

**JOINT/ SELECT
COMMITTEE REPORT
LEGISLATIVE
ASSEMBLY
1929**

The Indian Income-Tax (Provident Fund Relief) 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.	

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 have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. The Bill, as introduced, was drafted on the principle that all excess contributions and interest above the limit which is to be exempt from the payment of tax should be accumulated year by year and taxed as a lump sum at the end of the employee's service. We consider that, even to the limited extent of the excess contributions, this principle would be inconvenient in practice and would be inequitable in those cases where the receipt of large lump sum might render an employee, otherwise exempt, liable to pay income-tax, or raise his rate of income-tax, or even render him liable to super-tax. We prefer a system whereby the annual accretion to an employee's individual account shall be deemed to be income received by him and, subject to the exemption granted, taxed each year at the rate applicable. This principle, we consider, will be simpler to work in practice and it will have the desirable effect of allowing the whole of the employee's provident fund to be paid over to him at the end of his service without delay or diminution.

3. This change of accounting and taxation method, while not varying the substance of the Bill, or interfering with the extent of the exemptions granted, has involved substantial textual amendments. We have had to recast the whole of clauses 58E, 58F, 58G, 58H and 58I, and have replaced them by six new clauses 58E to 58J ; but in doing so we have adhered strictly to the general principles underlying the Bill as introduced. We need only make special mention of clause 58I dealing with the transfer of existing funds to funds which are newly recognised. We have cast the duty on employers of making up final accounts of existing funds, and of showing in them the portion of each employee's balance which is to be transferred to the recognised fund. Subject to the reservation that no tax already paid on an employee's own contribution will be refunded, the portion so transferred will receive retrospectively exemption from tax up to the same limit as will be given to the employee's future account. As regards any excess over and above the exempted portion which may be transferred, in order to avoid inconvenience in individual cases arising from the payment of a large amount of income-tax on such a lump sum, we have provided that an employee may withdraw the amount of the excess tax payable by him for that year from his balance in the recognised provident fund.

4. In addition, we have made several drafting amendments, minor amendments of substance, and consequential amendments.

The amendments in clause 3 and in old clause 5, now clause 4, and the omission of old clause 4 are consequential on our re-drafts of clauses 58E to 58I.

Clause 58A.—We have altered the definition of " employer " so as to include bodies such as Chambers of Commerce which are associations of associations and not associations of individuals ; and also in order to include individuals engaged in a business, profession or vocation.

We have altered the definition of " employee " so as to exclude personal and domestic servants.

Clause 58B.—We have added a new sub-clause providing for an appeal against an order of the Commissioner refusing to recognise a provident fund.

Clause 58C, sub-clause (1) :—

Condition (e).—We consider it to be in the interest of the employees to require that the fund shall be vested in two or more trustees.

Condition (g).—The category of heirs and executors in this condition is incomplete, and it would involve some risk to attempt to draft a complete category. We have, therefore, omitted the category entirely in order that the clause may cover all cases of lawful payees.

Clause 58L—old clause 58K.—In clause (b) of sub-clause (2), we have deleted the word " private " before the word " company ", as in our opinion there may be cases of shareholders in public companies just as well as in private companies who should properly come within the scope of the clause. We have been assured that it is the intention of Government that the rules to be framed under this provision will apply only to employees who are shareholders holding a substantial portion of the shares of a company.

5. We have carried out the necessary re-numbering and re-lettering.

6. The Bill was published in English in the Gazette of India of the 7th September, 1929.

7. For reasons given in paragraphs 2 and 3 above, we think that the Bill has not been so altered as to require re-publication and we recommend that it be passed as now amended.

B. L. MITTER.

GEORGE SCHUSTER.

G. L. WINTERBOTHAM.

J. Y. PHILIP.

H. P. MODY.

G. D. BIRLA.

N. C. KELKAR.

S. C. MITRA.

B. P. NAYUDU.

SARABHAI N. HAJI.

VIDYA SAGAR PANDYA.

A. H. GHUZNAVI.

The 16th September, 1929.

(Words printed in italics indicate the amendments
suggested by the Committee.)

A
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 the purposes hereinafter appearing; It is hereby enacted as follows :—

1. (1) This Act may be called the Indian Income-tax (Provident Funds Relief) Act, 1929.

(2) It shall come into force on such date as the Governor General may, by notification in the Gazette of India, appoint.

2. To sub-section (3) of section 4 of the Indian Income-tax Act, 1922 ^{Amendment of section 4, Act XI of 1922.} ^{XI of 1922.} (hereinafter referred to as the said Act), the following clause shall be added, namely :—

“(ix) Any income received by trustees on behalf of a recognised provident fund as defined in clause (a) of section 58A.”

3. In sub-section (3) of section 15 of the said Act, after the word and figure “section 7,” the words “and any sums exempted under sub-section (1) of section 58F” shall be inserted.

* * * *

4. In section 58 of the said Act,—

^{Amendment of section 58, Act XI of 1922.}

(a) in the proviso to sub-section (1), after the word and figures “section 57,” the words, figures and letter “and under section 58H” shall be added; and

(b) in sub-section (2), after the word and figures “section 57,” the words, figures and letter “and section 58H” shall be inserted.

