

CHAPTER 300.**INCOME TAX (IN AID OF INDUSTRY).**

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CHAPTER 300.

INCOME TAX (IN AID OF INDUSTRY).

16 of 1951.

An Ordinance to encourage the establishment or development of industries in the Colony and to make provision for relief from income tax to persons establishing or developing such industries and for purposes incidental to or connected with any of the foregoing purposes; and to make provision for relief from income tax in aid of certain industries and the provision of workmen's homes.

[23RD JUNE, 1951.]

Short title and construction.
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1. (1) This Ordinance may be cited as the Income Tax (In Aid of Industry) Ordinance, and shall be read as one with the Income Tax Ordinance.

Application of Parts II to VIII of this Ordinance.
First schedule.

(2) Parts II to VIII inclusive of this Ordinance shall, except as may be otherwise expressly provided therein, be applicable to the trades or businesses specified in the first schedule to this Ordinance:

Provided that the Governor in Council may from time to time, by order, vary the said schedule by adding thereto any other trade or business.

PART I.—TAX HOLIDAY PERIOD.

Relief from income tax.

2. (1) Notwithstanding anything to the contrary contained in the Income Tax Ordinance as amended it is hereby provided that—

(a) where, in the opinion of the Governor in Council, the trade or business carried on by a company save a gold or diamond mining company is wholly of a developmental and risk-bearing nature and is likely to be instrumental to the development of the resources of, and beneficial to the Colony, the Governor in Council may issue a direction to that effect and thereupon the income of such company for the five years of assessment commencing with the year of assessment in which such direction is issued (hereinafter called the tax holiday period) shall be exempt from income tax;

(b) where, in the opinion of the Governor in Council, part of the trade or business carried on by a company save a gold or diamond mining company, is of the description set forth in paragraph (a) of this subsection, the Governor in Co.

may issue a direction to that effect and, thereupon, the income derived from such part of the company's trade or business for the five years of assessment commencing with the year of assessment in which such direction is issued (hereinafter called the tax holiday period) shall be exempt from income tax:

Provided that if the end of the tax holiday period does not coincide with the end of an accounting period of a company, the income for the accounting period in which the last day of the tax holiday period falls shall be apportioned between the parts of the said accounting period which respectively precede and follow the end of the tax holiday period and the income thus attributed to the part which precedes the end of the tax holiday period shall be exempt from income tax.

(2) The provisions of Parts II to VIII inclusive of this Ordinance, where applicable to a company to which subsection (1) of this section applies, shall commence to apply in the first year of assessment following the year of assessment during the basis period of which the tax holiday period ends:

Provided that in computing the income for the tax holiday period and for the whole of the accounting period in which the last day of the tax holiday period falls no allowances shall be made for wear and tear of plant, machinery or buildings; and

Provided further that for the purposes of Parts II to VIII inclusive of this Ordinance the allowances which fall to be made shall be computed as if the capital expenditure incurred at any time up to the end of the accounting period in which the last day of the tax holiday period falls, less any realisation of capital assets effected up to the end of the said accounting period, were incurred on the first day following the end of the said accounting period, and as if the expenditure incurred at any time up to the end of the said accounting period on any scientific research contemplated by section 38 of this Ordinance were incurred on the first day following the end of the said accounting period; and

Provided further that any loss incurred by a company to which subsection (1) of this section applies during the tax holiday period shall be set-off, without the limitations imposed by section 15 of the Income Tax Ordinance, against the income arising to such a company during the period or periods immediately following the tax holiday period.

(3) A company to which subsection (1) of this section applies being a company limited by shares within the meaning of the Companies Ordinance, shall be entitled during the tax holiday period and within two years thereafter to distribute a sum equal

to the income arising during the tax holiday period from the trade or business to which subsection (1) of this section applies to the members of the company and every such sum shall be exempt from the payment of income tax in the hands of such members.

(4) Every company aforesaid shall upon payment of a dividend to which subsection (3) of this section applies furnish to each shareholder a certificate setting forth the amount of the dividend paid, the period of profits out of which it is paid, and that it is exempt from income tax as provided for by subsection (3) of this section.

(5) Every company to which subsection (1) of this section applies shall keep separate accounts relating to the gains or profits of every trade or business to which this section applies, and in all accounts and statements submitted to the Commissioner of Income Tax the gains or profits of every such trade or business shall be separately set out; and notwithstanding the exemption from income tax in the tax holiday period the provisions of section 40 of the Income Tax Ordinance (which relates to returns and particulars of income) shall, *mutatis mutandis*, apply to every such company.

(6) The Governor in Council may from time to time make regulations generally for carrying out the provisions of this section.

(7) Where the Governor in Council is satisfied that a company to which subsection (1) of this section applies has contravened any provisions of this Ordinance or of any regulations made under this section and that having regard to all the circumstances of the case it is expedient so to do, he may revoke the direction issued under subsection (1) of this section and thereupon the provisions of this section shall cease to apply to such company.

PART II.—INDUSTRIAL BUILDINGS AND STRUCTURES, ETC.

3. (1) Subject to the provisions of this Ordinance, where, on or after the 1st January, 1951, (in this Ordinance referred to as "the appointed day"), a person incurred or incurs capital expenditure on the construction of a building or structure which has been or is to be an industrial building or structure occupied for the purposes of a trade carried on either by him or by such a lessee as is hereinafter mentioned, in ascertaining the chargeable income for the year of assessment hereinafter mentioned, of such person who incurred the expenditure, there shall be allowed to him a deduction (in this Part of this Ordinance referred to as "an initial allowance") equal to one-tenth thereof.

Initial
allowances.

The said lessees are lessees occupying the building or structure on the construction of which the expenditure was incurred under a lease to which the relevant interest, as defined for the purposes of this Part of this Ordinance, is reversionary.

(2) The said year of assessment shall, in the case of a person incurring expenditure, be the year of assessment in his basis period for which the expenditure was incurred:

Provided that where the first use to which the building or structure is put is a use by a person occupying it by virtue of a tenancy to which the relevant interest is reversionary and the tenancy begins after the incurring of the expenditure, the said year of assessment shall be the year of assessment in which the tenancy begins.

(3) The preceding provisions of this section shall apply in relation to expenditure incurred by a person on or after the 1st January, 1949, but before the appointed day as if it had been incurred by him on the appointed day:

Provided that—

(a) the amount by reference to which the initial allowance is to be calculated shall, instead of being the amount of the expenditure, be the amount thereof less any deduction allowed for years of assessment before that in which the appointed day falls under section 13 of the Income Tax Ordinance for the exhaustion, wear and tear (hereinafter referred to as “depreciation allowance”) of the building or structure; and

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(b) no initial allowance shall be allowed if—

(i) before the appointed day, the relevant interest in the building or structure was sold, or, being a leasehold interest, comes to an end otherwise than on the person entitled thereto acquiring the interest which is reversionary thereon; or

(ii) before the appointed day, the building or structure is demolished or is destroyed; or

(iii) at any time before the appointed day the building or structure is, but on the appointed day is not, an industrial building or structure.

(4) Notwithstanding anything in this section, no initial allowance shall be made in respect of any expenditure if, when the building or structure comes to be used, it is not an industrial building or structure; and where an initial allowance has been granted in respect of any expenditure otherwise than in accordance with the provisions of this section, all such additional

assessments as are necessary to secure that effect is given to those provisions shall be made at any time notwithstanding that apart from this section the time limited by the relevant provisions of the Income Tax Ordinance for the amendment or making of additional assessments has expired.

(5) Any expenditure incurred on or after the 1st January, 1949, for the purposes of a trade by a person about to carry it on shall be treated for the purposes of the preceding provisions of this section as if it had been incurred by that person on the first day on which he does carry it on.

Annual allowances.

4. (1) Subject to the provisions of this Ordinance where—

(a) any person is, at the end of his basis period for the year of assessment in which the appointed day falls or any subsequent year of assessment, entitled to an interest in a building or structure; and

(b) at the end of the said basis period the building or structure is an industrial building or structure; and

(c) that interest is the relevant interest in relation to the capital expenditure incurred in the construction of that building or structure,

in ascertaining the chargeable income of such person there shall be allowed in the relative year of assessment the deduction of an amount (in this Part of this Ordinance referred to as "an annual allowance") equal to one-fiftieth of that expenditure.

(2) Where at any time on or after the appointed day, the interest in a building or structure which is the relevant interest in relation to any expenditure is sold while the building or structure is an industrial building or structure the annual allowance in respect of that expenditure shall, in the case of the years of assessment the basis periods for which end after the time of that sale—

(a) be computed by reference to the residue (as defined in the provisions of this Part of this Ordinance relating to the writing-off of expenditure) of that expenditure immediately after the sale; and

(b) be the fraction of the said residue the numerator of which is one and the denominator of which is the number of years of assessment comprised in the period which—

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

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

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

5. (1) Where any capital expenditure has been incurred on the construction of a building or structure and on or after the appointed day, any of the following events occurs while the building or structure is an industrial building or structure; that is to say—

Balancing allowances and balancing charges.

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

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

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

an allowance or charge (in this Part of this Ordinance referred to as "a balancing allowance" or "a balancing charge") shall, in the circumstances mentioned in this section, be made to, or as the case may be, on the person entitled to the relevant interest immediately before that event occurs for the year of assessment in his basis period for which that event occurs; and in ascertaining the chargeable income of such person a balancing allowance shall be deemed to be a deduction included in section 12, and a balancing charge shall be deemed to be a gain or profit within the meaning of paragraph (a) of section 5 of the Income Tax Ordinance:

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

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

the said residue or as the case may be of the excess thereof over the said moneys.

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

(4) If, for any of the relevant years of assessment (as defined for the purposes of this subsection), neither an annual allowance nor a scientific research allowance has been made, the last two preceding subsections shall have effect subject to the modification that the amount of the balancing allowance, or as the case may be, the amount on which the balancing charge is to be made shall be reduced by applying thereto the fraction, the numerator of which is the number of the relevant years of assessment for which an annual or scientific research allowance has been made in respect of the expenditure and the denominator of which is the total number of the relevant years of assessment.

In this subsection, the expression "the relevant years of assessment" means all the years of assessment or what would have been years of assessment if income tax had been in force after that in which the building or structure was first used for any purpose up to and including that in which the event takes place which gives rise to the allowance or charge:

Provided that where, before the said event but on or after the appointed day, the building or structure has been sold while an industrial building or structure, the said expression means all years of assessment for which either—

(a) an annual allowance is made by reason of the building or structure being an industrial building or structure at any time between the sale and the event, or, where there has been more than one such sale, between the last such sale and the event; or

(b) an annual allowance would have fallen to be made if the building or structure had been an industrial building or structure at all times between the sale, or as the case may be, the last of such sale, and the event.

(5) Notwithstanding anything in the preceding provisions of this section, in no case shall the amount on which a balancing charge is made on a person in respect of any expenditure on the construction of a building or structure exceed the amount of the initial allowance, if any, made to him in respect of that expenditure together with the amount of annual allowances or

scientific research allowances in respect of that expenditure and any wear and tear allowances (if any) in respect of that building or structure, made to him for years of assessment his basis periods for which end on or before the date of the event which gives rise to the charge.

6. (1) Any expenditure incurred on the construction of any building or structure shall be deemed for the purposes of this Part of this Ordinance to be written off to the extent and as at the times hereafter specified in this section, and references in this Part of this Ordinance to the residue of any such expenditure shall be construed accordingly.

Writing off of expenditure and meaning of "residue of expenditure."

(2) If an initial allowance is made in respect of the expenditure, the amount of that allowance shall be written off as at the time when the building or structure is first used.

