

**COMPANY LAW AND BUSINESS  
TAXES IN GREAT BRITAIN**

**MENT OF COMMERCE  
IGN AND DOMESTIC COMMERCE**

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Trade Promotion Series—No. **Dhansajyran Gadge**  
1889 9791 9791 9791

# COMPANY LAW AND BUSINESS TAXES IN GREAT BRITAIN

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UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1923

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## FOREWORD

Great Britain is still the best customer of the United States, in spite of difficulties and obstacles of an economic order. Business men and commercial attorneys have manifested a greater interest in company law and taxation—the two outstanding legal complications attending their merchandising activities—than in any other phase of British commercial law.

An effort has been made to present in this bulletin the essentials of corporate organization, emphasizing the types best suited to American business enterprises. The most customary form of trading company encountered in Great Britain is a “company limited by shares under the Companies Act.” This, together with the private limited liability company, has given the American concern its best medium of representation in England. Mr. Jaeger has sought to combine legal provisions and court decisions so as to present a clear summary of the subject. The Companies Act of 1929, being a consolidation of previous legislation, is made the basis of much of the discussion.

The relief accorded to American companies doing business in Great Britain under the United States Revenue Act of 1932 is described in this study under the caption “Doing business”, and the various methods whereby business may be carried on have been briefly sketched.

The section on taxation was originally prepared by Mitchell B. Carroll, formerly of the Division of Commercial Laws. The subject matter of this section has been revised in accordance with recent legislation. The taxes payable by individuals and companies are treated in detail.

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*Bureau of Foreign and Domestic Commerce.*

JUNE 1933.

# COMPANY LAW AND BUSINESS TAXES IN GREAT BRITAIN

## I. COMPANY LAW

### INTRODUCTION

This monograph describes the various forms of corporate organization by means of which business may be carried on in the United Kingdom,<sup>1</sup> the methods of doing business, and, finally, the tax liability incurred and the taxes payable when one or another of these methods is employed.

Considering first the question of corporate organization, it is found that the customary type of company in England is a limited-liability form known as a company limited by shares under the Companies Act of 1929.<sup>2</sup> A number of persons wishing to combine for the purpose of carrying on a commercial enterprise for profit may organize a partnership. But if a sufficient number are interested in the attainment of this objective, and especially if the participants wish to limit their individual liability for losses that may result, and desire to perpetuate their business, the probable result will be the organization of a company. The procedure for this purpose entails submission to the Registrar of Companies, Somerset House, London, of a brief paper termed a "Memorandum of Association", which must be signed by at least 7 persons in the case of a public company, or 2 in the case of a private company, each of whom must agree to take one or more shares in the company being formed. The memorandum mentions the name of the company (which must end with the word "Limited"), the location of the registered office, the powers and the amount of capital of the company, also the manner in which the liability of the members of the company is limited. The very existence of the company depends on this document. As between itself and the outside world, the powers and objects of a company are fixed by the memorandum, and, as a general rule, these powers and objects cannot be altered by the company alone, even if every member agrees.

<sup>1</sup> The terms "United Kingdom" and "Great Britain" are used interchangeably throughout this report. The United Kingdom finance acts and other acts apply to England, Scotland, Wales, and the adjacent islands with the exception of the Channel Islands and the Isle of Man; the provisions concerning the income tax apply also to Northern Ireland. Full administration of other inland-revenue duties in Northern Ireland was transferred to the Government of Northern Ireland by the Government of Ireland Act, 1920. The transferred duties included all the death duties (estate duty, legacy duty, succession duty, etc.), all stamp duties, and the mineral-rights duty. From the date on which this transfer was effective, Nov. 22, 1921, the Government of Northern Ireland undertook the assessment and collection of these taxes, and revenues were paid into its exchequer. The administration of taxes was transferred to the provisional government of Southern Ireland on Apr. 1, 1922. (Sixty-fifth Report of the Commissioners of His Majesty's Inland Revenue, p. 7.)

<sup>2</sup> This act, which went into effect on Nov. 1, 1929, consolidating previous legislation relating to limited companies especially, will be referred to simply as the "Companies Act."

The persons forming the company must next decide how the business is to be carried on, what management there shall be, and how the profits and losses are to be apportioned. Such and similar matters are considered in the articles of association. Ordinarily these provide for the appointment of directors, the election of officers, the division of capital into shares, the allotment of these shares to members, the issuance of certificates to members as evidence of a right to their shares, and the establishment of a register of members. The annual and special meetings of members, voting privileges, and the passing of resolutions are also specified; thus it is seen that the actual management of the company is dealt with in the articles, which form a binding contract between all the members and the company. In contrast to the memorandum, the articles of association may be altered when a sufficient number of shareholders desire it.

Should the persons organizing the company be unable to find the capital essential for the successful operation of their enterprise, the public may be invited to participate in the undertaking by subscribing for shares. Such an invitation to the public is termed a "prospectus." The issue of a prospectus is regulated by the Companies Act.

The capital of a company may be of any amount, divided into shares of any denomination; any person acquiring one or more shares becomes a member, or shareholder, of the company and becomes liable either immediately or when called upon to pay to the company the money which his share represents, if it has not been paid up in full. When a company is borrowing money, it frequently places a charge upon its property, giving to the lenders evidence of this obligation or charge, known as a "debenture." A company's existence may be terminated by the process known as "winding up." In such a case an official, called a liquidator, is appointed to take possession of all the property of the company, and, having paid its debts, he disburses the balance (if any) among the members. Debts secured by debentures or other charges are paid before unsecured debts. Consequently persons extending credit to British companies should be extremely careful to ascertain the amount of outstanding indebtedness covered by such debentures.

## ORGANIZATION OF THE COMPANY

### TYPES OF COMPANIES

Several different types of companies may be organized in the United Kingdom. Two main methods of incorporation exist: (1) By royal charter or letters patent and (2) under the Companies (Consolidation) Act of 1929. The former method is not of practical interest to American business men wishing to engage in trade in England, so discussion will be confined to incorporation under the Companies Act.

This statute provides for the establishment of four kinds of companies—(1) unlimited liability, (2) limited by guaranty, (3) limited by shares, and (4) private. Because of the ready ease with which the necessary formalities may be accomplished, the two last mentioned attract the attention of the American seeking to do business in England.



## PUBLIC COMPANIES

*Unlimited liability.*—The distinguishing features of each of the above-mentioned types may be stated briefly, as between the first type and the others as follows: Liability is not limited to the amount represented by a member's share, for he may be called upon to contribute an additional proportional amount to discharge the company's liability in the event of bankruptcy; shares may be transferred freely, subject to the regulations of the company; and liability continues for only 1 year (from the date when a member sells his share in an unlimited company). Unlimited companies may be converted into limited-liability companies by registering as such with the Registrar of Companies and complying with the usual requirements, except that the registrar may excuse the company from furnishing documents already submitted at the time of the original registration.

*Limited liability.*—In the limited company, the liability of each member is restricted to the amount of the shares subscribed for, or to the amount guaranteed in case of winding up (dissolution). The latter case is that of the company limited by guaranty; the former, of the company limited by shares.

The company limited by shares may require members to pay the face value of the shares agreed to be taken and allotted to them—either by installments, or in full if the company is being wound up. Where the members undertake to contribute a specified amount upon the dissolution of the company, it is said to be limited by guarantee. It may have capital; if the company has a capital, the shares into which it is divided and the total amount must be stated in the memorandum of association.

## PRIVATE COMPANIES

In addition to the foregoing classification of companies, a further distinction is made between public and private companies. Private companies need only 2 founders, while public companies require a minimum of 7. American companies frequently find it expedient to convert a branch into a private company by making the manager and assistant manager of the erstwhile branch the founders of the British company.

A private company must by its articles (*a*) restrict the right to transfer its shares, (*b*) limit the number of its members to 50, not including persons who are employed by the company and persons who, having been in the employment of the company, were while in that employment and have continued thereafter to be members of the company, and (*c*) prohibit any invitation to the public to subscribe for any shares or debentures of the company.

Examining these provisions individually, the first of these requirements may usually be complied with by giving the directors of the company a general power to decline to register transfers of shares. Only companies having a share capital may be termed "private companies"; those limited by guarantee can be registered only as public companies.

In practice, private companies rarely approach the maximum of 50 members (apart from employees and former employees) permitted by the act. It is to be noted that no limit is imposed as to the

number of employee-shareholders. Furthermore, such employees, having been shareholders while employed, may retain their shares after their employment has terminated.

The provision relative to employee-shareholders has made possible the development of the principle of cooperative ownership.

Where shares are held jointly by two or more individuals, such persons are viewed as a single member when calculating the total membership.

The general prohibition applicable to the private company according to which no invitation may be addressed to the public to subscribe for shares or debentures of the company, does not prevent such a company from inviting its own members and debenture holders to take the further nonnegotiable shares or debentures.

When a private company so alters its articles as no longer to include the provisions required to constitute it a private company, it will cease to be a private company, and within 14 days after such alteration it must deliver to the Registrar of Companies a prospectus or statement in lieu thereof containing information as to the nominal share capital and its division into shares; names, addresses, and description of directors or proposed directors; commissions paid, and certain other details of promotion expenditure. Default in complying with this provision renders the company and every officer in default liable to a fine of £50.

The most important penalty incurred through failure to comply with the above provisions is that the private company loses its special privileges and exemptions.

#### COMPANY PROMOTION

Before a group of people may actually merge their identities for business purposes and acquire a single juridical personality, a certain amount of preliminary work must be accomplished. The steps taken in this direction may be summed up in the term "promotion."

#### THE PROMOTER

The promoter, or person who takes the necessary steps to bring a company into existence, is one who "undertakes to form a company with reference to a given object, and to set it going, and who takes the necessary steps to accomplish that purpose."<sup>3</sup> Merely being engaged in a ministerial capacity to assist in the formation of a company does not make a person a promoter. The term "promoter" is not actually a legal expression,<sup>4</sup> but rather a commercial or business description. The facts in each case must determine whether or not a person is a promoter.

While the promoter is not a trustee, nor even an agent for the company (it not being in existence), yet his position is a definitely fiduciary one. No act accomplished by the promoter before the organization of the company can be ratified by the latter,<sup>5</sup> although by novation, if the power exists in the company's memorandum, such acts may be adopted. Consequently, it may be concluded that the promoter is a principal before incorporation; to safeguard himself,

<sup>3</sup> *Twyecross v. Grant* [1877], 2 C.P.D. 541.

<sup>4</sup> *Whitely Bridge Co. v. Green* [1879], 5 Q.B.D. 111.

<sup>5</sup> *Kelner v. Baster*, L.R. 2 C.P. 174.

he should expressly limit his personal liability and should make all contracts conditional upon the successful organization of the corporation. Being in a fiduciary relationship to the company or to the persons who are to form the company, the promoter must necessarily disclose all material facts which should be known to the company, as contracts between a company and its promoter are void if material facts have been concealed by the latter.

Where the promoter seeks to sell his property to the newly organized company, he must be especially careful to see that the company has a group of independent persons as its board of directors or that it has a prospectus<sup>6</sup> (which will acquaint the public with all the facts). A promoter is held to give to the company the benefit of any contract made while he is promoting the formation of the company, unless a clear intention to the contrary can be shown. He may not, while acting as a promoter, derive secret profits by the purchase of property in order to sell again at an increased price. If any such attempt should be made, the company may, upon discovery, recover secret profits.<sup>7</sup> But the question of whether a person made a contract as a promoter or in his personal capacity is one of fact, and no hard and fast rule of law has been enunciated. Where assets are purchased openly by promoters having the clear intention of selling to the company for profit, if they are not acting in the capacity of trustee this profit may be retained without violating the law.<sup>8</sup>

Preliminary contracts are generally made between the promoter and the company, or with the trustee for a projected company; just as the company has no rights and liabilities on the preliminary contracts as such,<sup>9</sup> it is not liable for expenses incurred prior to incorporation.<sup>10</sup>

Incorporation is completed when the Registrar of Companies issues a certificate showing that he has been satisfied that the requirements of the Companies Act have been complied with and the company may begin operations. A solicitor of the High Court must submit a statutory declaration of compliance with the requirements as conclusive evidence to the registrar before the latter will issue a certificate.

#### MEMORANDUM OF ASSOCIATION

Seven or more persons (two or more if the company being formed is a private company) must subscribe the document called the "Memorandum of Association", which must be filed with the Registrar of Companies.

Where a company limited by shares is being organized, the memorandum must contain the following details: (a) The name of the company with the word "Limited" as the last word of the name; (b) the location of its registered office; (c) the objects of the company; (d) that the liability of its members is limited; (e) and the amount of share capital with which the company proposes to be registered, and the division thereof into shares of fixed amount.

<sup>6</sup> See p. 9.

<sup>7</sup> *Erlanger v. New Sombrero Phosphate Co.*, 5 Ch.D. 111, 3 A.C. 1218.

<sup>8</sup> *Omnium Electric Palaces, Ltd. v. Bainer* [1913], 109 L.T.R. 206.

<sup>9</sup> *Natal Land Co. v. Pauline Colliery Syndicate, Ltd.* [1904], A.C. 120.

<sup>10</sup> *National Motor Mail Coach Co., Ltd.* [1908], 2 Ch. 515.

Each subscriber must write opposite his name the number, not less than one, of the shares he is taking.

If the company is one limited in liability by guarantee, having a share capital, then in addition to the foregoing requirements a statement must appear in the memorandum to the effect that each member undertakes to contribute to its assets in the event of its being wound up while he is a member, or within 1 year after he ceases to be a member, and to the costs, charges, and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount. If such a company has no share capital, the statement with regard to shares and share capital will be omitted.

Unlimited companies must file a similar memorandum, but the word "Limited" is omitted from the name, as are statements regarding the limitation of liability of members and share capital.

The memorandum must be stamped as a deed, and each subscriber must sign it in the presence of at least one witness attesting the member's signature. The memorandum may well be spoken of as the charter of the company. It sets forth the conditions of incorporation, and, as a general rule, the company's powers are limited thereby. Great care should be exercised in drafting this document, for once registered, it is difficult to alter the memorandum.

*Company name.*—Virtually any name may be chosen for the company to do business under, provided that it is not identical with, or does not so closely resemble that of an established company as to deceive the public.<sup>11</sup> A company attempting to do so may be ordered to wind up its affairs or to change its name, while the registrar will be ordered to strike its original name from the register.<sup>12</sup>

The words "royal", "imperial", "municipal", "chartered", and similar words may not be used without authority. A similar restriction applies to the phrases "Red Cross", "Geneva Cross", and "veterinary surgeon". The consent of the Board of Trade is required before the word "cooperative" may be used, and the words "chamber of commerce" may refer only to an association not for profit. The use of the term "building society" is prohibited.

Where it lies within the discretion of the registrar as to whether a certain company name is to be registered (as in the case of a name closely resembling that of another company), the court will not interfere unless this discretion has been exercised upon some wrong principle of law or the registrar has been influenced by matters which he ought not to have considered.<sup>13</sup> A company may change its name by special resolution with the consent of the Board of Trade or of the Registrar of Companies if it has inadvertently registered a name similar to that of an existing company; proceedings brought by or against the company under its old name are valid, regardless of the change.

*Registered office.*—Every company must have a registered office as soon as it begins business operations, or within 28 days after incorporation, whichever is the earlier. The statement required need show only that the registered office is in England (which includes Wales),

<sup>11</sup> *British Vacuum Cleaner Co. v. New Vacuum Cleaner Co.* [1907], W. 144.

<sup>12</sup> *Société Panhard et Levassor v. Panhard Levassor Motor Co., Ltd.* [1901], 2 Ch. 513.

<sup>13</sup> *Reo v. Registrar of Companies* [1912], 3 K.B. 23.

Scotland, or Ireland. This shows where the company will be registered; if in England, registration takes place at Somerset House. No postal address need be given. Registration fixes the domicile and nationality of the company.

Writs and notices are served at the registered office, and the register of members is kept there. Should there be no registered office, an order for substituted service will be made, or the writ may be served on the secretary and directors at an unregistered office.<sup>14</sup>

*Objects of the company.*—The objects and powers of the company must be set forth in the memorandum, and nothing beyond the scope of the company's activities as so set forth may be done without being ultra vires. An act which is beyond the power (ultra vires) of the company is void, and cannot be validated even by the consent of every shareholder.<sup>15</sup> The object of this rule is to protect the people who deal with the company and also to protect future shareholders. Except in certain particulars enumerated below, the memorandum can be changed only with the permission of the court.

It must be understood that when a company is incorporated with certain powers, it may do all the necessary acts incidental to that business, and also conduct the business in the same manner in which an individual would carry on the business; as, for example, a trading company may borrow money.<sup>16</sup> It is now quite generally the practice in drafting memoranda of association to state all possible objects of the company as independent; if this is clearly shown, the courts will so construe the document.<sup>17</sup>

Where there is one main object and several subsidiary objects, if the main object fails, the subsidiary objects also fail, and the company may be wound up.<sup>18</sup>

The objects for which the company is organized must be legal; if these objects should later be declared illegal, the company must be wound up.<sup>19</sup>

*Alteration of memorandum.*—By special resolution a company may alter the provisions of its memorandum with respect to the objects for which organized in order—

- (a) To carry on its business more economically or more efficiently;
- (b) To attain its main purpose by new or improved means;
- (c) To enlarge or change the local area of its operations;
- (d) To carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company;
- (e) To restrict or abandon any of the objects specified in the memorandum;
- (f) To sell or dispose of the whole or any part of the undertaking of the company; or
- (g) To amalgamate with any other company or body of persons.

No alteration may take effect until confirmed by the court. The court will not confirm any alteration until it is satisfied that sufficient notice has been given to every holder of debentures of the

<sup>14</sup> *Re Fortune Copper Mining Co.* [1870], 10 Eq. 390.

<sup>15</sup> *Ashbury Railway Carriage Co. v. Riche* [1875], L.R. 7 H.L., p. 672.

<sup>16</sup> *General Auction, etc. Co. v. Smith* [1891], 3 Ch. 432.

<sup>17</sup> *Cotman v. Brougham* [1918], A.C. 514.

<sup>18</sup> *Re Amalgamated Syndicate* [1897], 2 Ch. 600.

<sup>19</sup> *Re International Securities Corporation, Ltd.* [1909], 99 L.T.R. 531.

company, and to any persons or class of persons whose interests will, in the opinion of the court, be affected by the alteration. With respect to creditors who, in the court's opinion, are entitled to object and who signify their objection in accordance with the directions of the court, their consent to the alteration must be obtained or their debts or claims must be discharged or determined or secured to the satisfaction of the court. For special reasons the court may dispense with the notice required above. In any event, the court must have regard for the rights and interests of the members. No alteration may be made requiring a member to take up additional shares or otherwise increasing his liability.

*Limitation of liability.*—The general statement that the liability of members is limited, without further explanations, means "limited by shares"; no member can be called upon to pay more than the nominal amount of his shares, or so much thereof as remains unpaid. If a member's shares are fully paid up, no further liability exists.

However, if a company is in business for more than 6 months after its membership has been reduced below 7 (or 2, if a private company), every member who knows this fact is liable to pay all debts contracted during that period (sec. 28, Companies Act).

The company may also, as has been observed, be limited by guarantee, in which case each member agrees to contribute a specified sum in case the company should be wound up.

If authorized by its articles, a company may alter its memorandum by special resolution to make unlimited the liability of its directors, or managers, or of any managing director (sec. 60, Companies Act).

The liability of the members of a banking company which issues notes is unlimited (sec. 360).

*The capital clause.*—This clause states the amount of the nominal capital of a company and the number and amount of its shares.

While the promoters are generally guided by the probable needs of a company in fixing the nominal capital, it may actually be any sum, divided into shares of any denomination. (See p. 14 for more detailed discussion.)

*Subscription.*—A minimum of 7 persons for a public company (2 for a private company) must subscribe for at least one share each. The full name and description of each must be given. The term "persons" includes infants (whose contract to take shares is voidable, but not void), married women, bankrupts, and aliens. Thus, all the members may be aliens, provided the business is carried on in England.

The signatures of the members must be attested by a witness; the same person may witness all signatures. Subscribers' duties include paying for the shares for which they have subscribed, appointing the first directors, and signing the articles of association.

#### ARTICLES OF ASSOCIATION

The regulations (or by-laws) which govern the internal management of the company are designated the "Articles of Association." They form a binding contract as between members<sup>20</sup> and between

<sup>20</sup> *Borland v. Steel Bros.* [1901], 1 Ch. 279.

each member and the company, but do not bind the company nor its members to the general public.<sup>21</sup> The company limited by shares need not register any articles; if it fails to do so, a form called "Table A" (see appendix I, p. 134) applies in the same way as registered articles would apply. Articles of association must be registered by unlimited companies, by those limited by guarantee, and by private companies.

The articles must be printed, divided into consecutively numbered paragraphs, stamped as a deed, and signed by the subscribers to the memorandum of association. These signatures to the articles (as in the case of the memorandum) must be attested by at least one witness.

The company and its members are bound by the articles to the same extent as if they had been signed and sealed by each member and contained covenants that each member would observe them (sec. 20, Companies Act). New regulations are as binding as if they had been originally inserted in the articles (sec. 10, Companies Act).

*Alteration of the articles.*—In contrast to the memorandum, the articles may be changed by the company when this seems necessary. A special resolution of the company authorizes the alteration, subject to the limitation that the powers outlined in the memorandum may not be exceeded nor may they be inconsistent with the Companies Act or other laws.

The memorandum and articles are delivered to the registrar, together with such other documents as are required. At Somerset House these may be inspected by anyone upon payment of a nominal fee (sec. 314, Companies Act). Only members of the company are entitled to have a copy, for which a charge of 1 shilling may be made.

The accessibility of these documents puts all on notice as to the contents; thus, everyone may know what powers the company and directors have; if the act done is not inconsistent with the memorandum and articles, a third party is not required to determine whether all the necessary steps have been taken, but may assume that the directors have acted properly.<sup>22</sup> If the third party has notice of any irregularity, his rights are affected.<sup>23</sup>

#### THE PROSPECTUS

When shares are to be offered to the public it is customary to issue a circular descriptive of the objects of the company and its prospects of success, called a prospectus. In the Companies Act (sec. 380) it is described as "any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company."

When the prospectus is being prepared, it is in the interest of the promoters and other interested parties to make the proposition as alluring as possible, while the wish of Parliament is to prevent fraud and misrepresentation and by this means to protect the public. In writing the prospectus care must be taken not to make any untrue statements, for fraud or misrepresentation may cause an allotment of

<sup>21</sup> *Ely v. Positive, etc., Co.* [1876], 1 Ex.D. 88.

<sup>22</sup> *Rule in Royal British Bank v. Turquand* [1856].

<sup>23</sup> *Howard v. Patcut Irony Co.* [1888], 38 Ch.D. 156.

shares to be set aside; furthermore, the promoter making such statements may be sued for damages for fraud, and he may be sued for compensation for misrepresentations under the 'Companies Act (sec. 37).

The promoter should be careful to disclose all material facts as required in the Companies Act.

The following detailed information must be stated in the prospectus:

1. The contents of the memorandum with names, descriptions, and addresses of the signatories, the number of shares subscribed by them respectively, and the number of "founders' " or deferred shares, if any, and the interest of the holders.

2. The number of shares (if any) fixed by the articles as the qualification of a director, and what provision is made in the articles for the remuneration of the directors.

3. The names, descriptions, and addresses of the directors.

4. The minimum subscription (that is, the minimum amount which must be raised by the issue to provide for the various expenses connected with the beginning and successful operation of the business); the amount payable on application and allotment on each share; and, in the case of a second or subsequent offer of shares, the amount offered on each previous allotment within the preceding 2 years, the amount allotted, and the amount paid on the shares allotted.

5. The number and amount of shares and debentures issued within 2 years after fully or partly paid, otherwise than for cash and the consideration given therefor.

6. The names and addresses of vendors of any property to be acquired by the company, to be paid for out of the proceeds of the issue offered by the prospectus; the amount of the purchase money paid or payable in cash, shares, or debentures for any such property, specifying the amount payable for goodwill.

7. The amount of the underwriting commission.

8. An estimate of the preliminary expenses and the amount paid to any promoter, and under what conditions such payment was made.

9. The dates and the parties to every material contract, and the indication of a reasonable time and place at which any material contract or copy thereof may be inspected; if made in the ordinary course of business or made more than 2 years before the prospectus was issued, such contract need not be stated.

10. The names and addresses of auditors (if any).

11. What interest every director or promoter has in the promotion of the company or the property to be acquired by it, and a statement regarding sums to be paid to him in cash or shares by any person for services rendered by him in the promotion of the company, or to induce him to be a director or to qualify him as a director.

12. Where shares are of more than one class, the voting rights and rights as to capital and dividends for each of the several classes must be indicated; and if the business has been carried on for less than 3 years, the time during which it has been in existence must be shown.

The prospectus must also contain a report of the auditors, showing the profits of the company in each of the 3 years preceding the publication of the prospectus and the rates of dividend paid on all classes of shares for this period; a report by named accountants as to the profits during this 3-year period of any business intended to be acquired must be included. When a prospectus is issued more than 2 years after the company is entitled to begin its business operations, there will be omitted from the contents of the memorandum the number of shares fixed by the articles as the qualification of a director, and the remuneration of the directors, or the names, descriptions, and addresses of the directors, the estimate of preliminary expenses, or the interest of every director or promoter.



By "issued" is meant that the prospectus has been shown to persons as members of the public for the purpose of inviting them to subscribe for shares on the terms of the prospectus.<sup>24</sup>

The requirements relative to the prospectus apply to every prospectus issued by or on behalf of a company or any person interested in the formation of a company. Under the present act, any document by which the offer to the public is made is to be considered a prospectus issued by the company (sec. 38, Companies Act). Persons making such offer are liable as if they were directors, but the directors' liability does not come into question if he did not know of the matter not disclosed, or if noncompliance on his part arose from an honest mistake of fact or the noncompliance was immaterial and the court thinks he should be excused. However, the allottee of shares may recover damages in an action of deceit against the person responsible for the issue of the prospectus if he is able to show that the prospectus contained material misrepresentation of fact, that he was induced by this misrepresentation to subscribe for shares and sustained damage in consequence,<sup>25</sup> and that the misrepresentation was dishonest and fraudulent, being made when known to be false or without any belief in its truth, or recklessly, without care being displayed as to its truth or falsity.<sup>26</sup>

The right to repudiate an allotment of shares may be lost by negligence (failure to exercise his right),<sup>27</sup> or by acquiescence (if, knowing of the misrepresentation, the complaining shareholder still treats the contract as binding by acting as a member of the company), or if rights of innocent third parties accrue (for example, the right to avoid cannot be exercised if the company ceases to be a going concern).<sup>28</sup> While the rights against a company may be lost as described above, the right of action against the directors and officers of the company, or other persons responsible for the issue of the prospectus, will nevertheless subsist.

Summarizing the remedies of a person who has agreed to take an allotment of shares and who has been misled by statements in the prospectus, he may institute an action to set aside the allotment, enter a suit for damages for fraud, or a suit for damages for misrepresentation under the Companies Act (sec. 37).

*Statement in lieu of prospectus.*—When a company is being organized and no prospectus is issued, the company may not allot either shares or debentures unless a "statement in lieu of prospectus" (this does not apply to private companies) is registered. This statement should be filed at least 3 days before allotment and will contain most of the information which would have to appear in the prospectus (sec. 40, Companies Act), the form being prescribed<sup>29</sup> (fifth schedule, Companies Act).

No allotment of shares or debentures may be made unless the company files a statement in lieu of prospectus; if an allotment has been made, it is voidable if application is made by the allottee within 1

<sup>24</sup> *Nasa v. Lynde* [1929], A.C. 153.

<sup>25</sup> *Edginton v. Fitzmaurice* [1885], 29 Ch. D. 459.

<sup>26</sup> *Berry v. Peck*, 14 A.C. 337.

<sup>27</sup> *Re Christchurch Rubber Estates, Ltd.* [1912], 106 L.T.R. 260.

<sup>28</sup> *Tennant v. The City of Glasgow Bank*, 4 A.C. 615.

<sup>29</sup> See appendix I.

month after the statutory meeting, or, if there is no meeting, within 1 month after allotment. While there is nothing in the Companies Act to indicate the effect of inaccuracies or even willful misrepresentations in the statement in lieu of prospectus, nevertheless it would seem that those parties who have actually relied on the statement in lieu of prospectus will have a right to rescind the contract to take shares, for the statement in lieu of prospectus has become the basis of the contract between the allottee and the company.<sup>30</sup> The rules as to statements in a prospectus (see p. 9) will apply to statements in lieu of prospectus, and any person who wilfully makes a false statement in this document is guilty of a criminal offense (sec. 362, Companies Act).

The disclosures required under the Companies Act, particularly the contents of the memorandum and the qualification of the directors, will show (1) the objects of the company and the amount of capital, and (2) to what extent the directors themselves are interested in the company, and what faith they have in it. It is customary to provide that no person shall be qualified to act as a director unless he holds a certain number of shares. In any case, a person cannot be appointed a director of the company by its articles or named as one in the prospectus unless (a) he has agreed in writing to act in that capacity, (b) has signed the memorandum for qualification shares, or made a contract to take such shares from the company, or made a statutory declaration to the effect that a number of shares sufficient for qualification are registered in his name. A director must take up his qualification shares within 2 months, failing in which he must leave his office. The above provision does not apply to a private company.

#### CAPITAL

*Uses of term "capital."*—The nominal capital, or the nominal value of the shares which the company has authority to issue according to its memorandum, must be indicated in the memorandum and stated each year in the annual summary (sec. 108, Companies Act). The term "capital" is used in several other senses, as, for example, (a) issued capital, or the nominal value of the shares actually issued, and (b) paid-up capital, or the amount paid up or credited as paid upon the shares. The uncalled capital is the amount remaining to be paid up on the shares.

The term "capital" is also used to describe capital assets, that is, the actual property in the form of lands, buildings, machinery, furniture and fixtures, stock in trade, or rights such as goodwill, patents, and other intangible property. A distinction is made between fixed and floating assets; this distinction (differentiation) will depend largely on the nature of the company and its business. In general, land, buildings, and machinery are considered fixed assets, while stock in trade, cash, and debts are included in floating assets. In preparing the balance sheet of the company, the manner of determining the value of the fixed assets must be shown (sec. 124, Companies Act).

<sup>30</sup> *Re Blair Open Hearth Furnaces, Ltd.* [1914], 109 L.T.D. 830.

By special resolution, a company may declare that any portion of its capital not already called up shall not be capable of being called up except in the case of a winding up, and for that purpose. Such capital is termed "reserve" capital and cannot, without leave of the court, be turned into ordinary capital. The directors cannot deal with or charge reserve capital.<sup>51</sup>

While money borrowed by the company is sometimes referred to as "debenture capital", this expression is incorrect, for the money borrowed is not capital, although it is generally secured by a charge on the capital assets. While this money may be used for the acquisition of property or the replacement of assets, the money borrowed continues to remain a debt due from the company.

*Increase, alteration, and reduction of capital.*—If authorized by its articles, a company may increase its capital by resolution. Notice of such increase in capital must be given within 15 days of the passage of such a resolution (sec. 52, Companies Act).

If no provision for this contingency is made in the articles, a special resolution may be passed authorizing the issue.

The new capital may consist of ordinary, preference, or deferred shares, provided there is nothing contrary thereto in the memorandum. The permission of the court must be obtained to effect the necessary change in the memorandum.

Ordinarily an increase is made because the company has issued all its authorized capital and requires additional funds, but the nominal capital may be increased even when all the authorized capital has not been issued.

Stamp duty is payable on the entire amount by which the nominal capital has been increased.

Shares may be consolidated or subdivided by a resolution of the company passed at a general meeting.

Where the company has suffered a serious loss of capital, it may be advisable to write off the lost capital (thus, fully paid up £10 shares might be reduced to fully paid up £5 shares); such a reduction in capital may be made by a special resolution confirmed by the court if the articles contain this power. If they do not,<sup>52</sup> then a special resolution altering the articles is in order. The "all-round reduction", meaning that the capital lost is written off all the shares proportionally to their normal value, is frequently used, but the loss may be written off one class of shares and not off others. However, no unfairness may be worked on any class of shareholders by such a reduction. The consent of creditors to any reduction involving a return of capital or a reduction of liability for uncalled capital must be obtained or else they must be paid off. An inquiry is made as to the debts and liabilities of the company by means of advertisements; a list of creditors is settled by the court. When the creditors have consented or been paid off, the court will order the reduction confirmed on such terms as it sees fit.

If no return of capital or reduction of liability is involved, no inquiry for creditors is required. Fully secured debenture holders are not entitled to object unless there is evidence that the capital lost

<sup>51</sup> *Bartlett v. Mayfair Property Co.* [1898], 2 Ch. 28.

<sup>52</sup> *Re Dering Patent Packing Co.* [1903], W.N. 52.

includes circulating capital.<sup>33</sup> When capital is reduced on the basis of having been lost, evidence should be introduced to prove the loss.<sup>34</sup>

A diminution in capital occurs when shares not taken up or agreed to be taken up by anyone are canceled; this may be done by an ordinary resolution, if the articles so provide; this is not considered a reduction of capital.

#### SHARES AND STOCKS

The term "share" may be defined as the right to receive that proportion of the capital of a company upon its dissolution (or winding up) as may be determined by the regulations of the company and to receive such share of the profits, if any, of the company as may be authorized by the capital. The shares in a company are numbered, and the shares of each member are identified by these numbers.

#### ALLOTMENT OF SHARES

While the capital of a company is represented at any time by its capital assets, the members are not entitled to such capital assets until the liabilities of the company have been discharged. As the originally subscribed capital is divided into shares, so the value of the balance of the assets over liabilities is divisible into a similar number of shares, and instead of receiving what he originally subscribed, the holder of a share simply receives his proportion of such assets. The rights of the various classes of shareholders (discussed below) are determined by the articles or memorandum. A person becomes a member of a company by subscribing the memorandum, by having shares allotted to him, or by purchasing shares on the market. When allotments are being made, the company announces its willingness to receive applications for such allotments by means of the prospectus. When the allotment is made, it is simply the acceptance by the company of the offering to take shares contained in the application made by the individual. The prospectus is not an offer to the public which is subject to an acceptance creating a binding contract, but is simply an invitation to the general public to submit applications on the terms laid down in the prospectus. Generally, too, a form of application accompanies a prospectus. For the allotment of shares, a resolution of the board of directors is passed. A "minimum subscription" is necessary, that is, the minimum amount of capital which the directors or promoters have fixed beforehand as to the amount necessary to carry on the business of the company; no shares may be allotted until this minimum subscription has been subscribed and the amount due on application (not less than 5 percent of the nominal amount of the shares) has been paid (sec. 39, Companies Act). This amount must be stated in the prospectus or in the statement in lieu of prospectus.

If the minimum subscription has not been subscribed within 40 days after the issue of the prospectus, then the money paid by the subscribers must be returned immediately. If the money is not returned, the directors become liable to repay the money with interest at 5 percent, beginning with the termination of a period of 48

<sup>33</sup> *In re Meux Brewery Co., Ltd. and Reduced* [1919], 1 Ch. 28.

<sup>34</sup> *Caldwell v. Caldwell & Co.* [1916], W.N. 70.

days. If an attempt has been made to allot shares before the minimum subscription has been received, the allotment may be set aside within 1 month of the statutory meeting, or, if there is no statutory meeting, within 1 month after allotment, and any director who has knowledge of the fact is liable to compensate the company or the members (sec. 41, Companies Act). The provisions of this section (except as to the amount payable on application) do not apply to allotments of shares after the first allotment offered to the public. Persons to whom shares have been allotted cannot actually deal with them with finality until this section has been complied with and the company has become entitled to begin its business operations—in other words, the company must have allotted shares payable in cash up to the amount of the minimum subscription.<sup>35</sup> Every director must have paid on every share which he is liable to pay for in cash the same amount as members of the public must pay on application and allotment; a statutory declaration must have been made to this effect; and if there is no prospectus, a statement in lieu of prospectus must have been filed (sec. 94, Companies Act). It is to be emphasized that the minimum subscription provision does not apply to private companies.

No binding contract exists until the allotment has been made (resolution of the board of directors) and notice of the allotment has been posted or been communicated to the allottee in some other way.<sup>36</sup> In general, it may be said that the ordinary rules as to contracts apply to allotments. The offer, for instance, should be accepted within a reasonable time or it is held to be revoked.<sup>37</sup>

*Return of allotment.*—After having made an allotment of shares, a company limited by shares or one limited by guarantee and having a share capital, must make a return of the allotment to the Registrar of Shares within 1 month. This return must show the number and nominal value of the shares allotted; the names, addresses, and descriptions of the allottees; and the amount due or payable on each share. A contract in writing must also be filed, constituting the title of the allottee in cases where the shares are allotted as fully or partly paid otherwise than in cash. Any contract of sale or for service, or other consideration in respect of which the allotment was made, must be filed, duly stamped, and accompanied by a return showing fully the particulars of the allotment of such shares. If the contract has not been reduced to writing, it is sufficient to file particulars of the contract duly stamped as if it were the contract itself. Where default is made knowingly by the officers or directors of a company, a fine not to exceed £50 may be levied for every day during which the default continues; if the omission to deliver the document can be shown to have been accidental or due to inadvertence, the court will grant relief and extend the time for the delivery of the document for such period of time as it may deem proper (sec. 42, Companies Act). Failure to make the return will not invalidate the allotment.

*Commissions.*—While payment of commissions for the placing of shares is permissible, certain formalities must be observed. In

<sup>35</sup> *Finance and Issue, Ltd., v. Canadian Produce Co., Ltd.* [1905], 1 Ch. 37

<sup>36</sup> *Household Ins. Co. v. Grant* [1878], 4 Ex.D. 216.

<sup>37</sup> *Kamagata Hotel Co. v. Montefiore* [1866], L.R. 1 Ex. 109.

the first place, the articles of association must authorize the payment; secondly, the commission paid or agreed to be paid may not exceed 10 percent, and if the shares are being offered to the public for subscription, the amount of commission must be disclosed in the prospectus; otherwise, the commission must be indicated in the statement in lieu of prospectus and the number of shares which persons have agreed (for a commission) to subscribe must also be shown, as indicated above. Otherwise, no company may apply any of its shares or capital money either directly or indirectly in the payment of any commission, discount, or allowance (sec. 43, Companies Act). Every balance sheet must show the amounts of commissions paid by a company until written off in full.

#### CLASSES OF SHARES

The capital of a company may be provided in cash or otherwise by the various members and, in return, shares are allotted (as indicated above), giving these members a variety of rights. If the memorandum is silent as to the classes into which shares are divided, the articles will govern this matter, and the company may make such alterations as seem necessary in its articles in order to issue shares of various classes.<sup>38</sup> The rights of any class of shareholders cannot be interfered with, however, unless there is a resolution to this effect by the class concerned confirming the alteration, such resolution being passed and confirmed by the interested class in the same manner as a special resolution of the company would be adopted. If the rights of the various classes of shareholders are fixed in the memorandum, the permission of the court will be required before such changes may be made. The usual types or classes of shares known to company law and practice in England are ordinary, preference, and deferred (vendors') shares, and, in addition, certain variations of these.

*Ordinary.*—Usually the ordinary shares are the largest in number, and these shares will participate proportionally in the receipt of company profits by way of dividends declared after the preference shares have received their dividends.

*Preference.*—Preference shares, divided into cumulative or non-cumulative, entitle the holder to a fixed dividend before any dividend is paid on the ordinary shares. Generally the rate of this dividend will be fixed, and no matter how much money the company earns, there is no additional dividend beyond this fixed rate payable on the preference shares (unless the articles make special provision for such payment). When the preference shares are cumulative and the profits of the company in any year are not sufficient to pay the fixed dividend, the amount which should have been paid in the form of dividends when the profits are insufficient will accrue until such time as payments can be made out of the profits of subsequent years; that is, the right to receive the dividend will be carried over from year to year until payment in full has been made. Preference shares, in the absence of any specific regulations of the company thereon, are considered cumulative.<sup>39</sup> Noncumulative shares are entitled to the

<sup>38</sup> *Re Australian Estates Co.* [1910], 1 Ch. 414.

<sup>39</sup> *Foster v. Cole* [1906], 22 T.L.R. 555.

dividend at the specified rate from profits made in any one year; but if the profits are insufficient for full payment of this rate in any one year, there can be no making up of this deficiency in succeeding years. While usually a company cannot, without the sanction of the court, pay back the capital subscribed by its shareholders, nevertheless, if the articles so provide, a company can issue preference shares upon such terms that they may be redeemed out of profits or out of a fresh issue of shares (sec. 46, Companies Act). Such shares are called redeemable preference shares.

*Deferred.*—Deferred shares, sometimes called “capital founders’ shares”, are usually issued to promoters and are entitled to a dividend when the dividend on the ordinary shares amounts to more than a fixed amount. These shares are allotted on the basis of the promoters’ having done the preliminary work and may be issued as fully paid up; they may also be issued in satisfaction of an underwriting commission to persons subscribing for ordinary shares. In either case the Registrar of Companies is advised, and the number of founders’ shares has to be stated in the prospectus or in the statement in lieu of prospectus (sec. 35, Companies Act).

#### SHARE CERTIFICATES

A share certificate is the title deed of a member of a company. It is the title deed to personal property, the share being a legal right or chose in action. The certificate enables the shareholder to show a *prima facie* right to deal with the shares represented.

When a certificate has been properly issued by the company, the latter is estopped to deny that the person to whom the certificate was issued is entitled to the shares represented by the certificate.<sup>40</sup> The company, if it issues a certificate stating the shares to have been fully paid, cannot later allege that they are not fully paid up.<sup>41</sup> However, if the holder of the certificate knows that the shares are not fully paid, a statement in the certificate to the contrary will not benefit him. If an officer of the company issues certificates without the authority of the company, there will be no estoppel.

Certificates are prepared and sent to allottees as soon as possible; they must be ready for delivery within 2 months after the shares have been allotted or a transfer request is lodged with the company, unless the conditions of the issue provide otherwise. Failure to comply with this requirement will render the company and every officer responsible for this delay liable to a fine not to exceed £5 for each day that default continues (sec. 67, Companies Act).

#### TRANSFER OF SHARES

The shareholder is given the right to transfer his shares by the Companies Act (sec. 62). Upon transfer, the legal title passes and is perfected by registration thereof on the books of the company. Such a transfer must be made in writing and will conform to the requirements of the articles. When the transferor has executed the transfer, he gives it to the transferee with the share certificate; the

<sup>40</sup> *Dixon v. Kennaway* [1910], 1 Ch. 833.

<sup>41</sup> *Blount v. Ford* [1897], A.C. 156.

latter sends it to the company for registration. The transfer must be registered by the company as soon as possible, for until this formality is accomplished the transfer is not complete, the transferee having only an equitable interest. It has been held that the purchaser has the obligation to prepare the transfer.<sup>42</sup> Transfers must be stamped *ad valorem* (for rates of stamp tax, see p. 118).

The right to transfer may be restricted by the regulations of the company. A discretionary power may be lodged in the directors to refuse a transfer without giving any reasons. (This is not permitted under the rules of the London Stock Exchange; consequently such a restriction should not be inserted if shares are to be listed on the exchange.) If the directors exercise this power *bona fide* for the company's benefit, the court will not interfere.