5. After Chapter IX of the said Act the following Chapter shall be inserted, namely :—

“CHAPTER IXA.

SPECIAL PROVISIONS RELATING TO CERTAIN
CLASSES OF PROVIDENT FUNDS.

58A. In this Chapter, unless there is anything repugnant in the subject or context,—

Definitions.

(a) a “recognised provident fund” means a provident fund which has been and continues to be recognised by the Commissioner, in accordance with the provisions of this Chapter;

(b) an "employer" means—

(i) a Hindu undivided family, company, firm or other association of individuals or persons, or

(ii) an individual engaged in a business, profession or vocation whereof the profits and gains are assessable to income-tax under section 10 or section 11,

maintaining a provident fund for the benefit of his or its employees;

(c) an "employee" means an employee participating in a provident fund, but does not include a personal or domestic servant;

(d) a "contribution" means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own monies, to the individual account of an employee, but does not include any sum credited as interest;

(e) the "balance to the credit" of an employee means the total amount to the credit of his individual account in a provident fund at any time;

(f) the "annual accretion" to the balance to the credit of an employee means the increase to such balance in any year, arising from contributions and interest;

(g) the "accumulated balance due" to an employee means the balance to his credit, or such portion thereof as may be claimable by him under the regulations of the fund, on the day he ceases to be an employee of the employer maintaining the fund; and

(h) the "regulations of a fund" means the special body of regulations governing the constitution and administration of a particular provident fund.

58B. (1) The Commissioner of Income-tax may accord recognition to any provident fund which, in his opinion, satisfies the conditions prescribed in section 58C and the rules made thereunder, and may, at any time, withdraw such recognition if, in his opinion, the provident fund contravenes any of those conditions.

(2) The Governor General in Council may, at his discretion, direct the Commissioner of Income-tax to refuse to accord recognition to any provident fund, or may, at any time, withdraw recognition from any recognised provident fund.

(3) An order according recognition shall take effect on such date as the Commissioner may fix in accordance with any rules the Central Board of Revenue may make in this behalf, such date not being later than the last day of the financial year in which the order is made.

(4) An order withdrawing recognition shall take effect from the day on which it is made.

(5) An employer objecting to an order of the Commissioner refusing to recognise a provident fund may appeal, within sixty days of such order, to the Central Board of Revenue.

The appeal shall be in the form and shall be verified in the manner prescribed by the Central Board of Revenue.

58C. (1) In order that a provident fund may receive and retain recognition, it shall satisfy the conditions set out below and any other conditions which the Governor General in Council may, by rule, prescribe:—

Conditions to be satisfied by a recognised provident fund.

- (a) All employees shall be employed in India, or shall be employed by an employer whose principal place of business is in British India.
- (b) The contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, and credited to the employee's individual account in the fund.
- (c) Subject to the provisions of section 58D, the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year.
- (d) The fund shall consist of contributions as above specified, of accumulations thereof, and of interest (simple and compound), credited in respect of such contributions and accumulations, and of securities purchased therewith, and of no other sums.
- (e) The fund shall be vested in *two or more* trustees, under a trust which shall not be revocable save with the consent of all the beneficiaries.
- (f) The employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill-health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund.

In such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee, and to interest (simple and compound) credited in respect of such contributions and accumulations thereof, in accordance with the regulations of the fund.

- g) The accumulated balance due to an employee shall be payable * * * *
* * * * on the day he ceases to be an employee of the employer maintaining the fund.
- (h) Save as provided in clause (g), or in accordance with such conditions and restrictions as the Governor General in Council may, by rules, prescribe, no portion of the balance to the credit of an employee shall be payable to him.

(2) Where there is a repugnance between any regulation of a recognised provident fund and any provision of this Chapter or of the rules made thereunder, the regulation shall, to the extent of the repugnance, be of no effect.

The Commissioner may, at any time, require that such repugnance shall be removed from the regulations of the fund.

58D. Subject to any rules which the Governor General in Council may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of condition (c) of sub-section (1) of section 58C—

(a) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salary does not exceed five hundred rupees per mensem ; and

(b) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature, where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund.

58E. The annual accretion in any year to the balance at the credit of an employee participating in a recognised provident fund shall be deemed to have been received by him in that year and shall be included in his total income for that year, and, subject to the exemptions specified in section 58F, shall be liable to income-tax and super-tax:

Provided that, for the purpose of sub-section (3) of section 15, out of such annual accretion only the employee's own contributions shall be included in his total income.

58F. (1) An employee shall not be liable to pay annual income-tax on contributions to his individual account in a recognised provident fund, in so far as the aggregate of such contributions in any year does not exceed one-sixth of his salary in that year.

(2) In the accounts of a recognised provident fund, the contributions exempted from income-tax under sub-section (1) and accumulations thereof shall be shown separately, and interest thereon shall be calculated and shown separately. Such interest shall be exempt from payment of income-tax, in so far as it is allowed at a rate not exceeding such rate as the Governor General in Council may, by notification in the Gazette of India, fix in this behalf.

