

**THE  
ACTS AND PROCLAMATIONS  
OF  
COCHIN**

# THE ACTS AND PROCLAMATIONS OF COCHIN

**Volume X—(1117 M.E.)**

**PUBLISHED BY  
THE GOVERNMENT OF COCHIN  
(Law Department)**



**PRINTED BY  
THE SUPERINTENDENT, COCHIN GOVERNMENT PRESS,  
ERNAKULAM  
1942**

# THE ACTS AND PROCLAMATIONS OF COCHIN

Vol. X—(1117 M.E.)

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**ACTS  
AND  
PROCLAMATIONS  
VOLUME X  
1117**

**PROCLAMATION  
(I of 1117)**

**THE AIR RAID PRECAUTIONS SERVICES  
PROCLAMATION**

**CONTENTS**

**Preamble.**

**Sections.**

1. Short title, extent and commencement.
2. Constitution of Air Raid Precautions Services.
3. Appointment of members and officers.
4. Dismissal of members.
5. Functions of members.
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**THE AIR RAID PRECAUTIONS SERVICES  
PROCLAMATION**

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin, on the 3rd day of Kanni 1117  
corresponding to the 19th day of September 1941*

**[Published in the Cochin Government Gazette  
dated 11th Kanni 1117]**

WHEREAS an emergency has arisen which makes it necessary to provide for the constitution of Air Raid Precautions Services to carry out measures for the

protection of persons and property against hostile attack whether from the air or otherwise; We are pleased to command as follows.—

**Short title, extent and commencement.**

1. (1) This Proclamation may be called the Air Raid Precautions Services Proclamation, I of 1117.

(2) It extends to the whole of Cochin State.

(3) It shall come into force at once.

**Constitution of Air Raid Precautions Services.**

2. Government may constitute for any area a body to be called an Air Raid Precautions Service, and may appoint a person, hereinafter called the Controller, to command such body in such area.

**Appointment of members and officers.**

3. (1) Any authority authorized in this behalf by Government may appoint as members of an Air Raid Precautions Service so many persons who are fit and willing to serve as such as it is authorized by Government to appoint, and the Controller may appoint any such member to any office of command in the Service.

(2) Every person so appointed to be a member of an Air Raid Precautions Service shall be given a certificate of membership in such form as may be prescribed.

**Dismissal of members.**

4. The Controller or any other authority authorized in this behalf by Government may by order in writing dismiss summarily from an Air Raid Precautions Service any member thereof if, in the opinion of the Controller or such other authority, he fails to discharge satisfactorily his duties as such member, or is guilty of misconduct in the discharge of his duties as such member, or his continued presence in the Service is otherwise undesirable.

**Functions of members.**

5. (1) The members of an Air Raid Precautions Service shall perform such functions in relation to the carrying out of measures for the protection of persons and property against hostile attack as may be assigned to them by or under this Proclamation or any other law for the time being in force.

- (2) The Controller or any person authorized in this behalf by the Controller or by Government, may, at any time, call out a member of an Air Raid Precautions Service for training or to discharge any such function as aforesaid.

6. No suit, prosecution or other legal proceeding shall lie against the Controller or any member of an Air Raid Precautions Service for anything which is in good faith done or intended to be done in pursuance of this Proclamation or any rules made thereunder. **Bar of suits.**

7. No prosecution shall be instituted against the Controller or any member of an Air Raid Precautions Service in respect of anything done or purporting to be done by him in discharge of his functions as such Controller or member except with the previous sanction of Government. **Protection against prosecution.**

8. If any member of an Air Raid Precautions Service, on being called out under sub-section (2) of section 5, without sufficient excuse neglects or refuses to obey such order or to discharge his functions as a member of the Air Raid Precautions Service or to obey any lawful order or direction given to him for the performance of his duties, he shall, on conviction by a competent Court, be punishable with fine which may extend to fifty rupees. **Penalty.**

9. Government may make rules consistent with this Proclamation— **Rule-making power.**

- (a) prescribing the duties of members of Air Raid Precautions Services, and regulating the manner in which they may be called out for service;
- (b) regulating the organisation, appointment, conditions of service, discipline, accoutrements and clothing of members of any or all Air Raid Precautions Services;
- (c) prescribing the form of certificates of membership of any or all Air Raid Precautions Services;
- (d) generally for giving effect to the provisions of this Proclamation.

**PROCLAMATION**  
**(II of 1117)**

THE COFFEE MARKET EXPANSION ORDINANCE  
APPLICATION (AMENDMENT)  
PROCLAMATION

**CONTENTS**

**Preamble.**

**Sections.**

1. Short title and commencement.
2. Amendment of section 2 of Proclamation IV of 1116.
3. Amendment of section 14 (1) of Ordinance.
4. Amendment of section 47 of Ordinance.
5. Contracts.

THE COFFEE MARKET EXPANSION ORDINANCE  
APPLICATION (AMENDMENT)  
PROCLAMATION

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin, on the 8th day of Thulam 1117  
corresponding to the 24th day of October 1941*

[Published in the Cochin Government Gazette,  
dated 16th Thulam 1117]

**Preamble.**      WHEREAS it is expedient further to amend the Coffee Market Expansion Ordinance Application Proclamation, IV of 1116; We are hereby pleased to command as follows.—

**Short title and commencement.**

1. (1) This Proclamation may be called the Coffee Market Expansion Ordinance Application (Amendment) Proclamation, II of 1117.
- (2) It shall come into force at once.

**Amendment of section 2 of Proclamation IV of 1116.**

2. In section 2 of the Coffee Market Expansion Ordinance Application Proclamation, IV of 1116, hereinafter referred to as the Proclamation, for the words "as amended by Ordinance I of 1941", the words "as amended by Ordinances I and VIII of 1941" shall be substituted.

3. In sub-section (1) of section 14 of the Ordinance as in force in Cochin State for the word "twenty-five" the word "ten" shall be substituted.

Amendment  
of section  
14 (1) of  
Ordinance.

4. Section 47 of the Coffee Market Expansion Ordinance, 1941, shall have effect as if the following were substituted.—

Amendment  
of section 47  
of Ordinance.

"47. Nothing in this Proclamation shall apply to or affect any contract for the sale of coffee entered into—

Contracts.

(a) before the 3rd day of December, 1940, by the owner of a coffee estate which has been subject to sub-section (1) of section 14 from the commencement of this Proclamation, or

(b) before the commencement of the Coffee Market Expansion Ordinance Application (Amendment) Proclamation, II. of 1117, by the owner of a coffee estate which became subject to sub-section (1) of section 14 on the commencement of the said Proclamation,

if in the case referred to in clause (a) before the expiration of twenty-one days from the commencement of this Proclamation, or in the case referred to in clause (b) before the expiration of twenty-one days from the commencement of the Coffee Market Expansion Ordinance Application (Amendment) Proclamation, II of 1117, the owner of the coffee estate or the exporter who has effected the contract has furnished to the Board particulars of such contract ; but all contracts not saved by the provisions of this section shall, in so far as they are at variance with the provisions of this Proclamation, be void."

**PROCLAMATION****(III of 1117)**

## THE COCHIN CYCLONE RELIEF

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin on the 14th day of Thulam 1117  
corresponding to the 30th day of October 1941*

**[ Published in the Cochin Government Gazette,  
dated 16th Thulam 1117 ]**

WHEREAS it is deemed necessary to afford further temporary relief with a view to mitigate the hardships caused by the recent cyclone; We are hereby pleased to command as follows.—

1. (1) This Proclamation may be called the Cochin Cyclone Relief Proclamation, III of 1117.
- (2) It extends to the whole of Cochin.
- (3) It shall be deemed to have come into force on the last day of Karkadagam 1116 and shall continue to be in force until such time as Government may, by notification in the Cochin Government Gazette, determine.
2. Notwithstanding anything contained in the Cochin Agriculturists' Relief Act, XVIII of 1114,—
  - (a) the arrears of *pattom* as scaled down under section 16 of the said Act and payable in instalments before the last day of Karkadagam in the years 1116, 1117 and 1118 shall be payable only on or before the last day of Karkadagam in the years 1118, 1119 and 1120 respectively; and
  - (b) the arrears of *michavaram* as scaled down under section 17 of the said Act and payable in instalments before the last day of Karkadagam in the years 1116 and 1117 shall be payable only on or before the last day of Karkadagam in the years 1118 and 1119 respectively.
3. Where the land revenue payable in respect of any land for any of the years 1116 or 1117 is remitted in whole or in part by Government on account of the cyclone,



the landlord shall, notwithstanding any law, custom or contract to the contrary, remit in favour of his tenant—

- (a) the land revenue remitted by Government and
- (b) the *pattom* or *michavaram* in the same proportion.

## PROCLAMATION

### (IV of 1117)

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin,  
on the 14th day of Thulam 1117 corresponding  
to the 30th day of October 1941*

[ **Published in the Cochin Government Gazette,  
dated 16th Thulam 1117** ]

WHEREAS it is deemed expedient that Proclamation VII of 1115 dated the 14th day of Vrischigam 1115 corresponding to the 30th day of November 1939, should be amended in certain respects; We are pleased to command as follows.—

1. In the Preamble to Proclamation VII of 1115, hereinafter referred to as the Proclamation, between the words "Estate" and "it", the words "and to the Devaswams under the management of the said Estate" shall be inserted.

2. In paragraph 1 of the Proclamation, between the words "Estate" and "hereinafter", the words "and to the Devaswams under the management of the said Estate" shall be inserted.

## PROCLAMATION

(V of 1117)

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin,  
on the 13th day of Vrischigam 1117  
corresponding to the 28th day of November 1941*

[Published in the Cochin Government Gazette,  
dated 14th Vrischigam 1117]

WHEREAS for the proper and efficient management of the Cheranellur Swaroopam, We consider that OUR GOVERNMENT should assume the management of the affairs of the said Swaroopam ;

AND WHEREAS a deed of surrender (Document No. 21 of Book II of 1117 of the Ernakulam District Registry Office) has been executed to the Secretary to Government for and on behalf of OUR GOVERNMENT by all the members of the aforesaid Swaroopam ;

WE are pleased to command as follows.—

1. The management of the Cheranellur Swaroopam, the Sree Chakram Temple, the Thottathingal Sastha Temple, the Parambanarkulangara Temple and of all the properties appertaining thereto (hereinafter referred to as the Estate) shall be assumed forthwith by OUR GOVERNMENT and such management by OUR GOVERNMENT shall be continued until such time as OUR GOVERNMENT may deem fit :

Provided that Government shall, on a requisition made to them by a majority of the adult members of the Swaroopam, restore the management of the Estate to the Swaroopam.

2. During the period of such management of the Estate, OUR GOVERNMENT shall have plenary powers with regard to the alienation of the properties belonging to the Estate, with regard to composition with tenants in respect of arrears of *pattom*, *michavaram* and kindred dues accruing and accrued due and with regard to the rights of management in general and to do all that OUR GOVERNMENT consider necessary for the efficient administration and management of the Estate.

3. OUR GOVERNMENT may, by notification published in the Cochin Government Gazette, appoint a person or persons to manage the affairs of the Estate and OUR GOVERNMENT may delegate, by notification published in the Cochin Government Gazette, to the person or persons so appointed or to such other person or persons they may nominate in this behalf all or any of the powers conferred upon them by clauses 1 and 2 above.

4. OUR GOVERNMENT may frame such rules, as may, from time to time, be deemed necessary for managing the affairs of the Estate. Such rules, when framed and published in the Cochin Government Gazette, shall be deemed to be part of this Proclamation and their validity shall not be questioned in a court of law on the ground that they are *ultra vires* or on any other grounds.

5. All suits on behalf of or against the Estate shall, during the period of management of the Estate by OUR GOVERNMENT, be brought in the name of OUR GOVERNMENT or in the name of any officer or person as OUR GOVERNMENT may, generally or specially, by notification in the Cochin Government Gazette, specify.

6. All acts done by OUR GOVERNMENT or by their nominees in pursuance of the powers conferred by this Proclamation during the period of management by OUR GOVERNMENT shall be accepted without question by the members of the aforesaid Swaroopam and all accounts of management maintained by OUR GOVERNMENT or their nominees and all items of expenditure incurred by them for and on behalf of the aforesaid Swaroopam during such period shall also be accepted without question by the members of the aforesaid Swaroopam.

7. During the period of the management of the Estate by OUR GOVERNMENT the provisions of the Cochin Revenue Recovery Act, IV of 1083, shall apply for the recovery of *pattom*, *michavaram*, renewal fee and other dues of a like nature already accrued due or accruing due hereafter to the Estate.

8. The validity of the Deed of Surrender (Document No. 21 of Book II of 1117 of the Ernakulam District Registry Office) or of the acts of OUR GOVERNMENT in pursuance of this Proclamation shall not be liable to be questioned by any member of the Cheranellur Swaroopam in any court of law.

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10 *Staying Suits and Decrees for Eviction [1117: Pro. VI  
of Verumpattamdars*

**PROCLAMATION**

**(VI of 1117)**

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin,  
on the 13th day of Vrischigam 1117  
corresponding to the 28th day of November 1941*

**[Published in the Cochin Government Gazette,  
dated 14th Vrischigam 1117]**

WHEREAS We have under consideration a Bill for the purpose of granting fixity of tenure to *verumpattamdars* under certain conditions; We are hereby pleased to command as follows.—

1. This Proclamation shall be in force until such time as Government may withdraw it by notification in the Cochin Government Gazette.

2. This Proclamation shall not apply to *verumpattamdars* of buildings intended for residential, commercial or industrial purposes, with the land, if any, necessary for the convenient enjoyment of the building and appurtenant thereto, or to *verumpattamdars* from usufructuary mortgages and to persons deriving interest from them.

3. No suit shall be instituted against a *verumpattamdar* for eviction nor shall he be evicted from his holding in execution of a decree for eviction. All suits and appeals for eviction of *verumpattamdars* now pending in the courts shall be stayed but this shall not preclude courts from granting relief for arrears of rent due in respect of the holding.

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**THE COCHIN VILLAGE PANCHAYAT (AMENDMENT) ACT**

**(I of 1117)**

**CONTENTS**

**Preamble.**

**Sections.**

1. Short title and commencement.
2. Amendment of section 7.

THE COCHIN VILLAGE PANCHAYAT  
(AMENDMENT) ACT

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin,*

*on the 18th day of Vrischigam 1117 corresponding to the  
3rd day of December 1941*

[Published in the Cochin Government Gazette,  
dated 21st Vrischigam 1117]

WHEREAS it is deemed expedient further to amend the Cochin Village Panchayat Act, V of 1089; It is hereby enacted as follows.— Preamble.

1. This Act may be called the Cochin Village Panchayat (Amendment) Act, I of 1117 and it shall come into force at once. Short title and commencement.

2. In section 7 of the Cochin Village Panchayat Act, V of 1089, for the words "the term of the members" the words "the term of the President or members" shall be substituted. Amendment of section 7.

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PROCLAMATION

(VII of 1117)

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin,*

*on the 27th day of Vrischigam 1117 corresponding  
to the 12th day of December 1941*

[Published in the Cochin Government Gazette,  
dated 28th Vrischigam 1117]

WHEREAS the deep water wharf at Willingdon Island has been completed and whereas it is deemed necessary to provide for the facilities being properly utilised; We are pleased to command as follows.—

1. The Conservator of the Port of Cochin may in his discretion order any sea-going vessel within the Port to come alongside the wharf and use the facilities provided by the Port for the purpose

of landing and shipping goods or for landing or for shipping the same as the case may be.

2. Whoever infringes any order issued by virtue of the powers conferred by this Proclamation shall be punished with fine which may extend to one hundred rupees; and, if the infringement be continuing, with a further fine which may extend to one hundred rupees for every day during which such infringement continues.

3. All cases of infringement of any order issued by virtue of the powers conferred by this Proclamation shall be tried and penalties and costs recovered as provided in sections 54 and 55 of the Cochin Ports Act, VI of 1113.

## PROCLAMATION (VIII of 1117)

*Promulgated by His Highness Sree Kerala Varma, Maharaja of  
Cochin on the 28th day of Vrischigam 1117 corresponding  
to the 13th day of December 1941*

[Published in the Cochin Government Gazette,  
dated 28th Vrischigam 1117]

WHEREAS the Travancore National and Quilon Bank, Ltd., a Banking Company registered under the Travancore Companies Act, is under liquidation in the Courts of Travancore, Cochin, British India and other States and WHEREAS it is deemed expedient to provide for the further distribution of the remaining assets of the aforesaid Bank among the entire body of creditors wherever they may be, on an equitable basis, WE are hereby pleased to command that, subject to such terms and conditions as Our Government may by rules prescribe, the Court engaged in the winding up of the branches of the Travancore National and Quilon Bank, Ltd., in Our State, shall, in the matter of the further distribution of the assets of the aforesaid Bank, co-operate with the foreign Courts to be notified by Government in the Cochin Government Gazette. The rules when framed and published in the Cochin Government Gazette, shall be deemed to form part of this Proclamation.

2. WE are further pleased to command that till the publication of the aforesaid rules and except in accordance with the provisions contained therein, no further distribution of the assets shall be made by the Court winding up the branches of the aforesaid Bank in Our State.

**THE EXCESS PROFITS TAX ACT**  
**(II of 1117)**

*As amended by Act VII of 1117*

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**Preamble**

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Schedule I.—Rules for the computation of profits for purposes of Excess Profits Tax

„ II.—Rules for computing the average amount of capital

„ III.—Rules for determining the amount of capital held by a company through other companies

### THE EXCESS PROFITS TAX ACT

*Promulgated by His Highness the Maharaja of Cochin  
on the 4th day of Makaram 1117 corresponding  
to the 17th day of January 1942*

[Published in the Cochin Government Gazette  
dated 4th Makaram 1117]

WHEREAS it is expedient to impose a tax on excess profits arising out of certain businesses in the conditions prevailing during the present hostilities; It is hereby enacted as follows.—

**Short title,  
extent and  
commence-  
ment.**

1. (1) This Act may be called the Excess Profits Tax Act, II of 1117.
- (2) It extends to the whole of Cochin State.
- (3) It shall come into force at once.

**Definitions.**

2. In this Act, unless there is anything repugnant in the subject or context,—

- (1) “accounting period” in relation to any business means—

(a) where the accounts of the business are made up for successive



periods of twelve months, each of such periods;

- (b) in any other case, such period as the Excess Profits Tax Officer may determine:

Provided that in determining any accounting period under sub-clause (b) the Excess Profits Tax Officer shall have regard to the period, if any, which is, or has been, determined as the previous year for that business for the purposes of <sup>1</sup>[the Cochin Income-tax Act, 1117, or the Act repealed thereby]

- (2) "average amount of capital" means the average amount of capital employed in any business as computed in accordance with the Second Schedule;

- (3) "business" includes any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture or any profession or vocation, but does not include a profession carried on by an individual or by individuals in partnership if the profits of the profession depend wholly or mainly on his or their personal qualifications unless such profession consists wholly or mainly in the making of contracts on behalf of other persons or the giving to other persons of advice of a commercial nature in connection with the making of contracts:

Provided that where the functions of a company or of a society incorporated by or under any enactment consist wholly or mainly in the holding of investments or other property, the holding of the investments or property shall be deemed for the purpose of this definition to be a business carried on by such company or society:

Provided further that all businesses to which this Act applies carried on by the same person

<sup>1</sup>Substituted for "the Cochin Income-tax Act, 1108" by Act VII of 1117.

- shall be treated as one business for the purposes of this Act ;
- (4) "chargeable accounting period" means any accounting period ending on or after the 5th day of Kanni 1116 ;
- (5) "Commissioner" means a person appointed to be a Commissioner of Excess Profits Tax under section 3 ;
- (6) "company" means a company as defined in the Indian Companies Act, 1913, or the said Act as made applicable to Cochin or formed in pursuance of the law of any other Indian State or of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession and includes any foreign association whether incorporated or not, which the Government may, by general or special order, declare to be a company for the purposes of this Act ;
- (7) "deficiency of profits" means—
- (i) where profits have been made in any chargeable accounting period, the amount by which such profits fall short of the standard profits ;
  - (ii) where a loss has been made in any chargeable accounting period, the amount of the loss added to the amount of the standard profits ;
- (8) "director" includes any person occupying the position of a director by whatever name called and also includes any person who—
- (i) is a manager of the company or concerned in the management of the business ; and
  - (ii) is remunerated out of the funds of the business ; and
  - (iii) is the beneficial owner of not less than twenty per cent of the ordinary share capital of the company ;

(9) "dividend" includes—

- (a) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company ;
- (b) any distribution by a company of debentures or debenture-stock, to the extent to which the company possesses accumulated profits, whether capitalised or not ;
- (c) any distribution made to the shareholders of a company out of accumulated profits of the company on the liquidation of the company :

Provided that only the accumulated profits so distributed which arose during the six previous years of the company preceding the date of liquidation shall be so included ; and

- (d) any distribution by a company on the reduction of its capital to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st day of Chingam 1111 whether such accumulated profits have been capitalised or not :

Provided that "dividend" does not include a distribution in respect of any share issued for full cash consideration which is not entitled in the event of liquidation to participate in the surplus assets, when such distribution is made in accordance with sub-clause (c) or (d).

*Explanation*—The words “accumulated profits” wherever they occur in this clause, shall not include “capital profit”.

- (10) “Excess Profits Tax Officer” means a person appointed to be an Excess Profits Tax Officer under section 3 ;
- (11) <sup>1</sup> [“Income” has the meaning assigned to the expression in section 3 of the Cochin Income-tax Act, 1117 ;]
- (12) “fixed rate” in relation to dividends on share capital, other than ordinary share capital, includes a rate fluctuating in accordance with the maximum rate of income-tax ;
- (13) “loss” means a loss computed in the same manner as, for the purposes of this Act, profits are to be computed ;
- (14) “ordinary share capital” has the meaning assigned to that expression in sub-section (9) of section 9 ;
- (15) “person” includes a Hindu undivided family and an undivided *Marumakkathayam Tarwad* ;
- (16) “prescribed” means prescribed by rules made under this Act ;
- (17) “profits” means profits as determined in accordance with the First Schedule ;
- (18) “standard profits” means standard profits as computed in accordance with the provisions of section 6 ;
- (19) “statutory percentage” means—
  - (a) in relation to a business carried on by a body corporate (other than a company the directors whereof have a controlling interest therein), eight per cent per annum ;
  - (b) in relation to a business carried on by a partnership of which one or more of the partners is a body corporate (other than a company the directors whereof have a

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<sup>1</sup> Substituted by Act VII of 1117. •

controlling interest therein), such a rate per cent as is equivalent to—

- (i) eight per cent per annum on so much of the average amount of the capital employed in the business during the chargeable accounting period as represents the share of any such body corporate, and
- (ii) ten per cent per annum on the remainder of that amount;
- (c) in relation to a business to which neither sub-clause (a) nor sub-clause (b) applies, ten per cent per annum:

Provided that in relation to any decrease of capital the statutory percentage shall be in all cases six per cent :

Provided further that where the business was commenced on or after the 1st day of Chingam 1114, the foregoing percentages shall be increased from eight, ten and six per cent to ten, twelve and eight per cent, respectively ;

(20) <sup>1</sup> [“written down value” has the meaning assigned to that expression in sub-section (5) of section 13 of the Cochin Income-tax Act, 1117;]

3. (1) There shall be the following classes of excess profits tax authorities for the purposes of this Act, namely.—
- (a) Commissioner of Excess Profits Tax ;
  - (b) Excess Profits Tax Officers.

**Excess Pro-  
fits Tax  
Authorities.**

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<sup>1</sup> Substituted by Act VII of 1117.

- (2) The Commissioner of Excess Profits Tax, and Excess Profits Tax Officer shall be the person who is appointed to be the Commissioner of Income-tax, and the Deputy Commissioner of Income-tax respectively, under <sup>1</sup>[the Cochin Income-tax Act, 1117.]
- (3) The Government shall, subject to the provisions of sub-section (2), appoint such persons as Commissioner of Excess Profits Tax, and Excess Profits Tax Officers as they think fit and such persons shall perform their functions in respect of such cases as the Government may assign to them ;
- (4) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Government.

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Commissioner in the exercise of his appellate functions.

Charge of  
tax.

4. Subject to the provisions of this Act, there shall, in respect of any business to which this Act applies, be charged, levied and paid on the amount by which the profits during any chargeable accounting period exceed the standard profits a tax (in this Act referred to as "excess profits tax") which shall be equal to sixty per cent of that excess :

Provided that any profits which are, under the provisions of sub-section (3) of <sup>2</sup>[section 5 of the Cochin Income-tax Act, 1117] exempt from income-tax, and all profits from any business of life insurance shall be totally exempt from excess profits tax under this Act.

Application  
of Act.

5. <sup>3</sup>[This Act shall apply to every business of which any part of the profits made during the chargeable accounting period is chargeable to income-tax by virtue of the provisions

<sup>1</sup> Substituted for " the Cochin Income-tax Act, 1108 " by Act VII of 1117.

<sup>2</sup> Substituted for " section 4 of the Cochin Income-tax Act, 1108 " by Act VII of 1117.

<sup>3</sup> Substituted by *ibid.*

of sub-clause (i) or sub-clause (ii) of clause (b) of sub-section (1) of section 5 of the Cochin Income-tax Act, 1117, or of clause (c) of that sub-section :

Provided that this Act shall not apply to any business the whole of the profits of which accrue or arise without Cochin where such business is carried on by or on behalf of a person who is resident but not ordinarily resident in Cochin unless the business is controlled in India :

Provided further that where the profits of a part only of a business carried on by a person who is not resident in Cochin or not ordinarily so resident accrue or arise in Cochin or are deemed under the Cochin Income-tax Act, 1117, so to accrue or arise, then, except where the business being the business of a person who is resident but not ordinarily resident in Cochin is controlled in India, this Act shall apply only to such part of the business, and such part shall for all the purposes of this Act be deemed to be a separate business.]

6. (1) For the purposes of this Act, the standard profits of a business in relation to any chargeable accounting period shall, subject to the provisions of sub-sections (3) and (4), be an amount bearing to the profits of the business during the standard period, if in respect of that business a standard period is available, the same proportion as the chargeable accounting period bears to the standard period:

**Standard profits.**

Provided that if the average amount of capital employed in the business during such chargeable accounting period is greater or less than the average amount of capital employed during the standard period, such amount shall be increased or decreased, as the case may be, by an amount calculated by applying the statutory percentage to the amount of such increase or decrease :

Provided further that in the case of a business which was commenced on or after the last day of Karkadagam 1111, the standard profits shall, at the option of the person

carrying on the business, be an amount calculated by applying the statutory percentage to the average amount of capital employed in the business during such chargeable accounting period.

(2) For the purposes of this section the standard period shall, at the option of the person carrying on the business, be—

(a) the “previous year” as determined under section 2 of the Cochin Income-tax Act, 1108, for the purpose of the income-tax assessment for the year ending on the last day of Karkadagam 1112, or the previous year as so determined for the year ending on the last day of Karkadagam 1113; or

(b) the “previous year” as so determined for the year ending on the last day of Karkadagam 1112 and that for the year ending on the last day of Karkadagam 1114; or

(c) the “previous year” as so determined for the year ending on the last day of Karkadagam 1113, and that for the year ending on the last day of Karkadagam 1114; or

(d) the “previous year” as so determined for the year ending on the last day of Karkadagam 1114 and that for the year ending on the last day of Karkadagam 1115:

Provided that in no case shall any period of less than nine months be taken as a standard period.

(3) If, within the period specified in the notice issued under sub-section (1) of section 14



or within the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section, the person carrying on the business makes an application to the Excess Profits Tax Officer in this behalf, the Excess Profits Tax Officer shall refer the application to the Commissioner, and if the Commissioner is satisfied that during the standard period the profits of the business were less than might at the beginning of that period have been reasonably expected, he may direct that the standard profits shall be computed as if the profits during the standard period were such greater amount as he thinks just:

Provided that such amount shall not exceed the statutory percentage of the average amount of the capital employed in the business unless the Commissioner is satisfied that owing to some specific cause peculiar to the business it is just that a greater amount should be allowed.

Provided further that a determination on an application under this sub-section—

(a) shall have effect with respect to all subsequent chargeable accounting periods;

(b) shall exclude any further application under this sub-section.

(4) The standard profits shall be taken to be rupees thirty-six thousand in any case in which the standard profits computed in accordance with sub-section (1) are less than this sum:

Provided that if the chargeable accounting period is greater or less than one year the sum of rupees thirty-six thousand shall, for the purpose of this sub-section, be increased or decreased proportionately.

7. Where a deficiency of profits occurs in any chargeable accounting period in any business, the profits of the business chargeable with excess profits tax shall be

**Relief on occurrence of deficiency of profits.**

deemed to be reduced and relief shall be granted in accordance with the following provisions.—

- (a) the aggregate amount of the profits so chargeable for the previous chargeable accounting periods shall be deemed to be reduced by the amount of the deficiency of profits and the amount of excess profits tax payable in respect thereof shall be deemed to be reduced accordingly and the relief necessary to give effect to the reduction shall be given by repayment or otherwise;
- (b) where the amount of the deficiency of profits exceeds the aggregate amount of the profits so chargeable for the previous chargeable accounting periods, or where there is no previous chargeable accounting period, the balance of the deficiency of profits or the whole of the deficiency, as the case may be, shall be applied in reducing any profits so chargeable for the next subsequent chargeable accounting period, and if and so far as it exceeds the amount of those profits, any profits so chargeable for the next subsequent chargeable accounting period and so on.

**Successions  
and amalga-  
mations.**

8. (1) As from the date of any change in the persons carrying on a business, the business shall, subject to the provisions of this section, be deemed for all the purposes of this Act except for the purposes of determining the amount of the statutory percentage to have been discontinued, and a new business to have been commenced.
- (2) Where the change took place before the commencement of the first chargeable accounting period and consisted in the death or retirement of a partner, or the taking in of a partner, the persons carrying on the business after the change may, by notice given in writing before the prescribed date to the Excess Profits Tax Officer, elect that, for the purposes of the provisions of this Act relating to the computation of standard

profits, the business shall not be deemed to have been discontinued.

- (3) A business shall not, for the purposes of the provisions of this Act relating to the computation of standard profits, be deemed to be discontinued by reason of any change occurring on or after the commencement of the first chargeable accounting period, in the persons carrying it on, and the standard profits of the business in relation to any chargeable accounting period shall be computed accordingly, and, in particular, in computing the capital employed in the business after the change, and in considering for the purposes of computing the profits of, and the capital employed during, any chargeable accounting period, whether any and, if so, what deductions are to be made in respect of depreciation of buildings, plant and machinery, no regard shall be had to any consideration given in respect of the transfer of the business or any of the assets thereof on the occasion of the change.
- (4) Where, on or after the commencement of the first chargeable accounting period, two or more businesses are amalgamated, the resulting business shall be treated for the purposes of the provisions of this Act relating to the computation of standard profits as if—
  - (a) it had been in existence throughout the period during which there were in existence any of the former businesses;
  - (b) any profits made or losses incurred or capital employed in any of those former businesses had been made, incurred or employed in the resulting business; and
  - (c) any assets of any of those former businesses had become assets of the resulting business when they

became assets of the former business;

and, in particular, in computing the capital employed in the resulting business, and in considering, for the purposes of computing the profits of, and the capital employed during, any chargeable accounting period, whether any and, if so, what deductions are to be made in respect of depreciation of buildings, plant and machinery, no regard shall be had to any consideration given in respect of the transfer of any of those former businesses or any of the assets thereof on the occasion of the amalgamation.

- (5) Where, on or after the commencement of the first chargeable accounting period, part of a business is transferred as a going concern by the person theretofore carrying it on to another person, the part transferred and the part not transferred shall each be deemed for the purposes of the provisions of this Act relating to the computation of standard profits to be a continuation of the original business, and the said provisions including the provisions of this section relating to amalgamations, shall apply accordingly :

Provided that, for the purposes aforesaid, such apportionments shall be made of the profits made, and losses incurred, and the capital employed, in the original business and of any assets of the original business as may appear to the Excess Profits Tax Officer, or on appeal in the prescribed time and manner to the Commissioner, to him, to be just.

- (6) Notwithstanding anything in the foregoing provisions of this section, where a business was carried on immediately before the 1st day of Chingam 1112 and that business, or the main part of that business was transferred after the said day and before the

commencement of the first chargeable accounting period, by the person carrying it on to another person, the Excess Profits Tax Officer, if he is satisfied that the business carried on after the transference was not substantially different from the business or part transferred, shall, on the application of the person carrying on the business after the transference, treat that person, for the purposes of the provisions of this Act relating to the computation of standard profits, as if he had carried on the transferred business or part of the business as from the date of the commencement of that business.

- (7) Where, on or after the commencement of the first chargeable accounting period a partner in a firm carrying on a business to which this Act applies dies, then notwithstanding anything contained in sub-section (1) any deficiency of profits in respect of any chargeable accounting period ending on or before the date of his death shall, if it has not been fully applied in reducing the profits of any chargeable accounting period under section 7, be carried forward and applied in reducing any profits from the same business carried on by the surviving partner or partners in the first chargeable accounting period after the death of the partner, and if and so far as it exceeds the amount of those profits, in reducing any profits from such business in the next subsequent chargeable accounting period and so on.
- (8) Where—
- (a) a business is, by virtue of sub-section (2) or sub-section (3), deemed not to have been discontinued; or
  - (b) a business is, by virtue of sub-section (4), to be treated as if it had been in existence throughout the period during which there

was in existence any other business; or

(c) a business is, by virtue of sub-section (5), to be treated as a continuation of another business; or

(d) any person who is carrying on a business after a transfer is treated, by virtue of sub-section (6), as having carried on the business as from a date before the transfer,

the provisions of this Act relating to the computation of profits and capital for the purposes of excess profits tax shall, both as respects the standard period and any chargeable accounting period, have effect subject to such modifications, if any, as the Excess Profits Tax Officer may think just, and the Excess Profits Tax Officer may make such alterations in the periods which would otherwise be the chargeable accounting periods of the business as he thinks proper.

**Inter-  
connected  
companies.**

9. (1) Where any interest, annuity or other annual payment, or any royalty or rent, is paid by one company to another company, and one of those companies is a subsidiary of the other, or both are subsidiaries of a third company, the capital, profits and losses of both companies shall be computed for the purposes of this Act as if—

(a) the interest, annuity, annual payment, royalty or rent were not payable;

(b) any debt in respect of which any such interest is payable did not exist; and

(c) any asset in respect of which any such royalty or rent is payable

were the property of the company paying the royalty or the rent.

(2) Where—

- (a) any debt is owing to any company by another company; and
- (b) one of those companies is a subsidiary of the other, or both are subsidiaries of a third company; and
- (c) no interest is payable in respect of the debt, but the circumstances in which the debt came into existence or is allowed to continue to exist are such that the debt represents in substance capital employed in the business of the debtor company,

the capital of both companies shall be computed as if the debt did not exist.

(3) Where—

- (a) a company (hereinafter referred to as "the principal company") is resident in Cochin and is not a subsidiary of any other company resident in Cochin; and
- (b) during the whole or any part of any chargeable accounting period of the principal company, another company, whether or not resident or carrying on business within Cochin (hereinafter referred to as "the subsidiary company") is a subsidiary of the principal company,

the following provisions of this section shall, subject to the provisions of section 5, have effect in relation to that chargeable accounting period.

- (4) If the subsidiary company is a subsidiary of the principal company throughout the chargeable accounting period, such capital employed in, and profits or losses arising from, the business of the subsidiary company as is employed or arise in—
- (i) the chargeable accounting period; or
  - (ii) any year constituting or comprised in the standard period of the principal company,
- shall be treated for the purposes of this Act as if it or they were capital employed in, or as the case may be, profits or losses arising from, the business of the principal company.
- (5) If the subsidiary company is a subsidiary of the principal company during part only of the chargeable accounting period, the excess or deficiency of profits of the subsidiary company for that part of that period shall be treated as increasing or, as the case may be, decreasing the excess or deficiency of profits of the principal company for the whole period and shall not be deemed to be an excess or deficiency of profits of the subsidiary company.

In this sub-section, the expressions "excess" and "deficiency" mean, in relation to profits, an excess or deficiency in relation to the standard profits of the subsidiary company or, as the case may be, the principal company.

- (6) In any case to which sub-section (4) or sub-section (5) applies, such alteration, if any, of the periods which would otherwise be the chargeable accounting periods of the subsidiary company shall be made as the Government may direct.
- (7) For the purposes of this section, a company shall be deemed to be a subsidiary of another company if and so long as not less than



nine-tenths of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies.

- (8) The amount of ordinary share capital of one company owned by a second company through another company or other companies, or partly directly and partly through another company or other companies shall be determined in accordance with the provisions of the Third Schedule.
  - (9) In this section and the Third Schedule references to ownership shall be construed as references to beneficial ownership, and the expression "ordinary share capital", in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders whereof have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.
  - (10) The principal company shall be entitled to allocate to its subsidiary company or companies the respective proportionate shares of the excess profits tax payable by the whole group.
  - (11) The excess profits tax payable by virtue of this section by the principal company in respect of the profits of any subsidiary company shall, for the purposes of section 13 be deemed to have been paid by the subsidiary company and not by the principal company.
- 10 (1) In computing profits for the purposes of this Act no deduction shall be made in respect of any transaction or operation of any nature if and so far as it appears that the transaction or operation has artificially reduced or would artificially reduce the profits.

**Artificial  
transactions\***

- (2) If the Excess Profits Tax Officer is satisfied that any person has entered into or carried out any transaction or operation by which the profits have been or would be artificially reduced, he may direct that such person shall pay, in addition to any excess profits tax for which he is or, but for such transaction or operation, would be liable, a penalty not exceeding the tax evaded or sought to be evaded.

**Transactions designed to avoid or reduce liability to excess profits tax.**

- 11 (1) Where the Excess Profits Tax Officer is of opinion that the main purpose for which any transaction or transactions was or were effected whether before or after the passing of this Act was the avoidance or reduction of liability to excess profits tax, he may make such adjustments as respects liability to excess profits tax as he considers appropriate so as to counteract the avoidance or reduction of liability to excess profits tax which would otherwise be effected by the transaction or transactions.

- (2) Without prejudice to the generality of the powers conferred by sub-section (1), the powers conferred thereby extend—

(a) to the charging with excess profits tax of persons who but for the adjustments would not be chargeable with any tax or would not be chargeable to the same extent;

(b) to the charging of a greater amount of tax than would be chargeable but for the adjustments.

**Relief in respect of double excess profits taxation.**

- 12 (1) The Government may, by notification in the Cochin Government Gazette, make provision for the granting of relief in cases where both excess profits tax under this Act and excess profits tax under any law in force in the United Kingdom, in British India, in any Indian State, or in any other part of His Majesty's Dominions have been paid upon the profits of any business if it appears to

the Government that the laws of the United Kingdom or of British India or of that Indian State or of that other part of His Majesty's Dominions provide for corresponding relief in respect of excess profits tax charged on profits both in the United Kingdom or in British India or in that State or in that part and in Cochin:

Provided that where under section 19 of the Finance (No. 2) Act, 1939, national defence contribution has been paid in the United Kingdom in lieu of excess profits tax, that portion of the national defence contribution so paid which is equal to the excess profits tax which would otherwise have been payable shall, for the purposes of this sub-section, be deemed to be excess profits tax paid in the United Kingdom.

(2) If any person, who has paid excess profits tax under this Act for any chargeable accounting period in respect of profits arising outside India in a country the laws of which do not provide for any relief in respect of excess profits tax charged in Cochin proves that he has paid excess profits tax under the laws of the said country in respect of the same profits, he shall be entitled to the deduction from the excess profits tax payable in Cochin of a sum equal to one-half thereof or to one-half of the excess profits tax payable in the said country, whichever is the less.

13 (1) The amount of the excess profits tax payable in respect of a business for any chargeable accounting period diminished by any amount allowable by way of relief under the provisions of section 12, shall, in computing for the purposes of income-tax or super-tax the profits and gains of that business, be allowed to be deducted as an expense incurred in that period.

**Allowance of excess profits tax in computing income for income-tax purposes.**

(2) There shall also be so deducted the amount of any excess profits tax payable under any law in force in a country outside Cochin on the profits of the business in respect of any

chargeable accounting period to the extent to which such profits are liable to excess profits tax under this Act, after diminishing such amount by any amount which is allowable by way of relief by repayment, set off or otherwise under any law in the country where the tax is payable providing for the granting of relief in that country where excess profits tax has also been charged in Cochin:

Provided that where, under the provisions of this Act relating to deficiencies of profits or under any corresponding law in force in the said country without Cochin, relief is given by way of repayment from excess profits tax chargeable for any chargeable accounting period previous to that in which the deficiency occurs, the amount of the deduction allowed under sub-section (1) or sub-section (2) shall not be altered, but the amount repayable shall be taken into account in computing the profits and gains of the business for the purposes of income-tax as if it were a profit of the business accruing in the previous year (as determined for that business for the purposes of <sup>1</sup>[the Cochin Income-tax Act, 1117] in which the deficiency of profits occurs.