Shares may be mortgaged by deposit of the certificates with the lender. This merely establishes an equitable title. Such a title cannot be entered on the company's books and it does not put the company on notice, except insofar as it may attempt to seek to establish a priority for itself over the mortgage.<sup>43</sup> As no ordinary notice of the mortgage will require the company to recognize trusts or equities with which shares may be impressed, another method of safeguarding the mortgagee's equity has been worked out. This consists in serving what is called "notice in lieu of *distringas*." An affidavit and form of notice is filed at the central office of the Royal Courts of Justice by the mortgagee; a copy of the affidavit and a duplicate of the notice is then served on the company. Should the mortgagor seek to transfer these shares, the company must notify the mortgagee that the transfer will be registered unless steps are taken within 8 days to prevent this.

A shareholder may transfer a part of his shareholding. The certificate is then generally sent to the company, which certifies that the transferor has turned in his certificate. The transfer is given to the transferee and executed, then registered, and the company issues two new certificates—one to the transferor for the balance of the shares, the other to the transferee. But "certification" is simply evidence that the certificate has been deposited; there is no guarantee of transferor's title, and fraudulent certification by the secretary will not render the company liable, for the company only authorizes its secretary to give receipts for certificates actually deposited.<sup>44</sup>

Should the company, through its own negligence, permit the transferor to regain possession of the certificate originally deposited and the latter commits a fraud (as, for example, by borrowing money on the certificate), the company may be liable to the transferee if he has been damaged, but there is no other liability, even though third parties may suffer as a result.<sup>45</sup>

When a forgery has been perpetrated and the company registers the forged transfer, the true owner may demand reinstatement on the register. Usually the transferee suffers the loss; if, however, on the strength of the certificate issued, a third party deals with the trans-

<sup>42</sup> *Birkett v. Cowper*. Coles [1919], 35 T.L.R. 298.

<sup>43</sup> *Bradford Banking Co. v. Briggs* [1886], 12 A.C. 29.

<sup>44</sup> *George Whitechurch, Ltd. v. Cavanagh* [1902], A.C. 117.

<sup>45</sup> *Longman v. Bath Electric Tramways, Ltd.* [1905], 1 Ch. 646.



ferree, the company will be liable,<sup>46</sup> being unable to deny the validity of the certificate (by estoppel). When the original and only legal owner has been reinstated, the company must make good the third party's loss and then look to the transferee for indemnification.

If a transfer turns out to be invalid, the shareholder who attempted to transfer his shares remains liable for calls on these shares. Conversely, when the transfer is binding, then the transferee is liable to pay subsequent calls.<sup>47</sup>

As has been seen (p. 14), shareholders are not generally expected to pay the full value of their shares immediately upon becoming members of the company being formed. It is customary to pay a certain amount on application, an additional amount upon allotment, possibly a further installment shortly thereafter, and the balance "on call." This means that whenever the company may deem it advisable it may send out a request for this balance owed (owing) on the shares, and this is termed a "call." The articles generally specify the manner of making calls; the directors are often authorized to decide upon calls. By resolution at a board meeting they direct the secretary to give all shareholders notice of the call; no discrimination between members of a class is permissible.<sup>48</sup> The call, to be valid, must be paid in the manner prescribed by the articles; immaterial irregularities will not, however, vitiate a call otherwise good.<sup>49</sup>

The shareholder is in debt to the company for the amount unpaid on his shares, and he is under a statutory liability in the nature of a specialty debt to pay this amount when called upon.<sup>50</sup> Suit may be brought on calls remaining unpaid, and if the power is contained in the articles, the shares may be declared forfeited; such a power must be exercised bona fide for the company's benefit. No calls may be made until the maximum subscription has been completed (sec. 94, Companies Act). Calls must be paid in cash; but where the company owes the shareholder money, the call may be set off against this company debt except in case of a winding up, when all calls must be paid in full and debts are proved.

*Transmission.*—When a shareholder dies, the corporate existence of the company is not affected; the shares are personal property<sup>51</sup> and vest in the personal representative of the deceased shareholder. The personal representative may be registered, or he may have the beneficiaries registered.

A married woman is entitled to retain her property rights in shares belonging to her originally or acquired by her before or after marriage.

When a shareholder is bankrupt, the trustees in bankruptcy can sell and transfer his shares, or repudiate them if there is a liability.

*Share warrants.*—The issue of share warrants is allowed when the shares are fully paid up and the articles contain a provision making this possible. These warrants, under seal, state that the bearer

<sup>46</sup> *Bloomenthal v. Ford* [1897], A.C. 156.

<sup>47</sup> *Levi v. Ayres* [1878], 3 App. Cas. 552.

<sup>48</sup> *O'Connell v. Hallé Concert Society* [1915], 2 Ch. 253.

<sup>49</sup> *Dawson v. African Consolidated Co.* [1898], 1 Ch. 6.

<sup>50</sup> Companies Act, sec. 20(2): "All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company, and in England.

<sup>51</sup> While this is the general rule, there are one or two classical examples of exceptions where the shares themselves are considered real property, as in the *New River Co.*

thereof is entitled to the shares or stock therein specified. Delivery of the warrant transfers the shares or stock represented thereby. When the warrant is issued, three times the ad valorem stamp duty payable upon a transfer at the nominal value must be paid, but no stamp duty thereafter, regardless of how often the warrant changes hands.

The member to whom a share warrant is issued has his name struck off the register, and the following items are entered—the fact that a warrant has been issued, and a statement of the shares of stock included in the warrant, the shares being identified by number and the date of issue.

When the articles permit, the bearer may deliver the warrant to the company, have it canceled, and have his name entered on the register as a member for the shares represented by the warrant. The bearer of a warrant is not actually a member of the company unless provision is made in the articles (sec. 25, Compromise Act) that the holder of a share warrant shall be a member and have rights and privileges of membership as if he were on the register, provided he must produce his share warrant to the company before he may attend any meeting or vote.

Warrants generally have coupons attached showing the dates on which dividends will become payable during several years following their issue; the dividend will be paid to the person producing the coupon on the appropriate date.

#### FORFEITURE AND SURRENDER

A member who disregards calls may forfeit his shares if the articles so provide. Forfeiture does not release the person upon whom the call was made from his statutory liability on the debt, and he may be sued as an ordinary debtor. Any forfeiture which in reality amounts to a purchase by the company of the shares of a member will be invalid, for a company is not allowed to buy its own shares. Forfeited shares may be reissued at a discount; but shares so sold remain unpaid to the same extent that they were unpaid at the time of forfeiture.

Surrender of shares not fully paid up is justifiable only as an alternate to forfeiture, and may be made only when the same conditions exist and provision has been made in the articles. Fully paid-up shares may be surrendered, provided no reduction of capital is involved, as, for example, in exchange for other shares of the same nominal value.<sup>62</sup> If a reduction of capital is contemplated, the court's sanction must be obtained. Surrender avoids the formalities of forfeiture.

#### LIENS

The company has a first lien on the shares of each member for his debts and liabilities to the company when this is stipulated in the articles. This lien also covers dividends on the shares. Power of sale for the enforcement of the lien should be contained in the regulations; it is also necessary to empower the directors to appoint someone to act as transfer agent who will register the shares sold,

<sup>62</sup> *Roswell v. J. Roswell & Sons, Ltd.* [1912], 2 Ch. 609.

since the company cannot register a share without an instrument of transfer (sec. 63, Companies Act).

The death of the shareholder does not terminate the lien; it may even be imposed after death has occurred.

#### STOCKS

Fully paid-up shares may be turned into stock, the term "stock" simply denoting that the company has recognized the fact of the complete payment of the shares and that the time has come when those shares may be assigned in fragments, which was not permissible before. The chief distinctions between stocks and shares are that while shares cannot be transferred in fractions and no person may hold part of a share, any value of stock may be held.<sup>33</sup> When shares are converted into stock, the shares cease to be known by specific numbers, and the members of the company are the registered stockholders (when the stock is registered). In the case of unregistered stock they are the holders of warrants and have the right to act as members on proof of their holding. Share warrants may be issued only in case the shares are fully paid up and provision is made in the articles for such issue. These warrants are issued under the seal of the company, and they state that the bearer is entitled to shares or stock specified therein. They are transferable on delivery.

To illustrate how the division of stock resulting from paid-up shares may be effected, we may consider the case of a company having issued shares in denominations of £100. When such paid-up shares are converted into stock, it is possible to hold a fraction, such as £15 10s. 4d., in stock, and if a register of stockholders is kept, stock certificates will be granted to evidence the stock holdings.

#### DIVIDENDS

When trading profits are divided among the members of a company in proportion to their shares, they are called dividends. Dividends may not be paid out of capital. The articles may determine the proportion to be paid on each share, but if no reference is found therein, then dividends are paid on each share in proportion to the nominal value of that share, regardless of the amount paid on it.

While the rule that dividends should be paid out of profits and cannot be paid out of capital is easy to state, it has been found much harder to apply.<sup>34</sup> The facts in each case will finally determine what has actually been done, but a few principles seem to have been laid down with a certain degree of constancy.

It is generally believed that a distinction must be made between "fixed" and "circulating" capital.<sup>35</sup> Fixed capital is the property which is to be kept for permanent utilization in the business—such as buildings, plant, and fixed machinery, which need to be kept up by additions, improvements, and repairs, or by the establishment of a sinking fund to supply such needs.

Circulating capital is property which is bought or manufactured with the object of reselling or selling it at a profit. This type of

<sup>33</sup> *Marrice v. Aylmer* [1874], 10 Ch. App. 148.

<sup>34</sup> *Masonic Co. v. Sharpe* [1892], 1 Ch. 154.

<sup>35</sup> *Ammonia Soda Co. v. Chamberlain* [1918], 1 Ch. 265.

capital also includes goods consumed in use—coal, for example. Property of this kind should be replaced before any dividends are paid. Frequently it is difficult to distinguish between these two types of capital. Often no exact line of demarcation can be drawn, and much will depend on the business in which the company is engaged and the manner in which profits are determined.<sup>56</sup> It has been suggested that the question of determining “profit” and “capital” and the difference between them should be settled by the business man rather than by the lawyer. In any case, the memorandum and articles must be strictly adhered to, and directors and auditors must enforce their provisions. Where the articles permit, a profit made on realization of the company’s assets may be distributed as a dividend.

Shareholders cannot compel the payment of a dividend, even when the profits are ample, if the directors have failed to declare one and there is no fraud.<sup>57</sup>

As the matter of declaring dividends is in the hands of the directors, it generally happens that they recommend a dividend, the auditors make their report, and the shareholders approve or sanction the action of the directors. A director honestly believing that the accounts are true and justify a dividend recommendation, cannot be held liable; but if the dividend is recommended dishonestly or negligently and is an improper use of the funds of the company, the director is guilty of a breach of trust and is, with his co-directors, jointly and severally liable to repay to the company such money as has been paid in dividends under these conditions. However, recovery of the dividend received may be had from any shareholder knowing these facts. Such a shareholder may not sue the directors.<sup>58</sup>

As an example of typical regulations governing the declaration of dividends, table A (appendix I) should be consulted.

Provision is generally made for the payment of “interim” dividends—that is, dividends declared at any time between two ordinary general meetings.

Once dividends are declared, a debt from the company to each shareholder is created; the shareholder may sue the company on this debt.

Unless there is an express agreement providing otherwise, dividends must be paid in cash or the equivalent (that is, by check).

Sometimes the articles authorize the payment of dividends by means of the issue of shares or debentures. When shares are issued as dividends this is often referred to as the “capitalization of profits.” What actually happens is that if the company has sufficient undistributed profits, it can declare a dividend out of these profits and simultaneously issue a corresponding number of new shares, which are paid for by applying to that purpose the dividend declared which belongs to the shareholders. The result is that the company does not relinquish any of its assets, but each member has a larger number of shares. The question naturally arises as to whether such shares are to be viewed as income or capital. The latter view, namely that such shares are capital, seems to prevail. Shares

<sup>56</sup> *Verner v. General Commercial Trust* [1894], 2 Ch. 288.

<sup>57</sup> *Bond v. The Barrow Haematite Co.* [1902], 1 Ch. 353.

<sup>58</sup> *Towers v. African Tug Co.* [1904], 1 Ch. 558.

distributed in this way have not rendered the recipient liable to the tax on excess profits.<sup>20</sup>

In case shares are transferred when a dividend has been declared or is about to be declared, the question of who shall receive the dividend arises; the contract usually contains a stipulation to cover this contingency. If the dividend goes to the transferee, the transfer is said to be "cum dividend"; if it goes to the transferor, then it is "ex dividend." If the agreement has no stipulation as to dividends, the transferee receives all dividends declared after the date of the agreement for sale.<sup>21</sup>

#### BORROWING POWER AND DEBENTURES

##### BORROWING POWER

Trading companies have an implied power to borrow, and the extent to which this power may be exercised will depend on the nature of the memorandum and articles. The company may not borrow until the minimum subscription has been subscribed (sec. 94, Companies Act).

The character of such borrowing may be temporary or long-term. Borrowing for temporary purposes may be in the form of unsecured loans, making and endorsing of bills and notes, and overdrafts secured by the deposit of title deeds. Long-term borrowing, generally secured by mortgage of the company's property, is evidenced by the issue of debentures.

The directors (subject to the articles) generally exercise the borrowing powers of the company.

Nontrading companies do not have borrowing powers unless the memorandum so provides. Application to the court may, however, extend the provisions of the memorandum.

If a company should attempt to borrow beyond its powers, the borrowing is ultra vires and therefore void, as are also the securities given. The lender cannot sue the company for the return of the money, but if it has not been spent, he can get an injunction to stop the company from parting with it. An action will lie against the directors on an implied warranty of authority.<sup>22</sup> If the money has been used to pay debts which could have been enforced against the company, the lender may sue the company, standing then in the place of the creditors who have received satisfaction.<sup>23</sup>

The uncalled capital of a company may be changed if the memorandum or articles permit this.

Money borrowed by a company may be secured in one of several ways: (1) a legal mortgage of some specific asset; (2) a floating charge; (3) deposit of title deeds (equitable mortgage); (4) temporary deposit of debentures.

A floating charge on the undertaking or property of the company is a customary form of security. Essential elements are (a) that it must be a charge on a class of assets, present and future (for example, book debts, stock, etc.); (b) that the class so charged will change from time to time in the ordinary course of business;

<sup>20</sup> *Inland Revenue Commissioners v. Fisher's Executors* [1920], A.C. 395.

<sup>21</sup> *Beck v. Homersheim* (1878), 4 Ex.D. 24.

<sup>22</sup> *Wells v. Propert* (1873), L.R. 5 C.P. 427.

<sup>23</sup> *Harris Calculating Machine Co.* [1914], 1 Ch. 920.

(c) that the company must be able to use its assets so charged as if there were no charge upon them. Incoming assets of the same class replace those that have been used;<sup>63</sup> the business must be carried on without interference from the mortgagee or trustee until it becomes essential to enforce his security.

#### DEBENTURES

A debenture may be defined as a written promise to repay money advanced, and interest, according to the terms contained in the document. Repayment of the loan is usually secured by a charge on all or part of the assets or undertaking of the company. When accompanied by a trust deed, the trustee being appointed to hold the property or title deeds for the benefit of the debenture holders, it is properly called a mortgage debenture, although it is often referred to in popular parlance simply as a debenture. Debenture holders have the right to interest on their debentures, to receive payment of the principal sum in due course, or, if irredeemable, to partake of assets as secured creditors upon dissolution and to have their security protected, and, when necessary, realized.

Debentures may be payable to the registered holder or to bearer.

The latter are transferable by delivery and the former by means of a transfer registered on the company's books. The form of this transfer is similar to the one used in transferring shares (see page 17). The consideration must be stated if the debenture is not by deed.<sup>64</sup>

Specific performance may be had on a contract to take up and pay for debentures in a company (sec. 76, Companies Act).

Where a trust deed is used, certain advantages accrue to the debenture-holders. Among these may be mentioned the active presence of the trustees, ready to take the necessary steps in case the company should default, instead of leaving it to the individual action of some debenture-holder; if the trustees have a power of sale, they may realize the security without the assistance of the court. The trustees have a legal estate and this prevents subsequent legal mortgages from getting priority. By covenants in the deed, the company can be compelled to insure and safeguard the property covered by the charge.

Debentures payable to bearer are negotiable instruments.<sup>65</sup> They are transferable by delivery, and the transferee in due course gets good title, regardless of any defects that may have existed in the title of the transferor; the company need be given no notice of a transfer, and no stamp duty is payable when a transfer is made.

Interest on this type of debenture is obtained by means of coupons, which are orders on the company or its bank to pay a certain sum of money to the person presenting it on or after a certain date.

*Registration.*—Any attempt to create one of the following types of charge will fail unless details of the charge being created have been delivered to the Registrar of Companies for registration within 21 days of its creation—for securing an issue of debentures; or on

<sup>63</sup> *Re Yorkshire Woolcombers' Association* [1903], 2 Ch. 284.

<sup>64</sup> *Re Fireproof Doors, Ltd.* [1916], 2 Ch. 142.

<sup>65</sup> *Edelstein v. Schuler* [1902], 2 K.B. 144.

uncalled capital; or created by an instrument which if made by an individual would require registration as a bill of sale;<sup>66</sup> or on land; or on book debts; or on calls made but not paid; or on a ship or a share in a ship; or on goodwill, patents, trade marks, or copyrights; or a floating charge (sec. 79, Companies Act).

The time of creation is often material; it may be said that the charge is often material; it may be said that the charge is created when a debenture is issued unless there is a trust deed securing a series of debentures, in which case it will be the date of the execution of this deed.<sup>67</sup>

The details or particulars of a series of debentures which must be delivered to the registrar include (a) the dates of the resolutions and covering deed (if any) creating and defining the security; (b) the total amount secured by the whole series; (c) a general description of the property charged; and (d) the names, if there are trustees for the debenture-holders the names of these trustees (sec. 79, Companies Act). The deed containing the charge—or, if there is none, one of the debentures—must be sent to the registrar.

The company must keep a register of mortgages and charges specifically affecting company property and all floating charges on the undertaking or any property of the company (sec. 88); it must also keep copies of all mortgages and charges which have to be registered with the registrar (sec. 87). Companies generally maintain registers of debenture-holders, although this is not required by law.

The register (of the company) must be available for free inspection to creditors and members of the company, while other persons may not be charged more than 1 shilling. Copies of mortgages registered with the registrar must be open to members and creditors free, but not to others (sec. 89). The register kept by the Registrar of Companies may be inspected by anyone on the payment of a fee not to exceed 1 shilling (sec. 82). If there is a register of debenture-holders, it must be open to registered debenture-holders and to members of the company, subject to reasonable restrictions (sec. 73). A copy of this register may be had by shareholders or debenture-holders upon payment of 6 pence per 100 words; debenture-holders may obtain copies of the debenture trust deed (if there is one) for 1 shilling if it is in print, otherwise at 6 pence per 100 words (sec. 73 (2)).

Where there has been no registration of a charge or mortgage with the registrar, the obligation to pay the debt remains; but as to security, it is void.<sup>68</sup> However, a new mortgage made under the terms of a debenture trust deed not increasing the total amount secured does not have to be registered.<sup>69</sup> The registration of separate mortgages of ships to trustees for debenture-holders is not necessary.<sup>70</sup>

If the failure to register has been accidental or inadvertent, the court may order an extension of time for registration (sec. 85, Companies Act).

<sup>66</sup> Debentures or other mortgages made by "any mortgage, loan, or other incorporated company" need not be registered as bills of sale, even if they include chattels (sec. 17, Bills of Sale Act, 1882).

<sup>67</sup> *Re New London and Suburban Omnibus Co.* [1908], 1 Ch. 621.

<sup>68</sup> *Re Parkes Garage (Stradlincoke), Ltd.* [1929], 1 Ch. 139.

<sup>69</sup> *Bristol Brucrics, Ltd. v. Abbot* [1908], 1 Ch. 279.

<sup>70</sup> *Cunard S.S. Co. v. Hopwood* [1908], 2 Ch. 564.

*Issue.*—Debentures, not forming a part of the share capital of the company, may be issued at a discount if the articles permit.<sup>71</sup> Debentures may be issued any time up to the winding up of the company, provided such issue does not constitute a fraudulent preference (sec. 265, Companies Act) or a void floating charge (sec. 266). (See p. 40.) Money advanced to a company under an agreement that debentures shall be issued creates a charge in equity,<sup>72</sup> and the agreement should be registered within 21 days; if a debenture has been issued in an irregular manner, it may be considered as an agreement to give a charge (or debenture) in the future. Should such a charge be created within three months of winding up, it may be considered a fraudulent preference, and therefore void.<sup>73</sup>

Powers contained in the trust deed (often accompanying an issue of debentures) may enable the debenture holders to realize their security; otherwise they (a) may sue for the amount of their debentures; or (b) apply for the sale of the property secured; or (c) the appointment of a receiver may be made or requested; or (d) a petition may be presented for the winding up of the company; or (e) an order for a foreclosure may be applied for (to the court) as in the case of an ordinary mortgage. This foreclosure may be made to cover the uncalled capital of a company. To use this method of realizing security, all debenture holders of every class must be parties to the action; consequently, its use is infrequent.<sup>74</sup>

When the debenture holders have enforced their security, whatever proceeds are realized may be applied by them to the payment of costs, principal debt, and interest,<sup>75</sup> unless the security is insufficient and the company insolvent, in which case interest becoming due after winding up cannot be proved.

#### DEBENTURE STOCK

Some confusion has arisen from the use of the term "debenture stock." Just as in the case of a "debenture", where there is a debt due from the company evidenced by a document called a "debenture", so in the case of debenture stock, there is a debt or obligation due from the company called "debenture stock", evidenced by a document referred to as a "debenture stock certificate." Debenture stock may be subdivided; otherwise it is about the same as a debt secured by debentures, for it is definitely a debt or obligation. The company's liability on this is viewed as a liability to pay an annuity rather than that of repaying a loan.

#### RECEIVERS

As has been mentioned above, debenture holders may appoint (being given this power quite generally) a receiver to enforce their security. If this power is not given, the court may do so if conditions warrant such a step. If the court, upon application by a debenture holder, appoints a receiver, there can be no interference with the latter, for such interference would be contempt of court.

<sup>71</sup> *Re Regent's Canal Co.* [1876], 3 Ch.D. 43.

<sup>72</sup> *Pegge v. Neath, etc., Co.* [1808], 1 Ch. 183.

<sup>73</sup> *Re Jackson and Bassford* [1906], 2 Ch. 467.

<sup>74</sup> *Elton v. Continental Co.* [1897], 1 Ch. 511.

<sup>75</sup> *Wallace v. Universal Automatic Co.* [1894], 2 Ch. 555.



Unless the court grants its permission, no proceedings can be instituted<sup>16</sup> against a receiver or the property in his care.

A corporation is not eligible for appointment as a receiver (sec. 306, Companies Act). A receiver appointed under a power by the debenture holders is their agent; they are liable for his remuneration and on his contracts,<sup>17</sup> unless the power expressly states a receiver to be the agent of the company.<sup>18</sup>

A receiver appointed by the court is an officer of the court and may be held personally liable on any contract he makes. However, he will be indemnified out of the assets of the company in priority to the debenture holders (the receiver having acted under instructions of the court).<sup>19</sup> He is considered to have been appointed for the benefit of all persons interested in the assets. In case of a "debenture holder's action" (initiated by one debenture holder on behalf of himself and all the others) the court may appoint a receiver if the principal sum has become payable, due to default for 3 months in the payment of interest; or because of a distress or execution being levied or sued out on any property or assets of the company and not paid within 7 days; or if an order is made or a resolution passed for the winding up of the company; or if the company is wound up even though repayment is not expressly provided for in that event; or, finally, if the security is jeopardized, although no winding up or interest default has occurred.<sup>20</sup> An example would be if a company were to propose the distribution of its reserve fund among its members (as a dividend), leaving insufficient security for the debentures;<sup>21</sup> insufficiency of security alone does not amount to jeopardy.<sup>22</sup> The court may appoint the "official receiver" (sec. 179, Companies Act) the receiver of a company (sec. 307). The "official receiver" is generally the officer attached to the court for bankruptcy purposes.

While the company continues to exist after a receiver has been appointed, the assets become specifically charged in favor of the debenture holders.<sup>23</sup> If it is necessary, the court may appoint a manager to operate the business and then sell it as a going concern.

The receiver may be authorized by the court to borrow money which will constitute a first charge on the property having priority over all debentures, if this is essential to preserve the business.<sup>24</sup> All business correspondence, invoices, etc., bearing the name of the company, must show that a receiver has been appointed after an appointment has been made (sec. 308, Companies Act).

## COMPANY MANAGEMENT

### DIRECTORS

Since the adoption of the Companies Act of 1929 no doubt remains as to the requirement regarding directors; every company (except

<sup>16</sup> *Re Maidstone Palace, Ltd.* [1909], 2 Ch. 283.

<sup>17</sup> *Dryes v. Wood and others* [1911], 1 K.B. 506.

<sup>18</sup> *Robinson Printing Co. v. Chic., Ltd.* [1905], 2 Ch. 123.

<sup>19</sup> *Burt v. Bull* [1895], 1 Q.B. 276.

<sup>20</sup> *McMahon v. North Kent Iron Works* [1891], 2 Ch. 148.

<sup>21</sup> *Pitt Over Copper Co.* [1913], 2 Ch. 588.

<sup>22</sup> *Re New York Fuel-oid Co., Ltd.* [1913], 1 Ch. 1; *Sequin v. The Company* [1912], 1 L.J. 676.

<sup>23</sup> *Moss Steamship Co. v. Whitney* [1912], A.C. 260.

<sup>24</sup> *Re Glasier Copper Mines, Ltd.* [1906], 1 Ch. 365.

private companies) registered since this measure became law has had to have at least two directors (sec. 139, Companies Act).

#### DUTIES

It is usual for the company to have directors and officers. These officials include among their duties the making of contracts for the company, the administration and management of the enterprise, and the conservation and judicial utilization of the property of the company.

#### RELATION TO THE COMPANY

The exact relation of the directors to the company is difficult to define; nevertheless, it may be said that theirs is a fiduciary relationship, varying with the duties they are engaged upon. When exercising the power of issuing and allotting shares, making "calls", approving transfers, and performing similar functions, the directors are trustees for the company. They are not entirely nor purely trustees, for they generally receive remuneration from the company for their work. Furthermore, they have a pecuniary interest in the company by reason of their qualifying shares. But when the directors act as trustees, they do so for the company,<sup>65</sup> not for the individual shareholder nor for third parties who have entered into contract with the company.<sup>66</sup>

In relation to the property and contracts of the company the directors are more nearly in the position of agents for the company. Thus, they make contracts for the company and are not personally liable thereon unless they have contracted in their own names, in which case the third party may sue either the company or the directors. If the contract is ultra vires, and cannot bind the company, the directors are not liable unless on an implied warranty of authority.<sup>67</sup> If, however, the act is only beyond the powers of the directors, but not the company, if made with a third party who had no notice of the lack of power in the directors, the contract binds the company; if the contract is made with a member, it is voidable. An ultra vires act of the directors may be validated by the acquiescence of every shareholder. If the act is outside the powers of the company, it is entirely void.

#### APPOINTMENT

The articles often mention the first directors; but to be validly appointed, these directors must have signed and filed with the Registrar of Companies a consent to act, and must have signed the memorandum for his qualification shares, or taken them up and paid for them, or signed a contract to take them from the company and pay for them, or signed a declaration that a number of shares sufficient to qualify him are registered in his name (sec. 140, Companies Act).

Where the articles are silent as to the first directors, the subscribers to the memorandum will elect them (by majority vote) at a meeting of the subscribers, or appoint them by signing a written appoint-

<sup>65</sup> *Peroval v. Wright* [1902], 2 Ch. 421.

<sup>66</sup> *Bath v. Standard Land Co.* [1911], 1 Ch. 618.

<sup>67</sup> *Weeks v. Propert* [1873], L.R. 8 C.P. 427.

ment; all the subscribers must sign.<sup>88</sup> The articles generally specify how subsequent appointments of directors are to be made; if no specific provision is made, then the general meeting has the power to appoint new directors.<sup>89</sup>

The company must keep a register of its directors, showing their names, addresses, and nationalities, showing also former names and any change of nationality. Copies of the register must be sent to the Registrar of Companies, who must also be notified of any change among the directors (sec. 144, Companies Act).

#### QUORUM REQUIREMENT

The number of directors whose presence is required at a board meeting to transact business is called a quorum. The articles usually fix the quorum requirement. Notice of meetings must be given to all directors.

#### QUALIFICATIONS

Although it is not required, the articles generally provide that to act as a director a person must own a certain number of shares. If such a qualification exists, then it must be mentioned in the prospectus, and each director must take his qualification shares within two months of his appointment, or he must quit his office and he becomes liable to a fine of £5 for every day that he attempts to act as a director (sec. 141, Companies Act). No company may begin business operations until the directors have taken up their qualifying shares and paid on them (if payable in cash) the same proportion as is payable by the public on application and allotment (sec. 94, Companies Act).

If it is provided in the articles that the qualification of a director is the holding of shares "in his own right", a person may be qualified although not the beneficial owner of the shares; for example, a trustee may be qualified by the shares he holds in trust.<sup>90</sup> A director may be qualified by holding shares jointly with another person.<sup>91</sup>

#### DISQUALIFICATION

Disqualification results if the director does any act which, under the articles, disqualifies him from holding office. A director, being bankrupt, cannot act in that official capacity without leave of the court (sec. 142, Companies Act). A disqualified director cannot act for the company; if he attempts to do so, he may be restrained by injunction, although the company has no grounds for suing him for damages. Often a clause is inserted in the articles whereby any acts done by directors within the limit of their authority are valid, even if it should appear later that they were disqualified. This refers to transactions entered into with members of the company, as well as with third parties. Once a director has resigned, he cannot withdraw his resignation.<sup>92</sup> The company may remove a director whose services are unsatisfactory, but the power of removal is com-

<sup>88</sup> *In re John Morley Bldg. Co.* [1891], 2 Ch. 356.

<sup>89</sup> *Barrow v. Potter* [1914], 1 Ch. 895.

<sup>90</sup> *Re Drexel Coalfield Extension, Ltd.* [1908], 1 Ch. 65.

<sup>91</sup> *Grundy v. Briggs* [1910], 1 Ch. 444.

<sup>92</sup> *Glossop v. Glossop* [1907], 2 Ch. 870.

pletely governed by the articles.<sup>98</sup> A special resolution will give the company this authority if it is not contained in the articles. The term of office of the directors is usually specified.

#### POWERS

Directors are generally empowered to carry on the business of the company within such limitations as the articles may contain. The shareholders may ratify acts of the directors (although beyond their powers), provided they are within the powers of the company.

A contract between a director and the company will be void, there being a conflict between the director's private interest and his duty to the company. If the articles modify this rule and permit a director to make contracts with the company, then the board must be apprised of his interest (sec. 149, Companies Act) and the articles will usually provide that he may not vote. Another exception to the general rule is that a director may contract with the company to take shares.

#### MEETINGS

Directors carry on the management of the company at meetings (called board meetings). Such meetings are duly called; that is, each director must be given due notice. Directors may conduct their meetings whenever they may see fit; minutes of these meetings are kept and signed by the chairman.

Resolutions are the usual form in which the directors make their decisions; these are recorded in the minutes.

Directors may not, as a rule, delegate their powers, but the articles may give them express power to do this. Unless precluded by the articles, directors may exercise their right of vote in shareholders' meetings. When the winding up of a company is begun, the directors lose their powers.

#### REMUNERATION

The remuneration of directors must be made the subject of an agreement; ordinarily the articles make provision for the compensation of these officials. Such remuneration must be stated in the prospectus and shown in the balance sheet (sec. 128, Companies Act). When fixed by the articles, a special resolution is required to change the remuneration; when so provided for, it is a debt due from the company to the directors.

If the remuneration is to be a certain sum per year, the directors will not receive this unless the year is substantially complete; but if compensation is fixed at a certain "rate" per year, then it will be apportioned in case a director does not serve for the whole year.

Directors cannot vote themselves gifts, nor can compensation be paid to directors for loss of office unless the amount to be paid is disclosed to the shareholders and approved by the company (sec. 150, Companies Act). The auditors are required to make a statement of all sums paid to the directors for the preceding 3 years (whether as directors or managers) when requested to do so by persons having one fourth of the voting power in the company (sec. 148).

<sup>98</sup> *Browne v. La Trinidad* [1887], 87 Ch.D. 1.

## LIABILITY

While the rule is that directors are not personally liable when acting for the company, there are certain exceptions which should be noted. Thus, they are liable to persons who subscribe for shares when untrue statements appear in the prospectus (sec. 37, Companies Act); they are liable to the company for loss suffered by the company if they have exceeded their powers; they may also be liable to the company if they have been guilty of negligence, that is, failure to use the care of an ordinary person in his own affairs.<sup>94</sup> The directors are also liable on an implied warranty of authority when they have acted beyond their powers. Liability resulting from negligence by the directors cannot be averted by a clause in the articles to that effect (sec. 152, Companies Act). Where the directors, acting within their powers, make honest errors of judgment in the bona-fide exercise of their discretion, they will not be liable; those who charge the directors in such a case with bad faith must bear the burden of proof.<sup>95</sup>

## PENALTIES

Directors become liable to certain penalties when contravening or failing to comply with certain sections of the Companies Act, including the following: Calling a general meeting every year and within not more than 15 months of the preceding one, £50 maximum penalty (sec. 112); sending the registrar copies of resolutions (special and extraordinary), default fine of £2 (sec. 118); transmitting a proper report before the statutory meeting, £50 maximum penalty (sec. 113); keeping a register of members, £5 a day default penalty (secs. 95 and 365); keeping a register of directors and notifying changes in the board, £5 a day (sec. 144); preparing an annual list and summary, £5 a day (secs. 108 and 110); keeping registers of charges and mortgages, £50 maximum fine (sec. 88); allowing inspection of register of charges and mortgages, £5 fine and additional £2 a day (sec. 89); notifying registrar of conversion of shares into stock or of consolidation or division of shares, default fine, £5 a day (sec. 51); having certificates ready for delivery, fine £5 a day (sec. 67); stating in every balance sheet the amount paid as underwriting commission until written off, default fine of £5 a day (sec. 44); allotting of shares without minimum subscription completed, indemnification of allottee and company (sec. 41); sending in a proper return of allotments, £50 maximum fine (sec. 42); submitting a statement of affairs (on winding up), £10 a day (sec. 181). The penalties listed above are the maximum applicable to the offenses enumerated. The secretary of the company will generally familiarize himself with the requirements of the Companies Act and advise the directors accordingly.

## MEETINGS AND RESOLUTIONS

A company limited by shares is required to hold a general meeting, known as the statutory meeting, within not less than 1 month nor more than 3 months from the date upon which it is entitled

<sup>94</sup> *Leeds Estate Co. v. Shepherd*, 36 Ch.D. 787.

<sup>95</sup> *Re New Mashonaland Co.* [1892], 3 Ch. 577.

to begin business (sec. 113, Companies Act). The object of this meeting is to give the shareholders an opportunity to see for themselves how the company stands. Seven days before this meeting each shareholder must be sent a copy of a report showing the number of shares allotted, the amount paid up, and the consideration for which allotted; the cash received in payment for these shares; an abstract of the receipts and payments on capital account and an estimate of preliminary expenses; the names, addresses, and descriptions of the directors, manager, secretary, and auditors of the company; the particulars of any contract which is to be presented to the meeting for modification, and the nature of the modification. At least two directors must certify this report; the auditors are required to certify such part of the report as relates to accounts. When the company has only one director, then this director and the manager must sign the report. A copy must be filed with the Registrar of Companies immediately after it has been sent to the members. A private company is not required to hold a statutory meeting (sec. 113, Companies Act).

In the course of the meeting the members may discuss any matters relating to the promotion of the company or to the report. Before the statutory meeting the company cannot change the terms of any contract mentioned in the prospectus unless it is made subject to the approval of the statutory meeting (sec. 36, Companies Act). A list of members must be available at the meeting; this will show the names, descriptions, and addresses of the members, together with the number of shares held by each. If the requirements of the Companies Act regarding the statutory meeting are not complied with, this may be made sufficient grounds for a petition to the court to wind up the company, but the court may order the meeting to be held and the statutory report to be filed instead of granting the petition for an order to wind up the company.

The articles generally provide for an annual general meeting to convene on a certain date. At least one general meeting must be held every calendar year, and within 15 months of the previous meeting. A penalty of £50 is provided for failure to comply (sec. 112, Companies Act). Such a meeting is termed an "ordinary meeting", and the articles of association will, in general, stipulate its time and place. All members are entitled to notice of a general meeting. While notices are not construed very strictly, they must nevertheless show substantially what is proposed to be done.

The directors of a company may call an extraordinary general meeting for the purpose of transacting pressing business. Shareholders having not less than one tenth of the paid-up capital carrying a right of voting may compel the directors to call an extraordinary meeting (sec. 114, Companies Act). The articles may broaden this power (as by permitting shareholders with a smaller ratio of the paid-up capital to request a meeting), but they may not restrict it.

The demand for a meeting must be by requisition, and the shareholders requesting it must sign; the object for which the meeting is to be held should be stated. If the directors fail to call the meeting within 21 days, a majority (determined on the basis of voting power)

of those requesting the meeting may at any time within 3 months call the meeting.

The business transacted in the meetings is ordinary or extraordinary, the ordinary business (stated in the articles) usually involving consideration of accounts, sanctioning dividends, electing directors and auditors, receiving the reports of the directors and auditors, and all business which generally forms part of the ordinary routine of the annual meeting. Other business is extraordinary.

The articles may fix the number of shareholders which shall constitute a quorum for meetings. At least two must be present if no provision is made, unless all the shares of the class are held by one person.<sup>88</sup>

The meeting is presided over by a chairman, who may be appointed by or under the articles or elected by each meeting. The presiding officer decides procedural matters, sees that the meeting is properly conducted, and puts questions or resolutions to a vote. A meeting having been properly called cannot be postponed by the chairman or by the directors.<sup>89</sup> If the chairman attempts to put an end to the meeting without its consent, or leaves the chair and declares the meeting closed before the business has been completed, a new chairman may be elected and the business may be transacted.<sup>90</sup> While the rights of the minority must be respected, this does not mean that every shareholder may prolong the discussion interminably.

Minutes of the proceedings at all meetings of the company must be kept in minute books kept for that purpose. These minutes must be signed by the chairman, whereupon they constitute prima facie evidence of the proceedings. A meeting is considered to have been held if the minutes have been properly kept, unless the contrary is proved (sec. 120, Companies Act). Members are allowed to inspect the minute books of the company free of charge, the registered office being the place where these books are available for inspection. Members may obtain copies of the minutes at a cost not to exceed 6 pence per 100 words (sec. 121).

#### RESOLUTIONS

Resolutions may be considered as falling into three categories: (1) ordinary, (2) extraordinary, and (3) special.

An ordinary resolution is carried by a simple majority of those voting at a meeting. An extraordinary resolution requires the affirmative vote of three fourths of those who are entitled to vote and do vote at a general meeting, of which notice stating the intention to propose the resolution as an extraordinary resolution has been given (sec. 117, Companies Act). Such a resolution may be used to wind up a company voluntarily (sec. 225). The articles must contain a stipulation to this effect or they must be changed by special resolution. The latter type is similar to the extraordinary resolution but requires not less than 21 days' notice of the meeting and of the intention to present the resolution as a special resolution. Matters requiring a special resolution are (a) alteration of the articles of the company, (b) change in the name of the company (with permis-

<sup>88</sup> *East v. Bennett Brother, Ltd.* [1911], 1 Ch. 163.

<sup>89</sup> *Smith v. Parsons Mines* (1906), 2 Ch. 193.

<sup>90</sup> *National Dwellings Society v. Sykes* [1894], 3 Ch. 150.

sion from the Board of Trade), and (c) reduction of the capital or alteration of the memorandum (with leave of the court).

Each shareholder has the number of votes accorded to him by the articles; if no provision is made, each member has one vote. The usual method of voting is by a show of hands; only members actually present may then vote. The only person entitled to vote as the holder of a share is the one whose name appears on the register for that share.<sup>99</sup> A customary provision is that the number of votes each shareholder has shall depend on the number of shares he holds. If voting is carried on by a poll, members who are absent may have their votes cast by a proxy or representative, properly appointed for this purpose.

A written instrument giving a person authority to vote on behalf of a shareholder is called a proxy. When such authorization is given for only one specified meeting or adjournment thereof, it is a special proxy and must bear a penny stamp; if it is an authorization to vote at any meeting of the company, it is a general proxy, and a 10-shilling stamp must be affixed. Regulations governing proxies are usually to be found in the articles; otherwise, no right to vote by proxy exists.

If one company is a member of another company, it may designate a representative to vote on its behalf (sec. 116, Companies Act).

Adjourned meetings are generally considered as continuations of the original meetings,<sup>1</sup> but a resolution passed at an adjourned meeting must be treated as having been adopted on the date when it was actually passed (sec. 119).

While a chairman's statement that a special or extraordinary resolution has passed will not make a resolution good if the statement itself shows it to have been bad,<sup>2</sup> it will be conclusive unless a poll is requested.<sup>3</sup> A special resolution may be adopted at a meeting of which less than 21 days' notice has been given if all the members entitled to vote agree to this (sec. 117, Companies Act).

Within 15 days of adoption, a copy of every special or extraordinary resolution must be sent to the Registrar of Companies. Failure to do this may result in a fine of £2 being imposed. Special and extraordinary resolutions so registered must form part of the articles as issued thereafter (sec. 118).

## ACCOUNTS AND AUDITORS

### ACCOUNTS

Every company is required to keep books of account relating to all receipts and expenses and matters pertaining thereto, sales and purchases of goods, and assets and liabilities (secs. 122 and 123, Companies Act). These books are to be kept at the registered office or at some other place designated by the directors. They must be open to inspection by the directors. A profit-and-loss account and a balance sheet must be presented to the company each year at its general meeting by the directors.

<sup>99</sup> *Wiss v. Lansdell* [1921], 1 Ch. 420.

<sup>1</sup> *Spencer v. Kennedy* [1926], Ch. 125.

<sup>2</sup> *Re Caratol New Mines, Ltd.* [1902], 2 Ch. 498.

<sup>3</sup> *Re Hadleigh Castle Gold Mines* [1900], 2 Ch. 419.



The balance sheet must have a summary of the authorized capital, the issued capital, the liabilities, and the assets. The nature of the liabilities and assets and the method of arriving at the values of the fixed assets must be shown.

Provision is also made that the balance sheet will show in itemized form commissions and discounts on shares and debentures until written off (sec. 44); loans for the purchase of shares by employees (sec. 45); the number and amount of any redeemable preference shares, and the date on which they can be redeemed (sec. 46); particulars as to debentures which have been redeemed, but are available for reissue (sec. 75); the preliminary expenses, also those for the issue of shares until written off (sec. 124); all the debts of the company which are secured by any of its assets (sec. 124); the amount (if it can be ascertained) of the goodwill, patents, and trade marks (sec. 124); shares in subsidiary companies (sec. 125); details as to the profits and losses of subsidiary companies (sec. 126); loans to directors or officers, and the total amount of remuneration paid to directors (sec. 128).

Two directors (if there is only one, his signature is sufficient) must sign the balance sheet; there must be attached a report of the directors, as well as that of the auditors (sec. 129), as to the condition of the company's affairs, the dividends recommended to be paid, and the amounts to be allocated to reserve (sec. 124).

Accounts of the company, presented and passed at the annual general meeting, should be kept in the manner used by prudent business men.<sup>4</sup> Except in the case of the private company, copies of the accounts must be sent to the shareholders (sec. 130).