(3) If, by reason of the building or structure being at any time an industrial building or structure, an annual allowance is made for any year of assessment in respect of the expenditure, the amount of that allowance shall be written off as at the said time:

Provided that where at the said time an event occurs which gives rise or may give rise to a balancing allowance or balancing charge, the amount directed to be written off by this subsection as at the said time shall be taken into account in computing the residue of that expenditure immediately before that event for the purpose of determining whether any, and if so what, balancing allowance or balancing charge is to be made.

(4) If a scientific research allowance is made for any year of assessment in respect of the expenditure, the amount of that allowance shall be written off, in the case of an allowance under section 38 of this Ordinance as at the end of the basis year (as defined in that section) for the year of assessment, and, in the case of an allowance under section 39 of this Ordinance as at the time when the asset ceases to be used by the person in question for scientific research connected with the trade:

Provided that where, at the time when an amount falls to be written off under this subsection, an event occurs which gives rise or may give rise to a balancing allowance or a balancing charge, the amount directed to be written off by this subsection as at that time shall be taken into account in computing the residue of the expenditure immediately before that event for the purpose of determining whether any, and if so what, balancing allowance or balancing charge is to be made

(5) If, in the case of any year of assessment after that in which the building or structure is first used, no annual allowance or scientific research allowance falls to be made to any person in respect of the expenditure, then, subject to the provisions of this and the next succeeding subsection, an amount equal to one-fiftieth of the expenditure shall be written off as at the end of the year of assessment:

Provided that—

(a) where the building was first used in a year before the year preceding the year of assessment 1929, the year commencing on the 1st January after the building was first used and each subsequent period of twelve months before the year of assessment 1929 shall, for the purposes of this subsection, be deemed to be a year of assessment; and

(b) in the case of the year of assessment in which the appointed day falls or any subsequent year of assessment, the amount to be written off shall—

(i) if the building or structure has been sold on or after the appointed day while an industrial building or structure, be the amount which would have fallen to be written off if—

(1) the building or structure had been an industrial building or structure in use on the day preceding the beginning of the year of assessment for the purposes of a trade carried on by a person entitled to the relevant interest or structure; and

(2) the basis period of that person for the year of assessment had ended on the said preceding date; and

(3) an annual allowance had been made to him for the year of assessment accordingly;

(ii) be, if any wear and tear allowance under section 13 of the Income Tax Ordinance is made in respect of the building or structure for the year of assessment in the case of any trade not being a trade mentioned in the first schedule to this Ordinance and the amount falling to be written off as provided by this subsection is less than that allowance, an amount equal to the wear and tear allowance.

(6) If any wear and tear allowances are made in respect of the building or structure for any year of assessment before that in which the appointed day falls, and either—

(a) no amount falls to be written off under the last preceding subsection as at any date before the beginning of the year of assessment in which the appointed day falls; or

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schedule.

(b) the total amounts falling to be written off thereunder as at dates before the beginning of the year in which the appointed day falls are less than the total wear and tear allowances for years of assessment before that year.

an amount equal to the total wear and tear allowances or, as the case may be, to that total amount less the total amounts falling to be written off as aforesaid, shall be written off as at the end of the year of assessment immediately preceding that in which the appointed day falls.

(7) If, on the occasion of a sale, a balancing allowance is made in respect of the expenditure, there shall be written off as at the time of the sale the amount by which the residue of the expenditure before the sale exceeds the net proceeds of the sale.

(8) If, on the occasion of a sale, a balancing charge is made in respect of the expenditure, the residue of the expenditure shall be deemed for the purposes of this Part of this Ordinance to be increased as at the time of the sale by the amount on which the charge is made.

(9) Where the Crown is at any time entitled to the relevant interest in a building or structure, the preceding provisions of this section shall have effect as if all such annual allowances, balancing allowances, wear and tear allowances and balancing charges had been made as could have been made if—

(a) a person other than the Crown had been entitled to the relevant interest; and

(b) all things which, while the Crown is entitled to the relevant interest, have been done in relation to the building or structure by or to the Crown or by or to any person using the building or structure under the authority of the Crown, had been done by or to that other person, for the purposes of and in the course of a trade carried on by him;

(c) any sale or other disposition by or on behalf of the Crown of the relevant interest in the building or structure had been made in connection with the termination of that trade; and

(d) the basis periods of that other person in respect of that trade had in the case of each year of assessment, ended immediately before the beginning of the year of assessment.

7. (1) Where expenditure is incurred on the construction of a building or structure and, before that building or structure is used, the relevant interest therein is sold—

Buildings
and struc-
tures bought
unused.

(a) the expenditure actually incurred on the construction thereof shall be left out of account for the purposes of the preceding provisions of this Part of this Ordinance; but

(b) the person who buys that interest shall be deemed for those purposes to have incurred, on the date when the purchase price becomes payable, expenditure on the construction thereof equal to the said expenditure or to the net price paid by him for the said interest, whichever is the less:

Provided that, where the relevant interest in the building or structure is sold more than once before the building or structure is used, the provisions of paragraph (b) of this subsection shall have effect only in relation to the last of those sales.

(2) Where the expenditure incurred on the construction of a building or structure was incurred by a person carrying on a trade which consists, as to the whole or any part thereof, in the construction of buildings or structures with a view to their sale, and, before the building or structure is used, he sells the relevant interest therein in the course of that trade, or, as the case may be, of that part of that trade, paragraph (b) of the preceding subsection shall have effect subject to the following modifications—

(a) if that sale is the only sale of the relevant interest before the building or structure is used, the said paragraph (b) shall have effect as if the words “the said expenditure or to” and the words “whichever is the less” were omitted; and

(b) in any other case, the said paragraph (b) shall have effect as if the reference to the expenditure actually incurred on the construction of the building or structure were a reference to the price paid on the said sale.

Cessation
of wear and
tear
allowances.
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8. (1) Subject to the provisions of this section, no allowance shall be made under section 13 of the Income Tax Ordinance for the year of assessment in which the appointed day falls or any subsequent year of assessment.

(2) Notwithstanding anything in the preceding subsection if an allowance falls to be made under section 13 of the Income Tax Ordinance in respect of any premises in the case of any trade for the last year of assessment before that in which the appointed day falls, an allowance shall, by virtue of this subsection, be made under and subject to the provisions of the said section 13 in respect of those premises for the year of assessment in which the appointed day falls and each of the next four years of assessment in the case of every trade carried on thereon:

Provided that if, at any time in the year of assessment in which the appointed day falls or any of the next four years of assessment, any person to whom an allowance would otherwise

fall to be made under the said section for that year of assessment in respect of those premises, by notice in writing to the Commissioner, elects that the said section 13 shall no longer apply to the premises—

(a) no allowance shall be made under the said section 13 for that or any subsequent year of assessment in the case of that person's trade; and

(b) no allowance shall be made under the said section 13 for any year of assessment in the case of any trade, being a trade mentioned in the first schedule to this Ordinance, carried on on those premises after that person's trade has ceased to be carried on thereon.

(3) Where by virtue of the last preceding subsection an allowance falls to be made under the said section 13 for the year of assessment in which the appointed day falls or any subsequent year of assessment in the case of any trade, the other provisions of this Part of this Ordinance shall have effect in relation to the premises in question as if the appointed day were postponed until the first day of the first year of assessment for which no allowance falls to be made under that section in the case of that or any other trade mentioned in the first schedule to this Ordinance.

9. (1) Subject to the provisions of this section, in this Part of this Ordinance the expression "industrial building or structure" means a building or structure in use—

Definition of industrial building or structure.

(a) for the purposes of a trade mentioned in the first schedule to this Ordinance; and

(b) for the purposes of any of the aforementioned trades and consisting in the storage of goods or materials which, having been manufactured or produced or subjected, in the course of that trade, to any process, have not yet been delivered to any purchaser; and in particular the said expression includes any building or structure provided by the person carrying on such a trade for the welfare of workers employed in that trade and in use for that purpose.

(2) The provisions of subsection (1) of this section shall apply in relation to a part of a trade as they apply in relation to a trade:

Provided that where part only of a trade complies with the conditions set out in the said provisions, a building or structure shall not, by virtue of this subsection, be an industrial building or structure unless it is in use for the purposes of that part of that trade.

(3) Notwithstanding anything in subsection (1) or subsection (2) of this section, but subject to the provisions of subsection (4) of this section, the expression "industrial building or structure" does not include any building or structure in use as, or as part of, a dwelling-house, retail shop, show room or office or for any purpose ancillary to the purposes of a dwelling-house, retail shop, show room or office.

(4) Where part of the whole of a building or structure is, and part thereof is not, an industrial building or structure, and the capital expenditure which has been incurred on the construction of the second mentioned part is not more than one-tenth of the total capital expenditure which has been incurred on the construction of the whole building or structure, the whole building or structure and every part thereof shall be treated as an industrial building or structure.

(5) In this section the expression "retail shop" includes any premises of a similar character where retail trade or business (including repair work) is carried on.

Sports pavilions.

10. Where a building or structure which is not an industrial building or structure as defined in the last preceding section is occupied by the person carrying on a trade and used as a sports pavilion for the welfare of all or any of the workers employed in that trade this Part of this Ordinance shall apply in relation to that building or structure as if it were an industrial building or structure.

Meaning of "the relevant interest."

11. (1) Subject to the provisions of this section, in this Part of this Ordinance, the expression "the relevant interest" means, in relation to any expenditure incurred on the construction of a building or structure, the interest in that building or structure to which the person who incurred the expenditure was entitled when he incurred it.

(2) Where, when he incurs expenditure on the construction of a building or structure, a person is entitled to two or more interests in the building or structure, and one of those interests is an interest which is reversionary on all the others, that interest shall be the relevant interest for the purposes of this Part of this Ordinance.

(3) An interest shall not cease to be the relevant interest for the purposes of this Part of this Ordinance by reason of the creation of any lease or other interest to which that interest is subject, and where the relevant interest is a leasehold interest and is extinguished by reason of the surrender thereof, or on

the person entitled thereto acquiring the interest which is reversionary thereon, the interest into which that leasehold interest merges shall thereupon become the relevant interest.

(4) Where the relevant interest is a leasehold interest which came to an end before the appointed day and the last preceding subsection does not apply, the interest which is immediately reversionary thereon shall be deemed, for the purposes of the provisions of this Part of this Ordinance in so far as they relate to annual allowances, balancing allowances and balancing charges to have thereupon become the relevant interest.

12. For the purposes of this Part of this Ordinance, a building or structure shall not be deemed to cease altogether to be used by reason that it falls temporarily out of use on or after the appointed day and, where, immediately before any period of temporary disuse beginning on or after that day, a building or structure is an industrial building or structure, it shall be deemed to continue to be an industrial building or structure during the period of temporary disuse.

Temporary disuse of industrial buildings or structures.

13. (1) The provisions of this Part of this Ordinance shall have effect in relation to any period of requisition of any land as if the Crown had been in possession of that land for that period by virtue of a lease, and any reference in this Part of this Ordinance to the surrender of a lease or the extinguishment thereof on the person entitled thereto acquiring the interest which is reversionary thereon, or to the merger of a leasehold interest, shall be construed accordingly, and any sum paid to the Crown in respect of any building or structure constructed on any land during any period of requisition of that land, being a sum paid, whether by virtue of any enactment or otherwise, by the person who, subject to the rights of the Crown, is entitled to possession of the land, shall be deemed for the purposes of this Part of this Ordinance to be a sum paid in consideration of the surrender of that lease:

Requisitioned land, holding over of leased land, and other special cases.

Provided that where a person carrying on a trade is authorised by the Crown to occupy the land or any part thereof for the whole or any part of the period of requisition, the provisions of this Part of this Ordinance shall have effect as if the Crown had granted a sub-lease to that person of that land or, as the case may be, that part thereof, for the period of requisition or, as the case may be, for that part of the period for which the said person occupies the land, and the preceding provisions of this subsection shall have effect in relation to that sub-lease as they have effect in relation to the lease therein mentioned, subject,

however, to the modification that for the reference to any sum paid to the Crown there shall be substituted a reference to any sum paid to the said person.

