

INCOME-TAX ORDINANCE, 1942.ANORDINANCETO

ORDINANCE No.5 OF 1942.

Levy a tax on income derived from sources other than agriculture.

WHEREAS an emergency has arisen which makes it necessary to impose a tax on income derived from sources other than agriculture:

NOW, THEREFORE, the Prime Minister of the Government, with the sanction of the Commander-in-Chief of the Imperial Nippon Army in Burma, promulgates the following Ordinance-

Title, Extent and Commencement.

1. (1) This Ordinance may be called **the Burma Income-tax Ordinance, 1942.**

(2) It extends to the whole of Burma.

(3) It shall come into force at once.

Definitions.

2. In this Ordinance, 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 Burma, or subject to a local rate assessed and collected either by Government or any body or persons authorized by it for this purpose:

(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) "Person" includes a firm, a company and an Undivided Family;
- (4) "Firm" means persons who have agreed to share the profits of a business;
- (5) "Company" means an Association carrying on business in Burma whose stock or funds is or are divided into shares and transferable, whether the company is incorporated or not, and whether its principle place of business is situated in Burma or not;
- (6) "Business" includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;
- (7) "Prescribed" means prescribed by rules made under this Ordinance;
- (8) "Previous year" means the twelve months ending on the 31st of March next preceding the year for which the assessment is to be made, or, if the accounts of 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 31st day of March, then at the option of the assessee the year ending on a day to which his accounts have so been made up;
- (9) All dates mentioned in the Ordinance mean the dates computed by the Gregorian Calendar;
- (10) "Taxable income" means the aggregate amount of an assessee's income chargeable under each of the heads mentioned in section 6;
- (11) "Public servant" has the same meaning as in the Penal Code and includes any servant of any local authority or railway administration.

CHAPTER I.

CHARGE OF INCOME-TAX.

Charge of Income –tax.

3. (1) From and after the 1st day of April 1942, income-tax shall be charged in accordance with, and subject to the provisions of this Ordinance in respect of all income or profits of every person accruing or arising or received in Burma or deemed under the provisions of the Ordinance to accrue, or arise, or to be received in Burma. Such income-tax shall be calculated at the rate or rates mentioned in the Schedule contained in this Ordinance.
- (2) Income or profits accruing or arising without Burma to a person resident in Burma shall, if they are received in or brought into Burma, be deemed to have accrued or arisen in Burma and to be income or profits of the year they are so received or brought, notwithstanding the fact that they did not so accrue or arise in that year.

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

Exemption

4. (1) This Ordinance shall not apply to the following classes of income:-
- (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 of a religious or charitable institution derived from voluntary contributions and applicable solely to religious or charitable purposes.
- (iii) The income of local authorities.
- (iv) Any special allowance, benefit or perquisite specifically granted to meet expenses wholly and necessarily incurred in the performance of the duties of an office.
- (v) Agricultural income.
- (vi) The income of the Japanese and Japanese legal person for the time being.

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.

- (2) The Government may, by notification, exempt from liability to the tax the whole or any part of the income of any class or section of population, or of any person residing in any specified area and may, by a like notification, revoke the exemption.

CHAPTER II

INCOME-TAX AUTHORITIES.

Income-tax Authorities

- 5. There shall be the following classes of income-tax authorities for the purpose of this Ordinance, namely:-
 - (a) Director of Income-tax,
 - (b) Deputy Directors of Income-tax,
 - (c) Income-tax Officers and
 - (d) Any other officer appointed for this purpose by the Government.

CHAPTER III

TAXABLE INCOME.

Heads of income to which Ordinance applies.

- 6. Save as otherwise provided by this Ordinance, the following heads of income and profits shall be chargeable to income-tax in the manner hereinafter appearing, namely :-
 - (a) Salaries
 - (b) Property
 - (c) Business
 - (d) Professional earnings

(e) Other sources.

Salaries

7. 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 received by him in lieu of, or in addition to, any salary or wages, which are paid by or on behalf of Government, a local authority, a company, or any other public body or association, or by or on behalf of any private employer.

Property

8. (1) The tax shall be payable by an assessee under the head "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 his business, 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) the amount of any annual premium paid to insure the property against risk of damage or destruction;
- (iii) 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 a ground rent, the amount of such ground rent; and where the property has been acquired with borrowed capital, the amount of any interest payable on such capital and not specifically charged upon the property itself;
- (iv) any sums paid on account of land revenue in respect of the property;
- (v) in respect of vacancies, such sum as the Income-tax Officer may determine having regard to the circumstances of the case.

