

**JOINT/SELECT
COMMITTEE REPORT
LEGISLATIVE
ASSEMBLY**

1929

Indian Income Tax (Amendment) Bill

List of Reports of Select or Joint Committees
presented in the Legislative Assembly in 1929.

Serial No.	Short title of the Bill.	Date of presentation.	Remarks
1.	The Public Safety Bill.	20.2.29.	
2.	The Workmen's Compensation (Amendment) Bill.	26.2.29.	
3.	The Indian Income-tax (Amendment) Bill (Sec. 2, 23, etc.)	26.2.29.	
4.	The Trade Disputes Bill.	16.3.29.	
5.	The Reservation of the Coastal Traffic of India Bill by Mr. S. N. Haji.	2.4.29.	
6.	The Transfer of Property (Amendment) Bill.	2.9.29.	
7.	The Transfer of Property (Amendment) Supplementary Bill.	2.9.29.	
8.	The Indian Income-tax (Provident Fund Relief) Bill.	16.9.29.	
9.	The Indian Patents and Designs (Amendment) Bill.	25.9.29.	

LEGISLATIVE ASSEMBLY DEPARTMENT.

We, the undersigned, Members of the Select Committee to which the Bill further to amend the Indian Income-tax Act, 1922, for certain purposes was referred, have considered the Bill and the papers noted in Papers Nos. I to VII. the margin, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

The Committee met on the 3rd and 5th March, 1928, and the 1st, and 2nd February, 1929. Our deliberations have resulted in considerable alterations of the details of the Bill although not, we think, in its general principles. These alterations we now propose to refer to clause by clause omitting reference to minor alterations of a purely drafting nature.

Clause 3.—We have omitted the words “and assess it as if it were unregistered” as otiose. If the registration is cancelled the firm can only be assessed as an unregistered firm.

Clause 4.—This clause we have found to require very careful consideration, and we have expended a considerable amount of time in the discussion of it.

As regards sub-section (1) of the proposed new section 23A, we agree, in the first place, with those criticisms which point out that there may be perfectly genuine firms of which one member only is competent to bind the firm by his act, while, on the other hand, we consider that the sub-section as drafted could easily be evaded by an unwritten agreement or understanding under which a deed of partnership giving such powers to all the partners could be rendered a practical nullity and the actual power placed in the hands of one partner only. We further agree that it is very important that, as is provided in the case of companies in the English Act, the real purpose of the sub-section should be clearly stated and its provisions confined to cases where a firm or association has been formed and is used really and principally in order that one or more of its partners may evade the incidence of income-tax. Finally, we have added an *Explanation* to make it clear that firms such as are common in India in which one man puts up the whole or the major portion of the capital and is the principal partner in possibly a dozen or more firms with working partners associated with him, are not necessarily to be deemed to have been formed for the purpose of evasion. We think that the sub-section as now redrafted is a reasonable solution of the objections which have been taken to the original proposal.

As regards sub-section (2) of the proposed new section 23A, we are convinced that the criteria contained in clauses (a), (b) and (c) of the sub-section as originally proposed would fail to achieve the desired object. These clauses would not in fact have limited the operation of the sub-section to private companies only because, as many of the objectors have failed to observe, the conditions were to be alternative and not cumulative. On the other hand, it would have been perfectly easy for any person to form a public company having none of these attributes and yet actually under the control of a single person. As in the case of sub-section (1), we are also impressed

with the importance of having the real purpose of the enactment clearly stated in the body of the sub-section. After exhaustive discussions, therefore, we have adopted a sub-section which follows fairly closely, with necessary modifications, section 21 of the English Finance Act, 1922, as amended and amplified by section 31 (3) of the English Finance Act, 1927. The most important feature of the sub-section as now drafted is perhaps the proviso that it is not to apply to a company which is a subsidiary company or in which the public is substantially interested, and for the purpose of fixing the meaning of the latter expression we have formed the view that the definitions in the English Act are as satisfactory as it is possible in all the circumstances to devise.