Issue of  
notices for  
assessment.

14 (1) The Excess Profits Tax Officer may, for the purposes of this Act, require any person whom he believes to be engaged in any business to which this Act applies, or to have been so engaged during any chargeable accounting period, or to be otherwise liable to pay excess profits tax, to furnish within such period, not being less than sixty days from the date of the service of the notice, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) with respect to any chargeable accounting period specified in the notice the profits of the business and the standard profits of the business as computed in accordance with the provisions of section 6 or the amount of deficiency available for relief under section 7:

<sup>1</sup> Substituted for "the Cochin Income-tax Act, 1108" by Act VII of 1117.

Provided that the Excess Profits Tax Officer may, in his discretion, extend the date for the delivery of the return.

- (2) The Excess Profits Tax Officer may serve on any person, upon whom a notice has been served under sub-section (1), a notice requiring him on a date to be therein specified to produce, or cause to be produced, such accounts or documents as the Excess Profits Tax Officer may require and may from time to time serve further notices in like manner requiring the production of such further accounts or documents or other evidence as he may require :

Provided that the Excess Profits Tax Officer shall not require the production of any accounts relating to a period prior to the "previous year" as determined under section 2 of the Cochin Income-tax Act, 1108, for the purpose of the income-tax assessment for the year ending on the last day of Karkadagam 1112.

15. (1) The Excess Profits Tax Officer shall, by an order in writing after considering such evidence, if any, as he has required under section 14, assess to the best of his judgment the profits liable to excess profits tax and the amount of excess profits tax payable on the basis of such assessment, or if there is a deficiency of profits, the amount of that deficiency and the amount of excess profits tax, if any, repayable and shall furnish a copy of such order to the person on whom the assessment has been made. **Assessments.**
- (2) Excess profits tax payable in respect of any chargeable accounting period shall be payable by the person carrying on the business in that period.
- (3) Where two or more persons were carrying on the business jointly in the chargeable accounting period, the assessment shall be made upon them jointly and, in the case of a partnership, may be made in the partnership name.

- (4) Where by virtue of the foregoing provisions an assessment could, but for his death, have been made on any person either solely or jointly with any other person or persons, the assessment may be made on his legal representative either solely or jointly with that other person or persons, as the case may be.

**Profits es-  
caping  
assessment.**

16. If, in consequence of definite information which has come into his possession, the Excess Profits Tax Officer discovers that profits of any chargeable accounting period chargeable to excess profits tax have escaped assessment, or have been underassessed, or have been the subject of excessive relief, he may at any time within five years of the end of the chargeable accounting period in question serve on the person liable to such tax a notice containing all or any of the requirements which may be included in a notice under section 14, and may proceed to assess or re-assess the amount of such profits liable to excess profits tax and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under that section.

**Penalties.**

17. If the Excess Profits Tax Officer, or the Commissioner, in the course of any proceedings under this Act, is satisfied that any person has, without reasonable cause, failed to furnish the return required under sub-section (1) of section 14, or to produce or cause to be produced the accounts or documents or other evidence required by the Excess Profits Tax Officer under sub-section (2) of that section, or has concealed particulars of the profits made by or capital employed in the business, or has deliberately furnished inaccurate particulars of such profits or capital, he may direct that such person shall pay by way of penalty, in addition to the amount of any excess profits tax payable, a sum not exceeding—

- (a) where the person has failed to furnish the return required under sub-section (1) of section 14, the amount of the excess profits tax payable; and
- (b) in any other case, the amount of excess profits tax which would have been avoided if the return made had been accepted as correct.

18. (1) Any person aggrieved by a decision made in Appeals.  
pursuance of section 8 or 11, or objecting to the amount of excess profits tax for which he is liable as assessed by the Excess Profits Tax Officer or denying his liability to be assessed under this Act, or objecting to any penalty imposed by the Excess Profits Tax Officer, or to the amount of any deficiency of profits as assessed by the Excess Profits Tax Officer, or to the amount allowed by the Excess Profits Tax Officer by way of relief under any provision of this Act or to any refusal by the Excess Profits Tax Officer to grant relief or dissatisfied with a decision of the Excess Profits Tax Officer under Rule 12 or 13 of Schedule I may appeal to the Commissioner :

Provided that no appeal shall lie against a determination of the amount of the profits of any standard period where those profits have been determined in accordance with the second proviso to rule I of the First Schedule except in respect of adjustments made under the provisions of that Schedule.

- (2) An appeal shall ordinarily be presented within forty-five days of receipt of the notice of demand relating to the assessment or penalty objected to, or in the case of an appeal against the order making modifications or refusing to make modifications under subsection (8) of section 8 within 45 days from the date on which the order is communicated to him, or in the case of an appeal against the assessment of a deficiency of profits, within forty-five days of the receipt of the copy of the order determining the deficiency, or in the case of an appeal against the amount of a relief granted or a refusal to grant relief, within forty-five days of the receipt of the intimation of the order granting or refusing to grant the relief or in the case of an appeal against a decision under rule 12 or 13 of Schedule I within 45 days

from the date on which such decision is communicated to him, but the Commissioner may admit an appeal after the expiration of that period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

- (3) An appeal shall be in the prescribed form and shall be verified in the prescribed manner.
- (4) The Commissioner shall hear and determine the appeal and, subject to the provisions of this Act, shall pass such orders as he thinks fit, and such orders may include an order enhancing the assessment or a penalty :

Provided that an order enhancing an assessment or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

- (5) The procedure to be adopted in the hearing and determination of appeals shall be in accordance with the rules made in this behalf by the Government.

**Power of  
revision.**

19. The Commissioner may of his own motion call for the record of any proceeding under this Act which has been taken by any Excess Profits Tax Officer subordinate to him, and on receipt of the record may make such enquiry, or cause such enquiry to be made, and, subject to the provisions of this Act, may pass such orders thereon (including an order enhancing an assessment) as he thinks fit :

Provided that he shall not pass any order prejudicial to a person to whose business this Act applies without hearing him, or giving him a reasonable opportunity of being heard.

**Rectification  
of mistakes.**

20. The Commissioner may, at any time within four years from the date of any order passed whether by himself or by any Excess Profits Tax Officer under this Act, rectify any mistake in any evidence recorded during assessment or appellate proceedings, or any mistake apparent from the



record and shall within the like period rectify any mistake apparent from the record which has been brought to his notice by a person to whose business this Act applies :

Provided that no such rectification shall be made having the effect of enhancing the liability of any person unless that person has been given a reasonable opportunity of being heard.

21. <sup>1</sup>[The provisions of sections 6, 7, 13, 16, 32, 39, 46, to 57 (inclusive), 61 to 64 (inclusive), 70, 71, 72, 76, 104 to 106 (inclusive), 108 to 112 (inclusive) of the Cochin Income-tax Act, 1117] shall apply with such modifications, if any, as may be prescribed, as if the said provisions were provisions of this Act and referred to excess profits tax instead of to income-tax, and every officer exercising powers under the said provisions in regard to income-tax may exercise the like powers under this Act in regard to excess profits tax in respect of cases assigned to him under sub-section (3) of section 3 as he exercises in relation to income-tax under the said Act:

**Application of provisions of Act VI of 1117.**

Provided that references in the said provisions to the assessee shall be construed as references to a person to whose business this Act applies.

22. (1) Notwithstanding anything contained in <sup>2</sup>[the Cochin Income-tax Act, 1117], all information contained in any statement or return made or furnished under the provisions of that Act or obtained or collected for the purposes of that Act may be used for the purposes of this Act.

**Income-tax papers to be available for the purposes of this Act.**

(2) All information contained in any statement or return made or furnished under the provisions of this Act or obtained or collected for the purposes <sup>2</sup>[of this Act may be used for the purposes of the Cochin Income-tax Act, 1117].

23. If any person fails, without reasonable cause or excuse, to furnish in due time any return or statement, or to produce, or cause to be produced, any accounts or documents required to be produced under section 14, he shall, on conviction by a Magistrate, be punishable with fine which may extend to five hundred rupees, and with a

**Failure to deliver returns or statements.**

<sup>1</sup> Substituted by Act VII of 1117.

<sup>2</sup> Substituted for "the Cochin Income-tax Act, 1108" by *ibid.*

further fine which may extend to fifty rupees for every day during which the default continues.

**False statement and declaration.**

24. If a person makes in any return required under section 14 any statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable on conviction by a Magistrate with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

**Institution of proceedings and composition of offences.**

25. (1) A person shall not be proceeded against for an offence under section 23 or section 24 except at the instance of the Commissioner.
- (2) No prosecution for an offence punishable under section 23 or section 24 or under the Cochin Penal Code shall be instituted in respect of the same facts as those in respect of which a penalty has been imposed under this Act.
- (3) The Commissioner may, either before or after the institution of proceedings, compound any offence punishable under section 23 or section 24.

**Power of Government to grant relief in special cases.**

26. (1) If on an application made to it through the Excess Profits Tax Officer the Government is satisfied in the case of any business that special circumstances exist which render it inequitable that the standard profits of the business in relation to any chargeable accounting period should be computed in accordance with the provisions of sub-section (1) of section 6, and that no relief or insufficient relief has been granted under the provisions of sub-section (3) of that section, the Government may direct that the standard profits of the business shall be computed to be such greater amount as the Government thinks just:

Provided that such amount shall not exceed the statutory percentage of the average amount of the capital employed in the business unless the Government is satisfied that owing to some specific cause peculiar to the

business it is just that a greater amount should be allowed and that the relief, if any, afforded by the Commissioner under sub-section (3) of section 6 is inadequate.

Provided further that a determination on an application under this sub-section—

- (a) shall have effect with respect to all subsequent chargeable accounting periods;
  - (b) shall exclude any further application under this sub-section.
- (2) Without prejudice to the generality of the provisions of sub-section (1) the Government shall, in considering the making of a direction under that sub-section, have regard to the following circumstances, namely.—
- (a) that the capital employed in a business commenced on or after the 1st day of Chingam 1114, is so small in relation to the volume of the activities of the business that to compute the standard profits in accordance with the provisions of section 6 would be inequitable, taking into account the normal profits made in similar businesses;
  - (b) that owing to the nature of the business heavy expenditure by way of preliminary expenses or expenses in connection with experimental or development work has been incurred in accounting periods closely preceding the chargeable accounting period and that during the chargeable accounting period such expenditure would normally fall to be written of wholly or partly in the books of the person chargeable to excess profits tax;
  - (c) that the business is of a pioneer nature, that is to say, is concerned

with an industrial process or a form of manufacture or production not undertaken in Cochin before the 1st day of Chingam 1108, and has not been in existence long enough to have paid income-tax for the previous year as determined for the purpose of the income-tax assessment for the year beginning on the 1st day of Chingam 1113.

(3) If on an application made to it through the Excess Profits Tax Officer the Government is satisfied that the computation in accordance with the provisions of Schedule I of the profits of a business during any chargeable accounting period would be inequitable, owing to any of the following circumstances, namely.—

- (a) any postponement or suspension, as a consequence of the present hostilities, of renewals or repairs, or
- (b) the provision of buildings, plant or machinery which will not be required for the purposes of the business after the termination of the present hostilities, or
- (c) difficulties in bringing into Cochin income arising outside Cochin where the country in which the income accrued prohibits or restricts by its laws the remittance of money to Cochin, and loss in the remittance to Cochin of such income because of fluctuations in the rate of exchange between that country and British India; or
- (d) in the case of any business which includes the winning of any mineral (including mineral oil) the winning of which is of

exceptional importance for the prosecution of the present war, an increase in the output of the mineral which was essential in the national interest and which has had the effect of shortening the period during which but for such increased wartime output the sources of the mineral might have been expected to be exhausted;

the Government may direct that such allowances shall be made in computing the profits of the business during that chargeable accounting period as they think just:

Provided that in making such direction the Government may impose such conditions as they deem appropriate.

- (4) An application to the Government under this section shall be presented to the Excess Profits Tax Officer before the expiry of the period specified in the notice issued under sub-section (1) of section 14 or of the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section, but in the case of an application under sub-section (1) of this section, if the person carrying on the business has made or is making an application under sub-section (3) of section 6, the application shall be presented to the Excess Profits Tax Officer before the expiry of forty-five days from the date on which the order of the Commissioner disposing of the application under sub-section (3) of section 6 is communicated to the person who has made that application.

27. The Government may call for and examine the records of the proceedings of any Excess Profits Tax authority for the purpose of satisfying themselves as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such authority.

**Power to call for and examine records of proceedings of Excess Profits Tax authorities.**

If in any case it shall appear to the Government that any decision or order or proceedings of such authority should be modified, annulled or reversed, the Government may pass such orders, not inconsistent with this Act, as they deem fit:

Provided that they shall not annul, modify or alter in any way an order passed by the Commissioner <sup>1</sup>[under section 109 of the Cochin Income-tax Act, 1117], as made applicable to this Act.

Power to  
make rules.

28. (1) The Government may make rules for carrying out the purposes of this Act.
- (2) Without prejudice to the generality of the foregoing power, such rules may—
- (a) prescribe the procedure to be followed on appeals, applications for rectification of mistakes, and applications for refunds;
  - (b) provide for the adaptation to excess profits tax of any of the provisions of <sup>2</sup>[the Cochin Income-tax Act, 1117] which are made applicable to excess profits tax by section 21; or of any rules made under any such provision;
  - (c) provide in regard to companies whose business consists wholly or mainly in the dealing in or holding of investments for the granting of exemption or relief from liability to excess profits tax of profits derived from investments in other companies the profits of which have been subjected to excess profits tax in Cochin;
  - (d) provide for any matter which by, or under, this Act is to be prescribed.
- (3) The power to make rules conferred by this section shall be exercised in like manner as the power to make rules <sup>3</sup>[under section 102 of the Cochin Income-tax Act, 1117].

<sup>1</sup> Substituted by Act VII of 1117.

<sup>2</sup> Substituted by *ibid.*

<sup>3</sup> Substituted by *ibid.*

## SCHEDULE I

[See section 2(17)]

*Rules for the computation of profits for purposes of Excess Profits Tax*

1. The profits of a business during the standard period, or during any chargeable accounting period, shall be separately computed, and shall, subject to the provisions of this Schedule, be computed on the principle on which the profits of a business are computed for the purposes of income-tax <sup>1</sup>[under section 13 of the Cochin Income-tax Act, 1117]:

<sup>2</sup>[Provided that any sums (other than any interest paid by a firm to any partner of the firm) excluded under the proviso to clause (iii) of sub-section (2) or clause (a) of sub-section (4) of that section from the allowances made in computing the profits of the business for the purposes of income-tax shall, if paid, be included in those allowances when computing the profits of a business for the purposes of excess profits tax:]

Provided further that where the profits during any standard period have already been determined for the purpose of an assessment under the Cochin Income-tax Act, 1108, such profits as so determined shall, subject to the adjustments required by this Schedule, be taken as the profits during that period for the purpose of excess profits tax:

Provided further that where a standard period or chargeable accounting period is not an accounting period, the profits or losses of the business during any accounting periods wholly or partly included within the standard period or chargeable accounting period shall be so computed as aforesaid, and such division and apportionment to specific periods of those profits or losses and such aggregation of those profits and losses, or any apportioned part thereof shall be made as appears necessary to arrive at the profit during the standard period or chargeable accounting period: and any such apportionment shall be made in proportion to the number of months or fractions of months in the respective periods unless the Excess Profits Tax Officer, having regard to any special circumstances, otherwise directs.

2. <sup>2</sup>[The profits of a business during the standard period shall be computed on the same basis and in the same manner as the profits of that business are under the Cochin Income-tax Act, 1117 computed for the chargeable accounting period notwithstanding that the said Act may not have been in force in the standard period.]

3. (1) The principle of adding the allowance for depreciation for any one period to the allowance for depreciation for any subsequent period and deeming it to be part of the allowance for such subsequent period shall not be followed.

(2) No allowance shall be made for any loss other than a loss sustained in a business to which this Act applies.

<sup>3</sup>[(3) Nothing in this Act shall be construed as permitting the application, in computing the profits for the purposes of the Excess Profits Tax, of the provisions of sub-section (2) of section 30 of the Cochin Income-tax Act, 1117]

4. (1) Income received from investments shall be included in the profits in the cases and to the extent provided in sub-rules (2), (3) and (5) of this rule and not otherwise.

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<sup>1</sup> Substituted by Act VII of 1117

<sup>2</sup> Substituted by *ibid.*

<sup>3</sup> Added by *ibid.*

- (2) In the case of the business of a building society, or of a moneylending business, banking business, insurance business or business consisting wholly or mainly in the dealing in or holding of investments, the profits shall include all income received from investments, whether or not such income is included in the profits charged <sup>1</sup>[under section 13 of the Cochin Income-tax Act, 1117,] or is charged under any other section of that Act, or has been subjected to deduction of tax at source or is free of or exempt from income-tax.
- (3) In the case of a business part of which consists in banking, insurance or dealing in investments, not being a business to which sub-rule (2) of this rule applies, the profits shall include all income received from investments held for the purposes of that part of the business, being income to which the persons carrying on the business are beneficially entitled.
- (4) Notwithstanding anything contained in sub-rule (2) or 3, where the profits of a subsidiary company are under the provisions of section 9 to be included in the profits of the principal company for the purposes of assessment to excess profits tax, dividends from the subsidiary company out of such profits shall not also be included in the profits of the principal company.
- (5) In the case of a business which consists wholly or partly in the letting out of property on hire, the income from the property shall be included in the profits of the business whether or not it has been charged to income-tax <sup>2</sup>[under section 12 of the Cochin Income-tax Act, 1117], or under any other section of that Act.
- (6) Where the person carrying on a business is the beneficial owner of any investments, the income from which is by virtue of the provisions of this rule not to be taken into account in computing the profits of the business, and a deduction would, apart from the provisions of this rule, fall to be made in respect of interest on borrowed money, the deduction (if any) to be made in respect of that interest shall be computed as if the principal of the borrowed money were reduced by the value of those investments:

Provided that where the person carrying on the business is not a company no such reduction shall be deemed to be made in the principal of any borrowed money in respect of any investments unless the investments are mortgaged, charged or pledged as security for the repayment of that money and interest thereon.

5. If at any time after the close of the standard period, any increase in the capital employed in a business has been effected by means of a loan from a bank carrying on a *bona fide* banking business, or by means of a public issue of debentures secured on the property of the company, the interest on so much of the loan or debentures as has been utilised in effecting the increase in the capital shall not be deducted in computing the profits for the purposes of excess profits tax and, notwithstanding the provisions of rule 2 of Schedule II, that amount of such loan or debentures shall not be deducted in arriving at the amount of the capital employed in the business.

6. (1) In computing for any chargeable accounting period and in relation thereto for the standard period, if any, the profits of a business other than a business to which sub-rule (2) of rule 4 of this

<sup>1</sup> Substituted by Act VII of 1117.

<sup>2</sup> Substituted by *ibid.*



Schedule applies, or the profits of a part of a business other than a part of the business to which sub-rule (3) of the said rule applies, no deduction shall be made in respect of interest on borrowed money or in respect of any other consideration given for the use of borrowed money:

Provided that this rule shall not apply to the computation of profits of any business for any chargeable accounting period the standard profits for which are ascertained by reference to the minimum amount specified in sub-section (4) of section 6 of this Act:

Provided further that where a direction has been given by the Commissioner under sub-section (3) of section 6, or by the Government under sub-section (1) of section 26 of this Act, that the standard profits shall be computed as if the profits during the standard period were such greater amount as they think just, such amount shall be increased by the amount of the interest on or other consideration for the borrowed money during the standard period.

(2) In this rule and in rule 3 of the Second Schedule "borrowed money" means borrowed money which, apart from the provisions of the said rule 3, would have been deductible in computing capital.

7. No deduction shall be made on account of liability to pay, or payment of, income-tax, super-tax, or excess profits tax.

8. (1) In the case of a business carried on, in any accounting period which constitutes or includes a chargeable accounting period, by a company the directors whereof have throughout that accounting period a controlling interest therein—

(a) in computing the profits for that accounting period; and

(b) if the standard profits of the business are computed by reference to the profits of a standard period, also in computing, in relation to any such chargeable accounting period, the profits for the standard period,

no deduction shall be made in respect of directors' remuneration.

(2) In sub-rule (1) of this rule the expression "directors' remuneration" does not include—

(a) the remuneration of any director who is required to devote substantially the whole of his time to the service of the company in a managerial or technical capacity and is not the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control, more than five percent of the ordinary share capital of the company, or

(b) the remuneration of any managing agent where such remuneration is included in the profits of the managing agent's business for the purposes of excess profits tax.

(3) If, in the case of a business carried on by a company in any accounting period which constitutes or includes a chargeable accounting period, the directors of the company—

(a) have during any part of that accounting period, or

(b) had during the whole or any part of any previous accounting period which includes the whole or any part of any chargeable accounting period or the whole or any part of the standard period (if any),

a controlling interest therein, and the case is not one to which sub-rule (1) of this rule applies, then, except in so far as

the Government otherwise direct, no deduction shall be made in respect of directors' remuneration either in computing the profits for the first-mentioned accounting period or in computing in relation to any chargeable accounting period wholly or partly included in that accounting period, the profits of the standard period (if any).

9. In the case of a business carried on by a company, if the standard profits of the company are computed by reference to the profits during a standard period, no deduction shall be allowed in respect of remuneration paid to a managing agent in excess of the amount which would have been payable to that managing agent if the agreement in force in the standard period had been in force in the chargeable accounting period, except where such remuneration is subjected to excess profits tax in the hands of the managing agent.

10. Where the performance of a contract extends beyond the accounting period there shall (unless the Excess Profits Tax Officer, owing to any special circumstances, otherwise directs) be attributed to the accounting period such proportion of the entire profits or loss which has resulted, or which it is estimated will result, from the complete performance of the contract as is properly attributable to the accounting period, having regard to the extent to which the contract was performed therein:

Provided that when any such contract has been completed and the profits have been finally ascertained, if the aggregate of the amounts attributed to previous accounting periods exceeds the profit, as finally ascertained, from the complete performance of the contract, an adjustment shall be made to reduce the amounts so attributed to the various chargeable accounting periods to the amount of the profits as finally ascertained.

11. In respect of any building erected on or after the commencement of the first chargeable accounting period, which during any chargeable accounting period has ceased to be required for the purposes of the business or has been sold, any amount by which the value of the building at the date when it ceased to be required for the purposes of the business or the price obtained for the building, as the case may be, falls short of the written down value of the building shall be allowed as a deduction in arriving at the profits of that chargeable accounting period.

12. Where in respect of any accounting period a deduction would, apart from the provisions of this rule, be allowable in computing profits, and, in the opinion of the Excess Profits Tax Officer, the deduction does not represent a sum reasonably and properly attributable to that accounting period, only such part of the deduction shall be allowable as a deduction for that period as appears to the Excess Profits Tax Officer to be reasonably and properly attributable to that period and any balance of the deduction shall be treated as attributable to such other accounting period or periods (whether or not they include, or fall wholly or partly within, the standard period, if any, or any chargeable accounting period) as the Excess Profits Tax Officer thinks proper.

13. In computing the profits of any chargeable accounting period no deduction shall be allowed in respect of expenses in excess of the amount which the Excess Profits Tax Officer considers reasonable and necessary having regard to the requirements of the business and, in the case of director's fees or other payments for services to the actual services rendered by the person concerned.

## SCHEDULE II

[See section 2(2)]

### *Rules for computing the average amount of capital*

- (1) Subject to the provisions of this Schedule, the average amount of the capital employed in a business (so far as it does not consist of money) shall be taken to be—
- (a) so far as it consists of assets acquired by purchase on or after the commencement of the business, the price at which those assets were acquired, subject to the deductions hereafter specified;
  - (b) so far as it consists of assets being debts due to the person carrying on the business, the nominal amount of those debts, subject to the said deductions;
  - (c) so far as it consists of any other assets which have been acquired otherwise than by purchase as aforesaid, the value of the assets when they became assets of the business, subject to the said deductions.
- (2) The price or value of any assets other than a debt shall be subject to such deductions for depreciation as are necessary to reduce the asset to its written down value and to such other deductions in respect of reduced values of assets as are allowable in computing profits for the purposes of income-tax and, in the case of a debt, the nominal amount of the debt shall be subject to any deduction which has been allowed in respect thereof for income-tax purposes.
- (3) where the price of any asset has been satisfied otherwise than in cash, the then value of the consideration actually given for the asset shall be treated as the price at which the asset was acquired.
2. (1) Any borrowed money and debts shall be deducted, and in particular any debt for income-tax or super-tax or for excess profits tax in respect of the business shall be deducted:
- Provided that any such debt for income-tax or super-tax or excess profits tax shall, for the purposes of this Schedule, be deemed to have become due
- (a) in the case of income-tax and super-tax, on the last day of the period of time within which the tax is payable <sup>1</sup>[under section 61 of the Cochin Income-tax Act, VI of 1117].
  - (b) in the case of excess profits tax, on the first day after the end of the chargeable accounting period in respect of which the tax is assessable notwithstanding that the excess profits tax may not have been assessed until after that date.

The debts to be deducted under this sub-rule shall include any such sums in respect of accruing liabilities as are allowable as a deduction in computing profits for the purposes of excess profits tax or would have been so allowable if the period for which the amount of capital is being computed had been a chargeable accounting period; and the said sums shall be deducted notwithstanding that they have not become payable.

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<sup>1</sup> Substituted by Act VII of 1117.

(2) Where any debt for the excess profits tax assessable in respect of any period is to be deducted under this rule, the amount thereof shall not be reduced as the result of any relief to be given in respect of a deficiency of profits occurring in any subsequent period, and the amount of any such relief shall be treated as having become an asset of the business on the first day after the end of the chargeable accounting period in which the deficiency occurred.

3. In computing for any chargeable accounting period and in relation thereto for the standard period, if any, the average capital of a business other than a business to which sub-rule (2) of rule 4 of the First Schedule applies, or the average capital of a part of a business other than a part of a business to which sub-rule (3) of the said rule applies, no deduction shall be made in respect of borrowed money:

Provided that, the same deduction shall be made in respect of accruing liabilities for interest as would have been made if this rule had not been enacted.

4. Any investments the income from which is by virtue of the provisions of the First Schedule not to be taken into account in computing the profits of the business, and any moneys not required for the purposes of the business, shall be left out of account, but where any investments in the beneficial ownership of the person carrying on the business are so left out of account, the sum (if any) to be deducted under the last preceding rule in respect of borrowed money shall be computed as if the principal of the borrowed money were reduced by the value of those investments:

Provided that where the person carrying on the business is not a company, no reduction shall be deemed to be made in the principal of any borrowed money in respect of any investments unless the investments are mortgaged, charged or pledged as security for the repayment of that money and the interest thereon.

5. Notwithstanding anything contained in Rule 4 in the case of the business of shipping, to which this Act applies, the sale proceeds of any tonnage sold or the amount of compensation in respect of loss of ships or the amount of accumulation of reserves, whether invested or not, shall be taken into account in computing the average amount of capital employed in such business:

Provided that any income received from investment of such funds shall be included in computing profits for purposes of the excess profits tax.

6. For the purpose of ascertaining the average amount of capital employed in a business during any period, the profits or losses made in that period shall, except so far as the contrary is shown, be deemed—

(a) to have accrued at an even rate throughout the period; and

(b) to have resulted, as they accrued, in a corresponding increase or decrease, as the case may be, in the capital employed in the business.

7. Where, in accordance with the proviso to section 5 of this Act, this Act is applicable to part only of a business, the capital employed in that part shall be computed separately from any other capital of the person carrying on the business, and all references to capital employed in a business shall be construed as references to capital employed in that part of the business only.

## 8. (1) If—

- (a) the Government are satisfied, as respects any assets of any business the standard profits of which are computed by reference to the profits of a standard period, that during that period or any part thereof those assets were inherently unproductive, and
- (b) an application that this rule shall have effect is made through the Excess Profits Tax Officer to the Government by the person carrying on the business,

then, in computing the average amount of the capital employed in the business in the standard period and in all chargeable accounting periods, those assets, and any other assets of the business, shall be treated as not having been assets thereof during any part of the period during which, in the opinion of the Government, they were inherently unproductive:

Provided that in the case of a business the standard profits of which depend directly or indirectly upon a direction of the Commissioner under sub-section (3) of section 6, or of the Government under sub-section (1) of section 26 of this Act the provisions of this rule shall have effect to such extent only as the Government think proper:

Provided further that an application to the Government under this rule shall be presented to the Excess Profits Tax Officer before the expiry of the period specified in the notice issued under sub-section (1) of section 14 of this Act or of the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section.

- (2) Where sub-rule (1) of this rule has effect on the application of the person carrying on any business, any computation of capital of the business made before the making of the application, and any assessment affected by that computation shall be revised accordingly.

### SCHEDULE III

[See section 9(8)]

*Rules for determining the amount of capital held by a company  
through other companies*

1. Where, in the case of a number of companies, the first directly owns ordinary share capital of the second and the second directly owns ordinary share capital of the third, then, for the purposes of this schedule, the first shall be deemed to own ordinary share capital of the third through the second and, if the third directly owns ordinary share capital of a fourth, the first shall be deemed to own ordinary share capital of the fourth through the second and third, and the second shall be deemed to own ordinary share capital of the fourth through the third, and so on.

## 2. In this schedule—

- (a) any number of companies of which the first directly owns ordinary share capital of the next and the next directly owns ordinary share capital of the next but one and so on, and, if they are more than three, any three or more of them, are referred to “as a series”;
- (b) in any series—
  - (i) that company which owns ordinary share capital of another through the remainder is referred to as “the first owner”;
  - (ii) that other company the ordinary share capital of which is so owned is referred to as “the last owned company”;
  - (iii) the remainder, if one only, is referred to as an “intermediary” or, if more than one, is referred to as a “chain of intermediaries”;
- (c) a company in a series which directly owns ordinary share capital of another company in the series is referred to as an “owner”;
- (d) any two companies in a series of which one owns ordinary share capital of the other directly, and not through one or more of the other companies in the series, are referred to as being directly related to one another.

3. Where every owner in a series owns the whole of the ordinary share capital of the company to which it is directly related, the first owner shall be deemed to own through the intermediary or chain of intermediaries the whole of the ordinary share capital of the last owned company.

4. Where one of the owners in a series owns a fraction of the ordinary share capital of the company to which it is directly related, and every other owner in the series owns the whole of the ordinary share capital of the company to which it is directly related, the first owner shall be deemed to own that fraction of the ordinary share capital of the last owned company through the intermediary or chain of intermediaries.

## 5. Where—

- (a) each of two or more of the owners in a series owns a fraction, and every other owner in the series owns the whole, of the ordinary share capital of the company to which it is directly related; or
- (b) every owner in a series owns a fraction of the ordinary share capital of the company to which it is directly related;

the first owner shall be deemed to own through the intermediary or chain of intermediaries such fraction of the ordinary share capital of the last owned company as results from the multiplication of those fractions.

6. Where the first owner in any series owns a fraction of the ordinary share capital of the last owned company in that series through the intermediary or chain of intermediaries in that series, and also owns another fraction or other fractions of the ordinary share capital of the last owned company, either—

- (a) directly; or
- (b) through any intermediary or intermediaries which is not a member are not members of that series; or

- (c) through a chain or chains of intermediaries of which one or some or all are not members of that series; or
- (d) in a case where the series consists of more than three companies, through an intermediary or intermediaries which is a member or are members of the series, or through a chain or chains of intermediaries consisting of some but not all of the companies of which the chain of intermediaries in the series consists;

then, for the purpose of ascertaining the amount of the ordinary share capital of the last owned company owned by the first owner, all those fractions shall be aggregated and the first owner shall be deemed to own the sum of those fractions.

## PROCLAMATION (IX of 1117)

### THE ESSENTIAL SERVICES (MAINTENANCE) PROCLAMATION

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#### Preamble.

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3. Employment to which this Proclamation applies.
4. Power to order persons engaged in certain employments to remain in specified areas.
5. Officers.
6. Regulation of wages and conditions of service.
7. Penalties and procedure.
8. Bar of legal Proceedings.
9. Effect of orders, rules, etc., made under this Proclamation.

### THE ESSENTIAL SERVICES (MAINTENANCE) PROCLAMATION

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin*

*on the 11th day of Makaram 1117 corresponding  
to the 24th day of January 1942*

[Published in the Cochin Government Gazette, dated  
18th Makaram 1117]

WHEREAS an emergency has arisen which renders it Preamble.  
necessary to make provision for the maintenance of certain  
essential services;

NOW, THEREFORE, WE are pleased to command as follows.—

Short title,  
extent and  
commence-  
ment.

1. (1) This Proclamation may be called the Essential Services (Maintenance) Proclamation of 1117.
- (2) It extends to the whole of Cochin State.
- (3) It shall come into force at once.

Interpreta-  
tion.

2. In this Proclamation, unless there is anything repugnant in the subject or context, "employment" includes employment of any nature and whether paid or unpaid.

Employment  
to which this  
Proclama-  
tion applies.

3. This Proclamation shall apply to all employment under Government and to any employment or class of employment which Government, being of opinion that such employment or class of employment is essential for securing the defence of Cochin, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies or services necessary to the life of the community, may, by notification in the Cochin Government Gazette, declare to be an employment or class of employment to which this Proclamation applies.

Power to  
order per-  
sons engaged  
in certain  
employments  
to remain  
in specified  
areas.

4. (1) In respect of any employment or class of employment declared under section 3 to be an employment or class of employment to which this Proclamation applies, Government or an officer authorised in this behalf by Government may, by general or special order, direct that any person or persons engaged in such employment shall not depart out of such area or areas as may be specified in such order.
- (2) An order made under sub-section (1) shall be published in such manner as Government or the officer making the order considers best calculated to bring it to the notice of the persons affected by the order.

Officers.

5. Any person engaged in any employment or class of employment to which this Proclamation applies who—

- (a) disobeys any lawful order given to him in the course of such employment, or
- (b) without reasonable excuse abandons such employment or absents himself from work,  
or



- (c) departs from any area specified in an order under sub-section (1) of section 4 without the consent of the authority making that order,

and any employer of a person engaged in an employment or class of employment declared under section 3 to be an employment or class of employment to which this Proclamation applies, who without reasonable cause—

- (i) discontinues the employment of such person, or  
 (ii) by closing an establishment in which such person is engaged, causes the discontinuance of his employment,

is guilty of an offence under this Proclamation.

6. (1) Government may make rules regulating or empowering a specified authority to regulate the wages and other conditions of service of persons or of any class of persons engaged in any employment or class of employment declared under section 3 to be an employment or class of employment to which this Proclamation applies. **Regulation of wages and conditions of service.**
- (2) When any such rules have been made or when any directions regulating wages or conditions of service have been given by an authority empowered by such rules to give them, any person failing to comply therewith is guilty of an offence under this Proclamation.
7. (1) Any person found guilty of an offence under this Proclamation shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine. **Penalties and procedure.**
- (2) Where the person accused of an offence under this Proclamation is a company or other body corporate, every director, manager, secretary or other officer thereof shall, unless he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of the offence, be liable to the punishment provided for the offence.

(3) No court shall take cognizance of any offence under this Proclamation except upon a complaint in writing made by a person authorised in this behalf by Government.

Bar of legal Proceedings.

8. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Proclamation or the rules made thereunder.

Effect of orders, rules, etc., made under this Proclamation.

9. Any declaration, order, rule or regulation made and any direction given under this Proclamation shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

**THE COCHIN TOBACCO (AMENDMENT) ACT  
(III of 1117)  
CONTENTS**

**Preamble.**

**Sections.**

1. Short title and commencement.
2. Amendment of section 3.
3. Amendment of section 5.
4. Amendment of section 8.
5. Amendment of section 11.
6. Amendment of section 12.
7. Substitution of section 16.
8. Disposal of persons arrested and things seized.
9. Powers of investigation.
10. Offences to be bailable.
11. Insertion of section 17-A.
12. Composition of offences.
13. Amendment of section 18.

**THE COCHIN TOBACCO (AMENDMENT) ACT**  
*Passed by His Highness the Maharaja of Cochin  
on the 11th day of Makaram 1117  
corresponding to the 24th day  
of January 1942*

[Published in the Cochin Government Gazette,  
dated 18th Makaram 1117]

Preamble.

WHEREAS it is expedient further to amend the Cochin Tobacco Act, VII of 1084; It is hereby enacted as follows.—

Short title and commencement.

1. This Act may be called the Cochin Tobacco (Amendment) Act, III of 1117 and it shall come into force on such date as Government may, by notification in the Cochin Government Gazette, appoint.

2. In section 3 of the Cochin Tobacco Act, VII of 1084, hereinafter referred to as the Act, clauses (a) to (e) shall be re-lettered as clauses (c) to (g) and the following shall be inserted as clauses (a) and (b).—

Amendment  
of section 3.

'(a) 'Commissioner' means the Commissioner of Excise, Cochin State.

'(b) 'Cultivation' includes the tending or protecting of a plant during growth, and does not necessarily imply raising from seed."

3. In section 5 of the Act, the words "after previous publication" shall be deleted.

Amendment  
of section 5.

4. In sub-section (1) of section 8 of the Act, for the words "the tobacco," the word "anything" shall be substituted.

Amendment  
of section 8.

5. In section 11 of the Act—

Amendment  
of section 11.

(1) for the words "Salt, Police, Land Revenue, Abkari or Customs Departments," wherever they occur, the words "Excise, Police, Land Revenue or Customs Department" shall be substituted.

(2) for the words "Inspector of Excise Revenue," the words "Sub-Inspector of Excise" shall be substituted.

6. In section 12 of the Act—

Amendment  
of section 12.

(1) for the words "Abkari, Salt, Police, Land Revenue or Customs Departments", the words "Excise, Police, Land Revenue or Customs Department" shall be substituted;

(2) the following proviso shall be added.—

"Provided that, if the officer or person making the arrest under this section be not empowered under section 16-B to admit to bail, the person arrested shall be forthwith forwarded to an officer so empowered and it shall be the duty of such officer empowered as aforesaid to admit such person to bail, if sufficient bail be tendered for his appearance before the Magistrate having jurisdiction to try the case."

7. For section 16 of the Act, the following shall be substituted.—

Substitution  
of section 16.

"16. (1) Every person arrested and all things seized under section 11 or 12 shall, unless bail

Disposal of  
persons ar-  
rested and  
things seized.

shall have been accepted, be forthwith produced before the Magistrate having jurisdiction to try the case, and every person arrested and all things seized under section 10 shall without delay be produced before the Magistrate who issued the warrant. Every such officer before whom any person or thing is produced under this section shall, with all convenient speed, take such measures as may be necessary for the disposal, according to law, of such person or thing.

- (2) When a report of occurrence of an offence under this Act is received by an officer empowered under section 16-A to investigate the case, such officer shall, after such investigation as he may think necessary, lay a charge before the Magistrate having jurisdiction to try the case. But, if in the circumstances of the case the investigating officer thinks it undesirable to institute proceedings before a Magistrate, he shall forward the records of investigation to the Commissioner with a brief report, for the disposal of the case.
- (3) On receipt of the records of investigation with the report of the investigating officer, as aforesaid, the Commissioner may, at his discretion, order the release of the accused and the return of the articles seized, or if he thinks that the case is fit to be charged before a Magistrate, may order accordingly. The Commissioner may also return the records of investigation to the investigating officer for collecting further evidence as may be found necessary and after consideration of the whole evidence he may dispose of the case himself or direct that a charge be laid before the Magistrate.
- (4) The Commissioner may also, at his discretion, stay proceedings in any case pending investigation, and may either conduct the investigation himself or order that the case be investigated by another competent officer.

16-A (1) Officers of the Excise Department not below the rank of Sub-Inspectors shall have power to investigate all offences under this Act. **Powers of investigation.**

(2) Every such officer shall in the conduct of such investigation exercise the powers conferred by the Cochin Code of Criminal Procedure, upon an officer in charge of a Police Station, for the investigation of cognisable offences.

16-B. (1) All offences under this Act shall be bailable. **Offences to be bailable.**

(2) All officers of the Excise Department of and above the rank of Sub-Inspectors and all Police Officers of and above the rank of Officers in charge of Police Stations shall have power to grant bail in accordance with the Cochin Code of Criminal Procedure to any person arrested without warrant for an offence under this Act.

8. The following shall be inserted as section 17-A.— **Insertion of section 17-A.**

“17-A. The Commissioner or any Officer empowered in this behalf by the Diwan may accept from any person who has committed, or has been suspected of having committed, an offence under this Act, a sum of money not exceeding two hundred rupees by way of composition of each such offence, and in all cases in which any property has been seized as liable to confiscation under this Act, may release the same on payment of the value thereof as estimated by such officer or confiscate such property to Government. **Composition of offences.**”

On payment of such sum of money or such value, or both as the case may be, to such officer or to any officer authorised by him to receive such money or value, the accused person, if in custody, shall be discharged, the property seized shall be released and no further proceedings shall be taken against such person or property.”