Provided that the aggregate of the allowances made under this sub-section shall in no case exceed the annual value.

(2) For the purpose 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 residence, such sum shall, for the purposes of this section be deemed not to exceed ten per cent of the taxable income of the owner.

Business.

9. (1) The tax shall be payable by an assessee under the head "Business" in respect of the income or profits of any business carried on by him.

(2) Such income or profits shall be computed after making the following allowances, namely:-

- (i) any expenditure (not being in the nature of capital expenditure) incurred solely for the purpose of earning such income or profits: and
- (ii) in respect of depreciation of such buildings, machinery, plant or furniture being the property of the assessee, a sum equivalent to such percentage on the original cost thereof to the assessee as may in any case or class of cases be prescribed.

Professional earnings

10. (1) The tax shall be payable by an assessee under the head “Professional earnings” in respect of the income or profits of any profession followed by him.

(2) Such income or profits shall be computed after making the following allowances, namely:-

(i) any expenditure (not being in the nature of capital expenditure) incurred solely for the purposes of such profession, and not being personal expenses of the assessee:

(ii) in respect of depreciation of buildings, machinery, plant, apparatus, appliances, furniture being the property of the assessee, the allowances, specified in clause (ii) of sub-section (2) of section 9.

Other sources

11. (1) The tax shall be payable by an assessee under the head “Other sources” in respect of income or profits of every kind and from every source to which this Ordinance applies (if not included under any of the preceding heads).

Explanation.- Share of income or profits accruing, arising or received in Burma, or deemed to accrue or arise or to be received in Burma by an assessee does not come under the head “Other sources.”

(2) Such income or profits 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 or profits, provided that no allowance shall be made on account of any personal expenses of the assessee.

Reduction of tax when margin above certain limit is small.

12. Where owing to the fact that the taxable income of any assessee has reached or exceeded a certain limit he is liable to pay income-tax or to pay income-tax at a higher rate, the amount of income-tax payable by him shall, where necessary, be reduced so as not to exceed the aggregate of the following amounts, namely:-

- (a) the amount which would have been payable if his total income had been a sum less by one rupee than that limit, and
- (b) the amount by which his total income exceeds that sum.

CHAPTER IV.

DEDUCTIONS AND ASSESSMENTS.

Payment by deduction at source.

13. (1) Any person responsible for paying any income chargeable under the head “Salaries” shall, at the time of payment, deduct income-tax on the amount payable at the rate applicable to the estimated income of the assessee under this head.

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

(2) 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.

(3) All sums deducted in accordance with the provisions of this section shall be paid by the person making the deduction to the credit of the Government.

(4) If any such person does not deduct and pay the tax as required by or under this section, he shall without prejudice to any other consequences which he 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 31 for the recovery of any penalty from such person unless satisfied that such person has wilfully failed to deduct and pay the tax.

General notice calling for return of income.

14. The Director of Income-tax, shall, in every year, issue a general notice, requiring every person, chargeable to income-tax, to furnish, within such period not being less than thirty days as may be prescribed 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 taxable income. The notice shall be published in the Government Gazette, and copies of such notice shall be affixed at the Office of the Director of Income-tax, Offices of the Income-tax Officers, Public Offices, Police Stations and at such other conspicuous places throughout the country as the Director of Income-tax shall appoint.

Levy of tax on taxable income.

15. Subject to the conditions hereinbefore set out, there shall be levied in respect of the year beginning with the 1st day of April 1942, and in respect of each subsequent year, by collection in that year and subsequent adjustment as hereinafter provided income-tax upon every assessee in respect of his taxable income in that year at the rate specified in the Schedule contained in this Ordinance.

Adjustment with actual income when ascertained.

16. When the Income-tax Officer has, in any year after the commencement of this Ordinance for which income-tax is leviable under Section 15, ascertained, either from the return made by an assessee or after further inquiry, the taxable income actually received by or accrued to the assessee in the previous year, he shall compute the income-tax which would have been payable in respect thereof if it had been levied in such previous year with reference to the amount of the income so ascertained and the law then in force; and the difference between the sum so computed and the aggregate of the sums already paid by or on behalf of the assessee in respect of income-tax for such previous year, shall be paid by or refunded to the assessee, as the case may be.

Mode of assessment.

17. (1) Upon receipt of a return as required under Section 14 from an assessee, the Income-tax Officer shall, by an order in writing, make an assessment on the basis of such return or on that of any evidence or enquiry as he may deem necessary to call for or make.