58G. Where an employee participating in a recognised provident fund has rendered continuous service with his employer for a period of not less than five years and the accumulated balance due to him becomes payable, such accumulated balance shall be exempt from payment of income-tax and super-tax, and shall be excluded from the computation of his total income:

Provided that the Commissioner of Income-tax may allow such exemption and exclusion where the employee has rendered continuous service with the employer for a period of less than five years, if, in his opinion, the service has been terminated by reason of the employee's ill-health, or by the contraction or discontinuance of the employer's business, or other cause beyond the control of the employee.

(2) Where exemption from payment of income-tax is not allowed under the provisions of sub-section (1), the Income-tax Officer shall calculate the total of the various sums of income-tax from the payment of which the contributions and interest credited to the employee's individual account have been exempted under the provisions of sub-sections (1) and (2) of section 58F, and such total shall be payable by the employee, in addition to any other income-tax for which he may be liable for the year in which the accumulated balance due to him becomes payable.

58H. The trustees of a recognised provident fund, Deduction at source of or other person authorised income-tax payable on by the regulations of the accumulated balances due. fund to make payment of accumulated balances due to employees, shall, at the time an accumulated balance due to an employee is paid, deduct therefrom any income-tax payable under sub-section (2) of section 58G and any income-tax and super-tax payable on an employee's total income as determined under sub-section (3) of section 58J, and sub-sections (4) to (9) of section 18 shall apply as if the sum to be deducted were income-tax payable under the head "Salaries".

58I. (1) The accounts of a recognised provident fund shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such particulars as the Central Board of Revenue may prescribe.

(2) The accounts shall be open to inspection at all reasonable times by Income-tax authorities, and the trustees shall furnish to the Income-tax Officer such abstracts thereof as the Central Board of Revenue may prescribe.

58J. (1) Where recognition is accorded to a Treatment of balances provident fund with in newly recognised pro- existing balances, an vident funds. account shall be made of the fund up to the day before the day on which the recognition takes effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Central Board of Revenue may prescribe.

(2) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee's account in the recognised provident fund, and such amount (hereinafter called his transferred balance) shall be shown as the balance to his credit in the recognised provident fund on the date on which the recognition of the fund takes effect, and sub-sections (3) and (4) shall apply thereto.

Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the recognised fund shall be excluded from

the accounts of the recognised fund and shall be liable to income-tax and super-tax in accordance with the provisions of this Act other than this Chapter.

(3) Subject to such rules as the Central Board of Revenue may make in this behalf, the Income-tax Officer shall make a calculation of the aggregate of all sums comprised in a transferred balance which would have been liable to income-tax if this Chapter had been in force from the date of the institution of the fund, without regard to any tax which may have been paid on any such sum, and such aggregate (if any) shall be deemed to be income received by the employee in the year in which the recognition of the fund takes effect, and shall be included in the employee's total income for that year; and, for the purposes of assessment, the remainder of the transferred balance shall be disregarded, but no other exemption or relief, by way of refund or otherwise, shall be granted in respect of any sum comprised in such transferred balance:

Provided that, in cases of serious accounting difficulty, the Commissioner shall have power, subject to the said rules, to make a summary calculation of such aggregate.

(4) Notwithstanding anything contained in condition (h) of sub-section (1) of section 58C, an employee, in order to enable him to pay the amount of tax assessed on his total income as determined under sub-section (3), shall be entitled to withdraw from the balance to his credit in the recognised provident fund a sum not exceeding the difference between such amount and the amount to which he would have been assessed if the transferred balance had not been included in his total income.

(5) Nothing in this section shall affect the rights of the persons administering an unrecognised provident fund of dealing with it, or with the balance to the credit of any individual employee, before recognition is accorded, in any manner which may be lawful.

58K. (1) Where an employer who maintains a fund (whether transferred by employer to trustee or not) for the benefit of his employees and has not transferred the fund or any portion of it, transfers such fund or portion to * trustees in trust for the employees participating in the fund, the amount so transferred shall be deemed to be of the nature of capital expenditure.

(2) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustee (without addition of interest, and exclusive of the employee's contributions and interest thereon) shall be deemed to be an expenditure by the employer within the meaning of clause (ix) of sub-section (2) of section 10, incurred in the year in which the accumulated balance due to the employee is paid.

58L. (1) All rules made under this Chapter shall be subject to the provisions of sub-sections (4) and (5) of section 59.

(2) In addition to any power conferred by this Chapter, the Governor General in Council may make rules—

- (a) prescribing the statements and other information to be submitted with an application for recognition ;
- (b) limiting the contributions to a recognised provident fund by employees of a company who are shareholders in the company ;
- (c) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in a recognised provident fund ;
- (d) determining the extent to and the manner in which exemption from payment of income-tax and super-tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn ; and
- (e) generally, to carry out the purposes of this Chapter and to secure such further control over the recognition of provident funds and the administration of recognised provident funds as he may deem requisite.

58M. This Chapter shall not apply to any provident fund to which the Provident Funds Act, 1925, applies."

XIX of 1925.

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GOVERNMENT OF INDIA.
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.