9. In section 18 of the Act, for the words “the Sirkar” wherever they occur, the word “Government” shall be substituted; and between the words “Excise” and “department” in places where they occur, insert the words “Police, Land Revenue or Customs”. **Amendment of section 18.**

**PROCLAMATION**  
**(X of 1117)**

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin, on the 3rd day of  
Kumbham 1117 corresponding to the  
14th day of February 1942*

[Published in the Cochin Government Gazette,  
dated 3rd Kumbham 1117 (14th February 1942)]

WHEREAS it is deemed expedient to keep in abeyance the operation of the Cochin Town Councils Act, XXVI of 1115, during the continuance of the present war; WE are hereby pleased to command as follows.—

1. This Proclamation shall be in force until such date as Government may, by notification in the Cochin Government Gazette, withdraw this Proclamation.

2. The operation of the Cochin Town Councils Act, XXVI of 1115, shall be in abeyance during the period this Proclamation is in force and Wadakkancheri, Kunnamkulam and Nemmara shall cease to be Towns constituted under the said Act. The balance of the Town Funds and all other property vested in the Town Councils of Wadakkancheri, Kunnamkulam and Nemmara shall vest in Government and notwithstanding any provision contained in the Town Councils Act, XXVI of 1115, all taxes excepting the scavenging tax, collected by the Town Councils shall be refunded by Government to the person or company from whom such tax has been collected or their representatives in interest.

3. Notwithstanding any law to the contrary the scavenging tax imposed under section 66 and the license fees imposed under section 242 read with Schedule IV of that Cochin Town Councils Act, XXVI of 1115, which have not been collected by the Town Councils shall be recovered by the officer who may be authorised by Government under section 373 of the Cochin Municipal Act, XVIII of 1113, to enforce any of the provisions of the said Act within the areas of the existing Towns of Nemmara, Wadakkancheri and Kunnamkulam, in the same manner and as if they were fees due under the said Municipal Act.

4. The officer who may be authorised to enforce any of the provisions of the Cochin Municipal Act, XVIII of

1113, under section 373 of the said Act within the areas comprised in the existing Towns of Wadakkancheri, Kunnamkulam and Nemmara may contract with the owner or occupier of any premises to remove rubbish or filth or any particular kind of rubbish or filth from such premises or any places belonging thereto on such terms as to times and periods of removal and other matters as may seem suitable to the officer and on payment of fees at such rates calculated to cover the cost of the services as Government may determine.

5. Notwithstanding anything contained in the Cochin Village Panchayat Act, V of 1089, or the Rules issued thereunder, Government shall have the power to nominate the members and Presidents of the first Panchayats that may be constituted for the areas comprised in the Towns of Wadakkancheri and Kunnamkulam.

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**PROCLAMATION**  
**(XI of 1117)**

THE COFFEE MARKET EXPANSION ORDINANCE  
APPLICATION (AMENDMENT)

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin, on the 9th day of  
Kumbham 1117 corresponding to the  
20th day of February 1942*

[ Published in the Cochin Government Gazette,  
dated 17th Kumbham 1117 ]

WHEREAS it is expedient further to amend the Coffee Market Expansion Ordinance Application Proclamation, IV of 1116, WE are hereby pleased to command as follows.— **Preamble.**

1. (1) This Proclamation may be called the Coffee Market Expansion Ordinance Application (Amendment) Proclamation XI of 1117. **Short title and commencement.**

(2) It shall come into force at once.

Amendment  
of section 2.

2. In section 2 of the Coffee Market Expansion Ordinance Application Proclamation, IV of 1116, for the words "as amended by Ordinances I and VIII of 1941", the words "as amended by Ordinances I, VIII and XIII of 1941", shall be substituted.

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## PROCLAMATION

(XII of 1117)

THE INDIAN AIRCRAFT PROCLAMATION

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin, on the 21st day of  
Kumbham 1117, corresponding to the  
4th day of March 1942*

[Published in the Cochin Government Gazette Extraordinary  
dated 21st Kumbham 1117]

WHEREAS it is necessary to apply the provisions of the Indian Aircraft Act, XXII of 1934 and the rules issued thereunder to OUR State, WE are pleased to command that the Indian Aircraft Act, XXII of 1934, the rules issued under the said Act and Part IX of the Indian Aircraft Rules, 1920, shall be in force *mutatis mutandis* in OUR State until such time as Government may, by notification in the Cochin Government Gazette, rescind this Proclamation.

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**THE COCHIN CIVIL COURTS (AMENDMENT) ACT  
(IV of 1117)  
CONTENTS**

**Preamble.**

**Section.**

1. Short title and commencement. .
2. Amendment to section 21.

**THE COCHIN CIVIL COURTS  
(AMENDMENT) ACT**

*Promulgated by His Highness the Maharaja  
of Cochin, on the 24th day of Kumbham  
1117 corresponding to the  
7th day of March 1942*

**[ Published in the Cochin Government Gazette, dated  
24th Kumbham 1117 ]**

WHEREAS it is deemed necessary to further amend the Cochin Civil Courts Act, III of 1076: It is hereby enacted as follows.— **Preamble.**

1. This Act may be called the Cochin Civil Courts (Amendment) Act, IV of 1117, and it shall come into force at once. **Short title and commencement.**

2. Add the following to the first paragraph of section 21 of the Cochin Civil Courts Act, III of 1076.— **Amendment to section 21.**

“or for such longer period as His Highness may, for special reasons, allow”.

## THE COCHIN IRRIGATION (AMENDMENT) ACT

(V of 1117)

## CONTENTS

**Preamble.****Sections.**

1. Short title and commencement.
2. Amendment to section 20.

## THE COCHIN IRRIGATION (AMENDMENT) ACT

*Passed by His Highness the Maharaja of Cochin  
on the 10th day of Meenam 1117 corresponding  
to the 23rd day of March 1942*

**[Published in the Cochin Government Gazette, dated  
15th Meenam 1117]**

**Preamble.** WHEREAS it is expedient to amend the Cochin Irrigation Act, VIII of 1111; It is hereby enacted as follows.—

**Short title and commencement.** 1. This Act may be called the Cochin Irrigation (Amendment) Act, V of 1117 and shall come into force at once.

**Amendment to section 20.** 2. To clause (b) of section 20 of the Cochin Irrigation Act, VIII of 1111, the following proviso shall be added.—

“Provided that, where the new major Irrigation work is undertaken as a temporary experimental measure, Government may levy for a specified period on any area benefited or sought to be benefited by such undertaking such cess as they may deem fit on an acreage basis”.

**THE COCHIN INCOME-TAX ACT  
(VI of 1117)  
CONTENTS**

**Preamble.****Sections.**

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2. Repeal.
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  - *Marumakkathayam Tarawad,*

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THE COCHIN INCOME-TAX ACT

*Passed by His Highness the Maharaja of Cochin  
on the 10th day of Meenam 1117, corresponding  
to the 23rd day of March 1942*

[Published in the Cochin Government Gazette dated  
15th Meenam 1117]

- Preamble.** WHEREAS it is expedient to consolidate and amend the law relating to income-tax and super-tax; It is hereby enacted as follows.—
- Short title, extent and commencement.**
1. (1) This Act may be called the Cochin Income-tax Act, VI of 1117.
  - (2) It extends to the whole of Cochin; and
  - (3) It shall be deemed to have come into force on the first day of Chingam 1117.
- Repeal.**
2. The Cochin Income-tax Act, VIII of 1108, is hereby repealed.
- Definitions.**
3. In this Act, unless there is anything repugnant in the subject or context,—
    - (1) “agricultural income” means—
      - (a) any rent or revenue derived from land which is used for agricultural purposes, and is either

assessed to land-revenue in Cochin or subject to a local rate assessed and collected by officers of Government as such;

(b) any income derived from such land by—

(i) agriculture, or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market, or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in sub-clause (ii);

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator, or the receiver of rent-in-kind, of any land with respect to which, or the produce of which, any operation mentioned in sub-clauses (ii) and (iii) of clause (b) is carried on:

Provided that the building is on or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator or the receiver

of the rent-in-kind by reason of his connection with the land, requires as a dwelling house, or as a store-house, or other out-building;

- (2) "assessee" means a person by whom income-tax is payable;
- (3) "business" includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;
- (4) "Commissioner" means a person appointed to be a Commissioner of Income-tax under section 8;
- (5) "company" means a company as defined in the Indian Companies Act, 1913, as made applicable to Cochin or formed in pursuance of the law of any other Indian State or of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession and includes any foreign association whether incorporated or not, which the Government may, by general or special order, declare to be a company for the purposes of this Act;
- (6) "dividend" includes—
  - (a) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company;
  - (b) any distribution by a company of debentures or debenture-stock, to the extent to which the company possesses accumulated profits, whether capitalised or not;
  - (c) any distribution made to the shareholders of a company out of



accumulated profits of the company on the liquidation of the company:

Provided that only the accumulated profits so distributed which arose during the six previous years of the company preceding the date of liquidation shall be so included; and

- (d) any distribution by a company on the reduction of its capital to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st day of Chingam 1111, whether such accumulated profits have been capitalised or not:

Provided that "dividend" does not include a distribution in respect of any share issued for full cash consideration which is not entitled in the event of liquidation to participate in the surplus assets, when such distribution is made in accordance with sub-clause (c) or (d).

*Explanation.*— The words "accumulated profits", wherever they occur in this clause, shall not include "capital profit."

- (7) "Deputy Commissioner" means a person appointed to be Deputy Commissioner of Income-tax under section 8;
- (8) "firm", "partner" and "partnership" have the same meanings respectively as in the Cochin Partnership Act, XXIV of 1112; provided that the expression "partner" includes any person who being a minor has been admitted to the benefits of partnership;

- (9) "income" includes anything included in "dividend" as defined in clause (6) and anything which under *Explanation 2* to sub-section (1) of section 10 is a profit received in lieu of salary for the purposes of that sub-section and any sum deemed to be profits under the second proviso to clause (vii) of sub-section (2) of section 13 and the profits of any business of insurance carried on by a mutual insurance association computed in accordance with Rule 9 in Schedule I;
- (10) "Income-tax Officer" means a person appointed to be an Income-tax Officer under section 8;
- (11) "local authority" means any authority legally entitled to or entrusted by the Government with the control or management of a Municipal or Town Fund;
- (12) "Magistrate" means a Magistrate of the first class, or a Magistrate of the second class specially empowered by the Government to try offences against this Act;
- (13) "person" includes a Hindu undivided family, an undivided *Marumakkathayam tarawad* and a local authority;
- (14) "prescribed" means prescribed by rules made under this Act;
- (15) "previous year" means in respect of any separate source of income, profits and gains—
- (a) the twelve months ending on the last day of Karkadagam next preceding the year for which the assessment is to be made, or if the accounts of the assessee have been made up to a date within the said twelve months in respect of a year ending on any date other than the said last day of

Karkadagam, then at the option of the assessee the year ending on the day to which his accounts have so been made up :

Provided that where an assessee has once been assessed in respect of a particular source of income, profits and gains, he shall not in respect of that source exercise this option so as to vary the meaning of the expression "previous year" as then applicable to him except with the consent of the Income-tax Officer and upon such conditions as the Income-tax Officer may think fit ; or

- (b) in the case of any person, business or company or class of person, business or company, such period as may be determined by the Government or by such authority as the Government may authorise in this behalf ; or
- (c) where a business, profession or vocation has been newly set up in the financial year preceding the year for which assessment is to be made, the period from the date of the setting up of the business, profession or vocation to the last day of Karkadagam next following or to the last day of the period determined under sub-clause (b), or, if the accounts of the assessee are made up to some other date than the last day of Karkadagam and the case is not one for which a period has been determined by the Government under sub-clause (b), then at the option of the assessee, the period from the date of the setting up of the business,

profession or vocation to such other date :

Provided that when such other date does not fall between the setting up of the business, profession or vocation and the next following last day of Karkadagam, it shall be deemed that there is no previous year ; and

when the assessee is a partner in a firm, "previous year" in respect of his share of the income, profits and gains of the firm means the previous year as determined for the assessment of the income, profits and gains of the firm ;

(16) "principal officer," used with reference to a local authority or a company or any other public body or any association, means—

(a) the secretary, treasurer, manager or agent of the authority, company, body or association, or

(b) any person connected with the authority, company, body or association upon whom the Income-tax Officer has served a notice of his intention of treating him as the principal officer thereof ;

(17) "public servant" has the same meaning as in the Cochin Penal Code ;

(18) "registered firm" means a firm registered under the provisions of section 36 ;

(19) "total income" means total amount of income, profits and gains referred to in sub-section (1) of section 5 computed in the manner laid down in this Act, and

"total world income" includes all income, profits and gains wherever accruing or arising except income to which, under the provisions of sub-section (3) of section 5, this Act does not apply ; and

- (20) "unregistered firm" means a firm which is not a registered firm.

## CHAPTER I

### CHARGE OF INCOME-TAX

4. Income-tax shall be charged for every year at the rates specified in schedule II to this Act in accordance with and subject to the provisions of this Act in respect of the total income of the previous year of every individual, Hindu undivided family, undivided *Marumakkathayam tarawad*, company and local authority, and of every firm and other association of persons, or the partners of the firm or members of the association individually. Charge of  
Income-tax.

5. (1) Subject to the provisions of this Act, the total income of any previous year of any person includes all income, profits and gains from whatever source derived which — Application  
of Act.

(a) are received or are deemed to be received in Cochin in such year by or on behalf of such person, or

(b) if such person is resident in Cochin during such year,—

(i) accrue or arise or are deemed to accrue or arise to him in Cochin during such year, or

(ii) accrue or arise to him without Cochin during such year, or

(iii) having accrued or arisen to him without Cochin before the beginning of such year and after the last day of Karkadagam 1109 are brought into or received in Cochin by

him during such year  
in any form whether  
capitalized or not, or

- (c) if such person is not resident in Cochin during such year, accrue or arise, or, are deemed to accrue or arise to him in Cochin during such year :

Provided that there shall not be included in any assessment for the year ending on the last day of Karkadagam 1117 both the amount of the income, profits and gains referred to in sub-clause (ii) of clause (b) and the amount of the income, profits and gains referred to in sub-clause (iii) of clause (b) but only the greater of these two amounts :

Provided further that, in the case of a person not ordinarily resident in Cochin, income, profits and gains which accrue or arise to him without Cochin shall not be so included unless they are derived from a business controlled in or a profession or vocation set up in India or unless they are brought into or received in Cochin by him during such year :

Provided further that if in any year the amount of income accruing or arising without Cochin exceeds the amount brought into Cochin in that year, there shall not be included in the assessment of the income of that year so much of such excess as does not exceed four thousand five hundred rupees.

*Explanation 1.*—Income, profits and gains accruing or arising without Cochin shall not be deemed to be received in or brought into Cochin within the meaning of this sub-section by reason only of the fact that they are taken into account in a balance-sheet prepared in Cochin.

*Explanation 2.*—Income which would be chargeable under the head “Salaries” if payable in Cochin shall be deemed to accrue or arise in Cochin wherever paid if it is earned in Cochin.

*Explanation 3.*—A dividend paid without Cochin shall be deemed to be income accruing and arising in Cochin to the extent to which it has been paid out of profits subjected to income-tax in Cochin.

(2) For the purposes of sub-section (1), where a husband is not resident in Cochin remittances received by his wife resident in Cochin out of any part of his income which is not included in his total income shall be deemed to be income accruing in Cochin to the wife;

(3) Any income, profits or gains falling within the following classes shall not be included in the total income of the person receiving them:

(i) Any income, derived from property held under trust or other legal obligation wholly for religious or charitable purposes, and in the case of property so held in part only for such purposes, the income applied, or finally set apart for application, thereto.

(ii) Any income derived from business carried on on behalf of a religious or charitable institution when the income is applied solely to the purposes of the institution and—

(a) the business is carried on in the course of the carrying out of a primary purpose of the institution, or

(b) the work in connection with the business is

mainly carried on by beneficiaries of the institution.

- (iii) Any income of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.
- (iv) The income of local authorities except income from a trade or business carried on by the authority so far as that income is not income arising from the supply of a commodity or service within its own jurisdictional area.
- (v) Interest on securities which are held by, or are the property of, any provident fund to which the Provident Funds Act, XXIII of 1111, applies.
- (vi) Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office or employment of profit.
- (vii) Any receipts not being receipts arising from business or the exercise of a profession, vocation or occupation, which are of a casual and non-recurring nature, or are not by way of addition to the remuneration of an employee.
- (viii) Agricultural income.
- (ix) Any income received by trustees on behalf of a recognised provident fund as defined in clause (a) of section 80.
- (x) Any capital sum received in commutation of the whole or a portion of the pension, or in the nature of consolidated compensation



for death or injuries, or in payment of any insurance policy or as the accumulated balance at the credit of a subscriber to any Provident Fund to which the Provident Funds Act, XXIII of 1111 applies or as prize money by a subscriber in a kuri.

In this sub-section "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility but nothing contained in clause (i), clause (ii) or clause (iii) shall operate to exempt from the provisions of this Act that part of the income of a private religious trust which does not enure for the benefit of the public.

6. For the purposes of this Act—

(a) any individual is resident in Cochin in any year if he—

**Residence in  
Cochin.**

- (i) is in Cochin in that year for a period amounting in all to one hundred and eighty-two days or more ; or
- (ii) maintains or has maintained for him a dwelling place in Cochin for a period or periods amounting in all to one hundred and eighty-two days or more in that year, and is in Cochin for any time in that year ; or
- (iii) having within the four years preceding that year been in Cochin for a period of or for periods amounting in all to three hundred and sixty-five days or more, is in Cochin for any time in that year otherwise than on an occasional or casual visit ; or
- (iv) is in Cochin for any time in that year and the Income-tax Officer is satisfied that such individual having arrived in Cochin during that year is likely to remain in Cochin

for not less than three years from the date of his arrival.

- (b) a Hindu undivided family, an undivided *Marumakkathayam tarawad*, firm or other association of persons is resident in Cochin unless the control and management of its affairs is situated wholly without Cochin ; and
- (c) a company is resident in Cochin in any year
  - (a) if the control and management of its affairs is situated wholly in Cochin in that year, or
  - (b) if its income arising in Cochin in that year exceeds its income arising without Cochin in that year.

Ordinary  
residence.

7. For the purposes of this Act--

- (a) an individual is "not ordinarily resident" in Cochin in any year if he has not been resident in Cochin in nine out of the ten years preceding that year (or if he has not during the seven years preceding that year) been in Cochin for a period of, or for periods amounting in all to, more than two years ;
- (b) a Hindu undivided family or *Marumakkathayam tarawad*, is deemed to be ordinarily resident in Cochin if its manager is ordinarily resident in Cochin ;
- (c) a company, firm or other association of persons is ordinarily resident in Cochin if it is resident in Cochin.

## CHAPTER II

### INCOME-TAX AUTHORITIES

Income-tax  
authorities.

8. (1) There shall be the following classes of Income-tax authorities for the purposes of this Act, namely.—
- (a) Commissioner of Income-tax,
  - (b) Deputy Commissioner of Income-tax and
  - (c) Income-tax Officers.
- (2) The Commissioner of Income-tax, Deputy Commissioner of Income-tax and Income-tax Officers shall be appointed by the Government by notification in the Cochin

Government Gazette. They shall perform their functions in respect of such persons or classes of persons and of such incomes or classes of incomes and in respect of such area as the Government may direct. The Government may, by general or special notification in the Cochin Government Gazette, direct that the powers conferred on the Income-tax Officer and the Deputy Commissioner by or under this Act shall, in respect of any specified case or classes of cases be exercised by the Deputy Commissioner, and the Commissioner, respectively, and for the purposes of any case in respect of which such a notification applies, references in this Act or in any rules made hereunder to the Income-tax Officer and the Deputy Commissioner shall be deemed to be references to the Deputy Commissioner and the Commissioner respectively.

- (3) Deputy Commissioner of Income-tax and the Income-tax Officers appointed under subsection (2) shall, for the purposes of this Act, be subordinate to the Commissioner of Income-tax.
- (4) The Commissioner of Income-tax may transfer any case from one Income-tax Officer to another. Such transfer may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Income-tax Officer from whom the case is transferred.

### CHAPTER III

#### TAXABLE INCOME

9. Save as otherwise provided by this Act, the following heads of income, profits and gains, shall be chargeable to income-tax in the manner hereinafter appearing, namely.—

**Heads of  
income  
chargeable to  
Income-tax.**

- (i) Salaries.
- (ii) Interest on securities.

- (iii) Income from property.
- (iv) Profits and gains of business, profession or vocation.
- (v) Income from other sources.

**Salaries.**

10. (1) The tax shall be payable by an assessee under the head "Salaries" in respect of any salary or wages, any annuity, pension or gratuity, and any fees, commissions, perquisites or profits in lieu of, or in addition to, any salary or wages, which are due to him from, whether paid or not, or are paid by or on behalf of, the Government, a local authority, a company, or any other public body or association, or any private employer; and for the purposes of this sub-section advances by way of loan or otherwise of income chargeable under this head shall be deemed to be salary due on the date when the advance is received :

Provided that the tax shall not be payable in respect of any sum which the assessee by the conditions of his employment is required to spend out of his remuneration wholly, necessarily and exclusively in the performance of his duties :

Provided further that the tax shall not be payable in respect of any sum deducted from the salary payable by or on behalf of the Government to any individual, being a sum deducted in accordance with the conditions of his service, for the purpose of securing to him a deferred annuity or of making provision for his wife or children, provided that the sum so deducted shall not exceed one-sixth of the salary :

Provided further that where tax is deductible at the source under section 21, the assessee shall not be called upon to pay the tax himself unless he has received the salary without such deduction ;

*Explanation 1.*—The right of a person to occupy free of rent as a place of residence any premises provided by his employer is a perquisite for the purposes of this sub-section.

*Explanation 2.*—A payment due to or received by an assessee from an employer or former employer or from a provident or other fund at or in connection with the termination of his employment, whether or not the employment is then terminated or to be terminated, is to the extent to which it does not consist of contributions by the assessee or interest on such contributions a profit received in lieu of salary for the purposes of this sub-section, unless the payment is made solely as compensation for loss of employment and not by way of remuneration for past services :

Provided that nothing herein contained shall render liable to income-tax any payment from a provident fund to which the Provident Funds Act, XXIII of 1111, applies, or any payment from a recognised provident fund within the meaning of Chapter XII if such payment is exempted from payment of income-tax under the provisions of Chapter XII, or any payment from an approved superannuation fund within the meaning of Chapter XIII made on the death of a beneficiary or in lieu of or in commutation of an annuity, or by way of refund of contributions on the death of a beneficiary or on his leaving the employment in connection with which the fund is established.

(2) Any income which would be chargeable under this head if paid in Cochin shall be deemed to be so chargeable if paid to a Cochin subject or any employee of the Government of Cochin outside Cochin by or on behalf of the Government or by a local authority established by the Government.

11. The tax shall be payable by an assessee under the head "Interest on securities" in respect of the interest receivable by him on any security of the Government or on debentures or other securities for money issued by or on behalf of a local authority or a company:

**Interest on securities.**

Provided that no income-tax shall be payable under this section by the assessee in respect of any sum deducted from such interest by way of commission by a banker realizing such interest on behalf of the assessee or in respect of any interest payable on money borrowed for the purpose of investment in the securities by the assessee except interest chargeable under this Act which is payable without Cochin unless in respect of interest which is so chargeable tax has been paid or deducted under section 21 or

unless there is a person in Cochin who may be appointed an agent under section 53 in respect of such interest :

Provided further that no income-tax shall be payable on the interest receivable on any security of the Government of Cochin issued or declared to be income-tax free ;

**Property.**

12. (1) The tax shall be payable by an assessee under the head "Income from Property" in respect of the *bona fide* annual value of property consisting of any buildings or lands appurtenant thereto of which he is the owner, other than such portions of such property as he may occupy for the purposes of any business, profession or vocation carried on by him the profits of which are assessable to tax, subject to the following allowances, namely.—

- (i) where the property is in the occupation of the owner, or where it is let to a tenant and the owner has undertaken to bear the cost of repairs, a sum equal to one-sixth of such value;
- (ii) where the property is in the occupation of a tenant who has undertaken to bear the cost of repairs, the difference between such value and the rent paid by the tenant up to but not exceeding one-sixth of such value;
- (iii) the amount of any annual premium paid to insure the property against risk of damage or destruction;
- (iv) where the property is subject to a mortgage or other capital charge, the amount of any interest on such mortgage or charge; where the property is subject to an annual charge not being a capital charge, the amount of such charge; where the property is subject to a ground rent, the

amount of such ground rent; and where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital:

Provided that no allowance shall be made in respect of any interest or annual charge payable without Cochin and chargeable under this Act, except interest or a charge on which tax has been paid or from which tax has been deducted under section 21 or in respect of which there is an agent for the payee in Cochin who may be assessed under section 53;

- (v) any sums paid on account of land revenue, local rates or Municipal taxes in respect of the property;
  - (vi) in respect of collection charges, a sum not exceeding the prescribed maximum;
  - (vii) in respect of vacancies, that part of the net annual value, after deducting the foregoing allowances, which is proportional to the period during which the property is wholly unoccupied or, where the property is let out in parts, that portion of the net annual value, after deducting the foregoing allowances appropriate to any vacant part, which is proportional to the period during which such part is wholly unoccupied;
- (2) For the purposes of this section, the expression "annual value" shall be deemed to mean the sum for which the property might reasonably be expected to let from year to year:

Provided that, where the property is in the occupation of the owner for the purposes of his own residence, such sum shall, for the purposes of this section, be deemed not to exceed ten per cent of the total income of the owner.

(3) Where property is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not in respect of such property be assessed as an association of persons, but the share of each such person in the income from the property as computed in accordance with this section shall be included in his total income.

**Business.**

13. (1) The tax shall be payable by an assessee under the head "Profits and gains of business, profession or vocation" in respect of the profit or gains of any business, profession or vocation carried on by him.
- (2) Such profits or gains shall be computed after making the following allowances, namely.—

(i) any rent paid for the premises in which such business, profession or vocation is carried on, provided that when any substantial part of the premises is used as a dwelling-house by the assessee, the allowance under this clause shall be such sum as the Income-tax Officer may determine having regard to the proportional annual value of the part so used:

(ii) in respect of repairs, where the assessee is the tenant only of the premises, and has undertaken to bear the cost of such repairs, the amount paid on account thereof, provided that, if any substantial part of the premises is used by



the assessee as a dwelling-house, a proportional part only of such amount shall be allowed ;

- (iii) in respect of capital borrowed for the purposes of the business, profession or vocation, the amount of the interest paid :

Provided that no allowance shall be made under this clause in any case for any interest chargeable under this Act which is payable without Cochin except interest on which tax has been paid or from which tax has been deducted under section 21 or in respect of which there is an agent in Cochin who may be assessed under section 53 or, in the case of a firm, for any interest paid to a partner of the firm ;

*Explanation.*—Recurring subscriptions paid periodically by shareholders or subscribers in such Mutual Benefit Societies as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause :

- (iv) in respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, profession or vocation, the amount of any premium paid ;
- (v) in respect of current repairs to such buildings, machinery, plant, or furniture, the amount paid on account thereof ;
- (vi) in respect of depreciation of such buildings, machinery, plant, or furniture being the property of the assessee a sum equivalent where the assets are ships other

than ships ordinarily plying on inland waters, to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed and in any other case to such percentage on the written down value thereof as may in any case or class of cases be prescribed:

Provided that—

- (a) the prescribed particulars have been duly furnished;
- (b) where full effect cannot be given to any such allowance in any year not being a year which ended prior to the 1st day of Chingam 1117, owing to there being no profits or gains chargeable for that year, or owing to the profits or gains chargeable being less than the allowance, then, subject to the provisions of clause (a) of the proviso to subsection (2) of section 30 the allowance or part of the allowance to which effect has not been given, as the case may be, shall be added to the amount of the allowance for depreciation for the following year and deemed to be part of that

allowance, or if there is no such allowance for that year, be deemed to be the allowance for that year, and so on for succeeding years; and

(vii) in respect of any machinery or plant which, has been sold or discarded, the amount by which the written down value of the machinery or plant exceeds the amount for which the machinery or plant is actually sold, or its scrap value :

Provided that such amount is actually written off in the books of the assessee :

Provided further that where the amount for which any such machinery or plant is sold exceeds the written down value, the excess shall be deemed to be profits of the previous year in which the sale took place ;

(viii) in respect of animals which have been used for the purposes of the business, profession or vocation otherwise than as stock in trade and have died or become permanently useless for such purposes, the difference between the original cost to the assessee of the animals and the amount, if any, realised in respect of the carcasses or animals ;

(ix) any sums paid on account of land revenue, local rates or taxes to a local authority in respect of such part of the premises as is used for the purposes of the business, profession or vocation ;

- (x) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission.

Provided that the amount of the bonus or commission is of a reasonable amount with reference to—

- (a) the pay of the employee and the conditions of his service;
  - (b) the profits of the business, profession or vocation for the year in question; and
  - (c) the general practice in similar businesses, professions or vocations;
- (xi) when the assessee's accounts in respect of any part of his business, profession or vocation are not kept on the cash basis, such sum, in respect of bad and doubtful debts, due to the assessee in respect of that part of his business, profession or vocation, and in the case of an assessee carrying on a banking or money-lending business, such sum in respect of loans made in the ordinary course of such business as the Income-tax Officer may estimate to be irrecoverable but not exceeding the amount actually written off as irrecoverable in the books of the assessee :

Provided that if the amount ultimately recovered on any such debt or loan is greater than the difference between the whole debt or loan and the amount so allowed, the excess shall be deemed to be a

profit of the year in which it is recovered, and if less, the deficiency shall be deemed to be a business expense of that year;

(*xii*) any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of such business, profession or vocation;

(3) Where any building, machinery, plant or furniture in respect of which any allowance is due under clause (*iv*), clause (*v*), clause (*vi*) or clause (*vii*) of sub-section (2) is not wholly used for the purposes of the business, profession or vocation, the allowance shall be restricted to the fair proportional part of the amount which would be allowable if such building, machinery, plant or furniture was wholly so used.

(4) Nothing in clause (*ix*) or clause (*xii*) of sub-section (2) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax levied on the profits or gains of any business, profession or vocation or assessed at a proportion of or otherwise on the basis of any such profits or gains; and nothing in clause (*xii*) of sub-section (2) shall be deemed to authorise—

(*a*) any allowance in respect of a payment which is chargeable under the head "Salaries" if it is payable without Cochin and tax has not been paid thereon nor deducted therefrom under section 21; or

(*b*) any allowance in respect of any payment by way of interest, salary, commission or remuneration made by a firm to any partner of the firm; or

- (c) any allowance in respect of a payment to a provident or other fund established for the benefit of employees unless the employer has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are taxable under the head "Salaries".
- (5) In sub-section (2), "paid" means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under this section; "plant" includes vehicles, books, scientific apparatus and surgical equipment purchased for the purposes of the business, profession or vocation; and "written down value" means—

- (a) in the case of assets acquired in the previous year, the actual cost to the assessee;
- (b) in the case of assets acquired before the previous year the actual cost to the assessee less all depreciation actually allowed to him under this Act, or any Act repealed thereby;

Provided that where the provisions of the proviso to sub-section (2) of section 35 are applicable, the actual cost to the assessee referred to in clauses (a) and (b) shall be the actual cost to the person succeeded in the business, profession or vocation:

- (6) A trade, professional or similar association performing specific services for its members for remuneration definitely related to those services shall be deemed for the purpose of this section to carry on business in respect of those services, and the profits and gains therefrom shall be liable to tax accordingly.

- (7) Notwithstanding anything to the contrary contained in section 11, 12, 13, 14 or 21, the profits and gains of any business of insurance and the tax payable thereon shall be computed in accordance with the rules contained in Schedule I to this Act.
14. (1) The tax shall be payable by an assessee under the head "Income from other sources" in respect of income, profits and gains of every kind which may be included in his total income (if not included under any of the preceding heads). Other sources.
- (2) Such income, profits and gains shall be computed after making allowance for any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of making or earning such income, profits or gains, provided that no allowance shall be made on account of—
- (a) any personal expenses of the assessee, or
  - (b) any interest chargeable under this Act which is payable without Cochin, not being interest on which tax has been paid or from which tax has been deducted under section 21, or
  - (c) any payment which is chargeable under the head "Salaries", if it is payable without Cochin and tax has not been paid thereon nor deducted therefrom under section 21.
- (3) Where an assessee lets on hire machinery, plant or furniture belonging to him, he shall be entitled to allowances in accordance with the provisions of clauses (iv), (v), (vi) and (vii) of sub-section (2) of section 13.
- (4) Where an assessee lets on hire machinery, plant or furniture belonging to him and also buildings, and the letting of the building is

inseparable from the letting of the said machinery, plant or furniture, he shall be entitled to allowances in accordance with the provisions of clauses (iv), (v) and (vi) of sub-section (2) of Section 13 in respect of such buildings.

**Managing  
Agency  
Commission.**

15. Where a managing agent of a company is liable under an agreement made for adequate consideration to share managing agency commission with a third party or parties, the said agent and the said party or parties shall file a declaration showing the proportion in which such commission is shared between them, and on proof to the satisfaction of the Income-tax Officer of the facts contained in such declaration such agent and each such party shall be chargeable only on the share to which such agent or party is entitled under the agreement.

**Method of  
accounting.**

16. Income, profits and gains shall be computed, for the purposes of sections 13 and 14, in accordance with the method of accounting regularly employed by the assessee:

Provided that, if no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Income-tax Officer, the income, profits and gains cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine.

**Exemptions  
of a general  
nature.**

17. (1) The tax shall not be payable by an assessee in respect of any sum which he receives as a member of a Hindu undivided family or an undivided *Marumakkathayam tarawad*.

(2) The tax shall not be payable by an assessee—

(a) if a partner of an unregistered firm, in respect of any portion of his share in the profits and gains of the firm computed in the manner laid down in clause (b) of sub-section (1) of section 19 on which the tax has already been paid by the firm: or

(b) if a member of an association of persons other than a Hindu undivided family, an undivided



*Marumakkathayam tarawad*, a company or a firm, in respect of any portion of the amount which he is entitled to receive from the association on which the tax has already been paid by the association; or

(c) in respect of any income, profits or gains accruing or arising to him within British India or an Indian State, unless such income, profits or gains are received or deemed to be received in or are brought into Cochin in the previous year by or on behalf of the assessee, or are assessable under section 52.

18. (1) The tax shall not be payable in respect of any sums paid by an assessee to effect an insurance on the life of the assessee or on the life of a wife or husband of the assessee or in respect of a contract for a deferred annuity on the life of the assessee or on the life of a wife or husband of the assessee, or as a contribution to any provident fund to which the Provident Funds Act, XXIII of 1111, applies. Exemption in the case of life insurances.
- (2) Where the assessee is a Hindu undivided family, there shall be exempted under sub-section (1) any sums paid to effect an insurance on the life of any male member of the family or of the wife of any such member and where the assessee is an undivided *Marumakkathayam tarawad* there shall be exempted under sub-section (1) any sums paid to effect an insurance on the life of any member of the *tarawad*.
- (3) The aggregate of any sums exempted under this section shall not, together with any sums exempted under the second proviso to sub-section (1) of section 10 and any sums exempted under sub-section (1) of section

85, exceed in the case of an individual, one-sixth of the total income of the assessee, or six thousand rupees whichever is less, and in the case of a Hindu undivided family, or undivided *Marumakkathayam tarawad*, one-sixth of the total income of the assessee, or twelve thousand rupees, whichever is less.

**Exemptions and exclusions determining the total income.**

19. (1) In computing the total income of an assessee—

(a) any sums exempted under the second proviso to sub-section (1) of section 10, the second proviso to section 11, sub-section (2) of section 17 and section 18 shall be included ;

(b) when the assessee is a partner of a firm, then, whether the firm has made a profit or a loss, his share (whether a net profit or a net loss) shall be taken to be any salary, interest, commission or other remuneration payable to him by the firm in respect of the previous year increased or decreased respectively by his share in the balance of the profit or loss of the firm after the deduction of any interest, salary, commission or other remuneration payable to any partner in respect of the previous year :

Provided that if his share so computed is a loss, such loss may be set off or carried forward and set off in accordance with the provisions of section 30 ;

(c) all income arising to any person by virtue of a settlement or disposition whether revocable or not, and whether effected before or after the commencement of this Act, from assets remaining the

property of the settlor or disponent, shall be deemed to be income of the settlor or disponent, and all income arising to any person by virtue of a revocable transfer of assets shall be deemed to be income of the transfer :

Provided that for the purposes of this clause a settlement, disposition or transfer shall be deemed to be revocable if it contains any provision for the retransfer directly or indirectly of the income or assets to the settlor, disponent or transferor, or in any way gives the settlor, disponent or transferor a right to reassume power directly or indirectly over the income or assets :

Provided further that the expression "settlement or disposition" shall for the purposes of this clause include any disposition, trust, covenant, agreement, or arrangement, and the expression "settlor or disponent," in relation to a settlement or disposition shall include any person by whom the settlement or disposition was made :

Provided further that this clause shall not apply to any income arising to any person by virtue of a settlement or disposition which is not revocable for a period exceeding six years or during the lifetime of the person and from which income the settlor or disponent derives no direct or indirect benefit but that the settlor shall be liable to be assessed on the said income as and when the power to revoke arises to him.

(2) For the purposes of inclusion in the total income of an assessee any dividend shall be deemed to be income of the previous year in which it is paid, credited or distributed or deemed to have been paid, credited or distributed to him, and shall be increased to such amount as would, if income-tax (but not super-tax) at the rate applicable to the total income of a company for the financial year in which the dividend is paid,

credited or distributed or deemed to have been paid, credited or distributed, were deducted therefrom, be equal to the amount of the dividend;

Provided that when any portion of the profits and gains of the company out of which such dividend has been paid, credited or distributed or deemed to have been paid, credited or distributed was not liable to income-tax in the hands of the company, the increase to be made under this section shall be calculated upon only such proportion of the dividend as the amount of the profits and gains of the company liable to income-tax bears to the total profits and gains of the company.

(3) In computing the total income of any individual for the purpose of assessment, there shall be included—

(a) so much of the income of a wife or minor child of such individual as arises directly or indirectly—

- (i) from the membership of the wife in a firm of which her husband is a partner;
- (ii) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner;
- (iii) from assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart; or
- (iv) from assets transferred directly or indirectly to the minor child, not being a married

daughter, by such individual otherwise than for adequate consideration; and

(b) so much of the income of any person or association of persons as arises from assets transferred otherwise than for adequate consideration to the person or association by such individual for the benefit of his wife or a minor child or both.

20. (1) Where a person is not resident in Cochin, and is a subject of Cochin or of any other Indian State or of British India, the tax, including super-tax, payable by him or on his behalf on his total income shall be an amount bearing to the total amount of the tax including super-tax which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income; and in the case of any other non-resident person, the income-tax payable by him or on his behalf on his total income shall be at the maximum rate and the super-tax payable thereon shall be an amount bearing to the total amount of super-tax which would have been payable on his total world income had it been his total income the same proportion as his total income bears to his total world income.
- (2) Where there is included in the total income of any assessee any income (including income from a share in an unregistered firm, if assessed as such) exempted from tax by or under the provisions of this Act, the income-tax excluding super-tax payable by the assessee shall be an amount bearing to the total amount of the income-tax excluding super-tax which would have been payable on the total income had no part of it been exempted the same proportion as the

**Determi-  
nation of tax  
payable in  
certain  
special  
cases.**

unexempted portion of the total income bears to the total income.

- (3) Where there is included in the total income of any assessee any income exempted from tax under clause (c) of sub-section (2) of section 17, the super-tax payable by the assessee shall be an amount bearing to the total amount of the super-tax which would have been payable on the total income had no part of it been so exempted the same proportion as the total income less the portion so exempted bears to the total income.
- (4) Where any income exempted from tax under clause (c) of sub-section (2) of Section 17 which has been taken into account under sub-section (2) or sub-section (3) of this section as part of the total income of an assessee for the purpose of determining the income-tax or super-tax payable by him is in a subsequent year brought into or received in Cochin by the assessee and becomes chargeable with tax accordingly, the tax including super-tax payable by the assessee on his total income of that subsequent year shall be—
- (a) the amount which bears to the total amount of the tax including super-tax which would have been payable on his total income as reduced by the amount of the income so brought into or received in Cochin had such reduced income been his total income the same proportion as his total income bears to such reduced income, or
  - (b) the amount which bears to the total amount of the tax including super-tax which would have been payable on the amount of the income so brought into or received

in Cochin had such income been his total income the same proportion as his total income bears to the amount of the income so brought into or received in Cochin, whichever is the greater.