We have further added to the new section 23A three sub-sections. Sub-section (3) provides that any firm, association or company must be given an opportunity of being heard before orders are passed under the section. Sub-section (4) provides in the case of a firm or association that the additional tax payable by a member may, in default of payment by him, be recovered from the firm or association, and in the case where the individual members of a company have become liable to additional tax in respect of undistributed profits, that the proportionate part of tax payable on such undistributed profits shall be recoverable only from the company. Sub-section (5) provides that where undistributed profits have been included in the total income of individual members of a company they shall not, if they are subsequently distributed, be taxable again in the hands of the individual.

Clause 5 of the Bill as amended (Clause 9 of the Bill as introduced).—We consider that the definite provision which the Bill is to make for the procedure in the matter of registration of firms would be more suitably inserted in the Income-tax Act as section 26A rather than as section 39A. As regards the subject-matter of the new section we have considered very carefully the provision originally made in sub-section (3) allowing an Income-tax Officer to refuse registration to any association of individuals which is in his opinion not a firm. We think, in the first place, that such a provision is unnecessary in view of the provisions of sub-section (1) of the new section 23A which gives power to the income-tax authorities to treat the members of a firm as individuals, ignoring the constitution of the firm as such, and of his undoubted power under the Act as it now stands to refuse registration to a concern which on the face of the deed of partnership is not a firm as defined in the Act. In addition to this we observe that there is undoubtedly a large body of opinion which holds that the sub-section would place in the hands of Income-tax Officers a power which, although it might not in actual practice be abused, is liable to be misconceived and thus to hamper and discourage the formation of perfectly genuine partnerships for business purposes. At the same time we realise that it should not be possible for persons to obtain registration of an enterprise as a registered firm which is in fact nothing more than a one-man concern and we think the object in view can be satisfactorily met by making provision for the verification of an application for registration and by imposing by an amendment of section 52 of the

Act a penalty upon any one who makes a false verification. The result is a small amendment in sub-section (2) of the new section 26A and of section 52 of the Act ; and the omission of sub-section (3) of the new section.

Clause 6 (Clause 5 of the Bill as introduced).—We have agreed to this clause with one small drafting amendment.

Clause 7.—This clause is new. Clause 11 of the Bill as introduced provided a reference to the High Court on questions of fact as well as of law in cases where the income-tax authorities proceed against firms, associations and companies under the new section 23A. Several of the High Courts have taken strong objection to this proposal. They point out that not only would this involve a great increase in the work of High Courts but also a new principle would be introduced into the law relating to the jurisdiction of High Courts by making it the arbiter of facts, a principle which might have serious repercussions in other branches of law. We are agreed that these objections are fatal to the original proposal and consider that the only possible alternative is to provide, as we do in this clause, for the reference of cases of this nature to Boards of Referees. The actual provisions governing the constitution and procedure of these Boards we propose to leave to rules, but as the matter is of great importance to the commercial community we desire to outline briefly the manner in which we think they should be constituted. We may here observe that the rules will, as in the case of other rules made under the Act, be made after previous publication. The outline of our proposals is as follows :—

(1) The members of each Board of Referees should be chosen from an all-India panel constituted and maintained by the Central Board of Revenue. It will be the duty of the Central Board of Revenue to appoint a number of persons from each province who are willing to serve on Boards of Referees and to appoint such number from each province as is proportionate to the size and commercial importance of the province.

(2) On receipt of an application by the Commissioner of Income-tax for the reference of a case to a Board of Referees he will appoint a Board consisting of three, four or five members according to the magnitude of the case and of the issues involved. He should be directed to avoid selection of persons likely to show bias either for or against the appellant and should carefully consider the risk of an appellant being compelled to disclose the details of his business to a trade rival. Apart from this, although there will not be separate panels for each province, the Commissioners would normally choose a panel from those residing in the neighbourhood so as to avoid inconvenience and loss of time in travelling.

(3) The names selected by the Commissioner should be communicated to the appellant within one week, and the appellant should then be given a reasonable time, say 15 days, within which he may object, without giving reasons, to the inclusion of any name and at the same time may name not less than five members of the panel to whom he will not object. The Commissioner will then proceed to substitute a fresh name for any name to which objection has been taken, but he should not be bound by the list of names submitted by the appellant. If he takes a name from the appellant's list no objection to that name should be allowed. As regards any other names the appellant should

be allowed one more opportunity to raise objections. Thereafter, that is to say, in the case where the appellant has twice objected to a panel as proposed to be constituted by the Commissioner, the final composition of the Board should be settled by the Central Board of Revenue.