#### AUDITORS

Every company requires the services of an auditor; he is appointed at the annual general meeting of the company. If no appointment is made then, the Board of Trade may, upon the application of any member of the company, make this appointment (sec. 132). In general, the articles will contain a provision governing the appointment of auditors. Certain persons are ineligible to serve as auditors—as, for example, directors or other officers of the company, partners of or persons employed by an officer of the company (except in the case of a private company), and corporations (sec. 133).

The directors may appoint the first auditors, who may be removed by the company in general meeting (sec. 132). The intention to nominate a person as auditor must be announced to the company 14 days before the general meeting is to convene (sec. 132).

Auditors are entitled to have access to the books and papers of the company; they may even require explanations and all necessary information from the officers of the company. They may also attend the meetings of the company at which the accounts of their reports are being considered (sec. 134). While the auditor is an officer of the company, he is also a check on the directors, for he is a servant of the members. His duty is to determine the true financial position of the company, not merely to examine accounts and check receipts and payments; but he must also ascertain whether or not there was

<sup>4</sup> *Hinds v. Bussell Agre Co.* [1906], 2 Cr. 654.

any authorization to make the payments shown in the accounts being examined. The auditor must not only check the books, but must satisfy himself that they represent the company's true financial condition. The auditors must also prepare a report indicating whether or not they have been able to obtain all the information and explanations required, and whether or not the balance sheet has been properly drawn up (sec. 134). This report, attached to the balance sheet, must be read in the general meeting of the company; members are entitled to have copies (sec. 129).

The company cannot by any regulation in its articles limit the auditor's duty to report to the shareholders; any resolution enacted for that purpose is *ultra vires*.<sup>5</sup> The obligations of the auditor require him to see that the true financial condition of the company is reflected by the books; he must report all material points to the shareholders, and if the balance sheet does not show the amount of loans to the officers or the remuneration of the directors the report of the auditors must include these details as well (sec. 128). The auditor must also familiarize himself with his duties under the Companies Act and under the articles. Honesty, reasonable skill, and care are to be expected of an auditor; failure in these requirements may result in a suit against him for damages. It is not his duty to give advice,<sup>6</sup> but if he observes anything suspicious he should follow it through, and he must report to the shareholders.<sup>7</sup> The auditor cannot be said to guarantee that the books of the company show the true state of the company's affairs. But the auditor should see that the moneys and securities of the company are actually in its possession or have been deposited with a bank or other similar repository for safekeeping.<sup>8</sup>

The remuneration of the auditors is decided upon by those who have the power of appointment—as, for example, the general meeting, the directors, or the Board of Trade (sec. 132).

### PRIVATE COMPANIES

A private company is one which by its articles restricts the right to transfer its shares; limits the number of its members to 50 (not including individuals who are or have been in the company's employ); and prohibits any invitation to the public to subscribe for any shares or debentures of the company (sec. 26, Companies Act). Joint holding of one share is considered a single membership.

In case a private company does not comply with any of the above provisions, it is no longer entitled to the privileges of a private company. If the failure to comply is due to sufficient cause (such as accident or inadvertence), the court may grant relief (sec. 27). But if the private company alters its articles so that they no longer contain the necessary restrictive provisions, the company, being no longer a private company, must deliver, within 14 days, to the Registrar of Companies a prospectus or statement in lieu of prospectus in accordance with the prescribed form (schedule III, Companies Act).

<sup>5</sup> *Newton v. Birmingham Small Arms Co.* [1906], 2 Ch. 378.

<sup>6</sup> *Re London General Bank* (no. 2) [1895].

<sup>7</sup> *Re Kingston Cotton Mill Co.* (no. 2) [1896], 2 Ch. 279.

<sup>8</sup> *City Equitable Fire Insurance Co.* [1925], Ch. 407.

## SHARES

In practice, the shares of a private company are held by a few individuals, who will frequently be found to be members of the same family. Even when one person holds practically all the shares of a company, the legal position of the private company is in most respects the same as that of a public company.<sup>9</sup> American business enterprises often find it expedient to organize a private company in England to distribute their commodities in the British market; as only two members are required, the manager and his assistant may be the shareholders.

An important question to be determined is as to whether or not the company has issued an invitation to the public to subscribe for shares or debentures. The criterion appears to be that the invitation must have been issued by the company itself<sup>10</sup> and to any person who may have applied for shares or to a class of people chosen as being the most probable subscribers.<sup>11</sup>

## SPECIAL PRIVILEGES AND PROVISIONS

Private companies enjoy certain privileges and are subject to certain special provisions, among which may be mentioned the following:

1. Two members (instead of a minimum of seven, as in the case of a public company) may organize a private company (sec. 1).
2. Business operations may be started even if the minimum subscription has not been subscribed and the directors have not paid the proper proportion on their shares (sec. 94).
3. Shares may be allotted before the minimum subscription is subscribed (sec. 89).
4. No statutory meeting need be held (sec. 113).
5. No prospectus nor statement in lieu of prospectus need be filed or issued (sec. 40), but if an underwriting commission is to be paid, a statement in prescribed form must be issued (sec. 43).
6. Directors are not required to deliver to the registrar a consent to act, or to sign the memorandum or a contract for their qualification shares (sec. 140).
7. No balance sheet need be included with the annual summary (sec. 110).
8. A certificate, signed by a director or the secretary, that the company has not issued any invitation to the public to subscribe for shares or debentures, and a further certificate (if the total membership exceeds 50) that such excess consists of employees or former employees of the company must accompany the annual list and summary (secs. 108 and 111).

By its articles of association, the private company should provide that—

1. The number of its members (not counting employees and former employees) be limited to 50.
2. No invitations to the public to subscribe for shares or debentures be issued.
3. Share warrants are not authorized.
4. The transfer of shares is restricted.

## COMPANIES LIMITED BY GUARANTEE

In the case of a company limited by guarantee, each member undertakes to contribute a certain sum in case the company is wound up; therefore, such a company is not obliged to have any capital. The

<sup>9</sup> *Salomon v. Salomon* [1897], A.C. 22.

<sup>10</sup> *Booth v. New Afrikaner Co.* [1903], 1 Ch. 295.

<sup>11</sup> *Sherwell v. Combined Incandescent Syndicate, Ltd.* [1907], W.N. 110.

memorandum contains a statement of this guarantee, but need contain no statement in regard to the amount of capital.

No contribution in excess of the amount guaranteed may be required of any member in case the company is wound up. Past members of the company may be put on the "B" list. (See p. 47.)

There is very little security for persons dealing with a company having no capital, as there is no liability on the members until the company is wound up; by that time the members may no longer be financially responsible.

Where the company has a capital divided into shares, the amount of this capital and the number of shares must be stated in the memorandum (sec. 2, Companies Act).

Upon the allotment of shares, the registrar must be provided with a return, in compliance with section 42. (See p. 14.)

### REGISTERED BRANCHES

When business is to be done in the United Kingdom on a large and permanent basis, it may be desirable to register a branch. If it is decided to register a branch, certain formalities must be complied with: namely, the Registrar of Companies must be supplied with a certified copy of the charter, statutes, or memorandum and articles of association; a list of the directors of the company, together with the particulars regarding each as required for the register of directors; and the names and addresses of one or more persons resident in Great Britain authorized to accept, on behalf of the company, service of process and notices required to be served on the company. This information must be furnished to the Registrar of Companies within 1 month from the time of the establishment of a place of business in Great Britain. If any change is made in the foregoing particulars, the Registrar of Companies is to be advised. A certified copy of the charter must be legalized by the British consul having jurisdiction in the territory where the corporation was formed. A further requirement is that a combined balance sheet (showing the operations of the company and of the registered branch) must be filed each year in the form prescribed for companies under the Companies Act (sec. 347). Although the theory underlying this requirement is that the American company is being taxed on the net profits made in England, the accounts of the branch, if correct, will form the basis of its tax assessment.

Where an American company wishes to sell its goods in England without losing its identity, and has no objection to presenting its balance sheet for the scrutiny of the exchequer, doing business through a branch may prove to be the simplest and most effective method. Many American companies, having begun the marketing of their products in England through a branch, have found it advisable, as their business attained a considerable volume, to organize a separate British company.

When a company having a registered branch issues a prospectus inviting subscriptions for its shares or debentures in Great Britain, the country in which the company is incorporated must be stated; the name of the company and of the country in which incorporated must be displayed conspicuously on every place where it carries on

business in Great Britain; all notices, advertisements, billheads, letter paper, and publications of the company must show in legible characters the name of the company and the country in which incorporated; if the liability of members of the company is limited, this must be stated in legible characters in every prospectus issued, and in all billheads, letter paper, notices, advertisements, and all other official publications of the company in Great Britain, and must be displayed on every place where the company carries on its business in that country.

Any notice or process required to be served on a foreign company is considered sufficiently served if addressed to any person whose name has been delivered to the Registrar of Companies and left at or sent by mail to the address provided; but if the company has failed to deliver to the registrar the name and address of a person resident in Great Britain who is authorized to accept notices or service of process on behalf of the company, or if this person is dead or absent or refuses to accept service on behalf of the company, or cannot be served for any reason, then a document is validly served on the company by leaving it at or sending it by mail to any place of business established by the company in Great Britain.

When a branch is registered, whatever documents are to be delivered to the registrar must be delivered at the registration office in England or Scotland, dependent upon whether a place of business has been established in England or Scotland; if a place of business is established in both, then the documents must be delivered to both registration offices. If the company ceases to have a place in either part of Great Britain, then notice must be given the Registrar of Companies for that part; from the date of such notification, the company's obligation to deliver any documents to the registrar for that part is terminated.

Failure to comply with these provisions renders the company, its officers, and agents liable to a fine not to exceed £50, or, in case of a continuing offense, £5 per day for every day during which default continues (sec. 351, Companies Act).

It should be noted that house-to-house selling of shares ("share-hawking") is prohibited (sec. 356, Companies Act).

No person may issue, circulate, or distribute in Great Britain any prospectus offering shares or debentures, when the company, incorporated or to be incorporated outside of Great Britain, whether it has or has not established or will or will not establish a place of business in Great Britain, unless before any issue, circulation, or distribution of the prospectus in Great Britain, there has been filed a copy, certified by the chairman and two other directors of the company as having been delivered for registration to the Registrar of Companies. The prospectus must state on its face that a copy has been delivered to the registrar; it must be dated and conform to the requirements regarding the prospectus mentioned in other parts of the Companies Act (sec. 354). (See also p. 9.)

A foreign company may be wound up by the court if the management is conducted in England, but not otherwise.<sup>12</sup>

<sup>12</sup> *Re Commercial Bank of India* [1868], L.R. 6 Eq. 517.

## LIQUIDATION

If the existence of a company is to be terminated for any reason (such as insolvency), it will be wound up. This winding up may be accomplished in one of three ways, as follows: (a) Compulsory winding up by order of the court, (b) winding up under supervision of the court, and (c) voluntary winding up. A liquidator or liquidators must be appointed to take charge of the property of the company and then apply the assets to the payment of the creditors in proper order, distributing the balance among the shareholders according to their rights.

## WINDING UP BY THE COURT

The court will order the compulsory winding up of a company (sec. 168, Companies Act) if the company adopts a special resolution in favor of winding up; or if the company fails to hold the statutory meeting or to file the statutory report in connection with such statutory meeting; or if the company does not commence business within a year from its incorporation or suspends business for a year; or if the number of members (in a public company) falls below 7 (or below 2 in a private company); or if the court is of the opinion that winding up is just and equitable;<sup>13</sup> or, finally, if the company is unable to pay its debts. The last-mentioned condition is deemed to exist if a creditor, being owed £50 or more by the company, demands payment and does not receive same within three weeks; or if an execution on a judgment remains unsatisfied; or if it is proved to the satisfaction of the court that the company cannot pay its debts (sec. 169, Companies Act).

It is not usual for a company to be wound up by the court because of the decrease in membership below seven (in a public company); the court will, in general, permit the company to wind up its affairs voluntarily.

The court, when confronted with a petition to wind up a company because it is just and equitable, will not act unless there is some special reason for granting such a petition. A deadlock in the company has been held sufficient reason,<sup>14</sup> as also a plan of reconstruction prejudicial to shareholders.<sup>15</sup> Neither general charges of fraud nor fraud toward the outside world (the general public) has ordinarily been considered sufficient grounds for the court's intervention;<sup>16</sup> however, if the whole object of the company is fraudulent, a company will probably be wound up.<sup>17</sup> Reasons similar to those which would warrant the dissolution of a partnership will justify the winding up of a private company.<sup>14</sup>

The usual procedure to be followed in bringing about a compulsory winding up is to present a petition to the court. Creditors or contributories, or both, may petition the court, the order being made for the benefit of all (sec. 178, Companies Act). A contributory may petition if he is an original allottee or if the shares have come

<sup>13</sup> *In re Bleriot Manufacturing Aircraft Co.* [1917], 32 T.L.R. 253.

<sup>14</sup> *Yendje Tobacco Co.* [1916], 2 Ch. 426.

<sup>15</sup> *Consolidated South Rand Mines, Ltd.* [1908], 1 Ch., 491.

<sup>16</sup> *Re Medical Battery Co.* [1894], 1 Ch. 444; *London & Jull Soap Works, Ltd.* [1907], W.N. 254.

<sup>17</sup> *Re T. E. Brinsmead & Sons* [1897], 1 Ch. 45.

to him through the death of a former holder or if the number of members, in a public company, has decreased to less than 7 (2, in case of a private company), but no contributory (except as indicated above) may petition if he has not held his shares for at least 6 months during the 18 months preceding the petition. Shareholders who are fully paid up may petition, as also members whose calls are in arrears. Any provision in the articles attempting to deprive a member of the right to petition is void.<sup>18</sup>

While the court is not bound to issue the order on a contributory's petition, it will generally do so if there is anything which seems to require investigation. If the interest of the petitioning contributory is very small and the majority of contributories do not wish the order made, or if the petition is characterized by bad faith, the court will not order a winding up.<sup>19</sup> The court may not refuse to make the order because there are no assets (sec. 171, Companies Act), but this does not mean that a shareholder is entitled to have the company wound up unless there is good reason for a compulsory order. Should the company fail to deliver a report to the registrar before the statutory meeting, or fail to hold the meeting, a contributory may petition to wind up the company (secs. 168 and 170, Companies Act).

If a creditor can prove that he has an undisputed debt, and any of the conditions are present that are enumerated in section 168 (see p. 40), the court is obliged to issue the order for a winding up, except in certain special circumstances. If the order will do no good, or if the majority of the creditors are opposed to it, the court may refuse to make it. The order need not be made immediately and the petition may be allowed to stand over for a time.<sup>20</sup> Where the creditor's debt is disputed on some substantial ground, a winding-up order will probably not be made.

If the principal sum is payable to the debenture-holders direct, rather than to the trustees of a debenture trust deed, the debenture-holder may petition. The petition by a debenture-holder will be refused if the principal sum is payable to the trustees. When the instrument evidencing the security given to debenture-holders confers upon them the power of appointing a receiver, the court will not interfere if this power has not been exercised.<sup>21</sup>

The assignee of all or part of a debt may petition, but not a creditor of a third party who has, by means of a garnishee order, attached a debt due from the company to the third party.

Where the creditor's claim is unliquidated, no petition may be presented; a judgment fixing the amount of the debt must first be obtained. The creditor's debt does not have to amount to £50, but the court will generally refuse to make the order if the petitioning creditor's debt is small; ordinarily, however, £50 is considered to be the minimum amount to warrant a court order.

Action may be brought for maliciously petitioning for a winding-up order; no special damage need be proved.<sup>22</sup>

<sup>18</sup> *Peverill Gold Mines, Ltd.* [1898] 1 Ch. 122.

<sup>19</sup> *Re Metropolitan Saloon Omnibus Co.* [1859] 28 L.J. Ch. 830.

<sup>20</sup> *Re Brighton Hotel Co.* [1868] L.R. 6 Eq. 339.

<sup>21</sup> *Re Ermouth Docks Co.* [1873] 13 E. 17 Eq. 181.

<sup>22</sup> *Quarts Hill Co. v. Byrs* [1883] 11 Q.B.D. 674.

A foreign company may be wound up only if the management is carried on in England.<sup>23</sup> Unregistered companies may be wound up.<sup>24</sup>

*Procedure.*—The affidavit of the petitioner must support the petition which is presented in the High Court, or, if the capital of the company paid up or credited as paid up is not more than £10,000 the petition may be presented in the county court (sec. 163, Companies Act).

The court may dismiss the petition with or without costs, order it to stand over, make an order for winding up under supervision of the court, make compulsory order for winding up the company, or make any other order that may be just. If the winding up is to be compulsory, the court appoints a liquidator, who may ask the court to settle any question relative to the winding up (sec. 192, Companies Act).

There are certain results perceptible from a winding-up order which should be noted: (a) the winding-up dates from the presentation of the petition (unless there has been a resolution for a voluntary winding up, when the effective date is that of the resolution, or if preferential payments (see p. 2) are to be made, and there is no voluntary winding up, the date is that of the order); (b) all transfers of shares or change in the status of members, and all dispositions of the company's property made between the petition and the order, are void except on the direction of the court; (c) proceedings against the company are discontinued except with the consent of the court, and no new proceedings may be commenced without the court's consent; (d) any distress or execution levied against the company's property after winding up has begun is void except insofar as it is allowed to proceed by order of the court; (e) the powers of the directors are terminated, and the order serves as notice to servants and officials that their agreements are at an end unless they are retained under the direction of the official receiver, who will function as provisional liquidator until another liquidator is appointed or until the official receiver himself becomes official liquidator.

Those who are entitled to be heard at the hearing of the petition are the company, any creditor, and any contributory.

The petitioner's costs constitute a first charge (if petition is successful) on the assets of the company available for ordinary creditors, but not, for example, on property on which debenture-holders have a claim.

Proceedings in the winding up of a company may be stayed by the court if there is reason to stay these proceedings (sec. 202, Companies Act).

The court orders the company to be dissolved when its affairs are completely wound up. The liquidator reports this order to the registrar, who enters the fact on the register (sec. 221). The company thereafter no longer has any existence. However, within 2 years after the dissolution, the court may, upon application by the liquidator or other interested party, declare the dissolution to have been void; a copy of this order must be delivered to the registrar within 7 days (sec. 294).

<sup>23</sup> *Re Commercial Bank of India* [1868], L.R. 6 Eq. 517.

<sup>24</sup> *Re Victoria Society* [1913], 1 Ch. 167.



## WINDING UP UNDER SUPERVISION OF THE COURT

When the company passes a special or extraordinary resolution to wind up its affairs voluntarily, the court may order that the winding up shall proceed, but subject to the supervision of the court (sec. 256). The court may impose such conditions and terms as it deems just. The liquidator may then exercise his powers as in a voluntary winding up (the sanction of the court being unnecessary), but the court may give such directions as seem necessary. It is within the discretion of the court as to whether the order is to be made, and what directions are to be given the liquidator.<sup>25</sup> Regard may be had by the court as to the wishes of the creditors and contributories (sec. 288).

The date of the beginning of the voluntary liquidation is considered to be the commencement of the winding up under supervision.

There are certain advantages from a winding up under supervision; thus, no proceedings can be begun or continued against the company without permission of the court; proceedings in the winding up may be stayed by the court, and the latter may appoint an additional liquidator.

While in many respects the effect of an order for winding up under supervision and a compulsory winding up is similar, certain provisions effective upon a compulsory winding up are not applicable when the winding up is accomplished under the supervision of the court. Among these may be mentioned the requirement that a statement of the company's affairs be submitted to the official receiver, and that the latter make a report to the court; many of the provisions relative to liquidators (see p. 46) and those dealing with the appointment of a committee of inspection and special managers, and the public examination of promoters, directors, or other officers of the company.

## VOLUNTARY WINDING UP

A company may be wound up voluntary in any 1 of 3 ways under the terms of the Companies Act (sec. 225): (1) When the period fixed for the life of the company has come to an end or an event takes place upon the happening of which the company's regulations require that it be wound up and an ordinary resolution has been passed in general meeting for this purpose; (2) when the company, for any reason, has passed a special resolution requiring the company to be wound up voluntarily; (3) when the company has adopted an extraordinary resolution that, because of its liabilities it cannot carry on its business, and it is deemed advisable to wind up the company.

*Winding up by members.*—In a voluntary winding up, the company and its creditors are left to settle their affairs without report to the court, but every facility is provided for applying to the court in case this should prove necessary. Such a winding up dates from the time of the passage of the resolution authorizing the winding up (sec. 227).

From the beginning of the winding up, the company ceases to carry on its business, except for the purpose of beneficial winding up.

<sup>25</sup> *Re Watson & Sons* [1891], 2 Ch. 55.

Until completely dissolved, the company continues to exist as a corporate entity. No transfers of shares will be valid unless the liquidator's sanction is obtained (sec. 229); there is no prohibition upon transfers of debentures. No alteration in the status of members is permitted.

According to the Companies Act (sec. 230), a majority of the directors, the company being silent, may make and deliver to the Registrar of Companies a statutory declaration to the effect that in their opinion the company will be able to pay its debts in full within 12 months.

At a general meeting the company appoints a liquidator and fixes his remuneration. The powers of the directors cease upon appointment of the liquidator, except insofar as the company (at a general meeting) or the liquidator sanction their continuance (sec. 232). Should the office of liquidator become vacant, the company, in general meeting, may fill the vacancy; any contributory may summon the meeting (sec. 233). In case the winding up takes longer than a year, the liquidator must call a general meeting of the company each year and present an account (sec. 235).

The liquidator must prepare a final account and hold a general meeting ("final meeting") of the company when the company's affairs are fully wound up. This meeting must be advertised in the Gazette. The liquidator must send the registrar a copy of the accounts and make a return of the holding of the meeting within one week after the final meeting. The accounts and returns are registered (by the registrar), and three months after the date of registration the company is dissolved (sec. 236). The procedure described in the preceding paragraphs is that of a member's voluntary winding up of a company.

*Winding up by creditors.*—Another form of voluntary winding up is that instituted by the creditors of a company. This is the case where no declaration of solvency has been made, and the company must summon a meeting of the creditors for the same day as the meeting at which the resolution for voluntary winding up is to be presented, or the next day thereafter. An advertisement of this meeting must be inserted in the Gazette. The directors are obliged to present to the creditors' meeting a statement of the financial position of the company, with a list of its creditors (sec. 238, Companies Act).

Both the company and the creditors may name a liquidator, but the creditors' choice will prevail, subject to an application to the court (sec. 239). A committee of inspection may be appointed by the creditors (at their meeting); the company may appoint not more than five members (acceptable to the creditors) to this committee (sec. 240). Either the creditors or the committee of inspection may fix the remuneration of the liquidator. Powers of directors cease upon the appointment of a liquidator unless the creditors or the committee of inspection authorizes their continuance (sec. 241). Creditors will fill any vacancy that may occur (sec. 242).

A general meeting of the company and a creditors' meeting must be called by the liquidator each year if the winding up takes more than a year; an account must be presented before each meeting. When the companys' affairs are completely wound up, final meetings

of the company and creditors are held (after advertisement in the Gazette) at which the liquidator presents the account he has made up. Within 1 week after these meetings the liquidator must send to the registrar a copy of the account and a return, which are registered; 3 months after this registration the company is dissolved (sec. 245).

*Special or extraordinary resolution.*—An advertisement giving notice of the special or extraordinary resolution to wind up a company must be inserted in the London Gazette within 7 days. Subject to being utilized first in the satisfaction of the company's liabilities (sec. 226) *pari passu*, its property is distributed among the members. The liquidator may exercise the powers of a liquidator appointed by the court (sec. 248). The list of contributors is determined by the liquidator and constitutes *prima facie* evidence of their liability. The liquidator pays the debts of the company and settles the rights of the contributories among themselves.<sup>26</sup>

Any creditor or contributory or the liquidator may apply to the court (sec. 252) as in a winding up by the court; the jurisdiction of the court is then about the same as on a winding up by the court.

#### INTERVENTION OF COURT

In case it is desirable to keep the company in existence for more than 3 months after the final meeting, this may be accomplished by an order deferring the date of dissolution, or the dissolution may be declared void by the court (sec. 294). Expenses properly incurred in winding up (including the liquidator's remuneration) are payable out of the assets of the company in priority to all other claims (sec. 254).

In spite of the fact that a voluntary winding up has been initiated, a creditor has the right to a winding up by the court (sec. 255).

The petition of a contributory for a compulsory winding up order will not be granted by the court as a rule, unless the voluntary winding up is fraudulent, or there are suspicious circumstances connected therewith, or a thorough investigation is necessary. However, if the contributory's interest would be prejudiced by a voluntary winding up, the court has full discretion to make the order for a compulsory winding up (sec. 255).<sup>27</sup>

The court will adopt all the previous proceedings (except in case of fraud or mistake) in case of a voluntary winding up when it makes an order for a compulsory winding up; the beginning of the winding up dates from the adoption of the resolution authorizing it (sec. 175).

The company may make arrangements with its creditors in the course of voluntary liquidation (sec. 251) and the arrangement is binding on the company if sanctioned by an extraordinary resolution and on the creditors if acceded to by three quarters in number and value of the creditors. Such arrangement is subject to appeal to the court (sec. 251). Arrangements may be made between the company and its creditors (under section 153) whether the company is being wound up or not. For this purpose, the court may call meetings of members and creditors, or classes of these, and may de-

<sup>26</sup> *Pulford v. Deventish* [1903], 2 Ch. 825.

<sup>27</sup> *Re National Company for Distribution of Electricity* [1902], 2 Ch. 34.

clare an arrangement binding if confirmed by a majority in number representing three fourths of the creditors or members present (in person or by proxy) and voting at the meeting (sec. 153).<sup>28</sup>

Even if there is no dispute to compromise, such an arrangement may be made.<sup>29</sup>

#### LIQUIDATORS

The court may appoint one or more liquidators to conduct the proceedings in winding up a company and to perform such duties in that connection as the court may impose. A liquidator may be appointed provisionally (by the court) at any time after the presentation of a winding-up petition. The official receiver or any other suitable person may be appointed in this capacity at any time before the winding-up order is made, when the proceedings are in England; if in Scotland, a provisional liquidator may be appointed any time up to the first appointment of liquidators (sec. 184 Companies Act).

When the winding-up order is made, the official receiver becomes provisional liquidator of the company. The official receiver summons separate meetings of the creditors and contributories to decide whether application shall be made to the court to appoint a liquidator and a committee of inspection. Where a committee of inspection is appointed, the liquidator is subject (as to certain matters) to its control; if there is no committee, then he is subject to control (in a similar way) by the Board of Trade. The committee of inspection is composed of creditors and contributories or their attorneys. The numbers of each are fixed by agreement or by the court. This committee meets at least once a month, and a majority of its members constitute a quorum. Any member or the liquidator may summon a meeting.

Application may be made to the court by the official receiver (acting as liquidator) to appoint a special manager, if he believes the interests of the creditors or contributories or the business of the company require it. The special manager has the powers of an ordinary receiver and manager, or such other powers as the court may give him. His remuneration is fixed by the court, and he is required to give security.

The Registrar of Companies must be notified by a liquidator (other than the official receiver) of the latter's appointment and must give security in the prescribed manner to the satisfaction of the Board of Trade (sec. 186). Until these requirements have been complied with, the person appointed as liquidator may not act in that capacity. The official receiver presents an account (of the liquidation) to the liquidator. A corporation may not act as liquidator (sec. 278).

The remuneration of the liquidator is fixed by the court. A liquidator may resign or, upon cause being shown, may be removed by the court. A contributory or a creditor may apply for the liquidator's removal.<sup>30</sup> The official receiver becomes the liquidator in case that office becomes vacant.

All the property of the company is taken into custody by the liquidator, but the property does not vest in the latter upon his

<sup>28</sup> *Re Tea Corporation, Ltd.* [1904], 1 Ch. 12.

<sup>29</sup> *Guardian Assurance Co., Ltd.* [1917], 1 Ch. 431.

<sup>30</sup> *Re New de Kaap, Ltd.* [1908], 1 Ch. 589.

appointment. The court may make an order vesting in the liquidator any or all of the company's property (sec. 190). The liquidator represents both the company and its creditors, and is trustee for all who were creditors at the date of the winding up.

The liquidator's powers may be enumerated briefly as follows (when he has the sanction of the court or of the committee of inspection):

1. To bring or defend actions, or other legal proceedings, in the name and on behalf of the company.
2. To conduct the business of the company insofar as is necessary for a beneficial winding up.<sup>21</sup>
3. To engage the services of a solicitor or other agent to initiate proceedings or to do business which the liquidator is unable to do himself.
4. To arrange compromises with debtors, creditors, and contributories.
5. To pay off any class of creditors in full.

The liquidator may, without the sanction of court or committee, in whole or in part:

1. Sell the property of the company, by public auction or private contract, to any person or company.
2. Execute deeds, receipts and documents, using the seal of the company when necessary, in the name of the company.
3. Prove and claim in the bankruptcy of any contributory.
4. Draw, make, accept, and endorse bills of exchange and promissory notes in the name and on behalf of the company.
5. Borrow money necessary and charge the company's assets as security.
6. Take the necessary steps to obtain payment from the estate of a contributory, i.e., take out letters of administration.
7. Summon meetings of creditors and contributories, and do all other things necessary to wind up the company and distribute the assets.

The court has certain powers in winding up companies which are generally exercised by the liquidator, who is an officer and under its control. A summary of these powers follows:

1. Holding meetings of creditors and contributories to ascertain their wishes.
2. Preparing and settling lists of contributories and rectifying the register of members where necessary.
3. Making calls.
4. Fixing a time within which creditors must prove their claims or be debarred from remedy against the company.

Generally, there are two lists of contributories. On one list (the A list) will be found the names of those liable to make contribution as present members, on the other (the B list) will be found those who have ceased to be members within 1 year of the winding up. The lists are prima facie evidence. The B list need not be finally drawn up until it appears that the contributories on the A list (the present members) are unable to pay the debts.

The liquidator may make an immediate call, although by the terms of the allotment, calls are only payable by installment. The company's right to make calls under its agreement is replaced by the liquidator's statutory right.<sup>22</sup>

With permission of the court, the liquidator may disclaim his right to take over property subject to liabilities or land subject to encumbrances, such as burdensome covenants, or shares, or unprofitable contracts. Unless the court extends the time, this must be done within 12 months of the beginning of the winding up (sec. 267, Companies Act).

<sup>21</sup> *Re Wreck Recovery Co.* [1880], 15 Ch. 353.

<sup>22</sup> *Fowler v. Broad's Night Light Co.* [1893], 1 Ch. 724.

The liquidator being in the position of a trustee for the creditors of the company and in a fiduciary relationship to the contributories, his chief duty is the recovery of all property belonging to the company, the payment of debts, and the distribution of the balance, if any, among the contributories.<sup>33</sup> If the liquidator distributes all the property, allowing the property to be dissolved without paying the creditors, or if he pays the wrong parties by mistake, he may be liable for negligence.<sup>34</sup> In any case of doubt, the liquidator should protect himself by applying to the court for instructions.

When there is a "members' voluntary winding up" the company in general meeting appoints the liquidators (sec. 232, Companies Act). A special resolution to this effect is not necessary; special notice of the intention to appoint liquidators need not be given.<sup>35</sup> Should a vacancy occur in the office of liquidator, a general meeting of the company may be called by any contributory to fill the vacancy (sec. 233, Companies Act).

In a "creditors' voluntary winding up" the meeting of members and creditors (called by the company) may each name a liquidator; in the event of controversy, the creditors' appointee will be the liquidator, subject to an application to the court.

Should the appointment of a liquidator prove defective, he cannot sue for his remuneration. But he may claim reasonable compensation if the new liquidator or the company should utilize his services.<sup>36</sup>

In a voluntary winding up, the liquidator is not subject to the same degree of control by the Board of Trade as a liquidator in a compulsory winding up. Nevertheless, he is required to furnish the board with accounts and particulars as to the moneys in his hands if directed to do so by the board and it may audit his books.

The liquidator must keep proper books in which a record is kept of the progress of the liquidation. Books of account are also required, and twice each year (in a compulsory winding up), he must submit an account of his receipts and expenditures in prescribed form to the Board of Trade. The board audits this account, keeps one copy, and files another with the court.

The liquidator pays all moneys received by him into the companies liquidation account in the Bank of England. He may not retain in his hands sums in excess of £50 for more than 10 days unless authorized to do so by the Board of Trade; should he retain more than £50, he may be required to pay interest at the rate of 20 percent per annum on the excess, he may be dismissed from office, or his remuneration may be disallowed.

The court may remove a liquidator appointed by it, or one who has been continued in office under a supervision order. The court may also appoint a new liquidator to fill a vacancy caused by such a removal, or where a vacancy results from death or resignation. If there is a vacancy in the office of liquidator appointed by the company in a voluntary winding up, the company in general meeting may, subject to any arrangement with the creditors, fill such a vacancy.

<sup>33</sup> *Pulsford v. Devenish* [1903], 2 Ch. 625.

<sup>34</sup> *Windson Steam Coal Co.* [1928], Ch. 609 [1929]; 1 Ch. 151.

<sup>35</sup> *Re Trench Tubeless Tyre Co.* [1900], 1 Ch. 408.

<sup>36</sup> *Re Allison* [1904], 2 K.B. 327.

## II. DOING BUSINESS

Several methods of operation are available to those seeking to make the United Kingdom a market for their goods.<sup>1</sup> If the trade is carried on with, in contradistinction to within Great Britain, no tax liability will be incurred. The precise line of demarcation between what constitutes doing business "with" and doing business "within" is often hard to draw, but there are certain criteria of liability which have become time honored in their acceptance and usage, and which are therefore presented here.

### FIXING TAX LIABILITY

The place where the contract was made, where the goods were delivered, and where payment was made are three of the most important considerations influencing the decision of the Board of Inland Revenue in fixing tax liability. When the order for goods is sent to the United States, filled there, sent direct to the British customer, and payment made to the American vendor, no liability to British tax is incurred. This is also the rule when an American company sends a traveling salesman to England to display samples to prospective purchasers and to solicit orders which are subject to the acceptance of the American company. Even simpler is the case of the American company in the United States receiving a letter or cable order from an English customer and shipping the goods f.o.b. United States, then drawing a draft on the buyer. This is an illustration of doing business "with" Great Britain, and the British authorities are not concerned with the possible profit of the American company. Should the American company establish a branch or an agent in the United Kingdom, assuming that the agent does business in the company's name, then the company is regarded as doing business "within" Great Britain and should register in the office of the Registrar of Companies and should pay taxes on net profits derived from British sources.

There is, however, a twilight zone of tax liability for which it is impossible to lay down any hard and fast rules. An excellent case of doubtful liability to tax is presented by ambiguous agency relationships; in such instances the real facts will determine tax liability. While the fundamental theory is that everyone, whether a resident of Great Britain or not, who trades within that country is liable to the income tax, it is specifically provided that a nonresident shall not be chargeable to income tax in the name of a broker (or general commission agent) even though the broker acts regularly as such for the nonresident, provided that the broker carries on a bona fide

<sup>1</sup> In considering the problem of doing business in Great Britain it is noteworthy that a corporation pays only the income tax of 5s. in the £1 on its net profits (1933), whereas the individual is required to pay an additional surtax ranging from £27 10s. on £2,000 to £15,936 17s. 6d. on £50,000 of taxable income.

brokerage business in Great Britain or Northern Ireland and that he receives a remuneration for his services at a rate that is not less than is customary in the class of business in question (sec. 17, Finance Act of 1925). Agents doing business for a foreign principal are still liable in his behalf.

#### METHODS OF DOING BUSINESS

Marketing in England by means of direct sales, either to the individual customer himself, to a British importing house, to a broker, or to a general commission agent, entails no tax liability. The American company may register a branch office or organize a subsidiary company under the British Companies Act of 1929 if the business being done warrants such a step; in either case, the tax problem will be encountered.

If goods are to be disposed of on a large scale, they may be sold to a reputable English importing concern for ultimate distribution. A method providing more complete control is the formation of a private limited-liability company to which the goods may be sold by the American company; marketing service in England may then be left entirely to the former. The British private company would then pay taxes only on its own net profits. Of course, a tax must be paid on dividends distributed to the American parent company; this tax is withheld at source.

#### CONSIGNMENT AND AGENTS

Sale on consignment to a broker is used to a considerable extent for raw materials and bulk commodities such as cotton, but is rarely used for perishable or manufactured goods which cannot always be disposed of quickly and on which warehouse charges are high. Banks are not inclined to extend credit on the basis of documents covering such goods when they are consigned, as they may not be sold in time to meet payments. As shipments to brokers are not generally made except on cabled advices, given when the broker has either a definite offer or possible sale in view, this method is not considered practicable for the introduction of a manufactured article to the British market.

Should the American exporter wish to test the English market, he may send a traveling salesman to solicit orders subject to acceptance by the American principal. It has often been found expedient to employ an English agent on a commission basis; he may be representing a number of noncompetitive lines, in which case, although carrying on the business in his own name, he obtains orders for the account of his principal in the United States which are filled by direct shipment to the customer. The principal should not, under this arrangement, be subject to taxation.

If resort is had to the services of an exclusive agent, the question of the principal's liability to the British income tax is involved. In any case, the agent is liable on his commissions or salary. No doubt remains that the agent will be held liable in behalf of his principal if the name of the American principal is prominently displayed at the place of business and if the agent is closing con-



tracts or selling goods out of the stock shipped to him by the principal. As a matter of fact, the principal would then be regarded as conducting a branch establishment in England, and it would be necessary to register and file certain documents with the Registrar of Companies. (See p. 1.)

### THE REGISTERED BRANCH

When the business to be done in the United Kingdom is on a large and permanent basis, it may become desirable to register a branch or to form a British company. If it is decided to register a branch, certain formalities must be complied with. The Registrar of Companies must be supplied with a certified copy of the charter, statutes, or memorandum, and articles of association; a list of the directors of the company, together with the particulars regarding each required for the register of directors; and the names and addresses of one or more persons resident in Great Britain authorized to accept, on behalf of the company, service of process and notices required to be served on the company. This information must be furnished to the Registrar of Companies within 1 month from the time of the establishment of a place of business in Great Britain. If any change is made in the above-mentioned particulars, the Registrar of Companies is to be advised. A certified copy of the charter must be legalized by the British consul having jurisdiction in the territory where the corporation is formed. A further requirement is that a combined balance sheet (showing the operations of the company and of the registered branch) must be filed each year. Although the theory underlying this requirement is that the American company is being taxed on the net profits made in England, the accounts of the branch, if correct, will form the basis of its tax assessment. Where an American company wishes to sell its goods in England without losing its identity and has no objection to presenting its balance sheet for the scrutiny of the exchequer, doing business through a branch may prove to be the simplest and most effective method.

### THE BRITISH COMPANY

Many American companies, having begun the marketing of their products in England through a branch, have found it advisable, as their business attained a considerable volume, to organize a separate British company.\*

No company, association, or partnership consisting of more than 20 persons may be formed for business purposes unless registered as a company under the Companies Act.

One of the real advantages of organizing a British company is that such a company is a British subject enjoying the benefits of full-fledged membership in the British business community. Furthermore, no powers of attorney are necessary for the British company to make contracts and enter into other transactions, as is the case where a representative is sent to open a branch.

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\* Specimen forms of the memoranda and articles of association of various types of companies, as well as annual returns, statements in lieu of prospectus, etc., may be obtained upon application to the Division of Commercial Law, U.S. Department of Commerce.

The determination of taxable profits from business carried on in England is much simpler when a separate corporate entity has been organized. The tax will be levied on the profits of the subsidiary company, and, although dividends are paid to the parent company, the tax payable thereon will be withheld at source.

A manifest objection that may be raised against the formation of a British company is the initial registration fee, which varies with the size of the capital.

#### MOST ADVANTAGEOUS TYPES

As a rule, two types of companies seem to offer the greatest advantages: (1) the public company limited by shares, and (2) the private limited-liability company. The essential differences between these two types of corporate organization are that a public company must have at least seven founders, but there is no maximum limit on its membership and its shares are negotiable on the market. A private company need have only two founders, but it must limit the number of its members (exclusive of persons employed by the company) to 50. Its articles must restrict the right to transfer its shares and must prohibit any invitation to the public to subscribe for any shares or debentures of the company. There is no limitation as to the nationality of the founders of either type of company.

Care should be taken in selecting a British company for sales promotion on an agency basis in the United Kingdom to scrutinize outstanding obligations, particularly debentures and the terms on which these were issued. Debenture-holders, having a prior lien on the company's assets, may be given the right to appoint a receiver for the company in case it should become insolvent. Payment of the debentures, as prior liens, may exhaust all assets and leave the general creditors with unsatisfied claims.

#### TAXES AND FEES

Foreign companies established in England have occasionally attempted to deprive the British Government of legitimate revenue by invoicing goods to the branch or subsidiary company at so high a cost that the selling profit is barely enough to cover the expenses of distribution. The tax authorities, having a wide range of experience in this and similar methods of concealing true profits, are quick to suspect and discover such practices. When such an attempt is made the Collector of Inland Revenue may estimate how much profit a business of a particular kind should make; the tax authorities may then assess the foreigner at an arbitrarily high figure which may be reduced when the correct amounts are submitted, but the burden of proof will rest upon the taxpayer.

The standard rate of British income tax on companies is 5 shillings in the pound sterling (1933).

If any kind of annual interest, annuity, patent or copyright royalty, or the other annual payment is due from British sources to a person resident in the United States, he receives the amount due less deduction of the appropriate standard rate of income tax. Where the British debtor makes such payment out of his own profits because of its not being allowed as a business expense, the rate de-

ductible is that in force when the amount payable becomes due. If the annual payment is not made out of the debtor's assessable profits, as in the case of copyright royalties paid to nonresidents, the rate in force at time of payment will be deducted.

#### DUTIES PAYABLE BY BRITISH COMPANIES

When a British private or public company is registered, certain duties are payable both according to the amount of its capital and according to the nature and number of the documents filed. A private company is one that limits its membership to 50, does not offer any of its shares for public subscription, and places a restriction on the transfer of its shares. A public company is comparable to an American corporation in which the public holds a large proportion of the shares.

#### FEES PAYABLE BY PRIVATE COMPANIES

The more important documents that must be filed by a British private company and the fees payable in respect to them are indicated in the following paragraphs:

*Memorandum of association.*—This document must bear a 10-shilling deed stamp and is subject to the company-registration fee stamp on the basis of the nominal capital mentioned therein. The latter fee is graduated from £2 on a capital not exceeding £2,000 to a maximum of £50 when the capital is £525,000 or more. This fee is paid on the nominal capital without reference to the paid-in capital.

*Articles of association.*—This document must bear a 10-shilling deed stamp and a 5-shilling registration fee stamp.

*Statement of nominal capital.*—In addition to the deed and fee stamps, there must be impressed on the statement of capital the ad valorem stamp duty of 1 percent of the nominal share capital. As in the case of the registration fee, this duty is payable on the whole of the nominal share capital as authorized, without regard to the subscribed capital.

*Other fees.*—In addition to the fees mentioned above a private company must pay a fee of 5 shillings on each of the following: (a) Notice of situation of registered office; (b) particulars respecting directors; (c) declaration of compliance with the act; (d) for the registering of any other document and for making a record of any fact.

The rates of the ad valorem fee payable on the registration of a company with a share capital are: (a) Where the amount of the nominal share capital does not exceed £2,000, the fee is £2 (minimum); nominal capital £3,000, fee £2; nominal capital £4,000, fee £4; nominal capital £5,000, fee £5; thereafter progressing by 5 shillings for every £1,000 of capital after the first £5,000 up to £100,000 (when the fee is £28 15s.), and by 1 shilling for every £1,000 after the first £100,000 up to £525,000, which takes the maximum fee of £50.