## CHAPTER IV

### DEDUCTIONS AND ASSESSMENT

21. (1) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax and super-tax on the amount payable at a rate representing the average of the rates applicable to the estimated total income of the assessee under this head:

Payment by deduction at source.

Provided that such person may, at the time of making any deduction, increase or reduce the amount to be deducted under this subsection for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct.

- (2) The value in rupees of any income chargeable under the head "Salaries" which is payable to the assessee out of India by or on behalf of the Government shall be calculated at the prescribed rate of exchange.
- (3) Any person responsible for paying any income chargeable under the head "Salaries" to a person not resident in Cochin shall at the time of payment deduct income-tax at the maximum rate and also super-tax at the rate or rates applicable to the estimated income of the assessee under this head.
- (4) The person responsible for paying any income chargeable under the head "Interest on Securities" shall, unless otherwise prescribed in the case of any security of the Government at the time of payment, deduct income-tax but not super-tax on the

amount of the interest payable at the maximum rate :

Provided that where the Income-tax Officer gives a certificate in writing (which certificate he shall give in every proper case on the application of the assessee) that to the best of his belief the total income or the total world income of a recipient will be less than the minimum liable to income-tax or will be liable to a rate of income-tax less than the maximum rate, the person responsible for paying any income referred to in this sub-section or in sub-section (3), as the case may be, to such recipient shall, until such certificate is cancelled by the Income-tax Officer, pay the income without deduction or deduct the tax at such less rate, as the case may be.

- (5) Any person responsible for paying to a person not resident in Cochin any interest not being "Interest on Securities", or any other sum chargeable under the provisions of this Act, shall, at the time of payment, unless he is himself liable to pay income-tax thereon as an agent, deduct income-tax at the maximum rate:

Provided that where the person so payable is a subject of Cochin or of any other Indian State or of British India, and the Income-tax Officer gives a certificate in writing (which certificate he shall give in every proper case on the application of the assessee) that to the best of his belief the total world income of such person will be less than the minimum liable to income-tax or that his total income will be liable to a rate of income-tax less than the maximum rate, the person responsible for paying any income referred to in this sub-section shall, until such certificate is cancelled by the Income-tax Officer, pay the income without deduction or deduct the tax at such less rate, as the case may be :



Provided further that nothing in this sub-section shall apply to any payment made in the course of transactions in respect of which the person responsible for making the payment is deemed under the first proviso to section 53 not to be an agent of the payee.

- (6) Where the Income-tax Officer has reason to believe that the total world income of any person residing out of Cochin to whom any interest not being "Interest on Securities" or any other sum chargeable under this Act is payable, will in any year exceed the maximum amount which is not chargeable with super-tax under the law for the time being in force, he may, by order in writing, require the person responsible for making such payments to such person to deduct at the time of payment super-tax at the rate determined by the Income-tax Officer to be applicable to the total world income of such person in that year.
- (7) Where the person responsible for paying any interest not being "Interest on Securities" or any other sum chargeable under this Act to any person makes to that person in any year payments exceeding in the aggregate the maximum amount which is not chargeable with super-tax under the law for the time being in force, the person responsible for making such payments, shall, if he has not reason to believe that the recipient is resident in Cochin, and no order under sub-section (6) has been received in respect of such recipient, deduct at the time of payment super-tax on the amount by which the total amount of such payments exceeds the maximum amount not chargeable with super-tax at the rate applicable to such excess.
- (8) Where the Income-tax Officer has reason to believe that any person, who is a shareholder in a company, is resident out of Cochin and that the total world income of

such person will in any year exceed the maximum amount which is not chargeable to super-tax under the law for the time being in force, he may, by order in writing, require the principal officer of the company to deduct at the time of payment of any dividend from the company to the shareholder in that year super-tax at such rate as the Income-tax Officer may determine as being the rate applicable in respect of the income of the shareholder in that year.

- (9) If in any year the amount of any dividend or the aggregate amount of any dividends paid to any shareholder by a company (increased in accordance with the provisions of sub-section (2) of section 19) exceeds the maximum amount of the total income of a person which is not chargeable to super-tax under the law for the time being in force, and the principal officer of the company has no reason to believe that the shareholder is resident in Cochin State, and no order under sub-section (8) has been received in respect of such shareholder by the principal officer from the Income-tax Officer, the principal officer shall at the time of payment deduct super-tax on the amount of such excess at the rate which would be applicable under the law for the time being in force if the amount of such dividend or dividends (increased as aforesaid) constituted the whole total income of the shareholder.
- (10) All sums deducted in accordance with the provisions of this section shall, for the purpose of computing the income of an assessee, be deemed to be income received.
- (11) Any deduction made in accordance with the provisions of this section and any sum by which a dividend has been increased under sub-section (2) of section 19 shall be treated as a payment of income-tax or super-tax on behalf of the person from whose income the deduction was made, or of the owner of the

security or of the shareholder, as the case may be, and credit shall be given to him therefor in the assessment, if any, made for the following year under this Act:

Provided that, if such person or such owner obtains, in accordance with the provisions of this Act, a refund of any portion of the tax so deducted, no credit shall be given for the amount of such refund:

Provided further that where such person or owner is a person whose income is included under the provisions of clause (c) of sub-section (1) or sub-section (3) of section 19, section 58 or section 59 in the total income of another person such other person shall be deemed to be the person or owner on whose behalf payment has been made and to whom credit shall be given in the assessment for the following year.

(12) All sums deducted in accordance with the provisions of this section shall be paid within the prescribed time by the person making the deduction to the credit of the Government or as the Government directs.

(13) If any such person does not deduct or after deducting fails to pay the tax as required by or under this section, he, and in the cases specified in sub-sections (8) and (9) the company of which he is the principal officer shall, without prejudice to any other consequences which he or it may incur, be deemed to be an assessee in default in respect of the tax:

Provided that the Income-tax Officer shall not make a direction under sub-section (1) of section 62 for the recovery of any penalty from such person unless satisfied that such person has wilfully failed to deduct and pay the tax.

(14) The power to levy by deduction under this section shall be without prejudice to any other mode of recovery.

(15) Every person deducting income-tax or super-tax in accordance with the provisions of subsection (4), (5), (6), (7), (8) or (9), shall, at the time of payment of the sum from which tax has been deducted, furnish to the person to whom such payment is made a certificate to the effect that income-tax or super-tax has been deducted, and specifying the amount so deducted, the rate at which the tax has been deducted, and such other particulars as may be prescribed.

Payment in other cases.

22. In the case of income in respect of which provision is not made under section 21 for deduction of income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of section 21, income-tax shall be payable by the assessee direct.

Supply of information regarding dividends.

23. The principal officer of every company shall, on or before the 15th day of Thulam in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and of the addresses, as entered in the register of shareholders maintained by the company, of the shareholders to whom a dividend or aggregate dividends exceeding such amount as may be prescribed in this behalf has or have been distributed during the preceding year and of the amount so distributed to each such shareholder.

Certificate by company to shareholders receiving dividends.

24. The principal officer of every company shall, at the time of distribution of dividends, furnish to every person receiving a dividend a certificate to the effect that the company has paid or will pay income-tax on the profits which are being distributed, and specifying such other particulars as may be prescribed.

Supply of information regarding interest.

25. The person responsible for paying any interest not being "Interest on Securities" shall, on or before the fifteenth day of Thulam in each year, furnish to the prescribed officer a return in the prescribed form and verified in the prescribed manner of the names and addresses of all persons to whom during the previous financial year he has paid interest or aggregate interest exceeding such amount not being less than four hundred rupees as may be prescribed in this behalf, together with the amount paid to each such person.

26. The prescribed person in the case of every Government office, and the principal officer or the prescribed person in the case of every local authority, company or other public body or association, and every private employer shall prepare, and within thirty days from the last day of Karkadagam in each year, deliver or cause to be delivered to the Income-tax Officer in the prescribed form and verified in the prescribed manner, a return in writing showing—

Annual  
return.

- (a) the name and, so far as it is known, the address, of every person who was receiving on the said last day of Karkadagam, or has received or to whom was due during the year ending on that date, from the authority, company, body, association or private employer, as the case may be, any income chargeable under the head "Salaries" of such amount as may be prescribed;
- (b) the amount of the income so received or so due by each such person, and the time or times at which the same was paid or due as the case may be;
- (c) the amount deducted in respect of income-tax and super-tax from the income of each such person.

27. (1) The Income-tax Officer shall, on or before the 1st day of Kanni in each year, give notice, by publication in the press and by publication in the prescribed manner, requiring every person whose total income during the previous year exceeded the maximum amount which is not chargeable to income-tax to furnish, within such period not being less than sixty days as may be specified in the notice, a return, in the prescribed form and verified in the prescribed manner, setting forth (along with such other particulars as may be required by the notice) his total income and total world income during that year:

Return of  
income.

Provided that the Income-tax Officer may in his discretion extend the date for the delivery

of the return in the case of any person or class of persons.

- (2) In the case of any person whose total income is, in the Income-tax Officer's opinion, of such an amount as to render such person liable to income-tax, the Income-tax Officer may serve a notice upon him requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income and total world income during the previous year:

Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return.

- (3) If any person has not furnished a return within the time allowed by or under sub-section (1) or sub-section (2), or having furnished a return under either of those sub-sections, discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

- (4) The Income-tax Officer may serve on any person who has made a return under sub-section (1) or upon whom a notice has been served under sub-section (2) a notice requiring him, on a date to be therein specified, to produce, or cause to be produced, such accounts or documents as the Income-tax Officer may require:

Provided that the Income-tax Officer shall not require the production of any accounts relating to a period more than three years prior to the previous year.

- (5) The prescribed form of the returns referred to in sub-sections (1) and (2) shall, in the case of an assessee engaged in any

business, profession or vocation, require him to furnish particulars of the location and style of the principal place wherein he carries on the business, profession or vocation and of any branches thereof, the names and addresses of his partners, if any, in such business, profession or vocation and the extent of the share of the assessee and the shares of all such partners in the profits of the business, profession or vocation and any branches thereof.

28. (1) If the Income-tax Officer is satisfied without requiring the presence of the assessee or the production by him of any evidence that a return made under section 27 is correct and complete, he shall assess the total income of the assessee, and shall determine the sum payable by him on the basis of such return. Assessment.
- (2) If the Income-tax Officer is not satisfied without requiring the presence of the person who made the return or the production of evidence that a return made under section 27 is correct and complete, he shall serve on such person, a notice requiring him, on a date to be therein specified, either to attend at the Income-tax Officer's office or to produce, or to cause to be there produced, any evidence on which such person may rely in support of the return.
- (3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, the Income-tax Officer, after hearing such evidence as such person may produce and such other evidence as the Income-tax Officer may require, on specified points, shall, by an order in writing, assess the total income of the assessee, and determine the sum payable by him on the basis of such assessment.
- (4) If any person fails to make the return required by any notice given under sub-section (2) of section 27 and has not made

a return or a revised return under sub-section (3) of the same section or fails to comply with all the terms of a notice issued under sub-section (4) of the same section or, having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of this section, the Income-tax Officer shall make the assessment to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment and, in the case of a firm, may refuse to register it or may cancel its registration if it is already registered:

Provided that the registration of a firm shall not be cancelled until fourteen days have elapsed from the issue of a notice by the Income-tax Officer to the firm intimating his intention to cancel its registration.

(5) Notwithstanding anything contained in the foregoing sub-sections, when the assessee is a firm and the total income of the firm has been assessed under sub-section (1), sub-section (3) or sub-section (4), as the case may be—

(a) in the case of a registered firm, the sum payable by the firm itself shall not be determined but the total income of each partner of the firm, including therein his share of its income, profits and gains of the previous year, shall be assessed and the sum payable by him on the basis of such assessment shall be determined:

Provided that if such share of any partner is a loss it shall be set off against his other income or carried forward and set off in accordance with the provisions of section 30:

Provided further that when any of such partners is a person not



resident in Cochin, his share of the income, profits and gains of the firm shall be assessed on the firm at the rates which would be applicable if it were assessed on him personally, and the sum so determined as payable shall be paid by the firm; and

(b) in the case of an unregistered firm, the Income-tax Officer may instead of determining the sum payable by the firm itself proceed in the manner laid down in clause (a) as applicable to a registered firm, if, in his opinion, the aggregate amount of the tax including super-tax, if any, payable by the partners under such procedure would be greater than the aggregate amount which would be payable by the firm and the partners individually if the firm were assessed as an unregistered firm.

(6) Whenever the Income-tax Officer makes a determination in accordance with the provisions of sub-section (5), he shall notify to the firm by an order in writing the amount of the total income on which the determination has been based and the apportionment thereof between the several partners.

29. (1) Where the Income-tax Officer is satisfied that in respect of any previous year the profits and gains distributed as dividends by any company up to the end of the sixth month after its accounts for that previous year are laid before the company in general meeting are less than sixty per cent of the assessable income of the company of that previous year as reduced by the amount of income-tax and super-tax payable by the company in respect thereof, he shall, unless he is satisfied that having regard to losses

**Power to assess individual members of certain companies.**

incurred by the company in earlier years or to the smallness of the profit made, the payment of a dividend or a larger dividend than that declared would be unreasonable, make an order in writing that the undistributed portion of the assessable income of the company of that previous year as computed for income-tax purposes and reduced by the amount of income-tax and super-tax payable by the company in respect thereof, shall be deemed to have been distributed as dividends amongst the share-holders as at the date of the general meeting aforesaid, and thereupon the proportionate share thereof of each shareholder shall be included in the total income of such share-holder for the purpose of assessing his total income:

Provided that when the reserves representing accumulations of past profits which have not been the subject of an order under this sub-section exceed the paid up capital of the company, together with any loan capital which is the property of the shareholders, or the actual cost of the fixed assets of the company whichever of these is greater, this section shall apply as if instead of the words "sixty per cent" the words "one hundred per cent" were substituted:

Provided further that no order under this sub-section shall be made where the company has distributed not less than fifty-five per cent of the assessable income of the company, as reduced by the amount of income-tax and super-tax payable by the company in respect thereof, unless the company, on receipt of a notice from the Income-tax Officer that he proposes to make such an order, fails to make within three months of the receipt of such notice a further distribution of its profits and gains so that the total distribution made is not less than sixty per cent of the assessable income of the company of the previous year concerned

as reduced by the amount of income-tax and super-tax payable by the company in respect thereof:

Provided further that this sub-section shall not apply to any company in which the public are substantially interested or to a subsidiary company of such a company if the whole of the share capital of such subsidiary company is held by the parent company or by the nominees thereof.

*Explanation.*—For the purpose of this sub-section, a company shall be deemed to be a company in which the public are substantially interested if shares of the company (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty-five per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and are at the end of the previous year beneficially held by, the public (not including a company to which the provisions of this sub-section apply), and if any such shares have in the course of such previous year been the subject of dealings in any stock exchange in India or are in fact freely transferable by the holders to other members of the public.

- (2) The Income-tax Officer shall not pass any order under this section until he has given the company concerned an opportunity of being heard.
- (3) (i) Where the proportionate share of any member of a company in the undistributed profits and gains of the company has been included in his total income under the provisions of sub-section (1) the tax payable in respect thereof shall be recoverable from the company, if it cannot be recovered from such member.

(ii) Where tax is recoverable from a company under this sub-section, a notice of demand shall be served upon it in the prescribed form showing the sum so payable, and such company shall be deemed to be the assessee in respect of such sum, for the purposes of Chapter VIII.

(4) Where tax has been paid in respect of any undistributed profits and gains of a company under this section, and such profits and gains are subsequently distributed in any year, the proportionate share therein of any member of the company shall be excluded in computing his total income of that year.

(5) When a company is a shareholder deemed under sub-section (1) to have received a dividend, the amount of the dividend thus deemed to have been paid to it shall be deemed to be part of its total income for the purpose also of the application of that sub-section to distributions of profits by that company.

30. (1) Where any assessee sustains a loss of profits or gains in any year under any of the heads mentioned in section 9, he shall be entitled to have the amount of the loss set off against his income, profits or gains under any other head in that year:

Provided that where the assessee is an unregistered firm which has not been assessed under the provisions of clause (b) of sub-section (5) of section 28 in the manner applicable to a registered firm, any such loss shall be set off only against the income, profits and gains of the firm and not against the income, profits and gains of any of the partners of the firm; and where the assessee is a registered firm, any loss which cannot be set off against other income, profits and gains of the firm shall be apportioned between the partners of the firm and

**Set-off of  
loss in com-  
puting  
aggregate  
income.**

they alone shall be entitled to have the amount of the loss set off under this section.

- (2) Where any assessee sustains a loss of profits or gains in any year, being a previous year not earlier than the previous year for the assessment for the year ending on the last day of Karkadagam 1117, under the head "Profits and gains of business, profession or vocation", and the loss cannot be wholly set off under sub-section (1), the portion not so set off shall be carried forward to the following year and set off against the profits and gains, if any, of the assessee from the same business, profession or vocation for that year; and if it cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following year, and so on; but no loss shall be so carried forward for more than six years, and a loss arising in the previous years for the assessment for the years ending on the last day of Karkadagam 1117, the last day of Karkadagam 1118, the last day of Karkadagam 1119, the last day of Karkadagam 1120, and the last day of Karkadagam 1121, respectively, shall be carried forward only for one, two, three, four and five years, respectively:

Provided that—

- (a) where depreciation allowance is, under clause (b) of the proviso to clause (vi) of sub-section (2) of Section 13, also to be carried forward, effect shall first be given to the provisions of this sub-section;
- (b) nothing therein contained shall entitle any assessee, being a registered firm, to have carried forward and set off any loss which has been apportioned between the partners, under the proviso to sub-section (1), or entitle any assessee, being a partner in an unregistered firm which has not been assessed under the provisions of clause (b) of

sub-section (5) of section 28 in the manner applicable to a registered firm, to have carried forward and set off against his own income any loss sustained by the firm;

- (c) where an unregistered firm is assessed as a registered firm under clause (b) of sub-section (5) of section 28, during any year, its losses shall also be carried forward and set off under this section as if it were a registered firm;
- (d) where a change has occurred in the constitution of a firm, nothing in this section shall be deemed to entitle the firm to have set off so much of the loss proportionate to the share of a retired or deceased partner computed in accordance with the provisions of clause (b) of sub-section (1) of Section 19 as exceeds his share of profits, if any, of the previous year in the firm, or to entitle any partner to the benefit of any portion of the said loss which is not apportionable to him under the said clause (b), and where any person carrying on any business, profession or vocation has been succeeded in such capacity by another person, otherwise than by inheritance, nothing in this section shall be deemed to entitle any person other than the person incurring the loss to have it set off against his income, profits or gains.
- (3) When, in the course of the assessment of the total income of any assessee, it is established that a loss of profits or gains has taken place which he is entitled to have set off under the provisions of this section, the Income-tax Officer shall notify to the assessee by order in writing the amount of the loss as computed by him for the purposes of this section.

**Assessment  
in case of  
departure  
from Cochin.**

31. (1) When it appears to the Income-tax Officer that any person may leave Cochin State during the current financial year, or shortly after its expiry, and that he has no present intention of returning, the Income-tax

Officer may proceed to assess him on his total income of the period from the expiry of the last previous year of which the income has been assessed in his hands to the probable date of his departure from Cochin State or where he has not been previously assessed, on his total income of the period up to the probable date of his departure from Cochin State. The assessment shall be made on the total income of each completed previous year included in such period at the rate at which such income would have been charged had it been fully assessed, and as respects the period from the expiry of the last of such completed previous years to the probable date of departure the Income-tax Officer shall estimate the total income of such person during such period and assess it at the rate in force for the financial year in which such assessment is made:

Provided that nothing herein contained shall authorise an Income-tax Officer to assess any income, profits or gains which have escaped assessment or have been under-assessed, or have been assessed at too low a rate, or have been the subject of excessive relief under this Act but in respect of which he is debarred from issuing a notice under section 44.

- (2) For the purpose of making an assessment under sub-section (1) the Income-tax Officer may serve a notice upon such person requiring him to furnish, within such time not being less than seven days as may be specified in the notice, a return in the same form and verified in the same manner as a return under sub-section (2) of section 27, setting forth (along with such other particulars as may be provided for in the notice) his total income for each of the completed previous years comprised in the relevant period referred to in the first sentence of sub-section (1) and his estimated total income for the period from the expiry of the last such completed previous year to the probable date of his departure; and the

**Tax of  
deceased  
person pay-  
able by re-  
presentative.**

provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under sub-section (2) of section 27.

32. (1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge the tax assessed as payable by such person, or any tax which would have been payable by him under this Act if he had not died.
- (2) Where a person dies before the publication of the notice referred to in sub-section (1) of section 27 or before he is served with a notice under sub-section (2) of section 27 or section 44, as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under sub-section (2) of section 27 or under section 44, as the case may be, comply therewith, and the Income-tax Officer may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee.
- (3) Where a person dies, without having furnished a return which he has been required to furnish under the provisions of section 27, or having furnished a return which the Income-tax Officer has reason to believe to be incorrect or incomplete, the Income-tax Officer may make an assessment of the total income of such person and determine the tax payable by him on the basis of such assessment, and for this purpose may, by the issue of the appropriate notice which would have had to be served upon the deceased person had he survived, require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of sections 27 and 28 have required from the deceased person.



33. (1) Where any business, profession or vocation, is discontinued in any year an assessment may be made in that year on the basis of the income, profits or gains of the period between the end of the previous year and the date of such discontinuance in addition to the assessment, if any, made on the basis of the income, profits or gains of the previous year. **Assessment in case of discontinued business.**
- (2) Any person discontinuing any such business, profession or vocation shall give to the Income-tax Officer notice of such discontinuance within fifteen days thereof, and, where any person fails to give the notice required by this sub-section, the Income-tax Officer may direct that a sum shall be recovered from him by way of penalty not exceeding the amount of tax subsequently assessed on him in respect of any income, profits or gains of the business, profession or vocation up to the date of its discontinuance.
- (3) Where an assessment is to be made under sub-section (1), the Income-tax Officer may serve on the person whose income, profits and gains are to be assessed, or, in the case of a firm, or any person who was a member of such firm at the time of its discontinuance, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 27, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.
34. (1) Where, at the time of making an assessment under section 28, it is claimed by or on behalf of any member of a Hindu family or *Marumakṭhāyam tarawad* hitherto assessed as undivided that a partition has taken place among the members of such family, or *tarawad*, the Income-tax Officer **Assessment after partition of a Hindu undivided family or an undivided Marumakṭhāyam Tarawad.**

shall make such inquiry thereinto as he may think fit, and, if he is satisfied that the joint family or undivided *tarawad*, property has been partitioned among the various members or groups of members in definite portions he shall record an order to that effect:

Provided that no such order shall be recorded until notices of the inquiry have been served on all the members of the family.

- (2) Where such an order has been passed or where any person has succeeded to a business, profession or vocation formerly carried on by a Hindu undivided family or an undivided *Marumakkathayam tarawad* whose joint family property or undivided *tarawad* property has been partitioned on or after the last day on which it carried on such business, profession or vocation, the Income-tax Officer shall make an assessment of the total income received by or on behalf of the joint family or undivided *tarawad* as such, as if no partition had taken place, and each member or group of members shall, in addition to any income-tax for which he or it may be separately liable and notwithstanding anything contained in subsection (1) of section 17, be liable for a share of the tax on the income so assessed according to the portion of the joint family or undivided *tarawad* property allotted him or it;

and the Income-tax Officer shall make assessments accordingly on the various members and groups of members in accordance with the provisions of section 28:

Provided that all the members and groups of members whose joint family or undivided *tarawad* property has been partitioned shall be liable jointly and severally for the tax assessed on the total income received by or on behalf of the joint family or undivided *tarawad* as such.

(3) Where such an order has not been passed in respect of a Hindu family or a *Marumakkathayam tarawad* hitherto assessed as undivided, such family or *tarawad* shall be deemed, for the purposes of this Act, to continue to be a Hindu undivided family or undivided *Marumakkathayam tarawad*.

35. (1) Where, at the time of making an assessment under section 28, it is found that a change has occurred in the constitution of a firm or that a firm has been newly constituted, the assessment shall be made on the firm as constituted at the time of making the assessment:

Change in  
constitution  
of a firm.

Provided that the income, profits and gains of the previous year shall for the purpose of inclusion in the total incomes of the partners, be apportioned between the partners who in such previous year were entitled to receive the same:

Provided further that when the tax assessed upon a partner cannot be recovered from him it shall be recovered from the firm as constituted at the time of making the assessment.

(2) Where a person carrying on any business, profession or vocation has been succeeded in such capacity by another person, such person and such other person shall each be assessed in respect of his actual share, if any, of the income, profits and gains of the previous year:

Provided that, when the person succeeded in the business, profession or vocation cannot be found, the assessment of the profits of the year in which the succession took place up to the date of succession, and for the year preceding that year shall be made on the person succeeding him in like manner and to the same amount as it would have been made on the person succeeded or when the tax in respect of the assessment made for

either of such years assessed on the person succeeded cannot be recovered from him, it shall be payable by and recoverable from the person succeeding, and such person shall be entitled to recover from the person succeeded the amount of any tax so paid.

**Procedure in registration of firms.**

36. (1) Application may be made to the Income-tax Officer on behalf of any firm, constituted under an instrument of partnership specifying the individual shares of the partners, for registration for the purposes of this Act and of any other enactment for the time being in force relating to income-tax or super-tax.
- (2) The application shall be made by such person or persons, and at such times and shall contain such particulars and shall be in such form, and be verified in such manner, as may be prescribed; and it shall be dealt with by the Income-tax Officer in such manner as may be prescribed.

**Cancellation of assessment when cause is shown.**

37. Where an assessee within one month from the service of a notice of demand issued as hereinafter provided, satisfies the Income-tax Officer that he was prevented by sufficient cause from making the return required by section 27, or that he did not receive the notice issued under sub-section (4) of section 27, or sub-section (2) of section 28 or that he had not a reasonable opportunity to comply, or was prevented by sufficient cause from complying, with the terms of the last-mentioned notices, the Income-tax Officer shall cancel the assessment and proceed to make a fresh assessment in accordance with the provisions of section 28.

**Penalty for concealment of income or improper distribution of profits.**

38. (1) If the Income-tax Officer, the Deputy Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that any person—

(a) has without reasonable cause failed to furnish the return of his total income which he was required to furnish by notice given under sub-section (1) or sub-section (2) of section 27 or section 44 or has without reasonable

cause failed to furnish it within the time allowed and in the manner required by such notice;  
or

- (b) has without reasonable cause failed to comply with a notice under sub-section (4) of section 27 or sub-section (2) of section 28 or
- (c) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income,

he may direct that such person shall pay by way of penalty, in the case referred to in clause (a), in addition to the amount of the income-tax and super-tax, if any, payable by him, a sum not exceeding one and a half times that amount, and in the cases referred to in clauses (b) and (c), in addition to any tax payable by him, a sum not exceeding one and half times the amount of the income-tax and super-tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income:

Provided that—

- (a) no penalty for failure to furnish the return of his total income shall be imposed on an assessee whose total income is less than three thousand five hundred rupees unless he has been served with a notice under sub-section (2) of section 27;
- (b) where a person has failed to comply with a notice under sub-section (2) of section 27 or section 44 and proves that he has no income liable to tax, the penalty imposable under this sub-section shall be a penalty not exceeding twenty-five rupees;

- (c) no penalty shall be imposed under this sub-section upon any person assessable under section 52 as the agent of a person not resident in Cochin for failure to furnish the return required under section 27 unless a notice under sub-section (2) of that section or under section 44 has been served on him.
- (d) when the person liable to penalty is a registered firm, or an unregistered firm treated under section 28 (5) (b) as a registered firm, so that the amount of the income-tax and super-tax payable by the firm itself has not been determined, that amount shall be taken to be an amount equal to the tax which would have been payable by an unregistered firm on an income equal to the firm's total income, and, in the cases referred to in clauses (b) and (c), the amount of the income-tax and super-tax which would have been avoided if the income as returned had been accepted as the correct income, shall be taken to be the difference between the amount of the tax which would have been payable by an unregistered firm on an income equal to the firm's total income and the amount of the tax payable by an unregistered firm on an income equal to the income of the firm as actually returned by the firm.
- (2) If the Income-tax Officer, the Deputy Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that the profits of a registered firm have been distributed otherwise than in accordance

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

- (3) No order shall be made under sub-section (1) or sub-section (2) unless the assessee or partner, as the case may be, has been heard, or has been given a reasonable opportunity of being heard.
- (4) No prosecution for an offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section.
- (5) The Deputy Commissioner or a Commissioner, who has made an order under sub-section (1) or sub-section (2), shall forthwith send a copy of the same to the Income-tax Officer.
- (6) The Income-tax Officer shall not impose any penalty under this section without the previous approval of the Deputy Commissioner.

39. When any tax or penalty is due in consequence of any order passed under or in pursuance of this Act, the Income-tax Officer shall serve upon the assessee or other person liable to pay such tax or penalty a notice of demand in the prescribed form specifying the sum so payable.

**Notice of demand.**

40. (1) Any assessee objecting to the amount of income assessed under section 28 or section 37, or the amount of loss computed under section 30 or the amount of tax determined

**Appeal against assessment under this Act**

under section 28 or section 37, or denying his liability to be assessed under this Act, or objecting to a refusal of an Income-tax Officer to register a firm under section 36 or to make a fresh assessment under section 37, or objecting to any order under sub-section (2) of section 33 or section 34 or sub-section (2) of section 35 or section 38, made by an Income-tax Officer or objecting to any penalty imposed by an Income-tax Officer under sub-section (6) of section 59 or sub-section (5) of section 60 or sub-section (1) of section 62 or objecting to a refusal of an Income-tax Officer to allow a claim to a refund under section 64, 65 or 71, or to the amount of the refund allowed by the Income-tax Officer under any of those sections, and any assessee, being a company, objecting to an order made by an Income-tax Officer under sub-section (1) of section 29, may appeal to the Deputy Commissioner against the assessment or against such refusal or order :

Provided that no appeal shall lie against an order under sub-section (1) of section 62 unless the tax has been paid :

Provided further that where the partners of a firm are individually assessable on their shares in the total income of the firm, any such partner may appeal to the Deputy Commissioner against any order of an Income-tax Officer determining the amount of the total income or the loss of the firm or the apportionment thereof between the several partners, but in respect of matters which are determined by such order may not appeal against the assessment of his own total income :

Provided further that a shareholder in a company in respect of which an order under section 29 has been passed by an Income-tax Officer, may not in respect of matters determined



by such order appeal against the assessment of his own total income.

- (2) The appeal shall ordinarily be presented within thirty days of receipt of the notice of demand relating to the assessment or penalty objected to or of the order in writing notifying the amount of total income on which the determination under sub-section (5) of section 28 was based and the apportionment thereof between the several partners or of the loss computed under section 30, or of the intimation of the refusal to pass an order under sub-section (1) of section 34 or to register a firm under section 36 or of the date of the refusal to make a fresh assessment under section 37 or of the intimation of an order under sub-section (1) of section 29 or under section 64, 65 or 71, as the case may be; but the Deputy Commissioner may admit an appeal after the expiration of the period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.
- (3) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

41. (1) The Deputy Commissioner shall fix a day and place for the hearing of the appeal, and may from time to time adjourn the hearing. Hearing of appeal.
- (2) The Deputy Commissioner may, before disposing of any appeal, make such further inquiry as he thinks fit, or cause further inquiry to be made by the Income-tax Officer.
  - (3) The Deputy Commissioner may, at the hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if the Deputy Commissioner is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable.

- (4) In disposing of an appeal the Deputy Commissioner may—
- (a) in the case of an order of assessment—
    - (1) confirm, reduce, enhance or annul the assessment, or
    - (2) set aside the assessment and direct the Income-tax Officer to make a fresh assessment after making such further inquiry as the Income-tax Officer thinks fit or the Deputy Commissioner may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment and determine where necessary the amount of tax payable on the basis of such fresh assessment, or
  - (b) in the case of an order refusing to register a firm under section 36, or to make a fresh assessment under section 37, confirm such order, or cancel it and direct the Income-tax Officer to register the firm or to make a fresh assessment, as the case may be, or
  - (c) in the case of an order under sub-section (2) of section 33 or sub-section (1) of section 29, or sub-section (2) of section 35 or section 64, 65 or 71, confirm, cancel or vary such order, or
  - (d) in the case of an order under sub-section (1) of section 34, confirm such order or cancel it and either direct the Income-tax Officer to make further inquiry and pass a fresh order or to make an assessment in the manner laid down in sub-section (2) of section 34, or
  - (e) in the case of an order under section 38 or sub-section (6) of section 59 or sub-section (5) of section 60 or sub-section (1) of section 62, confirm or cancel such order or vary it so as either to enhance or reduce the penalty, or
  - (f) in the case of an appeal against a computation of loss under section 30, confirm or vary such computation:

Provided that the Deputy Commissioner shall not enhance an assessment or a penalty unless the appellant has had a reasonable opportunity of showing cause against such enhancement :

Provided further that at the hearing of any appeal against an order of an Income-tax Officer, the Income-tax Officer shall have the right to be heard either in person or by a representative.

(5) Where as the result of an appeal any charge is made in the assessment of a firm or association of persons or a new assessment of a firm or association of persons is ordered to be made, the Deputy Commissioner may authorise the Income-tax Officer to amend accordingly any assessment made on any partner of the firm or any member of the association.

(6) The Deputy Commissioner shall, on the conclusion of the appeal, communicate the orders passed by him to the assessee and to the Commissioner.

42. (1) Any assessee objecting to an order passed by the Deputy Commissioner under section 38 or to an order under sub-section (4) of section 41 enhancing his assessment or a penalty imposed under section 38 or sub-section (6) of section 59 or sub-section (5) of section 60 may appeal to the Commissioner within thirty days of the date on which he was served with notice of such order :

**Appeals  
against  
orders of the  
Deputy Com-  
missioner.**

Provided that the Commissioner may admit the appeal after the expiration of thirty days if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(2) The appeal shall be in the prescribed form, and shall be verified in the prescribed manner.

(3) In disposing of the appeal the Commissioner may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit.

43. (1) The Commissioner may of his own motion call for the record of any proceeding under

**Power of  
revision.**

this Act which has been taken by any authority subordinate to him or by himself when exercising the powers of the Deputy Commissioner under sub-section (2) of section 8.

- (2) On receipt of the record the Commissioner may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such orders thereon as he thinks fit :

Provided that he shall not pass any order prejudicial to an assessee without hearing him or giving him a reasonable opportunity of being heard:

Provided further that an order by the Commissioner declining to interfere shall be deemed not to be an order prejudicial to the assessee.

**Income  
escaping  
assessment.**

44. (1) If in consequence of definite information which has come into his possession the Income-tax Officer discovers that income, profits or gains chargeable to income-tax have escaped assessment in any year, or have been under-assessed, or have been assessed at too low a rate, or have been the subject of excessive relief under this Act the Income-tax Officer may, in any case in which he has reason to believe that the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars thereof, at any time within eight years, and in any other case at any time within four years of the end of that year, serve on the person liable to pay tax on such income, profits or gains, or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 27, and may proceed to assess or re-assess such income, profits or gains, and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section:

Provided that the tax shall be charged at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be:

Provided further that when the income, profits or gains concerned are income, profits or gains liable to assessment for a year ending prior to the commencement of this Act, or where the assessment made or to be made is an assessment made or to be made on a person deemed to be the agent of a non-resident person under section 53, this sub-section shall have effect as if for the periods of eight years and four years a period of one year were substituted.

- (2) No order of assessment under section 28 or of assessment or re-assessment under sub-section (1) of this section shall be made after the expiry, in any case to which clause (c) of sub-section (1) of section 38 applies, of eight years, and in any other case, of four years from the end of the year in which the income, profits or gains were first assessable.

Provided that nothing contained in this sub-section shall apply to a re-assessment made in pursuance of an order under section 41, section 42 or section 109.

45. (1) The Commissioner or Deputy Commissioner may, at any time within four years from the date of any order passed by him in appeal or, in the case of the Commissioner, in revision under section 43 and the Income-tax Officer may, at any time within four years from the date of any assessment order or refund order passed by him, on his own motion rectify any mistake apparent from the record of the appeal, revision, assessment, or refund as the case may be, and shall within the like period rectify any such mistake which has been brought to his notice by an assessee:
- Rectification  
of mistake.**

Provided that no such rectification shall be made, having the effect of enhancing an assessment or reducing a refund unless the Commissioner, the Deputy Commissioner or the Income-tax Officer, as the case may be, has given notice to the assessee of his intention so to do and has allowed him a reasonable opportunity of being heard:

Provided further that no such rectification shall be made of any mistake in any order passed more than one year before the commencement of this Act.

- (2) Where any such rectification has the effect of reducing the assessment, the Income-tax Officer shall make any refund which may be due to such assessee.
- (3) Where any such rectification has the effect of enhancing the assessment or reducing a refund the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 39, and the provisions of this Act shall apply accordingly.

Tax to be  
calculated to  
nearest anna.

46. In the determination of the amount of tax or of a refund payable under this Act, fractions of an anna less than six pies shall be disregarded, and fractions of an anna equal to or exceeding six pies shall be regarded as one anna.

Power to take  
evidence on  
oath, etc.

47. The Income-tax Officer, the Deputy Commissioner and Commissioner shall, for the purposes of this Chapter, have the same powers as are vested in a Court under the Code of Civil Procedure, 1111, when trying a suit in respect of the following matters, namely.—

- (a) enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of documents;  
and
- (c) issuing commissions for the examination of witnesses, and any proceeding before an Income-tax Officer, Deputy Commissioner

or Commissioner under this Chapter shall be deemed to be a "judicial proceeding" within the meaning of sections 179 and 214 and for the purposes of section 182 of the Cochin Penal Code.

48. The Income-tax Officer or the Deputy Commissioner may, for the purposes of this Act,—
- Power to call for information.**
- (1) require any firm, or Hindu undivided family or *Marumakkathayam tarawad* to furnish him with a return of the members of the firm, or of the manager or adult male members of the family or *tarawad*, as the case may be, and of their addresses;
  - (2) require any person whom he has reason to believe to be a trustee, guardian, or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian, or agent, and of their addresses;
  - (3) require any assessee to furnish a statement of the names and addresses of all persons to whom he has paid in any year rent, interest, commission, royalty or brokerage, or any annuity not being an annuity taxable under the head "Salaries", amounting to more than four hundred rupees, together with particulars of all such payments made.

49. The Income-tax Officer or the Deputy Commissioner, or any person authorised in writing in this behalf by the Income-tax Officer or the Deputy Commissioner, may inspect and, if necessary, take copies, or cause copies to be taken, of any register of the members, debenture-holders or mortgagees of any company or of any entry in such register.
- Power to inspect the register of members of any company.**

## CHAPTER V

### LIABILITY IN SPECIAL CASES

50. (1) Where the guardian or trustee of any person being a minor, lunatic or idiot (all of which persons are hereinafter in this sub-section included in the term "beneficiary") is entitled
- Guardians, trustees and agents.**

to receive on behalf of such beneficiary, or is in receipt on behalf of such beneficiary of, any income, profits or gains chargeable under this Act, the tax shall be levied upon and recoverable from such guardian or trustee, as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from any such beneficiary if of full age or sound mind and in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly.

- (2) Where the trustee or agent of any person not resident in Cochin and not being a minor, lunatic or idiot (such person being hereinafter in this sub-section referred to as a beneficiary) is entitled to receive on behalf of such beneficiary, or is in receipt on behalf of such beneficiary of, any income, profits or gains chargeable under this Act, the tax, if not levied on the beneficiary direct, may be levied upon and recovered from such trustee or agent, as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from the beneficiary if in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly.

Court of  
Wards, etc.

51. (1) In the case of income, profits or gains chargeable under this Act which the Court of Wards, or any receiver or manager (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court, or any trustee or trustees appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise (including the trustee or trustees under any Wakf deed which is valid under the Mussalman Charitable Endowment Act, XXXI of 1111), are entitled to receive on behalf of any person, the tax shall be levied upon and recoverable from such Court of Wards,



receiver or manager or trustee or trustees, in the like manner and to the same amount as it would be leviable upon and recoverable from the person on whose behalf such income, profits or gains are receivable, and all the provisions of this Act shall apply accordingly :

Provided that where any such income, profits or gains or any part thereof are not specifically receivable on behalf of any one person, or where the individual shares of the persons on whose behalf they are receivable are indeterminate or unknown, the tax shall be levied and recoverable at the maximum rate :

Provided further that when part only of the income, profits and gains of a trust is chargeable under this Act, that proportion only of the income, profits and gains receivable by a beneficiary from the trust which the part so chargeable bears to the whole income, profits and gains of the trust shall be deemed to have been derived from that part.