(4) The date and place of meeting of a Board should be fixed by the Commissioner of Income-tax after consulting the members.

(5) The members should elect a Chairman from among the non-official members of the Board and thereafter the procedure will be directed and controlled by him.

(6) The decision of a Board should be the decision of the majority of members present and signing the same. All members who are present should sign but any member should have the right to record a dissenting minute. In the case of an equality of votes the Chairman should have a casting vote and any decision which is signed by not less than half of the members should be deemed to be a valid decision. Provided these conditions are fulfilled, the absence of a member or his failure to sign the decision should not invalidate the proceedings.

(7) The scales of remuneration and allowances for members of Boards of Referees should be provided for in the rules.

Decisions of Boards of Referees are made final, subject to a reference (for which we provide in clause 10) to the High Court on points of law.

The only other point to which special reference is needed is the proviso to sub-section (3) of the proposed new section 33A which enables the appellant to endeavour to obtain a decision in his favour from the Commissioner acting under his powers of revision and thus obviate the delay and possible inconvenience of a reference to a Board.

Clause 8.—This clause is, as already noticed, consequential in part upon the amendment which we have made in sub-section (2) of the proposed new section 26A, and also contains a penalty for false verification of an appeal to a Board of Referees. (See sub-section (2) of new section 33A.)

Clause 10.—We have already explained this clause in our remarks upon clause 7.

2. The Bill was published as follows :—

In English.		
Gazette.		Date.
Gazette of India		10th Sep. 1927.
Fort Saint George Gazette		27th Sep. 1927.
Bombay Government Gazette		6th Oct. 1927.
Calcutta Gazette		13th Oct. 1927.
United Provinces Gazette		24th Sep. 1927.
Punjab Government Gazette		23rd Sep. 1927.
Burma Gazette		8th Oct. 1927.
Central Provinces Gazette		24th Sep. 1927.
Assam Gazette		21st Sep. 1927.
Bihar and Orissa Gazette		19th Oct. 1927.
Coorg District Gazette		1st Nov. 1927.
Sind Official Gazette		13th Oct. 1927.
North-West Frontier Gazette		14th Oct. 1927.
In the Vernaculars.		
Province.	Language.	Date.
Madras	Tamil	25th Oct. 1927.
	Telugu	25th Oct. 1927.
	Hindustani	1st Nov. 1927.
	Kanarese	25th Oct. 1927.
Bombay	Malayalam	25th Oct. 1927.
	Marathi	24th Nov. 1927.
	Gujarathi	24th Nov. 1927.
Punjab	Kanarese	10th Nov. 1927.
	Urdu	2nd Dec. 1927.
Burma	Burmese	19th Nov. 1927.
Coorg	Kanarese	1st Nov. 1927.
Sindh	Sindhi	20th Oct. 1927.

3. As we stated in the opening part of our Report, the Bill has not been essentially altered in principle, but the radical alterations in detail which we have made in clause 4 and the substitution of Boards of Referees as appellate tribunals in place

of the High Courts undoubtedly raise questions which require the fullest consideration. We therefore, as required by sub-order (4) of Standing Order 41, record our opinion that the Bill has been so altered as to require republication.

VICTOR SASSOON.

GEORGE SCHUSTER.

HAJI ABDOOLA HAROON.

PURSHOTAMDAS THAKURDAS.

M. S. ANEY.

H. G. COCKE.

K. C. NEOGY.

R. K. SHANMUKHAM CHETTY.

K. C. ROY.

VIDYA SAGAR PANDYA.

MUKHTAR SINGH.

The 26th February, 1929.

[AS AMENDED BY THE SELECT COMMITTEE.]

{Words printed in italics indicate the amendments suggested by the Select Committee.}

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BILL

*Further to amend the Indian Income-tax Act, 1922,
for certain purposes.*

WHEREAS it is expedient further to amend the Indian Income-tax Act, 1922, for certain purposes hereinafter appearing; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Short title and com- Income-tax (Amend- mendment. ment) Act, 192 .

(2) It shall come into force on the 1st day of April, 192 .

2. In section 2 of the Indian Income-tax Act, Amendment of section 1922 (hereinafter refer- XI of 1922. red to as the said Act),—
2, Act XI of 1922.