In this subsection, the expression "period of requisition" means a period in respect of which compensation is, or, but for any agreement to the contrary, would be, payable under any regulations or under the corresponding provisions of any Ordinance which may replace the said regulations, by reference to the rent which might reasonably be expected to be payable under a lease granted immediately before the beginning of that period.

(2) Where, with the consent of the lessor, a lessee of any building or structure remains in possession thereof, after the termination of the lease without a new lease being granted to him, that lease shall be deemed for the purposes of this Part of this Ordinance to continue so long as he remains in possession as aforesaid.

(3) Where, on the termination of a lease, a new lease is granted to the lessee in pursuance of an option available to him under the terms of the first lease, the provisions of this Part of this Ordinance shall have effect as if the second lease were a continuation of the first lease.

(4) Where, on the termination of a lease, the lessor pays any sum to the lessee in respect of a building or structure comprised in the lease, the provisions of this Part of this Ordinance shall have effect as if the lease had come to an end by reason of the surrender thereof in consideration of the payment.

(5) Where, on the termination of a lease, another lease is granted to a different lessee and, in connection with the transaction, that lessee pays a sum to the person who was the lessee under the first lease, the provisions of this Part of this Ordinance shall have effect as if both leases were the same lease and there had been an assignment thereof by the lessee under the first lease to the lessee under the second lease in consideration of the payment.

Exclusion of
double
allowances,
etc.

14. (1) No allowance shall be made under, or by virtue of, any provisions of this Part of this Ordinance in respect of, or of premises including, or of expenditure on, a building or structure if, for the same or any previous or subsequent year of assessment, an allowance is or can be made under any of the provisions of Part III or Part IV of this Ordinance in respect of, or of expenditure on, that building or structure.

(2) Without prejudice to the provisions of the preceding subsection, any reference in this Part of this Ordinance to the incurring of expenditure on the construction of a building or structure does not include expenditure on the provision of machinery or plant or on any asset which has been treated for any year of assessment as machinery or plant.

15. (1) References in this Part of this Ordinance to expenditure incurred on the construction of a building or structure do not include—

Interpreta-
tion of
Part II.

(a) any expenditure incurred on the acquisition of, or rights in or over, any land; or

(b) any expenditure incurred on preparing, cutting, tunnelling or levelling any land:

Provided that paragraph (b) of this subsection shall not apply to expenditure on work done on the land to be covered by a building or structure for the purposes of preparing the land to receive the foundations of the building or structure being work which may be expected to be valueless when the building or structure is demolished and not being work which consists of cutting or tunnelling.

(2) A person who has incurred expenditure on the construction of a building or structure shall be deemed for the purposes of any provision of this Part of this Ordinance referring to his interest therein at the time when the expenditure was incurred, to have had the same interest therein as he would have had if the construction thereof had been completed at that time.

(3) Without prejudice to any of the other provisions of this Ordinance relating to the apportionment of sale, insurance, salvage or compensation moneys, the sum paid on the sale of the relevant interest in a building or structure, or any other sale, insurance, salvage or compensation moneys payable in respect of any building or structure shall, for the purposes of this Part of this Ordinance, be deemed to be reduced by an amount equal to so much thereof, as, on a just apportionment, is attributable to assets representing expenditure other than expenditure in respect of which an allowance can be made under this Part of this Ordinance.

PART III.—MACHINERY AND PLANT.

16. (1) Where, on or after the appointed day, a person carrying on a trade incurs capital expenditure on the provision of machinery or plant for the purposes of the trade, there shall be made to him, for the year of assessment in the basis period

Initial
allowances.

for which the expenditure is incurred, an allowance (in this Part of this Ordinance referred to as "an initial allowance") equal to two-fifths of the expenditure.

(2) Where, on or after the 1st January, 1949, but before the appointed day, a person carrying on a trade incurs any capital expenditure on the provision of machinery or plant for the purposes of the trade, he shall be treated for the purposes of subsection (1) of this section as having incurred, on the appointed day, capital expenditure on the provision of that machinery or plant for those purposes equal to the amount of that expenditure less any deduction under section 13 of the Income Tax Ordinance for any year of assessment before that in which the appointed day falls:

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Provided that this subsection shall not apply to any expenditure on the provision of machinery or plant if, on the appointed day, the machinery or plant is no longer owned by the person who incurred the expenditure or is out of use as being worn out or obsolete or otherwise useless or no longer required.

(3) Any expenditure incurred on or after the said 1st January for the purposes of a trade by a person about to carry it on shall be treated for the purposes of the preceding provisions of this section as if it had been incurred by that person on the first day on which he does carry it on.

Allowance
for wear and
tear under
section 13
of Income
Tax Ordinance.
Cap. 299.

17. (1) For the purposes of section 13 of the Income Tax Ordinance (which provides, in ascertaining the chargeable income of any person in a trade for the deduction of a reasonable amount for the exhaustion by wear and tear of any machinery arising out of its use in the trade) the machinery or plant in use at the end of the basis period shall, in the case of the year of assessment in which the appointed day falls or any subsequent year of assessment, be taken to be the machinery or plant used for the purposes of the trade during the year.

Amendment
of section 13
of Income
Tax Ordinance for
purposes of
this Part of
this Ordinance.

(2) In the case of machinery or plant provided on or after the appointed day—

(a) in considering what deduction is to be allowed under section 13 of the Income Tax Ordinance, there shall be left out of account a proportion of the machinery or plant equal to the proportion of the expenditure on the provision thereof which is or is to be met directly or indirectly by the Crown or any government or public or local authority whether in the Colony or elsewhere, or out of the Sugar Rehabilitation Fund, or by any person other than the person providing the machinery or plant; and

(b) the deduction allowed under the said section 13 for any year of assessment shall not exceed what, apart from any deduction which falls to be made under the said section for that year would be the amount of the capital expenditure on the provision of the machinery or plant still unallowed as at the beginning of the year.

(3) Where, in considering whether any, and if so, what, deduction is to be allowed in respect of any machinery or plant under paragraph (c) of subsection (1) of section 12 of the Income Tax Ordinance or the said section 13, account falls to be taken of deductions previously allowed under the said paragraph (c) of subsection (1) of section 12 or the said section 13, any initial allowance granted in respect of the machinery or plant shall be taken into account as if it were a deduction allowed under the said paragraph (c) of subsection (1) of section 12 or the said section 13.

18. (1) Subject to the provisions of this section, where, on or after the appointed day, any of the following events occurs in the case of machinery or plant in respect of which an initial allowance or a deduction under section 13 of the Income Tax Ordinance has been made or allowed for any year of assessment to a person carrying on a trade, that is to say, either—

Balancing allowances and balancing charges.
Cap. 299.

(a) the machinery or plant is sold, whether while still in use or not; or

(b) the machinery or plant is destroyed; or

(c) the machinery or plant is put out of use as being worn out or obsolete or otherwise useless or no longer required;

and the event in question occurs before the trade is permanently discontinued, that is to say there being no successor to the trade, an allowance or charge (in this Part of this Ordinance referred to as "a balancing allowance" or "a balancing charge") shall, in the circumstances mentioned in this section, be made to, or as the case may be, on that person for the year of assessment in his basis period for which the event occurs; and in ascertaining the chargeable income of such person a balancing allowance shall be deemed to be a deduction included in section 12, and a balancing charge shall be deemed to be a gain or profit within the meaning of paragraph (a) of section 5 of the Income Tax Ordinance.

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

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

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

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

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

(b) the amount of any deductions in respect of machinery or plant in question under the said section 13;

(c) the amount of any scientific research allowances made to him in respect of the expenditure; and

(d) the amount of any balancing allowance previously made to him in respect of the expenditure.

Replacement
of machinery
or plant.

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

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

(i) the charge shall be made only on an amount equal to the difference; and

(ii) no initial allowance, no balancing allowance and no deduction under the said section 13 shall be made or allowed in respect of the new machinery or plant or the expenditure on the provision thereof; and

(iii) in considering whether any, and, if so, what balancing charge falls to be made in respect of the expenditure on the new machinery or plant, there shall be deemed to have

been made in respect of that expenditure an initial allowance equal to the full amount of that expenditure;

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

(i) the charge shall not be made; and

(ii) the amount of any initial allowance in respect of the said expenditure and the amount of any deduction to be allowed under the said section 13 shall be calculated as if the expenditure had been reduced by the amount on which the charge would have been made; and

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

(2) Paragraph (c) of subsection (1) of section 12 of the Income Tax Ordinance (which provides for a deduction for obsolescence in ascertaining the chargeable income)—

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(a) shall not have effect in the case of any replacement of plant or machinery provided on or after the appointed day;

(b) shall, in the case of the replacement on or after the appointed day of machinery or plant provided before the appointed day, have effect only if the person carrying on the trade by notice in writing to the Commissioner elects that it shall have effect in relation thereto;

and where any such election is made as is mentioned in paragraph (b) of this subsection, no balancing allowance shall be made in respect of the sale, destruction or putting out of use of the machinery, or plant which is replaced.

20. References in this Part of this Ordinance to the amount still unallowed of any expenditure as at any time shall be construed as references to the amount of that expenditure less—

Meaning of
"expenditure
unallowed."

(a) the initial allowance, if any, made in respect thereof to the person who incurred it;

(b) any deductions allowed to that person in respect of the machinery or plant under section 13 of the Income Tax Ordinance being deductions allowed in ascertaining chargeable income for a year of assessment the basis period for which ended before the time in question;

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(c) any scientific research allowance made to him in respect of that machinery or plant; and

(d) any balancing allowance made to him in respect of the expenditure.

Expenditure on alterations to buildings in connection with installation of machinery or plant. Cap. 299.

21. (1) Where, on or after the appointed day, a person carrying on a trade incurs capital expenditure on alterations to an existing building incidental to the installation of machinery or plant for the purposes of the trade, the provisions of this Part of this Ordinance and of section 13 of the Income Tax Ordinance shall have effect as if the said expenditure were expenditure on the provision of that machinery or plant and as if the works representing that expenditure formed part of that machinery or plant.

(2) The preceding provisions of this section shall apply in relation to expenditure incurred by a person on or after the 1st January, 1949, but before the appointed day, as if it had been incurred by him on the appointed day.

PART IV.—MINES, OIL WELLS, ETC.

Expenditure to which Part IV applies.

22. (1) In this Part of this Ordinance, the expression "expenditure to which this Part of this Ordinance applies" means capital expenditure incurred by any person in connection with the working of a mine, oil well or other source of mineral deposits of a wasting nature—

(a) on searching for or on discovering and testing deposits, or winning access thereto; or

(b) on the construction of any works which are likely to be of little or no value when the source is no longer worked:

Provided that the said expression does not include—

(i) any expenditure on the acquisition of the site of the source or of the site of any such works as aforesaid, or of rights in or over any such site;

(ii) any expenditure on the acquisition of, or of rights in or over, the deposits;

(iii) any expenditure on machinery or plant, or on any asset which has been treated for any year of assessment as machinery or plant;

(iv) any expenditure on works constructed wholly or mainly for subjecting the raw product of the source to any process, except a process designed for preparing the raw product for use as such;

(v) any expenditure on buildings or structures provided for occupation by or for the welfare of workers;

(vi) any expenditure on a building where the whole of the building was constructed for use as an office;

(vii) any expenditure on so much of a building or structure as was constructed for use as an office unless the capital expenditure on the construction of the part of the building or structure constructed for use as an office was not more than one-tenth of the capital expenditure incurred on the construction of the whole building or structure.