(2) Nothing contained in sub-section (1) shall prevent either the direct assessment of the person on whose behalf income, profits or gains therein referred to are receivable, or the recovery from such person of the tax payable in respect of such income, profits or gains.

52. (1) All income, profits or gains accruing or arising, whether directly or indirectly, through or from any business connection in Cochin, or through or from any property in Cochin, or through or from any asset or source of income in Cochin, or through or from any money lent at interest and brought into Cochin in cash or in kind, shall be deemed to be income accruing or arising within Cochin, and where the person entitled to the income, profits or gains is not resident in Cochin, shall be chargeable to income-tax either in his name or in the name of his

Non-resi-  
dents.

agent, and in the latter case such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax:

Provided that where the person entitled to the income, profits or gains is not resident in Cochin, the income-tax so chargeable may be recovered by deduction under any of the provisions of section 21 and that any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person which are, or may at any time come within Cochin:

Provided further that any such agent, or any person who apprehends that he may be assessed as such an agent, may retain out of any money payable by him to such non-resident person a sum equal to his estimated liability under this sub-section, and in the event of any disagreement between the non-resident person and such agent or person (as to the amount to be so retained, such agent or person) may secure from the Income-tax Officer a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount:

Provided further that the amount recoverable from such agent or person at the time of final settlement shall not exceed the amount specified in such certificate except to the extent to which such agent or person may at such time have in his hands additional assets of such non-resident person.

(2) Where a person not resident or not ordinarily resident in Cochin carries on business with a person resident in Cochin, and it appears to the Income-tax Officer, that owing to the close connection between such persons the course of business is so arranged that the business done by the resident person with the person not resident or not ordinarily resident produces to the resident either no

profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom or which may reasonably be deemed to have been derived therefrom, shall be chargeable to income-tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax.

- (3) Where any profits or gains have accrued or arisen to any person directly or indirectly from the sale in Cochin by him or by any agency or branch on his behalf of any merchandise exported to Cochin by him or any agency or branch on his behalf from any place outside Cochin, the profits or gains shall be deemed to have accrued and arisen and to have been received in Cochin and no allowance shall be made under subsection (2) of section 13 in respect of any buying or other commission whatsoever not actually paid, or of any other amounts not actually spent, for the purpose of earning such profits or gains.

53. Any person employed by or on behalf of a person residing out of Cochin, or having any business connection with such person, or through whom such person is in the receipt of any income, profits or gains upon whom the Income-tax Officer has caused a notice to be served of his intention of treating him as the agent of the non-resident person shall, for all the purposes of this Act, be deemed to be such agent:

**Agent to include persons treated as such.**

Provided that where transactions are carried on in the ordinary course of business through a broker in Cochin in such circumstances that the broker does not in respect of such transactions deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker who is carrying on such transactions in the ordinary course of his business and not as a principal such first mentioned broker shall not be deemed to be an agent under this section in respect of such transactions:

Provided further that no person shall be deemed to be the agent of a non-resident person, unless he has had an

opportunity of being heard by the Income-tax Officer as to his liability.

**Liability in case of a discontinued firm or association.**

54. Where any business, profession or vocation carried on by a firm or association of persons has been discontinued, or where an association of persons is dissolved, every person who was at the time of such discontinuance or dissolution a partner of such firm or a member of such association shall, in respect of the income, profits and gains of the firm or association, be jointly and severally liable to assessment under Chapter IV and for the amount of tax payable and all the provisions of Chapter IV shall, so far as may be, apply to any such assessment.

## CHAPTER VI

### SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SHIPPING

**Liability to tax of occasional shipping.**

55. The provisions of this Chapter shall notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any person who resides out of Cochin and carries on business in Cochin in any year as the owner or charterer of a ship (such person hereinafter in this Chapter being referred to as the principal), unless the Income-tax Officer is satisfied that there is an agent of such principal from whom the tax will be recoverable in the following year under the other provisions of this Act.

**Return of profits and gains.**

56. (1) Before the departure from any port in Cochin of any ship in respect of which the provisions of this Chapter apply, the master of the ship shall prepare and furnish to the Income-tax Officer a return of the full amount paid or payable to the principal, or to any person on his behalf, on account of the carriage of all passengers, live-stock or goods shipped at that port since the last arrival of the ship thereat.
- (2) On receipt of the return, the Income-tax Officer shall assess the amount referred to in sub-section (1), and for this purpose may call for such accounts or documents as he may require, and one-twentieth of the

amount so assessed shall be deemed to be the amount of the profits and gains accruing to the principal on account of the carriage of the passengers, live-stock and goods shipped at the port.

- (3) When the profits and gains have been assessed as aforesaid, the Income-tax Officer shall determine the sum payable as tax thereon at the rate for the time being applicable to the total income of a company, and such sum shall be payable by the master of the ship, and a port-clearance shall not be granted to the ship until the Customs-collector, or other officer duly authorised to grant the same, is satisfied that the tax has been duly paid.

57. Nothing in this Chapter shall be deemed to prevent a principal from claiming, in the year following that in which any payment has been made on his behalf under this Chapter, that an assessment be made of his total income in the previous year, and that the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and, if he so claims, any such payment as aforesaid shall be treated as a payment in advance of the tax and the difference between the sum so paid, and the amount of tax found payable by him shall be paid by him or refunded to him, as the case may be. **Adjustment.**

## CHAPTER VII

### SPECIAL PROVISIONS RELATING TO AVOIDANCE OF LIABILITY TO INCOME-TAX AND SUPER-TAX

58. (1) Where any person has, by means of a transfer of assets, by virtue or in consequence whereof, either alone or in conjunction with associated operations, any income which if it were the income of such person would be chargeable to income-tax becomes payable to a person not resident or to a person resident but not ordinarily resident in Cochin, acquired any rights by virtue or in consequence of which he has within the meaning of this
- Avoidance of income-tax by transactions resulting in the transfer of income to persons resident or ordinarily resident abroad.**

section power to enjoy such income, whether forthwith or in the future, that income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be income of such first mentioned person for all the purposes of this Act.

- (2) Where any person receives or is entitled to receive, whether before or after any transfer of assets by virtue or in consequence whereof either alone or in conjunction with associated operations any income becomes payable to a person not resident or resident but not ordinarily resident in Cochin, any sum paid or payable by way of a loan or repayment of a loan or any other sum, being a sum which is not paid or payable for full consideration in money or money's worth, paid or payable otherwise than as income, such income shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this section, be deemed to be the income of the first-mentioned person for all the purposes of this Act.
- (3) Sub-sections (1) and (2) shall not apply if such first-mentioned person shows to the satisfaction of the Income-tax Officer either—
- (a) that neither the transfer nor any associated operation had for its purpose or for one of its purposes the avoidance of liability to taxation; or
  - (b) that the transfer and all associated operations were *bona fide* commercial transactions and were not designed for the purpose of avoiding liability to taxation.
- (4) For the purposes of this section, an "associated operation" means, in relation to any transfer, an operation of any kind effected by any person in relation to any of the assets

transferred or any assets representing whether directly or indirectly any of the assets transferred, or to the income arising from any such assets, or to any assets representing whether directly or indirectly the accumulations of income arising from any such assets.

- (5) A person shall, for the purposes of this section, be deemed to have power to enjoy income of a person not resident, or resident but not ordinarily resident, in Cochin if—
- (a) the income is in fact so dealt with by any person as to be calculated at some point of time and, whether in the form of income or not, to enure for the benefit of the first-mentioned person, or
  - (b) the receipt or accrual of the income operates to increase the value to such first-mentioned person of any assets held by him or for his benefit, or
  - (c) such first-mentioned person receives or is entitled to receive at any time any benefit provided or to be provided out of that income or out of moneys which are or will be available for the purpose by reason of the effect or successive effects of the associated operations on that income and on any assets which represent that income, or
  - (d) such first-mentioned person has power by means of the exercise of any power of appointment or power of revocation or otherwise to obtain for himself, whether with or without the consent of any other person, the beneficial enjoyment of the income, or
  - (e) such first-mentioned person is able, in any manner whatsoever and whether directly or indirectly, to

control the application of the income.

- (6) In determining whether a person has power to enjoy income within the meaning of this section, regard shall be had to the substantial result and effect of the transfer and any associated operations and all benefits which may at any time accrue to such person as a result of the transfer and any associated operations shall be taken into account irrespective of the nature or form of the benefits.
- (7) For the purposes of this section—
- (a) the expression “assets” includes property or rights of any kind, and the expression “transfer” in relation to rights includes the creation of those rights;
  - (b) the expression “benefit” includes a payment of any kind;
  - (c) references to income of a person not resident or of a person not ordinarily resident in Cochin shall, where the amount of the income of a company for any year or period has been deemed to have been distributed under subsection (1) of section 29, include references to so much of the income of the company for that year or period as is equal to the amount deemed to have been distributed to that person;
  - (d) references to assets representing any assets, income or accumulations of income include references to shares in or obligations of any company to which, or obligation of any other person to whom, those assets, that income or those accumulations are or have been transferred;



- (e) any body corporate incorporated outside Cochin shall be treated as if it were resident out of Cochin whether it is so resident or not.
- (8) The provisions of this section shall apply for the purposes of assessment to income-tax and super-tax for the year ending on the last day of Karkadagam 1117, and subsequent years, and shall apply, in relation to transfers of assets and associated operations whether carried out before or after the commencement of this Act.
- (9) Where any person has been charged to tax on any income deemed to be his under the provisions of this section, and that income is subsequently received by him, whether as income or in any other form, it shall not again be deemed to form part of his income for the purposes of this Act.
59. (1) Where the owner of any securities (in this sub-section and in sub-section (2) referred to as "the owner") agrees to sell or transfer those securities, and by the same or any collateral agreement—
- Avoidance of tax by certain transactions in securities.**
- (a) agrees to buy back or re-acquire the securities, or
- (b) acquires an option, which he subsequently exercises, to buy back or re-acquire the securities,
- then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the interest payable as aforesaid shall, whether it would or would not have been chargeable to tax apart from the provisions of this section, be deemed for all the purposes of this Act to be the income of the owner and not to be the income of any other person.
- (2) The references in sub-section (1) to buying back or re-acquiring the securities shall be deemed to include references to buying or acquiring similar securities, so, however, that where similar securities are bought or

acquired, the owner shall be under no greater liability to tax than he would have been under if the original securities had been bought back or re-acquired.

(3) Where any person carrying on a business which consists wholly or partly in dealing in securities agrees to buy or acquire any securities, and by the same or any collateral agreement—

(a) agrees to sell back or re-transfer the securities, or

(b) acquires an option, which he subsequently exercises, to sell back or re-transfer the securities,

then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable by him, no account shall be taken of the transaction in computing for any of the purposes of this Act the profits arising from or loss sustained in the business.

(4) Sub-section (3) shall have effect, subject to any necessary modifications, as if references to selling back or re-transferring the securities included references to selling or transferring similar securities.

(5) For the purpose of this section—

(a) the expression “interest” includes a dividend;

(b) the expression “securities” includes stocks and shares;

(c) securities shall be deemed to be similar if they entitle their holders to the same rights against the same persons as to capital and interest and the same remedies for the enforcement of those rights, notwithstanding any difference in the total nominal amounts of the respective securities or in the form in which they are held or the manner in which they can be transferred.

(6) The Income-tax Officer may by notice in writing require any person to furnish him within such time as he may direct (not being less than twenty-eight days), in respect of all securities of which such person was the owner at any time during the period specified in the notice, such particulars as he considers necessary for the purposes of this section and for the purpose of discovering whether tax has been borne in respect of the interest on all those securities; and, if that person without reasonable excuse fails to comply with the notice, he shall be liable to a penalty not exceeding five hundred rupees and to a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues.

60. (1) Any person upon whom notice is served by the Income-tax Officer requiring him to furnish a statement of particulars relating to any securities in which, at any time during the period specified in the notice he has had any beneficial interest, and in respect of which, within such period, either no income was received by him, or the income received by him was less than the sum to which the income would have amounted if the income from such securities had accrued from day to day and been apportioned accordingly, shall, whether an assessment to income-tax or super-tax in respect of his total income has or has not been made for the relevant year or years of assessment, furnish such a statement and such particulars in the form and within the time (not being less than twenty-eight days) required by the notice.

Avoidance of  
tax by sales  
cum dividend.

(2) If it appears to the Income-tax Officer by reference to all the circumstances in relation to the securities of any such person (including circumstances with respect to sales, purchases, dealings, contracts, arrangements, transfers, or any other transactions relating to such securities) that such person has thereby

avoided or would avoid more than ten per cent of the amount of the income-tax or super-tax for any year which would have been payable in his case in respect of the income from those securities if the income had been deemed to accrue from day to day and had been apportioned accordingly, and the income so deemed to have been apportioned to him had been treated as part of his total income from all sources for the purposes of income-tax or super-tax, then those securities shall be deemed to be securities to which sub-section (3) applies.

- (3) For the purposes of assessment to income-tax or super-tax in the case of any such person, the income from any securities to which this sub-section applies shall be deemed to accrue from day to day, and in the case of the sale or transfer of any such securities by or to him shall be deemed to have been received as and when it is deemed to have accrued:

Provided that this section shall not apply if such person proves to the satisfaction of the Income-tax Officer that the avoidance of income-tax or super-tax was exceptional and not systematic and that there was not in his case in any of the three preceding years any such avoidance of income-tax or super-tax, or that the provisions of section 59 have been applied in his case in respect of such income.

- (4) If any person fails to furnish any statement or particulars required under this section, or if the Income-tax Officer is not satisfied with any statement or particulars furnished under this section, the Income-tax Officer may make an estimate of the amount of the income which, under the foregoing provisions of this section, is to be deemed to form part of the person's total income for the purposes of income-tax or super-tax.
- (5) If any person without reasonable excuse fails to furnish any statement or particulars required under this section, he shall be liable to a penalty not exceeding five

hundred rupees, and to a further penalty of the like amount for every day after the infliction of such penalty during which the failure continues.

- (6) For the purpose of this section the expression "securities" includes stocks and shares.

## CHAPTER VIII

### RECOVERY OF TAX AND PENALTIES

61. Any amount specified as payable in a notice of demand under sub-section (3) of section 29 or under section 39 or an order under section 41 or section 42 or section 43, shall be paid within the time, at the place and to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice or order, and any assessee failing so to pay shall be deemed to be in default: **Tax when payable.**

Provided that, when an assessee has presented an appeal under section 40, the Income-tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of:

Provided further that where an assessee has been assessed in respect of income arising outside Cochin in a country the laws of which prohibit or restrict the remittance of money to Cochin, the Income-tax Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which by reason of such prohibition or restriction cannot be brought into Cochin, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

*Explanation.*—For the purposes of this section income shall be deemed to have been brought into Cochin if it has been utilized or could have been utilized for the purposes of any expenditure actually incurred by the assessee without Cochin or if the income whether capitalized or not has been brought into Cochin in any form.

62. (1) When an assessee is in default in making a payment of income-tax, the Income-tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum **Mode and time of recovery.**

not exceeding that amount shall be recovered from the assessee by way of penalty.

- (2) For the purposes of sub-section (1), the Income-tax Officer may direct the recovery of any sum less than the amount of the arrears and may enhance the sum so directed to be recovered from time to time in the case of a continuing default, so however that the total sum so directed to be recovered shall not exceed the amount of the arrears payable.
- (3) The Income-tax Officer may forward to the Diwan Peishkar a certificate under his signature specifying the amount of arrears due from an assessee, and the Diwan Peishkar, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue.

Provided that without prejudice to any other powers of the Diwan Peishkar in this behalf he shall for the purpose of recovering the said amount have the powers which under the Code of Civil Procedure, 1111, a Civil Court has for the purpose of the recovery of an amount due under a decree.

- (4) If any assessee is in receipt of any income chargeable under the head "Salaries" the Income-tax Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears due from such assessee, and such person shall comply with any such requisition, and shall pay the sum so deducted to the credit of the Government or as the Government directs.
- (5) The Government may direct with respect to any special area that income-tax shall be recovered therein with, and as an addition to, any municipal tax or local rate, by the same person and in the same manner as the municipal tax or local rate is recovered.

- (6) Save in accordance with the provision of sub-section (1) of section 52, or of the proviso to section 61 no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the financial year in which any demand is made under this Act.

Provided that where the sum payable is allowed to be paid by instalments the period of one year herein referred to shall be reckoned from the date on which the last of such instalments was due.

63. Any sum imposed by way of penalty under the provisions of sub-section (2) of section 33, section 38, sub-section (6) of section 59, sub-section (5) of section 60 or sub-section (1) of section 62, shall be recoverable in the manner provided in this Chapter for the recovery of arrear of tax. **Recovery of penalties.**

## CHAPTER IX

### REFUNDS

64. (1) If any individual, Hindu undivided family, undivided *Marumakkathayam tarawad*, company, local authority, firm or other association of persons, or any partner of a firm or member of an association individually satisfies the Income-tax Officer or other authority appointed by the Government in this behalf that the amount of tax paid by him or on his behalf or treated as paid on his behalf for any year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of any such excess. **Refunds.**
- (2) The Deputy Commissioner in the exercise of his appellate powers, or the Commissioner in the exercise of his appellate powers or powers of revision if satisfied to the like

effect shall cause a refund to be made by the Income-tax Officer of any amount found to have been wrongly paid or paid in excess.

- (3) Where income of one person is included under any provision of this Act in the total income of any other person such other person only shall be entitled to a refund under this section in respect of such income.
- (4) Nothing in this section shall operate to validate any objection or appeal which is otherwise invalid or to authorise the revision of any assessment or other matter which has become final and conclusive, or the review by any officer of a decision of his own which is subject to appeal or revision, or where any relief is specifically provided elsewhere in this Act, to entitle any person to any relief other or greater than that relief or to entitle any person to claim a refund of tax payable before the commencement of this Act, which he would not be entitled to claim but for the passing of this Act.

Relief in  
respect of  
United  
Kingdom  
Income-tax.

65. (1) If any person who has paid by deduction under section 21 or otherwise Cochin Income-tax for any year on any part of his income proves to the satisfaction of the Income-tax Officer that he has paid by deduction or otherwise United Kingdom income-tax for the corresponding year in respect of the same part of his income and that the rate at which he was entitled to, and has obtained, relief under the provisions of section 27 of the Finance Act, 1920 (10 & 11 Geo. 5 c. 18), is less than the Cochin rate of tax charged in respect of that part of his income, he shall be entitled to a refund of a sum calculated on that part of his income at a rate equal to the difference between the Cochin rate of tax or the appropriate rate of United Kingdom income-tax, whichever is less, and the rate at which he was entitled to, and obtained relief under that section:



Provided that in no case shall the rate at which such refund is calculated exceed half the Cochin rate of tax appropriate to the income of the person entitled to relief.

(2) In sub-section (1)—

- (a) the expression “Cochin income-tax” means income-tax and super-tax charged in accordance with the provisions of this Act;
- (b) the expression “Cochin rate of tax” means the amount of Cochin income-tax exclusive of super-tax after deduction of any relief due to a claimant under the other provisions of this Act but before deduction of any relief due to him under this section, divided by his total income after deducting therefrom any income (including income from a share in an unregistered firm) exempted from tax by or under the provisions of this Act, added to the amount of Cochin super-tax before deduction of any relief due to the claimant under this section divided by his total income;
- (c) the expression “United Kingdom income-tax” means income-tax and super-tax chargeable in accordance with the provisions of the Income-tax Acts;
- (d) the expression “appropriate rate of United Kingdom income-tax” has the meaning assigned to that expression in section 27 of the Finance Act, 1920 (10 & 11 Geo. 5 c. 18), as amended by the Finance Act, 1927.

Relief in respect of Indian State and Dominion Income-tax.

66. (1) The Government may, by notification in the Government Gazette, make provision for the granting of relief in respect of income on which has been paid both income-tax (including super-tax) under this Act and Dominion income-tax.
- (2) For the purposes of this section "Dominion income-tax" means any income-tax or super-tax charged under any law in force in any other Indian State or in any part of His Majesty's Dominions (other than the United Kingdom) where the laws of that State or part provide for relief in respect of tax charged on income both in that State or part and in Cochin which appears to the Government to correspond to the relief which may be granted by this section.

Income-tax on company's dividend deemed to have been paid by shareholder.

67. Where any dividend has been paid, credited or distributed or is deemed to have been paid, credited or distributed to any of the persons specified in section 4 who is a shareholder of a company which is assessed to income-tax in Cochin or elsewhere, such person shall be deemed in respect of such dividend himself to have paid income-tax (exclusive of super-tax) at the rate applicable to the total income of a company for the financial year in which the dividend has been paid, credited or distributed or is deemed to have been paid, credited or distributed on so much of the dividend as bears to the whole the same proportion as the amount of income on which the company is liable to pay income-tax bears to the whole income of the company.

Relief granted to a company to be deemed relief granted to shareholder.

68. (1) Where any dividend has been paid, credited or distributed or is deemed to have been paid, credited or distributed to a shareholder of a company which has obtained the relief referred to in section 65 or granted under section 66, the shareholder shall be deemed in respect of such dividend himself to have obtained such relief at the rate at which such relief has been granted in respect of income-tax only to the company for the financial year preceding the year in which the dividend was paid, credited or distributed or is deemed to have been paid, credited or distributed.

- (2) If the rate at which a shareholder is deemed under sub-section (1) to have obtained relief exceeds the rate at which he would have been entitled to relief had such relief been given direct to him by or under the said sections or order, any excess shall be recovered from him either as an addition to the tax payable by him on any assessment made on him under section 28 or section 44 or by setting it off against any relief due to him under section 64.

69. If any person who is a subject of Cochin and has paid by deduction or otherwise Cochin income-tax for any year in respect of any income arising without Cochin in a country the laws of which do not provide for any relief in respect of income-tax charged in Cochin proves that he has paid income-tax by deduction or otherwise under the laws of the said country in respect of the same income, he shall be entitled to the deduction from the Cochin income-tax payable of a sum equal to one-half of such Cochin income-tax or to one-half of such tax payable in the said country, whichever is the less.

**Relief in respect of tax charged in country not providing for relief in respect of Cochin Income-tax.**

*Explanation.*—The expression 'Cochin Income-tax' in this section means Income-tax and Super-tax charged in accordance with the provisions of this Act.

70. Where under any of the provisions of this Act, a refund is found to be due to any person, the Income-tax Officer, Deputy Commissioner or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded, or any part of that amount against the tax, if any, remaining payable by the person to whom the refund is due.

**Power to set off amount of refunds against tax remaining payable.**

71. Where through death, incapacity, bankruptcy, liquidation or other cause, a person who would but for such cause, have been entitled to a refund under any of the provisions of this Act, or to make a claim under section 64 or 65, is unable to receive such refund or to make such claim, his executor, administrator or other legal representative, or the trustee or receiver, as the case may be, shall be entitled to receive such refund or to make such claim for the benefit of such person or his estate.

**Power of representative of deceased person or person disabled to make claim on his behalf.**

Limitation  
of claims for  
refund.

72. No claim to any refund of income-tax or super-tax under this Chapter shall be allowed, unless it is made within four years from the last day of the financial year commencing next after the expiry of the previous year in which the income arose, accrued or was received or was deemed to have arisen, accrued or been received or was brought into Cochin :

Provided that where the claim is to a refund of income-tax or super-tax paid prior to the commencement of this Act, the claim shall not be allowed unless it is made within one year from the last day of the year in which the tax was recovered or before the last day of the financial year commencing after the expiry of the previous year as defined in clause (15) of section 3 in which the income arose on which the tax was recovered, whichever period may expire later :

Provided further that a claim to refund under section 65 of tax paid prior to the commencement of this Act, may be admitted after the period of limitation herein prescribed, when the applicant satisfies the Commissioner, or the Deputy Commissioner of Income-tax specially empowered in this behalf by the Government that he had sufficient cause for not making the claim within such period.

## CHAPTER X

### OFFENCES AND PENALTIES

Failure to  
make pay-  
ments or  
deliver  
returns or  
statements  
or allow  
inspection.

73. If a person fails without reasonable cause or excuse—

- (a) to deduct and pay any tax as required by section 21 or under sub-section (4) of section 62 ;
- (b) to furnish a certificate required by sub-section (15) of section 21 or by section 24 to be furnished ;
- (c) to furnish in due time any of the returns mentioned in section 23, section 25, section 26, sub-section (2) of section 27, or section 48 ;

- (d) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (4) of section 27, such accounts and documents as are referred to in the notice ;
- (e) to grant inspection or allow copies to be taken in accordance with the provisions of section 49 ;

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

74. If a person makes a statement in a verification mentioned in section 23 or section 25 or section 26 or section 27 or sub-section (2) of section 36 or sub-section (3) of section 40, or sub-section (2) of section 42, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable, on conviction before a Magistrate, with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

**False statement in declaration.**

75. (1) A person shall not be proceeded against for an offence under section 73 or section 74 except at the instance of the Deputy Commissioner.
- (2) The Deputy Commissioner may either before or after the institution of proceedings compound any such offence.

**Prosecution to be at instance of Deputy Commissioner.**

76. (1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Act other than proceedings under this Chapter, or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of this Act, shall be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, as made applicable to Cochin, no Court shall, save as provided in this Act, be entitled to require

**Disclosure of information by a public servant**

any public servant to produce before it any such return, accounts, documents or record or any part of any such record, or to give evidence before it in respect thereof.

- (2) If a public servant discloses any particulars contained in any such statement, return, accounts, documents, evidence, affidavit, deposition or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.
- (3) Nothing in this section shall apply to the disclosure—
  - (a) of any such particulars for the purposes of a prosecution under the Cochin Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Act, or
  - (b) of any such particulars to any person acting in the execution of this Act where it is necessary to disclose the same to him for the purposes of this Act, or
  - (c) of any such particulars occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand, or
  - (d) of any such particulars to a Civil Court in any suit to which the Government is a party, which relates to any matter arising out of any proceeding under this Act, or
  - (e) of any such particulars to any officer appointed by the Comptroller of Finance and Accounts or the Government to audit income-tax receipts or refunds, or

- (f) of any such particulars, relevant to any inquiry into the conduct of an official of the Income-tax Department, to any person appointed by the Government to hold such inquiry, or
- (g) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Cochin Stamp Act, 1083, to impound an insufficiently stamped document, or
- (h) of such facts, to an authorised officer of the United Kingdom, or of any Indian State or of any part of His Majesty's Dominions which has entered into an agreement with Cochin for the granting of double taxation relief, as may be necessary for the purpose of enabling such relief or a refund under section 65 of this Act to be given, or
- (i) of such facts, to any authority exercising powers under the Sea Customs Act, 1109 or any Act of the Cochin Legislature imposing a duty of excise as may be necessary for enabling it duly to exercise such powers, or
- (j) of such facts, to any person charged by law with the duty of inquiring into the qualifications of electors as may be necessary to establish whether a person is or is not entitled to be entered on an electoral roll, or
- (k) of so much of such particulars, to the appropriate authority, as may be necessary to establish whether a person has or has not been assessed to income-tax in any particular year or years, where

under the provisions of any law for the time being in force such fact is required to be established, or

- (1) of any such particulars, relevant to any inquiry into a charge of misconduct in connection with income-tax proceeding against a lawyer or registered accountant, to the authority referred to in sub-section (3) of Section 104, when exercising the functions referred to in that sub-section.
- (4) Nothing in this section shall apply to the production by a public servant before a Court of any document, declaration or affidavit filed, or the record of any statement or deposition made in a proceeding under section 34 or section 36, or to the giving of evidence by a public servant in respect thereof.
- (5) No prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

## CHAPTER XI

### SUPER-TAX

Charge of  
super-tax.

77. In addition to the income-tax charged for any year, there shall be charged, levied and paid for that year in respect of the total income of the previous year of any individual, Hindu undivided family, undivided *Marumakkathayam tarawad*, company, local authority, unregistered firm or other association of persons, not being a registered firm, or the partners of the firm or members of the association individually, an additional duty of income-tax (in this Act referred to as super-tax) at the rates specified in Schedule III to this Act:

Provided that where under the provisions of clause (b) of sub-section (5) of section 28 an unregistered firm has been assessed in the manner applicable to a registered firm, super-tax shall be payable by each partner of the firm



individually on his share in the income, profits and gains of the firm and not by the firm itself:

Provided further that, where the profits and gains of an unregistered firm or other association of persons not being a company have been assessed to super-tax, super-tax shall not be payable by a partner of the firm or a member of the association, as the case may be, in respect of the amount of such profits and gains which is proportionate to his share.

78. Subject to the provisions of this Chapter, the total income of any individual, Hindu undivided family, undivided *Marumakkathayam tarawad*, company, local authority, unregistered firm or other association of persons shall, for the purposes of super-tax, be the total income as assessed for the purposes of income-tax, and where an assessment of total income has become final and conclusive for the purposes of income-tax for any year, the assessment shall also be final and conclusive for the purposes of super-tax for the same year.

Total income for purposes of super-tax.

79. (1) All the provisions of this Act, relating to the charge, assessment, collection and recovery of income-tax except those contained in section 4, the second proviso to sub-section (1) of section 10, the second proviso to section 11, clauses (a) and (b) of sub-section (2) of section 17, and sections 18, 22 and 24 and the first proviso to sub-section (1) of section 51 and section 85 and sub-section (2) of section 86 shall apply, so far as may be, to the charge, assessment, collection and recovery of super-tax.

Application of Act to super-tax.

(2) Save as provided in sub-sections (1), (2), (3), (6), (7), (8) and (9) of section 21 and section 87 super-tax shall be payable by the assessee direct.

## CHAPTER XII

### SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF PROVIDENT FUNDS

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

Definitions.

(a) a “recognised provident fund” means a provident fund which has been and continues

to be recognised by the Commissioner, in accordance with the provisions of this Chapter;

(b) an "employer" means—

(i) a Hindu undivided family, undivided *Marumakkathayam tarawad*, company, firm or other association of persons, or

(ii) an individual engaged in a business, profession or vocation whereof the profits and gains are assessable to income-tax under section 13,

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

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

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

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

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

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

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

81. (1) The Commissioner of Income-tax may accord recognition to any provident fund which in his opinion, satisfies the conditions prescribed in section 82 and the rules made thereunder, and may, at any time, withdraw such recognition if, in his opinion, the provident fund contravenes any of those conditions.
- (2) An order according recognition shall take effect on such date as the Commissioner may fix in accordance with any rules the Government may make in this behalf, such date not being later than the last day of the financial year in which the order is made.
- (3) An order withdrawing recognition shall take effect from the day on which it is made.
- (4) An employer objecting to an order of the Commissioner refusing to recognise or an order withdrawing recognition from a provident fund may appeal, within sixty days of such order, to the Government.

The according and withdrawal of recognition.

The appeal shall be in the form and shall be verified in the manner prescribed by the Government.

- (5) An order according recognition to a provident fund shall not, unless the Commissioner otherwise directs, be affected by the fact that the fund is subsequently amalgamated with another provident fund on the occurrence of an amalgamation of the undertakings in connection with which the two funds are maintained, or that it subsequently absorbs the whole or a part of another provident fund belonging to an undertaking which is wholly or in part transferred to or merged in the undertaking of the employer maintaining the first mentioned fund.
82. (1) In order that a provident fund may receive and retain recognition, it shall satisfy the conditions set out below and any other conditions which the Government may, by rule, prescribe—
- (a) All employees shall be employed in India or shall be employed

Conditions to be satisfied by a recognised Provident fund.

by an employer whose principal place of business is in Cochin :

Provided that the Commissioner may, if he thinks fit and subject to such conditions, if any, as he thinks proper to attach to the recognition, accord recognition to a fund maintained by an employer whose principal place of business is not in Cochin notwithstanding that a proportion not exceeding ten per cent of the employees is employed outside India :

- (b) The contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, and credited to the employee's individual account in the fund.

Provided that an employee who retains his employment while serving in His Majesty's Forces or when taken into or employed in the national service under the National Service (European British Subjects) Act, 1940, or the National Service (Technical Personnel) Ordinance, 1940, may, notwithstanding, that he receives from the employer no salary or a salary less than he would have received had he not entered His Majesty's Forces, or been so taken into or employed in the national service, contribute to the fund during his service in His Majesty's Forces or while so taken into or employed in the national service a sum not exceeding the amount he would have contributed had he continued to receive from the employer the same salary (including increments, if any) as he would have received had he not entered His Majesty's Forces or been taken into or employed in the national service.

- (c) Subject to the provisions of section 83, the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited

to the employee's individual account at intervals not exceeding one year.

- (d) The fund shall consist of contributions as above specified, and of donations, if any, received by the trustees of accumulations thereof, and of interest (simple and compound), credited in respect of such contributions, donations and accumulations, and of securities purchased therewith, and of no other sums.
- (e) The fund shall be vested in two or more trustees under a trust which shall not be revocable save with the consent of all the beneficiaries.
- (f) The employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill-health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund.
- In such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee, and to interest (simple and compound) credited in respect of such contributions and accumulations thereof, in accordance with the regulations of the fund.
- (g) The accumulated balance due to an employee shall be payable on the day he ceases to be an

employee of the employer maintaining the fund.

(h) Save as provided in clause (g), or in accordance with such conditions and restrictions as the Government may, by rules, prescribe, no portion of the balance to the credit of an employee shall be payable to him.

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

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

Power to relax restrictions of employer's contributions in certain cases.

83. Subject to any rules which the Government may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of condition (c) of sub-section (1) of section 82—

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

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

Annual accretion deemed to be income received.

84. The annual accretion in any year to the balance at the credit of an employee participating in a recognised provident fund shall be deemed to have been received by him in that year and shall be included in his total income for that year, and, subject to the exemptions specified in section 85, shall be liable to income-tax and super-tax :

Provided that, for the purpose of sub-section (3) of section 18, out of such annual accretion only the employee's own contributions shall be included in his total income.

85. (1) An employee shall not be liable to pay income-tax on contributions to his individual account in a recognised provident fund, in so far as the aggregate of such contributions in any year does not exceed one-sixth of his salary in that year or six thousand rupees, whichever is less.

**Exemption of annual accretion from income-tax.**

(2) Interest credited on the accumulated balance of any employee in a recognised provident fund shall be exempt from payment of income-tax, if and in so far as it does not exceed one-third of the salary of the employee for the year concerned and in so far as it is allowed at a rate not exceeding such rate as the Government may, by notification in the Cochin Government Gazette, fix in this behalf.

86. (1) Where the accumulated balance due to an employee participating in a recognised provident fund becomes payable, such accumulated balance shall be exempt from payment of super-tax.

**Exemption of accumulated balance from income-tax and super-tax.**

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

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

or other cause beyond the control of the employee.

- (3) Where exemption from payment of income-tax is not allowed under the provisions of sub-section (2), the Income-tax Officer shall calculate the total of the various sums of income-tax and super-tax which would have been payable by the employee in respect of his total income for each of the years concerned if the fund had not been a recognised provident fund, and the amount by which such total exceeds the total of all sums paid by or on behalf of such employee by way of tax for such years shall be payable by the employee in addition to any other income-tax and super-tax for which he may be liable for the year in which the accumulated balance due to him becomes payable.

**Deduction at source of income-tax payable on accumulated balances due.**

87. The trustees of a recognised provident fund, or other person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, at the time an accumulated balance due to an employee is paid, deduct therefrom any income-tax payable under sub-section (3) of section 86 and any income-tax and super-tax payable on an employee's total income as determined under sub-section (3) of section 89, and sub-sections (10) to (15) of section 21 shall apply as if the sum to be deducted were income-tax payable under the head "Salaries".

**Accounts of recognised provident funds.**

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

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

**Treatment of balances in newly recognised provident funds.**

89. (1) Where recognition is accorded to a provident fund with existing balances, an account shall be made of the fund up to the day before the day on which the recognition takes



effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Government may prescribe.

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

Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the recognised fund shall be excluded from the accounts of the recognised fund and shall be liable to income-tax and super-tax in accordance with the provisions of this Act other than this Chapter.

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

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

- (4) Notwithstanding anything contained in condition (h) of sub-section (1) of section 82, an employee, in order to enable him to pay the amount of tax assessed on his total income as determined under sub-section (3), shall be entitled to withdraw from the balance to his credit in the recognised provident fund a sum not exceeding the difference between such amount and the amount to which he would have been assessed if the transferred balance had not been included in his total income.
- (5) Nothing in this section shall affect the rights of the persons administering an unrecognised provident fund or dealing with it, or with the balance to the credit of any individual employee, before recognition is accorded, in any manner which may be lawful.

**Treatment  
of fund  
transferred  
by employer  
to trustee.**

90. (1) Where an employer who maintains a provident fund (whether recognised or not) for the benefit of his employees and has not transferred the fund or any portion of it, transfers such fund or portion to trustees in trust for the employees participating in the fund, the amount so transferred shall be deemed to be of the nature of capital expenditure.
- (2) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustee (without addition of interest, and exclusive of the employee's contributions and interest thereon) shall, if the employer has made effective arrangements to secure that tax shall be deducted at source from the amount of such share when paid to the employee, be deemed to be an expenditure by the

employer within the meaning of clause (xii) of sub-section (2) of section 13, incurred in the year in which the accumulated balance due to the employee is paid.

91. (1) All rules made under this Chapter shall be subject to the provisions of sub-sections (4) and (5) of section 102. **Provisions relating to rules.**
- (2) In addition to any power conferred by this Chapter, the Government may make rules—
- (a) prescribing the statements and other information to be submitted with an application for recognition;
  - (b) limiting the contributions to a recognised provident fund by employees of a company who are share-holders in the company;
  - (c) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in a recognised provident fund;
  - (d) determining the extent to and the manner in which exemption from payment of income-tax and super-tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn; and
  - (e) generally, to carry out the purposes of this Chapter and to secure such further control over the recognition of provident funds and the administration of recognised provident funds as it may deem requisite.

Application  
of this  
Chapter.

92. This Chapter shall not apply to any provident fund to which the Provident Funds Act, 1111, applies.

### CHAPTER XIII

#### SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF SUPERANNUATION FUNDS

Definitions.

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

- (a) “approved superannuation fund” means a superannuation fund or any part of a superannuation fund which has been and continues to be approved by the Government in accordance with the provisions of this Chapter ;
- (b) “employer”, “employee” and “contribution” have, in relation to superannuation funds, the meanings assigned to those expressions in section 80 in relation to provident funds ;
- (c) “ordinary annual contribution” means an annual contribution of a fixed amount or an annual contribution computed on some definite basis by reference to the earnings, the contributions or the number of members of the fund.

Approval and  
withdrawal  
of approval.

94. (1) The Government may accord approval to any superannuation fund or any part of a superannuation fund which in its opinion complies with the requirements of section 95, and may at any time withdraw such approval, if in its opinion the circumstances of the fund or part cease to warrant the continuance of the approval.
- (2) The Government shall communicate in writing to the trustees of the fund the grant of approval with the date on which the approval is to take effect, and, where the approval is granted subject to conditions, those conditions.
- (3) The Government shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such

withdrawal and the date on which the withdrawal is to take effect.

- (4) The Government shall neither refuse nor withdraw approval to any superannuation fund or any part of a superannuation fund unless it has given the trustees of that fund a reasonable opportunity of being heard in the matter.

95. In order that a superannuation fund may receive and retain approval the following conditions shall be satisfied, namely.—

Conditions  
for approval.

- (a) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in Cochin;
- (b) the fund shall have for its sole purpose the provision of annuities for employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement, or for the widows, children or dependants of persons who are or have been such employees on the death of those persons; and
- (c) the employer in the trade or undertaking shall be a contributor to the fund:

Provided that the Government may, if it thinks fit and subject to such conditions, if any, as it thinks proper to attach to the approval, approve a fund or any part of a fund.—

- (i) notwithstanding that the rules of the fund provide for the return in certain contingencies of contributions paid to the fund, or
- (ii) if the main purpose of the fund is the provision of such annuities as aforesaid, notwithstanding that such provision is not its sole purpose, or
- (iii) notwithstanding that the trade or undertaking in connection with which the fund is established is

carried on only partly in  
Cochin.

Application  
for approval.

- 96 (1) An application for approval of a superannuation fund or part of a superannuation fund for any year of assessment shall be made in writing before the end of that year by the trustees of the fund to the Income-tax Officer, and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules and of the accounts of the fund for the last year for which such accounts have been made up. The Government may require such further information to be supplied as it thinks proper.
- (2) If any alteration in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alteration to the Income-tax Officer, and in default of such communication any approval given shall, unless the Government otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

Exemption of  
superannua-  
tion fund  
from income-  
tax.