(a) after clause (6) the following clause shall be inserted, namely:—

“(6A) ‘firm’, ‘partner’ and ‘partner- ship’ have the same meanings res- pectively as in the Indian Contract Act, 1872”; and

IX of 1872.

(b) for clause (14) the following shall be substituted, namely:—

“(14) ‘registered firm’ means a firm registered under the provisions of section 26A;”.

3. In sub-section (4) of section 23 of the said Act, after the word “judg- Amendment of section ment” the words “and, 23, Act XI of 1922. in the case of a registered firm, may cancel its registration” shall be added.

4. After section 23 of the said Act the following section shall be Insertion of new sec- tion 23A in Act XI of 1922. inserted, namely:—

“23A. (1) Where the Income-tax Officer is satisfied that any

Power to assess individual members of certain firms, associations and companies. firm or other asso- ciation of indivi- duals carrying on any business, other

than a Hindu undivided family or a company, is under the control of one member thereof, and that such firm or association has been formed or is being used for the purpose of evading or reducing the liability to tax of any member thereof, he may, with the previous approval of the Assistant Commissioner, pass an order that no assessment on the firm or association as such shall be made, and thereupon the share of each member in the profits and gains of the firm or association shall be included in his total income for the purpose of his assessment thereon.

Explanation.—A member of a firm or asso- ciation who owns the whole or the major portion of the capital of the firm or asso- ciation shall not by reason only of that fact be deemed to control the firm or association.

- (2) Where the Income-tax Officer is satisfied that a company is under the control of not more than five of its members and that its profits and gains are allowed to accumulate beyond the reasonable needs, existing and contingent, of its business without being distributed to the members, and that the accumulation is allowed for the purpose of preventing the imposition of tax upon any of the members in respect of their shares in the profits and gains so accumulated, he may, with the previous approval of the Assistant Commissioner, pass an order that no assessment on the company as such shall be made, and thereupon the proportionate share of each member in the profits and gains of the company, whether such profits and gains have been distributed to the members or not, shall be included in the total income of such member for the purpose of his assessment thereon :

Provided that this sub-section shall not apply to any company which is a subsidiary company or in which the public are substantially interested.

Explanation.—For the purpose of this sub-section,—

- (a) a company shall be deemed to be a subsidiary company if, by reason of the beneficial ownership of shares therein, the control of the company is in the hands of a company not being a company to which the provisions of this sub-section apply or of two or more companies none of which is a company to which those provisions apply ;
 - (b) a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent. of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the previous year beneficially held by, the public (not including a company to which the provisions of this sub-section apply), and if any such shares have in the course of such previous year been the subject of dealings in any stock exchange in British India or are in fact freely transferable by the holders to other members of the public ;
 - (c) a company may be deemed to be under the control of any persons where the majority of the voting power or shares is in the hands of those persons or of relatives or nominees of those persons ;
 - (d) " nominee " means a person who may be required to exercise his voting power on the directions of, or holds shares directly or indirectly on behalf of, another person.
- (3) The Assistant Commissioner shall not give his approval to any order proposed to be passed by the Income-tax Officer under this section until he has given the firm, association or company concerned an opportunity of being heard.
- (4) (i) Where any member of a firm or association of individuals makes default in the payment of tax on his share of profits and

gains which has been included in his total income under the provisions of sub-section (1), such tax may be recovered from the firm or association, as the case may be.

- (ii) Where the proportionate share of any member of a company in the undistributed profits and gains of the company has been included in his total income under the provisions of sub-section (2), the tax payable in respect thereof shall be recoverable from the company and not from such member.
- (5) Where tax has been paid in respect of any undistributed profits and gains of a company under this section, and such profits and gains are subsequently distributed in any year, the proportionate share therein of any member of the company shall be excluded in computing his total income of that year."

5. After section 26 of the said Act the following section shall be inserted, namely:—
 Insertion of new section shall be inserted, section 26A in Act XI of 1922.

"26A. (1) Application may be made to the Income-tax Officer on behalf of any firm, constituted under an instrument of partnership specifying the individual shares of the partners, for registration for the purposes of this Act and of any other enactment for the time being in force relating to income-tax or super-tax.