(2) If a person fails to submit a return as required under Section 14, within the specified time, the Income-tax Officer shall make an assessment to the best of his judgment.

Penalty for concealment of income.

18. If the Income –tax Officer, the Deputy Director or the Director in the course of any proceedings under this Ordinance, is satisfied that an assessee has concealed the particulars of his income, or has deliberately furnished inaccurate particulars of such income, and has thereby returned it below its real amount, he may direct that the assessee shall, in addition to the income-tax payable by him, pay by way of penalty a sum not exceeding the amount of the income-tax which would have been avoided if the income so returned by the assessee had been accepted as the correct income.
- Provided that no such order shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard.

Notice of demand.

19. When the Income-tax Officer has determined a sum to be payable by an assessee under Section 17, or when an order has been passed under Section 18 for the payment of penalty, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum so payable.

Liability to pay income-tax in respect of business or profession.

20. Income-tax payable in respect of a business or profession shall be recoverable from the person who is found to be carrying on the business or profession at the time of making the demand.

Power to take evidence on oath, etc.

21. The Income-tax Officer, Deputy Director and Director shall, for the purposes of this Ordinance, have the same powers as are vested in a Court under the Code of Civil Procedure 1908, 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 Director or Director under this Ordinance shall be deemed to be a “Judicial proceeding” within the meaning of sections 193 and 228 and for the purposes of section 196 of the Penal Code.

Appeal against assessment.

22. (1) Any assessee objecting to the assessment or rate at which he is assessed under Section 17 (1), or denying his liability to be assessed under this Ordinance, or to any order against him under Section 18 made by an Income –tax Officer, may appeal to the Deputy Director of Income-tax against the assessment or order.
- Provided that no appeal shall lie in respect of an assessment made under sub-section (2) of Section 17.
- (2)The appeal shall be presented within thirty days of receipt of the notice of demand relating to the assessment or penalty objected to.

Hearing of appeal.

23. (1) The Deputy Director of Income-tax shall fix a day and place for the hearing of the appeal and may from time to time adjourn the hearing.

(2) The Deputy Director of Income-tax 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) In disposing of an appeal the Deputy Director of Income-tax may, in the case of an order of assessment-

(a) confirm, reduce, enhance or annul the assessment, or

(b) 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 Director may direct, and the Income-tax Officer shall thereupon proceed to make such fresh assessment or, in the case of an order under Section 18,

(c) confirm, cancel or vary such order.

Provided that the Deputy Director of Income-tax shall not enhance an assessment unless the appellant has had a reasonable opportunity of showing cause against such enhancement.

Appeals against orders of Deputy Director of Income-tax.

24. (1) Any assessee objecting to an order passed by the Deputy Director of Income-tax under Section 18 or to an order enhancing his assessment under sub-section (3) of Section 23, may appeal to the Director of Income –tax within thirty days of the making of such order.

(2) In disposing of the appeal the Director of Income-tax may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit.

Power of review.

25. (1) The Director of Income-tax may of his own motion call for the record of any proceeding under this Ordinance which has been taken by any authority subordinate to him.

(2) On receipt of the record the Director of Income-tax may make such inquiry or cause such enquiry to be made and, subject to the provisions of this Ordinance, 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 if being heard.

CHAPTER V.

LIABILITY IN SPECIAL CASES.

Guardians, trustees and agents.

26. In the case of any guardian, trustee or agent of any person being a minor, lunatic, or idiot or residing out of Burma (all of which persons are hereinafter in this Section included in the term “beneficiary”)being in receipt on behalf of such beneficiary of any income or profits chargeable under this Ordinance, the tax shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same amount as would be leviable upon and recoverable from any such beneficiary if of full age, sound mind, or resident in Burma, and in direct receipt of such income or profits, and all the provisions of this Ordinance shall apply accordingly.

Administrator-General, Official Trustee, etc.

27. (1) In the case of income or profits chargeable under this Ordinance which the Administrator-General or Official Trustee 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 duly executed trust deed, are entitled to receive on behalf of any person, the tax shall be levied upon and recoverable from such Administrator-General, Official Trustee, 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 or profits are receivable, and all the provisions of this Ordinance shall apply accordingly.

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

Non-residents.

28. (1) In the case of any person residing out of Burma, all income or profits accruing or arising to such person, whether directly or indirectly, through or from any business connection or property in Burma, shall be deemed to be income accruing or arising within Burma, and shall be chargeable to income-tax in the name of the agent of any such person, and such agent shall be deemed to be, for all the purposes of this Ordinance, the assessee in respect of such income-tax.