(2) Any reference in this Part of this Ordinance to assets representing any expenditure includes, in relation to expenditure on searching for, discovering and testing deposits, any results obtained from any search, exploration or inquiry upon which the expenditure was incurred.

23. (1) Where, on or after the appointed day, a person carrying on a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits of a wasting nature incurs for the purposes of the trade any expenditure to which this Part of this Ordinance applies on the construction of works likely to have little or no value to him when the source is no longer worked, in ascertaining the chargeable income of such person, there shall be allowed to him for the year of assessment in the basis period for which the expenditure is incurred a deduction (in this Part of this Ordinance referred to as "an initial allowance") equal to one-tenth of that expenditure.

Initial allowances.

(2) The provisions of the preceding subsection shall apply in relation to expenditure incurred by a person on or after the 1st January, 1949, but before the appointed day, as if it had been incurred by him on the appointed day:

Provided that—

(a) in the case of expenditure on a building or structure the amount by reference to which the initial allowance is to be calculated shall, instead of being the amount of the expenditure, be the amount of the expenditure less any relevant wear and tear allowances made in respect of the building or structure under section 13 of the Income Tax Ordinance or any year of assessment before that in which the appointed day falls; and

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(b) no initial allowance shall be made in respect of any expenditure if the asset representing the expenditure has been sold between the date when the expenditure was incurred and the appointed day.

24. (1) Where a person carrying on a trade which consists of or includes the working of any mine, oil well, or other source of mineral deposits of a wasting nature has, at any time after

Annual allowances.

the beginning of the appointed day and before the end of his basis period for any year of assessment, incurred for the purposes of that trade expenditure to which this Part of this Ordinance applies, in ascertaining the chargeable income of such person there shall be allowed to him a deduction (in this Part of this Ordinance referred to as "an annual allowance") for that year in respect of the whole of the expenditure to which this Part of this Ordinance applies which he has incurred for the purposes of the trade and in connection with that source in the period which begins with the said day and ends with the end of the said basis period.

(2) The amount of the said allowance shall be the amount which results from applying to the residue of the expenditure the fraction of which—

(a) the numerator represents the output from the source in question in the basis period for the year in question; and

(b) the denominator represents the sum of that output and the total potential future output of the source estimated as at the end of that period;

or the fraction one-twentieth whichever is the greater.

(3) Where the source ceases to be worked, the person carrying on the trade may elect that the annual allowances, if any, for the year of assessment in which that event occurs and each of the five previous years of assessment shall be computed as if the reference in the last preceding subsection to the total potential future output of the source estimated as at the end of the basis period were a reference to the actual output of the source between the end of the basis period and the happening of the said event, and the said allowances shall be computed accordingly, and, notwithstanding anything in the Income Tax Ordinance limiting the time for the making of assessments or the allowance of claims for repayment, all such repayments and additional assessments shall be made as are necessary to enable effect to be given to this subsection.

(4) Where, on the appointed day, a person is carrying on a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits of a wasting nature, the preceding provisions of this section shall have effect as if he had on that day incurred for the purposes of the trade and in connection with the source of expenditure to which this Part of this Ordinance applies of the amount specified in the second schedule to this Ordinance:

Second
schedule.

Provided that if he considers that that amount is inadequate having regard to the dates on which expenditure to which this

Part of this Ordinance applies was actually incurred in connection with the source before the appointed day, he may apply to the Governor in Council for relief, and the Governor in Council may authorise such increase in that amount as may be appropriate.

(5) References in this section to the residue of any expenditure, in relation to the annual allowance to be made for any year of assessment, are references to the amount thereof which remains after deducting therefrom—

(a) any initial allowances made in respect of that expenditure or any part thereof for that or any previous year of assessment;

(b) any annual allowances made in respect of that expenditure or any part thereof for any previous year of assessment; and

(c) subject to the provisions of the next succeeding section, if, before the end of the basis period for the year of assessment for which the allowance is to be made, any asset representing the expenditure is sold or demolished or destroyed, the sale, insurance, salvage or compensation moneys.

25. (1) The provisions of this section shall have effect where—

(a) a person who is, on or after the appointed day, carrying on a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits of a wasting nature sells assets representing expenditure to which this Part of this Ordinance applies; and

(b) the buyer of those assets buys them for the purposes of a trade carried on or to be carried on by him, being a trade which consists of or includes the working of the whole or any part of the source in connection with which the assets were provided.

(2) If the net proceeds of the sale are less than the residue of the expenditure on the assets immediately before the sale, an allowance (in this Part of this Ordinance referred to as "a balancing allowance") shall be made to the seller, for the year of assessment in the basis period for which the sale took place, equal to the difference; and in ascertaining the chargeable income of such person a balancing allowance shall be deemed to be a deduction included in section 12 of the Income Tax Ordinance.

(3) If the net proceeds of the sale exceed the residue of the expenditure on the assets immediately before the sale, a charge (in this Part of this Ordinance referred to as "a balancing

Sale of source or part of source as going concern.

Cap. 299.

charge") shall be made on the seller, for the year of assessment in the basis period for which the sale took place, on the amount of the excess; and in ascertaining the chargeable income of such person a balancing charge shall be deemed to be a profit or gain within the meaning of paragraph (a) of section 5 of the Income Tax Ordinance.

(4) If the source in connection with which the expenditure was incurred has been worked before the appointed day, the last two preceding subsections shall have effect subject to the modification that the amount of the balancing allowance or the amount on which the balancing charge is made shall be reduced by applying thereto the fraction of which the numerator represents the total output from the source in the period which begins with the appointed day and ends with the time of sale, and the denominator represents the total output from the source up to the time of the sale:

Provided that if the person to whom a balancing allowance is to be made in respect of any expenditure considers that the amount by which the allowance is to be reduced under this subsection is excessive having regard to the dates on which the expenditure was actually incurred, he may apply to the Governor in Council for relief, and the Governor in Council may authorise such smaller reduction as may be appropriate.

(5) In no case shall the amount on which a balancing charge is made upon a person in respect of any assets exceed the difference between—

(a) the expenditure to which this Part of this Ordinance applies which he incurred upon the assets; and

(b) the residue of that expenditure immediately before the sale.

(6) Whether a balancing allowance or balancing charge is made upon the seller or not, the deduction to be made in the case of the seller in respect of the assets under paragraph (c) of subsection (5) of the last preceding section shall, instead of being the sale, insurance, salvage or compensation moneys, be the residue of the expenditure attributable to the assets immediately before the sale.

(7) The buyer shall, for the purposes of the provisions of this Part of this Ordinance relating to annual allowances, balancing allowances and balancing charges, be deemed to have incurred on the assets at the time of the sale expenditure to which this Part of this Ordinance applies equal to whichever is the less of the following amounts, that is to say—

(a) so much of the price as is attributable to the assets; and

(b) the residue of the expenditure on the assets immediately after the sale.

26. (1) Any expenditure incurred for the purposes of a trade by a person about to carry it on shall be treated for the purposes of this Part of this Ordinance as if it had been incurred by that person on the first day on which he does carry it on:

Application to expenditure incurred by persons not engaged in the trade of mining, etc.

Provided that nothing in this subsection shall authorise the making of an initial allowance in respect of any expenditure incurred before the 1st January, 1949.

(2) Where a person incurs expenditure to which this Part of this Ordinance applies on searching for, discovering and testing the mineral deposits of any mine, oil well or other source of a wasting nature and winning access to those deposits, and, without having carried on any trade which consists of or includes the working of the source, he sells any assets representing that expenditure, then, if the person who acquires the assets carries on such a trade as aforesaid in connection with the source that person shall, for the purposes of this Part of this Ordinance, be deemed to have incurred for the purposes of the trade and in connection with the source of expenditure to which this Part of this Ordinance applies equal to the amount of the expenditure to which this Ordinance applies which is represented by the assets or the price paid by him for the assets, whichever is the smaller.

27. The Governor in Council may make regulations for carrying this Part of this Ordinance into effect, and those regulations may in particular—

Regulations.

(a) lay down rules for determining the extent of the mineral deposits which are to be taken, for all or any of the purposes of this Part of this Ordinance, as constituting a source and the amount of the output of the source in any year or over any period, and in estimating total potential future output for any of those purposes;

(b) lay down rules for determining the residue of the expenditure attributable to an asset immediately before, or immediately after, the sale thereof;

(c) in relation to cases in which, by virtue of the preceding provisions of this Part of this Ordinance, a person is deemed to have incurred expenditure on the appointed day, lay down rules for determining what assets are to be treated as representing that expenditure and how much of that expenditure is to be treated as incurred on any particular asset,

(d) lay down rules for determining, for the purposes of any application under this Part of this Ordinance, whether and by how much—

(i) the amount of the expenditure which, under this Part of this Ordinance, a person is to be treated as having incurred on the appointed day is inadequate; or

(ii) the amount by which any allowance is to be reduced under this Part of this Ordinance is excessive.

PART V.—PATENTS.

Annual allowances for capital expenditure on purchase of patent rights.

28. (1) Where, on or after the appointed day, a person incurs capital expenditure on the purchase of patent rights, in ascertaining the chargeable income of such person there shall, subject to and in accordance with the subsequent provisions of this Part of this Ordinance, be allowed to him for each of the relevant years of assessment, as hereinafter defined, a deduction (in this Part of this Ordinance referred to as “an annual allowance”) equal to the appropriate fraction, as hereinafter defined, of the amount of that expenditure:

Provided that no annual allowance shall be made to a person in respect of any expenditure unless—

(a) the allowance falls to be made to him in ascertaining the chargeable profits or gains of his trade; or

(b) any income receivable by him in respect of the rights would be liable to income tax.

(2) The relevant years of assessment are, in the case of any person, the fourteen years of assessment beginning with the year of assessment in his basis period for which the expenditure was incurred:

Provided that—

(a) where the rights are purchased for a specified period, the preceding provisions of this subsection shall have effect with the substitution for the reference to fourteen years of a reference to fourteen years or the number of years comprised within that period whichever is the less; and

(b) where the rights purchased begin one complete year or more after the commencement of the patent and the preceding paragraph of this proviso does not apply, the said provisions shall have effect with the substitution for the reference to fourteen years of a reference to fourteen years less the number of complete years which, when the rights begin, have elapsed since the commencement of the patent, or, if fourteen complete years have elapsed as aforesaid, of a reference to one year; and

(e) any expenditure incurred on or after the appointed day for the purposes of a trade by a person about to carry it on shall be treated for the purposes of this subsection as if it had been incurred by that person on the first day on which he does carry it on, unless before the said first day he has sold all the rights on the purchase of which the expenditure was incurred.

(3) The appropriate fraction is the fraction the numerator of which is one and the denominator of which is the number of the relevant years of assessment.

29. (1) Where, on or after the appointed day, a person incurs capital expenditure on the purchase of patent rights and, before the end of the relevant years of assessment, any of the following events occurs, that is to say—

Effect of
lapse of
patent rights,
sales, etc.

(a) the rights come to an end without being subsequently revived; or

(b) he sells all those rights or so much thereof as he still owns; or

(c) he sells part of those rights and the net proceeds of the sale (so far as they consist of capital sums) are not less than the amount of the capital expenditure remaining unallowed;

no annual allowance shall be made to that person for the year of assessment in his basis period for which the event takes place or any subsequent year of assessment.

(2) Where, on or after the appointed day, a person incurs capital expenditure on the purchase of patent rights and, before the end of the relevant years of assessment, either of the following events occurs, that is to say—

(a) the rights come to an end without being subsequently revived; or

(b) he sells all those rights, or so much thereof as he still owns, and the net proceeds of the sale (so far as they consist of capital sums) are less than the amount of the capital expenditure remaining unallowed;

there shall, subject to and in accordance with the subsequent provisions of this Part of this Ordinance, be made to him for the year of assessment in his basis period for which the event takes place an allowance (in this Part of this Ordinance referred to as "a balancing allowance") equal, if the event is the rights coming to an end, to the amount of the capital expenditure remaining unallowed, and, if the event is a sale, to the amount of the capital expenditure remaining unallowed less the net proceeds of the sale.