(2) The application shall be made by such person or persons, and at such times, and shall contain such particulars and shall be in such form, and be verified in such manner, as may be prescribed; and it shall be dealt with by the Income-tax Officer in such manner as may be prescribed."

6. For section 28 of the said Act the following section shall be substituted, namely:—
 Amendment of section 28, Act XI of 1922.

"28. (1) If the Income-tax Officer, the Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that an assessee has concealed the particulars of his income or has deliberately furnished inaccurate particulars of such income, and has thereby returned it below its real amount, he may direct that the assessee shall, in addition to the income-tax payable by him, pay by way of penalty a sum not exceeding the amount of the income-tax which would have been avoided if the income so returned by the assessee had been accepted as the correct income.

(2) If the Income-tax Officer, the Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance with the shares of the partners as shown in the

instrument of partnership registered under this Act, and that any partner has thereby returned his income below its real amount, he may direct that such partner shall, in addition to the income-tax payable by him, pay by way of penalty a sum not exceeding the amount of income-tax which would have been avoided if the income returned by such partner had been accepted as his correct income; and no refund or other adjustment shall be claimable by any other partner by reason of such direction.

- (3) No order shall be made under sub-section (1) or sub-section (2), unless the assessee or partner, as the case may be, has been heard, or has been given a reasonable opportunity of being heard.
- (4) No prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.
- (5) An Assistant Commissioner or a Commissioner, who has made an order under sub-section (1) or sub-section (2), shall forthwith send a copy of the same to the Income-tax Officer."

7. After section 33 of the said Act the following
Insertion of new section shall be inserted,
section 33A in Act XI namely:—
of 1922.

- " 33A. (1) Any person aggrieved by an order of an Income-tax Officer under sub-section (1) or sub-section (2) of section 23A may, within thirty days of the passing of such order, lodge an appeal in the office of the Commissioner.
- (2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.
- (3) The Commissioner shall refer such appeal, with a statement of his own opinion thereon, to a Board of Referees for decision; and the Board of Referees shall decide the appeal after hearing the appellant and any person deputed by the Commissioner:

Provided that, before making a reference to a Board of Referees, the Commissioner may, and at the request of the appellant shall, in exercise of his powers of revision under section 33, decide the matters in dispute, and thereupon the assessee may withdraw his appeal or proceed with it.

- (4) The decision of the Board of Referees shall be forwarded to the Commissioner who shall transmit it to the Income-tax Officer who passed the original order, and shall also send copies to each Income-tax Officer who has made any assessment consequent upon such order; and where a decision reverses or modifies the order of the Income-tax Officer, fresh assessments shall be made in accordance therewith, or such consequential adjustments as may be required shall be made in any assessments already made.
- (5) The decision of a Board of Referees shall not be subject to appeal to any Income-tax authority, and shall not be revised by the Commissioner in exercise of his powers under section 33.

(6) A Board of Referees shall consist of not less than three and not more than five persons, of whom not less than one-half, including the chairman, shall be non-officials having business experience, and one shall be a person having held judicial office, not inferior to that of a Subordinate Judge or a Judge of a Small Cause Court, for a period of not less than five years.

(7) Subject to the provisions of sub-section (6), the Central Board of Revenue may make rules regulating the formation, composition and procedure of Boards of Referees."

8. In section 52 of the said Act, after the word *Amendment of sec-* and figure "section 22" *tion 52, Act XI of the words and figures "or* 1922. *sub-section (2) of section 26A"* shall be inserted, and after the word and figure "section 32" the words and figures "or sub-section (2) of section 33A" shall be inserted.

9. In sub-section (2) of section 54 of the said *Amendment of sec-* Act, after the first proviso *tion 54, Act XI of the following proviso shall* 1922. *be inserted, namely:—*

"Provided, further, that nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 26A, or to the giving of evidence by a public servant in respect thereof."

10. In sub-section (2) of section 66 of the said *Amendment of Act,—* section 66, Act XI of 1922.

(a) after the word "month" the words "of the making of a decision by a Board of Referees under section 33A or" shall be inserted, and

(b) before the word "order", in the second and third places where it occurs the words "decision or" shall be inserted.

23
LEGISLATIVE ASSEMBLY
DEPARTMENT.

Report of the Select Committee on the
Bill further to amend the Indian
Income-tax Act, 1922, for certain
purposes, with the Bill as amended.