#### FEES PAYABLE BY PUBLIC COMPANIES

In addition to the fees mentioned above, a public company must pay a fee of 5 shillings on each of the following:

1. List of persons who have consented to act as directors.
2. Consent to act in writing of directors appointed by the articles.
3. Contract by any directors who are named in the articles and are required thereby to hold shares as a qualification and to take and pay for those shares.

4. Copy of the prospectus that is to be issued, containing the prescribed particulars, duly dated, and signed by every person named therein as a director or proposed director or by his agent authorized in writing. If no prospectus is to be issued, a statement in lieu of prospectus must be filed.

#### INCREASE OF CAPITAL, REGISTRATION OF MORTGAGES, ETC.

Where the share capital is increased after the first registration of the company the same fees are payable per £1,000 or fraction as would have been payable if such increased capital had formed part of the original share capital at the time of registration, provided no company becomes liable to pay in respect of nominal share capital any greater fee than £50, taking into account in the case of fees payable on an increase of share capital after registration the fees paid on registration. Both the registration fees and the ad valorem stamp duty of 1 percent must be paid within 15 days after the resolution authorizing the increase; otherwise interest is payable at the rate of 5 percent per year on the sum due. There is also a recording fee of 5 shillings.

Where any mortgage, charge, or debenture created by a company is registered and the amount thereof does not exceed £200, the fee is 10 shillings; where the amount exceeds £200, the fee is £1. For registering particulars of a series of debentures created by a company, where the total amount secured by the whole series does not exceed £200 the fee is 10 shillings; where it does exceed £200 the fee is £1.

#### DOUBLE-TAX RELIEF UNDER UNITED STATES REVENUE ACT

After having paid taxes to the British Government, as shown in the following pages, the income from trade, investments, or other sources in the United Kingdom must subsequently be included in the total income of the American recipient for the purposes of the United States income tax.

Double taxation does not result, however, because relief is granted under the United States Revenue Act of June 6, 1932, by a system of credits to be taken against the American tax in respect of the foreign tax on income from sources without the United States.

The general rule which prevails throughout this act is that the Treasury of the United States renounces its tax in favor of the country of origin, either through a credit against the American tax or through an exemption.

The exemption referred to is granted, in respect of compensation received for services rendered abroad, to citizens who are outside of the United States for a period greater than 6 months, unless such citizens are employed by the United States Government or any of its agencies; there is also an exemption when a certain portion of the income is obtained from American possessions and not received in the United States.

#### CREDIT FOR TAXES PAID TO POLITICAL SUBDIVISIONS

Section 131 (a) permits the taking of credit against the United States tax, payable by a citizen or domestic corporation on total net

income, for all or a part of the income, war-profits, and excess-profits taxes paid or accrued during the taxable year to any foreign government or to a possession of the United States. The term "United States" as used in the act includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia. The tax credit may be taken not only for taxes paid to the government of a sovereign state, such as the German Reich or Switzerland, but to all political entities included therein, as, for example, the Länder of Germany or the Cantons of Switzerland. The question of taking a tax credit for taxes paid to component political entities of foreign states was highly controversial until finally settled by the Supreme Court of the United States in the case of *Chicago Portrait Co. v. United States*.<sup>8</sup>

The entire foreign tax paid on income derived from sources without the United States may be credited against the American tax if the rate of the foreign tax is equal to or less than that payable to the United States on such foreign income, according to the terms of section 131 (a) (1) and (b).

#### CREDIT FOR TAXES PAID BY FOREIGN BRANCH

An American corporation may claim credit against the tax due from it to the American Government in respect of a certain proportion of the tax which a foreign subsidiary pays on its own profits in the country in which it is situated, according to section 131 (f), as illustrated by the following hypothetical case:

An American corporation having a branch in the United Kingdom, or shares in a British company paying 25 percent in that country on profits or dividends, need pay only tax to the United States on its American income. It is important to note that the excess of the British tax over the credit allowed no longer may be taken as a deduction (as was formerly the case). If, however, the branch is in a country having a lower rate, such as Canada, for example, where the corporation tax is 11 percent [1932], together with a 5-percent surtax on the tax payable on income of \$5,000 and up, the American company must pay to the United States Treasury the difference between the American rate of 13½ percent and the foreign rate on the income in question. The American company, consequently, will pay the same amount of tax as though its business operations had been carried on entirely in the domestic market.

#### CONSOLIDATED TAX RETURNS SUBJECT COMPANY TO HIGHER RATE

If this corporation has a subsidiary company in a foreign country and it owns a majority of its stock, it may credit against the United States tax on income from all sources (including dividends from this subsidiary) a certain portion of the tax which the subsidiary paid to the foreign government on its profits before distributing dividends. Consolidated returns subject the corporate income to a higher tax rate, namely, 14½ percent.

Should the American corporation have a subsidiary in countries such as Canada and Italy, which impose no dividend tax, credit will be claimed under section 131 (a) (1), in accordance with the provisions of section 131 (f), in respect of the subsidiary's profits tax when the latter distributes dividends to the parent corporation.

<sup>8</sup> *Burnet, Commissioner of Internal Revenue v. Chicago Portrait Company* [decided Feb. 23, 1932], 285 U.S. 1.

## CREDIT AGAINST TAX LIMITED

In computing the credit for foreign income taxes, it is essential to take into account the limitations in section 131 (b), which reads, in substance, that the amount of credit in respect of the tax paid or accrued to any country may not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources within such country bears to his entire net income for the same taxable year; and, furthermore, that the credit shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's net income from sources without the United States bears to its entire net income for the same taxable year. The foreign tax credit, therefore, must be computed separately for each country, and may not exceed the amount of tax payable on that income in this country, namely  $13\frac{3}{4}$  percent.

According to section 23, the taxpayer is required to elect whether he wishes to take a tax credit or a deduction for taxes paid in foreign countries and possessions of the United States; in no case may he have both, as was the case under the Revenue Act of 1928.

## COMPUTATION OF CREDIT FOR FOREIGN INCOME TAX

In determining the amount of tax payable to the United States, the credit for taxes paid to foreign governments is computed first, using for this purpose a tax rate not in excess of the  $13\frac{3}{4}$  percent, tax levied in the United States. In other words, if the foreign tax rate is in excess of  $13\frac{3}{4}$  percent, the credit taken may not be greater than  $13\frac{3}{4}$  percent of the foreign income. If, however, the American company decides that it will be of greater benefit to take deductions against income for taxes paid abroad, no credit may be taken. For companies doing business on a cash and not on an accrual basis, the usual procedure is to take the total net income and multiply it by the rate of the American tax, and then to total the tax credits arrived at by multiplying the foreign income from the various countries in which earned by the respective tax rates which these countries apply (in no case may the tax credit on any such income exceed  $13\frac{3}{4}$  percent of said income); the total tax credits are then subtracted from the total tax payable if no tax credits were allowed. This credit is granted in respect of taxes borne directly by the American taxpayer, whether individual or corporation. When the deduction method is employed, all the taxes paid abroad, regardless of whether they are higher than the American tax rate, are added together and the total is subtracted from the American company's income from all sources.

## EXEMPTION OF INCOME FROM POSSESSIONS

Domestic corporations and citizens of the United States deriving income from its possessions (including Puerto Rico, the Philippine Islands, and the Canal zone, but not the Virgin Islands) are exempt from American tax in respect of income from outside sources, provided this income is not received in the United States, and—

(1) If 80 percent or more of the gross income of such citizen or domestic corporation (computed without the benefit of this section) for the 3-year period immediately preceding the close of the taxable year (or for such part of such

period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession of the United States; and

(2) If, in the case of such corporation, 50 percent or more of its gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States; or

(3) If, in case of such citizen, 50 percent or more of his gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States either on his own account or as an employee or agent of another (sec. 251, United States Revenue Act of 1932).

#### INCOME EARNED ABROAD BY PRIVATE CITIZEN EXEMPT

The American citizen who is abroad for more than 6 months in the calendar year serving as a representative of his firm, as manager of the local subsidiary company, or employed in any other manner is exempt from American tax in respect of his income derived from services rendered abroad for the company, according to section 116 (a). It is unnecessary for him to account for such income in a tax return, even though he files one covering his income from investments or other sources, whether in the United States or abroad. It is the earning of income or rendering of services abroad that entitles the citizen to this exemption. Therefore it is immaterial whether his employer deposits his salary to his account in an American bank and he draws only a part thereof for use abroad. Such an individual is not permitted to take as a deduction from his gross income any deductions properly allocable to or chargeable against amounts excluded from gross income under this head. Anyone claiming his exemption for income earned while in foreign countries may not deduct from his remaining income traveling expenses while on business abroad and such other expenditures that were incurred incidentally to earning the exempted income.

#### "SOURCE OF INCOME" AND "EARNED INCOME" DEFINED

"Source of income" refers to the place where the services were rendered. Therefore, when services are performed outside of the United States, the compensation received therefor is looked upon as earned income from sources without the United States.

The term "earned income" includes wages, salaries, professional fees, and other amounts received as compensation for personal services actually rendered. It does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of profits rather than a reasonable allowance for the personal services actually rendered. If the taxpayer is engaged in a trade or business in which both personal services and capital are material income-producing factors, he may consider as earned income a reasonable allowance for the personal services actually rendered by him not in excess of 20 percent of his share of the net profits of such trade or business.

The Treasury has held that, for income-tax purposes, "a bona fide nonresident of the United States for more than 6 months" includes all American citizens who are outside the United States for a period greater than 6 months in any taxable year, and this non-

residence need not be continuous, but may be the result of more than one trip, provided the total lengths of time embraced by such trips must be greater than 6 months. The object of these trips is immaterial for tax purposes, so long as the employee of the American company is on business in its behalf. The exemption of such an employee is not waived by the maintenance of a home in the United States. Employees of the Government of the United States or of any of its agencies resident abroad for more than 6 months in any taxable year are not exempt from taxation by the United States.



### III. BUSINESS TAXES

#### INTRODUCTION

The only national taxes payable as a general rule by the American individual who goes to Great Britain for business purposes, or by the American corporation that establishes a branch or a subsidiary company there, are the income tax (including surtax for individuals only) and the stamp duties on commercial documents.

The income tax on individuals is composed of a standard rate (at present 25 percent) and a surtax, with progressive rates, on income exceeding £2,000. Corporations pay only the standard rate.

Death duties may be incurred if the individual dies domiciled in Great Britain or leaves property situated there. No discussion of the estate or other death duties is included, as these are not considered in the nature of business taxes.<sup>1</sup> The corporation duty, which is a stamp tax imposed in lieu of death duties on certain property vested in companies, is considered negligible.

The "land tax," an old levy collected on the basis of quotas fixed in 1793, is still payable on real estate, in respect of which it has not been redeemed. Most real estate, however, is assessable under the income tax on the basis of its actual or presumed rental value, known as the "annual value."

There is a duty of 1 shilling in the pound (5 percent) on the rental value of all rights to work minerals and of all mineral wayleaves, known as the mineral-rights duty.

Customs duties are payable on certain products imported into the United Kingdom, but they are outside the scope of this bulletin.

The preceding taxes are all national levies. Municipalities obtain their revenues through the imposition of local "rates," which vary in amount from place to place. Only national taxes are discussed in this monograph.

#### LIABILITY TO TAXATION

So long as the individual or corporation merely sells from its office in the United States direct to British customers, the contract being concluded and delivery and payment being made outside Great Britain, no liability to British taxation should arise.

If, while still remaining in the United States, a person acquires real estate in Great Britain, he may be assessed to income tax on the "annual value" of such real estate; to the land tax if it has not already been redeemed; and to local "rates."

If the individual or corporation purchases shares or bonds issued in Great Britain, the standard rate of income tax will be deducted

<sup>1</sup>The Division of Commercial Laws publishes special circulars (request No. CL-365) showing the latest rates of estate and other death duties.

from the dividend or interest payments. If the amounts received exceed £2,000, the individual will be liable to surtax as well.

### INTEREST, ANNUITIES, AND ROYALTIES

If any kind of annual interest, annuity, patent or copyright royalty, or other annual payment is due from British sources to a person resident in the United States, he receives the amount due, less deduction of the appropriate standard rate of income tax. Where the British debtor makes such payment out of his own profits because of its not being allowed as a business expense, the rate deductible is that in force when the amount payable becomes due (sec. 39 (1), Finance Act of 1927). If the annual payment is not made out of the debtor's assessable profits, as in the case of copyright royalties paid to nonresidents (sec. 25, Finance Act of 1927), the rate in force at time of payment will be deducted (rule 21, general rules, Income Tax Act of 1918).

When interest is not on a yearly basis, as where it is paid by a bank on short-term deposit, or where it is paid to a bank on a loan for a specified period less than a year, the tax is not as a rule deducted at the source, but is assessed on the recipient. If the recipient is not resident in the United Kingdom, he may be assessed in the name of his agent there, who receives such income for him.

In practice, a foreign bank which has an account with a correspondent British bank is not taxable on income derived from the purchasing of acceptances at a discount unless it can be construed to have an agent in Great Britain in whose name an assessment might be made.

### TRADING WITH UNITED KINGDOM EXEMPT—TRADING WITHIN TAXABLE

If a business enterprise operated in the United States by an individual, partnership, or corporation markets its products in the United Kingdom through a bona fide commission agent or broker who receives the customary commission, it will not have to pay British income tax on the profits derived (sec. 17, Finance Act of 1925). The commission agent or broker alone is taxable on his commissions. No liability to income tax is likely to be encountered, furthermore, if the American company sends a representative for a short trip through the United Kingdom to make business contacts and to book orders subject to acceptance by the company in the United States, the goods being delivered direct to the purchasers.

Where, however, the American firm authorizes a British agent to solicit orders or sell from a consignment of goods for its account, or sends one of its own men to open an office in, say, London, for the purpose of selling its product, liability to British income tax on the profits will probably arise, and in any event the resident representative will be liable to tax on his remuneration.

In other words, when a foreign firm does business in the United Kingdom through its own agent (in the strict legal sense of that term), it becomes liable to the British income tax. The test usually

employed in border-line cases to determine whether trade is carried on in the United Kingdom has been to ascertain whether the contract for the sale of goods was made there. The contract usually is deemed to be made in another country if the offer made in the United Kingdom must be sent to the other country for acceptance. (The offer may be transmitted through an intermediary in the United Kingdom; but if that intermediary has solicited offers constantly in behalf of the foreign firm, it is possible that he may be considered the agent of the foreign firm, with resultant liability for the foreign principal.)

#### INDIVIDUAL LIABLE IF RESIDENT

Suppose an American is sent to London as his firm's representative. It is specifically stated in the law (rule 2, schedule D, Income Tax Act of 1918) that he shall not be taxed as an individual residing in the United Kingdom in respect of profits or gains received from possessions or securities outside the United Kingdom,<sup>2</sup> provided he is there for a temporary purpose, has no intention of establishing a residence, and does not reside in the United Kingdom for 6 months in the aggregate in any year of assessment. If he does reside there for 6 months or more, he will be taxable for that year.

Residing in the United Kingdom for a period or periods amounting to 6 months in any year of assessment has also been given as a general definition of residence which will entail liability in respect of income from all sources (except income arising abroad from dominion or foreign possessions, other than securities, stocks, shares, and rents, that is not actually remitted to the person residing in the United Kingdom)<sup>3</sup>. The maintenance of a dwelling place in the United Kingdom, unless the occupier is abroad for the year of assessment, has also been stated as a test of full liability. Recurrent annual visits for a substantial period (3 months) will create residence for tax purposes after they become habitual (4 years).

Since the British authorities regard residence as question of fact, it is impossible to give a rule applicable to all cases. From the preceding statements, however, one may apparently deduce the principle that the American representative will not be liable, except possibly on income from British sources, if he goes to the United Kingdom for some temporary purpose and remains there for less than 6 months in an assessment year. If he leases an apartment, however, lives in it during part of the year, and keeps it at his disposal while traveling in other countries, he may be assessed to income tax and surtax on his taxable income from all sources. (A more complete discussion of this subject appears on pp. 65 and 112.)

#### NONRESIDENT LIABLE IF HE HAS RESIDENT AGENT OR ESTABLISHMENT

Where the representative who is sent to Great Britain becomes resident, the company may not only become liable to British income

<sup>2</sup> For a definition of "foreign possessions" see p. 83 of this bulletin.

<sup>3</sup> Sixty-fifth Report of the Commissioners of His Majesty's Inland Revenue, for the year ended Mar. 31, 1922, p. 80.

tax in respect of the profits made through him, but if construed to have an establishment there it may also be required to register with the Registrar of Companies. Such registration is obligatory if the representative opens a sales office or organizes a branch factory or an assembling plant under the name of the company. An individual doing business under his true name and a partnership using the true names of its partners do not have to register, but if the strict requirements of the law<sup>4</sup> as to names are not complied with, they must register with the Registrar of Business Names.

If the American firm has as its authorized agent an established British individual or firm, it may be held to be liable to British income tax on profits, but it is not likely to be regarded as having an establishment in the United Kingdom so long as it does not pay the agent's office rent or permit the agent to carry on business under the firm name. In this paragraph the term "authorized agent" means an agent who is empowered to act for the account of a principal so as to bind him, and does not embrace an independent dealer or distributor to whom goods are sold outright, on credit or open account, even under an exclusive-dealership arrangement.

The nonresident firm deriving profits through its own representative, branch, or authorized British agent is, in principle, taxable only on the net-sales profits made in the United Kingdom, due allowance being made for the manufacturing profit which ordinarily is realized by the parent concern in the country where it is situated and which is taxable there.

#### DETERMINING LIABILITY OF NONRESIDENT

A special limitation on the liability of a nonresident individual or company marketing goods in the United Kingdom is contained in rule 12, of the general rules, Income Tax Act of 1918. The assessment may be restricted "on the basis of the profits which might reasonably be expected to have been earned by a merchant or, where the goods are retained by or on behalf of the manufacturer or producer, by a retailer of the goods sold who had bought from the manufacturer or producer direct."

No liability is encountered if a nonresident transacts business with other nonresidents through an agent who is resident in the United Kingdom (rule 11, general rules).

If the true amount of the profits or gains of any nonresident person from trade exercised in the United Kingdom cannot be readily ascertained, he may be assessed on a percentage of the turnover of the business done through the agency (rules 8 and 9, general rules).

Once the net profit has been determined, both standard rate and surtax will be payable thereon if the foreign principal is an indi-

<sup>4</sup>The Registration of Business Names Act of 1916 stipulates that if an individual carries on business in the United Kingdom under a name "which does not consist of his true surname without any addition other than his true Christian names or the initials thereof" he must register with the Registrar of Business Names Somerset House London. The same act applies to all firms having a place of business in the United Kingdom and trading under a name "which does not consist of the true surnames of all partners who are individuals and the corporate names of all partners who are corporations without any addition other than true Christian names of individual partners or the initials of such Christian names."

vidual or partnership, but only the standard rate if a corporation. If the foreign company has an establishment in the United Kingdom, the only other taxes likely to be encountered are the nominal stamp duties payable on registration (1 shilling on each certified copy of a required document and, in addition, 5 shillings on each document or return filed) and on bills of exchange, as well as local "rates" on the premises occupied.

Many American enterprises have formed subsidiary companies for the purpose of carrying on their business in the United Kingdom, primarily for the reason that if a British company is formed it is considered easier to segregate the profits subject to the British income tax. (On p. 2 a discussion of the more usual forms of corporate organization available to Americans will be found.)

## BRITISH INCOME TAX

### STRUCTURE OF THE INCOME TAX

The income-tax system consists of a fixed standard rate, which is imposed on the various kinds of income as classified under five "schedules", and a graduated surtax on total incomes exceeding £2,000, which is a deferred installment of income tax payable January 1 following the year of assessment.

The entire system regards primarily the income of individuals. A corporation is liable on its total net profits, but when dividends are declared it may transfer to each shareholder a proportionate part of the tax by deducting the appropriate standard rate from the amount of the dividend check. The same rule applies to interest and other annual payments. Consequently the company actually bears the tax only on its undistributed profits.

The period for which the tax is levied is the current "year of assessment", running from April 6 to the following April 5.

### RATES IN FORCE

The effective standard rate of income tax (total tax divided by total statutory income) payable by residents in Great Britain is determined by 4 factors: (a) A special allowance for earned income, (b) various personal allowances against assessable income, (c) two rates of tax (that is, half and full standard rate), and (d) certain reliefs against tax for insurance, dominion income tax, etc. Surtax is payable on net income of the year of assessment without such allowances.

Nonresidents, on the other hand, are taxed in most instances by deducting the standard rate at the source, without any of the allowances granted to residents. Nonresidents are liable also to surtax if their income from British sources exceeds £2,000.

COMPARISON OF STANDARD RATES, 1920-33

The standard rates of income tax in force in Great Britain during the fiscal years 1920-21 to 1932-33 were as follows:

BRITISH INCOME TAX RATES

Year	Per pound sterling of taxable income	
	First £225	Remainder
1920-21 and 1921-22	4 s. d.	5 s. d.
1922-23	3 0	5 0
1923-24 and 1924-25	2 6	4 6
1925-26 to 1927-28	2 3	4 6
1928	2 0	4 0
1929	2 0	4 0
1930	2 0	4 0
1931	1 2 0	4 6
October 1931 to 1933, inclusive	1 2 6	5 0

<sup>1</sup> First £250.

<sup>2</sup> First £175.

NOTE.—These rates will be kept current by the Division of Commercial Laws, U. S. Department of Commerce, through the issuance of supplemental circulars.

Certain allowances, deductions, and reliefs were granted to individuals, the age allowance only being contingent upon the total amount of the income:

- Earned-income allowance..... One fifth of the earned income, not exceeding £300 for any individual.
  - Age allowance, to individuals aged 65 years or upwards whose total income does not exceed £500. One fifth of such income, not exceeding £300.
  - Personal allowance..... Married persons, £150; other persons, £100.
  - Increased personal allowance where wife has earned income. Up to £45.
  - Widower's or widow's housekeeper.....
  - Unmarried person's female relative taking care of young brother or sister. } £50.
  - Children under 16 years of age, or over 16 if continuing full-time education. } £50 for one child and £40 for each subsequent child.
  - Certain dependent relatives incapacitated by old age or infirmity. } £25 for each such relative.
  - Allowance for life-assurance premiums..... Tax calculated at defined rates on premiums, subject to various restrictions.
  - Dominion income-tax relief..... Tax calculated in accordance with statutory provisions.
- First £175 taxable at one half standard rate.

SURTAX ON INCOMES ABOVE £2,000

In respect of—	s.	d.
First £500 of the excess	1.1	---
Next £500 of the excess	1.1	3.3
Next £1,000 of the excess	2.2	---
Next £1,000 of the excess	3.3	---
Next £1,000 of the excess	3.3	6.6
Next £2,000 of the excess	4.4	---
Next £2,000 of the excess	5.5	---

In respect of—	s.	d.
Next £5,000 of the excess.....	5.5	6.6
Next £5,000 of the excess.....	6.6	---
Next £10,000 of the excess.....	6.6	6.6
Next £20,000 of the excess.....	7.7	---
Remainder of the excess.....	7.7	6.6

[The amounts shown in the right-hand column indicate the surtax in each pound sterling.]

### PRINCIPLES OF LIABILITY

Liability to the British income tax is based on the principles of both origin and residence. It applies in the first place to all income which has its origin in the United Kingdom, including that derived by nonresidents, and in the second place to all income, wherever arising, which accrues to a person residing in the United Kingdom. There are, however, two exceptions to these broad principles:

1. Interest on certain British Government securities issued during the World War is not subject to income tax so long as the securities are proved to be in the beneficial ownership of persons not ordinarily resident in the United Kingdom.
2. Persons, including companies, resident in the United Kingdom who have income arising abroad from possessions other than securities, stocks, shares, and rents in the self-governing dominions, in India and other British territory, and in foreign countries, are chargeable, not on the full amount of income arising, but only on the amount actually remitted to them in the United Kingdom.

### WHEN AN INDIVIDUAL IS RESIDENT

The question of what constitutes residence in the United Kingdom is one of fact, and no absolute rule can be given which will apply to all cases. In general, an individual is regarded as a person residing in the United Kingdom (a) when a British subject, if he usually resides in the United Kingdom, notwithstanding he may happen to be abroad temporarily; or (b) whether or not a British subject, if he maintains a residence in the United Kingdom—unless he is abroad for the whole of the year of assessment; or (c) whether or not a British subject, if he resides in the United Kingdom for a period or periods amounting to 6 months or more in the year of assessment.

The fact that a foreigner maintains a residence in another country and is domiciled in another country does not preclude his acquiring a residence for income-tax purposes in the United Kingdom. An American citizen was held to be so resident because he rented a house and shooting rights in Scotland, where he spent about 2 months in each year.<sup>5</sup> In another case a Belgian subject who had a residence in Brussels but who visited England each year and occupied (though always for less than 6 months in the aggregate) a hunting box belonging to a company in which he owned over 90 percent of the shares, was held to be chargeable with income tax as a person residing in the United Kingdom, on the ground that the hunting box was de facto available for his occupancy whenever he came to that country.<sup>6</sup>

<sup>5</sup> *Cooper v. Cadwalader* [1904], 5 T.C. 101.

<sup>6</sup> *Loewenstein v. De Salis* [1926], 10 T.C. 424.

## WHEN A FOREIGNER IS EXEMPT

An individual will not be liable to tax under schedule D as a person residing in the United Kingdom in respect of profits and gains received from possessions or securities located outside the United Kingdom who (a) is in the United Kingdom for some temporary purpose only, and (b) not with any view or intent of establishing his residence therein, and who (c) has not actually resided in the United Kingdom for an aggregate of 6 months in the year of assessment; but if any such individual resides in the United Kingdom for 6 months or more in any one year he will be so chargeable for that year (rule 2, miscellaneous rules applicable to schedule D).

Expressed differently, an American citizen having no possessions or securities in the United Kingdom, who goes there for a temporary stay of a few months, is not likely to be held liable to British tax. If he earns a salary for service rendered there, the collection of tax thereon would depend largely upon the circumstances of the case.

## WHEN COMPANIES ARE RESIDENT

If a company has been organized under British law, has its principal establishment in the United Kingdom, and is controlled there, it is resident in the United Kingdom and is fully liable to taxation.

A corporation which was organized in Cape Colony and which had its head office and general meetings in Kimberley was held to be resident in the United Kingdom because its business was controlled by board meetings convened in London, so that the actual "head, seat, and governing power" were at the London office.<sup>7</sup>

A company registered in England but running a hotel in Egypt and having its control and management in Egypt was held to be exercising its trade solely in the latter country, consequently only the profits remitted to England could be taxed there.<sup>8</sup>

A company registered in England but controlled in Sweden was held to be registered in both places.<sup>9</sup> In his decision, the Lord Chancellor stated that a registered company, like an individual, can have more than one residence for the purposes of the income-tax acts.

## TRADING "WITH" OR "WITHIN" UNITED KINGDOM

Where a foreign firm sells direct to its British customers or distributors, or indirectly through a bona fide commission agent or broker receiving the customary commission, the trade is considered as being carried on *with* the United Kingdom and no liability to British income tax is incurred. On the other hand, if trade is carried on *within* the United Kingdom, whether through the foreign firm's own registered establishment, or through an authorized agent, or in some other manner, the firm is liable to the British income tax on the profits realized.

*Trading with the United Kingdom.*—A nonresident is regarded as trading "with" the United Kingdom if he sells his goods through a

<sup>7</sup> *De Beers Consolidated Mines v. Howe* [1906], A.C. 455, 5 T.C. 198.

<sup>8</sup> *Mitchell v. Egyptian Hotels*, 6 T.C. 542.

<sup>9</sup> *Swedish Central Ry. Co., Ltd., v. Thompson*, 9 T.C. 342.



bona fide general commission agent or broker, as indicated in the following paragraphs (sec. 17, Finance Act of 1925) :

1. Where sales or transactions are carried out on behalf of a nonresident person through a broker in the ordinary course of his business as such, and the broker satisfies the conditions required to be satisfied for the purposes of this section, then, notwithstanding that the broker is a person who acts regularly for the nonresident person as such broker, the nonresident person shall not be chargeable to income tax in the name of that broker in respect of profits or gains arising from those sales or transactions.

2. The conditions required to be satisfied for the purposes of this section are that the broker must be a person carrying on bona fide the business of a broker in Great Britain or Northern Ireland, and that he must receive in respect of the business of the nonresident persons which is transacted through him remuneration at a rate not less than that customary in the class of business in question.

3. In this section the expression "broker" includes a general commission agent.

4. Rule 10 of the general rules shall have effect subject to the provisions of this section.

No precise definition of "bona fide broker" or "general commission agent" has been enunciated by the courts; determination of the liability of a foreign firm depends upon the facts of the particular case.

*Trading within the United Kingdom.*—Many decisions have been handed down by the British courts determining that under a specific set of facts trade is being conducted within the United Kingdom, but no attempt has been made to give an exhaustive definition of what constitutes doing business there. No doubt as to liability exists if business is done through a branch office of the foreign firm or through an authorized agent. In determining the relationship of agency in border-line cases the primary factor is "whether or not the contracts for the sale of goods or performance of service are made in the United Kingdom." Generally speaking, the foreign merchant will not have to pay tax if the contract for the sale of goods in the United Kingdom is not concluded there; liability is still less likely to accrue if, in addition, both payment and delivery of the goods take place outside the United Kingdom.

#### SALES BY NONRESIDENT THROUGH AGENT

The taxation of sales made by nonresidents through agents was provided for by the charging section of schedule D of the Income Tax Act of 1918, which declared persons not residing in the United Kingdom liable in respect of annual profits and gains arising from trade exercised within the United Kingdom. The nonresident is chargeable in the name of any factor or agent, whether or not such factor or agent has the receipt of the profits and gains (rule 6, general rules, Income Tax Act of 1918).

The person acting on behalf of a nonresident may be required to furnish a statement of the profits and gains in respect of which the tax is to be charged to him on account of the foreign principal. The agent must pay the tax (rule 13, general rules), but he may retain, out of money coming into his hands on behalf of the foreign principal, an amount sufficient to cover the tax paid (rule 14, general rules).

## TRADE CARRIED ON WHERE CONTRACTS ARE MADE

In determining when trade is carried on through an agent, the primary test is whether or not the contracts for the sale of goods were made in the United Kingdom. As Lord Chancellor Cave states in *Maclaine & Co. v. Eccott*:<sup>10</sup>

The question whether trade is exercised in the United Kingdom is a question of fact, and it is undesirable to lay down any exhaustive test of what constitutes such an exercise of trade; but I think it must now be taken as established that in the case of a merchant's business, the primary object of which is to sell goods at a profit, the trade is (speaking generally) exercised or carried on (I do not myself see much difference between the two expressions) at the place where the contracts are made. No doubt reference has sometimes been made to the place where payment is made for the goods sold or to the place where the goods are delivered, and it may be that in certain circumstances these are material considerations; but the most important and indeed the crucial question is, Where are the contracts of sale made?

This principle has been upheld in a number of cases.<sup>11</sup>

## TAXPAYERS AND BASES OF ASSESSMENT

## INDIVIDUALS

*Resident individuals.*—An individual resident in the United Kingdom is liable to the standard rate of income tax and the graduated surtax on income from all sources, with the exception of income from "foreign possessions" (other than stocks, securities, and rents) that is not remitted to the United Kingdom. The net income subject to the standard rate is first determined for the year of assessment; the surtax constitutes a deferred installment of income tax.

If an individual derives income from dividends, interest, or other annual payments taxable by deduction of the standard rate of tax at the source and also from salaries or a business or profession subject to direct assessment or if his whole income is from sources taxed by deduction an adjustment may be necessary in order to take into account the abatements and allowances to which he may be entitled. After taking all these factors into consideration if the total tax due exceeds the amount collected at source, only the balance is payable; if the tax collected by deduction exceeds the amount actually due, the taxpayer may either claim a refund or have the excess credited against his liability for another year. The surtax is payable on the net income without any abatements or allowances.

In computing the liability of a resident individual taxpayer to the standard rate of income tax the first step is to calculate the statutory or net income as determined by the various schedules. From the net income is deducted the earned-income or age allowance, leaving the assessable income. The personal allowances and reliefs are then deducted, the balance constituting the taxable income. The "allowances and reliefs" comprise:

Earned-income or age allowance, one fifth, maximum £300.

Personal allowance (general abatement), £100 if single, £150 if married.

<sup>10</sup> *Maclaine & Co. v. Eccott*, 10 T.C. 481, at p. 574.

<sup>11</sup> *Erichsen v. Last* [1881], 8 Q.B.D. 414, 4 T.C. 422, C.A.; *Granger & Son v. Gough* [1896], A.C. 325, 3 T.C. 462; *Werte & Co. v. Colquhoun* [1898], 20 Q.B.D. 753, 2 T.C. 402; *Lovell and Christmas v. Texas Commissioners* (New Zealand) [1908], A.C. 46; *Greenwood v. Smith* [1922], 1 A.C. 417, 8 T.C. 193; and *Wilcock v. Pinto & Co.* [1925], 1 K.B. 80, 9 T.C. 111.

Increased personal allowance where wife has earned income, four fifths of such earned income not over £45.

Deduction for housekeeper (if taxpayer is single or a widower), £50.

Deduction for first child, £50.

Deduction for other children, each £40.

Deduction for dependent relatives, etc., each £25.

The first £175 of taxable income is charged at half the standard rate (or 12½ percent) and the remainder at the full standard rate (or 25 percent). From this total amount of tax there is deducted, in terms of tax, any relief due in respect of (a) premiums paid for life assurance or for contracts for deferred annuities and (b) Dominion income tax. The balance represents the tax actually payable.

*Nonresident individuals.*—Nonresident foreigners are, as a rule, chargeable at 5s. in the pound (25 percent) on income from British sources without any of the allowances indicated above, but nonresident British subjects are allowed a proportionate part of the abatements.

If the income derived from sources within the United Kingdom exceeds £2,000, the nonresident is also subject to surtax. He should file a return for this purpose, as there are no provisions for collecting surtax at the source. If he fails to file a return, and has no agent in the United Kingdom in whose name he could be assessed, he is still liable to the surtax.

#### PARTNERSHIPS

The business profits of a partnership cannot be separately assessed on the individual partners but are assessed on the partnership or firm in the business name. The actual amount of tax payable on the profits thus assessed, however, is computed with reference not only to the shares in the profits to which the several partners are respectively entitled, but also to the allowances and reliefs which the partners may claim as individuals. For this purpose each partner must make a return of his total statutory income, including his share of the profits of the partnership assessed for the year.

If the constitution of a firm varies so as to require a revision of the partnership agreement, liability for the year in which such change occurs must be allocated proportionately to the length of time preceding and subsequent to the date of the change. Moreover, the status of the partners before and after the change must be taken into consideration in computing the tax on their respective shares.

#### COMPANIES

*Resident companies.*—Income tax is imposed at the standard rate on a British public or private limited company or a resident foreign corporation on the total profits, irrespective of their destination, with the exception of income from foreign possessions (other than stocks, securities, and rents) not remitted to the United Kingdom. The profits subject to tax include such amounts as will be paid as annual charges and also such amounts as will be distributed as dividends. The company recoups itself by deducting the standard rate of tax from payments made in the form of interest and other annual charges or dividends, and consequently itself bears the tax only on undistributed profits. If reserves are later distributed as dividends, the com-

pany may deduct from the amounts so distributed the appropriate standard rate. This rate is the standard rate of the year in which the amount payable becomes due (sec. 39 (1), Finance Act of 1927).

Notwithstanding the shareholders ultimately bear a proportionate part of the company's tax, the company is regarded as the taxpayer. "Plainly a company paying income tax on its profits does not pay it as agent for its shareholders. It pays as a taxpayer, and if no dividend is declared, the shareholders have no direct concern in the payment."<sup>12</sup>

Earned-income relief may not be claimed by a limited company, nor may it take advantage of any reliefs similar to the personal allowances granted individuals.

*Nonresident companies.*—Foreign companies not held to be resident in the United Kingdom will bear the standard-rate tax, through its being deducted at source, in the case of income from dividends, interests, royalties, and other annual payments.

If the foreign company has a sales agency or branch establishment of any kind in the United Kingdom, it will pay the standard rate of tax on the net sales profit realized there. It is customary to have the return made up and audited by a chartered accountant, who will also handle any subsequent discussions over items in the return with the inspector of taxes.

Where the return is fair and is certified to by a reputable firm of accountants, it is improbable that a declaration of the entire income of the parent concern will be requested. If the authorities consider the return of the branch insufficient, they might request a return of the total net income of the parent company, including that from British sources; but if this information is refused, the authorities are free to assess the branch in other ways, such as taking the percentage of net to gross profits made by similar British establishments.

## ITEMS NOT INCLUDED IN ASSESSING INCOME

### CASUAL PROFITS

Generally speaking, for the purposes of British income tax, "income is the surplus of receipts over the current expenditure necessary to earn those receipts, regardless of the appropriation of any part of the receipts or surplus for the purpose of writing off or amortizing the capital value of any assets that waste in the process of producing the income." In other words, income is regarded, in general, as an annual and recurrent gain or profit. Casual profits and capital gains and losses in the sense of the United States Revenue Act are not, as a rule, considered a fixing liability. "Casual, non-recurring, or occasional profits arising from transactions that do not form part of the ordinary business of the person who makes them" are held not to be within the scope of the income tax and, consequently, escape taxation. If an individual occasionally buys securities, shares, cotton, wheat, or some other commodity on the exchange and sells later at a profit, he would probably not be taxed on his gain;

<sup>12</sup> *Inland Revenue Commissioners v. Blott* [1920], 1. K.B. 114, 2 K.B. 657 [1921], 2 A.C. 171, 8 T.C. 101, at p. 136.

but if he repeated such transactions a number of times in order to make profits thereon, there seems to be a possibility that such income would be regarded as trading profits and therefore liable to tax.

#### CAPITAL GAINS

*Profits from sale of capital assets.*—Broadly speaking, the profits derived from the sale of real property or other capital assets that have been held as an investment, or from the transmutation of capital assets from one form into another, are not taxable income; but the gains arising from the purchase and sale of property as part of the business of the taxpayer are subject to tax.

Where properties were acquired and sold many years later, it was held that the owner was not carrying on the trade of buying and selling land, and the gain was not taxable.<sup>13</sup> Where part of a company's business was the development and sale of land, however, the profits were considered as trading profits and were therefore taxable.<sup>14</sup>

*Inventions, patents, and the like.*—In another case, the respondent company was formed for the purpose, among others, of acquiring inventions, patents, and the like and of using or selling them or otherwise turning them to account. The company sold certain Japanese patents for a capital sum (payable in installments) and a royalty; it also sold an American patent, receiving as consideration therefor certain shares of the purchasing company. The court of appeal held that the transactions were merely the realization of capital assets and that the gain was not taxable.<sup>15</sup>

#### BONUS PREFERENCE SHARES

In accordance with the same principle, bonus shares are not taxable. A company capitalized a large sum of undistributed profits and issued to its shareholders an equivalent amount of bonus shares. The House of Lords decided that the bonus shares were not income.<sup>16</sup>

#### BONUS DEBENTURE STOCK

While in the case just cited the bonus took the form of paid-up preference shares, in another case<sup>17</sup> the bonus was in the shape of debenture stock; the same conclusion was reached.<sup>18</sup>

#### PROFITS DISTRIBUTED ON LIQUIDATION

On the liquidation of a company, undistributed profits can no longer be distinguished from capital, and such portion of the assets distributed by the liquidator as represents undistributed profits is not income in the hands of the shareholders which must be included in their returns of total income.

<sup>13</sup> *Hudson's Bay Co. v. Stevens*, 5 T.C. 424.

<sup>14</sup> *Thes v. South-West Africa Co., Ltd.* [1924], 131 L.T. 248, 9 T.C. 141.

<sup>15</sup> *Collins v. Firth-Brearley Stainless Steel Syndicate, Ltd.* [1925], 9 T.C. 520.

<sup>16</sup> *Inland Revenue Commissioners v. Blatt* [1921], 2 A.C. 171, 8 T.C. 101 at p. 126.

<sup>17</sup> *Inland Revenue Commissioners v. Fisher's Executors* [1925] 1 K.B. 451 [1926] L.A.C. 395, 10 T.C. 502.

<sup>18</sup> 10 T.C. at p. 838.

## WASTING ASSETS (DEPLETION)

Depletion of capital assets is not taken into consideration except to the extent of allowing for the wastage of plant and machinery and certain buildings that contain plant and machinery.<sup>19</sup> The exception granted in this case is due to the fact that the income-tax acts have always allowed deductions for renewals and replacement of tools and implements used for the purpose of a trade, and it is therefore consistent to grant an equivalent allowance for the wastage of plant and machinery.

*Mines.*—The report of the royal commission appointed in 1919 to study the income tax upholds the refusal to allow for depletion in the case of mines, for example, on the ground that if the owner were “granted an allowance sufficient to enable him to replace his capital when the mine is exhausted, it would be inequitable to refuse an analogous allowance in respect of the initial capital invested in the education and training of a lawyer or surgeon or workman, whose earning power is possibly of shorter duration than the life of the mine.” It was found impossible, therefore, “to make any general recommendation that from the income produced by any asset an allowance should be made for the amortization of its capital value.”

If an allowance were granted in respect to any asset, the commission deemed it advisable to impose a time limit on the recognition of wastage; one should regard only the wastage “which is important when considered in relation to human life and human expectation.” Since contingencies happening after the lapse of a period of time exceeding 35 years do not appeal very greatly to the mind of the average individual, no allowance should be made when the life of the wasting asset is to be 35 years or longer. Assets with a shorter life should receive an allowance dependent on the time by which their life falls short of 35 years.

It was further recommended that the measure of this allowance should be “the sinking-fund payment necessary to amortize the capital cost of the asset over its agreed life less that sinking-fund payment which would be necessary to amortize the capital cost if the life of the asset were 35 years.”<sup>20</sup>

*Copyrights, patents, and the like.*—In respect to copyrights, patent rights, goodwill, and trade-marks in the hands of the original owner, it was recommended that no allowance for depreciation should be made, “nor should any allowance be given to the purchaser of any assets of this nature if the vendor is within the scope of the United Kingdom income tax.” The commission believed, however, that an allowance should be granted if the life of the asset is less than 35 years, “to the patentee in respect of the proved costs of experimenting and patenting, whether (a) he works the patent himself or (b) lets it on royalty.”

The main class of wasting assets for which the commission recommended a depreciation allowance is described in the following paragraph:

<sup>19</sup> For authorized allowances see p. 144 in appendix II. See also section on “Depreciation, renewals, and obsolescence”, p. 101 of text.

<sup>20</sup> By “sinking-fund payment” is meant the annual sum which, if set aside at interest for a term of years equal to the life of the asset, would produce an amount equal to the capital cost of the asset.

Subject always to the limitation that their life falls short of 35 years, we recommend that an allowance shall be given in respect of all inherently wasting material assets which have been created by the expenditure of capital, such as buildings and foundations, surface works, permanent way and equipment of railways and tramways, docks and shaft-sinkings, and initial work on development. In every case the allowance should be calculated by reference not to the absolute but to the relative liability to waste.

These recommendations have not been acted upon.