(3) Where a person who, on or after the appointed day, has incurred capital expenditure on the purchase of patent rights sells all or any part of those rights and the net proceeds of the sale (so far as they consist of capital sums) exceed the amount of the capital expenditure remaining unallowed, if any, there shall, subject to and in accordance with the subsequent provisions of this Part of this Ordinance, be made on him for the year of assessment in his basis period for which the sale takes place a charge (in this Part of this Ordinance referred to as "a balancing charge") on an amount equal to the excess or, where the amount of the capital expenditure remaining unallowed is nil, to the said net proceeds.

(4) Where a person who, on or after the appointed day, has incurred capital expenditure on the purchase of patent rights sells a part of those rights and the last preceding subsection does not apply, the amount of any annual allowance made in respect of that expenditure for the year of assessment in his basis period for which the sale takes place or any subsequent year of assessment shall be the amount arrived at by—

(a) subtracting the net proceeds of the sale (so far as they consist of capital sums) from the amount of the expenditure remaining unallowed at the time of the sale; and

(b) dividing the result by the number of the relevant years of assessment which remained at the beginning of the year of assessment in his basis period for which the sale takes place;

and so on for any subsequent sales.

(5) References in the preceding provisions of this section to the amount of any capital expenditure remaining unallowed shall, in relation to any event, be construed as references to the amount of that expenditure less any annual allowances made in respect thereof for years of assessment before the year of assessment in the basis period for which that event occurs, and less also the net proceeds of any previous sale by the person who incurred the expenditure of any part of the rights acquired by the expenditure, so far as those proceeds consist of capital sums.

(6) Notwithstanding anything in the preceding provisions of this section, no balancing allowance shall be made in respect of any expenditure unless an annual allowance has been, or, but for the happening of the event giving rise to the balancing allowance, could have been, made in respect of that expenditure, and the total amount on which a balancing charge is made in respect of any expenditure shall not exceed the total annual allowances actually made in respect of that expenditure, less, if

a balancing charge has previously been made in respect of that expenditure, the amount on which that charge was made.

30. (1) Where, on or after the appointed day, a person resident in the Colony sells any patent rights and the net proceeds of the sale consist wholly or partly of a capital sum, he shall, subject to the provisions of this Part of this Ordinance, be charged to tax under the provisions of paragraph (a) of section 5 of the Income Tax Ordinance for the year of assessment in the basis period for which the sum is received by him and each of the five succeeding years of assessment, on an amount equal to one-sixth of that sum:

Charges on capital sums received for patent rights.

Cap. 299.

Provided that if that person, by notice in writing served on the Commissioner not later than twelve months after the end of the year of assessment in the basis period for which the said amount was received, elects that the whole of the said sum shall be charged to tax for the said year of assessment, it shall be charged to tax accordingly.

(2) Where, on or after the appointed day, a person not resident in the Colony sells any patent rights and the net proceeds of the sale consist wholly or partly of a capital sum, and the patent is a Colony patent, then subject to the provisions of this Part of this Ordinance—

(a) he shall be chargeable to tax in respect of that sum under the provisions of paragraph (a) of section 5 of the Income Tax Ordinance, as if such proceeds of sale were income derived from the Colony; and

(b) all the other provisions of the Income Tax Ordinance shall have effect accordingly:

Provided that if, not later than twelve months after the end of the year of assessment in the basis period for which the sum is paid, the person to whom it is paid, by notice in writing to the Commissioner, elects that the said sum shall be treated for the purpose of income tax for that year and each of the five succeeding years as if one-sixth thereof, and no more, were included in his income chargeable to tax for all those years respectively, it shall be so treated, and all such repayments and assessments of tax for each of those years shall be made as are necessary to give effect to the election.

(3) Where the patent rights sold by a person or the rights out of which the patent right sold by a person were granted were acquired by him by purchase and the price paid by him consisted wholly or partly of a capital sum, subsections (1) and (2) of this section shall apply as if any capital sum received by

him when he sells the right were reduced by the amount of that sum:

Provided that where between the said purchase and the said sale he has sold part of the patent rights acquired by him and the net proceeds of that sale consist wholly or partly of a capital sum, the amount of the reduction falling to be made under this subsection in respect of the subsequent sale shall be itself reduced by the amount of that sum.

Third
schedule.

(4) The provisions of the third schedule to this Ordinance (which relate to deaths, windings up and partnership changes) shall have effect in relation to the charges provided for by this section, and, in the said schedule, the expression "the principal section" means this section.

Patent rights
sold before
appointed
day.

31. Nothing in the preceding provisions of this Part of this Ordinance shall apply in relation to any patent rights if those rights, or any rights out of which they were granted, have been the subject of a sale before the appointed day and the proceeds of the sale consisted wholly or partly of a capital sum.

Relief for
expenses.

32. (1) In computing the profits or gains of any trade, there shall be allowed to be deducted as expenses any fees paid or expenses incurred on or after the appointed day in obtaining, for the purposes of the trade, the grant of a patent or an extension of the term of a patent.

(2) Where—

(a) on or after the appointed day, a person, otherwise than for the purposes of a trade carried on by him, pays any fees or incurs any expenses in connection with the grant or maintenance of a patent or the obtaining of an extension of a term of a patent; and

(b) those fees or expenses would, if they had been paid or incurred for the purposes of a trade, have been allowable as a deduction in estimating the profits or gains thereof;

there shall be made to him, for the year of assessment in the basis period for which these expenses were paid or incurred, an allowance equal to the amount thereof.

(3) Where a patent is granted in respect of any invention an allowance equal to so much of the net amount of any expense incurred, on or after the appointed day, by an individual who, whether alone or in conjunction with any other person, actually devised the invention as is properly ascribable to the deviser thereof (not being expenses in respect of which, or of ass

representing which, an allowance falls to be made under any other provision of the Income Tax Ordinance) shall be made to that individual for the year of assessment in the basis period for which the expenses were incurred.

(4) The provisions of the last preceding subsection shall apply in relation to expenses incurred before the appointed day, as if those expenses were incurred on the appointed day, subject to the modification that, if the patent in question was granted one complete year or more before the appointed day, the amount to be allowed shall be reduced by applying thereto the fraction the numerator of which is fourteen less the number of complete years comprised in the period beginning with the commencement of the patent and ending immediately before the appointed day, and the denominator of which is fourteen.

33. (1) Where a royalty or other sum is paid in respect of the user of a patent, and that user extended over a period of six complete years or more, the person receiving the payment may require that the income tax payable by him by reason of the receipt of that sum shall be reduced so as not to exceed the total amount of income tax which would have been payable by him if that royalty or sum had been paid in six equal instalments at yearly intervals, the last of which was paid on the date on which the payment was in fact made.

Spreading of income payments over several years.

(2) Subsection (1) of this section shall apply in relation to a royalty or other sum where the period of the user is two complete years or more but less than six complete years as it applies to royalties and sums mentioned in that subsection, but with the substitution for the reference to six equal instalments of a reference to so many equal instalments as there are complete years comprised in that period.

34. (1) An allowance or charge under any of the provisions of this Part of this Ordinance shall be made to or on a person in ascertaining the chargeable income resultant on the exercise of his trade if—

When a person is to be treated as a trader.

(a) he is carrying on a trade the profits or gains of which are, or, if there were any, would be, chargeable to income tax under the Income Tax Ordinance for the year of assessment for which the allowance or charge is made; and

(b) at any time in his basis period for that year of assessment, the patent rights in question, or other rights out of which they were granted, were or were to be used for the purposes of that trade:

Provided that nothing in this subsection shall affect any of the preceding provisions of this Part of this Ordinance allowing a deduction of expenses in computing the profits or gains of a trade or requiring a charge to be made under the Income Tax Ordinance.

Cap. 299.

(2) Save as aforesaid, in ascertaining the chargeable income of such person an allowance shall be deemed to be a deduction included in section 12 of the Income Tax Ordinance, and a charge shall be deemed to be a gain or profit within the meaning of paragraph (a) of section 5 of the Income Tax Ordinance.

Interpreta-
tion.

35. (1) In this Part of this Ordinance, the following expressions have the meanings hereby respectively assigned to them, that is to say—

“income from patents” means—

(a) any royalty or other sum paid in respect of the user of a patent;

(b) any amount on which tax is payable for any year of assessment by virtue of any of the provisions of this Part of this Ordinance;

“the commencement of a patent” means, in relation to a patent, the date from which the patent rights become effective;

“patent rights” means the right to do or authorise the doing of anything which would, but for that right, be an infringement of the patent;

“Colony patent” means a patent granted under the laws of this Colony.

(2) In this Part of this Ordinance, any reference to the sale of part of patent rights includes a reference to the grant of a licence in respect of the patent in question, and any reference to the purchase of patent rights includes a reference to the acquisition of a licence in respect of a patent:

Provided that if a licence granted by a person entitled to any patent rights is a licence to exercise those rights to the exclusion of the grantor and all other persons for the whole of the remainder of the term for which the rights subsist, the grantor shall be treated for the purposes of this Part of this Ordinance as thereby selling the whole of the rights.

Cap. 342.

(3) Where under section 33 of the Patents and Designs Ordinance, or any corresponding provisions of the law of any country outside the Colony, an invention which is the subject of a patent is made, used or exercised or vended by or for the service of the

Crown or the government of the country concerned, the provisions of this Part of this Ordinance shall have effect as if the making, user, exercise or vending of the invention had taken place in pursuance of a licence, and any sums paid in respect thereof shall be treated accordingly.

(4) Any reference in this Part of this Ordinance to the number of years comprised in a period shall be construed as a reference to the number of consecutive periods of twelve months, beginning with the day with which the period begins, which are comprised in the period, any odd period of less than twelve months remaining at the end of the period being treated as a complete twelve months:

Provided that nothing in this subsection shall be construed as affecting any reference in this Part of this Ordinance to the number of complete years comprised in any period or which have elapsed since any date.

PART VI.—SCIENTIFIC RESEARCH.

36. Notwithstanding anything in the Income Tax Ordinance, where, after the appointed day, a person carrying on a trade—

(a) incurs expenditure not of a capital nature on scientific research related to that trade and directly undertaken by him or on his behalf; or

(b) pays any sum to any scientific research association for the time being approved for the purposes of this section by the Governor in Council being an association which has as its object the undertaking of scientific research related to the class of trade to which the trade he is carrying on belongs; or

(c) pays any sum to be used for such scientific research as is mentioned in the last preceding paragraph to any such university, college, research institute or other similar institution as is for the time being approved for the purposes of this section by the Governor in Council;

the expenditure incurred or sum paid, as the case may be, may be deducted as an expense in computing the profits or gains of the trade for the purposes of income tax.

37. For the purposes of section 36 of this Ordinance, any expenditure incurred and any sum paid on or after the 1st January, 1949, and on or before the appointed day, being expenditure or a sum which, apart from that section, would not have been deductible as an expense in computing the profits or gains of the trade for the purposes of income tax, shall be treated as if that expenditure was incurred or that sum was paid immediately after the appointed day.

Allowances for expenditure not of capital nature incurred after the appointed day.

Allowances of expenditure not of a capital nature incurred between 1st January, 1949, and the appointed day.

Allowances of expenditure of a capital nature incurred after the appointed day.