Provided that any arrears of tax may be recovered also in accordance with the provisions of this Ordinance from any assets of the non-resident person which are, or may at any time come, within Burma.

(2) Where a person not resident in Burma carries on business with a person resident in Burma 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 produces to the resident either no profits or less than the ordinary profits which might be expected to arise in the business, the income or profits derived there from or which may reasonably be deemed to have been derived there from 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 Ordinance, the assessee in respect of such income-tax.

Agents to include persons treated as such.

29. Any person employed by or on behalf of a person residing out of Burma, or having any business connection with such person, or through whom, such person is in the receipt of any income or profits 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 Ordinance, be deemed to be such agent.

Provided 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 discontinued firm.

30. Where any business or profession carried on by a firm has been discontinued, every person who was at the time of such discontinuance a member of such firm shall be jointly and severally liable for the amount of the tax payable in respect of the income or profits of the firm.

CHAPTER VI.

RECOVERY OF TAX AND PENALTIES.

Mode of recovery.

31. (1) When an assessee fails to pay the tax within the time specified in the notice of demand issued under Section 19, the Income-tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the assessee by way of penalty.
- (2) The Income-tax Officer may forward to the District Commissioner a certificate under his signature specifying the amount of arrears of income-tax or penalty as the case may be, due from an assessee, and the District Commissioner, 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 District Commissioner in this behalf, he shall for the purpose of recovering the said amount have in respect of the attachment and sale of debts due to the assessee the powers which under the Code of Civil Procedure, 1908, a Civil Court has in respect of the attachment and sale of debts due to a judgment debtor for the purpose of the recovery of an amount due under a decree.
- (3) In any area, with respect to which the Director has directed that any arrears may be recovered by any process enforceable for the recovery of an arrear of any municipal tax or local rate imposed under any enactment for the time being in force in any part of Burma, the Income-tax Officer may proceed to recover the amount due by such process.
- (4) The Director may direct by what authority any powers or duties incident under any such enactment as aforesaid to the enforcement of any process for the recovery of a municipal tax or local rate shall be exercised or performed when that process is employed under sub-section(3).

CHAPTER VII.

REFUNDS.

General Power to make refunds.

32. (1) If the Income-tax Officer is satisfied upon claim made that tax has been paid by or on behalf of any person with which he was not properly chargeable, the Income-tax Officer shall allow a refund to such person of the amount so paid or so paid in excess.
- (2) The Deputy Director of Income-tax in the exercise of his appellate powers, or the Director of Income –tax in the exercise of his appellate powers or powers of revision if satisfied to the like effect shall in like manner 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) Nothing in this section shall operate to validate any objection or appeal which is otherwise invalid or to authorize 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 Ordinance, to entitle any person to any relief other or greater than that relief.

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

33. Where a refund is found to be due to any person, the Income-tax Officer, Deputy Director or Director, 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.

CHAPTER VIII.

MISCELLANEOUS.

Indemnity.

34. Every person deducting, retaining or paying any tax in pursuance of this Ordinance in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof.

Bar of suits in Civil Court.

35. No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Ordinance, and no prosecution, suit or other proceeding shall lie against any Government Officer for anything in good faith done or intended to be done under this Ordinance.

Disclosure of information by a public servant.

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

Provided that nothing in this section shall apply to the disclosure-

(a) of any such particulars for the purposes of a prosecution under the Penal Code in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, or for the purposes of a prosecution under this Ordinance, or

- (b) of any such particulars to any person acting in the execution of this Ordinance where it is necessary to disclose the same to him for the purposes of this Ordinance, or
- (c) of any such particulars occasioned by the lawful employment under this Ordinance of any process for the service of any notice or the recovery of any demand, or
- (d) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Stamp Act, to impound an insufficiently stamped document.

Provided, further, that no prosecution shall be instituted under this section except with the previous sanction of the Director.

Power to make rules.

37. (1) The Government may make rules for carrying out the purposes of this Ordinance and for the ascertainment and determination of any class of income.

(2) Rules made under this section shall be published in the Government Gazette, and shall thereupon have effect as if enacted in this Ordinance.

Repeal of Burma Income –tax Act.

38. With effect from the 1st day of April 1942, the Burma Income-tax Act, [former Indian Income-tax Act, 1922, being Act XI of 1922, as adapted under the Government of Burma(Adaptation of Laws) Order, 1937], shall be repealed.

BA MAW,
Prime Minister.

[ATTACH LIST 1] 01 SCHEDULE. RATES OF TAX.