97. Income derived from investments or deposits of an approved superannuation fund shall be exempt from payment of income-tax, and any sum paid by an employer or an employee by way of contribution towards an approved superannuation fund shall, in the case of an employer, be deducted in computing his income, profits or gains for the purpose of assessment, and, in the case of an employee, be treated for all the purposes of this Act as if it were a sum to which the provisions of section 18 apply :

Provided that no such exemption shall be allowable to an employee in respect of any sum which is not an ordinary annual contribution :

Provided further that where a contribution by an employer is not an ordinary annual contribution it shall, for the purposes of this section, be treated, as the Government may direct, either as an expense incurred in the year

in which the sum is paid, or as an expense to be spread over such period of years as the Government thinks proper.

98. (1) Where any contributions (including interest on contributions, if any) are repaid to an employee, the amount so repaid shall be deemed for the purposes of income-tax to be income of the employee for that year.

**Treatment of repaid contributions.**

(2) Where any contributions (including interest on contributions, if any) are repaid to an employee during his lifetime but not at or in connection with the termination of his employment, income-tax on the amount so repaid or paid shall except in the case of an employee whose employment was carried on abroad, be deducted by the trustees of the fund at the average rate of tax at which the employee was liable to income-tax during the preceding three years or during such period, if, less than three years, as he was a member of the fund, and shall be paid by the trustees to the credit of the Government within prescribed time and in such manner as the Government may direct.

99. Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under section 26.

**Deduction from pay of, and contributions on behalf of, employee to be included in return under section 26.**

100. If a fund or a part of a fund for any reason ceases to be an approved superannuation fund, the trustees of the fund shall nevertheless remain liable to account for tax on any sum paid—

**Liabilities of trustees on cessation of approval of fund.**

- (a) on account of returned contributions (including interest on contributions, if any), and
- (b) in commutation or in lieu of annuities,

in so far as the sum so paid is in respect of contributions made before the fund or part of the fund ceased to be an approved fund under the provisions of this Chapter.

Particulars to be furnished in respect of superannuation fund.

101. The trustees of an approved superannuation fund and any employer who contributes to an approved superannuation fund shall, when required by notice from the Income-tax officer, within twenty-one days of the date of such notice—

- (a) furnish to the Income-tax Officer a return containing such particulars of contributions made to the fund as the notice may require;
- (b) prepare and deliver to the Income-tax Officer a return containing—
  - (i) the name and place of residence of every person in receipt of an annuity from the fund;
  - (ii) the amount of the annuity payable to each annuitant;
  - (iii) particulars of every contribution (including interest on contributions, if any) returned to the employer or to employees; and
  - (iv) particulars of sums paid in commutation or in lieu of annuities;
- (c) furnish to the Income-tax Officer a copy of the accounts of the fund to the last date prior to such notice to which such accounts have been made up, together with such other information and particulars as the Government may reasonably require.

## CHAPTER XIV

### MISCELLANEOUS

Power to make rules.

102. (1) The Government may, make rules for carrying out the purposes of this Act and for the ascertainment and determination of any class of income. Such rules may be made for the whole of Cochin or for such part thereof as may be specified.
- (2) Without prejudice to the generality of the foregoing power, such rules may—
- (a) prescribe the manner in which, and the procedure by which, the



income, profits and gains shall be arrived at in the case of—

- (i) incomes derived in part from agriculture and in part from business;
  - (ii) persons residing out of Cochin
- (b) prescribe the procedure to be followed on applications for refunds;
  - (c) provide for such arrangements with His Majesty's Government as may be necessary to enable the appropriate relief to be granted under section 27 of the Finance Act, 1920, (10 & 11 Geo. 5c. 18) or under section 65 of this Act;
  - (d) prescribe the year which, for the purpose of relief under section 65, is to be taken as corresponding to the year of assessment for the purposes of section 27 of the Finance Act, 1920 (10 & 11 Geo. 5c. 18); and
  - (e) provide for any matter which by this Act is to be prescribed.
- (3) In cases coming under clause (a) of sub-section (2), where the income, profits and gains liable to tax cannot be definitely ascertained, or can be ascertained only with an amount of trouble and expense to the assessee which, in the opinion of the Government is unreasonable, the rules made under that sub-section may —
- (a) prescribe methods by which an estimate of such income, profits and gains may be made, and
  - (b) in cases coming under sub-clause (i) of clause (a) of sub-section (2), prescribe the proportion of the income which shall be deemed to be income, profits and gains liable to tax;

and an assessment based on such estimate or proportion shall be deemed to be duly made in accordance with the provisions of this Act.

- (4) The power to make rules conferred by this section shall, except on the first occasion of the exercise thereof, be subject to the condition of previous publication.
- (5) Rules made under this section shall be published in the Cochin Government Gazette, and shall thereupon have effect as if enacted in this Act.

**Power to make exemptions, etc.**

103. (1) The Government may, by notification in the Government Gazette, make an exemption, reduction in rate or other modification, in respect of income-tax in favour of any class of income, or in regard to the whole or any part of the income of any class of persons.
- (2) Where, by reason of any portion of an assessee's salary being paid in arrears or in advance, or by reason of his having received in any one financial year salary for more than twelve months, or a payment which is under the provisions of sub-section (1) of section 10 a profit in lieu of salary his income is assessed at a rate higher than that at which it would otherwise have been assessed, the Government may grant the appropriate relief.

**Appearance by authorised representative.**

104. (1) Any assessee, who is entitled or required to attend before any Income-tax authority in connection with any proceeding under this Act otherwise than when required under section 47 to attend personally for examination on oath or affirmation, may attend by a person authorised by him in writing in this behalf, being a relative of or a person regularly employed by the assessee, or a lawyer or accountant, and not being disqualified by or under sub-section (3).

(2) In this section,—

- (i) a person regularly employed by the assessee shall include any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings;
  - (ii) “lawyer” means a Barrister-at-Law or Solicitor or any other person entitled to plead in any Court of law in Cochin:
  - (iii) “accountant” means a registered accountant enrolled in the Register of Public Accountants maintained by the Diwan under the Auditors Certificate Rules, 1111, or a member of an association of accountants recognised in this behalf by the Government.
- (3) No person who has been dismissed from Government service after the 1st day of Chingam, 1116, shall be qualified to represent an assessee under sub-section (1); and if any lawyer or registered accountant is found guilty of misconduct in connection with any income-tax proceedings by the authority empowered to take disciplinary action against members of the profession to which he belongs, or if any other person is found guilty of such misconduct by the Commissioner of Income-tax, the Commissioner of Income-tax may direct that he shall be thenceforward disqualified to represent an assessee under sub-section (1):

Provided that—

- (a) no such direction shall be made in respect of any person unless he is given a reasonable opportunity of being heard,
- (b) any person against whom such direction is made may, within one month of the making of the

direction, appeal to the Government to have the direction cancelled, and

- (c) no such direction shall take effect until one month from the making thereof or when an appeal is preferred, until the disposal of the appeal.

Receipts to be given.

105. A receipt shall be given for any money paid or recovered under this Act.

Service of notices.

106. (1) A notice or requisition under this Act may be served on the person therein named either by post or, as if it were a summons issued by a Court, under the Code of Civil Procedure, 1111.

(2) Any such notice or requisition may in the case of a firm or a Hindu undivided family, or an undivided *Marumakkathayam tarawad*, be addressed to any member of the firm or to the manager, or any adult male member of the family or *tarawad*, and, in the case of any other association of persons be addressed to the principal officer thereof.

Place of assessment.

107. (1) Where an assessee carries on a business, profession or vocation at any place, he shall be assessed by the Income-tax Officer of the area in which that place is situate or, where the business, profession or vocation is carried on in more places than one, by the Income-tax Officer of the area in which the principal place of his business, profession or vocation is situate.

(2) In all other cases, an assessee shall be assessed by the Income-tax Officer of the area in which he resides.

(3) Where any question arises under this section as to the place of assessment, such question shall be determined by the Commissioner:

Provided that, before any such question is determined, the assessee shall have had an opportunity of representing his views :

Provided further that the place of assessment shall not be called in question by an assessee if he has made a return in response to the notice under sub-section (1) of section 27 and has stated therein the principal place wherein he carries on his business, profession or vocation, or if he has not made such a return shall not be called in question after the expiry of the time allowed by the notice under sub-section (2) of section 27 or under section 44 for the making of a return :

Provided further that if the place of assessment is called in question by an assessee the Income-tax Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under this sub-section before assessment is made.

(4) Notwithstanding anything contained in this section, every Income-tax Officer shall have all the powers conferred by or under this Act on an Income-tax Officer in respect of any income, profits or gains accruing, or arising or received within the area for which he is appointed.

108. Every person deducting, retaining or paying any tax in pursuance of this Act in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof. **Indemnity.**

109. (1) If, in the course of any assessment under this Act or any proceeding in connection therewith other than a proceeding under Chapter X, a question of law arises, the Commissioner may, either on his own motion or on reference from any Income-tax authority subordinate to him, draw up a statement of the case and refer it with his own opinion thereon to the High Court. **Statement of case by Commissioner to High Court.**

(2) Within sixty days of the date on which he is served with notice of an order under section

41 or section 42, or of an order under section 43 enhancing an assessment or otherwise prejudicial to him, the assessee in respect of whom the order was passed may, by application accompanied by a fee of one hundred rupees or such lesser sum as may be prescribed, require the Commissioner to refer to the High Court any question of law arising out of such order, and the Commissioner shall, within sixty days of the receipt of such application, draw up a statement of the case and refer it with his own opinion thereon to the High Court.

Provided that a reference shall lie from an order under section 43 only on a question of law arising out of that order itself, and not on a question of law arising out of a previous order under section 41, revised by the order under section 43.

Provided further that, if, in exercise of his power of revision under section 43, the Commissioner decides the question, or if the Commissioner rejects the application on the ground that it is time-barred or otherwise incompetent, or if, in exercise of his powers under sub-section (3), the Commissioner refuses to state the case, the assessee may within thirty days from the date on which he receives notice of the order passed by the Commissioner withdraw his application, and if he does so, the fee paid shall be refunded.

(3) If, on any application being made under sub-section (2), the Commissioner refuses to state the case on the ground that no question of law arises, the assessee may within six months from the date on which he is served with notice of the refusal apply to the High Court, and the High Court, if

it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to state the case and to refer it; and, on receipt of any such requisition, the Commissioner shall state and refer the case accordingly.

- (4) If, on any application being made under sub-section (2), the Commissioner rejects it on the ground that it is time-barred, the assessee may, within two months from the date on which he is served with notice of the order of the Commissioner, apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Commissioner's decision, may require the Commissioner to treat the application as made within the time allowed under sub-section (2).
- (5) If the High Court is not satisfied that the statements in a case referred under this section are sufficient to enable it to determine the question raised thereby, the Court may refer the case back to the Commissioner by whom it was stated to make such additions thereto or alterations therein as the Court may direct in that behalf.
- (6) The High Court upon the hearing of any such case shall decide the questions of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Commissioner by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Commissioner shall dispose of the case accordingly, or, if the case arose on a reference from any Income-tax authority subordinate to him, shall forward

a copy of such judgment to such authority who shall dispose of the case conformably to such judgment.

(7) Where a reference is made to the High Court on the application of an assessee, the costs shall be in the discretion of the Court.

(8) Notwithstanding that a reference has been made under this section to the High Court, income-tax shall be payable in accordance with the assessment made in the case.

Provided that, if the amount of an assessment is reduced as a result of such reference, the amount overpaid shall be refunded with such interest as the Commissioner may allow.

(9) Section 5 of the Cochin Limitation Act, 1112, shall apply to an application to the High Court by an assessee under sub-section (3) or sub-section (4).

**References to  
be heard by  
Benches of  
High Court.**

110. (1) When any case has been referred to the High Court under section 109, it shall be heard by a Bench of not less than two Judges of the High Court, and in respect of such case the provisions of section 83 of the Code of Civil Procedure 1111, shall, so far as may be, apply.

**Bar of suits  
in Civil  
Court.**

111. No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any Officer of the Government for anything in good faith done or intended to be done under this Act.



112. In computing the period of limitation prescribed for an appeal under this Act or for an application under section 109 the day on which the order complained of was made, and the time requisite for obtaining a copy of such order, shall be excluded.

**Computation  
of periods of  
limitation.**

113. All proceedings taken and all orders passed in connection with the assessments for the year commencing on the 1st day of Chingam 1117 under the Cochin Income-tax Act, VIII of 1108, and the rules thereunder shall continue to be valid:

**Transitory  
provisions  
with respect  
to operation  
of Cochin  
Income-tax  
Act, VIII of  
1108.**

Provided that further proceedings in connection with all such assessments shall be under the provisions of this Act:

Provided further that if in any such assessment, any income chargeable under this Act is excluded or any deduction not allowable under this Act is allowed or any income not chargeable under this Act is included or any deduction allowable under this Act is not allowed or the tax determined is more or less than the tax payable under this Act, the Income-tax Officer may modify the assessment and determine the tax payable in accordance with the provisions of this Act.

## SCHEDULE I

[See section 13(7)]

### Rules for the Computation of the Profits and Gains of Insurance Business

1. In the case of any person who carries on, or at any time in the preceding year carried on, life insurance business, the profits and gains of such person from that business shall be computed separately from his income, profits or gains from any other business.

2. The profits and gains of life insurance business shall be taken to be either—

(a) the gross external incomings of the preceding year from that business less the management expenses of that year, or

(b) the annual average of the surplus arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation made for the last inter-valuation period ending before the year for which the assessment is to be made, so as to exclude from it any surplus or deficit included therein which was made in any earlier inter-valuation period and any expenditure other than expenditure which may under the provisions of section 13 of this Act be allowed for in computing the profits and gains of a business,

whichever is the greater:

Provided that the amount to be allowed as management expenses shall not exceed—

(a)  $7\frac{1}{2}$  per cent of the premiums received during the preceding year in respect of single premium life insurance policies, *plus*

(b) in respect of the first year's premiums received in respect of other life insurance policies for which the number of annual premiums received is less than twelve, or for which the number of years during which premiums are payable is less than twelve, for each such premium or each such year  $7\frac{1}{2}$  per cent. of such first year's premiums received during the preceding year, *plus*

(c) 85 per cent. of the first year's premiums received during the preceding year in respect of other life insurance policies and  $8\frac{1}{2}$  per cent. of other premiums received during that year in respect of all life insurance policies other than single premium life insurance policies.

3. In computing the surplus for the purpose of rule 2—

(a) one-half of the amounts paid to or reserved for or expended on behalf of policy-holder shall be allowed as a deduction:

Provided that in the first such computation made under this rule of any such surplus no account shall be taken of any such amounts to the extent to which they are paid out of or in respect of any surplus brought forward from a previous inter-valuation period:

Provided further that if any amount so reserved for policy-holders ceases to be so reserved, and is not paid to or expended on behalf of policy-holders one-half of such amount, if it has been previously allowed as a deduction, shall be treated as part of the surplus for the period in which the said amount ceased to be so reserved;

- (b) any amount either written off or reserved in the accounts or through the actuarial valuation balance-sheet to meet depreciation of or loss on the realisation of securities or other assets, shall be allowed as a deduction, and any sums taken credit for in the accounts or actuarial valuation balance-sheet on account of appreciation of or gains on the realisation of the securities or other assets shall be included in the surplus:

Provided that if upon investigation it appears to the Income-tax Officer that having due regard to the necessity for making reasonable provision for bonuses to participating policy-holders and for contingencies, the rate of interest or other factor employed in determining the liability in respect of outstanding policies is materially inconsistent with the valuation of the securities and other assets so as artificially to reduce the surplus, such adjustment shall be made to the allowance for depreciation of, or to the amount to be included in the surplus in respect of appreciation of such securities and other assets, as shall increase the surplus for the purposes of these rules to a figure which is fair and just;

- (c) the whole amount of interest received in respect of any securities of the Government which have been issued or declared to be income-tax free shall be deducted.

4. Where for any year an assessment is made in accordance with the annual average of a surplus disclosed by a valuation for an inter-valuation period exceeding twelve months, then, in computing the tax payable for that year, credit shall not be given in accordance with sub-section (11) of section 21 for the tax paid in the preceding year, but credit shall be given for the annual average of the income-tax paid by deduction at source from interest on securities or otherwise during such period.

5. For the purposes of these rules—

- (i) “preceding year” means the previous year as defined in section 3 of this Act;
- (ii) “gross external incomings” means the full amount of incomings from interest, dividends, fines and fees and all other incomings from whatever source derived (except premiums received from policy-holders and interest and dividends on any annuity fund) and includes also profits from reversions and on the sale or the granting of annuities, but excludes profits on the realisation of securities:

Provided that incomings, including the annual value of the property occupied by the assessee, which but for the provisions of sub-section (7) of section 13 would have been assessable under section 12 shall be computed upon the basis laid down in the last-named section, and that there shall be allowed from such gross incomings such deductions as are permissible under that section.

- (iii) “management expenses” means the full amount of expenses (including commissions) incurred exclusively in the management of the business of life insurance, and in the case of a company carrying on other classes of business as well as the business of life insurance in addition thereto a fair proportion of the expenses incurred in the general management of the whole business. Bonuses or other sums paid to or reserved on behalf of policy-holders, depreciation of, and losses on

the realisation of, securities and any expenditure other than expenditure which may under the provisions of section 13 of this Act be allowed for in computing the profits and gains of a business are not management expenses for the purposes of these rules;

(iv) "life insurance business" includes annuity business, that is to say, the business of effecting contracts of insurance for the granting of annuities on human life and, if so provided in the contract of insurance, disability and double or triple indemnity accident benefits;

(v) "securities" includes stocks and shares.

6. The profits and gains of any business of insurance other than life insurance shall be taken to be the balance of the profits disclosed by the annual accounts, after adjusting such balance so as to exclude from it any expenditure other than expenditure which may under the provisions of section 13 of this Act be allowed for in computing the profits and gains of a business. Profits and losses on the realisation of investments, and depreciation and appreciation of the value of investments shall be dealt with as provided in rule 3 for the business of life insurance.

7. The profits and gains of companies carrying on dividing society or assessment business shall be taken to be 15 per cent. of the premium income of the previous year, or in the case of non-resident companies 15 per cent. of the Cochin premium income of the previous year.

8. The profits and gains of the Cochin branches of an insurance company not resident in Cochin, in the absence of more reliable data, may be deemed to be the proportion of the total world income of the company corresponding to the proportion which its Cochin premium income bears to its total premium income. For the purpose of this rule the total world income of life insurance companies not resident in Cochin whose profits are periodically ascertained by actuarial valuation shall be computed in the manner laid down in these rules for the computation of the profits and gains of life insurance business carried on in Cochin.

9. These rules apply to the assessment of the profits of any business of insurance carried on by a mutual insurance company.

## SCHEDULE II

(See section 4)

### Rates of income-tax

A. In the case of every individual, Hindu undivided family, undivided Marumakkathayam tarawad, unregistered firm and other association of persons not being a case to which paragraph B of this schedule applies—

	<i>Rate</i>
1. On the first Rs. 1,500 of total income ..	Nil
2. On the next Rs. 3,500 of total income ..	Eight pies in the rupee
3. On the next Rs. 5,000 of total income ..	One anna in the rupee
4. On the next Rs. 5,000 of total income ..	One anna six pies in the rupee
5. On the balance of total income ..	Two annas in the rupee

Provided that—

(i) no income-tax shall be payable on a total income which does not exceed Rs. 2,000.

(ii) the income-tax payable shall in no case exceed half the amount by which the total income exceeds Rs. 2,000.

B. In the case of every company and local authority and in every case in which under the provisions of this Act income-tax is to be charged at the maximum rate—

		<i>Rate</i>
On the whole of total income	.. ..	Two annas in the rupee

### SCHEDULE III

(See section 77)

#### Rates of super-tax

A. In the case of every individual, Hindu undivided family, undivided Marumakkathayam tarawad, unregistered firm and other associations of persons not being a case to which paragraph B of this schedule applies—

		<i>Rate</i>
1. On the first Rs. 25,000 of total income	..	Nil
2. On the next Rs. 10,000 of total income	..	Eight pies in the rupee
3. On the next Rs. 20,000 of total income	..	One anna four pies in the rupee
4. On the next Rs. 70,000 of total income	..	Two annas in the rupee
5. On the next Rs. 75,000 of total income	..	Two annas eight pies in the rupee
6. On the next Rs. 1,50,000 of total income	..	Three annas four pies in the rupee
7. On the next Rs. 1,50,000 of total income	..	Four annas in the rupee
8. On the balance of total income	.. ..	Four annas eight pies in the rupee

B. In the case of every company and local authority—

		<i>Rate</i>
On the whole of total income	.. ..	One anna in the rupee

Provided that—

(i) no super-tax shall be payable on a total income which does not exceed Rs. 25,000.

(ii) the super-tax payable shall in no case exceed half the amount by which the total income exceeds Rs. 25,000.

**PROCLAMATION  
(XIII of 1117)**

THE TRANSPORT SERVICE PROCLAMATION

**CONTENTS**

**Preamble.**

**Sections.**

1. Short title; extent and commencement.
2. Definitions.
3. Register of motor vehicle drivers.
4. Power to requisition services.
5. Registered persons to notify changes of address, and obtain permission to leave area of registration.
6. Penalties.
7. Sanction for prosecutions.
8. Power to make rules.
9. Application of Proclamation to drivers, syrangas, crews, etc., of boats.

THE TRANSPORT SERVICE PROCLAMATION

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin*

*on the 12th day of Medam 1117 corresponding to  
the 25th day of April 1942*

**[ Published in the Cochin Government Gazette,  
dated 12th Medam 1117 ]**

**Preamble.**

WHEREAS an emergency has arisen which makes it necessary to take powers to require persons capable of driving motor vehicles to place themselves and their services at the disposal of Government; We are pleased to command as follows.—

**Short title,  
extent and  
commence-  
ment.**

1. (1) This Proclamation may be called the Transport Service Proclamation, 1117;  
(2) It extends to the whole of Cochin;

(3) It shall come into force at once.

2. In this Proclamation, unless there is anything repugnant in the subject or context—

**Definitions.**

(a) “licensing authority” means the Commissioner of Police, and where the provisions of this Proclamation have been extended to drivers, syrangs and crews by a notification under section 9, the Chief Engineer;

(b) “motor vehicle” means any mechanically propelled vehicle adapted for use upon roads;

(c) “transport vehicle” has the meaning assigned to that expression in the Motor Vehicles Act, VIII of 1116.

3. (1) Government may cause the licensing authority to prepare for the State or for any area in the State a register in which shall be entered the names of such persons within the State or area, as the case may be, who are capable of driving a motor vehicle as the licensing authority may think fit to enter, together with such details of their qualifications as drivers, as may be prescribed by rules made under section 8.
- (2) The register shall show under separate headings those persons who are capable of driving a transport vehicle, and those persons who are not so capable.
- (3) The licensing authority shall, on entering the name of any person in the register, send to that person a notice in writing informing him that his name has been entered in the register for the State or area, as the case may be, stating whether he has been registered as capable of driving a transport vehicle or not, and informing him of the provisions of section 4 and section 5 of this Proclamation.
- (4) The licensing authority may, for the purpose of preparing the register under sub-section (1), by notice in writing call upon any person

**Register of motor vehicle drivers.**

to furnish in accordance with the requirements of the notice any information relating to his qualifications as a driver of motor vehicles which may be required by such notice.

**Power to requisition services.**

4. (1) Any officer empowered in this behalf by Government may, by order in writing delivered to any person whose name is enrolled in the register referred to in section 3, require him to present himself at such time and at such place and to such authority within the State as may be specified in the order and to perform within the State such services and for such time as may be so specified or as may be required of him by the authority to whom he has presented himself in pursuance of such order.
- (2) An order under sub-section (1) may require a person to drive a motor vehicle notwithstanding that he is not licensed under the Motor Vehicles Act, to drive a motor vehicle or a motor vehicle of the class to which the vehicle to be driven belongs and the provisions regarding the licensing of drivers contained in the Motor Vehicles Act shall not apply to such person in respect of any motor vehicle driven by him in obedience to any such order.

**Registered persons to notify changes of address, and obtain permission to leave area of registration.**

5. Any person to whom the notice under sub-section (3) of section 3 is sent shall thereafter, on any change occurring in his address, at once report such change to the licensing authority, and shall not depart out of the State or area, as the case may be, in which he is registered without first informing the licensing authority and receiving permission from that authority to depart.

**Penalties.**

6. (1) Whoever fails to comply with the requirements of any notice issued under sub-section (4) of section 3 or in purported compliance with any such notice knowingly or recklessly makes any untrue statement, or without reasonable excuse fails to report as required by section 5 any change occurring



in his address shall be punishable with fine which may extend to one hundred rupees.

- (2) Whoever without reasonable excuse fails to comply with an order in writing made under sub-section (1) of section 4 or to perform in the manner required any service which he is required to perform in pursuance of such order or, in contravention of section 5, departs out of the area in which he is registered shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.
- (3) Whoever being the employer of a person required by an order under sub-section (1) of section 4 to present himself for service does anything calculated to prevent such person from or to obstruct such person in complying with the order shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

7. No prosecution for an offence punishable under this Proclamation and no prosecution for an offence punishable under the Motor Vehicles Act for the time being in force committed by a person who is for the time being acting in obedience to an order under sub-section (1) of section 4 of this Proclamation, shall be instituted without the previous sanction in writing of Government or of an authority authorised in this behalf by Government.

**Sanction for prosecutions.**

8. (1) Government may, by notification in the Cochin Government Gazette, make rules to carry out the purposes of this Proclamation.
- (2) Without prejudice to the generality of the foregoing power, rules may be made providing for all or any of the following matters, namely—
- (a) the form of the register referred to in section 3, the principles to be followed in selecting names for entry therein, and the details to be recorded therein;

**Power to make rules.**

- (b) the form of any order in writing or notice in writing to be issued under this Proclamation ;
- (c) the payment of persons whose services are requisitioned under this Proclamation for the services rendered.

Application  
of Procla-  
mation to  
drivers,  
sygangs  
crew, etc., of  
boats.

9. Government may by notification in the Cochin Government Gazette direct that the provisions of this Proclamation shall apply to drivers, sygangs and crew of steam and motor boats and on such direction the reference to motor vehicles in sections 3 to 8 of this Proclamation shall have effect as if the words "motor or steam boats" were substituted.

## PROCLAMATION

(XIV of 1117)

*Promulgated by His Highness Sree Kerala Varma, Maharaja  
of Cochin, on the 12th day of Medam 1117 corres-  
ponding to the 25th day of April 1942*

[Published in the Cochin Government Gazette,  
dated 12th Medam 1117]

WHEREAS it is necessary to keep in abeyance the operation of certain provisions of the Cochin Electricity Act, III of 1102, during the continuance of the present hostilities ; WE are hereby pleased to command that until such time as Government may, by notification in the Cochin Government Gazette, deem fit to rescind this Proclamation, the operation of clause XI of the schedule to the Cochin Electricity Act, III of 1102, shall stand suspended and that alterations or amendments in the terms and conditions of a license in respect of the prices chargeable by a licensee for the supply of high tension energy for industrial loads may be made by Government without reference to the local authority concerned.

**PROCLAMATION****(XV of 1117)****THE PENALTIES (ENHANCEMENT)  
PROCLAMATION****CONTENTS****Preamble.****Sections.**

1. Short title, extent and operation.
2. Power of Government to put the provisions of this Proclamation into effect.
3. Punishment for theft.
4. Punishment for offences under sections 306, 415 and 416 of the Cochin Penal Code.
5. Punishment for contraventions of rule 35, Defence of India Rules.
6. Punishment for offences under section 356 of the Cochin Penal Code.
7. Punishment for offences under sections 133, 134 and 172 of the Cochin Penal Code.
8. Saving.

**THE PENALTIES (ENHANCEMENT)  
PROCLAMATION**

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin,  
on the 18th day of Medam 1117 corresponding  
to the 1st day of May 1942*

**[ Published in the Cochin Government Gazette, dated  
26th Medam 1117 ]**

WHEREAS an emergency has arisen which makes it **Preamble.**  
necessary to enhance in certain circumstances the penalties

provided by law for the punishment of certain offences; WE are pleased to command as follows.—

**Short title,  
extent and  
operation.**

1. (1) This Proclamation may be called the Penalties (Enhancement) Proclamation, 1117.
- (2) It extends to the whole of Cochin State.
- (3) It shall come into force at once; but sections 3 to 7 inclusive shall have effect only in pursuance of and in accordance with a notification issued under section 2 and only so long as such notification remains unrescinded.

**Power of  
Government  
to put the  
provisions of  
this Procla-  
mation into  
effect.**

2. Government may, from time to time by notification in the Cochin Government Gazette, declare that sections 3 to 7 inclusive, or any of them, or such provisions of section 4 or section 7 as relate to a particular offence or particular offences therein specified shall have effect throughout Cochin or in any specified area in Cochin.

**Punishment  
for theft.**

3. Whoever commits theft in any premises which have been damaged by war operations, or vacated by reason of attack by the enemy or in consequence of any authorised directions given for the purpose of meeting or hindering any actual or apprehended attack by the enemy or of protecting persons and property from the dangers involved in any such attack, or commits theft of any article which has been left exposed or unprotected as a consequence of war operations shall be punished with death, or with rigorous imprisonment for a term which may extend to ten years, or with whipping.

*Explanation.*—In this section “theft” means theft as defined in section 358 of the Cochin Penal Code and “authorised directions” means any order or directions made or given in the exercise of any power conferred by or under the Defence of India Act 1939, as made applicable to Cochin.

**Punishment  
for offences  
under sec-  
tions 306, 415  
and 416 of  
the Cochin  
Penal Code.**

4. Whoever commits an offence punishable under section 306, or section 415 or section 416 of the Cochin Penal Code may, in lieu of any punishment to which he is liable under the said Code, be punished with death, or with whipping.

5. Whoever contravenes any of the provisions of rule 35 of the Defence of India Rules as made applicable to Cochin may, in lieu of any punishment to which he is liable under the said rule, be punished with death, or with whipping.

Punishment for contraventions of rule 35, Defence of India Rules

6. Whoever commits an offence punishable under section 356 of the Cochin Penal Code may, in lieu of any punishment to which he is liable under the said Code, be punished with death.

Punishment for offences under section 356 of the Cochin Penal Code.

7. Whoever commits any offence punishable under section 133 or section 134 or section 172 of the Cochin Penal Code may, in lieu of any punishment to which he is liable under the said Code, be punished with whipping.

Punishment for offences under sections 133, 134 and 172 of the Cochin Penal Code.

8. Notwithstanding anything elsewhere contained in any Proclamation for the time being in force, an offence made punishable with death by this Proclamation shall not, by reason of having been made so punishable, cease to be triable by any Court which might have tried the offence had it not been made so punishable.

Saving.

## PROCLAMATION (XVI of 1117)

### THE SPECIAL CRIMINAL COURTS PROCLAMATION

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##### Preamble.

##### Sections.

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14. Summary Courts.
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17. Sentences by Summary Courts.
18. Appeals.
19. Procedure when Summary Court considers case triable by another court.
20. Power of Special Courts to deal with refractory accused.
21. Powers of Special Courts to exclude the public.
22. Special rule of evidence.
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25. Exclusion of interference of other Courts.
26. Application of ordinary law.

THE SPECIAL CRIMINAL COURTS  
PROCLAMATION

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin,  
on the 18th day of Medam 1117 corresponding  
to the 1st day of May 1942*

[ Published in the Cochin Government Gazette, dated  
26th Medam 1117 ]

**Preamble.**

WHEREAS an emergency has arisen which makes it necessary to provide for the setting up of special criminal courts; WE are hereby pleased to command as follows.—

**Short title,  
extent and  
commence-  
ment.**

1. (1) This Proclamation may be called the Special Criminal Courts Proclamation XVI of 1117.
- (2) It extends to the whole of Cochin State.
- (3) It shall come into force in Cochin only if Government being satisfied of the existence of an emergency arising from a hostile attack on India or on a country neighbouring on India or from the imminence of such an attack, by notification in the Cochin

Government Gazette, declare it to be in force in Cochin State and shall cease to be in force when such notification is rescinded:

Provided that any trial or proceeding which was pending at the time of such rescission may be continued and completed as if the provisions of this Proclamation were still in force.

2. Courts of criminal jurisdiction may be constituted under this Proclamation of the following classes, namely.— **Special Courts.**

- (i) Special Judges ;
- (ii) Special Magistrates ;
- (iii) Summary Courts.

3. Government may appoint to be a Special Judge for the whole of Cochin or for such area as they may think fit any person who has acted for a period of not less than two years in the exercise of the powers of a Sessions Judge under the Code of Criminal Procedure, II of 1086, (hereinafter in this Proclamation referred to as the Code). **Special Judges.**

4. A Special Judge shall try such offences or classes of offences, or such cases or classes of cases as Government may, by general or special order in writing, direct. **Jurisdiction of special Judges.**

5. (1) A Special Judge may take cognizance of offences without the accused being committed to his Court of trial, and, in trying accused persons, shall follow the procedure prescribed by the Code for the trial of warrant cases by Magistrates: **Procedure of Special Judges.**

Provided that a Special Judge shall ordinarily record a memorandum only of the substance of the evidence of each witness examined, may refuse to summon any witness if satisfied after examination of the accused that the evidence of such witness will not be material, and shall not be bound to adjourn any trial for any purpose unless such adjournment is, in his opinion, necessary in the interests of justice.

- (2) In matters not coming within the scope of sub-section (1), the provisions of the Code, so far as they are not inconsistent with this Proclamation, shall apply to the proceedings of a Special Judge; and for the purposes of the said provisions the court of the Special Judge shall be deemed to be a Court of Session.

**Sentences by  
Special  
Judges.**

6. A Special Judge may pass any sentence authorised by law.

**Review of  
convictions.**

7. If in any proceedings before a Special Judge—

(a) a person convicted is sentenced to death or to imprisonment for life or to imprisonment for a term of seven years or more, or

(b) though no person is so sentenced, the Special Judge certifies that in his opinion the case has involved questions of special difficulty, whether of law or fact, or is one which for any other reason ought properly to be reviewed, the proceedings shall be submitted for review by a person nominated in this behalf by Government which person shall be chosen from the Judges of the High Court and the decision of that person shall be final.

**Special  
Magistrates.**

8. Any Magistrate of the First Class who has exercised powers as such for a period of not less than two years may be invested by Government with the powers of a Special Magistrate under this Proclamation.

**Jurisdiction  
of Special  
Magistrates.**

9. A Special Magistrate shall try such offences or classes of offences, or such cases or classes of cases other than offences or cases involving offences punishable under the Cochin Penal Code with death, as Government may by general or special order in writing, direct.

**Procedure of  
Special  
Magistrates.**

10. (1) In the trial of any case, a Special Magistrate shall follow the procedure laid down in sub-section (1) of section 5 for the trial of cases by a Special Judge.

(2) In matters not coming within the scope of sub-section (1), the provisions of the Code,



so far as they are not inconsistent with this Proclamation, shall apply to the proceedings of a Special Magistrate; and for the purposes of the said provisions the Special Magistrate shall be deemed to be a Magistrate of the first class.

11. (1) A Special Magistrate may pass any sentence authorised by law, except a sentence of death or imprisonment for life or imprisonment exceeding seven years. **Sentences by Special Magistrates.**

(2) If a Special Magistrate is of opinion that an offence under trial by him requires a punishment in excess of that which he is empowered to inflict, he shall stay proceedings and send the case for trial to the Special Judge having jurisdiction in the area, and the Special Judge shall thereupon have jurisdiction to try the case as if it had been made over to him by order in writing made under section 4.

12. (1) Where a Special Magistrate passes a sentence of imprisonment for life or imprisonment for a term exceeding two years, an appeal shall lie to the Special Judge having jurisdiction in the area or, if there is no Special Judge for the area, to the Court of Session. **Appeals.**

(2) An appeal under sub-section (1) shall be presented within seven days from the date of the sentence.

(3) In disposing of an appeal under this section, a Special Judge shall follow the same procedure and have the same powers as an appellate court follows and has under the Code.

13. If any question arises whether, under any order made under section 4 or section 9, an offence is triable by a Special Judge or a Special Magistrate, the question shall be referred for decision to Government and the decision of Government shall be final. **Distribution of cases.**

14. Government may, by general or special order in writing, empower any Magistrate appointed under the **Summary Courts.**

provisions of the Code to exercise the powers of a Summary Court in any area specified in the order.

**Jurisdiction  
of Summary  
Courts.**

15. (1) A Summary Court shall have power to try such offences or classes of offences or such cases or classes of cases as Government may by general or special order direct:

Provided that no person shall be tried by a Summary Court for an offence which is punishable with imprisonment for a term exceeding two years.

- (2) The District Magistrate may by general or special order give directions as to the distribution among the Summary Courts of cases triable by them under sub-section (1).

**Procedure of  
Summary  
Courts.**

16. In the trial of any case a Summary Court shall, as far as possible, follow the procedure laid down in the Code for the trial of warrant cases, and shall have all the powers conferred by the Code on a Magistrate:

Provided that the Court shall not be required to record more than a memorandum of the evidence or to frame a formal charge:

Provided further that, in the trial of any offence punishable with imprisonment for a term not exceeding one year, the Court may follow the procedure for the summary trial of cases in which an appeal lies laid down in Chapter XXII of the Code.

**Sentences by  
Summary  
Courts.**

17. Summary Courts may pass any sentence which may be passed by a Magistrate of the first class.

**Appeals.**

18. (1) If a Summary Court, in a case tried according to the procedure for the trial of warrant cases, passes a sentence of imprisonment for a term exceeding three months or of fine exceeding two hundred rupees or in a case tried by summary procedure passes a sentence of imprisonment for a term exceeding one month or of fine exceeding fifty rupees, an appeal shall lie to the District Magistrate.
- (2) An appeal under sub-section (1) shall be presented within seven days from the date of the sentence.

- (3) In disposing of an appeal under this section, the appellate Court shall follow the same procedure and have the same powers as an appellate Court follows and has under the Code.
19. (1) If a Summary Court is of opinion that the offence disclosed is one which it is not empowered to try it shall send the case for trial to the Special Judge or Special Magistrate empowered to try the case under this Proclamation or, if no such Court has been so empowered, to an ordinary criminal court having jurisdiction.
- Procedure when Summary Court considers case triable by another court.**
- (2) If a Summary Court is of opinion that an offence which it is empowered to try should be tried by a court of superior jurisdiction, or that it requires a punishment in excess of that which the Summary Court is empowered to inflict, it shall stay proceedings and report the case to the District Magistrate, who may—
- (a) direct that the case shall be tried by a Summary Court, or
- (b) send it to a Court constituted under this Proclamation having jurisdiction or to an ordinary criminal Court having jurisdiction, or
- (c) report it for the orders of Government.
20. (1) Where an accused in a trial before a Court constituted under this Proclamation, has, by his voluntary act, rendered himself incapable of appearing before the Court, or resists his production before it, or behaves before it in a persistently disorderly manner, the Court may, at any stage of the trial, by order in writing made after such inquiry as it may think fit, dispense with the attendance of such accused for such period as it may think fit, and proceed with the trial in his absence.
- Powers of Special Courts to deal with refractory accused.**

- (2) Where a plea is required in answer to a charge from an accused whose attendance has been dispensed with under sub-section (1), such accused shall be deemed not to plead guilty.
- (3) An order under sub-section (1) dispensing with the attendance of an accused shall not affect his right of being represented by a pleader at any stage of the trial or being present in person if he has become capable of appearing, or appears in Court and undertakes to behave in an orderly manner.
- (4) Notwithstanding anything contained in the Code, no finding, sentence or order passed in a trial before a Court constituted under this Proclamation shall be held to be illegal by reason of any omission or irregularity whatever arising from the absence of any or all of the accused whose attendance has been dispensed with under sub-section (1).

**Powers of  
Special  
Courts to  
exclude the  
public.**

21. A Court constituted under this Proclamation may if it thinks fit, order at any stage of a trial that the public generally or any particular persons shall not have access to or be or remain in the room or building used by the Court.

**Special rule  
of evidence.**

22. Notwithstanding anything contained in the Indian Evidence Act, 1872 as made applicable to Cochin, when the statement of any person has been recorded by any Magistrate, such statement may be admitted in evidence in any trial before a Court constituted under this Proclamation, if such person is dead or cannot be found or is incapable of giving evidence.

**Special rule  
of procedure.**

23. (1) Notwithstanding anything contained in section 300 of the Code, where any offender has been sentenced by a Court constituted under this Proclamation to pay a fine, the Court may recover the fine by the issue of a warrant for the levy of the amount by attachment and sale of any property moveable or immovable of the offender.
- (2) Notwithstanding anything contained in section 441 of the Code, a Court constituted

under this Proclamation may, when imposing a fine on any person convicted by the Court, order the whole or any part of the fine recovered to be applied—

- (a) in the payment to any person affected by the offence of compensation for any loss, injury or annoyance caused by the offence, or
- (b) in the payment of a reward to any person who has given information leading to the detection of the offence or to the conviction of the accused.