38. Subject to the provisions of section 40 of this Ordinance where after the appointed day a person—

(a) while carrying on a trade, incurs expenditure of a capital nature on scientific research related to that trade and directly undertaken by him or on his behalf; or

(b) incurs expenditure of a capital nature on scientific research directly undertaken by him or on his behalf and thereafter sets up and commences a trade connected with that research;

in ascertaining the chargeable income of such person there shall be allowed to him a deduction equal to three-fifths of the expenditure for the year of assessment in the basis year for which the expenditure was incurred and a deduction equal to one-tenth of the expenditure for each of the succeeding four years of assessment.

In this section the expression "basis year" means in relation to a year of assessment, the period the profits or gains of which are under the Income Tax Ordinance to be taken to be the profits or gains of the year preceding that year of assessment.

Special provisions with regard to assets representing capital expenditure.

39. (1) Where an asset representing scientific research expenditure of a capital nature incurred by the person carrying on a trade ceases to be used by that person for scientific research related to that trade—

(a) no allowance shall be made under section 38 of this Ordinance for any year of assessment after that in which the cessation takes place; and

(b) if the amounts, if any, allowed under the said section 38 in respect of the expenditure added to the value of the asset immediately before cessation, are less than the said expenditure there shall be allowed in charging the profits or gains of the trade for the year of assessment in which the cessation takes place an additional deduction equal to the difference; and

(c) if in any subsequent year of assessment a claim is, or would but for this subsection, be admissible by the person carrying on the trade to a deduction in respect of the asset for wear and tear and the amount of that deduction is dependent upon the actual cost to that person of the asset, the cost of the asset, or the net cost of the asset, then the actual cost, cost or net cost, as the case may be, shall, for the purpose of ascertaining whether any and if so what deduction is admissible, be treated as reduced by the amount of any deductions allowed in respect of the asset under this section or section 38 of this Ordinance.

(2) Where an asset representing scientific research expenditure of a capital nature in respect of which an allowance or allowances has or have been made under this or the said section 38 in charging the profits or gains of a trade ceases to be used by the person carrying on the trade for scientific research related to that trade and is then or thereafter sold by him without having been used in the meantime for other purposes, then—

(a) if an additional allowance, or a greater additional allowance, would have been made under the last preceding subsection for the year of assessment in which the cessation occurred if the proceeds of sale of the asset had been taken to be the value of the asset, an amount equal to the additional allowance which would have been made or, as the case may be, to the difference between the additional allowance which would have been made and the additional allowance which was made for that year shall be allowed in ascertaining the chargeable income in respect of the trade for the year of assessment in which the sale occurs or, if the sale occurs on or after the date on which the trade is permanently discontinued, that is to say there being no successor, for the last year of assessment in the basis period for which the trade is carried on before the discontinuance;

(b) in any other case, if the proceeds of sale plus the total amount of the allowances made under this and the said section 38 in respect of the expenditure, exceed the amount of the expenditure, the excess or the amount of the allowances so made, whichever is the less, shall be treated as a trading receipt of the trade accruing at the time of the sale, or, if the sale occurs on or after the date on which the trade is permanently discontinued, accruing immediately before the discontinuance.

(3) Where an asset is destroyed, it shall for the purposes of the last preceding subsection be treated as if it had been sold immediately before the destruction thereof and any insurance moneys or other compensation of any description received by the person carrying on the trade in respect of the destruction and any moneys received by him for the remains of the asset shall be treated as if they were proceeds of that sale.

(4) Where a deduction is allowed for any year under this or the said section 38 in respect of expenditure represented wholly or partly by any assets, no deduction shall be allowed under any provision of the Income Tax Ordinance other than this Part of this Ordinance in respect of wear and tear of those assets for any year of assessment during any part of which

they are used by the person carrying on the trade for scientific research related to the trade.

Periods covered by section 39.

40. (1) Any reference in section 39 of this Ordinance to expenditure of a capital nature incurred by the person carrying on a trade shall not include a reference to any expenditure except expenditure incurred after the appointed day.

(2) Subsection (4) of the said section 39 of this Ordinance shall not prevent the allowance of any deduction for the purpose of income tax for any year of assessment before that in which the appointed day falls.

Carry forward of trade losses arising out of allowances. Cap. 299.

41. Section 15 of the Income Tax Ordinance shall apply in relation to deductions allowable under sections 38 and 39 of this Ordinance.

Scientific research allowances exclude initial and annual allowances under Parts II and III.

42. No initial allowance under Part II and Part III of this Ordinance shall be made in respect of expenditure on the provision of an asset if that expenditure is expenditure in respect of which a deduction may be allowed under section 38 and subsection (4) of section 39 shall apply in relation to annual allowances under the said Part II as it applies in relation to wear and tear allowances.

Interpretation and supplemental provisions.

43. (1) In this Part of this Ordinance the following expressions have the meanings hereby respectively assigned to them, that is to say—

“scientific research” means any activities in the fields of natural or applied science for the extension of knowledge;

“scientific research expenditure” means expenditure incurred on scientific research; references to expenditure incurred on scientific research do not include any expenditure incurred in the acquisition of rights in, or arising out of scientific research, but save as aforesaid, include all expenditure incurred for the prosecution of, or the provision of facilities for the prosecution of, scientific research; references to scientific research related to a trade or a class of trades include—

(a) any scientific research which may lead to or facilitate an extension of that trade or as the case may be, of trades of that class;

(b) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that trade or, as the case may be, trades of that class;

“asset” includes part of an asset.

(2) The same expenditure shall not be taken into account for any of the purposes of this Part of this Ordinance in relation to more than one trade.

PART VII.—HOUSING OF WORKERS EMPLOYED IN ANY OF THE TRADES MENTIONED IN THE FIRST SCHEDULE TO THIS ORDINANCE OR IN HUSBANDRY.

44. Subject to the provisions of and save as otherwise provided in this Part of this Ordinance, where on or after the 1st January, 1950, any person engaged in any of the trades mentioned in the first schedule to this Ordinance, or, being the owner of an estate consisting of or including agricultural land, incurs capital expenditure on the construction on land, whereof such person is the owner, of a building to be occupied as a residence by workers employed by any such person in any such trade or in husbandry, in ascertaining the chargeable income of such person in the year of assessment immediately thereafter, and in each of the succeeding nine years of assessment, there shall be allowed as a deduction a sum equal to one-tenth of such capital expenditure.

Annual allowances for capital expenditure on workers' dwellings.

45. (1) Such capital expenditure in relation to any building to be occupied as a residence shall, save as hereinafter provided, be limited to a sum not exceeding four thousand dollars:

Limitation of annual allowances.

Provided that where such building is so constructed as to include within such building more than one separate dwelling house, the capital expenditure in relation to such building shall be limited to a sum not exceeding two thousand five hundred dollars in respect of each separate dwelling house so constructed within such building.

(2) In determining such expenditure as aforesaid, there shall not be included the value of the building site and the curtilage attaching thereto, nor any expenses incurred preparatory to the erection of any such building, but the expenditure in erecting out-offices to be used in connection therewith and in the installation of fixtures shall be taken into account in determining such expenditure.

46. Where a person would, if he continued to be the owner of any land upon which such building is erected, in ascertaining his chargeable income, be entitled under this Part of this Ordinance to a deduction in respect of expenditure as in the manner provided, and the whole of his interest in the land in question, or in any part of the land in question is transferred whether by operation of law or otherwise to some other person, then—

Mode of dealing with annual allowances after transfer of land, etc.

(2) The same expenditure shall not be taken into account for any of the purposes of this Part of this Ordinance in relation to more than one trade.

PART VII.—HOUSING OF WORKERS EMPLOYED IN ANY OF THE TRADES MENTIONED IN THE FIRST SCHEDULE TO THIS ORDINANCE OR IN HUSBANDRY.

44. Subject to the provisions of and save as otherwise provided in this Part of this Ordinance, where on or after the 1st January, 1950, any person engaged in any of the trades mentioned in the first schedule to this Ordinance, or, being the owner of an estate consisting of or including agricultural land, incurs capital expenditure on the construction on land, whereof such person is the owner, of a building to be occupied as a residence by workers employed by any such person in any such trade or in husbandry, in ascertaining the chargeable income of such person in the year of assessment immediately thereafter, and in each of the succeeding nine years of assessment, there shall be allowed as a deduction a sum equal to one-tenth of such capital expenditure.

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Limitation of annual allowances.

Provided that where such building is so constructed as to include within such building more than one separate dwelling house, the capital expenditure in relation to such building shall be limited to a sum not exceeding two thousand five hundred dollars in respect of each separate dwelling house so constructed within such building.

(2) In determining such expenditure as aforesaid, there shall not be included the value of the building site and the curtilage attaching thereto, nor any expenses incurred preparatory to the erection of any such building, but the expenditure in erecting out-offices to be used in connection therewith and in the installation of fixtures shall be taken into account in determining such expenditure.

46. Where a person would, if he continued to be the owner of any land upon which such building is erected, in ascertaining his chargeable income, be entitled under this Part of this Ordinance to a deduction in respect of expenditure as in the manner provided, and the whole of his interest in the land in question, or any part of the land in question is transferred whether by operation of law or otherwise to some other person, then—

Mode of dealing with annual allowances after transfer of land, etc.

(a) the amount of the allowance (if any) for the year of assessment immediately after that in which the transfer takes place shall be apportioned between the person from whom the interest is transferred and the person to whom the interest is transferred; and

(b) the person to whom the interest is transferred, shall to the exclusion of the person from whom the interest is transferred be entitled, where the interest transferred is in the whole of the land to the whole of the allowance for any subsequent year of assessment, and where the interest transferred is in part only of the land, to so much of the allowance as is properly referable to that part of the land.

For the purposes of this section, where an interest in land is leasehold and the lease comes to an end, that interest shall be deemed to have been transferred—

(i) if an incoming tenant makes any payment to the outgoing tenant in respect of assets representing the expenditure in question, to the incoming tenant; and

(ii) in any other case, to the owner of the interest in the immediate reversion on the tenancy.

Cesser of
annual
allowances
during
temporary
non-use of
building.

47. In the event of any building intended on its completion to be so occupied by such workers not being so occupied within six months of its completion, or, being so occupied, ceasing to be occupied for a like period, then the owner shall not in the year of assessment following such event be entitled to the deduction hereinbefore provided, and the full period of ten years during which such deductions may be made under this Part of this Ordinance shall not be thereby extended.

Claims for
deductions
under Part
VII.

48. Any claim by any person for a deduction under this Part of this Ordinance shall be included in the return of income referred to in section 51 of this Ordinance.

Interpreta-
tion.

49. In this Part of this Ordinance—

“owner” means a person having the freehold interest in the building site and the curtilage thereto attaching, or the lessee of the said site and curtilage, provided that at the time of occupation of the building as a residence for the first time by such workers as aforesaid the unexpired portion of the lease shall not be less than ten years.

References to owner shall not apply to a person having a freehold interest in the building site and curtilage attaching and to a lessee of the said site and curtilage

same time; and persons in partnership and persons interested in the estate of a deceased person or in property held on trust shall, respectively, be deemed to be a single owner and the allowances under this Part of this Ordinance shall be apportioned between them in the proportion to which they are respectively entitled to share in the income of the trade;

“agricultural land” means land occupied wholly or mainly for the purposes of field and or animal husbandry and includes a dairy;

“worker” means any person who has entered into or works under a contract of service or apprenticeship expressed or implied, oral or written, with an employer whether by way of manual labour, clerical work or otherwise and whether remuneration is calculated by time or work done but does not include the owner or relatives of the owner except that in the cases of relatives of the owner to the extent that the Commissioner may permit where he is satisfied that such relatives are workers actually employed in such trade.

PART VIII.—MISCELLANEOUS AND GENERAL.