### CLASSES OF TAXABLE INCOME

No general definition of what constitutes income is found in the Consolidated Tax Act of 1918, but income is assessed under five schedules (A, B, C, D, and E) and that falling under each schedule is defined. Each schedule is, broadly speaking, a set of substantive provisions and administrative rules that govern the assessment and collection of the tax on the particular kinds of income with which it deals. The standard rate of tax applies in each case. After the several classes of income have been each separately assessed for the standard rates or taxed by deduction at source, they are all grouped together in a "return of total income" for the purpose of determining certain allowances and fixing liability to surtax.

The five schedules embrace the following kinds of income:

- A. Income from the ownership of lands, houses, etc.
- B. Income from the occupation of lands.
- C. Income paid, under deduction of tax at the source, out of any public revenue.
- D. Income from trade, professions, vocations, and certain employments; dominion and foreign securities and possessions; interest; and miscellaneous items of income.
- E. Income from public and private employments.

Where all the income derived by a resident individual is taxed at the source, such as dividends on shares, interest on debentures and mortgages, and house rents, he is entitled to claim a refund to the extent of his personal allowances and other reliefs. If, on the other hand, he derives, in addition to income taxed by deduction, income from a business or vocation that is assessed on the basis of a return made by him, an adjustment is made in order to secure the proper amount of relief against the total tax due on the various kinds of income combined. When the combined income exceeds £2,000 surtax is payable.

Inasmuch as schedule D is of most interest to Americans, this schedule will be discussed first.

#### SCHEDULE D. INCOME FROM TRADE, PROFESSIONS, INTEREST,<sup>2</sup> ETC.

Schedule D is the principal schedule of the British income-tax act, covering not only (1) profits of trade and manufacture, (2) income from professions, etc., (3) interest not taxed at source, (4) income from dominion and foreign securities other than that chargeable under schedule C, and (5) income from dominions and foreign possessions (defined on p. 83), but also (6) income from sources not

<sup>2</sup> See also separate discussion of interest, p. 81.

covered by any of these groups or by any other schedule. These six heads are designated "cases" in the act.

The tax under schedule D is imposed on the annual income or profits arising or accruing to—

(a) Any person residing in the United Kingdom, from property wherever situated (not assessed under schedule A), or from "any trade,"<sup>22</sup> profession, or vocation" wherever carried on; and

(b) Any person not residing in the United Kingdom, from property in the United Kingdom (not assessed under schedule A), or from "any trade, profession, or vocation" exercised within the United Kingdom.

#### TRADING PROFITS AND INCOME FROM PROFESSIONS (CASES I AND II)

Trading profits are treated in case I and those of a profession or vocation in case II, but the two cases may well be studied at the same time because the rules governing the basis of assessment and the allowable deductions are the same for both.

Profits accruing from trade and manufacture and income arising from a profession or vocation carried on in the United Kingdom are assessable on the person, firm, or company deriving them, if resident there. If the recipient is resident elsewhere, he still is liable, but the assessment may be made against, and if necessary in the name of, the agent carrying on such business or profession for the account of the nonresident principal.

If trade is carried on abroad but is controlled by persons residing in the United Kingdom, the profits are taxed under case I.

If the profits are derived by a resident in the United Kingdom from trade which is carried on abroad and is controlled abroad, the tax is assessed under case IV, governing income from foreign possessions.

#### BASIS OF ASSESSMENT

Prior to the act of 1926 trading profits and income arising from a profession or vocation were taxed on the average of the previous 3 years, but by virtue of section 29 of the 1926 enactment a business or profession is assessed on the whole of the profits of the year preceding the year of assessment. This provision is applicable commencing with 1927-28.

*Basis for new business.*<sup>23</sup>—Where a business or profession has been set up and commenced within the year preceding the year of assessment, the tax will be computed on the profits or gains for 1 year from the time of opening. The person charged is entitled, however, on giving notice in writing to the inspector of taxes within 12 months after the end of the year of assessment to be charged to income tax on the amount of profits of the year of assessment. If the assessment has already been made on the basis first indicated, it will be subject to adjustment.

If the business has been commenced within the year of assessment itself, then the computation will be made on the full amount of the

<sup>22</sup> The word "trade" as used in the Income Tax Act of 1918 "included every trade manufacture, adventure, or concern in the nature of trade."

<sup>23</sup> Covered by rule 1 (2), rules applicable to cases I and II, and rule 2 applicable to case VI, as amended [with effect from Apr. 6, 1927] by the Finance Act of 1926, sec. 29 (1), sec. 29 (2), sec. 36 (1), and fourth schedule.



profits arising in the year of assessment, or according to the average of such a period, being less than 1 year, as the case may require and as may be directed by the commissioners.

*Basis when a business is discontinued.*—If a business or profession is permanently discontinued, the tax for the year of assessment in which the discontinuance takes place is to be assessed on the profits or gains made in that year itself from April 6 to the date of discontinuance. The computation of profits is made in the ordinary manner, allowance being given for losses.

If, without regard to the discontinuance, the assessment for the year has already been made, it may be corrected by repayment or additional assessment, according to the case (sec. 31, Finance Act of 1926).

If the profits for the year preceding the year of discontinuance are in excess of the assessment made for that year (based on the profits for the preceding year), the authorities may make an additional assessment (sec. 31 (1), (b), Finance Act of 1926).

*Succession to a business.*—At the present time, when there is a succession to a business which involves merely a change in ownership without any alteration of the identity of the business, the amount of the assessment is to be computed as if there had been no change in the ownership, and the liability is apportioned on a time basis (rules 9 and 11, rules applicable to cases I and II, schedule D).

After April 5, 1928, however, unless all the old and new partners otherwise require, the business "is to be treated as continuous only when the personnel of the owners is to some extent the same." If, on the other hand, "there is a succession by one individual to another, by one partnership to another, by a partnership to an individual, or by an individual to a partnership, so that no individual who was carrying on the trade, etc., before the change continues to do so after the change, or, again, where a company succeeds an individual or partnership (or vice versa), the change will be treated as a discontinuance and a fresh commencement."<sup>24</sup>

#### INCOME CHARGEABLE

Income tax is to be charged under schedule D on the "annual profits or gains" arising from any business or profession, and the rule applicable to case I directs that the tax "shall be computed on the full amount of the balance of the profits or gains" of the year preceding that of assessment. The act contains no definition of what constitutes the "balance of profits or gains", and the interpretation thereof has been left largely to the courts. According to one interpretation, "profits and gains must be estimated on ordinary principles of commercial trading by setting against the income earned the cost of earning it, subject to the limitations prescribed."<sup>25</sup>

Nevertheless, there are a number of provisions in the act which indicate what may and what may not be deducted, most of the provisions being negative in character. In the rules applicable to cases I

<sup>24</sup> Sec. 32 (1), Finance Act of 1926; Konstam, Supp., pp. 22-23.

<sup>25</sup> McBain, p. 76.

and II, rule 1 states that tax shall be charged without any other deduction than is allowed by the act of 1918.

The taxpayer is not bound to keep books of account and prepare financial statements of his business; but if he does not, the tax officials may resort to estimative assessments if they are not satisfied with the figures he produces.

It frequently happens that the accounts of an enterprise will have to be adjusted in order to conform to the requirements of the income-tax law. To make a correct return of profits it is deemed necessary to strike a balance at two successive dates, to evaluate stock at each date, and to determine the profit or loss arising during such period.

The usual accounts are made up according to the double-entry system of bookkeeping and include the trading account, the profit and loss account, and the balance sheet. Such accounts are sometimes, though not customarily, placed at the disposal of the inspector of taxes who is engaged in making the assessment. The matter is, however, normally dealt with by the taxpayer's accountant.

#### ACCOUNTING PERIODS WITHIN YEAR OF ASSESSMENT

The year of assessment begins April 6 and ends the following April 5, and if an account for a period of 1 year was made up to a date within the year preceding the year of assessment, then the tax will be charged on the profits of such period.

If, on the other hand, no such account was made up, or if several accounts were made up to dates within the year preceding the year of assessment, the commissioners of inland revenue may decide which period of 12 months is to be taken for tax purposes (sec. 34 (1) (b), Finance Act of 1926). The period of 12 months must be a continuous one. The commissioners may make their selection retrospective by adopting, for computing the tax, a corresponding period of a year of assessment earlier than that to which their first selection applied (sec. 34 (2)). For example, if they decide under section 34 (1) to compute the tax for the year of assessment 1928-29 on the profits for 12 months ended September 30, 1927, they may subsequently direct that the tax for the year 1928-29 be computed on the profits for 12 months ended September 30, 1926. "The assessment for 1927-28, if not yet made, will be made according to this direction; if an assessment has already been made and the result of the direction is that the taxpayer is liable to pay more tax for that year, an additional assessment is to be made; if the result is that he has paid too much, repayment is to be made."<sup>28</sup>

#### ALLOWABLE DEDUCTIONS

The income tax act does not attempt to give a complete list of the deductions and expenses that may be charged against business profits. As regards expenditures, a distinction is made between capital and revenue expenditures, only the latter being allowed. The amount claimed must have been wholly and exclusively laid out or expended for the purpose of the business; it must have been employed in the course of earning profits rather than as an outlay

<sup>28</sup> Konstam, Supp., p. 18.

of capital preparatory to the earning of profits. Consequently no allowance is made for reserves for depreciation other than wear and tear, nor for bad debts except to the extent that they are definitely bad or estimated to be doubtful, nor for contributions to sinking funds, etc. In general, allowable expenditure may be defined as an annual expenditure necessary to carry on the business.

*Business premises.*—An amount equivalent to the net annual value of the business premises in the United Kingdom owned or occupied by the proprietor of the business may be charged against the profit. The annual value of lands, tenements, hereditaments, or heritages so occupied is separately assessed under schedule A. Where the business premises are mills, factories, or other similar premises, the gross annual value may be deducted.

The Finance Act of 1919 allows a deduction of one sixth of the annual value of property owned abroad and occupied for trade purposes if the property consists of mills, factories, or similar premises. If the annual value of such property cannot be readily determined, reference is usually made to the cost price and the net annual value of similar property in the United Kingdom. Otherwise, the allowance relative to property owned and occupied in connection with the business does not extend to property located abroad.

Bad debts are deductible if the debts have been actually considered bad and written off in the books as irrecoverable. If sums are subsequently recovered, they must be credited to business receipts at the date of recovery. If debts are considered doubtful in a measure but not wholly irrecoverable, an allowance may be claimed to the extent to which they are doubtful, provided such debts are specifically evaluated for income-tax purposes. General reserves for bad debts are not allowed.

Costs of renewing debentures on maturity are deductible in the case of financial companies. In no case is the cost of the original issue of debentures allowed.

Depreciation in value resulting from wear and tear of any machinery or plant used for the purpose of the business and belonging to the person by whom the trade is exercised is allowed annually. In many instances percentages have been agreed upon by the inland revenue with the various trade associations. The rates are on the written-down value in every case except shipping. (See appendix II, p. 144.) No allowance is granted for depreciation of capital assets. (See section, "Depreciation, renewals, and obsolescence", p. 101.)

Cost of renewal of plant machinery actually worn out in the earning of profits is generally allowed as a business expense of the accounting period in which the replacement takes place, provided no annual claim is made for a deduction respecting wear and tear.

Fees paid to trustees for debenture holders are deductible from profits, since they are assessed on the recipients under schedule E.

Income tax is deductible only where the tax on employee's salary is paid by the employer and where the tax on directors' fees is paid by the company. Since the amount of tax paid for the employee is considered additional remuneration, it is taken into account in making the schedule E assessment on the employees. Foreign income tax paid in respect of profits where they arise is deductible.

Interest on overdrafts, being payable without deduction of tax, is allowed as a business expense.

Legal expenses incurred in connection with the collection of debts and other matters having to do with the ordinary business of the enterprise are deductible; but those connected with the registration of the company, transfers of property, and the like, are regarded as a capital expenditure, for which no allowance is made.

*Patents.*—The cost of renewing expired patents is allowed.

*Premiums.*—Annual premiums for burglary, fire, and similar insurance are allowable expenditures. While indemnification for loss of ordinary trading stock must be regarded as ordinary business receipts, recoveries for building, plant, machinery, and other purely capital assets, not affecting the trading or profit-and-loss account, are not to be counted as taxable revenue. In practice, "loss of profits" insurance premiums are deductible if the firm paying the premiums undertakes to count receipts therefrom as business income.

*Removal.*—If removal is compulsory, the expenses incurred will generally be allowed; but if voluntary, only the cost of transferring stock in trade is in practice allowed, and the balance of the cost is regarded as a capital outlay.

*Repairs.*—Repairs are allowed when they are necessary to maintain the premises, machinery, or other objects in their ordinary satisfactory state. The allowance is limited to the amount actually expended in the account year.

*Royalties.*—Book royalties, if paid in full and assessable on the recipient, are deductible.

*Subscriptions.*—Subscriptions to charity are not provided for in the act, but in practice an allowance is made for subscriptions to charitable institutions, such as infirmaries, hospitals, seaside homes, and asylums, maintained primarily by public subscription and from which the donor or his employees would possibly derive some benefit.

Subscriptions to trade associations by members are in practice allowed as business expenses for the latter where the association has agreed in writing with the board of inland revenue to pay income tax on the excess of its receipts over expenses.

#### NONALLOWABLE DEDUCTIONS

Capital put into or withdrawn from the business and capital losses are not considered.

*Depletion.*—Although there has been much discussion regarding allowances for depletion of capital assets, such as mines and forests, no such allowance has been accorded. The income-tax commission which sat in 1919 made certain suggestions for allowances when the life of the wasting asset does not exceed 35 years, but no effort has been made to enact such a provision.

*Income taxes.*—Income tax of any kind paid in the United Kingdom is not deductible except as stated on page 95. No allowance is given for any sum paid as dominion income tax unless under the laws of the dominion no allowance is given against dominion income tax in respect of the payment of British income tax. Foreign income tax paid no profits in the place where they arise may be deducted.

*Interest.*—Interest paid on capital invested in the business and other payments of annual interest or annuities payable out of business profits may not be deducted, but the borrower may recoup himself by deducting the standard rate of tax when the interest is paid.

*Leases.*—The premium paid for the renewal of the lease of the premises occupied for many years by a trading firm was held to be a capital expense and therefore not deductible in computing the trading profits of the firm.<sup>27</sup>

*Losses.*—Losses not suffered directly in the business are barred. For example, if shares in a limited company forming part of the business assets are sold at less than cost, the resulting loss may not be charged against profits. For the same reason, a gain arising from selling shares at a figure higher than the cost price is not counted. Similarly, losses recovered under a contract of insurance or indemnity are not deductible.

A person who has sustained a trading loss is entitled to an adjustment of liability to income tax or may set off a loss in one business against the profits of another (rule 13, rules applicable to cases I and II, schedule D).<sup>28</sup> The balance of the loss not cared for by the preceding provision may be brought forward and deducted from the profits of that particular enterprise in the next year of assessment, and, if such profits are insufficient, may be deducted from the profits of succeeding years up to the sixth year of assessment following that in which the loss occurred (sec. 33 (1) (3), Finance Act of 1926; sec. 27 (1), Finance Act of 1927). If an individual transfers his business to a company in consideration solely or mainly of an allotment of shares, section 29 of the Finance Act of 1927 allows him to set off his previous business losses against dividends or other income received from the company.

*Patents.*—The cost of acquiring new patents is not allowed. Patent royalties are not deductible as expenses (rule 3 (m), rules applicable to cases I and II, schedule D), but the payer may deduct income tax from the royalties (rule 19 (2), general rules, Income Tax Act of 1918).

*Proprietor's salary and personal expenditures.*—No allowance is given for salaries paid to proprietors, drawings by proprietors, or any expenses of maintenance of the persons assessable, their families or establishments, or expenditures for other domestic or private purposes.

*Reserves.*—General reserves are not allowed for any purpose.

#### QUARRIES, MINES, IRON WORKS, ETC. (CASE I)

The assessing of the tax on profits from the following kinds of property (previously assessed under schedule A, no. III) was transferred to case I of schedule D by section 28 and the third schedule of the Finance Act of 1926:

1. Quarries of stone, slate, limestone, or chalk.
2. Mines of coal, tin, lead, mundic, iron, and other mines.
3. Iron works, gas works, salt springs or works, alum mines or works, waterworks, streams of water, canals, inland navigation,

<sup>27</sup> *MacTaggart v. Strump* [1925], S.C. 599, 10 T.C. 17.

<sup>28</sup> Losses in transactions assessable under case VI of schedule D, however, may be set off only against profits in similar transactions (sec. 27, Finance Act of 1927).

docks, drains or levels, fishing, rights of markets and fairs, tolls, railways and other ways, bridges, ferries, and other concerns of like nature having profits from or arising out of any lands, tenements, hereditaments, or heritages.

A separate assessment may be made under schedule A, no. I, in respect of lands, tenements, hereditaments, or heritages occupied or used in connection with any of the foregoing classes of business.

#### BASIS OF ASSESSMENT

Quarries, iron works, etc., were previously assessed upon the profits of the preceding year, but mines were generally taxed on the basis of a 5-year average. All these items of income are now assessed on the basis of the preceding year's profits, beginning April 6, 1927. The assessment is made on the person or body of persons carrying on the concern or their agents.

The profits of the preceding year are ascertained according to the general rules applicable to case I of schedule D.

#### ALLOWABLE DEDUCTIONS

*Annual value.*—If a separate assessment is made (see foregoing), the deduction that usually is allowed from profits for the "annual value" of business premises will be limited to the amount of the schedule A assessment in the year in which the profits are determined. If the premises occupied are in the nature of mills or factories owned by the person carrying on the business and are not separately assessed and charged, one sixth of the annual value of those premises may be deducted as expenses incurred in that year (sec. 18 (2), Finance Act of 1919; third schedule, Finance Act of 1926). Where such property is not owned by the person carrying on the business and is separately assessed under schedule A, the tax may be deducted in paying rent and other annual payments and charges.

*Losses.*—The rules regarding losses under schedule D now apply to the concerns enumerated above. The loss suffered in one business may be set off against the profits of another, and the losses suffered in any one concern in 1 year may be written off against its profits during the subsequent 6 years.

*Repairs.*—The limitation on deductions for repairs to the actual amount expended in the account year applies in this case, and the usual allowances are granted in respect to wear and tear of machinery and obsolescence (rules 6 and 7, rules applicable to cases I and II, schedule D).

*Special relief to charities, etc.*—An exemption is granted where quarries, mines, etc., taxable under this head are owned by a charity (sec. 30(1) (a), Finance Act of 1921). Relief is also granted where the rents or royalties payable in respect of any of these properties are payable to any hospital, public school or almshouse, or to any trustees for charitable purposes, provided the moneys are applied to charitable purposes only (sec. 37 (1) (a), Income Tax Act of 1918; sec. 28, Finance Act of 1926).

## INTEREST (CASE III)

The following kinds of interest<sup>29</sup> are taxable under case III of schedule D, rule 1:

(a) Any interest of money, whether yearly or otherwise, or any annuity or other annual payment, whether such payment is payable within or outside the United Kingdom, either as a charge on any property of the person paying the same by virtue of any deed or will or otherwise, or as a reservation thereout, or as a personal debt or obligation by virtue of any contract, or whether the same is received and payable half-yearly or at any shorter or more distant periods.

(b) All discounts, such as on acceptances and Treasury bills.

(c) Profits on securities bearing interest payable out of the public revenues other than such as are charged under schedule C.

(d) Interest, annuities, dividends, and shares of annuities payable out of any public revenue where the half-yearly payments in respect thereof do not exceed 50 shillings and are not chargeable under schedule C.

(e) Interest paid or credited in full without deduction of tax by any savings bank to any depositor.

(f) Interest on any exchequer bonds issued under the authority of the Treasury during the continuance of the World War and a period of 6 months thereafter, and on any securities issued under the War Loan Acts of 1914 to 1917, or any act amending those acts, in cases where such interest is paid without deduction of tax.

## BASIS OF ASSESSMENT

The normal basis of assessment is the amount of interest arising within the year preceding the year of assessment.

When the income first arises in the year of assessment the tax is computed on the full amount of such income. The same basis will be employed where the income first arose on some day in the year preceding the year of assessment other than the 6th day of April. Where the income first arose on April 6 in the year preceding the year of assessment, or on some day in the year next before the year preceding the year of assessment other than April 6, the taxpayer is entitled, on giving written notice to the inspector within 12 months after the end of the year of assessment, to be charged on the amount of the income of that year, and if the tax charged has been paid, any amount overpaid will be repaid (sec. 17, Finance Act of 1922).

As compared with annual interest, which as a rule is taxed by deduction at the source, interest under case III is taxed by direct assessment on the person receiving or entitled to the income (rule 1, miscellaneous rules applicable to schedule D).

## SEPARATE LIABILITY IN RESPECT TO EACH SOURCE

A separate liability is incurred in respect to income from each source. Any interest from a source owned by a wife is considered independently in determining the amount assessable and the relief granted in case the source becomes nonexistent.

<sup>29</sup> See also separate discussions of "Interest," p. 91.

All income derived by a person from any of the sources specified in rule 1 of case III may, however, as from April 1, 1927, be assessed and taxed in one sum (sec. 30, Finance Act of 1926). This provision does not extend to income from investments of the life-assurance fund of foreign life-assurance companies (mentioned in rule 3) nor to the profits of cattle or milk dealers (covered in rule 4).

The tax is computed separately, however, on :

1. Income from a source under rule 1 of case III, or a part of such source, which a person ceases to possess in any year of assessment (the computation is made as in the case of a discontinuance of a trade or profession, on the actual income of the year of assessment).

2. Income from a new source of profits or an addition to a source acquired in any year of assessment, the computation being made, as respects the year of assessment in which the income first arises, on the full amount of the profits or income arising within that year; and, in respect to subsequent years of assessment, on the full amount of the profits or income arising within the year preceding the year of assessment, in accordance with rule 2 of case III (sec. 30, Finance Act of 1926).

#### DEALERS IN CATTLE OR MILK (CASE III)

If the lands occupied by a dealer in cattle or milk, which have been charged under schedule B on the assessable value, are insufficient for the upkeep of the cattle brought onto the lands, so that the assessment value affords no just estimate of the profits, the commissioners "may require a statement of the profits to be delivered and charge such further sum thereon as, together with the charge under schedule B, will make up the full sum wherewith the dealer or seller ought to be charged" (rule 4, rules applicable to case III, schedule D).

The normal basis of assessment is the full amount of profits arising within the year preceding the year of assessment (rule 2).

Any division, apportionment, or aggregation necessary in arriving at taxable profits is authorized by section 35, Finance Act of 1926.

#### TITHES, DUES, MANORIAL PROFITS, ETC. (CASE III)

The miscellaneous profits derived from lands or other hereditaments, previously assessable under schedule A, no. II, were transferred by the Finance Act of 1926 (sec. 28) to schedule D, case III. Such profits (rules of No. II) include :

(a) Tithes taken in kind.

(b) Dues, etc., in right of the church or by endowment or in lieu of tithes (not being tithes arising from lands), and teinds in Scotland.

(c) Tithes compounded for, and all rents and money payments in lieu of tithes arising from lands, other than tithe commutation rent charges confirmed under the Tithe Act of 1836.

(d) Profits of manors and other royalties, including all dues and services or other casual profits, other than rents or other annual payments reserved or charged.

(e) Fines received in consideration of any demise of land or tenements (not being parcel of a manor or royalty demisable by the custom thereof).



(f) Profits of other than the preceding kinds, and not liable to deduction, arising from lands, etc., and not in the actual occupation of the person to be charged; for example, a dead rent payable in respect of coal comprised in a mining lease but not yet won.

#### BASIS OF ASSESSMENT

In general, the tax is to be imposed on the basis of the profits arising within the year preceding the year of assessment, in accordance with rule 2 (1) of the rules applicable to case III of schedule D. In computing the amount of an assessment under schedule D, however, the like allowances and deductions will be made as would have been made if the assessment had been made under schedule A, no. II, that is, the exemption for lands, tenements, hereditaments, and heritages owned and occupied by a charity, or profits therefrom used for charitable purposes only.

The assessment in respect of the above-mentioned kinds of income is generally made on the recipient of the income, so that tax is not deducted on payment, though it is possible to make the assessment on the occupier of the lands, etc. (rule 6 of no. VII, schedule A).

#### INCOME FROM FOREIGN SECURITIES (CASE IV)

Income from foreign securities—that is, securities outside the United Kingdom—is taxed under case IV. (The British Dominions and the Irish Free State are “outside the United Kingdom.”) Income from “securities” means, in general, income arising by virtue of a deed or contract, such as a mortgage, bond, or similar instrument. Shares in a company are not included under this head.

*Basis of assessment.*—The tax will be computed normally on the full amount of income arising in the year preceding the year of assessment, whether or not the income has been or will be received in the United Kingdom. This rule first applied in the year 1927–28. Previously the basis was the income arising in the year of assessment itself.

*Deductions.*—The deductions and allowances granted are the same whether or not the income is received in the United Kingdom. The following deductions are specifically granted.

1. The amount of income tax paid in the place where the income in question arose (see “Dominion relief”, p. 100).

2. The annual interest, annuities, or other annual amounts payable out of the income to a person not resident in the United Kingdom.

*Exemptions for nonresidents, etc.*—Only the amount of income that has been or will be received in the United Kingdom, without any deductions, is taxed in the case of (a) persons not domiciled in the United Kingdom; or (b) British subjects not ordinarily resident in the United Kingdom; or (c) income arising from securities forming part of the investments of the foreign life-assurance fund of an assurance company.

#### INCOME FROM DOMINION AND FOREIGN POSSESSIONS (CASE V)

Any source of income outside the United Kingdom, except foreign and colonial securities covered in case IV, is dealt with by case V. The term “foreign possessions” is broadly interpreted and includes

income from: (a) profits of a business abroad, the control of which is situated abroad; (b) dividends on shares in foreign or colonial companies; (c) rents from property abroad; (d) interest from banking accounts and deposits abroad; (e) in certain circumstances, remuneration from employment abroad; (f) income from foreign trust funds.<sup>282</sup>

#### A. STOCKS, SHARES, OR RENTS

*Basis of assessment.*—In the case of income arising from stocks, shares, or rents in any place out of the United Kingdom, the tax will be computed on the full amount thereof arising in the year preceding the year of assessment, whether the income has been or will be received in the United Kingdom (sec. 29, Finance Act of 1926). The former basis was the average of the three preceding years.

*Deductions.*—Whether such income is received in the United Kingdom or not, the same deductions are allowed as stated in case IV.

*Exemptions for nonresidents, etc.*—The preceding rule regarding assessment does not apply (a) to a person not domiciled in the United Kingdom, (b) to a British subject not ordinarily resident in the United Kingdom, or (c) to such income arising from the investments of the foreign life-assurance fund of an assurance company. In these instances the computation is made on the basis of assessment given below under B.

#### B. OTHER INCOME FROM FOREIGN POSSESSIONS

*Basis of assessment.*—Where income arises from foreign possessions other than stocks, shares, or rents, the tax will be computed on the full amount of the actual sums received in the United Kingdom in the year preceding the year of assessment from remittances payable in the United Kingdom, or from property imported, or from money or value arising from property not imported, or from money or value so received on credit, or on account in respect of any such remittances, property, money, or value brought or to be brought into the United Kingdom.

A business carried on wholly in Australia was held<sup>280</sup> to be such a possession, and accordingly a person resident in the United Kingdom was assessable to tax in respect of so much of his share of the profits of that business as had been remitted to England.

An employment out of the United Kingdom which is a source of income falls under the same rule, and in *Pickles v. Foulsham*<sup>281</sup> Lord Chancellor Cave cites as examples a doctor residing in England and practicing in France only and a mining engineer having a residence in England and wholly employed by a Spanish mining company in Spain.

In *Pickles v. Foulsham*, however, the earnings of the agent in West Africa of a British company were held to be not a foreign possession, because "while the burdens incidental to his employment were to be borne wholly or mainly abroad the principal benefit which he was to derive from it could only be claimed in the United Kingdom."<sup>281</sup> The commission which formed the bulk of his remuneration was payable by the company in the United Kingdom, and, in fact, the

<sup>280</sup> *Garland v. Archer-Shee*, 15 T.C. 693.

<sup>281</sup> *Colquhoun v. Brooks* [1889], 14 A.C. 493, 2 T.C. 490.

<sup>282</sup> *Pickles v. Foulsham*, 9 T.C. 261, D. 287.

company paid the whole of his remuneration into a banking account in England on which his wife had the power of drawing. The court held that instead of being assessed under case V as being resident in England, although his duties were performed for the most part, if not entirely, in West Africa, because he rented a house in the United Kingdom in which his wife and family resided and he himself spent a few days in the United Kingdom during the year of assessment.

*Deductions.*—The same deductions are allowed under B as are allowed under case I.

#### PROVISIONS COMMON TO CASES IV AND V

Although the normal basis of assessment for both case IV and case V is the full amount of the profits, gains, or income of the year preceding the year of assessment, some special provisions are found in sections 29 and 30 of the Finance Act of 1926, as follows:

##### A. REGARDING INCOME WHEN IT FIRST ARISES

1. For the year of assessment in which the income first arises, the tax will be computed on the full amount of the income arising within that year.

2. Where the income first arose on some day in the year preceding the year of assessment other than the 6th day of April, income tax will be computed on the income of the year of assessment.

3. Where the income first arose on the 6th day of April in the year preceding the year of assessment, or on some day in the year next before the year preceding the year of assessment other than the 6th day of April, the person charged will be entitled, on giving notice in writing to the surveyor within 12 months after the end of the year of assessment, to be charged on the amount of the income of that year; and if the tax charged has been paid, any tax overpaid will be refunded.

##### B. REGARDING THE ASSESSMENT AND CHARGING IN ONE SUM

Income treated under case IV or under case V may be aggregated under each head, but the two classes may not be grouped together. A separate assessment on the particular source will be made in the following cases:

1. If in any year of assessment a person so chargeable ceases to possess a particular source or part of a source of such income, he is taxed, as in the case of a discontinuance of a business, on the income received in the year of assessment itself from April 6 to the date of discontinuance.

2. If a person acquires, in any year of assessment, a new source of such income or an additional source, the rules given above regarding income when it first arises will apply.

##### INCOME NOT TAXED UNDER OTHER HEADS (CASE VI)

The revenue authorities assess, under case VI, such income as they are not authorized to assess under the other schedules or the other cases of schedule D. Among the kinds of income usually taxed under this head are:

1. Profits derived from the sale of patent rights, literary copy-rights, etc., when it is not the ordinary business of the vendor to engage in such transactions.

2. Profits derived from occasional sales or other activities entered into for the purpose of making a profit or under such other circumstances as would entail liability.

3. Rents derived from leasing furnished houses (exclusive of the ordinary business of keeping a boarding house, for which liability is incurred under case I). Deductions may be taken in computing the assessable profits for the rent paid by the lessor of the furnished house, local "rates", cost of heating, lighting, and cleaning, insurance, depreciation of furniture (usually up to 10 percent), repairs, agents' fees, and advertising charges. If the lease is made inclusive of services, the income derived is frequently regarded as earned income.

Beginning with April 6, 1927, the assessment under case VI is made either on the actual profits arising in the year of assessment or upon the profits of a period not greater than 1 year, averaged out to 12 months, provided the commissioners so direct (sec. 29 (2), Finance Act of 1926).

#### SCHEDULE E. SALARIES

Salaries or other remuneration paid to employees, directors' fees, and pensions, annuities, and other compensation payable in respect of past services to retired employees or their representatives are taxed under schedule E. Employment exercised abroad is regarded generally as a foreign possession, and the income therefrom is taxable under schedule D, case V.

#### BASIS OF ASSESSMENT

In the past, the tax has been assessed on the total amount of remuneration payable for the year of assessment, an adjustment being made in respect of any increases or decreases of remuneration which take place during the year. As from 1928-29, however, this kind of income will be taxed on the basis of the preceding year except in the case of (1) weekly wage earners engaged in manual labor, who are assessed half-yearly, (2) persons not continuously resident in the United Kingdom who are employed there occasionally or intermittently, and (3) colonial officers' leave pay (sec. 45, Finance Act of 1927).

Expenses necessarily incurred and defrayed out of remuneration are deductible, but such expenses do not include traveling expenses from residence to place of employment.

Lump-sum compensation paid at termination of employment is usually not assessable.

Any person who was assessed for 1927-28 in respect of income taxable under schedule E may, on giving notice to the inspector of taxes not later than June 30, 1929, require that his assessment for 1928-29 be reduced to the income of that year if such amount is less than the income for 1927-28 (sec. 45 (3), Finance Act of 1927).

## NEW EMPLOYMENT

When a person first receives income taxable under this schedule, the tax will be computed on the amounts received in the current year of assessment.

If he first holds employment on some day in the year preceding the year of assessment other than the 6th day of April, income tax will be computed on the income received for the year of assessment.

Where his employment began on or before the 6th day of April in the year preceding the year of assessment, he will be entitled, on giving written notice to the inspector within 12 months after the year of assessment, to be taxed on the basis of the income of the last-mentioned year (sec. 45 (4), Finance Act of 1927).

## DISCONTINUANCE OF EMPLOYMENT

Where in any year of assessment a person ceases to be employed or to receive income chargeable under schedule E, he will pay tax for that year on the amount of his income for the period beginning on April 6 and ending on the date of the cessation.

If the emoluments for the year ending on the 5th day of April in the year preceding the year of assessment exceed the amount on which tax has been charged for the preceding year, an additional assessment may be made (sec. 45 (5), Finance Act of 1927).

## EMPLOYER'S RETURN

The employer submits in April a return of employees and, in the past, has declared the estimated remuneration of each employee for the year ending the following April 5. Increases occurring during the year were taken care of by additional assessments, and decreases were adjusted by discharging the appropriate amount of tax or, if the entire tax has been paid, by repayment of the amount not due.

In the case of varying remuneration, it has been the practice of the revenue authorities to base the assessment upon the amount of commissions or other fluctuating income received in the preceding year.

If the employer pays the remuneration free of tax, as sometimes occurs in the case of limited companies, the amount of tax thus paid is treated as additional remuneration and must be returned as part of the employee's remuneration.

## SCHEDULE C. INCOME FROM GOVERNMENT SECURITIES

Interest, annuities, dividends, etc., payable in the United Kingdom out of any public revenue, whether of the United Kingdom, a British Dominion, or a foreign state, are taxable under schedule C. Such income is taxed at the source, the Bank of England or other agent entrusted with the payment of the interest or other income being empowered to deduct the standard rate of tax when payment is made to the recipient. The amount so deducted is then delivered to the inland revenue authorities. The exceptions to this general rule are as follows:

1. Interest, etc., on holdings of Government departments or of certain official charitable funds, etc., is not subject to tax.

2. Interest payable in the United Kingdom on any securities of a British Dominion or a foreign state which are owned by a person not resident in the United Kingdom is not subject to tax, and, if charged, the tax may be reclaimed.

3. Contrary to the prewar practice of taxing securities of the British Government by deduction at the source, the interest paid on most of the British Government securities issued during the war is either (a) paid in full and assessed on the recipient under the rules of schedule D, or (b) if paid on securities which are proved to be in the beneficial ownership of a person who is not ordinarily resident in the United Kingdom, is exempted from tax.

4. Certain securities were issued during the war exempt from the standard rate of tax but subject to the supertax. (The reason for this treatment was that the standard rate of income tax was compounded by means of a subnormal rate of interest.)

5. Interest on war savings certificates and national savings certificates, issued subject to a limitation on the total number of certificates that may be held by any one individual and carrying accumulated interest at the date of their maturity, is exempt from both the standard rate of income tax and the supertax.

6. Small amounts of interest and dividends, of which the half-yearly payment does not exceed 50 shillings, payable through the Bank of England or the Bank of Ireland out of any public revenue, are not taxed at the source but are assessable on the recipient under the rules of schedule D.

7. Securities issued in the United States by a British municipal corporation, county council, or other local authority for the purpose of raising any money which it is authorized to borrow, if issued with the authority of the British Treasury, are not liable to the standard rate of income tax or supertax, except where they are held by persons domiciled in the United Kingdom or by British subjects ordinarily resident there (sec. 46 (4), Income Tax Act of 1918).

(In this connection, see also "Interest and other annual payments," p. 91.)

#### SCHEDULE A. INCOME FROM OWNERSHIP OF LANDS, HOUSES, ETC.

Schedule A applies as from 1927-28 to the annual value of lands, houses, and buildings in the United Kingdom, exclusive of mines, quarries, etc., taxed under schedule D, case I, and tithes, manorial profits, etc., taxed under schedule D, case III. The term "lands" embraces houses occupied by tenant farmers and also farm buildings. Schedule A deals with income from:

(a) Lands, buildings, etc., capable of actual occupation (no. I of schedule A);

(b) Certain tithes, profits of manors, and other minor profits of lands not in the actual occupation of the person entitled to the payment (no. II of schedule A); and

(c) Railways, mines, iron works, gas works, salt works, waterworks, docks, canals, quarries, and similar enterprises which are closely connected with the land but are in the nature of trading concerns (no. III of schedule A).

## NO. I OF SCHEDULE A

The proprietor of the land, house, or other property assessable under no. I of schedule A who occupies such property himself is assessable on its annual value in the same manner as the owner who has leased his property to tenants. (The bulk of the "tithe" in England has been commuted into "tithe-rent charge", which also comes under this head—unless, as happens occasionally, it is taxed by deduction.) An exemption is granted in respect of property owned by a charity. Relief also is granted where the rents or royalties payable in respect of any of these properties are payable to any hospital, public school, or almshouse or to any trustee for charitable purposes, provided the moneys are applied to charitable purposes only (sec. 37 (1) (a), Income Tax Act of 1918; sec. 30 (1) (a), Finance Act of 1921; sec. 28, Finance Act of 1926).

## BASIS OF ASSESSMENT

The tax is imposed on the "annual value", which, in broad terms, is the rent received for leasing the property or the rent it would be worth if leased by the year, the tenant bearing the usual tenant's "rates" and taxes and the landlord bearing the cost of repairs.

The method of determining annual values differs in various parts of the United Kingdom. In the Administrative County of London it follows the evaluation made under the Valuation (metropolis) Act of 1869, for local rating, and in Scotland it follows for the most part the valuation made under the Lands Valuation (Scotland) Act of 1857, for local rating. With these exceptions all property is re-valued periodically when directed by the Finance Act. The annual value, when determined, remains in force normally for a period of 5 years, but it can be increased during this period to take into account structural alterations to the property.

The annual value as determined constitutes the gross assessment.

## DEDUCTIONS

From the annual value an allowance for repairs is deductible, as follows: When the annual value does not exceed £40, one fourth; when the annual value is between £40 and £50, £10; when the annual value does not exceed £100, one fifth; when the annual value exceeds £100, £20 plus one sixth of the excess of the annual value over £100.

These rates apply primarily to houses. The allowance for lands is an amount equal to one eighth of their annual value. An allowance is also given in respect of any part of the year of assessment during which the house is not occupied.

A tenant occupier who deducts tax against rent may be required by his landlord to produce his receipt for payment of the tax, and the tenant occupier will not be discharged of so much of the rent as is represented by the tax paid unless he delivers the receipt to the landlord when requested.

## NOS. II AND III OF SCHEDULE A

The tax on the classes of income formerly assessed under no. II (computed on the actual amounts of money received or on various

averages) and no. III (formerly imposed on the annual value measured according to the rules of schedule D) was transferred for the year of assessment 1927-28 and thereafter to schedule D, cases III and I, respectively, the basis of assessment to be the income of the preceding year. This transfer does not affect the exemption granted by sections 37, 38, and 39 of the Income Tax Act of 1918, and section 30 of the Finance Act of 1921, with regard to rents of land belonging to hospitals and other charities, friendly societies, trade unions, savings banks, cooperative societies, etc.

(The remaining numbers of schedule A, from IV to VIII, inclusive, contain rules for estimating annual value and concerning allowances, persons chargeable, and recouplement of tax in certain cases.)

#### SCHEDULE B. PROFITS FROM OCCUPATION OF LANDS

Schedule B concerns primarily the profits of farmers. It covers income derived from the occupation of lands. The tax is imposed in addition to the tax under schedule A but does not extend (1) to dwellings not used in connection with farming nor (2) to warehouses, workshops, and other buildings used for business purposes.

In the section of this report dealing with "Exemptions" (see p. 96) details are given concerning allowance for lands occupied by charities for purposes of husbandry, public parks, lands attached to hospitals, etc. Earned-income relief also is allowed in respect of assessments under schedule B on land occupied for purposes of husbandry only and on woodlands managed on a commercial basis.

#### BASIS OF ASSESSMENT

Assessment is made on a conventional basis which assumes profits bearing a certain relation to the "annual value" of the land occupied. The occupier of lands used for purposes of husbandry (that is, cultivation of crops) is taxed under schedule B on the annual value as determined for schedule A.

A farmer occupying lands for purposes of husbandry only may (1) accept the ordinary assessment under schedule B and obtain at the end of the year a reduction to the amount of actual annual profits if they are less than the conventional assessment, or (2) elect to be assessed under schedule D on the same basis as though his income from the occupation of land were trading profits. In the case of all other lands the basis of assessment is one third of their annual value under schedule A.

Lands occupied for the purpose of raising cattle are also assessed under schedule B, but in certain circumstances (see p. 82) the commissioners have power to demand a statement of profits and to tax under schedule D, case III, the amount by which the profits exceed the schedule B assessment.

Profits of nurseries and market gardens are assessed under schedule B but computed according to the rules of schedule D.

Although profits from the occupation of woodlands are normally assessable under this schedule, a person occupying woodlands and managing them on a commercial basis may elect to be assessed as a trader under schedule D.



## INTEREST AND ANNUAL PAYMENTS

In view of the numerous provisions in the British income-tax law concerning interest and other annual payments, the various methods of treating the more important items of such income (already noted under the several schedules) have been grouped below for the convenience of the reader. The broad line of demarcation is between payments which are not made on an annual basis and those which are. The term "yearly interest" has been defined as that which may become payable at a future date and is calculable by periods of not less than a year, even though the obligation to pay it may cease before the year is out.<sup>22</sup> While interest for a shorter period than a year is assessed directly on the recipient, yearly interest, as a rule, is taxed by deduction of tax at the source.

Annual payments may be classified under five heads: (1) Annual payments which are assessed directly on the recipient; (2) interest, dividends, etc., paid out of British or foreign public revenues, or (3) by foreign companies to persons in the United Kingdom, from which the paying agent deducts tax and accounts for it to the Crown; (4) annual payments which are not made out on the taxed profits of the payer, and from which the payer deducts tax for the account of the Crown; (5) interest and other annual payments known as "annual charges", which must be included in the taxable income of the debtor, the debtor recouping the tax by deducting it from the amount paid to the creditor.

## INTEREST FOR PERIODS LESS THAN A YEAR

Payment of income tax on interest for periods less than a year falls into one of the following groups:

1. In paying interest upon short-term loans made by bankers, as for 3 months, which are not intended to be continued for a long period,<sup>23</sup> the borrower may not deduct tax, and the interest is included in the taxable profits of the bank. If the money was borrowed in the course of trading and not for use as capital, the borrower is allowed to deduct the interest thereon as an expense in computing net profits. Where the interest was not allowed as an expense, but was paid out of the debtor's taxable profits to a bank carrying on a bona fide banking business in the United Kingdom, the debtor may claim repayment from the authorities. This same rule applies to annual interest on bankers' loans (sec. 36 (1), Income Tax Act of 1918).

2. Interest on a bank deposit for less than a year is paid without deduction of tax and assessed on the depositor.

3. Interest (not being yearly interest) on a loan made by persons bona fide carrying on business as members of a stock exchange or as a discount house in the United Kingdom is paid by the borrower without deduction of tax, but if the authorities are satisfied that the lenders will include the interest in their statement of taxable income the borrower may claim repayment of the amount of tax on the

<sup>22</sup> *In re Craven* [1907], 2 Ch. 448.