24. A court constituted under this Proclamation shall not be required to grant an adjournment for the purpose of securing the attendance of a legal practitioner, if in the opinion of the Court such adjournment would cause unreasonable delay in the disposal of the case.

**Legal practitioners.**

25. Notwithstanding the provisions of the Code, or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall, save as provided in this Proclamation, be no appeal from any order or sentence of a Court constituted under this Proclamation and, save as aforesaid, no court shall have authority to revise such order or sentence, or to transfer any case from any such Court or have any jurisdiction of any kind in respect of any proceedings of any such Court.

**Exclusion of interference of other Courts.**

26. The provisions of the Code and of any other law for the time being in force, in so far as they may be applicable and in so far as they are not inconsistent with the provisions of this Proclamation, shall apply to all matters connected with, arising from or consequent upon a trial by special criminal courts constituted under this Proclamation.

**Application of ordinary law.**

**PROCLAMATION  
(XVII of 1117)**

**THE WAR INJURIES  
PROCLAMATION**

**CONTENTS**

**Preamble.**

**Sections.**

1. Short title, extent and commencement.
2. Interpretation.
3. Power to make schemes for relief in respect of war injuries and war service injuries.
4. Relief from liability to pay compensation or damages.
5. Information as to earnings.
6. Medical attention in dispensaries and hospitals.
7. Penalty for false statement.
8. Assignments or charges to be void.

**THE WAR INJURIES  
PROCLAMATION**

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin,  
on the 21st day of Medam 1117 corresponding to  
the 4th day of May 1942*

**[ Published in the Cochin Government Gazette, dated  
26th Medam 1117 ]**

**Preamble.**

WHEREAS an emergency has arisen which renders it necessary to make provision for the grant of relief in respect of certain personal injuries sustained during the continuance of the present hostilities; We are hereby pleased to command as follows.—

**Short title,  
extent and  
commence-  
ment.**

1. (1) This Proclamation may be called the War Injuries Proclamation, XVII of 1117;  
(2) It extends to the whole of Cochin;  
(3) It shall come into force at once.

2. In this Proclamation, unless there is anything repugnant in the subject or context—

Interpretation.

- (1) “civil defence organization” means any organization established for civil defence purposes which is declared by a scheme to be a civil defence organization for the purposes of this Proclamation and the scheme;
- (2) “civil defence volunteer”, in relation to an injury, means a person certified, by an officer of a civil defence organization authorised by Government to grant such certificates, to have been a member of that organization at the time the injury was sustained;
- (3) “continuance of the present hostilities” means the period beginning with the commencement of this Proclamation and ending with such date as Government may, by notification in the Cochin Government Gazette, declare to be the date on which the present hostilities terminated;
- (4) “gainfully occupied person” means a person who is engaged in any trade, business, profession, office, employment or vocation and is wholly or substantially dependent thereon for a livelihood, or a person who, though temporarily unemployed, is normally so engaged and dependent;
- (5) “scheme” means a scheme made under this Proclamation;
- (6) “war injury” means a physical injury—
  - (a) caused by—
    - (i) the discharge of any missile (including liquids and gas), or
    - (ii) the use of any weapon, explosive or other noxious thing, or

- (iii) the doing of any other injurious act, either by the enemy or in combating the enemy or in repelling an imagined attack by the enemy; or
  - (b) caused by the impact on any person or property of any enemy aircraft, or any aircraft belonging to or held by any person on behalf of or for the benefit of His Majesty, Our Government, or any allied power or any part of, or anything dropped from, any such aircraft.
- (7) "war service injury", in relation to a civil defence volunteer, means any physical injury shown to the satisfaction of Government or other authority authorised to make payments under a scheme to have arisen out of and in the course of the performance by the volunteer of his duties as a member of the civil defence organization to which he belonged at the time the injury was sustained, and (except in the case of a war injury) not to have arisen out of and in the course of his employment in any other capacity:

Provided that before being so satisfied Government or other authority authorised to make payments under a scheme shall have received from the civil defence organization of which the volunteer concerned was a member at the time the injury was sustained, a report, by an officer of the organization authorised by Government to make such reports, about the injury in question.

**Power to make schemes for relief in respect of war injuries and war service injuries.**

3. (1) Government may make a scheme or schemes in accordance with the provisions of this Proclamation providing for the grant of relief in respect of the following injuries sustained during the continuance of the present hostilities, namely—

(a) war injuries sustained by gainfully



occupied persons (with such exceptions, if any, as may be specified in the scheme) and by persons of such other classes as may be so specified; and

(b) war service injuries sustained by civil defence volunteers.

(2) A scheme may authorise Government, or any authority authorised by Government to make payments under the scheme, in such circumstances and subject to such conditions as may be specified in the scheme, to make to or in respect of persons injured—

(a) payments by way of temporary allowances, which shall be payable only so long as the person injured is incapacitated for work by the injury and has not received any such payment as is mentioned in clause (b);

(b) payments otherwise than by way of temporary allowance, which shall be payable only where the injury causes serious and prolonged disablement or death; and

(c) payments for the purchase of or the grant at the cost of Government of artificial limbs or surgical or other appliances and payments for medical and surgical treatment.

(3) A scheme may empower Government to make regulations for giving effect to the purposes of the scheme.

(4) A scheme may provide that it shall come into operation or shall be deemed to have come into operation on such date as may be specified therein.

- (5) A scheme may be amended or rescinded at any time by Government.
- (6) Any decision of Government or other authority empowered to make payments under a scheme as to the making, refusal or amount, or as to the continuance or discontinuance, of a payment under a scheme may be varied from time to time by a subsequent decision of Government or such authority as the case may be, but save in so far as it is so varied shall be final and conclusive.

Relief from liability to pay compensation or damages.

- 4. (1) In respect of a war injury sustained during the continuance of the present hostilities by any person, and in respect of a war service injury sustained during that period by a civil defence volunteer, no such compensation or damages shall be payable, whether to the person injured or to any other person, as apart from the provisions of this sub-section—
  - (a) would be payable under the Workmen's Compensation Act, V of 1111;
  - (b) would, whether by virtue of any enactment or by virtue of any contract or at common law, be payable—
    - (i) in the case of a war injury, by any person, or
    - (ii) in the case of a war service injury sustained by a civil defence volunteer, by the employer of the volunteer, or by any person who has responsibility in connection with the volunteer's duties as

such or by any other  
civil defence volun-  
teer,

on the ground that the injury in question was attributable to some negligence, nuisance or breach of duty for which the person by whom the compensation or damage would be payable is responsible.

(2) The failure to give a notice or make a claim or commence proceedings within the time required by any enactment shall not be a bar to the maintenance of proceedings in respect of any personal injury, if—

(a) an application for a payment under a scheme has been duly made to Government or other authority empowered to make payments under the scheme in respect of the injury; and

(b) the Court or other authority before which the proceedings are brought is satisfied that the said application was made in the reasonable belief that the injury was such that a payment could be made under the scheme; and

(c) Government or other authority empowered to make payments under the scheme certifies that the application was rejected, or that payments made in pursuance of the application were discontinued, on the ground that the injury was not such an injury; and

(d) the proceedings are commenced within one month from the date of the said certificate.

5. (1) Where it is necessary in order to determine the amount of any payment to be awarded under a scheme in respect of any injury, to ascertain the earnings of the person injured

Information  
as to earn-  
ings.

in respect of any period before he sustained the injury, Government or other authority authorised to make payments under the scheme may by notice in writing require—

(a) any person who was an employer of the injured person during that period, or

(b) any other person having any knowledge with respect to the financial circumstances of the injured person during that period,

to furnish in accordance with the notice any information in his possession relating to those earnings or circumstances, and to produce to any person specified in the notice any wage books, records or other documents in his possession containing entries with respect to those earnings.

(2) If any person—

(a) fails to comply with the requirements of any such notice, or

(b) in purported compliance with any such notice, knowingly or recklessly makes any untrue statement or untrue representation, or produces any document which is false in a material particular or calculated to deceive,

he shall be punishable with fine which may extend to three hundred rupees.

**Medical  
attention in  
dispensaries  
and hospitals**

6. (1) The person managing any dispensary or hospital shall, if so required by Government by general or special order—

(a) provide at the dispensary or hospital medical and surgical treatment for persons who have sustained injuries of the nature specified in sub-section (1) of section 3, and

(b) keep such records and make such returns relating to the person treated for such injuries as may be required by or under a scheme.

(2) If any person fails to comply when so required with the provisions of this section he shall be punishable with fine which may extend to one thousand rupees.

7. Any person who, for the purpose of obtaining a payment or grant under a scheme either for himself or for any other person, knowingly makes any untrue statement or untrue representation, shall be punishable with imprisonment for a term which may extend to three months.

Penalty for false statement.

8. Any assignment of, or charge on, and any agreement to assign or charge any payment awarded or to be awarded under a scheme shall be void, and, on the insolvency of any person to whom such a payment has been awarded, the payment shall not pass to any trustee or other person acting on behalf of the creditors.

Assignments or charges to be void.

**ACT TO AMEND THE INDIAN COMPANIES ACT AS MADE APPLICABLE TO COCHIN**

**ACT VIII of 1117**

**CONTENTS**

**Preamble.**

**Sections.**

1. Short title and commencement.
2. Amendment of Section 277-K.

ACT TO AMEND THE INDIAN COMPANIES ACT  
AS MADE APPLICABLE TO COCHIN

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin,  
on the 5th day of Edavam 1117 corresponding to  
the 18th day of May 1942*

[Published in the Cochin Government Gazette,  
dated 10th Edavam 1117]

**Preamble.**

WHEREAS it is expedient further to amend the Indian Companies Act as made applicable to Cochin; It is hereby enacted as follows.—

**Short title and commencement.**

1. This Act may be called the Act to amend the Indian Companies Act as made applicable to Cochin and it shall be deemed to have come into force on the 1st day of April 1942 corresponding to the 19th day of Meenam 1117.

**Amendment of section 277-K.**

2. For the proviso added by Act VII of 1116 to sub-section (3) of section 277-K of the Indian Companies Act, as made applicable to Cochin, substitute the following.—

“Provided further that a banking company may, to the extent of 50 per cent of the amount standing to the credit of its reserve fund, on the first day of April 1942 ear-mark any immovable property free of encumbrance situate in Cochin and owned by the company, and the property so ear-marked shall be deemed to be a sufficient investment to the extent of the reserve fund in respect of which such immovable property has been ear-marked, for a period of one year from the 1st day of April 1942 corresponding to the 19th day of Meenam 1117, on the following conditions.—

- (1) the property is not a lease-hold for a term of years;
- (2) the value of the property exceeds if consisting of land by one-third or if consisting of buildings by one half of the amount to be invested; and
- (3) no mortgages or other charges are created by such companies on the properties so ear-marked.”

**PROCLAMATION**  
**(XVIII of 1117)**

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin,*

*on the 29th day of Edavam 1117 corresponding  
to the 11th day of June 1942*

**[Published in the Cochin Government Gazette,  
dated 31st Edavam 1117]**

WHEREAS it is necessary to provide that lessees shall not be entitled to claim value for the improvements effected by them during the period of the lease in respect of lands leased to them in pursuance of the Scheme for Food Production; WE are hereby pleased to command as follows.—

Notwithstanding the provisions contained in the Cochin Tenancy Act, XV of 1113, relating to the payment of compensation for improvements, no lessee to whom land has been leased in pursuance of the Scheme for Food Production initiated by Government shall, in the absence of a contract to the contrary, be entitled to claim nor shall the lessor be liable to pay value for the improvements, if any, effected by the lessee during the period of the lease or the period during which he holds over the property without the consent in writing of the lessor:

Provided that this Proclamation shall not apply to leases granted without the previous approval in writing of the Commissioner of Food Production.

**PROCLAMATION**  
**(XIX of 1117)**

**POLICE (RESIGNATION OF OFFICE) PROCLAMATION**

**CONTENTS**

**Preamble.**

**Sections.**

1. Short title, extent and commencement.
2. Temporary amendment of Sections 16 of the Cochin Police Act
3. Temporary amendment of section 19 of the Cochin Police Act

## POLICE (RESIGNATION OF OFFICE) PROCLAMATION

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin,  
on the 29th day of Edavam 1117 corresponding  
to the 11th day of June 1942*

[ Published in the Cochin Government Gazette,  
dated 31st Edavam 1117 ]

WHEREAS an emergency has arisen which makes it necessary temporarily to suspend the right at present enjoyed by members of the Police force to resign office on giving notice of their intention to resign; We are hereby pleased to command as follows.—

Short title,  
extent and  
commence-  
ment.

1. (1) This Proclamation may be called the Police (Resignation of Office) Proclamation, XIX of 1117.
- (2) It extends to the whole of Cochin State.
- (3) It shall come into force at once and shall continue to be in force until rescinded by Government by notification in the Cochin Government Gazette.

Temporary  
amendment  
of section 16  
of the Cochin  
Police Act.

2. So long as this Proclamation remains in force, Section 16 of the Cochin Police Act, I of 1058, hereinafter referred to as the Act shall have effect as if the following were substituted.—

“16. No Police Officer shall be at liberty to resign his office, or withdraw himself from the duties thereof unless expressly allowed to do so in writing by the Commissioner. Nor shall any such Police Officer engage in any employment or office whatever other than the duties under this Act unless expressly permitted to do so in writing under the seal of the Commissioner.”

Temporary  
amendment  
of section 19  
of the Cochin  
Police Act.

3. Section 19 of the Act shall have effect as if the words “or without having given two months’ notice as provided by this enactment” were deleted.



**PROCLAMATION**

**(XX of 1117)**

*Promulgated by His Highness Sree Kerala Varma,*

*Maharaja of Cochin,*

*on the 29th day of Edavam 1117 corresponding to*

*the 11th day of June 1942*

**[ Published in the Cochin Government Gazette,  
dated 31st Edavam 1117 ]**

WHEREAS it is expedient further to amend Proclamation, III of 1113, authorising the levy of Landing and Shipping Fees within the limits of Our Port of Cochin; We are pleased to command as follows.—

After clause 3 of Proclamation III of 1113, the following shall be added.—

“4. Government may from time to time make rules—

- (a) appointing places where goods or particular classes of goods intended for shipment or landed from ships within the port are to be placed for the purpose of assessing the fees payable under this Proclamation and places where passengers may land or embark;
- (b) providing for the ascertainment and recovery of the amount of any damage that may be caused to a pier, jetty, wharf, quay or other work in a port by any person or by any vessel or drift; and
- (c) generally for carrying out the purposes of this Proclamation.

Such rules and any alteration or cancellation thereof shall be published in the Cochin Government Gazette, and shall thereupon have the force of law.”

**PROCLAMATION  
(XXI of 1117)**

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin,  
on the 29th day of Edavam 1117 corresponding to  
the 11th day of June 1942*

[ **Published in the Cochin Government Gazette,  
dated 31st Edavam 1117** ]

WHEREAS it is expedient to revive the Nemmara Group Village Panchayat Court that was in existence on the eve of the constitution of Nemmara into a Town under the Cochin Town Councils Act, XXVI of 1115; WE are hereby pleased to command that notwithstanding anything contained in the Cochin Village Panchayat Act, V of 1089, and the rules or orders issued thereunder, Government may appoint the President and Judges of the Nemmara Group Village Panchayat Court till such time as Government may deem fit to rescind this Proclamation by notification in the Cochin Government Gazette.

**PROCLAMATION  
(XXII of 1117)**

THE REGISTRATION OF FOREIGNERS ACT (EXTENDING)  
PROCLAMATION

**CONTENTS**

**Preamble.**

**Sections.**

1. Short title, extent and commencement.
2. Application of Act, XV of 1114 to certain persons.

THE REGISTRATION OF FOREIGNERS ACT  
(EXTENDING) PROCLAMATION

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin,  
on the 29th day of Edavam 1117 corresponding  
to the 11th day of June 1942*

[ **Published in the Cochin Government Gazette,  
dated 31st Edavam 1117** ]

WHEREAS an emergency has arisen which makes it necessary to apply the Registration of Foreigners Act,

XV of 1114, to certain persons to whom that Act does not at present apply; WE are hereby pleased to command as follows.—

1. (1) This Proclamation may be called the Registration of Foreigners Act (Extending Proclamation, XXII of 1117. Short title, extent and commencement.
- (2) It extends to the whole of Cochin State.
- (3) It shall come into force at once.
2. The provisions of the Registration of Foreigners Act, XV of 1114, and of the rules and orders made thereunder shall apply to and in relation to any person who was at birth a subject of any State in Europe excluding His Majesty's dominions in Europe, or a Japanese, Chinese or Thai subject, as they apply to and in relation to foreigners as defined for the purposes of that Act. Application of Act, XV of 1114 to certain persons.

## PROCLAMATION

(XXIII of 1117)

### THE COLLECTIVE FINES PROCLAMATION

#### CONTENTS

**Preamble.**

**Sections.**

1. Short title, extent and commencement.
2. Imposition of collective fines on inhabitants of area.

### THE COLLECTIVE FINES PROCLAMATION

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin,  
on the 15th day of Mithunam 1117 corresponding  
to the 29th day of June 1942*

[Published in the Cochin Government Gazette,  
dated 20th Mithunam 1117]

WHEREAS an emergency has arisen which makes it necessary to provide for the imposition of collective fines in connection with offences prejudicially affecting the Preamble.

defence of Cochin or the efficient prosecution of war; We are hereby pleased to command as follows.—

Short title,  
extent and  
commence-  
ment.

1. (1) This Proclamation may be called the Collective Fines Proclamation, XXIII of 1117.

(2) It extends to the whole of Cochin State.

(3) It shall come into force at once.

Imposition of  
collective  
fines on inha-  
bitants of  
area.

2. (1) If it appears to Government that the inhabitants of any area are concerned in or abetting the commission of offences prejudicially affecting the defence of Cochin or the efficient prosecution of war, or are harbouring persons concerned in the commission of such offences, or are failing to render all the assistance in their power to discover or apprehend the offender or offenders, or are suppressing material evidence of the commission of such offences, Government may, by notification in the Cochin Government Gazette, impose a collective fine on the inhabitants of that area.

(2) Government may exempt any person or class or section of such inhabitants from liability to pay any portion of such fine.

(3) The District Magistrate, after such inquiry as he may deem necessary, shall apportion such fine among the inhabitants who are liable collectively to pay it, and such apportionment shall be made according to the District Magistrate's judgment of the respective means of such inhabitants.

(4) The portion of such fine payable by any person may be recovered from him as a fine or as arrears of land revenue.

*Explanation.*—For the purposes of this section the expression “inhabitants of an area” includes persons who themselves or by their agents or servants occupy or hold land or other immovable property within such area, and landlords who themselves or by their agents or servants collect rents from holders or occupiers of land in such area, notwithstanding that they do not actually reside therein.

**ACT IX OF 1117****GOVERNMENT TRADING TAXATION  
(AMENDMENT) ACT****CONTENTS****Preamble.****Sections.**

1. Short title and commencement.
2. Amendment of section 2.

**GOVERNMENT TRADING TAXATION  
(AMENDMENT) ACT**

*Promulgated by His Highness the Maharaja of Cochin  
on the 15th day of Mithunam 1117, corresponding  
to the 29th day of June 1942*

[Published in the Cochin Government Gazette,  
dated 20th Mithunam 1117]

WHEREAS it is expedient to amend the Government Trading Taxation Act, V of 1115; It is hereby enacted as follows.— **Preamble.**

1. (1) This Act may be called the Government Trading Taxation (Amendment) Act, IX of 1117. **Short title and commencement.**

(2) It shall come into force at once.

2. To sub-section (1) of section 2 of the Government Trading Taxation Act, V of 1115, the following proviso shall be added.— **Amendment of section 2.**

“Provided that Government may, by notification in the Cochin Government Gazette, make an exemption, reduction in rate or other modification they deem fit in respect of the tax payable under this Act in favour of any such Government either in regard to the whole or any part of their income ”

**ACT X OF 1117****THE COCHIN PORT ROADS CONTROL ACT  
CONTENTS****Preamble.****Sections.**

1. Short title and commencement.
2. Definitions.
3. Carriages or carts using Port Roads to pay specified fees.
4. Credit of fees to Cochin Port Fund.
5. Procedure in case of non-payment of fees.
6. Penalty for evasion or unauthorised levy of fees.
7. Prohibition of vehicles to use Port Roads.
8. Power to alter the Schedule.
9. Mode of recovering fines.
10. Power to make rules.

**THE COCHIN PORT ROADS CONTROL ACT**

*Passed by His Highness Sree Kerala Varma,  
Maharaja of Cochin,*

*on the 1st day of Karkadagam 1117 corresponding  
to the 17th day of July 1942*

**[Published in the Cochin Government Gazette,  
dated 2nd Karkadagam 1117]**

**Preamble.**

WHEREAS it is expedient to provide for the levy of special fees on carriages and carts driven along the Port Roads; It is hereby enacted as follows.—

**Short title and commencement.**

1. This Act may be called the Cochin Port Roads Control Act X of 1117 and shall be deemed to have come into force with effect from 16th Kanni 1116, corresponding to 1st October 1940.

**Definitions.**

2. In this Act, unless there is anything repugnant in the subject or context,—

- (i) “carriage” means any wheeled vehicle with springs or other appliances acting as springs and includes motor cars, motor lorries, motor omnibuses, motor cycles, bicycles and rickshaws; but does not include a perambulator or other form of vehicle designed for the conveyance of small children;

- (ii) "cart" means any wheeled vehicle with or without springs which is not a carriage and includes a hand cart;
- (iii) "port roads" mean the roads in Willingdon Island to the north of the Mattancheri Halt Station;
- (iv) "prescribed" means prescribed by Government by rules made under this Act.

3. No carriage or cart shall be driven along any of the Port Roads unless the fees specified in this behalf in the Schedule are duly paid to such person and at such place and in such manner as may be prescribed :

**Carriages or carts using Port Roads to pay specified fees.**

Provided that no such fees shall be levied on carriages or carts belonging to or in the service of Government or specially exempted by general or special order of Government.

4. All fees levied under this Act shall be credited to the Cochin Port Fund.

**Credit of fees to Cochin Port Fund.**

5. (1) If the fee leviable on a vehicle is not paid on demand, the person appointed to collect it may seize and detain such portion of the appurtenances or load of such vehicle as will, in his opinion, suffice to defray the amount due; in the absence of any such appurtenances or load or in the event of their value being insufficient to defray the amount due, he may seize and detain the vehicle.

**Procedure in case of non-payment of fees.**

- (2) All property seized under sub-section (1) shall be sent within twenty-four hours to the Tahsildar, Cochin-Kanayannur Taluk, or to such person as he may have authorised to receive and sell such property and the Tahsildar shall forthwith give notice to the proprietor of the property seized, or, if the proprietor is not known or cannot be found, to the person who was in charge of the said property at the time when it was seized, or, if such person cannot be found publish by

beat of drum, that, after the expiry of two days, exclusive of Sundays and public holidays, from the date of service or publication of such notice, the property will be sold in auction at a place to be specified in the notice.

- (3) If at any time before the sale has begun, the amount due on account of the fee together with a sum of annas eight on account of charges incurred in connection with the seizure and detention is tendered to the officer conducting the sale, the property seized shall forthwith be released.
- (4) If no such tender is made, the property may be sold and the proceeds of the sale applied to the payment of—
  - (a) the amount due on account of the fee;
  - (b) such penalty not exceeding the amount of the fee as the Tahsildar may direct;
  - (c) a sum of rupee one on account of charges incurred in connection with the seizure, detention and sale; and
  - (d) the surplus sale proceeds, if any, shall be returned to the proprietor if claimed within two months from the date of sale failing which the surplus proceeds shall be credited to the Cochin Government.

**Penalty for evasion or unauthorised levy of fees.**

6. Any person who refuses or evades the payment of fees payable under this Act or without due authority levies any such fee under colour of this Act or being empowered to collect fees under this Act collects or receives any sum in excess of the lawful due or plies any vehicle within the Port Road contrary to the provisions of section 3 or section 7 of this Act shall be punished, on conviction before a Magistrate, with fine which may extend to fifty rupees, or with simple imprisonment which may extend to one month.



7. No vehicle, other than rubber tyred, shall be driven along the Port Roads.

Prohibition of vehicles to use Port Roads.

8. The Government shall have power to alter, add to or cancel in part, the Schedule attached to this Act. Such alteration, addition or cancellation shall be published in the Cochin Government Gazette and on such publication shall have effect as if enacted in this Act.

Power to alter the Schedule.

9. All fines imposed under this Act may be recovered in the manner prescribed by the Code of Criminal Procedure, Act II of 1086.

Mode of recovering fines.

10. (1) Government may make rules to carry out the provisions of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

(a) the conditions under which fees are leviable;

(b) the authority by whom and the manner in which such fees are to be levied; and

(c) for regulating the issue of permits evidencing payment of fees under this Act.

#### SCHEDULE

	For each day Rs.	Per quarter Rs.	Per year Rs.
(1) Private cars each	0—8—0	..	5—0—0
(2) Motor cycles with or without side cars each	0—4—0	..	5—0—0
(3) Taxis or private cars plying with G. Permits	0—8—0 per taxi or car	15—0—0 per taxi or car	50—0—0 per taxi or car
(4) Buses each	1—8—0	..	..
(5) Rickshaws	each 0—1—0	1—0—0	3—0—0
(6) Bicycles			
(7) Small rubber tyred hand-carts			

## PROCLAMATION

(XXIV of 1117)

### THE WAR RISKS (FACTORIES) INSURANCE PROCLAMATION

#### CONTENTS

#### Preamble.

#### Sections.

1. Short title, extent and commencement.
2. Definitions.
3. War Risks (Factories) Insurance Scheme.
4. Employment of agents by Government.
5. Compulsory Insurance.
6. Power of Government to obtain information.
7. Recovery of arrears of premium instalments.
8. Limitation of prosecutions.
9. Composition of offences.
10. Bar of legal proceedings.
11. Power to exempt Factories.
12. Power to make rules.

### THE WAR RISKS (FACTORIES) INSURANCE PROCLAMATION

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin,  
on the 1st day of Karkadagam 1117 corresponding to  
the 17th day of July 1942*

[Published in the Cochin Government Gazette,  
dated 2nd Karkadagam 1117]

WHEREAS an emergency has arisen which makes it necessary to provide for the insurance of certain property in Cochin State against war risks; WE are hereby pleased to command as follows.—

Short title,  
extent and  
commence-  
ment.

1. (1) This Proclamation may be called the War Risks (Factories) Insurance Proclamation XXIV of 1117.  
(2) It extends to the whole of Cochin State.  
(3) It shall come into force at once.

2. In this Proclamation, unless there is anything repugnant in the subject or context,—

**Definitions.**

- (a) “buildings” includes foundations, plinths, floors, staircases, tanks, engine and boiler beds, chimneys and flues;
- (b) “factory” means a factory as defined in clause (i) of section 2 of the Cochin Factories Act, II of 1113, and includes any premises including the precincts thereof which, having at any time after the 31st day of December 1938, been a factory as defined in clause (i) of section 2 of the said Act, have not been exempted under section 11 from the provisions of section 5 of this Proclamation;
- (c) “factory buildings” includes all buildings comprised in the factory, and such other buildings (including residential buildings for staff and workmen, hospitals and welfare centres) within a radius of two miles from the main factory building as are in the same ownership or occupation as the factory and are used for the purposes of the factory;
- (d) “insurable value” of property means the value of the property as ascertained for the purposes of insurance under this Proclamation;
- (e) “occupier” of a factory has the meaning assigned to the word in clause (k) of section 2 of the Cochin Factories Act, II of 1113;
- (f) “owner” of a factory includes, when parts of the property insurable under this Proclamation in relation to the factory are owned by different persons, each such person in respect of the part owned by him;
- (g) “prescribed” means prescribed by rules made under this Proclamation;
- (h) “property insurable under this Proclamation” means, in relation to any factory, the factory buildings, all plant and machinery in the factory, and such other plant and machinery as may be prescribed;
- (i) “war risks” means such risks arising from—
  - (i) action taken by an enemy or action

taken in combating an enemy or in repelling an imagined attack by an enemy,

- (ii) measures taken under proper authority to avoid the spreading of, or otherwise to mitigate, the consequences of damage occurring (whether accidentally or not) as the direct result of any such action as aforesaid,
- (iii) precautionary or preparatory measures taken under proper authority with a view to preventing or hindering the carrying out of any attack by an enemy, being measures involving risk to property,
- (iv) precautionary or preparatory measures involving the doing of work on land and taken under proper authority in any way in anticipation of enemy action, being measures involving risk to property,
- (v) precautionary or preparatory measures taken under proper authority with a view to denying facilities to an enemy, being measures involving damage to or diminution of the value of property,

as may be prescribed.

**War Risks  
(Factories)  
Insurance  
Scheme.**

3. The War Risks (Factories) Insurance Scheme operated by the Government of India under that Government's War Risks (Factories) Insurance Ordinance, 1942, shall have effect in the State as fully and completely as if it had been put into operation under a law of the State.

**Employment  
of agents by  
Government.**

4. Government may employ or authorise the employment of any person or firm to act as their agents for any of the purposes of this Proclamation, and may pay to persons or firms so employed such remuneration as Government think fit.

5. (1) Every owner of a factory, except a factory belonging to Government or a factory exempted under section 11 from the provisions of this Proclamation, shall by such date as may be specified in this behalf by Government, by notification in the Cochin Government Gazette, take out a policy of insurance against war risks issued in accordance with the War Risks (Factories) Insurance Scheme operated by the Government of India, whereby he is insured in respect of all property insurable under this Proclamation which appertains to the factory for a sum not less than the insurable value of such property :

Compulsory insurance.

Provided that, where the owner of the factory is not himself the occupier of the factory, the occupier of the factory shall, unless the owner has already taken out a policy of insurance as required by this sub-section, himself take out the policy, and in such a case the occupier shall be deemed to act as the agent of the owner. and shall be entitled to receive from the owner all sums paid as premiums on the policy.

- (2) The obligation imposed by sub-section (1) includes, when the owner of the factory is required by Government to reconstruct a factory which has suffered damage, an obligation to take out an additional policy of insurance as required by the sub-section in respect of the reconstructed factory.
- (3) When a factory in respect of which a policy of insurance against war risks has been taken out as required by this section is transferred from one owner to another or there is a change of occupier of the factory, the policy may be transferred to the new owner or occupier, and such new owner or occupier shall succeed to all rights and liabilities under and in relation to the policy as if the policy had been in the first instance taken out by him.

(4) Whoever contravenes the provisions of sub-section (1) or the proviso thereto, or, having taken out a policy of insurance as required by that sub-section, fails to pay any instalment of premium thereon which is subsequently due, shall be punishable with fine which may extend to two thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first on which the contravention or failure continues.

**Power of Government to obtain information.**

6. (1) Any person authorised in this behalf by Government may, for the purpose of ascertaining whether or not the owner or occupier of a factory has taken out a policy of insurance as required by this Proclamation in respect of all property insurable under this Proclamation which appertains to the factory, or for the purpose of investigating the insurable value of such property, or for the purpose of estimating the damage suffered by such property,—

(a) require the owner or occupier of a factory to submit to him such accounts, books or other documents or to furnish to him such information as he may reasonably think necessary, or

(b) at any reasonable time enter any premises or upon any property appertaining to a factory, inspect such premises or property, and require any person found therein or thereon, whom he believes to be in possession of information relevant to his investigation, to furnish to him such information as he may reasonably think necessary.

(2) Whoever wilfully obstructs any person in the exercise of his powers under this section or fails without reasonable excuse to comply with any request made thereunder shall, in respect of each occasion on which any such

obstruction or failure takes place, be punishable with fine which may extend to one thousand rupees.

- (3) Whoever, in purporting to comply with his obligation under this section, knowingly or recklessly makes a statement false in a material particular, shall be punishable with fine which may extend to one thousand rupees.

7. Any instalment or premium due on a policy of insurance issued under the War Risks (Factories) Insurance Scheme operated by the Government of India may be recovered as an arrear of land revenue.

**Recovery of arrears of premium instalments.**

8. No prosecution for any offence punishable under this Proclamation shall be instituted against any person except by or with the consent of Government or an authority authorised in this behalf by Government.

**Limitation of prosecutions.**

9. Any offence punishable under sub-section (4) of section 5 may, either before or after the institution of the prosecution, be compounded by Government, or by any authority authorised in this behalf by Government, on payment for credit, to the War Risks (Factories) Insurance Fund constituted by the Government of India of such sum as Government or such authority, as the case may be, think fit.

**Composition of offences.**

10. No suit, prosecutions or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Proclamation.

**Bar of legal proceedings.**

11. Government may, by notification in the Cochin Government Gazette, exempt any factory or any description of factories or any premises including the precincts thereof which have at any time after the 31st day of December, 1938, been a factory as defined in clause (i) of section 2 of the Cochin Factories Act, II of 1113, from the provisions of section 5 and may by order declare that any factory or any description of factories so exempted may, if the owner so wishes, be insured under the War Risks (Factories) Insurance Scheme operated by the Government of India.

**Power to exempt factories.**

Power to  
make rules.

12. (1) Government may, by notification in the Cochin Government Gazette, make rules to carry into effect the provisions of this Proclamation.
- (2) Subject to any other Rules or any modification that may be made in exercise of the powers under sub-section (1) of this section, the Rules for the time being in force under the Government of India's War Risks (Factories) Insurance Ordinance, 1942, shall, *mutatis mutandis*, be deemed to be the Rules for the purposes of this Proclamation, and, further, all persons authorised by the Government of India under their War Risks (Factories) Insurance, Ordinance, 1942, and the Rules framed thereunder for any of the purposes of that Ordinance shall be deemed to be authorised under this Proclamation for corresponding purposes.

## PROCLAMATION

(XXV of 1117)

THE COFFEE MARKET EXPANSION ACT  
(APPLICATION) PROCLAMATION

### CONTENTS

#### Preamble.

#### Sections.

1. Short title, extent and commencement.
2. Application of the Coffee Market Expansion Act, VII of 1942
3. Modification of section 14 of the Act.
4. Repeals and savings.



THE COFFEE MARKET EXPANSION ACT  
(APPLICATION) PROCLAMATION

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin,  
on the 11th day of Karkadagam 1117 corresponding to  
the 27th day of July 1942*

[Published in the Cochin Government Gazette,  
dated 16th Karkadagam 1117]

WHEREAS it is expedient to collaborate with the Government of India in their Coffee Control Scheme for assistance to the coffee industry by regulating the export and sale of coffee and by other means; WE are hereby pleased to command as follows.—

Preamble

1. (1) This Proclamation may be called the Coffee Market Expansion Act (Application) Proclamation XXV of 1117.

Short title,  
extent and  
commence-  
ment.

(2) It extends to the whole of Cochin State;

(3) It shall come into force at once and shall continue in force until such time as Government may by notification in the Cochin Government Gazette withdraw this Proclamation.

2. The Coffee Market Expansion Act, VII of 1942, in force in British India hereinafter referred to as the Act with all the amendments that may be made thereto and the rules issued thereunder shall, subject to the provisions contained in section 3 of this Proclamation, be in force *mutatis mutandis* in Cochin State.

Application  
of the Coffee  
Market  
Expansion  
Act, VII of  
1942.

3. Sub-section (1) of section 14 of the Act shall have effect as if the following were substituted.—

Modification  
of section 14  
of the Act.

“14(1) Every person owning land planted with coffee plants aggregating not less than ten acres, whether such land is comprised in one estate or in more than one estate, and whether it is situate wholly or only partly in Cochin State, shall, unless it is already registered as required by this Proclamation, before the expiration of one month from the date on which he first becomes subject to the provisions of this Proclamation, apply to the registering officer to be registered as an owner and in respect of each estate owned by him.

Registration  
of owners  
of coffee  
estates.

*Explanation.*—For the purpose of this sub-section the Registering Officer shall be—

- (i) where the Estate is situate wholly within Cochin State, the registering officer appointed by Our Government;
- (ii) where the estate is situate partly within Cochin State and partly within British India, the registering officer appointed by the Provincial Government of the Province in British India within which such estate is situate; and
- (iii) where the estate is partly within Cochin State and partly within any other Indian State or States, the registering officer appointed by the Government of the State in which the largest extent of the estate is situate”.

**Repeals and savings.**

4. (1) The Coffee Market Expansion Ordinance (Application) Proclamation, IV of 1116, Coffee Market Expansion Ordinance Application (Amendment) Proclamation, VIII of 1116 and Coffee Market Expansion Ordinance Application (Amendment) Proclamation, II of 1117 and Coffee Market Expansion Ordinance Application (Amendment) Proclamation XI of 1117, are hereby repealed.
- (2) Without prejudice to the provisions of section 22 of the General Clauses Act, III of 1079—
- (a) any trial or proceeding under the Coffee Market Expansion Ordinance Application Proclamation, IV of 1116, pending on the date of the coming into force of this Proclamation may be continued and completed as if such trial or proceeding were a trial or proceeding under this Proclamation,
  - (b) all registrations made, all licenses issued and all other things done under Proclamation IV of 1116 shall be deemed to have been made, issued or done under this Proclamation.

GOVERNMENT OF INDIA  
LEGISLATIVE DEPARTMENT

The following Act of the Indian Legislature received the assent of the Governor-General on the 2nd March 1942, and is hereby promulgated for general information.—

ACT No. VII OF 1942

*An Act to continue the provision made under Ordinance No. XIII of 1940 for assistance to the coffee industry by regulating the export of coffee from and the sale of coffee in British India and by other means.*

XIII of 1940

WHEREAS it is expedient to continue the provision made under the Coffee Market Expansion Ordinance, 1940, for assistance to the coffee industry by regulating the export of coffee from and the sale of coffee in British India and by other means;

It is hereby enacted as follows.—

1. (1) This Act may be called the Coffee Market Expansion Act, 1942.

Short title,  
extent and  
duration.

(2) It extends to the whole of British India.

(3) It shall cease to be in force at the end of the twelve months commencing on the 1st day of July subsequent to the termination of the present hostilities.

2. It is hereby declared that it is expedient in the public interest that the Central Government should take under its control the development of the coffee industry.

Declaration  
as to expedi-  
ency of  
Central Gov-  
ernment's  
control.

3. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(a) "the Board" means the Indian Coffee Market Expansion Board constituted under section 4;

(b) "coffee" means the commodity derived from the fruit of the rubiaceous plant known by that name, and includes raw coffee, cured coffee, uncured coffee, roasted coffee and prepared coffee;

(c) "Collector" means a Customs-collector as defined in clause (c) of section 3 of the Sea Customs Act, 1878, or a Collector of Land Customs as defined in clause (c) of section 2 of the Land Customs Act, 1924, as the case may be;

(d) "curing" means the application to raw coffee of mechanical process other than pulping for the purpose of preparing it for marketing;

(e) "curing establishment" means any place to which raw coffee is sent by a registered owner for curing, and includes any estate which the Board may

VIII of 1878.

XIX of 1924.

234 *Coffee Market Expansion* [1117: Pro. XXV  
(Application)

declares to be a curing establishment for the purposes of this Act ;

- (f) "estate" means an area administered as one unit which contains land planted with coffee plants ;
- (g) "Indian Coffee Cess Committee" means the Indian Coffee Cess Committee constituted under the **XIV of 1935.** Indian Coffee Cess Act, 1935 ;
- (h) "internal sale quota" means that portion, stated in terms of bulk or weight, of the whole of the coffee produced by the estate in the year, which a registered estate is permitted under this Act to sell in the Indian market ;
- (i) "owner" includes any agent of an owner ;
- (j) "prescribed" means prescribed by rules made under this Act ;
- (k) "registered estate" means an estate in respect of which an owner is registered under sub-section (1) of section 14, and includes also any estate in respect of which an owner is required to be registered under the provisions of that sub-section ;
- (l) "registered owner" means an owner of a registered estate who has been or is required to be registered under sub-section (1) of section 14 ;
- (m) "surplus pool" means the stock of coffee accumulated by the Board out of the amounts delivered to the Board under section 25 ;
- (n) "year" means the period of twelve months beginning with the 1st day of July and ending with the 30th day of June following.

**Constitution  
of the Board.**

4. (1) The Board constituted by the name of the Indian Coffee Market Expansion Board under section 4 of the Indian Coffee Market Expansion Ordinance, 1940, shall be the Indian Coffee Market Expansion Board for the purposes of this Act. **XIII of 1940.**

(2) No act done by the Board shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board.

**Incorporation  
of the  
Board.**

5. The Board shall be a body corporate by the name of the Indian Coffee Market Expansion Board, having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to contract, and shall by the said name sue and be sued.

**Vesting of  
property in  
the Board.**

6. So long as this Act remains in force all property movable or immovable, of or belonging to the Indian Coffee Cess Committee shall vest in the Board and all debts and liabilities of the said Committee shall be transferred to the Board, and the officers and servants of the said Committee

shall be officers and servants on the staff of the Board and the said Committee shall be suspended.