50. (1) Any claim by a person for an allowance falling to be made to him under any of the provisions of this Ordinance in ascertaining his chargeable income shall be included in the Return of Income required to be delivered under the Income Tax Ordinance, and the allowance shall be deemed to be a deduction included in section 12 of the Income Tax Ordinance.

Manner of charging tax and granting allowances in case of traders.

Cap. 299.

(2) If, in the case of a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits—

(a) a balancing allowance falls to be made under Part II of this Ordinance for the last year of assessment during the basis period for which the trade is carried on;

(b) the event giving rise to the allowance is the mine, oil well or other source ceasing to be worked;

(c) the allowance is in respect of expenditure on a building or structure which was constructed for occupation by, or for the welfare of persons employed at, or in connection with the working of, the mine, oil well or other source; and

(d) full effect cannot be given to the allowance because of an insufficiency of profits or gains for the said year of assessment;

the person entitled to the allowance may claim that the balance of the allowance may be given for the last preceding year of

assessment and so on for other preceding years of assessment, so, however, that no allowance shall be given by virtue of this subsection for any year of assessment earlier than the second year of assessment before the first mentioned year of assessment:

Provided that the amount of any such allowance to be given for preceding years of assessment shall not in any case exceed an amount which would reduce the tax payable to less than one-half the amount which would have been payable had the allowance not been given.

(3) Any charge falling to be made under any of the provisions of this Ordinance on a person for any year of assessment shall be deemed to be a gain or profit within the meaning of paragraph (a) of section 5 of the Income Tax Ordinance.

Meaning of
"basis
period."

51. (1) In this Ordinance, the expression "basis period" means the period on the profits or gains of which income tax for any year of assessment falls to be finally computed under the Income Tax Ordinance in respect of the trade in question:

Provided that, in the case of any trade—

(a) where two basis periods overlap, the period common to both shall be deemed for the purpose of this subsection to fall in the first basis period only;

(b) where there is an interval between the end of the basis period for one year of assessment and the basis period for the next year of assessment, then, the interval shall be deemed to be part of the second basis period.

(2) For the purpose of giving effect to this Ordinance and in particular so that the several allowances and charges on any person engaged in any trade to which this Ordinance applies should be given or made in conformity with the provisions of this Ordinance, an assessment or re-assessment to tax on the chargeable income of any such person shall be made with consequential allowances, charges or reliefs on such person irrespective of the time limited for so doing in the Income Tax Ordinance.

Apportionment of consideration and exchanges and surrenders of leasehold interests.

52. (1) Any reference in this Ordinance to the sale of any property includes a reference to the sale of that property together with any other property and where property is sold together with other property so much of the net proceeds of the sale of the whole property as, on a just apportionment, is properly attributable to the first mentioned property shall, for the purposes of this Ordinance be deemed to be the net proceeds of the sale of the first-mentioned property, and references to

expenditure incurred on the provision or purchase of property shall be construed accordingly.

For the purposes of this subsection, all the property which is sold in pursuance of one bargain shall be deemed to be sold together, notwithstanding that separate prices are or purport to be agreed for separate items of that property or that there are or purport to be separate sales of separate items of that property.

(2) The provisions of the last preceding subsection shall with the necessary adaptations, apply in relation to other sale, insurance, salvage or compensation moneys as they apply in relation to the net proceeds of sales.

(3) This Ordinance shall have effect as if any reference therein (including any reference in the preceding provisions of this section) to sale of any property included a reference to the exchange of any property and, in the case of a leasehold interest, also included a reference to the surrender thereof for valuable consideration, and any provisions of this Ordinance referring to sales shall have effect accordingly with the necessary adaptations and, in particular, with the adaptations that references to the net proceeds of sale and to the price shall be taken to include references to the consideration for the exchange or surrender and references to capital sums included in the price shall be taken to include references to so much of the consideration as would have been a capital sum if it had taken the form of a money payment.

(4) As respects the year in which the appointed day falls and any subsequent year of assessment, the preceding provisions of this section shall with necessary adaptations have effect in relation to—

(a) paragraph (c) of subsection (1) of section 12 and section 13 of the Income Tax Ordinance (which provide respectively for an obsolescence allowance and for a wear and tear allowance in the case of machinery and plant) as if the said paragraph (c) of subsection (1) of section 12 and section 13 were provisions of this Ordinance; and

(b) section 39 of this Ordinance (which relates to sale of assets representing expenditure on scientific research).

53. (1) The provisions of this section shall have effect in relation to sales of any property where either—

(a) the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom

Special provisions as to certain sales.

the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control of both of them; or

(b) it appears with respect to the sale or with respect to transactions of which the sale is one, that the sole or main benefit which, apart from the provisions of this section, might have been expected to accrue to the parties or any one of them was the obtaining of an allowance or deduction under any of the following enactments, that is to say, any of the provisions of this Ordinance or of paragraph (c) of subsection (1) of section 12 and section 13 of the Income Tax Ordinance.

Cap. 299.

References in this subsection to a body of persons include references to a partnership.

(2) Where the property is sold at a price other than that which it would have fetched if sold in the open market, then subject to the succeeding provisions of this section, the like consequences shall ensue for the purposes of the enactments mentioned in subsection (1) of this section, in their application to the income tax of all persons concerned, as would have ensued if the property had been sold for the price which it would have fetched if sold in the open market.

(3) Where the sale is a sale of machinery or plant—

(a) no initial allowance shall be made to the buyer; and

(b) subject to the provisions of the next succeeding subsection, if the price which the property would have fetched if sold in the open market is greater than the limit of re-charge on the seller, the last preceding subsection shall have effect as if for the reference to the price which the property would have fetched if sold in the open market there were substituted a reference to the said limit of re-charge:

Provided that the subsection shall not apply in relation to a sale of machinery or plant which has never been used if the business or part of the business of the seller was the manufacture or supply of machinery or plant of that class and the sale was effected in the ordinary course of the seller's business:

Provided also that where the sale is one to which paragraph (a) of subsection (1) of this section applies and took place before the appointed day, and the seller acquired the machinery or plant on or after the 1st January, 1949, paragraph (a) of this subsection shall not apply.

In this subsection the expression "limit of re-charge" means, in relation to a person who sells machinery or plant—

(i) if he provided that machinery or plant for himself before the appointed day, the actual cost to him of the

machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on machinery or plant by way of renewal, improvement or reinstatement;

(ii) if he provided the machinery or plant for himself on or after the appointed day, the expenditure incurred by him on the provision thereof.

(4) Where the sale is one to which paragraph (a) of subsection (1) of this section applies and paragraph (b) of that subsection does not apply and the parties to the sale by notice in writing to the Commissioner so elect, the following provisions shall have effect—

(a) subsection (2) of this section shall have effect as if for the reference to the price which the property would have fetched if sold in the open market there were substituted a reference to that price or to the sum hereinafter mentioned, whichever is the lower;

(b) paragraph (b) of subsection (3) shall not apply; and

(c) notwithstanding anything in the preceding provisions of this section, such balancing charge, if any, shall be made on the buyer on any event occurring after the date of the sale as would have fallen to be made on the seller if the seller had continued to own the property and had done all such things and been allowed all such allowances or deductions in connection therewith as were done by or allowed to the buyer.

The said sum is—

(i) in the case of an industrial building or structure, the residue of the expenditure on the construction of that building or structure immediately before the sale, computed in accordance with the provisions of section 6 of this Ordinance;

(ii) in the case of machinery or plant, the amount of the expenditure on the provision thereof still unallowed immediately before the sale, computed in accordance with the provisions of section 20 of this Ordinance;

(iii) in the case of assets representing the expenditure to which Part IV (Mines, Oil Wells, etc.) of this Ordinance applies, the residue of the expenditure attributable to those assets immediately before the sale, computed in accordance with the provisions of the said Part IV; and

(iv) in the case of patent rights, the amount of any capital expenditure on the acquisition thereof remaining unallowed, computed in accordance with the provisions of section 29 of this Ordinance.

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(5) As respects paragraph (c) of subsection (1) of section 12 and section 13 of the Income Tax Ordinance, the provisions of this section shall have effect as respects tax for the year of assessment in which the appointed day falls and any subsequent year of assessment.

Trade marks and designs.

54. In computing the profits or gains of any trade there shall be allowed to be deducted as expenses any fees paid or expenses incurred on or after the appointed day in obtaining for the purposes of the trade, the registration of a design or a trade mark or the extension of the period of copyright in a design or the renewal of registration of a trade mark.

Interpretation of certain references to expenditure, etc.

55. (1) References in this Ordinance to capital expenditure and capital sums—

(a) in relation to the person incurring the expenditure or paying the sums, do not include any expenditure or sum which is allowed to be deducted in computing, for the purposes of income tax, the profits or gains of a trade by him; and

(b) in relation to the person receiving the amounts expended or the sums in question, do not include references to any amounts or sums which fall to be taken into account as receipts in computing the profits or gains of any trade, carried on by him.

(2) Any reference in this Ordinance to the date on which expenditure is incurred shall be construed as a reference to the date when the sums in question become payable.

Subsidies, etc.

56. (1) Expenditure shall not be regarded for any of the purposes of this Ordinance as having been incurred by any person in so far as it has been or is to be met directly or indirectly by the Crown or by any government or public or local authority whether in the Colony or elsewhere, or out of the Sugar Rehabilitation Fund, or by any person other than the first mentioned person:

Provided that, in considering whether any, and, if so, what, balancing charge is to be made on a person under Part III of this Ordinance in respect of any machinery or plant provided before the appointed day, this section, except in so far as it refers to expenditure met out of the Sugar Rehabilitation Fund, shall not apply.

(2) In considering, for the purposes of subsection (1) of this section, and of any other provision of this Ordinance

referring to expenditure met or to be met directly or indirectly by the Crown or by any authority or person other than the person incurring the expenditure, how far any expenditure has been or is to be so met, there shall be left out of account—

(a) any insurance moneys or other compensation moneys payable in respect of any asset which has been demolished, destroyed or put out of use; and

(b) any expenditure met or to be met by any person other than the Crown or a government or public or local authority, being expenditure in respect of which, apart from the provisions of this paragraph, no allowance could be made under the provisions of the next succeeding subsection.

(3) Where, on or after the appointed day, a person for the purposes of a trade carried on or to be carried on by him or by a tenant of land in which he has an interest, contributes a capital sum to expenditure on the provision of an asset, being expenditure which, apart from the provisions of subsection (1) of this section, would have been regarded as wholly incurred by another person and in respect of which, apart from the said provisions, an allowance would have been made under Part II, Part III or Part IV of this Ordinance, then, subject to the provisions of the fourth schedule to this Ordinance, such initial and annual allowance, if any, shall be made to the contributor as would have been made to him if his contribution had been expenditure on the provision, for the purposes of that trade, of a similar asset.

Fourth
schedule.

57. In computing the cost to any person of maintenance, repairs, insurance and management, for the purpose of ascertaining chargeable income there shall be left out of account any expenditure incurred by him on or after the appointed day, in so far as it has been or is to be met directly or indirectly by the Crown or by any government or public or local authority, or by any person other than the first mentioned person.

Computation
of expendi-
ture for
purposes of
section 12
of the Income
Tax Ordi-
nance.