<sup>23</sup> *Goslings and Sharpe v. Blake* [1889], 23 Q.B.D. 324.

interest that he has paid because of its being included in his taxable income (sec. 36 (2), Income Tax Act of 1918).

#### ANNUAL PAYMENTS (INTEREST, DIVIDENDS, ETC.)

Payment of income tax on yearly interest falls into one of the following groups:

##### TAX PAID BY RECIPIENT

1. Interest, annuities, and other annual profits or gains assessable on the persons receiving or entitled to the income include, among others, the following items covered under case III of schedule D:

(a) All discounts. The entire difference between the amount paid for a Treasury bill and the sum realized for it, whether by holding until maturity or by selling or converting before maturity, has been held<sup>22</sup> taxable under this head.

(b) Profits on securities bearing interest payable out of the public revenue other than such as are charged under schedule C.

(c) Interest, annuities, dividends, and shares of annuities payable out of any public revenue where the half-yearly payments in respect thereof do not exceed 50 shillings and are not chargeable under schedule C.

(d) Interest paid or credited in full without deduction of tax by any savings bank to any depositor. The savings bank is itself exempt in respect of such interest, but it is chargeable against the depositor under case III of schedule D (sec. 39 (3) (b) (i), Income Tax Act of 1918).

(e) Interest on exchequer bonds issued under the authority of the Treasury during the World War and a period of 6 months thereafter and on any securities issued under the War Loan Acts of 1914 to 1917, or any act amending those acts, in cases where such interest is paid without deduction of tax.

##### TAX DEDUCTED BY PAYING AGENT

2. Interest, annuities, dividends, etc., with certain exceptions, payable in the United Kingdom out of any public revenue, whether of the United Kingdom, a British Dominion, or a foreign state, are subject to tax by deduction. The paying agent deducts the standard rate at time of payment and remits it to the Crown.

British municipal securities issued in the United States with the authority of the British Treasury are exempt from British income tax and supertax except where they are held by persons domiciled in the United Kingdom or by British subjects ordinarily resident there (sec. 46 (4), Income Tax Act of 1918).

3. Interest, dividends, annuities, etc., paid by foreign companies to persons in the United Kingdom through an agent are similarly taxed, the paying agent deducting the standard rate from the amount due and remitting it to the Crown (rule 7, miscellaneous rules applicable to schedule D).

Where the dividends of a foreign company were payable either at the London agency or abroad at the option of the shareholder,

<sup>22</sup>*National Provident Institution v. Brown*, 8 T.C. 57 [1921], 2 A.C. 222.

and the agency paid the dividends out of its own profits, which were sufficient for the purpose, it was held<sup>26</sup> that in assessing the dividends an allowance should be made in respect of that portion which was paid out of the previously taxed profits of the English agency.

## TAX DEDUCTED BY PAYER FOR CROWN

4. Interest, annuities, or other annual payments charged with tax under schedule D and any royalty or other sum paid in respect of the user of a patent not payable wholly or in part out of the taxed profits of the taxpayer are taxed by deduction, the payer accounting for the amount deducted to the Crown (rule 21, general rules, Income Tax Act of 1918). This rule applies also in the following cases:

(a) Copyright royalties, other than on cinematograph productions, paid to a nonresident (sec. 25, Finance Act of 1927).

(b) Interest not paid out of earnings. Where a railway company paid "annual interest" on its share capital and debenture stock, although it had made no profit, and deducted tax therefrom, it was held liable for the whole amount as a debt due the Crown.<sup>26</sup> The company had made a return and had been assessed on the amount of interest paid in the year preceding the year of assessment. As the amount paid in the year of assessment was greater than that of the previous year, the company's liability extended to the difference.

## TAX RECOUPED BY PAYER (ANNUAL CHARGES)

5. Interest on mortgages and bonds, annuities, or any other annual payments made under a will, deed, or contract, or any royalty or other sum paid in respect of the user of a patent, which is payable wholly out of the taxed profits of the payer, is subject to the deduction and retention of the tax by the payer from the amounts remitted to the payee (rule 19, general rules, Income Tax Act of 1918). A discussion of various items taxed in this manner follows.

(a) *Real-estate rents.*—The tenant occupier is taxed on his net income including the rent, but is entitled to deduct and retain the standard rate of tax in respect of the rent payable to the landlord (schedule A, no. VIII). The same rule applies to ground rents, chief rents, feu duties, and tithe-rent charges where not assessed directly on the title holder.

(b) *Annual payment in the nature of a royalty.*—A foreign firm granted an English company the exclusive right of manufacturing articles by a secret process and of selling them, in consideration of the payment for 40 years of 8 percent of the gross receipts of such sales. Before paying the amount due to the foreign firm the English company deducted the income tax payable thereon. The court held<sup>27</sup> that the English company was entitled to do so as the payment was an annuity or annual payment payable out of profits or gains.

<sup>26</sup> *Gilbertson v. Fergusson* [1881], 7 Q.B.D. 562, 46 L.T. 10, 1 T.C. 501.

<sup>27</sup> *Lord Advocate v. Forth Bridge Rtd. Co.* [1890], 28 Sc.L.R. 576, 3 T.C. 1.

<sup>28</sup> *Delage v. Nugget Polish Co.* [1905], 92 L.T. 682, 21 T.L.R. 454.

(c) *Interest on bills of exchange.*—The practice of deducting tax from interest on a bill of exchange was approved in one case,<sup>38</sup> but its correctness was doubted in another.<sup>39</sup>

(d) *Interest on mortgage loan.*—Periodical installments covering principal and interest were payable over a term of years in respect of money borrowed from a building society on mortgage of property. It was held<sup>40</sup> that income tax was deductible from the portion of the repayments that represented interest.

(e) *Mortgage held by bankers.*—In a case where bankers had a mortgage for a fixed sum and also a banking account with their customer, the court remarked: "It is necessary, in all these cases, to distinguish between what is a banking account, as between banker and customer, and what is an account as between mortgagor and mortgagees \* \* \*." Where the relationship is that of mortgagor and mortgagee, the mortgagor is entitled to deduct tax from the interest, but in dealings with merchants, in discounting bills and the like, and on loans for short periods the income tax is not deducted.<sup>41</sup>

(f) *Weekly payments over a year.*—Fixed weekly payments due on a fixed day every week for a period possibly exceeding a year were held<sup>42</sup> to be "annual payments" from which tax was deductible.

The term "annual charges" refers not only to payments made once a year, but also to payments made at longer or shorter intervals where the amounts are calculated with reference to a fixed period and which are paid or intended to be paid year after year.

(g) *Dividends, etc.*—Dividends paid by a British company are assimilated to annual charges, being included in the total profits of the company subject to the standard rate of tax. When dividends are distributed, the company deducts tax therefrom.

#### BASIS OF ASSESSMENT

In applying the principle of deduction at source, the income tax on annual payments arising out of a legal obligation is collected from the debtor or payer through requiring him to include in his taxable income the amounts that must be paid to the creditor or payee. Such amounts are entered in the debtor's return as annual charges against his income. Since the tax is to be borne by the creditor, however, the debtor is authorized to transfer the burden of the tax to the creditor by deducting the standard rate from the amount paid, thus recouping himself.

The gross amounts transferred must be declared by the recipient in his return of total income, but the standard rate of tax is not imposed a second time on the creditor by direct assessment. It is necessary to deduct such charges from the debtor's gross amount of income in order to ascertain the total net statutory income on which are based his allowances and reliefs and his liability to supertax.

Any agreement between the payer and the payee requiring annual charges to be paid in full is null and void. The payee is bound to

<sup>38</sup> *Dinning v. Henderson* [1850], 3 DeG. & Sm. 702, 19 L.J. Ch. 273, 14 Jur. (N.S.) 1038.

<sup>39</sup> *Goalings and Sharps v. Blake* [1889], 23 Q.B.D. 324, 2 T.C. 450.

<sup>40</sup> *Middlesbrough, etc., Benefit Building Society, Ex parte Wythes* [1885], 53 L.T. 492.

<sup>41</sup> *Moses v. Sait* [1883], 82 L.J. Ch. 756, 32 Beav. 260.

<sup>42</sup> *In re Janor's Settlement: Waamuth v. Janor* [1918], 2 Ch. 54, 87 L.J. Ch. 454, 119 L.T. 114.

allow the payer to deduct tax from the payment due (rule 23, general rules, Income Tax Act, 1918).

When a debtor paid yearly interest without deducting income tax, he lost the right to deduct in respect of such payment,<sup>43</sup> but in another case<sup>44</sup> to the payer of royalties, who had not deducted tax, was allowed to recover the amount of the tax from the recipient of the royalties.

#### RATE DEDUCTIBLE

If the annual payment is made out of profits taxable in the hands of the payer, or if the tax has been borne by the payer through deduction at source from amount due him, the payer deducts, from the gross amount he has to pay, the standard rate or rates in force over the period in which the income out of which the payment is made was accruing due. Thus, if the fiscal year of a limited company overlaps 2 income-tax years having different rates, the rate of tax deductible from the gross amount of dividend is the average of the rates in force, taking into account the proportion of time each was in force during the fiscal year of the company.

Beginning with 1928-29 tax is to be deducted from dividends, interest, ground rent, etc., at the standard rate for the year in which the amount payable becomes due. This new rule does not apply, however, in the case of rents payable by a tenant occupier and annual charges in Scotland, which will continue to be taxed in the present manner (sec. 39 (1), Finance Act of 1927).

Where the annual payments are made out of profits that are not chargeable, as where interest, dividends, annuities, etc., are paid in England by the paying agent of a foreign company, the rate in force at the date of payment is to be deducted from the gross amount. The same rule applies to copyright royalties, except cinematograph productions, which are paid to nonresidents (sec. 25, Finance Act of 1927).

#### EXEMPTIONS

Income of certain kinds and of specified bodies is exempt from tax. In addition to the general exemptions, there are a number of special exemptions under the various schedules.

Contributions to charity are not as a rule exempt, but contributions by employers to charities benefiting employees are allowable.

#### GENERAL EXEMPTIONS

General exemptions embrace:

1. Lump sums paid for compensation for injury or loss of office.
2. Sickness benefit.
3. Sums, other than annuities, received under life, sickness, or accident insurance policies.
4. Disability pensions granted to ex-service men.
5. Accumulated interest on war or national savings certificates, provided the number held by the owner does not exceed the number authorized by the Treasury regulations.
6. Dividends, in respect of purchases, received from industrial, provident, or cooperative societies.

<sup>43</sup> *Galashiels Provident Building Society v. Newlands* [1893], 20 R. 821, 30 Sc.L.R. 730.

<sup>44</sup> *Agnew v. Ferguson* [1903], 5 F. 879, 40 Sc.L.R. 636.

7. Unemployment, sick, and strike pay received from trade unions, etc.

8. Scholarships and grants to students for research or similar training at colleges, universities, etc., or held by persons receiving full-time education at a school, university, or other educational establishment.

9. Competition prizes.

#### SCHEDULE A EXEMPTIONS

Schedule A, no. 1 (income from the ownership of lands, houses, etc.), exemptions embrace:

1. Colleges or halls in any university of the United Kingdom occupied for educational purposes.

2. Buildings belonging to hospitals, public schools, or almshouses, insofar as these are used only for charitable purposes.

3. Buildings belonging to a literary or scientific institution used solely for the purposes of the institution and where no payment is made or demanded for instruction. The annual value of such property is duly brought into assessment, but the tax is specially remitted.

By concession an exemption is granted (a) council schools, denominational schools, mission rooms, though used occasionally for purposes other than educational or religious, and (b) parish halls and rooms, parish clubs, church institutes, and buildings of a similar character almost exclusively used for divine worship, Sunday schools, and other religious objects, where not leased for profit and the sums received from occasional leasing are only intended to cover the cost of cleaning, lighting, etc. This exemption does not extend to the tax payable on charges on such property, as ground rent, feu duty, and mortgage or bond interest or other annual payments secured on the property, from which tax is deducted when the payer makes such payment. Cathedrals, churches, property vested in and occupied by the Crown, etc., are not brought into assessment at all.

#### SCHEDULE B EXEMPTIONS

The only statutory exemption under schedule B (income from the occupation of lands) is that accorded in the case of lands occupied by a charity where such lands are:

(a) Occupied for the purpose of husbandry; and

(b) The husbandry is mainly carried on by beneficiaries of the charity; and

(c) The profits, if any, arising from the cultivation of the land are applied solely to the purposes of the charity. By "charity" is meant a body of persons or a trust established for charitable purposes only, such as the relief of poverty, the advancement of education and religion, and certain other purposes by which the community is benefited.

This exemption extends, however, to:

(a) Public parks, recreation grounds, etc., where held in trust for the public.

(b) Lands attached to hospitals, public schools, and almshouses and used for their purposes.

- (c) Gardens and pleasure grounds occupied in conjunction with a house and not exceeding 1 acre in extent.
- (d) Public parks belonging to the municipalities, etc.
- (e) Allotments, plots, etc.
- (f) Waste lands that are unenclosed.

#### SCHEDULE C EXEMPTIONS

Under schedule C (income paid, under deduction of tax at source, out of any public revenue) :

1. No tax is charged in respect of interest, etc., on holdings of Government departments or of certain official charitable funds, etc.
2. Interest payable in the United Kingdom on any securities of a British Dominion or foreign state which are owned by a person not resident in the United Kingdom is not charged to tax, or if charged, the tax may be reclaimed.
3. The interest paid on British Government securities issued during the war period which are proved to be in the beneficial ownership of persons who ordinarily are not resident in the United Kingdom is not liable to tax.
4. Interest on certain securities issued during the war period is free from assessment to the standard rate but remains liable to supertax.
5. War and national savings certificates which are issued subject to a limitation on the total number of certificates that may be held by any one individual carry accumulated interest at the date of their maturity and are granted exemption from both income tax and supertax in respect of that interest.

#### SCHEDULE D EXEMPTIONS

Schedule D (income from trade, professions, etc.; dominion and foreign securities and possessions; interest, etc.) exemptions include:

1. Under case IV, income from dominion and foreign securities accruing to a person not domiciled in the United Kingdom or to a British subject who ordinarily is not resident in the United Kingdom is not subject to tax except on the amount which is received in the United Kingdom.
2. Under case V, the same rule applies to income from dominion and foreign stocks, shares, or rents. Income from the share of a business wholly carried on abroad and from other foreign possessions except stocks, shares, and rents is not taxed except for the amount actually received within the United Kingdom, even though the recipient is a resident.
3. Charities are exempt in respect to (a) trading profits, provided the profits are used exclusively for the purposes of the charity, and the trade is exercised in the carrying out of one of its primary purposes or the work is mainly carried on by the beneficiaries of the charity; and (b) annual and other than annual interest, applied solely to charitable purposes.

#### AMERICAN SHIPPING PROFITS EXEMPT FROM BRITISH TAX

An American enterprise engaged in the business of shipping (ordinarily assessable under schedule D) is exempt from British tax

on its profits made within the United Kingdom by virtue of the principle of reciprocal exemption that has been adopted as between that country and the United States.<sup>48</sup> This arrangement, operative from May 1, 1923, was made by the British Government under authority of section 18 of the Finance Act of 1923. Similar arrangements effective from April 6, 1923, had been made with Norway, Sweden, Denmark, Finland, and the Netherlands.

The 1923 act contemplated only arrangements with foreign states. Section 31 of the Finance Act of 1924 extends the authorization to include reciprocal-exemption arrangements with any British Dominion, any territory under British protection, and any territory in respect of which a mandate is being exercised by the government of any part of the British Empire.

### ALLOWANCES AND RELIEFS

In respect of earned income a resident taxpayer is permitted to take against the income tax certain abatements, known as "allowances" and "reliefs", for the living necessities for himself and family, and for life-assurance premiums. There is also a reduced rate intended primarily to give additional relief to persons with small incomes. Beginning with 1928-29, reliefs consisting in deductions from assessable income are taken by means of deductions from tax.

#### EARNED-INCOME ALLOWANCE

After deducting allowances for expenses, wear and tear, and obsolescence, the taxpayer may take an allowance equal to one fifth (but not exceeding £300) of the earned income acquired as the result of his personal efforts or services. "Earned income" embraces:

- (a) Salaries and other remuneration from employment.
- (b) The business profits of an individual, excluding the share of a sleeping partner and the profits of a limited company.
- (c) Pensions and allowances given to survivors of a deceased person in respect of past services of the deceased.
- (d) Value of property forming part of the emoluments of an employment, provided the occupier has the power to sublet.
- (e) Civil-list pensions granted under the civil-list acts.

In a partnership assessment, each partner is granted the one fifth allowance, with a maximum of £300, from his share. Consequently, the total earned-income allowance in the firm assessment may exceed £300, according to the number of partners and the amounts of their distributive shares.

If earned income of the wife is included in the income of the husband, additional relief is granted to the extent of four fifths of the wife's earned income, but subject to a maximum allowance of £45.

#### AGE AND PERSONAL ALLOWANCES

In cases where the taxpayer, or his wife, who is living with him, is 65 years of age and his total income for the year of assessment does not exceed £500, his entire income may be treated as earned

<sup>48</sup> Refer to sec. 213(b)(8), U.S. Revenue Act of 1926, for the American provisions.



income and the corresponding relief may be taken. If his total income exceeds £500 by such a small amount as to cause hardship because of his not being permitted to take advantage of this special relief, the tax payable on the total income will be reduced, where necessary, so as not to exceed a sum equal to the total of (1) the amount of tax to which he would have been liable if his total income had been £500, and (2) one half the excess of his total income over £500.

If the taxpayer is unmarried, the first £100 of assessable income (the balance after deduction of earned-income relief) is exempt. If the taxpayer is married, the exemption is £150. The full allowance may be claimed by a taxpayer who marries at any time within the year of assessment. All personal and family allowances may be taken in full for the year in which death occurs.

#### ALLOWANCE FOR HOUSEKEEPER AND DEPENDENTS

An allowance of £50 is given if the taxpayer is a widower or widow and has any female person, whether a relative or not, resident with him or her in the capacity of housekeeper. The same amount is allowed an unmarried person who maintains in his or her household his or her mother (widower or living apart from her husband) or some other female relative for the purpose of taking charge of a brother or sister.

There is an allowance of £50 for the first child and £40 for each other child (including a stepchild or adopted child in the custody of and maintained by the claimant), provided (1) the income of the child (except from scholarships) does not exceed £50 per year, and (2) the child must be living on April 6 in the year of assessment, and be less than 16 years of age. If the child is over 16 years of age, he must be receiving full-time instruction at a school, university, or other educational establishment.

An allowance of £25 may be claimed in respect of each dependent relative of the taxpayer or his wife who is incapacitated by old age or infirmity from maintaining himself or herself, or his wife's or his own widowed mother whether incapacitated or not. The income of the dependent relative must not exceed £50 a year. If the taxpayer, by reason of old age or infirmity of himself or his wife, is dependent upon the services of a daughter resident with and maintained by him, he may claim similar allowance, but not subject to the maximum limit of £50 on the daughter's personal income.

#### REDUCED-RATE RELIEF

The first £175 of taxable income is charged at one half of the standard rate for the year of assessment ( $2\frac{1}{2}$ s. in the pound) and the remainder at the full standard rate (5s. in the pound).

If the first £175 of taxable income includes income from dividends, interest, etc., taxed by deduction of the full standard rate at the source, the excess of  $2\frac{1}{2}$ s. in the pound that has been collected is set off, so far as possible, against the tax due on other income. This rule applies also to "tax-free" dividends, but does not apply to "tax-compounded" interest on Government securities.

If the total income of the taxpayer has been taxed by deduction of the full rate at the source, or if he has not enough income-subject to

direct assessment to absorb the excess of tax collected at the source, he may claim repayment of the amount of tax overpaid.

#### LIFE-ASSURANCE PREMIUMS

Subject to certain restrictions, a taxpayer who takes out a life-  
insurance policy or contracts for a deferred annuity upon his own  
life or the life of his wife is entitled to relief at the "appropriate  
rate" on the amount of the allowable premiums paid by him in the  
year of assessment. An amount equivalent to tax at the "appropri-  
ate rate" on the amount of allowable premiums is deducted from  
the tax chargeable on the taxable income. The restrictions on this  
relief are the following:

1. The allowed premium must not exceed 7 percent of the capital  
sum assured in any single policy.

2. The total amount of allowable premium must not exceed one  
sixth of the total net statutory income of the taxpayer.

3. The "appropriate rate" depends upon the time when the policy  
was taken out. If taken out on or before June 22, 1916, the appro-  
priate rate of tax to be deducted varies according to the total income  
for the year of assessment, being (a) one half the standard rate  
where the total income does not exceed £1,000, (b) three fourths the  
standard rate where the total income is between £1,000 and £2,000,  
and (c) the standard rate where the total income exceeds £2,000.

If the claimant's income does not quite amount to the limits of  
£1,000 or £2,000 referred to above, he may claim, in addition to the  
normal relief at "appropriate rate" (a) a sum equivalent to tax at  
one fourth of the standard rate on the amount of the premiums,  
diminished by (b) a sum equivalent to tax at the standard rate on  
the amount by which the taxpayer's total income falls short of  
£1,000 or £2,000.

In the case of policies taken out after June 22, 1916, relief is  
limited to those giving a capital sum at death, and the beneficiary  
may claim only one half the standard rate of tax for the year of  
assessment.

#### DOMINION INCOME-TAX RELIEF

A person resident in the United Kingdom who derives from one  
of the Dominions of the British Empire income that has been sub-  
ject to the income tax of such dominion may claim a certain relief  
from the United Kingdom income tax in respect to the income that  
has already been taxed in the dominion. The relief is calculated at  
the dominion rate of tax or at one half of that person's appropriate  
rate of United Kingdom tax, whichever rate is the lower. The  
dominion rate of tax is determined by dividing the amount of the  
dominion income tax paid for the year by the amount of the income  
subject to such tax.

The "appropriate rate" of United Kingdom tax is the rate of  
income tax which the claimant is liable to pay for the year to which  
the claim relates, or, where he is liable to the United Kingdom sur-  
tax for the same year, it is the sum of the rates of United Kingdom  
income tax and surtax which he is liable to bear for that year. For  
the purposes of this provision, the rate of United Kingdom income  
tax is ascertained by dividing the amount of tax payable on the

claimant's taxable income (omitting life-assurance allowances) by the amount of such taxable income. The rate of surtax is determined by dividing the amount of surtax payable by the claimant by the amount of his total income.

Companies which are within the scope of the preceding provisions may also claim relief in respect of dominion income tax, but the relief so obtained is passed on to their shareholders when dividends are distributed.

The Royal Commission on the Income Tax, which recommended this relief, suggested that any further relief necessary to assure the taxpayer relief amounting in all to the lower of the United Kingdom and dominion taxes should be given by the dominion concerned.

#### NO RELIEF FOR NONRESIDENT INDIVIDUALS

With the exception of the relief in respect of the dominion income tax, the allowances, deductions, and reliefs previously described are not given to individuals who are not resident in the United Kingdom; subject to a qualification, the full standard rate is payable on the whole of their income liable to the United Kingdom income tax.

The qualification is that these allowances, deductions, and reliefs may be claimed, with certain modifications, where the individuals satisfy the commissioners of inland revenue that he or she (1) is a British subject; or (2) is a person who is or has been employed in the service of the Crown, or who is employed in the service of any missionary society or of any native state under the protection of His Majesty; or (3) is a resident of the Isle of Man or the Channel Islands; or (4) has previously resided within the United Kingdom and is resident abroad for the sake of his or her health or the health of a member of his or her family resident with him or her; or (5) is a widow whose late husband was in the service of the Crown.

These modifications have the effect of charging the income which is subject to tax in the United Kingdom at the real effective rate which would have been levied if the total income from all sources had been subject to tax in the United Kingdom. In other words, an individual coming within one of the above exceptions would pay the amount of tax that bears the same proportion to the total tax (after deducting all allowances and reliefs) on total income from all sources as the income liable to United Kingdom tax bears to his total income, whether subject to United Kingdom tax or not.

#### DEPRECIATION, RENEWALS, AND OBSOLESCENCE

##### DEPRECIATION OF PLANT AND MACHINERY

In charging the profits or gains of a business, profession, employment, vocation, or office (assessable under schedule D or otherwise), the commissioners having jurisdiction of the assessment may allow such deduction as they consider just and reasonable in respect of the diminished value by reason of "wear and tear" during the year of any machinery or plant used for the purpose of the trade and belonging to the person by whom it is carried on. The allowance is also granted if machinery or plant is leased on condition that the lessee

maintain it and return it in good condition at the end of the lease (rule 6, rules applicable to cases I and II, schedule D).

If the lessor of the machinery himself is bound to keep it in good condition, he may claim an allowance for wear and tear. In such case, if the rent for the use of the plant and machinery is paid to the lessor without deduction of tax, he may claim the allowance against the assessment which will be made on him. On the other hand, if tax is deducted from the rent when paid, the lessor may claim the allowance for wear and tear, and the appropriate amount of tax will be refunded to him.

The term "plant and machinery" extends to tramways, ships, etc., used in carrying on a business undertaking. It also includes, in practice, engines, boilers, fixtures, shafting, fittings, and all other assets in the nature of machinery which are susceptible to wear and tear. The wear-and-tear allowance is not in practice given in respect of loose tools, implements, and utensils, but an allowance may be claimed for the amounts expended in supplying, maintaining, repairing, or altering such articles.

#### SPECIAL PRACTICE IN CALCULATING DEPRECIATION OF SHIPS

No deduction for wear and tear or repayment on account of any such deduction will be allowed for any year if the deduction, when added to the deductions allowed on that account for any previous years to the person by whom the trade is carried on, will make the aggregate amount of the deductions exceed the actual cost to that person of the machinery or plant, including in the actual cost any expenditure in the nature of capital expenditure on the machinery or plant by way of renewal or improvement. The allowance is calculated for each year of assessment upon the written-down value of the plant and machinery at the beginning of the year of assessment, that is, the balance after deducting from the value of the machinery the allowance for the preceding year. In practice, this value is taken as that of the date of the last balance sheet before the year of assessment. This rule is applied universally except in the case of ships, where a percentage is allowed on the prime cost based on the estimated number of years of life of the vessel.

A ship is generally deemed to have a scrap or break-up value, and this value is ordinarily assumed to be a fractional part of the total or prime cost corresponding to the ratio of one year to the total number of years of the ship's life. For example, if a ship costing £20,000 is estimated to last 20 years, the break-up value would normally be reckoned as one twentieth of £20,000, or £1,000, and an allowance of £1,000 would be made each year. The wear and tear of second-hand ships is computed according to the estimated life of the ship, having regard to its age at the date of purchase, and the allowance is on an agreed scale. A special agreement between the revenue authorities and the United Kingdom Chamber of Shipping regulates wear-and-tear allowances for both new and second-hand ships.

#### AMOUNT OF DEPRECIATION ALLOWANCE

The commissioners have the power of determining the depreciation allowance, but in practice the taxpayer usually comes to an

agreement with the inspector of taxes on the amount to be allowed at the time of computing his income-tax liability; if dissatisfied, he may appeal.

The capital cost of the plant and machinery is frequently taken as the basis on which a percentage is allowed for depreciation. There is found in appendix II hereto a list of the percentages that have been agreed upon between trade associations and the inland-revenue officials as applicable to machinery in their trades. If additions are made to the plant and machinery in any particular year, the value of the new material is added to the written-down value of the preceding year for the purpose of computing the allowance for the succeeding year.

Where depreciation cannot be offset against an assessment because the wear-and-tear allowance exceeds the profits liable to assessment, it may be carried forward, as a rule, until extinguished in assessments of subsequent years.

#### RENEWAL OF PLANT AND MACHINERY

The annual allowance in respect of depreciation is deemed to take the place of an allowance for the cost of renewal of plant and machinery in that year. Consequently, the taxpayer can charge the actual cost of renewing plant and machinery as a business expense only when he has made no claim for wear and tear. As cost of renewal the authorities allow the net cost of replacement of an article similar in all respects to the one replaced, less the amount received from the sale of the replaced asset. Where the new object is superior to the one replaced, a part of the cost of the former representing the improvement will be disallowed.

The ordinary cost of repairs and upkeep of plant and machinery is considered independently of the question of depreciation and renewals and is allowed as an ordinary business expenditure. Anything in the nature of a capital expenditure will be disallowed, however—as, for example, where an outlay is made for alterations, improvements, or additions to the plant and machinery.

If a trade association or a considerable group of taxpayers engaged in any particular trade or business wish to secure an alteration of the amount allowed for wear and tear in respect to certain machinery, they may apply to the commissioners of inland revenue, who in turn, if they deem the application worthy of consideration, must refer it to a board of referees appointed by the treasury, which will consider the application and fix the amount of the allowance. This procedure, however, has never been applied in practice.

#### OBSOLESCENCE OF PLANT AND MACHINERY

The cost of replacing any plant or machinery which has become obsolete is allowed as an expense (rule 7, rules applicable to cases I and II, schedule D). In estimating the profits or gains of a business the taxpayer may deduct as expenses incurred in any year "so much of any amount expended in that year in replacing plant or machinery which has become obsolete as is equivalent to the cost of the plant or machinery replaced after deducting from that cost the total amount of allowances which have at any time been

made, in estimating profits or gains as aforesaid on account of the wear and tear of that plant and machinery, and any sum realized by the sale of that machinery or plant."

This section is intended to cover the replacing of out-of-date machinery by the improved types necessary to effect economies or to compete efficiently in production and does not appear to refer to worn-out machinery.

## PROCEDURE IN ASSESSMENT AND COLLECTION

### PROCEDURE IN ASSESSMENT

Soon after the 5th of April each taxpayer is supplied with return forms for schedules A, B, D, and E in the tax district where he carries on business or is employed, or, otherwise, at his residence. A taxpayer who is a director of several companies or has more than one employment or business will probably receive a return form for each kind of income, but he is obligated to submit only one return of total income and should give back the remaining forms with a reference to the return that has been filed.

Although the taxpayer is supposed to submit his return within three weeks after receipt of the blanks, he frequently is allowed an additional period, not exceeding two months in all. Taxpayers who are engaged in business, and particularly companies, occasionally (but by no means generally) supply with their return copies of their trading accounts, profit and loss account, and balance sheet. The taxpayer merely fills in the blank spaces in the return; the computation of the tax due is made by the authorities.

The summer months are taken up with the making of assessments. In October or November, the assessment has usually been completed, and in many cases is based on an agreement between the tax inspector and the taxpayer. A notice of assessment is then given to the taxpayer. If he does not submit a notice of appeal in three weeks, the assessment stands. The tax is then payable, in whole or in part according to the schedule, on January 1 following.

### PRESENT PRACTICE

Most assessments are nominally made by the general commissioners of the district through the assessors or by the additional commissioners in the case of schedule D assessments, but in practice the assessment is prepared by the inspector of the district in which the taxpayer is located.

If the inspector desires additional information, he usually requests the taxpayer or his accountant to come to his office. He has no right to visit the office of the taxpayer and inspect his books; but if he has reason to believe that the return is fraudulent in any manner he may get at the books indirectly by causing a high assessment to be made, against which the taxpayer will appeal to either the general or special commissioners. In order to satisfy either body of his actual liability, the taxpayer will probably find it necessary to submit his full accounts. In *T. Haythornthwaite & Sons, Ltd. v. Kelly*, the court of appeal, January 24, 1927, it was held, however, that even the commissioners can not require the submission of the personal bank books of the directors of a private company.

The inspector of a district may make additional assessments within 6 years if it is discovered that the liability of the taxpayer has been insufficiently assessed for any particular year. The inland-revenue commissioners may reopen a case if they have reason to believe an inspector has made a mistake in determining a taxpayer's liability, and if they find an insufficiency they have the power to move the general commissioners to make an additional assessment.

#### SUGGESTED REVISION

The royal commission appointed to study the income tax—from whose report quotations have already been given—recommended that the assessing authorities “should have power to require the production of accounts in support of a return when accounts are in existence or books have been regularly kept. The accounts should be fully certified by the taxpayer, and should include both profit and loss accounts and balance sheets. If the accounts have been audited, they should be certified by the auditor as well as by the taxpayer.”

The recommendation is also made that the assessing authorities should have power to call for further information and, subject to the taxpayer's right to appeal to the special commissioners, to direct the production and examination of the original books of accounts, including stock sheets, belonging to the taxpayer; also, that banks should be required to inform the tax inspectors whether or not any particular person has an account with them. Furthermore, the assessing authorities should have power to examine books and documents in the hands of paying agents in connection with the assessment of foreign dividends and remittances.

#### ASSESSMENT OF HUSBAND AND WIFE

The income of a married woman living with her husband in Great Britain is treated as the income of her husband, the latter paying the tax on the aggregate income insofar as the tax is not collected at source. Either husband or wife may apply for a separate assessment and pay the tax separately, but the Government does not forego its right to hold the husband ultimately responsible for the wife's tax. The separate assessment does not reduce the total amount of tax payable by both husband and wife, since their incomes are considered jointly for purposes of the graduation of the tax. The only effect is to divide the tax between them in approximate proportion to their respective incomes.

Application for separate assessments on the husband and the wife must be made by the husband or the wife before July 6 in any year of assessment for which the application is made. If persons marry during the year of assessment, an application for separate assessment regarding that year should be made before July 6 in the following year. The authorities may request separate statements of income from both husband and wife and, in addition, a statement of the total combined income.

The total amount of relief given husband and wife may not exceed the amount allowed if a single assessment were made. Earned-income relief is granted separately in the assessments on earned income of the husband and wife. Personal and family allowances

are taken in proportion to their respective assessable incomes. Life-  
insurance relief is granted to the spouse by whom the premiums are  
paid.

#### MINOR'S INCOME—TRUST FUNDS

The tax is imposed in the usual manner on a child having income  
in its own right. If the child is a minor and has a legal guardian  
who receives income on the minor's behalf, the latter makes the  
return, pays tax, and may also claim repayment for the minor. If  
the minor has no legal guardian receiving income on his behalf, he  
may be assessed in the usual way.

If a minor has an absolute interest in income which accumulates  
in his favor under a trust, deed, or other agreement, it is possible  
to make repayment claims in his behalf year by year, in respect of  
the income of each year. The minor is entitled, in this connection,  
to the ordinary personal allowance and the reduced rate.

Where a minor has a contingent interest, the trustees may make  
claims in his behalf based on expenditure for maintenance. When  
at maturity the contingent interest becomes an absolute interest,  
claims may be submitted for the balance of tax repayable in respect  
of personal and reduced rate reliefs.

In respect of income subject to direct assessment, trusts are treated  
similarly to corporate bodies. The full standard rate is imposed on  
them. When the income is paid over to the beneficiaries, the trustees  
deduct the standard rate. Adult beneficiaries make their own claim  
for repayment of personal, family, and reduced-rate reliefs. If  
beneficiaries are exempt through nonresidence, the trustees are not  
chargeable with tax.

#### TIME OF PAYMENT

As a general rule, income tax under schedules A, B, D, and E is  
due and payable on or before January 1 in the year of assessment.  
An additional assessment to tax signed after that date is payable on  
the day after the date of signature. There are certain exceptions to  
this rule:

1. Tax is payable in two equal installments, the first on or before  
January 1 in the year of assessment and the second on or before the  
following July 1, in the case of—

(a) Schedule A assessments. Since 1918, tax under this head  
has been paid by the tenant into the exchequer in two installments,  
on January 1 and July 1, and deducted by him from the next pay-  
ment of rent to the landlord. The income tax having fallen from  
5 shillings to 4 shillings in the pound, the need for allowing the  
tenant two installments has passed, and the finance act, 1927 (sec.  
21), provides for a reversion to the pre-1918 practice of collecting  
the income tax under schedule A in one installment payable Jan-  
uary 1, beginning 1928.

(b) Schedule B assessments, on lands occupied for husbandry  
only.

(c) Schedule D assessments, on any individual or firm in re-  
spect of a business or profession.

(d) Schedule E assessments, in respect to most employments:  
but, in the case of wages, the taxpayer may arrange with the col-



lector for payment to be spread over 13 weeks in each half year, provided income-tax stamps, which can be purchased at the post office, are affixed weekly to a special card which the collector will supply for the purpose.

2. Tax is payable quarterly, on or before the 20th day of June, September, December, and March, in the case of railway companies in England and Ireland.

3. Tax is deducted at source in the case of—

(a) Schedule C, income paid out of any public revenue.

(b) Schedule D, foreign dividends, etc., the tax being remitted to the treasury shortly after being deducted from such income. In the case of dividends paid by a British corporation, the corporation deducts the standard rate of tax, but merely to transfer a proportionate part of its tax to the shareholder. The tax has already been collected by the Government by means of the direct assessment of the total profits of the company.

(c) Schedule E, employment under the Government.

#### PROCEDURE IN COLLECTION

The principal method of collecting the British income tax is by deduction at source, the payer of the income being authorized to deduct the standard rate of tax from the payment made to the ultimate proprietor. The tax is recovered from the payer through requiring him to include such income in his own assessment. For example, a limited company has to pay the standard rate of tax on the whole of its profits, irrespective of their destination. It may recoup itself, however, by deducting the standard rate from such amounts of its profits as are distributed as dividends or paid out as interest on loans or debentures.

Similarly, the lessee of lands or buildings pays tax on his entire income without any allowance for the rent. When he pays rent to his landlord, however, he deducts the standard rate and thus reimburses himself. The landlord, in turn, is assessed on his entire income without any allowance in respect of interest on a mortgage or a ground rent, but deducts tax when these charges are paid. In other cases—for example, the paying agent in the United Kingdom for dividends and interest of dominion and foreign companies—the payer merely serves as collecting agent for the Crown and turns over to the treasury the amounts deducted.

#### INCOME SUBJECT TO TAX AT SOURCE

The principal classes of income subject to taxation at source are:

*Schedule A.*—In general, rents in Great Britain and all ground rents, lease rents, head rents, feu duties, and similar income derived from immovable property in the United Kingdom; mortgage and other interest secured on such property; mineral royalties.

*Schedule C.*—Income from British, dominion, and foreign government securities.

*Schedule D.*—Dividends, debenture and other interest paid by limited-liability companies; interest and dividends paid by dominion and foreign companies through agents in the United Kingdom; coupons for dividends payable abroad which are realized through

a banker or coupon dealer in the United Kingdom; patent royalties; annual interest and annuities payable under contracts.

Copyright royalties, except for cinematograph productions, when paid to an owner whose usual place of abode is not within the United Kingdom, will be taxed by deduction. The payer delivers the amount thus collected to the revenue authorities (sec. 25, Finance Act of 1927). As a rule, such income is subject to direct assessment in the hands of the recipient.

*Schedule E.*—Salaries of officers in the service of the Government (civil service, army, navy, etc.).

The full standard rate of tax is deducted.

#### INCOME SUBJECT TO DIRECT ASSESSMENT

The method of collecting tax depends upon whether the person assessed is the ultimate proprietor. If the person charged is not the ultimate proprietor, the tax is collected by means of deduction at the source. If he is the ultimate proprietor the tax is collected from him by direct assessment. Collection is made direct on:

(a) Trading profits of individuals, whether trading singly or as partners.

(b) Trading profits of limited-liability companies.

(c) Income from professions and most employments.

(d) Profits from the occupation of land.

(e) Income from dominion and foreign securities and possessions not paid through agents in the United Kingdom.

(f) Interest other than annual, discounts, etc.

As previously indicated, the full standard rate of tax is deducted when collection is made at the source. When the tax is collected directly the various reliefs are deducted, and the first £225 of the resulting "taxable income" is subject to but one half the standard rate; the balance pays the full rate. Consequently the recipient of income that has been taxed at source may have borne more tax by deduction than he is liable to pay. The excess paid may be set off against the tax payable by him in direct assessments, or, if he has no income subject to direct assessment, the taxpayer may claim repayment of the excess.

#### REFUNDS

The standard rate of the British tax being collected wherever possible at the source, it frequently happens that in the case of recipients of small incomes, especially those deriving the major part of their revenue from investments in shares and debentures, more tax has been collected (through deduction at source) than is actually due because of the personal allowances of the recipient. In such event the recipient files a claim for refund on a special form, and payment follows quickly, frequently within 10 days.

Repayment is authorized in numerous other instances, as where (a) tax has been collected at a higher rate than is due; (b) the lessor of plant and machinery is entitled to an allowance for wear and tear; (c) a nonresident has suffered deduction of tax from income arising from foreign securities; (d) a loss has been incurred or a business has been discontinued in the year of assessment; (e) duty has been

paid on an assessment subsequently discharged or reduced on appeal; (f) interest has been paid out of taxed profits to bankers without recouping tax from the amount paid (sec. 36 (1), Income Tax Act of 1918).

#### GENERAL PRINCIPLES

There are certain general principles governing claims for repayment. As a rule, money paid under a mistake of law is irrecoverable, and money paid under a mistake of fact is recoverable.<sup>45</sup> The line between mistakes of law and mistakes of fact is not clearly defined in equity,<sup>47</sup> but to exclude the right to relief the mistake must be one of general law.<sup>48</sup> Although in certain cases courts of equity granted relief even if the mistake were one of law,<sup>49</sup> these were cases in which the court thought the circumstances rendered refusal of relief inequitable.

Under no circumstances is money refunded when paid originally under a view of the law then prevailing which subsequently is found to be wrong as the result of a court decision. In Great Britain, only court decisions constitute binding and conclusive interpretations of law, and if a decision is rendered that is contrary to the previous interpretations of the inland revenue, it has no retroactive effect on any case other than the one involved.

The inspectors usually have authority to handle claims for repayment and to order refunds, but the inland revenue officials in London sometimes instruct the inspectors to refer claims for refunds to them.

Ordinarily a taxpayer who wishes to contest an assessment must give notice in writing to the inspector within three weeks after receiving a notice of assessment. If he does not appeal, the assessment becomes final and conclusive, subject to the provisions of section 24 of the Finance Act of 1923, which provides that where an assessment is excessive by reason of some error or mistake in the return made by the taxpayer for the purposes of the assessment, the excess may be recovered on application to the commissioners of inland revenue within 6 years.

#### APPEALS

Within 21 days after receiving a notice of assessment for the standard rate of tax, the taxpayer may lodge a notice of appeal to the general commissioners or, in the case of schedule D and schedule E assessments, the special commissioners. In practice he chooses the former if the nature of the dispute is one that can best be settled by business men. If technical or highly complicated points are involved, it is usually considered preferable to appeal to the special commissioners. Either body is the final authority on questions of fact, and the taxpayer can appeal from their decision to the courts only on a point of law. The taxpayer can be represented by an

<sup>45</sup> *Midland-Grand Western Railway of Ireland v. Johnson* [1858], 6 H.L.Cas. 798; *Stockley v. Stockley* [1812], 1 Ves. & B. 23; *Cockrell v. Cholmeley* [1830], 1 Bus. & M. 418; *Marshall v. Colett* [1835], 1 Y. & C. (Ex.) 232.

<sup>46</sup> *Daniel v. Sinclair* [1881], 6 A.C. 181.

<sup>47</sup> *Cooper v. Pathe* [1867], L.R. 170, 2 H.L. 149; *Beauchamp v. Wain* [1873], L.R. 6;

H.L. 223.

<sup>48</sup> *Clyson v. Cockburn* [1834], 3 My. & K. 99; *Watson v. Marston* [1853], 4 DeG. M. & G. 230.

authorized agent such as a barrister, solicitor, or a member of an incorporated body of accountants before either body; the Crown is represented by the inspector of taxes.