7. (1) The chairman of the Board shall be elected by the Board from among the members of the Board :

**Chairman,  
committees,  
staff and  
agents.**

XIII of 1940.

Provided that the person who is, at the commencement of this Act, the chairman of the Indian Coffee Market Expansion Board constituted under the Coffee Market Expansion Ordinance, 1940, shall be the first chairman of the Board.

(2) The Board may appoint such committees for such purposes and may employ such staff as it thinks necessary for the efficient discharge of its functions under this Act.

(3) The Board may authorise agents to discharge on its behalf its functions in relation to the marketing, storing and curing of coffee.

8. (1) The Central Government shall appoint an officer, to be called the Controller of Coffee, to exercise such powers and perform such duties under the direction of the Board as may be prescribed by the Central Government.

**Controller  
and Deputy  
Controller of  
Coffee.**

(2) The Central Government may appoint an officer, to be called the Deputy Controller of Coffee, to exercise such powers and perform such duties of the Controller of Coffee as may be delegated to him by the Controller of Coffee with the previous sanction of the Central Government or as may be prescribed by the Central Government.

(3) The Controller of Coffee and the Deputy Controller of Coffee may be either salaried or unsalaried : if salaried, they shall be paid by the Board such salaries as may be fixed by the Central Government.

(4) The Board shall pay to the Controller of Coffee and the Deputy Controller of Coffee such allowances as may be fixed by the Central Government.

9. The Board may, with the previous sanction of the Central Government, make bye-laws consistent with this Act and the rules made thereunder to provide for all or any of the following matters, namely.—

**Power of  
Board to  
make bye-  
laws.**

- (a) the procedure to be followed at meetings of the Board and at committees ;
- (b) the powers exercisable and the duties to be discharged by the chairman of the Board and the members of the staff of the Board ;
- (c) the travelling or other allowances which may be drawn by members of the Board ;
- (d) the appointment, promotion and dismissal of members of the staff of the Board, the creation

and abolition of such appointments, and the terms of service of members of the staff of the Board :

- (e) any other matter in respect of which bye-laws may be made under this Act or the rules made thereunder.

**Dissolution  
of the Board.**

10. When the Board is dissolved by reason of this Act having ceased to be in force, the unexpended balance of all money received by the Board under the Coffee Market Expansion Ordinance, 1940, or under this Act except money in the pool fund shall be disposed of in such manner as the Central Government may direct. The Central Government shall disburse the money in the pool fund in the same manner as the Board would have done had it continued to exist. XII of 1940.

*Duties of Customs and of Excise*

**Duty of  
customs.**

11. A duty of customs shall be levied on all coffee produced in India and exported from British India at the rate of one rupee per hundredweight or at such lower rate as the Central Government may, on the recommendation of the Board, by notification in the official Gazette provide.

**Duty of  
excise.**

12. A duty of excise shall be levied at such rate not exceeding one rupee per hundredweight as may be fixed by the Central Government on the recommendation of the Board by notification in the official Gazette on all coffee, except coffee sold and delivered before the estate became subject to the provisions of sub-section (1) of section 14, which a registered estate is permitted by the internal sale quota allotted to it to sell in the Indian market, whether such coffee is actually sold or not, and on all coffee released for sale in India by the Board from the surplus pool.

**Payment of  
proceeds of  
duties to the  
Board and  
manner of  
realisation by  
the Board.**

13. (1) The proceeds of the duty of customs levied under section 11 and of the duty of excise levied under section 12 shall be paid to the Board for credit to the general fund of the Board.

(2) On the last day of each month, or as soon thereafter as may be convenient, the Collector shall pay to the Board the proceeds of the duty of customs recovered during that month after deduction of the expenses, if any, for collection and recovery.

(3) The Central Board of Revenue may make rules providing, on such conditions as may be specified in the rules, for—

- (a) the refund of the duty of customs where coffee is exported by land and subsequently imported into India, and
- (b) the export by land, without payment of the duty of customs, of coffee which is subsequently to be imported into India.

(4) The duty of excise on coffee shall be payable by the registered owner of the estate producing the coffee and shall be realised by the Board by the deduction of the amount of the duty payable by such owner from any sum due to him on account of sales from the surplus pool. It shall be a first charge on such sum, and shall, if not capable of realisation by deduction as aforesaid, be paid to the Board by the registered owner within one month of demand by the Board or thereafter be recoverable from him as an arrear of land revenue.

(5) The Board shall have power to adjudge by bulk the number of hundredweights contained in any quantity of uncured coffee.

(6) No action of the Board under this section shall be called in question by any Court.

#### *Registration*

14. (1) Every person owning land planted with coffee plants aggregating not less than ten acres, whether such land is comprised in one estate or in more than one estate and whether it is situated wholly or only partly in British India, shall, unless it is already registered as required by this sub-section, before the expiration of one month from the date on which he first becomes subject to the provisions of this sub-section, apply to the registering officer appointed in this behalf by the Provincial Government to be registered as an owner and in respect of each estate owned by him.

**Registration  
of owners of  
coffee estates.**

(2) The Central Government may, by notification in the official Gazette, declare that the provisions of sub-section (1) shall apply to persons owning land planted with coffee plants aggregating less than ten acres.

(3) A registration once made shall continue in force until it is cancelled by the registering officer.

(4) If any question arises whether an owner of an estate is or is not required to be registered under this section, the question shall be decided by the Controller of Coffee, subject to revision by the Central Government.

15. (1) The Provincial Government may, by notification in the official Gazette, make rules to carry into effect the provisions of section 14.

**Power of  
Provincial  
Government  
to make  
rules.**

(2) Without prejudice to the generality of the fore-going power, such rules may prescribe the form of the application for registration and for cancellation of registration, the fee payable on such applications, the particulars to be included in such applications, the procedure to be followed in granting and cancelling registration, the registers to be kept by registering officers, and the supply by registering officers of information to the Board.

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*Control of Sale, Export and Re-import of Coffee*

Maximum prices for sale of coffee wholesale.

16. (1) The Central Government may, after consultation with the Board, by notification in the official Gazette fix the maximum price or prices at which coffee may be sold wholesale in the Indian market.

(2) No registered owner or licensed curer shall sell coffee wholesale in the Indian market at a price exceeding the maximum fixed under this section.

Sale of coffee in excess of internal sale quota.

17. No registered owner shall, before the estate became subject to the provisions of sub-section (1) of section 14, sell or contract to sell in the Indian market coffee from any registered estate if by such sale the internal sale quota allotted to that estate is exceeded:

Provided that nothing in this section shall apply to coffee sold from a registered estate in excess of the internal sale quota if such sale was in pursuance of a contract of sale entered into before the estate became subject to the provisions of sub-section (1) of section 14 and if after the estate became so subject no coffee has been sold from that estate in the Indian market except in pursuance of a contract of sale entered into before the estate became subject to the provisions of sub-section (1) of section 14.

Sale of coffee, how made.

18. No registered owner shall sell coffee unless either—

(a) it has been cured at or is delivered to the buyer through a curing establishment licensed under section 28, or

(b) it is sold under and in accordance with the provisions of a licence procured from the Board under section 24.

Storage or sale of coffee on or from unregistered estate.

19. No owner of an estate not registered under this Act shall sell from or store on his estate or cause or permit to be sold from or stored on his estate any coffee not grown on the estate.

Export of coffee.

20. No coffee shall be exported from British India otherwise than by the Board or under an authorisation granted by the Board in the prescribed manner and in the prescribed cases, and the provisions of the Sea Customs Act, 1878, shall have effect as if the provision made by this section had been made by notification issued under section 19 of that Act.

VIII of 1878.

Provided that nothing herein contained shall apply to coffee dispatched out of British India by post, or carried in a passenger's luggage for his personal use.

Provided further that the Central Government may exempt from the operation of this section, either absolutely or subject to conditions, the export of coffee from British



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India to an Indian State or to any foreign settlement bounded by India.

21. (1) No coffee which has been exported from India shall be re-imported into British India except under and in accordance with a permit granted by the Board.

**Re-import of coffee exported from India.**

(2) The Board may in any fit case grant such a permit and no charge shall be made therefor.

22. (1) The Board shall as soon as may be, allot to each registered estate an internal sale quota for the year.

**Internal sale quota.**

(2) The internal sale quota shall be a fixed percentage, common to all registered estates, of the probable total production of the estate in the year as estimated by the Board,

(3) The Board may at any time vary the internal sale quota by varying the fixed percentage common to all registered estates, or may express the whole or any part of the internal sale quota of an estate in terms of bulk instead of in terms of weight.

23. (1) A registered owner shall furnish to the Board at the prescribed times and in the prescribed manner such returns as may be prescribed.

**Returns to be made by registered owners.**

(2) If any registered owner fails to furnish the returns required under sub-section (1) in respect of any estate, the Board may refuse to allot an internal sale quota to that estate, or, where an internal sale quota has already been allotted, may cancel it.

(3) The Board may authorise an officer to visit any estate at any time to verify the accuracy of any return made under this section or to ascertain the productive capacity of the estate.

24. The registered owner of any estate may subject to the prescribed conditions and so long as the internal sale quota allotted to that estate will not be exceeded by the proposed sale obtain from the Board a licence for the sale from that estate of uncured coffee.

**Licences for sale of uncured coffee.**

25. (1) All coffee produced by a registered estate in excess of the amount specified in the internal sale quota allotted to that estate shall be delivered to the Board for inclusion in the surplus pool by the owner of the estate or by the curing establishment receiving the coffee from the estate.

**Surplus coffee and surplus pool.**

(2) Delivery shall be made to the Board in such places and in such manner as the Board may direct, and such directions may provide for partial delivery to the surplus pool at any time whether or not at that time the internal sale quota has been exceeded; and the coffee delivered shall be such as to represent fairly in kind and quality the produce of the estate. The Board may reject any consignment offered for delivery which does not satisfy this requirement, but

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shall not reject any consignment merely for a defect in curing.

(3) Coffee delivered for inclusion in the surplus pool shall upon delivery to the Board remain under the control of the Board which shall be responsible for storage, curing where necessary, and marketing of the coffee.

(4) The Board shall, with the concurrence of the Controller of Coffee, prepare a differential scale for the valuation of coffee, and shall in accordance with that scale classify the coffee in each consignment delivered for inclusion in the surplus pool according to its kind and quality, and shall make an assessment of its value based on its quantity, kind and quality.

(5) The Board may, with the consent of a registered owner, before an internal sale quota has been allotted to an estate, treat as having been delivered for inclusion in the surplus pool any coffee from such estate which the registered owner may agree to have so treated.

(6) When coffee has been delivered or is treated as having been delivered for inclusion in the surplus pool, the registered owner whose coffee has been so delivered or is treated as having been so delivered shall retain no rights in respect of such coffee except his right to receive the payments referred to in section 34.

**Sales of coffee  
by the Board.**

26. (1) The Board shall take all practical measures to market the coffee included in the surplus pool, and all sales thereof shall be conducted by or through the Board.

(2) The Board may purchase for inclusion in the surplus pool coffee not delivered for inclusion in it.

*Curing of Coffee*

**Coffee to be  
cured in  
licensed  
curing esta-  
blishments.**

27. No registered owner shall cause or allow coffee to be cured elsewhere than in a licensed curing establishment, whether the curing establishment is maintained by himself or by another person.

**Licensing of  
curing esta-  
blishments.**

28. Every establishment for curing coffee shall obtain from the Board a licence to operate as such.

**Information  
to be supplied  
to the Board  
in connection  
with curing.**

29. (1) A registered owner when sending coffee to a curing establishment shall report to the Board, separately for each estate from which coffee is sent, the amount of coffee sent; and the curing establishment shall in accordance with such instructions as may be issued by the Board and having regard to the internal sale quota of the estate, apportion each such consignment into two parts, one part consisting of coffee intended for internal sale and one part of coffee intended to be delivered for inclusion in the surplus pool and shall report to the Board the amount of coffee in each such part.

(2) A registered owner curing coffee in a curing establishment maintained by himself shall supply to the Board the information specified in sub-section (1)

(3) A curing establishment which buys or receives uncured coffee from any person shall ascertain the estate on which the coffee was produced and shall report to the Board the quantity of coffee so obtained and the estate or estates from which it came.

(4) Every curing establishment shall maintain accounts in such forms as may be required by the Board and such accounts shall be open to inspection at any time by the Board or by an officer authorised in this behalf by the Board.

#### *Finance*

30. The Board shall maintain two separate funds, a general fund and a pool fund. **Separate funds to be maintained by the Board.**

31. (1) To the general fund shall be credited all proceeds of the duty of customs and the duty of excise levied under section 11 and section 12, respectively, and all receipts including receipts for licences issued by the Board, other than those to be credited under section 32 to the pool fund. **General fund.**

(2) The general fund shall be applied to meet the expenses of the Board, the cost of such measures as it may consider advisable to undertake for promoting the sale and increasing the consumption in India and elsewhere of coffee produced in India, or for promoting agricultural and technological research in the interest of the coffee industry in India.

32. (1) To the pool fund shall be credited all sums realised by sales by the Board of coffee from the surplus pool. **Pool fund.**

(2) Subject to the provisions of sub-section (4) of section 13, the pool fund shall be applied only to—

- (a) the making to registered owners of estates of payments proportionate to the value of the coffee delivered by them for inclusion in the surplus pool;
- (b) the costs of storing, curing and marketing coffee deposited in and of administering the surplus pool;
- (c) the purchase of coffee not delivered for inclusion in the surplus pool.

33. The Board may, subject to any prescribed condition, borrow on the security of the general fund or the pool fund for any purposes for which it is authorised to expend money from such fund, or on the security of the coffee delivered or treated as delivered for inclusion in the surplus pool for any purposes for which it is authorised to expend money from the pool fund. **Power to borrow.**

34. (1) The Board shall at such times as it thinks fit make to registered owners who have delivered coffee for **Payments to registered owners.**

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inclusion in the surplus pool such payments out of the pool fund as it may think proper.

(2) The sum of all payments made under sub-section (1) to any one registered owner shall bear to the sum of the payments made to all registered owners the same proportion as the value of the coffee delivered by him out of the year's crop to the surplus pool bears to the value of all coffee delivered to the surplus pool out of that year's crop.

*Penalties and Procedure*

**Failure to register.**

35. Any owner of a coffee estate who fails to apply for registration in accordance with section 14 shall be punishable with fine which may extend to one thousand rupees and to a further fine which may extend to five hundred rupees for each month after the first during which such failure continues.

**Contraventions of sections 16, 17, 18 and 19.**

36. (1) Any registered owner who contravenes the provisions of sub-section (2) of section 16, or section 17 or section 18, any licensed curer who contravenes the provisions of sub-section (2) of section 16, and any person who contravenes the provisions of section 19 shall be punishable with fine which may extend to one thousand rupees.

(2) When a registered owner is convicted under this section, the Board may thereafter deduct from any payment to be made under section 34 to such registered owner a sum equal to the value as estimated by the Board of any coffee unlawfully sold by him.

**Unlicensed curing establishment.**

37. If any curing establishment operates as such without a licence, the owner shall be punishable with fine which may extend to five hundred rupees.

**False returns.**

38. Any person who makes in any return to be furnished under section 23 or in any report to be made under section 29 any statement which is false and which he knows to be false or does not believe to be true shall be punishable with fine which may extend to one thousand rupees.

**Obstruction.**

39. Whoever obstructs any member or officer of the Board or any person authorised by the Board or by the Central Government in the discharge of any duty imposed on or entrusted to him under this Act, or who having control over or custody of any records fails to produce such records when required to do so or refuses information lawfully asked for by a member or officer of the Board or by a person authorised by the Board or by the Central Government to inspect such records or ask for such information shall be punishable with fine which may extend to one thousand rupees.

**Cognizance of offences.**

40. (1) No Court other than the Court of a Magistrate of the first class shall take cognizance of any offence punishable under this Act.

(2) No Court shall take cognizance of an offence punishable under section 35 except on complaint made by an officer authorised in this behalf by the Provincial Government or of an offence punishable under any other section except on complaint made with the previous sanction of the Central Government by an officer authorised in this behalf by the Board.

*General*

41. The Board shall have power to determine, after such inquiry as it thinks fit, the amount of coffee which has, up to the time when it first becomes subject to the provisions of sub-section (1) of section 14, been sold, or been sold and delivered in the year by any registered state, and the amount so determined shall be conclusive for the purpose of section 12 and section 17. **Power of Board to determine amount of coffee sold by an estate.**

42. (1) All acts of the Board shall be subject to the control of the Central Government which may cancel, suspend or modify as it thinks fit any action taken by the Board. **Control by the Central Government.**

(2) The records of the Board shall be open to inspection at all reasonable times by any officer authorised in this behalf by the Central Government.

43. (1) Any person aggrieved by an order of the Board refusing a licence to or cancelling the licence of a curing establishment may, within sixty days of the making of the order, appeal to the Central Government. **Appeals to the Central Government.**

(2) Any person making an appeal under this section shall pay a fee of five rupees which shall be credited to Central Revenues.

44. Any member of the Board, and any officer of the Board or other person authorised in this behalf by the Central Government or the Board, may enter any estate or any curing establishment and may require the production for his inspection of any records kept therein, or ask for any information relating to the production, storage, or sale of coffee by the estate. **Inspection of records.**

45. (1) The Board shall keep accounts in such manner as may be prescribed of all money received and expended by it. **Accounts of the Board.**

(2) The accounts shall be kept separately for the general fund and the pool fund.

(3) The Board shall cause the accounts to be audited annually by auditors appointed by the Central Government and the auditors shall have power to disallow any item of expenditure which has, in their opinion, been incurred otherwise than in accordance with this Act.

(4) The Central Government may on the application of the Board allow any item of expenditure disallowed by the auditors under sub-section (3)

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**Inspection of records of the Board and obtaining of copies.**

46. Any registered owner to whom an internal sale quota is allotted may, subject to the prescribed conditions, inspect the records maintained by the Board and may on payment of the prescribed fee obtain copies of any proceedings or orders of the Board.

**Contracts.**

47. All contracts for the sale of coffee in so far as they are at variance with the provisions of this Act shall be void :

Provided that nothing contained in this section shall apply to contracts to which under section 47 of the Coffee Market Expansion Ordinance, 1940, that Ordinance did not apply.

XIII of 1940.

**Power of the Central Government to make rules.**

48. (1) The Central Government may, by notification in the official Gazette, make rules to carry out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power rules may be made providing for all or any of the following matters, namely.—

- (a) the term of office of members of the Board, the circumstances in which and the authority by which members may be removed, and the filling of casual vacancies in the Board;
- (b) the conduct of business by the Board and the number of members which shall form a quorum at a meeting;
- (c) the maintenance by the Board of records of business transacted by the Board, and the submission of copies thereof to the Central Government;
- (d) the preparation by the Board of estimates of annual receipts and expenditure;
- (e) the manner in which the internal sale quota of coffee estates shall be determined;
- (f) the manner in which the Board shall exercise its powers of buying and selling coffee in the Indian market;
- (g) the appointment by the Board of agents;
- (h) the conditions to be fulfilled by a curing establishment before a licence to operate as such can be issued;
- (i) the form of and the particulars to be contained in any returns or reports to be made to the Board under this Act;
- (j) the form of, manner of application for, fees payable for, procedure in granting any conditions governing the licences and permits to be issued by the Board;
- (k) any other matter except the matters referred to in section 15 which is to be or may be prescribed under this Act.

XIV of 1935. 49. (1) So long as this Act remains in force the Indian Coffee Cess Act, 1935, shall be deemed to be repealed, without prejudice however to the continuing validity of any action taken by the Indian Coffee Cess Committee which is not inconsistent with the provisions of this Act. **Act XIV of 1935 to be deemed to be repealed.**

XIV of 1935. (2) All rules made by the Central Board of Revenue under section 9 of the Indian Coffee Cess Act, 1935, shall, until replaced by rules made under sub-section (3) of section 13 of this Act, continue to have effect in respect of the duty of customs imposed by section 11 of this Act as they had effect in respect of the coffee cess imposed by that Act.

XIII of 1940.  
I of 1941.  
VII of 1941.  
XIII of 1941. 50. (1) The Coffee Market Expansion Ordinance, 1940, the Coffee Market Expansion (Amendment) Ordinance, 1941, the Coffee Market Expansion (Second Amendment) Ordinance, 1941, and the Coffee Market Expansion (Third Amendment) Ordinance, 1941, are hereby repealed. **Repeals and savings.**

X of 1897. (2) Without prejudice to the provisions of section 24 of the General Clauses Act, 1897.—

(a) any trial or proceeding under the Coffee Market Expansion Ordinance, 1940, pending at the time of the repeal of that Ordinance may be continued and completed as if such trial or proceeding were a trial or proceeding under this Act;

(b) all registrations made, all licences issued and all other things done under the said Ordinance shall be deemed to have been made, issued or done under this Act.

## PROCLAMATION

(XXVI of 1117)

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin,  
on the 11th day of Karkadagam 1117 corresponding  
to the 27th day of July 1942*

[Published in the Cochin Government Gazette, dated  
16th Karkadagam 1117]

WHEREAS it is deemed necessary to amend Proclamation X of 1117; WE are hereby pleased to command that—

In Proclamation X of 1117, after the words “excepting the scavenging tax” in clause (2) and the word and figure “section 66” in clause (3), the words “in the case of buildings in respect of which scavenging service has actually been rendered” shall be added.

## PROCLAMATION (XXVII of 1117)

### WAR RISKS (GOODS) INSURANCE PROCLAMATION CONTENTS

**Preamble.**

**Sections.**

1. Short title, extent and commencement.
2. Definitions.
3. Goods insurable under this Proclamation.
4. Ownership.
5. War Risks Insurance Scheme.
6. Compulsory Insurance.
7. Power of Government to obtain information.
8. Limitation on prosecutions.
9. Composition of offences.
10. Bar of legal proceedings.
11. Power to make rules.

### WAR RISKS (GOODS) INSURANCE PROCLAMATION

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin,*

*on the 15th day of Karkadagam 1117 corresponding to the  
31st day of July 1942*

*to make certain provisions for the insurance of goods  
in Cochin State against damage by enemy action*

[Published in the Cochin Government Gazette Extraordinary,  
dated 15th Karkadagam 1117]

**Preamble.**

WHEREAS an emergency has arisen which renders it necessary to make certain provisions for the insurance of goods in Cochin State against damage by enemy action; We are hereby pleased to command as follows. —

**Short title,  
extent and  
commence-  
ment.**

1. (1) This Proclamation may be called the War Risks (Goods) Insurance Proclamation, 1117.
- (2) It extends to the whole of Cochin State.
- (3) It shall come into force at once.

**Definition.**

2. In this Proclamation, unless there is anything repugnant in the subject or context,—
  - (a) “agricultural products” means products of agriculture, horticulture or silviculture and includes growing crops, plants and trees;
  - (b) “goods” means any materials, commodities or articles and includes materials or articles used in or for the construction of ships up to the time at which a ship after construction is launched;



- (c) "war risks" means such risks arising from
- (i) action taken by an enemy or action taken in combating an enemy or in repelling an imagined attack by an enemy,
  - (ii) measures taken under proper authority to avoid the spreading of, or otherwise to mitigate, the consequences of damage occurring (whether accidentally or not) as the direct result of any such action as aforesaid,
  - (iii) precautionary or preparatory measures taken under proper authority with a view to preventing or hindering the carrying out of any attack by an enemy, being measures involving a substantial degree of risk to property,
  - (iv) precautionary or preparatory measures involving the doing of work on land and taken under proper authority in any way in anticipation of enemy action, being measures involving a substantial degree of risk to property,
  - (v) precautionary or preparatory measures taken under proper authority with a view to denying facilities to an enemy, being measures involving a substantial degree of damage to or diminution of the value of property,  
as may be prescribed;
- (d) "live-stock" includes animals of any description;
- (e) "prescribed" means prescribed by rules made under this Proclamation;
- (f) "seller of goods" includes a seller of goods acting as an agent, and, in relation to any person carrying on the business of selling goods as an agent, any reference in this

Proclamation to goods produced by him or to goods not produced by him shall be construed as including a reference to goods produced, or, as the case may be, not produced by his principal.

Goods insurable under this Proclamation.

3. (1) Subject to the provisions of this section—
- (a) the following goods shall, in relation to any person carrying on business in Cochin State as a seller of goods of any description produced by him, be deemed to be goods insurable under this Proclamation that is to say, all goods situated in Cochin State being either—
    - (i) goods of that description, or
    - (ii) goods used as material from which goods of that description are produced or as ingredients or component parts of goods of that description; and
  - (b) the following goods shall, in relation to any person carrying on business in Cochin State as a seller of goods of any description not produced by him, be deemed to be goods insurable under this Proclamation, that is to say, all goods of that description being goods situated in Cochin State.
- (2) In relation to a person carrying on in Cochin State the business of selling agricultural products produced by him, all agricultural products and live-stock for the time being situated in Cochin State shall, subject to the following provisions of this section, be deemed to be goods insurable under this Proclamation:

Provided that Government may by general or special order direct that the provisions of

section 6 shall not operate so as to require a person to be insured in respect of any goods which, in relation to that person would not, apart from the provisions of this sub-section, be goods insurable under this Proclamation.

- (3) Things which, in relation to a person carrying on any business as a seller of goods, are at any time goods insurable under this Proclamation shall not cease to be goods so insurable by reason only that they are subsequently placed in or affixed to land under a contract of sale entered into by that person in the course of that business.
  - (4) Government may, by notification in the Cochin Government Gazette, direct that goods of any description specified in the notification shall, notwithstanding anything contained in this section, be deemed not to be goods insurable under this Proclamation.
4. (1) Save in so far as is otherwise expressly provided in this Proclamation, any goods shall, subject to the provisions of this section, be deemed for the purposes of this Proclamation to be owned—
- (a) if the property in the goods is for the time being vested in a person in relation to whom they are insurable under this Proclamation by that person;
  - (b) if the property in the goods is not so vested, by any person in relation to whom the goods are insurable under this Proclamation and who is for the time being entitled, either unconditionally or conditionally, to have the property in the goods vested in him:

Provided that where—

- (i) any goods would, under the foregoing provisions of this sub-section, be deemed to

be owned by a person in whom the property therein is vested otherwise than in the course of a business carried on by him in Cochin State, or who is entitled to have the property therein vested in him otherwise than in the course of such a business, and

(ii) any person carrying on business in Cochin State is for the time being entitled to sell the goods as agent, the goods shall be deemed to be owned by the last mentioned person.

(2) Where in the course of any business a ship is being or has been constructed under contract, and the ship or any part thereof or any goods appropriated for the construction thereof—

(a) would, apart from the provisions of this sub-section, have been deemed for the purposes of this Proclamation to be owned at any time by the person from time to time carrying on the business; or

(b) have at any time been accepted, in pursuance of a contract made with him, by the person from time to time carrying on the business,

then, notwithstanding that they would not, apart from the said provisions, be deemed for the said purposes to be owned by the person from time to time carrying on the business, the ship and any part thereof and any goods so appropriated as aforesaid shall, subject to the provisions of sub-section (3), be deemed, in a case to which clause (a)

applies, to continue to be owned by the person from time to time carrying on the business until the acceptance of the ship, in pursuance of the contract in question, by the person for whom it is being, or has been, constructed, and in a case to which clause (b) applies, to be owned by the person from time to time carrying on the business at all times between the acceptance referred to in the said clause (b) and the acceptance of the ship as aforesaid by the person for whom it is being, or has been, constructed.

(3) The provisions of sub-section (2) shall apply in relation to the construction under contract in the course of a business of part of a ship, not being part of a ship which is being, or has been, constructed by the person from time to time carrying on the business, as they apply in relation to the construction of a ship—

(a) with the substitution for references to a ship of references to part of a ship;

(b) where the contract for the part of the ship is with the person for whom the ship is being constructed, with the substitution for references to the acceptance of the ship under the contract in question of references to the acceptance of the ship under the contract for the construction thereof;

(c) where the contract for the part of the ship is with any other person, with the substitution for references to the acceptance of the ship under the contract in question of references to the acceptance of the part of the ship under the contract for the construction of the part by the person for whom it is being, or has been, constructed.

(4) Where the person from time to time carrying on a business receives any money, under a

policy issued in pursuance of the War Risks (Goods) Insurance Scheme of the Government of India, in respect of the loss of or damage to a ship, part of a ship or goods which are deemed to be owned by him by virtue of sub-section (2) or sub-section (3), the money shall be held by him on trust for the person who apart from the provisions of those sub-sections would be deemed for the purposes of this Proclamation to be the owner of the ship, part or goods, subject, however, to any lien or charge which would otherwise be enforceable against the ship, part or goods, and subject also to the right to retain out of the money the amount of any expenses reasonably incurred by the first mentioned person in making good any part of the loss or damage which he is liable to make good.

**War Risks  
Insurance  
Scheme.**

5. The War Risks (Goods) Insurance Scheme operated by the Government of India under that Government's War Risks (Goods) Insurance Ordinance shall have effect in the State to the same extent and in the same manner as if it had been put into operation under a law of the State.

**Compulsory  
Insurance.**

6. (1) No person shall, after such date as may be prescribed in this behalf by Government carry on business in Cochin State as seller of goods unless in respect of insurable goods situated in the State for the time being owned by him in the course of his business, there is in force a policy of insurance against War Risks issued by the authority operating the War Risks (Goods) Insurance Scheme of the Government of India:

Provided that nothing in this sub-section shall restrict the carrying on of business as aforesaid by any person, if and so long as the value of all goods insurable which are for the time being owned by him within the State in the course of that business does not exceed the sum of Rs. 20,000:

Provided further that Government may declare that the provisions of this sub-section shall

not apply to the carrying on of business as aforesaid by any person in respect of goods of any description specified in such declaration.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to one thousand rupees and with a further fine which may extend to five hundred rupees for every day after the first on which the contravention continues.

7. (1) Any person authorised in this behalf by this Government or the Government of India, may, for the purpose of ascertaining whether or not any person has insured any goods against war risks, and, if so, for what value,—

**Power of Government to obtain information.**

(a) require any person carrying on in Cochin State the business of fire insurance or of a seller of goods to submit to him such accounts, books or other documents or to furnish to him such information as he may reasonably think necessary, or

(b) at any reasonable time enter any premises occupied by any person carrying on in Cochin State any such business, and inspect the premises and require any person found therein who is for the time being in charge thereof to produce to him and allow him to examine such accounts, books or other documents as may relate to the business carried on in the premises or to furnish to him such information as he may reasonably think necessary.

(2) Whoever wilfully obstructs any person in the exercise of his powers under this section or fails without reasonable excuse to comply with a request made thereunder shall, in respect of each occasion on which any such

obstruction or failure takes place, be punishable with fine which may extend to five hundred rupees.

- (3) Whoever, in purporting to comply with his obligations under this section, knowingly or recklessly makes a statement false in a material particular, shall be punishable with fine which may extend to one thousand rupees.

**Limitation  
on prosecutions.**

8. No prosecution for any offence punishable under this Proclamation shall be instituted against any person except by or with the consent of Government or an authority authorised in this behalf by Government.

**Composition  
of offences.**

9. Any offence punishable under sub-section (2) of section 6 may, either before or after the institution of the prosecution, be compounded by this Government or by the Government of India or by any authority authorised in this behalf by either Government, on payment for credit to the War Risks (Goods) Insurance Fund established by the Government of India of such sum as this Government or the Government of India or such authority, as the case may be, think fit.

**Bar of legal  
proceedings.**

10. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Proclamation.

**Power to  
make rules.**

11. (1) Government may, by notification in the Cochin Government Gazette, make rules to carry into effect the provisions of this Proclamation.

- (2) Subject to any other Rules or any modification that may be made in exercise of the powers under sub-section (1) of this section, the Rules for the time being in force under the Government of India's War Risks (Goods) Insurance Ordinance, 1940, shall, *mutatis mutandis*, be deemed to be the Rules for the purposes of this Proclamation and, further all persons authorised by the Government of India under the War Risks



(Goods) Insurance Ordinance, 1940, and the Rules framed thereunder for any of the purposes of that Ordinance shall be deemed to be authorised under this Proclamation for corresponding purposes.

## PROCLAMATION

(XXVIII of 1117)

SPECIAL CRIMINAL COURTS (AMENDMENT)

PROCLAMATION

CONTENTS

**Preamble.**

**Sections.**

1. Short title and commencement.
2. Insertion of new section 23A in Proclamation XVI of 1117.
3. Special provision regarding bail.

SPECIAL CRIMINAL COURTS (AMENDMENT)

PROCLAMATION

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin,  
on the 23rd day of Karkadagam 1117 corresponding to  
the 8th day of August 1942*

[Published in the Cochin Government Gazette, dated  
23rd Karkadagam 1117]

WHEREAS it is necessary to amend the Special Criminal Courts Proclamation XVI of 1117; We are hereby pleased to command as follows.—

1. (1) This Proclamation may be called the Special Criminal Courts (Amendment) Proclamation, XXVIII of 1117. Short title  
and com-  
mencement.
- (2) It shall come into force at once.

Insertion of  
new section  
23A in Pro-  
clamation  
XVI of 1117.  
Special pro-  
vision re-  
garding bail.

2. After section 23 of the Special Criminal Courts Proclamation, XVI of 1117, the following section shall be inserted, namely.—

“23A. Notwithstanding anything contained in the Code no person accused in a trial before a Court constituted under this Proclamation of a non-bailable offence shall be released on bail or on his own bond unless—

(a) the prosecution has been given an opportunity to oppose the application for such release, and

(b) the Court is satisfied that there are reasonable grounds for believing that he is not guilty of the offence,

and no person who has been sentenced by a Court constituted under this Proclamation to a term of imprisonment for any offence whether bailable or non-bailable shall be released on bail pending any appeal by him.”

## PROCLAMATION (XXIX of 1117)

### ESSENTIAL SERVICES (MAINTENANCE) AMENDMENT PROCLAMATION CONTENTS

#### Preamble.

#### Sections.

1. Short title and commencement.
2. Amendment of section 5.
3. Amendment of section 7.

### ESSENTIAL SERVICES (MAINTENANCE) AMENDMENT PROCLAMATION

*Promulgated by His Highness Sree Kerala Varma,  
Maharaja of Cochin,  
on the 23rd day of Karkadagam 1117 corresponding to  
the 8th day of August 1942*

[Published in the Cochin Government Gazette, dated  
23rd Karkadagam 1117]

#### Preamble.

WHEREAS it is deemed necessary to amend the Essential Services (Maintenance) Proclamation, IX of 1117; WE are hereby pleased to command as follows.—

Short title  
and com-  
mencement.

1. (1) This Proclamation may be called the Essential Services (Maintenance) Amendment Proclamation XXIX of 1117.

(2) It shall come into force at once.

2. To section 5 of the Essential Services (Maintenance) Proclamation, IX of 1117, hereinafter referred to as the Proclamation, the following shall be added, namely.— **Amendment of section 5.**

*“Explanation 1.*—The fact that a person apprehends that by continuing in his employment he will be exposed to increased physical danger is not a reasonable excuse within the meaning of clause (b).

*Explanation 2.*—A person abandons his employment within the meaning of clause (b) who, notwithstanding that it is an express or implied term of his contract of employment that he may terminate his employment on giving notice to his employer of his intention to do so, so terminates his employment without the previous consent of his employer.”

3. To section 7 of the Proclamation, the following sub-section shall be added, namely.— **Amendment of section 7.**

“(4) Notwithstanding anything contained in the Cochin Code of Criminal Procedure, II of 1086, an offence under this Proclamation shall be cognizable.”

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## APPENDIX

### \*The Defence of India (Amendment) Ordinance, XXIII of 1942

11th June 1942 (29th Edavam 1117)

No. 56.—The following Ordinance of the Government of India in the Legislative Department, Ordinance No. XXIII of 1942, making further amendments to the Defence of India Act, 1939, is republished for general information.—

#### GOVERNMENT OF INDIA

LEGISLATIVE DEPARTMENT

New Delhi, the 22nd May, 1942

ORDINANCE No. XXIII OF 1942

#### An Ordinance further to amend the Defence of India Act, 1939

WHEREAS an emergency has arisen which makes it **XXXV** of necessary further to amend the Defence of India Act, 1939, **1939.** for the purposes hereinafter appearing.—

NOW, THEREFORE, in exercise of the powers **26 Geo. 5,** conferred by section 72 of the Government of India Act as **c. 2.** set out in the Ninth Schedule to the Government of India Act, 1935, the Governor-General is pleased to make and promulgate the following Ordinance.—

Short title and commencement.

1. (1) This Ordinance may be called the Defence of India (Amendment) Ordinance, 1942.
- (2) It shall come into force at once.

Amendment of section 2, Act XXXV of 1939.

2. In clause (xiv) of sub-section (2) of section 2 of **XXXV** of the Defence of India Act, 1939 (hereinafter referred to as **1939.** the said Act), the words “used or likely to be used by the Central Government” shall be omitted.

Amendment of section 6, Act XXXV of 1939.

3. In section 6 of the said Act,—
  - (a) after clause (2) the following clause shall be inserted, namely.—

‘(2A) Section 12 of the Indian Official Secrets **XIX** of 1923. Act, 1923, shall have effect as if after clause (a) the following clause had been inserted, namely.—
  - ‘(aa) an offence under section 5 shall be a cognizable and non-bailable offence.’”
  - (b) in clause (5) for the words beginning with **XXXIV** of “the Indian Navy (Discipline) Act, 1934” **1934.**

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\*The amendments effected by this Ordinance are in force here in virtue of the provisions contained in sub-section (1) of section 1 of Proclamation VIII of 1115.

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and ending with the word "namely" the following shall be substituted, namely.—

"the Indian Navy (Discipline) Act, 1934, shall have effect as if in the Naval Discipline Act as set forth in the First Schedule to that Act—

(a) in section 58, in regulations (1) and (16) for the word "five" the word "three" in regulation (7) for the words "the President is a captain" the words "the President is a commander", and in regulation (15) for the word "four" the word "two" had been substituted.

(b) for section 90 the following section had been substituted, namely.—"

(c) after clause (5) the following clause shall be added, namely.—

"(6) the Motor Vehicles Act, 1939, shall have **IV of 1939.** effect subject to the following modifications, namely.—

(a) Notwithstanding anything contained in section 62 of that Act a permit under that section may be granted, and shall be granted in any case in which the Provincial Government so directs, to be effective for a period exceeding four months ;

(b) Notwithstanding anything contained in Chapter IV of that Act, but without prejudice to the provisions of section 60, the transport authority which granted a permit may at any time cancel the permit or may suspend it for such period as it thinks fit, if in the opinion of the transport authority it is no longer in the public interest that the service should continue and the vehicle or vehicles covered by the permit can be more usefully employed elsewhere ; and the transport authority shall cancel or suspend a permit issued by it if so required by the Provincial Government ;

(c) If in any particular case the Provincial Government thinks fit so to order, the authority empowered to grant a permit under Chapter IV of that Act shall not, in deciding to grant or

refuse a permit, be bound to take into consideration representations made by any person, authority or association other than the applicant, or to follow the procedure laid down in section 57, and may accept an application for a stage carriage permit or a public carrier's permit though made less than six weeks before the date on which it is desired that the permit shall have effect;

- (d) The Provincial Government may exempt from all or any of the provisions of Chapter IV of that Act, all or any transport vehicles used or required for use in connection with work considered by the Provincial Government to be work connected with the defence of British India or the prosecution of war."

4. For section 18 of the said Act the following section shall be substituted, namely.—

**Substitution of new section 18 for existing section 18 in Act XXXV of 1939.**

"18. When any members of the military or police forces of an Indian State or any members of a police force constituted under the authority of the Crown Representative are, with the authority of the Central or a Provincial Government, employed in British India on military or police duties, then—

**Powers and functions and legal protection of Indian State military and police forces and of Crown**

V of 1898.

- (a) sections 128, 130 and 131 of the Code of Criminal Procedure, 1898, shall apply to officers, non-commissioned officers and men of an Indian State military force when so employed as if they were officers, non-commissioned officers and soldiers respectively of His Majesty's Army ;

**Representative's police force when employed on military or police duties in British India.**

- (b) any provision of law for the time being in force which invests a police officer in British India with any status, power or function shall operate to invest a police officer of equivalent rank in an Indian State police force or in a police force constituted under the authority of the Crown Representative when so employed with the like status, power or function ; and for the purposes of the Code of Criminal Procedure, 1898, an officer in any such force

V of 1898.

*Appendix*

not below the rank equivalent to that of a sub-inspector of police in British India shall be deemed to be an officer in charge of a police station ;

- (c) any provision of law for the time being in force which gives protection, whether specifically or otherwise, to members of His Majesty's military forces or of the police forces in British India from or in respect of any prosecution or other legal proceedings or from or in respect of any other liability shall apply also to members of an Indian State military force and to members of an Indian State police force or a police force constituted under the authority of the Crown Representative when so employed."

LINLITHGOW

*Viceroy and Governor-General*

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