58. (1) In this Ordinance except where the context otherwise requires—

“control,” in relation to a body corporate, means the power of a person to secure, by means of holding of shares or the possession of voting power in or in relation to that or any other body corporate, or by virtue of any powers conferred by the articles of association or other document regulating that or any other body corporate, that the affairs of the first mentioned body corporate are conducted in

Other pro-
visions as
to interpreta-
tion.

accordance with the wishes of that person, and, in relation to a partnership, means the right to a share of more than one-half of the assets or of more than one-half of the income, of the partnership;

“income” includes any amount on which a charge to tax is authorised to be made under any of the provisions of this Ordinance;

“lease” includes an agreement for a lease where the term to be covered by the lease has begun, and any tenancy, and “lessee,” “lessor” and “leasehold interest” shall be construed accordingly;

“mineral deposits” includes any natural deposits capable of being lifted or extracted from the earth;

“sale, insurance, salvage, or compensation moneys” mean, in relation to an event which gives rise or might give rise to a balancing allowance or a balancing charge to or on any person—

(a) where the event is a sale of any property, the net proceeds to that person of the sale;

(b) where the event is the demolition or destruction of any property, the net amount received by him for the remains of the property, together with any insurance moneys received by him in respect of the demolition or destruction and any other compensation of any description received by him in respect thereof, in so far as that compensation consists of capital sums; and

(c) where the event is that a building or structure ceases altogether to be used or that machinery or plant is put out of use, any compensation of any description received by him in respect of that event, in so far as that compensation consists of capital sums.

(2) Any reference in this Ordinance to any building, structure, machinery, plant, works, asset, shall be construed as including a reference to a part of any building, structure, machinery, plant, works, asset:

Provided that where the reference is expressed to be to the whole of a building or structure, this subsection shall not apply.

(3) Any reference in this Ordinance to the time of any sale shall be construed as a reference to the time of completion or the time when possession is given, whichever is the earlier.

FIRST SCHEDULE.

s. 1(2).

Parts II to VIII inclusive of this Ordinance shall, except as may be otherwise expressly provided therein, be applicable to the following trades—

1. The manufacture and refining of sugar and its by-products.
2. The distilling of rum.
3. The working of any mine (other than a mine operated by a gold or diamond mining company), oil well, or other mineral deposits and the manufacture, refining and processing of oil and other minerals and their derivatives.
4. The manufacture of—
glass, paper, nails, screws, bolts and metallic fasteners of all kinds, plastic goods, hosiery, textiles, hats, leather, leather goods and footwear, cement, fertilisers, bricks, tiles and concrete blocks for building purposes, packages and crates, ice, edible oils, fats, soaps and allied products, spirit compounds, bay rum and perfumed spirits, methylated spirits, furniture, matches, fibre, gas and flavouring extracts, tobacco, cigarettes, tobacco snuff, cans, radios, condiments, preserves, ply-wood, veneers, wood-pulp, bags and twine.
5. Breweries.
6. Sawmills.
7. Logging.
8. Hotels providing mainly for the accommodation of tourists and having—
(a) if situated in a municipal area, not less than 30 bedrooms;
and
(b) if situated elsewhere, not less than 20 bedrooms.
9. Dairy husbandry.
10. The milling of rice.
11. Canning industry.

SECOND SCHEDULE.

s. 24.

APPLICATION OF PART IV TO EXPENDITURE BEFORE THE APPOINTED DAY.

PART I.—PRELIMINARY.

1. The amount of expenditure which a person who, on the appointed day, is carrying on a trade which consists of or includes the working of a mine, oil well or other source of mineral deposits of a wasting nature is to be treated for certain purposes of Part IV of this Ordinance as having incurred on that day shall, except in the cases dealt with in Part III of this schedule, be the amount specified in Part II thereof.

2. In the subsequent provisions of this schedule, the said expenditure is referred to as "the appointed day expenditure" and the said person is referred to as "the trader."

PART II.

Provision applicable where Part III of this schedule does not apply.

3. Except in cases to which Part III of this schedule applies, the amount of the appointed day expenditure shall be ascertained by—

(a) ascertaining the total expenditure to which Part IV of this Ordinance applies which was incurred by the trader before the appointed day for the purposes of the trade and in connection with the source; and

(b) subtracting therefrom the amounts specified in paragraph 4 of this schedule; and

(c) applying the fraction specified in paragraph 5 of this schedule to the result.

4. The said amounts are—

(a) where any asset representing any part of the expenditure incurred by the trader as aforesaid before the appointed day has, before the appointed day, been sold by him, the amount of the expenditure so incurred which is attributable to that asset; and

(b) where the assets representing the expenditure so incurred, not being assets sold by the trader before the appointed day, consist of or include buildings or structures, any wear and tear allowances made in respect of the buildings or structures for any year of assessment before that in which the appointed day falls.

5. The said fraction is the fraction of which—

(a) the numerator represents the total potential future output from the source, estimated as at the appointed day; and

(b) the denominator represents the sum of the total output from the source before the appointed day and the said potential future output.

PART III.

Provisions applicable in certain cases where assets have been purchased from a predecessor.

6. (1) Where at or about the time when the trader began to work the source, he acquired from a predecessor in the working of the source, assets representing expenditure to which Part IV of this Ordinance applies incurred by that or any other predecessor in the working of the source, the amount of the appointed day expenditure shall be whichever of the amounts respectively specified in the two next succeeding paragraphs is the smaller.

(2) In this and the subsequent provisions of this Part of this schedule the expression "predecessor" in the working of a source means a person who has, before the appointed day, carried on a trade which consisted of or included the working of the source but has, before that day ceased to work it.

(3) In the subsequent provisions of this Part of this schedule, the assets mentioned in subparagraph (1) of this paragraph are referred to as "the acquired assets."

7. (1) The first of the amounts mentioned in the last preceding paragraph is the amount which results from—

(a) ascertaining the total expenditure to which Part IV of this Ordinance applies which was incurred either on the acquired assets by any predecessor in the working of the source for the purposes of his trade and in connection with the source or by the trader for the purposes of his trade and in connection with the source; and

(b) subtracting therefrom the sums specified in sub-paragraph (2) of this paragraph; and

(c) applying to the result the fraction specified in sub-paragraph (3) of this paragraph.

(2) The said sums are—

(a) where any of the acquired assets have, before the appointed day, been sold by the trader, so much of the said expenditure incurred by any predecessor in the working of the source as is attributable to that asset;

(b) where any asset representing any part of the expenditure incurred by the trader as aforesaid before the appointed day has, before the appointed day, been sold by him, the amount of that expenditure which is attributable to that asset; and

(c) where any of the acquired assets or any asset representing any such expenditure as aforesaid of the trader consists of buildings or structures (not being buildings or structures sold by the trader before the appointed day) any relevant wear and tear allowances made in respect of the buildings or structures for any year of assessment before that in which the appointed day falls.

(3) The said fraction is the fraction of which—

(a) the numerator represents the total potential future output from the source, estimated as on the appointed day; and

(b) the denominator represents the sum of the total output from the source before the appointed day and the said total potential future output.

8. (1) The second of the said amounts is the amount which results from—

(a) adding the price paid by the trader for the acquired assets to all the expenditure to which Part IV of this Ordinance applies which he incurred for the purposes of the trade and in connection with the source between the time when he acquired those assets and the appointed day; and

(b) subtracting from the total the sums specified in subparagraph (2) of this paragraph; and

(c) applying to the result the fraction specified in subparagraph (3) of this paragraph.

(2) The said sums are—

(a) where any asset representing the expenditure mentioned in paragraph (a) of sub-paragraph (1) of this paragraph has, before the appointed day, been sold by the trader, the amount of that expenditure which is attributable to that asset; and

(b) where any of the acquired assets has, before the appointed day, been sold by the trader, the price paid by the trader for the asset; and

(c) where the assets representing that expenditure, not being assets sold by the trader before the appointed day, consist of or include buildings or structures, any wear and tear allowances made to him in respect of the buildings or structures for any year of assessment before that in which the appointed day falls.

(3) The said fraction is the fraction of which—

(a) the numerator represents the total potential future output of the source, estimated as at the appointed day; and

(b) the denominator represents the sum of the total output from the source between the date of the acquisition of the acquired assets and the appointed day and the said total potential future output.

THIRD SCHEDULE.

s. 30.

Effects of Deaths, Windings up and Partnership changes on certain charges in respect of patent rights.

1. Where a person on whom, by reason of the receipt of a capital sum, a charge falls or would otherwise fall to be made under the principal section dies, or, being a body corporate, commences to be wound up—

(a) no sums shall be charged under the principal section on that person for any year subsequent to that in which the death takes place or the winding up commences; and

(b) the amount falling to be charged for the year in which the death occurs or the winding up commences shall be increased by the total amounts which, but for the death or winding up, would have fallen to be charged for subsequent years:

Provided that, in the case of a death, the personal representative may, by notice in writing served on the Commissioner not later than twenty-one days after notice has been served on him of the charge falling to be made by virtue of this paragraph, require that the income tax payable out of the estate of the deceased by reason of the increase provided for by this paragraph shall be reduced so as not to exceed the total amount of income tax which would have been payable by him or out of his estate by reason of the operation of the principal section in relation to that sum, if, instead of the amount falling to be charged for the year in which the death occurs being increased by the whole amount of the sums charged for subsequent years, the several amounts falling to be charged for the years beginning with that in which the capital sum was received and ending with that in which the death occurred had each been increased by the said whole amount divided by the number of those years.

2. Where, under the provisions of Part VIII of this Ordinance relating to partnerships, a charge under the principal section falls to be made on two or more persons as being the persons for the time being carrying on a trade, and that trade is discontinued, the provisions of paragraph 1 of this schedule shall have effect in relation to the discontinuance as they have effect where a body corporate commences to be wound up:

Provided that—

(a) the additional sum which, under the said paragraph falls to be charged for the year in which the discontinuance occurs shall be apportioned among the members of the partnership immediately before the discontinuance, according to their respective interests in the partnership profits before the discontinuance, and each partner (or, if he is dead, his personal representative) charged separately for his proportion; and

(b) each of the partners, or, if he is dead, his personal representative shall have the same right to require a reduction of the total income tax payable by him or out of his estate by reason of the increase as would have been exercisable by the personal representative under the said paragraph 1 in the case of a death, and the proviso to the said paragraph shall have effect accordingly, but as if references to the amount of income tax which would have been payable by the deceased or out of his estate in the event therein mentioned were a reference to the amount of income tax which would in that event have fallen to be paid or borne by the partner in question or out of his estate.

FOURTH SCHEDULE.

s. 56.

Supplementary Provisions as to Allowances for Contributions towards the Expenditure of Other Persons.

1. Subject to the provisions of this schedule, the amount of the allowances and the manner in which they are to be made shall be determined on the following basis—

(a) the asset shall be deemed to continue at all material times to be in use for the purposes of his trade;

(b) where the asset is machinery or plant, and when the contribution was made, the trade was carried on or to be carried on by a tenant of land in which the contributor has an interest, the contributor shall be deemed to have let the machinery or plant to the said tenant on such terms that the full burden of wear and tear thereof falls directly on the contributor.

2. Where, when the contribution was made, the trade for the purposes of which it was made was carried on or to be carried on by the contributor, the following provisions shall have effect on any transfer of the trade or any part of the trade—

(a) where the transfer is of the whole trade, the annual allowance for the year of assessment in the year preceding which the transfer takes place and all subsequent years of assessment shall be made to the transferee;

(b) where the transfer is of part only of the trade, the provisions of the preceding subparagraph shall have effect with respect to so much of the allowance as is properly referable to the part of the trade transferred.

3. (1) Where, when the contribution was made, the trade was carried on or to be carried on by a tenant of land in which the contributor had an interest, the annual allowance for any year of assessment shall be made to the person who, at the end of the year preceding the year of assessment, is entitled to the contributor's interest in the land, and the provisions of this Ordinance defining for the purposes of Part II thereof, the expression "the relevant interest" shall, with the necessary modifications, apply in relation to a contribution made for the purposes of a trade carried on or to be carried on by a tenant of land as they apply in relation to expenditure incurred on the construction of a building or structure.

(2) Subsection (2) of section 4 of this Ordinance (which relates to the effect of sales on the amount of annual allowances) shall not apply in relation to annual allowances to be made in respect of contributions.