As a rule, when a taxpayer appeals, the disputed matter is first investigated by the inspector, who reaches an agreement with the taxpayer on as many points as possible. If the taxpayer or the inspector wishes to appeal from the decision of either the general or the special commissioners, he should immediately express his dissatisfaction with the decision because of an error in law and intimate a demand, within 20 days, for the opinion of the High Court of England or the Court of Session in Scotland. If the taxpayer has elected to be assessed by the special commissioners, he has the right to appeal against their decision in any particular, whether of fact or of law, to the commissioners of inland revenue. This privilege, however, is seldom if ever used.

From the High Court in England, the case may be carried to the Court of Appeals and then to the House of Lords, the judgment of which is final.

#### TIME LIMIT

Section 27 of the Finance Act of 1926 extended the time limit from three years to six years in respect of claims for relief where bona fide errors or mistakes in returns have been made. This extension applies only to assessments made after April 5, 1923. This clause does not affect the rights of the revenue authorities to enforce penalties in respect of fraudulent returns or cases where income has been insufficiently returned within the obvious knowledge of the taxpayer.

#### GROUND

The grounds of appeal must be stated in a notice of appeal against an assessment made under schedule D. The commissioners may, nevertheless, in their discretion hear the appeal on any ground that has not been unreasonably or willfully omitted from the notice of appeal (sec. 25, Finance Act, of 1926).

#### PAYMENT OF APPEALED ASSESSMENTS

Prior to the passage of the Finance Act of 1926, an assessment made under schedule D could not become final until the expiration of the time for hearing appeals had expired and until any appeal against it had been finally determined. Such an assessment may now be allowed and confirmed even though the appeal has been adjourned or postponed beyond the time limit.

Pending the determination of the appeal, however, only such part of the tax as is not in dispute is to be collected. An adjustment is made when the appeal is finally decided.

A nonresident has the right to appeal to the special commissioners.

#### PENALTIES

Besides having the right to make an estimative assessment if no return is filed, or an additional assessment or surcharge if the return filed is insufficient, British tax officials, under the divers enactments, have recourse to numerous penalties. Some of these penalties seem

to cover the same ground in different ways, and as the courts have made no attempt to reconcile them, the election of the appropriate penalty is apparently within the discretion of the revenue authorities.<sup>50</sup>

#### DEFAULT IN FILING RETURN

The penalty for neglecting or refusing to make a true return within the time limit specified in a general or particular notice is a sum not exceeding £20 and treble the tax chargeable (sec. 23 (2), Finance Act of 1923). Failure, without reasonable excuse, to make a return for surtax purposes when requested by the commissioners or to give notice of liability to surtax is subject to a penalty not exceeding £50 and, after judgment, to a further penalty of like amount for every day during which the default continues (sec. 44 (3), Finance Act of 1927).

Employers are liable to a penalty for failure to deliver a list of the names, places of residence, and remuneration of all persons employed by them. The secretary or other officer acting as secretary of a corporate body who does not conform to this requirement also will be liable to the same penalty. The penalty may be an amount not exceeding £20 and treble the tax due (sec. 23 (2), Finance Act of 1923).

Where a person is making a return on his own behalf, he can claim an extension only if he has delivered the best return possible within the prescribed period (sec. 140 (4), Income Tax Act of 1918). If a person is required to make a return on behalf of another, he may obtain further time from the general commissioners if he satisfies them that he is unable to deliver a perfect return within the proper period (sec. 107 (3), Income Tax Act of 1918).

A person who has failed to submit his return in the period prescribed may deliver it at any time before proceedings for recovery of the penalty have been commenced, and no action will be taken against him (sec. 140 (2), Income Tax Act of 1918).

#### FALSE OR FRAUDULENT RETURN

A person making a false statement or representation in a return is liable not only to a penalty of £20 together with treble the tax chargeable, but also to 6 months' hard labor on summary conviction (sec. 227, Income Tax Act of 1918). The penalty for inducing or aiding another person to make a fraudulent return is £500 (sec. 23 (3), Finance Act of 1923).

If in making any claim for allowance or deduction the taxpayer fraudulently conceals or untruly declares any particulars, the penalty is £20 and treble the tax chargeable in respect of all the sources of income. The penalty for aiding and abetting in making a false claim is £500 (sec. 30, Income Tax Act of 1918). Where a person knowingly makes a false statement or false representation for the purpose of obtaining an allowance, reduction, rebate, or repayment in respect of income tax either for himself or for another, or in any return made in regard to income tax, he will be liable, on summary conviction, to imprisonment for a term not exceeding six months with hard labor (sec. 227, Income Tax Act of 1918).

<sup>50</sup> Konstan, p. 309.

If after submitting a return the taxpayer discovers an error or omission therein, he may rectify it by submitting an additional return and thus free himself from liability to any proceeding that might have been brought against him (sec. 140 (1), Income Tax Act of 1918).

#### LIMITATIONS ON PENALTY

Proceedings for the recovery of a fine or penalty may be commenced at any time within 6 years after the date on which it was incurred.

The courts have no discretion to alter the amount of a penalty, but the revenue authorities have discretion to mitigate penalties and to stay proceedings.

#### THE SURTAX

The surtax is due and payable as a deferred installment of the income tax on or before the 1st day of January next after the end of the year of assessment for which it is payable, except that surtax, or any part of any surtax, included in an assessment which is signed or allowed on or after the 1st day of January shall be deemed to be due and payable on the day next after the day on which the assessment is signed and allowed. Surtax is assessed and charged by the special commissioners in one sum. The special commissioners may make an assessment or an additional assessment in respect of surtax during any time within the year of assessment or within the period allowed by the income tax acts for the making of assessments and additional assessments; when the assessment for the income tax is final, it is also final for the purpose of the surtax for that year.

Relief from the United Kingdom income tax in respect of the dominion income tax is not taken into account in computing surtax, although such relief is given from income tax charged or chargeable at the standard rate.

Assessments of surtax are subject to appeal to the special commissioners, except in the case of the income fixed for income-tax purposes which, once having been fixed, is considered as final and conclusive; the provisions of the income tax acts relating (*a*) to persons who are to be chargeable with income tax at the standard rate and to assessments to such tax, (*b*) to appeal against such assessments, (*c*) to the collection and recovery of such tax, and (*d*) to cases to be stated for the opinion of the High Court, are to be applied to the charge, assessment, collection, and recovery of surtax, in so far as they are applicable.

When desired, and provided application is made, by either a husband or a wife, before the 6th of July in the year next following the year of assessment, in the manner and form prescribed by the commissioners, surtax for that year is assessed, charged, and recovered on the income of the husband and on the income of the wife as if they were not married, although the income of the husband and wife is treated as one in estimating the total income for the purposes of surtax. The amount of surtax payable in respect of the total income is then divided between the husband and wife in proportion to the amounts of their respective incomes, and the total amount payable may not be less than it would have been if separate returns had not been filed.

Notice may be served at any time calling upon the taxpayer to furnish a true and correct return, in the prescribed form, of all the sources of his income and of the amount derived from each source for the year preceding the year of assessment, the computation of income being made by reference to the year preceding the year of assessment and not by reference to any other year or period. Where a taxpayer is liable in any year of assessment to surtax on any part of his total income, he is required to give notice that he is liable to the special commissioners before the 30th day of September next following the end of that year. If a person fails to make a return when required, or if the special commissioners are not satisfied with the return made by him, they may assess the surtax according to the best of their judgment. If any person without reasonable excuse fails to make a return or give notice, he is liable to a penalty not to exceed £50, and if judgment has been given for that penalty, a further penalty of the same amount for every day during which the default continues may be imposed.

When the surtax has been assessed by the special commissioners, they must serve notice on the taxpayer of the amount of this assessment; any such notice may be served upon a taxpayer by letter addressed to the taxpayer's usual or last known place of abode. Surtax is assessed and charged at the office of the special commissioners in London, and appeals may be heard in London, Edinburgh, or Belfast, provided notice has been given by the taxpayer within 28 days from the date of the service of the notice of such assessment that he intends to appeal to the special commissioners against the assessment; such notice must specify the grounds of appeal.

Surtax should be paid to the Accountant General of Inland Revenue, Somerset House, London, W.C. 2.

## OTHER BRITISH TAXES

### STAMP DUTIES

Unless the instrument subject to stamp duty is written upon stamped paper, it must be properly stamped before the expiration of 30 days after it is first executed (or first received in the United Kingdom if executed outside the United Kingdom). However, because of the risk of loss in transit, transfers and other documents first executed in the United Kingdom and then sent abroad for completion may be presented for stamping within 30 days after their return to the United Kingdom.

### GENERAL EXEMPTIONS

Exempted from the incidence of stamp duties are:

1. Transfers of shares in the Government or parliamentary stocks or funds.
2. Instruments for the sale, transfer, or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel or any part interest, share, or property of or in any ship or vessel.
3. Instruments of apprenticeship, bonds, contracts, and agreements entered into in the United Kingdom for or relating to the service in any of the British Colonies or possessions abroad of any person as an

artificer, clerk, domestic servant, handicraftsman, mechanic, gardener, servant in husbandry, or laborer.

4. Testaments, testamentary instruments, and dispositions mortis causa in Scotland.

5. Bonds given to sheriffs or other persons in Ireland upon the replevy of any goods or chattels and assignments of such bonds.

6. Instruments made by, to, or with the commissioners of works for any purposes of the Act 15 and 16 Vict. c. 28.

7. Receipts given for or on account of salaries, pay, or wages or any like payment to the holder of an office or to an employee, or in respect of any pension, superannuation allowance, or other similar allowances.

In the event of reconstruction or amalgamation of companies an exemption is granted, under special conditions, in respect of instruments made for the purpose of transferring an undertaking or shares, or vesting the undertaking or shares in the transferee company (sec. 55, Finance Act of 1927).

#### METHOD OF IMPOSITION

At the present time stamp duties are imposed in one of several ways. In some instances the duty is collected by means of the impression of the stamp before execution, and in others after execution. Where it would be inconvenient to obtain an impressed stamp, the law allows the application of adhesive stamps. Where adhesive stamps are permitted, ordinary postage stamps may be used if the duty does not exceed 2s. 6d. There are also special inland-revenue stamps of 3, 4, and 5 shillings. Adhesive stamps must be used in the case of contract notes and foreign bills of exchange; special stamps for this purpose are obtainable at post offices. Stamps of any amount are obtainable also at the Stock-Exchange Stamp Office, 26 Austin Friars, London, E.C. 2.

Composition of the stamp duties payable on transfers of shares, stocks, and funded debt and on share warrants and stock certificates by way of a lump-sum payment may be arranged for by a corporation, company, or county council through agreement with the commissioners of inland revenue to pay, half yearly, a duty of 1 shilling percent on the nominal value of all shares or other securities or, if the shares are not fully paid up, on the amount that has been paid in. The rates payable in the case of a lump-sum composition for transfer stamp duty on stocks of British dominions to which the colonial stock acts apply, stocks of foreign governments inscribed at the Bank of England, and stocks of certain British protectorates are as follows, per £100: When the term of the loan does not exceed 20 years, the rate per £100 of the nominal value of the shares is 10s.; 20 to 40 years, 20s.; 40 to 60 years, 25s.; 60 to 100 years, 30s.; exceeding 100 years, 35s.

#### PENALTIES

Every person in the United Kingdom who assigns, transfers, or in any manner negotiates an instrument which is chargeable with duty and is not duly stamped incurs a fine of £20.

Foreign securities brought from abroad for conversion and exchanged by the banker operating the conversion for the older securi-



ties are not "assigned, transferred, or negotiated in the United Kingdom" within the meaning of this rule.

The secretary or other officer of a company charged with registering or entering in the books of the company any instrument liable to stamp duty must see that the instrument is properly stamped prior to making the entry, subject to a penalty of £10.

#### DUTIES ON SHARES, BONDS, SECURITIES, ETC.

Duties payable on shares, bonds, and other securities in the United Kingdom may be classified under four general heads:

1. Capital duty payable on the organization of a company in the United Kingdom, consisting of the *ad valorem* duty of 1 per cent and a graduated registration duty with a maximum of £50 on its nominal share capital.

2. Duty payable on issue of loan capital, 2s. 6d. for every £100 or fraction thereof to be secured (see "Loan capital" below).

3. Duties payable on the issue of "marketable securities", whether domestic (inclusive of those issued in representation of loan capital) or foreign. The rates vary according to the nature of the security. Registered bonds and debentures pay the same rate as loan capital, namely, 2s. 6d. per £100; bearer bonds are subject to a duty of 4s. for every £10 on being first assigned or negotiated in any manner in the United Kingdom; and foreign share certificates, including American, that pass by delivery in the United Kingdom are liable to a duty of 3d. for every £25 (see "Marketable securities", p. 116).

4. Duties on conveyances or transfers on sale or operating as voluntary dispositions *inter vivos* of stocks, shares, registered bonds, and debentures (see "Conveyance or transfer", p. 118).

No-par-value stock is little known in the English markets and no special reference is made to it in tax legislation or literature.

#### LOAN CAPITAL.

With regard to the tax on loan capital, section 8 of the Finance Act of 1899, provides:

1. Where any local authority, corporation, company, or body of persons formed or established in the United Kingdom proposes to issue any loan capital, it shall, before the issue thereof, deliver to the commissioners a statement of the amount proposed to be secured by the issue.

2. Subject to the provisions of this section, every such statement shall be charged with an *ad valorem* stamp duty of 2s. 6d. for every £100 and any fraction of £100 over any multiple of £100 of the amount proposed to be secured by the issue, and the amount of duty shall be a debt to Her Majesty.

3. The duty under this section shall not be charged to the extent to which it is shown to the satisfaction of the commissioners that the stamp duty payable in respect of a mortgage or marketable security has been paid on any trust deed or other document securing the loan capital proposed to be issued.

4. If any local authority, corporation, company, or body of persons neglect to deliver a statement, or fail to pay the duty in compliance with this section, that local authority, corporation, company, or body of persons shall be liable to pay Her Majesty, in addition to the duty, a sum equal to 10 per cent upon the amount of the duty and a like sum for every month after the first month during which the neglect or failure continues.

5. In this section the expression "loan capital" means any debenture stock, county stock, corporation stock, municipal stock, or funded debt, by whatever name known, or capital raised by any local authority, corporation, company, or body of persons formed or established in the United Kingdom, which

is borrowed or has the character of borrowed money, whether it is in the form of stock or in any other form, but does not include any county council or municipal corporation bills repayable not later than 12 months from their date or any overdraft at the bank or other loan raised for a merely temporary purpose for a period not exceeding 12 months, and the expression "local authority" includes any county council, municipal corporation, district council, dock trustees, harbor trustees, or other local body by whatever name called.

Section 10 of the Finance Act of 1907, provides:

1. Where it is shown to the satisfaction of the commissioners that the loan capital issued by any local authority, corporation, company, or body of persons, in respect of which a statement has, after the commencement of this act, been delivered to the commissioners under section 8 of the Finance Act, 1899, has been wholly or partly applied for the conversion or consolidation of then existing loan capital, that authority, corporation, company, or body of persons, as the case may be, shall be entitled to repayment in respect of the duty charged on the statement so delivered at the rate of 2 shillings for every £100 of the capital to which the statement relates which is so shown to have been applied for the purpose of the conversion or consolidation of then existing loan capital; but this section shall not apply to any duty payable in respect of a mortgage or marketable security which has been paid on any trust deed or other document securing the loan capital which has been issued.

2. If it is represented to the commissioners by any such local authority, corporation, company, or body of persons that loan capital about to be issued by them is to be applied, in whole or in part, for the purpose of the conversion or consolidation of the existing loan capital, the commissioners may postpone the time for the delivery of the statement and the payment of duty under section 8 of the Finance Act, 1899, until the capital has been issued or until such other time as the commissioners think fit for the purpose of enabling the payment and repayment of the duty to take place as one transaction.

With regard to the emission of American securities, it was recently held<sup>51</sup> that the delivery of a security issued in the United States to the agent of a person residing in the United Kingdom was made in the United States and therefore not liable to stamp duty. In another case new bonds were executed in the United States on the reconstruction of two non-English railway companies. The bondholders in England had deposited their bonds with an appointed agent in that country. The new bonds were sent to that agent to be exchanged for the old. It was held<sup>52</sup> that the bonds were not "issued" or "offered for subscription" in the United Kingdom.

#### MARKETABLE SECURITIES

"Marketable securities" include:

(a) A marketable security made or issued by or on behalf of any company or body of persons, corporate or unincorporate, formed or established in the United Kingdom, and

(b) A marketable security by or on behalf of any foreign state or government or foreign or colonial municipal body, corporation, or company (1) which is made or issued in the United Kingdom; or (2) which, though originally issued out of the United Kingdom, has been after August 6, 1885, or is in future offered for subscription, and given or delivered to a subscriber, in the United Kingdom; or (3) which, the interest thereon being payable in the United Kingdom, is assigned, transferred, or in any manner negotiated in the United Kingdom.

<sup>51</sup> *Chicago Ry. Terminal Elevator Co. v. Inland Revenue Commissioners*, 75 L.T. 572, 45 W.R. 242.

<sup>52</sup> (a) *Brown and (b) Gordon v. Inland Revenue Commissioners*, 84 L.T. 71.

*Registered bonds and debentures.*—Registered bonds and debentures are liable to the same duty applying to mortgages, bonds, debentures, and covenants (except a marketable security otherwise specially charged with duty) which are the only or principal or primary security (other than an equitable mortgage) for the payment or repayment of money. The rates are as follows:

	s.	d.
Not exceeding £10	3	
Exceeding £10 and not exceeding £25	8	
Exceeding £25 and not exceeding £50	1	3
Exceeding £50 and not exceeding £100	2	6
Exceeding £100 and not exceeding £150	3	9
Exceeding £150 and not exceeding £200	5	0
Exceeding £200 and not exceeding £250	6	3
Exceeding £250 and not exceeding £300	7	6
For every £100 or fraction in excess of £300	2	6

Reference should be made to the general table of stamp duties beginning on p. 119.

*Bearer bonds.*—Bearer bonds bearing date or signed after August 6, 1885, and repayable at any time exceeding 3 years of date when duty is payable are liable to a duty of 4 shillings for every £10 or fraction thereof. Bearer bonds dated or signed after June 3, 1862, but before or on August 6, 1885, are liable to a duty of 10 shillings percent (four times that set out in the schedule under "Mortgage, bond, debenture, covenant, etc.", p. 128). All other bearer bonds (other than colonial government or colonial municipal bonds) to which the above-mentioned provisions do not apply are subject to the duty of 4 shillings for every £10 on being first assigned, transferred, or in any manner negotiated in the United Kingdom.

*Bond repayable at a premium.*—If bonds, mortgages, etc., are repayable at a premium, the amount of the premium must be included with the nominal value in order to fix the amount of stamp duty chargeable, except where the payment of a premium depends upon the exercise of an option by the borrower.

*Domestic bearer share warrant or stock certificate.*—Where a company formed or established in the United Kingdom issues warrants or stock certificates to bearer, the duty payable is an amount equal to three times the amount of the ad valorem stamp duty which would be chargeable on a deed transferring the shares of stock specified in the warrant or certificate if the consideration for the transfer were the nominal value of such shares.

*Foreign bearer share warrant or stock certificate.*—Share warrants and stock certificates to bearer of any company or body of persons formed or established out of the United Kingdom are chargeable with duty at the rate of 4s. for every £10 of the nominal value of the share or stock to which the warrant or certificate relates on being assigned, transferred, or in any manner negotiated in the United Kingdom.

*American share certificates passing by delivery.*—American and foreign share certificates, etc., passing by delivery are chargeable at the rate of 3d. for every £25 or fraction thereof of the nominal value of the share or stock on being assigned, transferred, or negotiated in any manner in the United Kingdom.

## CONVEYANCE OR TRANSFER

On conveyances or transfers on sale or operating as voluntary dispositions inter vivos of stocks, shares, registered bonds, and debentures (being marketable securities) the stamp duty payable is as follows:

	Shilling
Where the purchase money does not exceed £5.....	1
Where the purchase money does not exceed £10.....	2
Where the purchase money does not exceed £15.....	3
Where the purchase money does not exceed £20.....	4
Where the purchase money does not exceed £25.....	5
For every additional £25 up to £300.....	5
If exceeding £300, for every additional £50 or fraction.....	10

On any Bank of England stock the tax is 15s. 6d. on transfer by sale or by way of voluntary disposition inter vivos, 7s. 9d. in any other case.

In the case of any stock of the Government of Canada inscribed in books kept in the United Kingdom or of any colonial stock to which the Colonial Stock Act of 1877 applies, the stamp duty on the transfer on sale or by way of voluntary disposition inter vivos is 5s. per £100, in any other case 2s. 6d. per £100, the percentage being calculated on the nominal amount of stock transferred.

As to transfers of stocks and shares in colonial and foreign companies, a conveyance on sale of property situated in the United Kingdom or abroad executed in the United Kingdom is liable to stamp duty.<sup>68</sup> An unstamped or insufficiently stamped transfer of any property does not constitute a legal delivery.

A transfer on sale to a dealer or his nominee in respect of a transaction carried out by him in the ordinary course of his business as such dealer is charged with a duty of 10s. under section 42, Finance Act of 1920. Such a transfer must bear, in addition to the stamp denoting the duty, an impressed stamp (known as the supplementary stamp) indicating that it has been stamped under the provisions of that section.

Gifts inter vivos are charged with the same stamp duty as conveyances or transfers on sale, with the substitution in each case of the value of the property conveyed or transferred for the amount or value of the consideration for the sale (sec. 74, Finance Act of 1910). Therefore, in a gift of stock or marketable securities the transfer must be stamped with ad valorem conveyance duty on the market value of the stock.

## CONTRACT NOTES

"Contract note" means the note sent by a broker or agent to his principal advising the principal, or the vendor or purchaser, as the case may be, of the sale or purchase of any stock or marketable security. The expression does not include a note sent by a broker or agent to his principal where the principal is himself acting as broker or agent for a principal and is himself either a member of the stock exchange in the United Kingdom or a person who bona fide carries on the business of a stock broker in the United Kingdom and is registered as such in the list of stock brokers kept by the commissioners of inland revenue.

<sup>68</sup> *Wright v. Inland Revenue Commissioners*, 25 L.J.R.Exch. 49, 11 Exch.R. 48.

A duty is levied on contract notes for the sale or purchase of any stock or marketable security, based on the value of the stock, as follows:

	s.	d.
When the value is £5 to £100.....	6	
When the value is £100 to £500.....	1	0
When the value is £500 to £1,000.....	2	0
When the value is £1,000 to £1,500.....	3	0
When the value is £1,500 to £2,500.....	4	0
When the value is £2,500 to £5,000.....	6	0
When the value is £5,000 to £7,500.....	8	0
When the value is £7,500 to £10,000.....	10	0
When the value is £10,000 to £12,500.....	12	0
When the value is £12,500 to £15,000.....	14	0
When the value is £15,000 to £17,500.....	16	0
When the value is £17,500 to £20,000.....	18	0
When the value is above £20,000.....	20	0

A special adhesive stamp is employed in taxing contract notes. The duty is recoverable as part of the brokerage charge.

Continuation notes are chargeable on only one of the two transactions embraced. Unless the option is a double one, option-contract notes are subject to half of the above rates. The same is true of contract notes following a duly stamped option-contract note.

PRINCIPAL STAMP DUTIES

In the following schedule appear the principal stamp duties (exclusive of death duties) payable in the United Kingdom as given in the report of the inland revenue commissioners for the year ended March 31, 1922, corrected to January 1928.

[Note.—In the case of instruments marked \* the duty must be denoted by adhesive stamps, and in the cases marked † may be so denoted.]

	£	s.	d.
Admission of any person—			
In England—to the degree of barrister-at-law.....	50	0	0
If previously admitted as such in Ireland.....	10	0	0
If previously admitted as an advocate in Scotland.....			Nil.
In Ireland—to the degree of barrister-at-law.....	50	0	0
If previously admitted as such in England, or as an advocate in Scotland.....	10	0	0
In Scotland—as an advocate.....	50	0	0
If previously admitted as a barrister-at-law in Ireland.....	10	0	0
If previously admitted as a barrister-at-law in England.....			Nil.
To be a member of either of the four Inns of Court in England or a student of the Society of King's Inns in Dublin.....	25	0	0
As a solicitor of the Supreme Court in England or of the Court of Judicature in Ireland.....	25	0	0
In Scotland—			
(1) As a law agent to practice before the Court of Session, or as writer to the signet:			
If he has previously paid the sum of £60 for duty upon his articles of clerkship.....	25	0	0
If he has been previously duly admitted as a law agent to practice before a sheriff court.....	30	0	0
In any other case.....	85	0	0
(2) As a law agent to practice before a sheriff court:			
If has previously paid the sum of 2s. 6d. for duty upon his articles of clerkship.....	54	17	6
In any other case.....	55	0	0
As a fellow of the College of Physicians in England, Scotland, or Ireland.....	25	0	0

	£	s.	d.
Admission of any person—Continued			
In England or Ireland—			
As a Burgess, or into any corporation, or company, in any city, borough, or town corporate—			
In respect of birth, apprenticeship, or marriage, or, in Ireland, in respect of being engaged in any trade, mystery, or handicraft	1	0	0
Upon any other ground	3	0	0
In Scotland—			
As a Burgess, or into any corporation or company in any burgh		5	0
Advocate. See Admission.			
Affidavit and statutory declaration	2	6	
†Agreement or contract made pursuant to the highways acts relating to the making, maintenance, or repair of highways		6	
†Agreement or memorandum of agreement made in England or Ireland under hand only, or made in Scotland without clause of registration, and not otherwise specifically charged		6	
Agreement for a lease or tack, or for any letting. See Lease or tack.			
Agreement (under hand) on deposit of deeds. See Mortgage (equitable).			
Agreement for sale of property, chargeable, with certain exceptions, under section 59 of the Stamp Act, 1891, with the same duty as an actual conveyance on sale (q.v.).			
Allotment. See Letter of allotment.			
Appointment of a new trustee and appointment in execution of a special power of any property, etc., by any instrument not being a will		10	0
Appraisalment or valuation where the amount of the appraisalment—			
Does not exceed £5		3	
Exceeds £5 and does not exceed £10		6	
Exceeds £10 and does not exceed £20	1	0	
Exceeds £20 and does not exceed £30	1	6	
Exceeds £30 and does not exceed £40	2	0	
Exceeds £40 and does not exceed £50	2	6	
Exceeds £50 and does not exceed £100	5	0	
Exceeds £100 and does not exceed £200	10	0	
Exceeds £200 and does not exceed £500	15	0	
Exceeds £500	1	0	0
Apprenticeship, instrument of		2	6
Articles of association of a company under the companies (consolidation) act, 1908 (8 Edw. 7, c. 69), sec. 12, to be stamped as a deed		10	0
Articles of clerkship whereby any person becomes bound to serve as a clerk in order to his admission:			
As a solicitor of the Supreme Court in England or of the Court of Judicature in Ireland	80	0	0
As a law agent to practice before the Court of Sessions or as a writer to the signet in Scotland	60	0	0
As a law agent to practice before a sheriff court in Scotland		2	6
Whereby any person having been before bound by duly stamped articles and not having completed his service becomes bound afresh for the same purpose:			
Where the duty upon the previous articles was 2s. 6d.		2	6
In any other case		10	0
Assignment or assignation:			
By way of security or of any security. See Mortgage, etc.			
Upon a sale or by way of voluntary disposition inter vivos or otherwise. See Conveyance.			
Attorney, letter or power of. See Letter of attorney.			
Warrant of. See Warrant of attorney.			
Award in England or Ireland and award or decret arbitral in Scotland		10	0
Bank note for money—			
Not exceeding £1		5	
Exceeding £1 and not exceeding £2		10	
Exceeding £2 and not exceeding £5		1	3

	s.	d.
Bank note for money—Continued		
Exceeding £5 and not exceeding £10.....	1	9
Exceeding £10 and not exceeding £20.....	2	0
Exceeding £20 and not exceeding £30.....	3	0
Exceeding £30 and not exceeding £50.....	5	0
Exceeding £50 and not exceeding £100.....	8	6
Bankers' composition:		
Bank of England—on each £1,000,000 of the average amount of value of the bank post bills in circulation (the minimum average circulation on which composition is payable is £500,000).....	3,500	0 0
Other bankers, for every £100 or fractional part of £100 of the average amount or value of notes and bills in circulation during every half year—		
England and Ireland.....	3	6
Scotland—		
Notes.....	4	2
Bills.....	3	6
Barrister at law. See Admission.		
Bearer, instrument to. See Instrument to bearer and Share warrant or stock certificate to bearer.		
†Bill of exchange (inland or foreign) payable on demand or at sight or on presentation or within 3 days after date or sight.....		2
Bill of exchange (inland or foreign) of any other kind whatsoever (except a bank note) and promissory note of any kind whatsoever (except a bank note) drawn, or expressed to be payable, in the United Kingdom:		
Where the amount or value of the money for which the bill or note is drawn or made—		
Does not exceed £10.....		2
Exceeds £10 and does not exceed £25.....		3
Exceeds £25 and does not exceed £50.....		6
Exceeds £50 and does not exceed £75.....		9
Exceeds £75 and does not exceed £100.....	1	0
Exceeds £100, for every £100, and also for any fractional part of £100, of such amount on value.....	1	0
[*NOTE.—The ad valorem duties upon bills of exchange and promissory notes drawn or made out of the United Kingdom must be denoted by adhesive stamps.]		
*Bill of exchange (foreign), drawn and expressed to be payable out of the United Kingdom, and actually paid or endorsed, or in any manner negotiated, in the United Kingdom, where the amount—		
Does not exceed £10.....		2
Exceeds £10 and does not exceed £25.....		3
Exceeds £25 and does not exceed £100.....		6
Exceeds £100, for every £100, and also for any fractional part of £100.....		6
Bill of lading of, or for, any goods or merchandise, or effects to be exported or carried coastwise.....		6
Bill of sale:		
Absolute. See Conveyance on sale.		
By way of security. See Mortgage, etc.		
Bond for securing the payment or repayment of money or the transfer or retransfer of stock. See Mortgage, etc., and Marketable security.		
Bond in relation to any annuity upon the original creation and sale thereof. See Conveyance on sale.		
Bond, covenant, or instrument of any kind whatsoever:		
(1) Being the only or principal or primary security for any annuity (except upon the original creation thereof by way of sale or security and except a superannuation annuity) or for any sum or sums of money at stated periods, not being		

Bond, covenant, or instrument of any kind whatsoever—Continued	s.	d.
Interest for any principal sum secured by a duly stamped instrument, nor rent reserved by a lease or tack:		
For a definite and certain period so that the total amount to be ultimately payable can be ascertained, the same ad valorem duty as a bond or covenant for such total amount. See Mortgage, etc.		
For the term of life or any other indefinite period:		
For every £5, and also for any fractional part of £5, of the annuity or sum periodically payable.....	2	6
(2) Being a collateral, or auxillary, or additional or substituted security, for any of the above-mentioned purposes where the principal or primary instrument is duly stamped:		
Where the total amount to be ultimately payable can be ascertained, the same ad valorem duty as a bond or covenant of the same kind for such total amount.		
In any other case:		
For every £5, and also for any fractional part of £5, of the annuity or sum periodically payable.....		6
(3) Being a grant or contract or payment of a superannuation annuity; that is to say, a deferred life annuity granted or secured to any person in consideration of annual premiums payable until he attains a specified age and so as to commence on his attaining that age:		
For every £5, and also for any fractional part of £5, of the annuity.....		6
Bond given pursuant to the directions of any act, or of the commissioners of customs, or any of their officers, for or in respect of any of the duties of excise or customs, or for preventing frauds or evasions thereof, or for any other matter or thing relating thereto:		
Where the penalty of the bond does not exceed £150, the same ad valorem duty as a bond for the amount of the penalty.		
In any other case.....		5 0
Bond on obtaining letters of administration in England or Ireland, or a confirmation of testament in Scotland.....		5 0
Bond of any kind whatsoever not specifically charged with any duty:		
Where the amount limited to be recoverable does not exceed £300, the same ad valorem duty as a bond for the amount limited.		
In any other case.....		10 0
Capital duty (limited partnerships):		
Statement of the amount contributed by a limited partner and statement of any increase in that amount:		
For every £100 or fractional part of £100 of original or additional capital so contributed.....	1	0 0
Capital duty (loan). See Loan capital duty.		
Capital duty (share):		
Companies and corporations:		
For every £100 or fractional part of £100 of the nominal share capital or of any increase thereof.....	1	0 0
Certificate of birth, etc. See Copy or extract (certified).		
Certificate to be taken out yearly by every solicitor in England and Ireland; law agent or writer to the signet in Scotland, or as a notary public in any part of the United Kingdom; and by every other person in England and Ireland legally qualified to act as a conveyancer, special pleader, or draughtsman in equity:		
If such person practices in London within 10 miles of the general post office; within the city or shire of Edinburgh; or in the city of Dublin, or within 3 miles therefrom.....	9	0 0
If such person practices beyond the above-mentioned limits.....	6	0 0
If he has not been in practice three years, half the foregoing rates.		
Certificate of incorporation under the charitable trustees incorporation act, 1872 (35 and 36 Vict. c. 24), section 9. and application for such certificate.....		10 0
Charter of resignation, confirmation, novodamus, or upon apprising, or upon decree of adjudication, or sale of any lands, or other heritable subjects in Scotland.....		5 0



†Charter party.....		6
Cheque. See Bill of exchange payable on demand.		
Collateral security. See Bond, covenant, etc., and Mortgage.		
College of physicians. See Admission.		
Colonial security. See Marketable security.		
Companies' capital. See Capital duty.		
Contract. See Agreement.		
*Contract note (as defined by finance (1909-10) act, 1910, part V), for or relating to the sale or purchase of any stock or marketable security, where the value of the stock or marketable security—		
Is £5 and does not exceed £100.....		6
Exceeds £100 and does not exceed £500.....	1	0
Exceeds £500 and does not exceed £1,000.....	2	0
Exceeds £1,000 and does not exceed £1,500.....	3	0
Exceeds £1,500 and does not exceed £2,500.....	4	0
Exceeds £2,500 and does not exceed £5,000.....	6	0*
Exceeds £5,000 and does not exceed £7,500.....	8	0
Exceeds £7,500 and does not exceed £10,000.....	10	0
Exceeds £10,000 and does not exceed £12,500.....	12	0
Exceeds £12,500 and does not exceed £15,000.....	14	0
Exceeds £15,000 and does not exceed £17,500.....	16	0
Exceeds £17,500 and does not exceed £20,000.....	18	0
Exceeds £20,000.....	1	0 0
Conveyance or transfer:		
(1) Of any stock of the Bank of England—		
On sale or by way of voluntary disposition inter vivos.....	15	6
In any other case.....	7	9
(2) Of any stock of the Government of Canada inscribed in books kept in the United Kingdom, or of any colonial stock to which the colonial stock act, 1877, applies; for every £100, and also for any fractional part of £100, of the nominal amount of stock transferred—		
On sale or by way of voluntary disposition inter vivos.....	5	0
In any other case.....	2	6
Conveyance or transfer on sale or by way of voluntary disposition inter vivos:		
Of any stocks or marketable securities (except Bank of England stock or colonial government stocks), or of any other prop- erty—		
Where the amount or value of the consideration for the sale or, in the case of voluntary disposition, the value of the property transferred—		
Does not exceed £5.....	1	0
Exceeds £5 and does not exceed £10.....	2	0
Exceeds £10 and does not exceed £15.....	3	0
Exceeds £15 and does not exceed £20.....	4	0
Exceeds £20 and does not exceed £25.....	5	0
Exceeds £25 and does not exceed £50.....	10	0
Exceeds £50 and does not exceed £75.....	15	0
Exceeds £75 and does not exceed £100.....	1	0 0
Exceeds £100 and does not exceed £125.....	1	5 0
Exceeds £125 and does not exceed £150.....	1	10 0
Exceeds £150 and does not exceed £175.....	1	15 0
Exceeds £175 and does not exceed £200.....	2	0 0
Exceeds £200 and does not exceed £225.....	2	5 0
Exceeds £225 and does not exceed £250.....	2	10 0
Exceeds £250 and does not exceed £275.....	2	15 0
Exceeds £275 and does not exceed £300.....	3	0 0
Exceeds £300 and does not exceed £350.....	3	10 0
Exceeds £350 and does not exceed £400.....	4	0 0
Exceeds £400 and does not exceed £450.....	4	10 0
Exceeds £450 and does not exceed £500.....	5	0 0
Exceeds £500, per £50 or fractional part of £50.....	10	0

Conveyance or transfer on sale or by way of voluntary disposition inter vivos—Continued

Of any property, except stocks and marketable securities, where the provisions of section 73, Finance (1900-10) Act, of 1910, apply—

Where the amount or value of the consideration for the sale, or, in the case of voluntary disposition, in the value of the property transferred—

Does not exceed £5.....	8
Exceeds £5 and does not exceed £10.....	1 0
Exceeds £10 and does not exceed £15.....	1 6
Exceeds £15 and does not exceed £20.....	2 0
Exceeds £20 and does not exceed £25.....	2 6
Exceeds £25 and does not exceed £50.....	5 0
Exceeds £50 and does not exceed £75.....	7 6
Exceeds £75 and does not exceed £100.....	10 0
Exceeds £100 and does not exceed £125.....	12 6
Exceeds £125 and does not exceed £150.....	15 0
Exceeds £150 and does not exceed £175.....	17 6
Exceeds £175 and does not exceed £200.....	1 0 0
Exceeds £200 and does not exceed £225.....	1 2 6
Exceeds £225 and does not exceed £250.....	1 5 0
Exceeds £250 and does not exceed £275.....	1 7 6
Exceeds £275 and does not exceed £300.....	1 10 0
Exceeds £300 and does not exceed £350.....	1 15 0
Exceeds £350 and does not exceed £400.....	2 0 0
Exceeds £400 and does not exceed £450.....	2 5 0
Exceeds £450 and does not exceed £500.....	2 10 0
Exceeds £500, per £50 or fractional part of £50.....	10 0

Conveyance or transfer by way of security of any property (except (1) stock of the Bank of England, or (2) stock of the Government of Canada inscribed in books kept in the United Kingdom or colonial stock to which the Colonial Stock Act, 1877, applies), or of any security. See Mortgage, etc., and Mortgage of stock or marketable security.

Conveyance or transfer of any kind not hereinbefore described..... 10. 0

Copy or extract (attested or in any manner authenticated) of or from—

(1) An instrument chargeable with any duty; (2) an original will, testament, or codicil; (3) the probate or probate copy of a will or codicil; (4) any letters of administration, or any confirmation of a testament; (5) any public register (except any register of births, baptisms, marriages, deaths, burials, or cremations); (6) the books, rolls, or records of any court—

In the case of an instrument chargeable with duty not amounting to 1s., the same duty as such instrument.

In any other case..... 1 0

†Copy or extract (certified) of or from any register of births, baptisms, marriages, deaths, burials, or cremations..... 1

Copyhold and customary estates, instruments relating thereto:

Upon a sale thereof. See Conveyance on sale.

Upon a mortgage thereof. See Mortgage, etc.

Upon a demise thereof. See Lease or tack.

Upon any other occasion—

Surrender or grant made out of court, or the memorandum thereof, and copy of court roll of any surrender or grant made in court..... 10 0

Counterpart. See Duplicate.

Coupon. See Bill of exchange, and Policy.

Covenant for securing the payment or repayment of money, or the transfer or retransfer of stock. See Mortgage, etc.

Covenant in relation to any annuity upon the original creation and sale thereof. See Conveyance on sale.

Covenant in relation to any annuity (except upon the original creation and sale thereof), or to other periodical payments. See Bond, covenant, etc.

	£	s.	d.
Covenant. Any separate deed of covenant (not being an instrument chargeable with ad valorem duty as a conveyance on sale or mortgage) made on the sale or mortgage of any property, and relating solely to the conveyance or enjoyment of, or the title to, the property sold or mortgaged, or to the production of the muniments of title relating thereto, or to all or any of the matters aforesaid: Where the ad valorem duty in respect of the consideration or mortgage money does not exceed 10s., a duty equal to the amount of such ad valorem duty.			
In any other case-----	10	0	
Credit, letter of. See Bill of exchange.			
Debenture for securing the payment or repayment of money or the transfer or retransfer of stock. See Mortgage, etc., and Marketable security.			
Declaration of any use or trust of or concerning any property by any writing, not being a will, or an instrument chargeable with ad valorem duty as a settlement or as a voluntary disposition inter vivos-----	10	0	
Deed whereby any real burden is declared or created on lands or heritable subjects in Scotland. See Mortgage, etc.			
Deed containing an obligation to infeft any person in heritable subjects in Scotland, under a clause of reversion, as a security for money. See Mortgage, etc.			
Deed containing an obligation to infeft or seize in an annuity to be uplifted out of heritable subjects in Scotland. See Bond, covenant, etc.			
Deed of any kind whatsoever, not otherwise described-----	10	0	
Deeds of arrangement act, 1914 (4 and 5 Geo. 5, c. 47), sec. 5. Upon every deed of arrangement registered under the provisions of this act: For every £100 or fraction of £100 of the sworn value of the property passing, or (where no property passes under the deed) the amount of composition payable under the deed, 1s. in addition to the proper inland revenue duty.			
Disposition in Scotland of any property, not otherwise described----	10	0	
Docket made on passing any instrument under the Great Seal of the United Kingdom-----	2	0	
Dock warrant. See Warrant for goods.			
Draft for money. See Bill of exchange.			
Duplicate or counterpart of any instrument chargeable with any duty: Where such duty does not amount to 5s., the same duty as the original instrument. In any other case-----	5	0	
Exchange or excambion, instruments effecting: Where the consideration given for equality does not exceed £100. Where the consideration given for equality exceeds £100, ad valorem conveyance on sale duty on the amount of such consideration only.	10	0	
Exemplification or constat under the Great Seal of the United Kingdom of Great Britain and Ireland of any letters patent or grant made or to be made by his majesty, or by any of his royal predecessors, of any honor, dignity, promotion, franchise, liberty, or privilege, or of any lands, office, or other thing whatsoever-----	5	0	0
Exemplification under the seal of any court in England or Ireland of any record or proceeding therein-----	3	0	0
Faculty, license, commission, or dispensation for admitting or authorizing any person to act as a notary public: In England-----	30	0	0
In Scotland or Ireland-----	20	0	0
Faculty or dispensation of any other kind: In England-----	30	0	0
In Ireland-----	25	0	0
Foreclosure order for. See Conveyance on sale.			
Foreign security. See Marketable security.			
Furnished house or apartments, letting of. See Lease.			
Gift inter vivos. See Conveyance on sale.			
Inns of court. See Admission.			

£ s. d.

Instrument to bearer (not being a share warrant or stock certificate to bearer) by means of which any share or stock of any company formed or established out of the United Kingdom is assigned, transferred, or in any manner negotiated in the United Kingdom (secs. 4 [2] and 6 of finance act, 1899):

For every £25, and also for every fractional part of £25 of the nominal value of the share of stock----- 3

Insurance. See Policy.

Law agent. See Admission and Certificate.

Law student. See Admission.

Lease or tack:

(1) For any definite term not exceeding a year:

† Of any dwelling house, or part thereof, at a rent not exceeding the rate of £40 per annum----- 1

(2) For any definite terms less than a year:

† Of any furnished dwelling house or apartment where the rent for such term exceeds £25----- 5 0

† Of any lands, tenements, or heritable subjects except or otherwise than as aforesaid, the same duty as a lease for a year at the rent reserved for the definite term.

[† In the case of furnished dwelling houses or apartments, the duty chargeable on instruments under subhead (2) and duplicates or counterparts of such instruments, may be denoted by adhesive stamps.]

(3) For any other definite term, or for any indefinite term, of any lands, tenements, or heritable subjects:

Where the consideration, or any part thereof, moving to the lessor or to any other person, consists of any money, stock, or other security:

In respect of such consideration (subject to the provisions of sec. 15, revenue act, 1911), the same duty as a conveyance on a sale for the same consideration. (See Conveyance or transfer on sale.)

Where the consideration, or any part thereof, is any rent—

In respect of such consideration, if the term does not exceed 35 years or is indefinite and if the rent, whether reserved as a yearly rent or otherwise, is at a rate or average rate—

Not exceeding £5 per annum-----	1 0
Exceeding £5 and not exceeding £10-----	2 0
Exceeding £10 and not exceeding £15-----	3 0
Exceeding £15 and not exceeding £20-----	4 0
Exceeding £20 and not exceeding £25-----	5 0
Exceeding £25 and not exceeding £50-----	10 0
Exceeding £50 and not exceeding £75-----	15 0
Exceeding £75 and not exceeding £100-----	1 0 0
Exceeding £100, for every £50 or fraction-----	10 0

In respect of such consideration, if the term exceeds 35 years, but does not exceed 100 years, and if the rent, whether reserved as a yearly rent or otherwise, is at a rate or average rate—

Not exceeding £5 per annum-----	6 0
Exceeding £5 and not exceeding £10-----	12 0
Exceeding £10 and not exceeding £15-----	18 0
Exceeding £15 and not exceeding £20-----	1 4 0
Exceeding £20 and not exceeding £25-----	1 10 0
Exceeding £25 and not exceeding £50-----	3 0 0
Exceeding £50 and not exceeding £75-----	4 10 0
Exceeding £75 and not exceeding £100-----	8 0 0
Exceeding £100, for every £50 or fraction-----	3 0 0

In respect of such consideration, if the term exceeds 100 years, and if the rent, whether reserved as a yearly rent or otherwise, is at a rate or average rate—

Not exceeding £5 per annum-----	12 0
Exceeding £5 and not exceeding £10-----	1 4 0

Lease or tack—Continued

£ s. d.

(3) For any other definite term, etc.—Continued

Where the consideration, etc.—Continued

Exceeding £10 and not exceeding £15	1	16	0
Exceeding £15 and not exceeding £20	2	8	0
Exceeding £20 and not exceeding £25	3	0	0
Exceeding £25 and not exceeding £30	6	0	0
Exceeding £30 and not exceeding £35	9	0	0
Exceeding £35 and not exceeding £100	12	0	0
Exceeding £100, for every £50 or fraction	6	0	0
(4) Of any kind whatsoever not before described	1	0	0

Letter of allotment and letter of renunciation, or any other document having the effect of a letter of allotment:

- (1) Of any share or fractional part of a share of any company or proposed company.
- (2) In respect of any loan raised or proposed to be raised, by any company or proposed company, or by any municipal body or corporation.
- (3) Issued or delivered in the United Kingdom, of any share or fractional part of a share of any foreign or colonial company or proposed company, or in respect of any loan raised or proposed to be raised by or on behalf of any foreign or colonial state, government, municipal body, corporation or company—

Where the nominal amount which is allotted or to which the letter of renunciation relates is less than £5..... 1

Where the nominal amount which is allotted or to which the letter of renunciation relates is not less than £5..... 6

[The duty on a letter of renunciation may be denoted by an adhesive stamp.]

Letter of credit. See Bill of exchange.

Letter or power of attorney, and commission, faculty, mandate, or other instrument in the nature thereof:

- (1) For the sole purpose of appointing or authorizing a proxy to vote at any one meeting at which votes may be given by proxy, whether the number of persons named in such instrument be one or more..... 1
- (2) By any petty officer, seaman, marine, or soldier serving as a marine, or his representatives, for receiving prize money or wages..... 1 0
- (3) For the receipt of the dividends or interest of any stock—  
Where made for the receipt of one payment only..... 1 0  
In any other case..... 5 0
- (4) For the receipt of any sum of money, or any bill of exchange or promissory note for any sum of money, not exceeding £20 or any periodical payments, not exceeding the annual sum of £10 (not being hereinbefore charged)..... 5 0
- (5) Of any kind whatsoever not hereinbefore described and not specially exempted..... 10 0

Letters of marque and reprisal..... 5 0 0

Licences:

Bankers.....	30	0	0
Marriage, if special (in England or Ireland).....	5	0	0
Marriage, not special (in England).....	10	0	0
Attorneys', solicitors', notaries'. See Certificate and Faculty.			

Limited partnerships. See Capital duty.

Loan capital duty:

Local authorities, corporations, companies, etc. Issue of loan capital not secured by an instrument bearing the mortgage or marketable security duty—

For every £100 or fractional part of £100 of the amount secured by the issue..... 2 6

Marketable security as defined by sec. 82, Stamp Act, 1891:

1. Not transferable by delivery, the same duty as upon a mortgage for the same amount.

Marketable security as defined by sec. 82, Stamp Act, 1891.—Con.

£ s. d.

II. Transferable by delivery:

- A. Colonial government security-----
- B. Colonial municipal security-----
- (1) Bearing date or signed before or on August 6, 1885.
- (2) Bearing date or signed or offered for subscription after August 6, 1885—
  - (a) Repayable within a period not exceeding 1 year of date when duty payable, 6d. for every £10.
  - (b) Repayable within a period not exceeding 3 years of date when duty payable, 1s. for every £10.
  - (c) Repayable at a period exceeding 3 years of date when duty payable, 2s. for every £10.
  - (d) Security substituted for one duly stamped under (c), 1s. for every £20.
- C. Other than colonial municipal and colonial government—
  - (1) Bearing date or signed before or on August 6, 1885—
    - (a) Repayable within a period not exceeding 1 year of date when duty payable, 6d. for every £10.
    - (b) Repayable within a period not exceeding 3 years of date when duty payable, 1s. for every £10.
    - (c) Repayable at a time exceeding 3 years of date when duty payable, four times the duty upon a mortgage for the same amount.
  - (2) Bearing date or signed or offered for subscription after Aug. 6, 1885:
    - (a) Repayable within a period not exceeding one year of date when duty payable, 6d. for every £10.
    - (b) Repayable within a period not exceeding three years of date when duty payable, 1s. for every £10.
    - (c) Repayable at a time exceeding three years of date when duty payable, 4s. for every £10.
    - (d) Security substituted for one duly stamped under (c), 2s. for every £20.

Double the duty upon a mortgage for the same amount.

Marketable security as described in finance act, 1899, sections 4 (1) and 6:

- Repayable within a period not exceeding one year of date when duty payable, 6d. for every £10.
- Repayable within a period not exceeding three years of date when duty payable, 1s. for every £10.
- Repayable at a time exceeding three years of date when duty payable, 4s. for every £10.

Memorandum of agreement. See Agreement.

Memorandum of association of a company under the companies (consolidation) act. 1908 (8 Edw. 7, c. 69), section 6, to be stamped as a deed-----

10 0

Memorial to be registered pursuant to any act for the time being in force relating to the public registering of deeds in England or Ireland:

Where the instrument registered is chargeable with any duty not amounting to 2s. 6d., the same duty as the registered instrument.

In any other case-----

2 6

Mortgage, bond, debenture, covenant (except a marketable security otherwise specially charged with duty), and warrant of attorney to confess and enter up judgment:

- (1) Being the only or principal or primary security (other than an equitable mortgage) for the payment or repayment of money—

Not exceeding £10-----

3

Exceeding £10 and not exceeding £25-----

8

	£	s.	d.
<b>Mortgage, bond, debenture, covenant, etc—Continued</b>			
(1) Being the only or principal or primary security, etc—Con.			
Exceeding £25 and not exceeding £50.....	1		3
Exceeding £50 and not exceeding £100.....	2		6
Exceeding £100 and not exceeding £150.....	3		9
Exceeding £150 and not exceeding £200.....	5		0
Exceeding £200 and not exceeding £250.....	6		3
Exceeding £250 and not exceeding £300.....	7		6
Exceeding £300—for every £100, and also for any fractional part of £100 of the amount secured.....	2		6
(2) Being a collateral, or auxiliary, or additional or substituted security (other than an equitable mortgage), or by way of further assurance for the above-mentioned purpose where the principal or primary security is duly stamped: For every £100, and also for any fractional part of £100 of the amount secured.....			6
(But the whole amount of duty shall not exceed 10s.)			
(3) Being an equitable mortgage—			
For every £100, and any fractional part of £100, of the amount secured.....	1		0
(4) Transfer, assignment, disposition, or assignation of any mortgage, bond, debenture, or covenant (except a marketable security), or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment (except a transfer, etc., by way of voluntary disposition inter vivos, as to which see Conveyance on sale):			
For every £100, and also for any fractional part of £100, of the amount transferred, assigned, or disposed, exclusive of interest which is not in arrear.....			6
And also where any further money is added to the money already secured, the same duty as a principal security for such further money.			
(5) Reconveyance, release, discharge, surrender, resurrender, warrant to vacate, or renunciation of any such security as aforesaid, or of the benefit thereof, or of the money thereby secured—			
For every £100, and also for any fractional part of £100, of the total amount or value of the money at any time secured.....			6
<b>Mortgage of stock or marketable security:</b>			
Under hand only. See Agreement.			
By deed. See Mortgage.			
† Notarial act of any kind whatsoever (except a protest of a bill of exchange or promissory note, or any notarial instrument to be expedited and recorded in any register of sasines).....	1		0
Notary public. See Certificate and Faculty.			
Notice to quit to be served on a tenant of a holding in Ireland [the landlord and tenant (Ireland) act, 33 and 34 Vict. c. 46, sec. 57].....			2 6
Order for the payment of money. See Bill of exchange.			
Partition or division, instruments effecting:			
If the consideration for equality does not exceed £100.....	10		0
If the consideration for equality exceeds £100, ad valorem conveyance on sale duty on the amount of such consideration only.			
Passport.....			
† Policy of insurance against accident and policy of insurance for any payment agreed to be made during the sickness of any person, or his incapacity from personal injury, or by way of indemnity against loss or damage of or to any property, and policy of insurance or indemnity against liability incurred by employers in consequence of claims made upon them by workmen who have sustained personal injury, when the annual premium on such policies does not exceed £2.....			6

	s.	d.
Policy of life insurance where the sum insured—		
Does not exceed £10.....		1
Exceeds £10 but does not exceed £25.....		3
Exceeds £25 but does not exceed £500, for every £50, or fraction of £50, of the amount insured.....		3
Exceeds £500 but does not exceed £1,000, for every £100, or fraction of £100, of the amount insured.....	1	0
Exceeds £1,000 for every £1,000, or fraction of £1,000, of the amount insured.....	10	0
Policy of sea insurance:		
(1) Where the premium or consideration does not exceed the rate of 2s. 6d. percent of the sum insured.....		1
Where the premium or consideration is expressed to be a sum not exceeding the rate of half-a-crown percent, and is subject to an increase (whether defined or not in the policy) in the event of the occurrence of a specified contingency, it shall be treated as one not exceeding the rate of half-a-crown percent. But if, owing to the occurrence of the contingency, the premium or consideration is increased so as to exceed the rate of half-a-crown percent, the policy or a new policy to be thereupon issued shall be stamped with the additional duty payable and may be so stamped without penalty at any time not exceeding thirty days after the date on which the increased premium or consideration becomes ascertained.		
(2) In any other case—		
(a) For or upon any voyage, where the sum insured—		
Does not exceed £250.....		3
Exceeds £250 but does not exceed £500.....		0
Exceeds £500 but does not exceed £750.....		9
Exceeds £750 but does not exceed £1,000.....	1	0
Exceeds £1,000, for every £500 or fractional part of £500.....		0
(b) For time—		
Where the insurance is made for any time not exceeding six months, a duty equivalent to three times the amount payable if the insurance were made upon a voyage.		
Where the insurance is made for any time exceeding six months but not exceeding twelve months, a duty equivalent to six times the amount payable if the insurance were made upon a voyage.		
Power of attorney. See Letter of attorney.		
Precept of clare constat to give seisin of lands or other heritable subjects in Scotland.....	5	0
Procurator, deed, or other instrument of.....	10	0
Promissory note. See Bank note, Bill of exchange.		
†Protest, of any bill of exchange or promissory note:		
Where the duty on the bill or note does not exceed 1s., the same duty as the bill or note.		
In any other case.....		1 0
Proxy. See Letter or power of attorney.		
†Receipt given for, or upon the payment of money amounting to £2 or upwards.....		2
Reconveyance. See Mortgage.		
Release or renunciation of any property, or of any right or interest in any property:		
Upon a sale or by way of voluntary disposition Inter vivos. See Conveyance on sale.		
By way of security. See Mortgage, etc.		
In any other case.....	10	0
Renunciation, letter of. See Letter of allotment.		
Resignation:		
Principal or original instrument of resignation, or service of cognition of heirs, or charter or seisin of any houses, lands, or other heritable subjects in Scotland holding burgage, or of burgage tenure.....		5 0



Resignation—Continued

And instrument of resignation of any lands or other heritable subjects in Scotland not of burgage tenure.....	5 0
Revocation of any use or trust of any property by any writing, not being a will.....	10 0

Scrip certificate, scrip, or other document:

- |  |   |
|--|---|
| (1) Entitling any person to become the proprietor of any share or fractional part of a share of any company or proposed company.....   |   |
| (2) Issued or delivered in the United Kingdom and entitling any person to become the proprietor of any share or fractional part of a share of any foreign or colonial company or proposed company.....   |   |
| (3) Denoting, or intended to denote, the right of any person as a subscriber in respect of any loan raised or proposed to be raised by any company or proposed company, or by any municipal body or corporation.....   | 2 |
| (4) Issued or delivered in the United Kingdom and denoting, or intended to denote, the right of any person as a subscriber in respect of any loan raised or proposed to be raised by or on behalf of any foreign or colonial state, government, municipal body, corporation, or company..... |   |

Seisin:

Instrument of seisin given upon any charter, precept of clare constat, or precept from chancery, or upon any wadset, heritable bond, disposition, apprising, adjudication, or otherwise of any lands or heritable subjects in Scotland.....	5 0
And any notarial instrument to be expedited and recorded in any register of sasines.....	5 0

Settlement:

Any instrument, whether voluntary or upon any good or valuable consideration, other than a bona-fide pecuniary consideration, whereby any definite and certain principal sum of money (whether charged or chargeable on lands or other hereditaments or heritable subjects, or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects or not) or any definite and certain amount of stock, or any security, is settled or agreed to be settled in any manner whatsoever—	
For every £100, and also for any fractional part of £100, of the amount or value of the property settled or agreed to be settled.....	5 0

Where, however, an instrument is chargeable with duty both as a conveyance or transfer operating as a voluntary disposition inter vivos under section 74 of the Finance (1909–10) Act of 1910, and as a settlement under the heading "settlement" in the first schedule of the stamp act, 1891, the instrument is to be charged with duty as a conveyance or transfer under section 74, but not as a settlement. [See in this connection sec. 74 (4) and (5) of the Finance (1909–10) Act of 1910.]

Share capital duty. See Capital duty (share).

Share certificate (foreign). See Instrument to bearer.

Share warrant or stock certificate to bearer:

- (1) Of a company formed or established in the United Kingdom a duty of an amount equal to three times the amount of the ad valorem stamp duty which would be chargeable on a deed transferring the share or shares or stock specified in the warrant or certificate if the consideration for the transfer were the nominal value of such share or shares or stock.
- (2) Of a company formed or established out the the United Kingdom by means of which any share or stock is as-

	£	s.	d.
Share warrant or stock certificate to bearer—Continued			
signed, transferred or in any manner negotiated in the United Kingdom [sec. 4 (1), Finance Act of 1899]—			
For every £10, and also for any fractional part of £10, of the nominal value of the share or stock to which the warrant or certificate relates.....		4	0
Solicitor. See Admission and Certificate.			
Statutory declaration. See Affidavit.			
Substituted security. See Bond, covenant, etc., Marketable security, and Mortgage, etc.			
Superannuation annuity. See Bond, covenant, etc.			
Surrender:			
Of copyholds. See Copyhold.			
Of any other kind whatsoever not chargeable with duty as a conveyance on sale or by way of voluntary disposition inter vivos or as a mortgage.....		10	0
Tenancy agreement. See lease.			
Transfer. See Conveyance or transfer.			
†Transfer:			
Any request or authority to the purser or other officer of any mining company, conducted on the cost-book system, to enter or register any transfer of any share or part of a share in any mine, or any notice to such purser or officer of any such transfer .....			6
Valuation. See Appraisalment.			
Voluntary disposition inter vivos. See Conveyance on sale.			
†Voting paper:			
Any instrument for the purpose of voting by any person entitled to vote at any meeting of any body exercising a public trust, or of the shareholders or members or contributors to the funds of any company, society, or institution.....			1
Warrant of attorney, to confess and enter up a judgment given as a security for the payment or repayment of money, or for the transfer or retransfer of stock. See Mortgage, etc.			
Warrant of attorney of any other kind.....		10	0
†Warrant for goods.....			3
Warrant under the sign manual of His Majesty.....		10	0
Writ:			
(1) Of acknowledgment under the registration of leases (Scotland) Act, 1857.....			5 0
(2) Of acknowledgment by any person infeft in lands in Scotland in favor of the heir or disponee of a creditor fully vested in right on an heritable security constituted by infeftment.....			
†(3) Of resignation and clare constat.....			

**CORPORATION DUTY \***

The corporation duty is a stamp duty imposed under the Customs and Inland Revenue Act of 1885, in lieu of the death duties from which property belonging to corporate or unincorporate bodies is exempt.

Its small yield is due to the breadth of the exemptions, which include property of a trading company or of a body whose capital stock is so divided and held as to be liable to be charged to legacy or succession duty, property acquired from voluntary contributions, Government property, and property employed for educational, charitable, religious, literary, scientific, or artistic purposes.

\* Source: Sixty-fifth Report of the Commissioners of His Majesty's Inland Revenue, p. 52, and subsequent reports.

The rate is £5 percent (5 percent) on the net annual value of income accrued in respect of all real or personal property held by such bodies, except that which is specifically exempted under the act.

#### LAND TAX<sup>a</sup>

The national land tax, a levy upon lands, tenements, and hereditaments in Great Britain (not including Ireland), has largely been redeemed and is considered relatively unimportant.

A total sum of £1,905,077 was imposed on "real estate" under the land tax act of 1797, and in the following year that sum was made a perpetual charge, subject to redemption. The area of assessment in England and Wales is the parish, each parish being liable for its quota in the proportion established in 1797-98. Of the 16,104 parishes in England and Wales, 1,251 had extinguished their quotas by March 25, 1926. The areas of assessment in Scotland are the several counties and burghs for which quotas were fixed in 1798.

#### EXEMPTIONS AND ABATEMENTS

Although property belonging to the Crown is not exempt, no tax is collected on such property when occupied by the Crown for State purposes.

Owners of unexonerated property are exempt if their total income does not exceed £160 per annum, and are given an abatement of one half the tax if their total income does not exceed £400 per annum.

#### BASIS OF ASSESSMENT AND RATE

The tax collectible in any year from each area is the "unredeemed quota," which is the gross quota fixed in 1798 minus the amount redeemed and exonerated since that date. The aggregate of the unredeemed quotas on March 25, 1926, was £894,212.

The rate varies according to the proportion which the total annual value of the unexonerated property in the area bears to the unredeemed quota, from 1d. in the pound (about 4.1 per 1,000) to a maximum of 1s. in the pound (5 percent) on the annual value of the unexonerated property as determined for income tax under schedule A.

#### REDEMPTION

Any property liable to assessment under the land tax acts may be redeemed by any person having an interest or estate therein upon entering into a redemption contract with the inland revenue commissioners and paying a capital sum equal to 25 times the tax assessed on the property.

If the amount collected in any area exceeds the unredeemed quota, it must, subject to the award of any part thereof as remuneration to the assessor, be applied as capital in the reduction of that quota.

<sup>a</sup> Source: Sixty-fifth Report of the Commissioners of His Majesty's Inland Revenue, p. 78, and subsequent reports.

## APPENDIX

### TABLE A.—REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES<sup>1</sup>

#### PRELIMINARY

1. In these regulations "The Act" means the Companies Act, 1929. When any provision of the act is referred to, the reference is to that provision as modified by any statute for the time being in force. Unless the context otherwise requires, expressions defined in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company shall have the meanings so defined.

#### SHARES

2. Subject to the provisions, if any, in that behalf of the memorandum of association, and without prejudice to any special rights previously conferred on the holders of existing shares, any share may be issued with such preferred, deferred, or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital, or otherwise, as the company may from time to time by special resolution determine, and any preference share may, with the sanction of a special resolution, be issued on the terms that it is, or at the option of the company is liable to be, redeemed.

3. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll.

4. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

5. If a share certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding 1s., and on such terms, if any, as to evidence and indemnity, as the directors of the bank think fit.

6. No part of the funds of the company shall directly or indirectly be employed in the purchase of, or in loans upon the security of, the company's shares, but nothing in this regulation shall prohibit transactions mentioned in the proviso to section 45 (1) of the act.

#### LIEN

7. The company shall have a lien on every share (not being a fully paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect to that share, and the company shall also have a lien on all shares (other than fully paid shares) standing registered in the name

<sup>1</sup> Companies Act, First Schedule. Referred to as "Table A."

of a single person for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this regulation. The company's lien if any, on a share shall extend to all dividends payable thereon.

8. The company may sell, in such manner as the directors think fit, any shares on which the company has a lien; but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

9. For giving effect to any such sale the directors may authorize some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer and he shall not be bound to see the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

10. The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale.

#### CALLS ON SHARES

11. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares provided that no call shall exceed one fourth of the nominal amount of the share, or be payable at less than 1 month from the last call; and each member shall (subject to receiving at least 14 days' notice specifying the time of times of payment) pay to the company at the time or times so specified the amount called on his shares.

12. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

13. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of 5 percent per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

14. The provisions of these regulations as to the liability of joint holders and as to payment of interest shall apply in the case of nonpayment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payable by virtue of a call duly made and notified.

15. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

16. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, 6 percent) as may be agreed upon between the member paying the sum in advance and the directors.

#### TRANSFER AND TRANSMISSION OF SHARES

17. The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

18. Shares shall be transferred in the following form, or in any usual or common form which the directors shall approve:

I, A. B. of \_\_\_\_\_, in consideration of the sum of £\_\_\_\_\_ paid to me by C. D. of \_\_\_\_\_ (hereinafter called "the said transferee"), do hereby transfer to the said transferee the share (or shares) numbered \_\_\_\_\_ in the

undertaking called the \_\_\_\_\_ Company, Limited, to hold unto the said transferee, subject to the several conditions on which I hold the same: and I, the said transferee, do hereby agree to take the said share (or shares) subject to the conditions aforesaid. As witness our hands the \_\_\_\_\_ day of \_\_\_\_\_

Witness to the signatures of, etc.

19. The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the 14 days immediately preceding the ordinary general meeting in each year. The directors may decline to recognize any instrument of transfer unless (a) a fee not exceeding 2s. 6d. is paid to the company in respect thereof, and (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

If the directors refuse to register a transfer of any shares, they shall within 2 months after the date on which the transfer was lodged with the company send to the transferee notice of the refusal.

20. The legal personal representatives of a deceased sole holder of a share shall be the only persons recognized by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the legal personal representatives of the deceased survivor, shall be the only persons recognized by the company as having any title to the share.

21. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the directors, have the right, either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

22. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

#### FORFEITURE OF SHARES

23. If a member fails to pay any call or installment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or installment remains unpaid, serve a notice on him requiring payment of so much of the call or installment as is unpaid, together with any interest which may have accrued.

24. The notice shall name a further day (not earlier than the expiration of 14 days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of nonpayment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

25. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

26. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be canceled on such terms at the directors think fit.

27. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall

cease if and when the company receive payment in full of the nominal amount of the shares.

28. A statutory declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The company may receive the consideration, if any, given for the share on any sale or disposition thereof and may execute a transfer of the share in favor of the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the share.

29. The provision of these regulations as to forfeiture shall apply in the case of nonpayment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

#### CONVERSION OF SHARES INTO STOCK

30. The company may by ordinary resolution convert any paid-up shares into stock, and reconvert any stock into paid-up shares of any denomination.

31. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as, and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

32. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

33. Such of the regulations of the company as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

#### ALTERATION OF CAPITAL

34. The company may from time to time by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

35. Subject to any direction to the contrary that may be given by the company in general meeting, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of those shares in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

36. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital.

37. The company may by ordinary resolution (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares; (b) subdivide its existing shares, or any of them, into shares of smaller

amount than is fixed by the memorandum of association subject, nevertheless, to the provisions of section 50 (1) (d) of the Act; (c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

38. The company may by special resolution reduce its share capital and any capital redemption reserve fund in any manner and with, and subject to, any incident authorized, and consent required, by law.

#### GENERAL MEETINGS

39. A general meeting shall be held once in every calendar year at such time (not being more than 15 months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the third month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

40. The above-mentioned general meetings shall be called ordinary general meetings; and all other general meetings shall be called extraordinary general meetings.

41. The directors may, whenever they think fit, convene an extraordinary general meeting, and extraordinary general meeting shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by section 114 of the act. If at any time there are not within the United Kingdom sufficient directors capable of acting to form a quorum, any directors or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

#### NOTICE OF GENERAL MEETINGS

42. Subject to the provisions of section 117 (2) of the act relating to special resolutions, 7 days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and, in case of special business, the general nature of that business shall be given, in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but with the consent of all the members entitled to receive notice of some particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit.

43. The accidental omission to give notice of a meeting to, or the nonreceipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.

#### PROCEEDINGS AT GENERAL MEETINGS

44. All business shall be deemed special that is transacted at any extraordinary meeting, and all that is transacted at an ordinary meeting, with the execution of sanctioning a dividend, the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

45. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

46. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum.



47. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

48. If there is no such chairman, or if at any meeting he is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

49. The chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 10 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

50. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least 3 members present in person or by proxy entitled to vote or by 1 member or 2 members so present and entitled, if that member or those 2 members together hold not less than 15 percent of the paid-up capital of the company, and, unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favor of, or against, that resolution.

51. If a poll is duly demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

52. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

53. A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

#### VOTES OF MEMBERS

54. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

55. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

56. A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, curator bonis, or other person in the nature of a committee or curator bonis appointed by that court, and any such committee curator bonis, or other person may, on a poll, vote by proxy.

57. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

58. On a poll votes may be given either personally or by proxy.

59. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a corporation, either under seal, or under the hand of an officer or attorney duly authorized. A proxy need not be a member of the company.

60. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than 48 hours before the time for holding the meeting or adjourned meeting, at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

61. An instrument appointing a proxy may be in the following form, or any other form which the directors shall approve:

I, \_\_\_\_\_, of \_\_\_\_\_, in the county of \_\_\_\_\_, being a member of the \_\_\_\_\_ Company, Limited, hereby appoint \_\_\_\_\_, of \_\_\_\_\_, as my proxy, to vote for me and on my behalf at the (ordinary or extraordinary, as the case may be) general meeting of the company to be held on the \_\_\_\_\_ day of \_\_\_\_\_ and at any adjournment thereof.

Signed this \_\_\_\_\_ day of \_\_\_\_\_.

62. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

#### CORPORATIONS ACTING BY REPRESENTATIVES AT MEETING

63. Any corporation which is a member of the company may by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of the company or of any class of members of the company, and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the company.

#### DIRECTORS

64. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

65. The remuneration of the directors shall from time to time be determined by the company in general meeting.

66. The qualification of a director shall be the holding of at least one share in the company.

#### POWERS AND DUTIES OF DIRECTORS

67. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company, as are not, by the act, or by these articles, required to be exercised by the company in general meeting, subject nevertheless, to any regulation of these articles, to the provisions of the act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

68. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit, and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation or retirement of directors; but his appointment shall be subject to determination ipso facto if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

69. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

70. The directors shall cause minutes to be made in books provided for the purpose (a) of all appointments of officers made by the directors; (b) of the names of the directors present at each meeting of the directors and of any committee of the directors; (c) of all resolutions and proceedings at all meetings of the company, and of the directors, and of committees of directors; and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

## THE SEAL

71. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of a director and of the secretary or such other person as the directors may appoint for the purpose; and that director and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

## DISQUALIFICATION OF DIRECTORS

72. The office of director shall be vacated if the director (a) ceases to be a director by virtue of section 141 of the act; or (b) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or manager; or (c) becomes bankrupt; or (d) becomes prohibited from being a director by reason of any order made under sections 217 or 275 of the act; or (e) is found lunatic or becomes of unsound mind; or (f) resigns his office by notice in writing to the company; or (g) is directly or indirectly interested in any contract with the company or participates in the profits of any contract with the company.

*Provided, however,* That a director shall not vacate his office by reason of his being a member of any corporation which has entered into contracts with or done any work for the company if he shall have declared the nature of his interest in manner required by section 149 of the act, but the director shall not vote in respect of any such contract or work or any matter arising thereout, and if he does so vote his vote shall not be counted.

73. At the first ordinary general meeting of the company the whole of the directors shall retire from office, and at the ordinary general meeting in every subsequent year one third of the directors for the time being, or, if their number is not three or a multiple of three, then the number nearest one third, shall retire from office.

74. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

75. A retiring director shall be eligible for reelection.

76. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto, and in default the retiring director shall be deemed to have been reelected unless at such meeting it is resolved not to fill up such vacated office.

77. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

78. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

79. The directors shall have power at any time, and from time to time, to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

80. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

## PROCEEDINGS OF DIRECTORS

81. The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

82. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall when the number

of directors exceeds 3 be 3, and when the number of directors does not exceed 3, be 2.

83. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the company, but for no other purpose.

84. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

85. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

86. A committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the chairman is not present within 5 minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.

87. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

88. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

#### DIVIDENDS AND RESERVE

89. The company in general meeting may declare dividends, but no dividends shall exceed the amount recommended by the directors.

90. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

91. No dividend shall be paid otherwise than out of profits.

92. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares, but if and so long as nothing is paid up on any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

93. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalizing dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

94. If several persons are registered as joint holders of any shares, any one of them may give effectual receipts for any dividend or other moneys payable on or in respect of the share.

95. Any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled thereto, or in the case of joint holders, to any one of such joint holders at his registered address, or to such person and such address as the member or person entitled or such joint holders, as the case may be, may direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent or to the order of such other person as the member or person entitled or such joint holders, as the case may be, may direct.

96. No dividend shall bear interest against the company.

97. The directors shall cause proper books of account to be kept with respect to (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place; (b) all sales and purchases of goods by the company; and (c) the assets and liabilities of the company.

98. The books of account must be kept at the registered office of the company, or at such other place or places as the directors think fit, and shall always be open to the inspection of the directors.

99. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorized by the directors or by the company in general meeting.

100. The directors shall from time to time, in accordance with section 123 of the act, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts, balance sheets, and reports as are referred to in that section.

101. A copy of every balance sheet (including every document required by law to be annexed thereto) which is to be laid before the company in general meeting, together with a copy of the auditors' report, shall, not less than seven days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the company.

#### AUDIT

102. Auditors shall be appointed and their duties regulated in accordance with sections 132, 133, and 134 of the act.

#### NOTICES

103. A notice may be given by the company to any member, either personally or by sending it by post to him to his registered address, or (if he has no registered address within the United Kingdom) to the address, if any, within the United Kingdom supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of 24 hours after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

104. If a member has no registered address within the United Kingdom and has not supplied to the company an address within the United Kingdom for the giving of notices to him, a notice addressed to him and advertised in a newspaper circulating the neighborhood of the registered office of the company, shall be deemed to be duly given to him as soon on the day on which the advertisement appears.

105. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register of members in respect of the share.

106. A notice may be given by the company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if any, within the United Kingdom supplied for the purpose by the persons claiming to be so entitled, or (until such an address might have been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

107. Notice of every general meeting shall be given in some manner hereinbefore authorized to (a) every member except those members who (having no registered address within the United Kingdom) have not supplied to the company an address within the United Kingdom for the giving of notices to them, and also to (b) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for his death or bankruptcy, would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

## II.—DEPRECIATION ALLOWANCES .

## SCHEDULE OF AGREED NORMAL RATES OF DEPRECIATION

[The rates are on the written-down value in every case except shipping]

Industry, etc.	Percent	Nature of plant
Bleaching and finishing.....	7½	Plant and machinery generally.
Bookbinding.....	5	Engines, boilers, and shafting.
Brickmaking.....	7½	General binding machinery.
	5	Steam engines, boilers, and shafting; mixing and brickmaking machines.
Chemical.....	7½	Electrical plant (dynamoes, motors, transformers, etc); crushing and grinding plant.
	15	No depreciation is allowed on kilns, but an allowance is made in respect of the cost of repairs, renewals, and rebuilding; the cost of new kilns and of extensions to existing kilns is treated as capital in the ordinary course.
Cold stores and ice manufac- ture.	7½	Sulphuric-acid plant.
	5	Chemical plant other than above; electrical plant.
Color, paint, and varnish manufacturing.	5	Other plant.
	5	Steam and gas engines, boilers, and shafting.
Commercial motor vehicles....	7½	Electric plant and insulation. (Lagging, belting, loose plant, utensils, etc., to be dealt with by way of renewals.)
	10	Refrigerating machinery; that is, compressors, condensers, ice tanks, coolers, conduits, molds, coils, travelers, etc.
Corset manufacturing.....	5	Engines, boilers, shafting, and storage tanks.
	7½	General plant and machinery, including grinding machinery and electric motors.
Dropforgers and stampers.....	20	Motor lorries and motor tractors.
	15	Horses, loose tools and utensils, including typewriters. (Renewals allowed instead of depreciation.)
Dyeing and finishing.....	20	Commercial motor vehicles propelled by steam power (steam lorries).
	5	Commercial motor vehicles propelled by power derived from internal-combustion engines (motor lorries and motor vans).
Dyeing and cleaning. (See Steam laundries.)	5	Steam engines, boilers, and shafting.
	7½	Laundry and cutting machinery and electric motors.
Electric furnaces and plant and machinery used in con- nection.	10	Other machinery.
	20	Motor vans.
Electric-light undertakings....	7½	Plant and machinery generally (excluding furnaces).
Embroidery manufacturing....	7½	Plant and machinery generally.
Engineers' precision tools, manufacture of (such as twist drills, milling cutters, reamers, tap dies, and screw- ing tackle).	12½	All parts of furnace (including transformers, switch gear, high and low cable connections, furnaces, tilting gear and regulators), but not foundations, buildings, cranes, huckets, or any shop tools or equipment.
	3	Cables.
Envelop making.....	5	Plant and machinery.
	5	Fixed plant (engines, boilers, shafting and gearing, and motors).
Farming.....	10	Stitching machines.
	5	Steam and gas engines, boilers, shafting, and pulleys.
Fishing tackle.....	7½	Electrical machinery, including dynamoes and motors.
	9	Other plant and machinery.
Fishing tackle.....	5	Steam power plant and shafting.
	7½	Electrical power plant, including dynamoes and electric motors, and on all process plant.
Fishing tackle.....	20	Motor lorries and motor vans.
	5	Steam boilers and engines, portable steam engines, threshing machines and fixed plant.
Fishing tackle.....	7½	Electric installation.
	22½	Minor loose plant and utensils. (Renewals allowed instead of depreciation.)
Fishing tackle.....	15	Petrol- or oil-driven tractor-cultivators.
	20	Commercial motor vehicles propelled by steam power (steam lorries).
Fishing tackle.....	20	Commercial motor vehicles propelled by power derived from internal-combustion engines (motor lorries and motor vans).
	10	Motor cars (depreciation restricted to proportionate part applicable to use of car for business purposes).
Fishing tackle.....	10	All other types of farm machinery and implements, including portable poultry and similar sheds and incubators.
	5	Engines, boilers, and shafting.
Fishing tackle.....	8	Fishing hook and rod making machinery.
	7½	Electric motors.

<sup>1</sup> Rate on written-down value after deducting all allowances. Rate to be reconsidered at the end of 3 years from Feb. 26, 1920.

## SCHEDULE OF AGREED NORMAL RATES OF DEPRECIATION—Continued

Industry, etc.	Percent	Nature of plant
Flax spinning and weaving (Ireland).	7½	Plant and machinery (except accessory plant, such as pirns, pirn cages, spools, belting, driving ropes, damask cards, designs, patterns, models, furniture, and fixtures).
Flock manufacturing.	6	Plant and machinery generally.
Flour milling.	5	Engines, boilers, and main shafting.
Furniture manufactures.	7½	Other machinery.
	5	Engines, boilers, and shafting.
	7½	General plant and machinery and electric motors.
Gas undertakings (not owned by municipal or public authorities).	15	Vehicles propelled by steam power (steam wagons and lorries).
	20	Vehicles propelled by power derived from internal-combustion engines (motor wagons and lorries).
Gas undertakings (not owned by municipal or public authorities).	3	Gas boilers.
	10	Meters, cookers, and gas fires.
Handkerchief and embroidery manufacturing.	5	Fixed plant (engines, boilers, shafting, gearing, and motors).
	10	Stitching machines.
Hemstitching.	5	Fixed plant (engines, boilers, shafting, gearing, and motors).
Hosiery manufacturing.	10	Hemstitching machinery.
	5	Engines, boilers, and shafting.
Hosiery-needle making.	10	Process plant.
	5	Steam and gas engines, boilers, and shafting.
	7½	Electric motors.
Lace and embroidery and muslin manufacturing.	10	Manufacturing machinery.
	7½	Plant and machinery.
Ladies' and children's clothing.	5	Engines, boilers, and shafting.
	7½	Electric motors.
Laundries, steam. See Steam laundries.	10	General process plant.
Linoleum and floorcloth manufacturing.	5	Engines, boilers, and shafting.
	7½	Other plant and machinery.
Machine tools manufacturing (exclusive of grinding and other similar machinery).	10	Diesel engines.
	10	Steam engines, boilers, and shafting.
Match manufacturing.	7½	Other (including electric) plant and machinery.
Motor omnibuses.	5	Steam engines, boilers, and shafting, and on lathes, woodcutting, and waxtaper making machinery, including taper drums.
	7½	General plant and machinery, including electric dynamos and motors, match making, spirit leveling and cleaning, and box-filling machines.
Motor omnibuses.	20	Motor lorries and motor vans.
	20	Motor omnibuses.
Motor pantechnicons and lorries.	20	Motor pantechnicons and lorries.
Muslin manufacturing.	7½	Plant and machinery.
Nail making.	5	All plant and machinery.
	5	Engines, boilers, and shafting.
Needles and fishing tackle manufacturing.	6	Crochet, fishing-hook, and rod-making machinery.
	7½	Electric motors and needle-making machinery.
Newspaper printing.	5	Engines, boilers, and shafting.
	7½	Printing and binding machines.
Pantechnicons, motor.	10	Type (if not dealt with by way of renewals).
	20	Motor pantechnicons and lorries.
Paper-bag making.	5	Engines, boilers, and shafting.
	7½	Electric motors and general plant.
Paper-box making.	20	Motor vans.
	7½	Plant and machinery.
Paper mills.	20	Motor vans.
	5	Machinery working day only.
Pig iron and steel manufacturers.	7½	Machinery working day and night.
	7½	Plant and machinery generally (excluding furnaces, but including plant and machinery ancillary to furnaces).
Printing.	5	Engines, boilers, and shafting.
	7½	Printing and binding machines.
Railway wagons.	10	Type, if not dealt with by way of renewals.
	5	Railway wagons owned by traders. (In the case of wagons owned by railway companies the method adopted is to allow the actual cost of renewals year by year.)
Sawmills. See Timber.		

<sup>1</sup> Additions to and replacements to be charged to capital, provided that repairs, renewals, and replacements which do not destroy the identity of the machine shall be allowed as a revenue charge.

<sup>2</sup> No allowance for wear and tear to be made in respect of furnaces, but in lieu thereof the cost of repairs, replacements, and rebuilding to be as a charge against revenue, but cost of additional furnaces and extensions and enlargements of existing furnaces to be charged to capital.

<sup>3</sup> Rate to be reconsidered at the end of 1929-30. Rate does not apply to commercial motor vehicles.

<sup>4</sup> Does not extend to horse-drawn pantechnicons, lorries, or to "left" pantechnicons which are not a fixed portion of a motor.

## SCHEDULE OF AGREED NORMAL RATES OF DEPRECIATION—Continued

Industry, etc.	Percent	Nature of plant
Scottish Association of Master Bakers.	6	Plant and machinery.
Shipping.....	4	Steamships.
	5	Sailing vessels.
Shoe and slipper making.....	5	Engines, boilers, and shafting.
	10	Process plant.
	20	Motor vans and lorries.
Silk manufacturing.....	5	Steam engines, boilers, and shafting.
	7½	General plant (including winding, throwing, doubling, and weaving machinery); electric motors.
	10	Sewing, braiding, and knitting machines.
Steam laundry and dyeing and cleaning.	7½	Plant and machinery generally.
	20	Motor vans.
Steel, rolling, forging, hammering and re-rolling. See Pig iron and steel manufacturers.		
Synthetic-dyestuffs manufacture.	4	Locomotives.
	5	Railway wagons (ordinary), boilers, steam engines, shafting coal-handling plant, and feed pumps.
	6	Rails of railway sidings.
	7½	Electric motors, dynamos, ice-making plant (excluding steam power plant), and open railway wagons exclusively used for conveyance of specially deleterious substances.
	15	All other plant and machinery. <sup>1</sup>
Tailoring trade, ready-made and wholesale bespoke men's heavy clothing.	9	Plant and machinery generally.
Taxicabs (double-shift).....	20	
Timber goods, manufacturers of.	5	Engines, boilers, and main shafting.
Timber merchants, sawmills..	7½	General sawmilling plant and machinery.
	20	Traction engines, tractors, motor cars, and haulage plant.
Tramways.....	(10)	Permanent way.
	3	Cables.
	7	Cars and other rolling stock.
	5	General plant and machinery, including standards, brackets and workshop tools.
Wrought-iron industry.....	7½	Plant and machinery generally.

<sup>1</sup> Additions to and replacements to be charged to capital, provided that repairs, renewals, and replacements which do not destroy the identity of the machine shall be allowed as a revenue charge.

<sup>2</sup> No allowance for wear and tear to be made in respect of the nonmetal parts of the structure of ovens, but in lieu thereof the cost of repairs and replacements and rebuilding to be charged to revenue, but cost of new ovens and extensions and enlargements of existing ovens to be charged to capital.

<sup>3</sup> Rate on prime cost. With regard to ships purchased second-hand at prices in excess of the written-down value at the date of purchase, the following arrangements have been made: (a) The allowance is made on the actual cost price of the ship to the owner for the time being, without regard to the price cost to a previous owner. (b) The rate of depreciation allowable is calculated by reference to the reasonable expectation of the life of the ship at the date of purchase from the previous owner.

<sup>4</sup> Each of the constituent parts (vats, autoclaves, etc.) of a "battery" constituting a single unit, and each rail of railway sidings shall be taken to be a separate machine.

<sup>5</sup> No allowance to be made in respect of nitric-acid plant or plant consisting of silica, glass, earthenware, or other material as distinct from metal, pipes, and electric cables, railway sidings except rails, but cost of repairs and reinstatement to be charged against revenue as and when incurred.

<sup>6</sup> An allowance per mile of track based upon the estimated life of the permanent way.

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