



# THE CEYLON GOVERNMENT GAZETTE

EXTRAORDINARY

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## PART II.—LEGAL.

### DRAFT ORDINANCES.

#### MINUTE.

The following Draft of a proposed Ordinance is published for general information:—

L. D.—O. 21/46

No. 1/4/73 (FSO)

#### An Ordinance to amend the Export Duties (Continuation of Increased Rates) Ordinance, No. 9 of 1945.

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows:—

1. This Ordinance may be cited as the Export Duties (Continuation of Increased Rates) Amendment Ordinance, No. of 1946.

Short title.

2. Section 4 of the Export Duties (Continuation of Increased Rates) Ordinance, No. 9 of 1945, (hereinafter referred to as the "principal Ordinance") is hereby amended by the substitution for the words and figure "October or November, 1946", of the following:—

Amendment of section 4 of Ordinance No. 9 of 1945.

"July, 1947".

3. Section 5 of the principal Ordinance is hereby amended by the addition at the end thereof of the following:—

Amendment of section 5 of the principal Ordinance.

"Such duties shall, for the purposes of the Customs Ordinance, be deemed to be imposed by resolution of the State Council under section 9 of that Ordinance, and any of those duties may at any time after the date so appointed be abolished, increased, reduced or otherwise altered by resolution of the State Council under that section."

#### *Objects and Reasons.*

Under Ordinance No. 9 of 1945 the increased rates of export duty on tea, raw rubber, rubber latex and plumbago which came into force on July 10, 1941 were continued for a further period. The original intention was that the increased rates should cease to apply on a day in October or November, 1946 to be fixed by the Governor. The object of this Bill is to continue the increased rates until July, 1947. The necessary amendment in section 4 of the principal Ordinance will be effected by Clause 2 of this Bill.

The opportunity is taken to amend section 5 of the principal Ordinance in order to make it clear that when the old duties obtaining in July, 1941 are revived, the State Council will have the power to alter them in the ordinary course by means of an appropriate resolution under the Customs Ordinance.

O. E. GOONETILLEKE,  
Financial Secretary.

Colombo, May 14, 1946.

#### MINUTE.

The following Draft of a proposed Ordinance is published for general information:—

L. D.—O. 14/45

No. 4/7/22 (FSO)

#### An Ordinance to amend the Income Tax (Special Provisions) Ordinance, No. 8 of 1945.

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows:—

1. This Ordinance may be cited as the Income Tax (Special Provisions) (Amendment) Ordinance, No. of 1946.

Short title.

Amendment of section 4 of Ordinance No. 8 of 1945.

2. Section 4 of the Income Tax (Special Provisions) Ordinance, No. 8 of 1945, is hereby amended by the substitution, for the words "two years", of the words "three years".

*Objects and Reasons.*

Excess Profits Duty was first imposed on Trades by Ordinance No. 38 of 1941 for a period of three years. Agriculture and Plumbago Mining were excluded from the scope of that Ordinance but steps were taken under other laws to increase the export duty on tea, rubber and plumbago from 10th July 1941. In order that the effect of this increase might not be nullified in the case of tea and rubber by the relieving provisions of sections 31 and 32 of the Income Tax Ordinance (Cap. 188), Ordinance No. 31 of 1941 was passed to suspend the operation of those sections for a period of three years.

2. By Ordinance No. 39 of 1942 Excess Profits Duty as imposed for two years on the profits of Agriculture and Plumbago Mining, and relief from Excess Profits Duty was provided in respect of the additional export duty; but the additional export duty continued to be levied.

3. When the period during which excess profits duty is leviable was extended for a further period of two years by the Excess Profits Duty (Amendment) Ordinance, No. 39 of 1944, the Income Tax (Special Provisions) Ordinance, No. 8 of 1945 was enacted in order to provide that relief under section 31 and the rebate under section 32 of the Income Tax Ordinance shall not be granted during the two years commencing on 10th July, 1944. As the Excess Profits Duty Amendment Ordinance, No. 49 of 1945, has again extended the period during which that duty is leviable by another year, it is necessary to extend in like manner the period referred to in the Income Tax (Special Provisions) Ordinance, No. 8 of 1945. The object of this Bill is to make the necessary amendment.

Colombo, May 14, 1946.

O. E. GOONETILLEKE,  
Financial Secretary.

MINUTE.

The following Draft of a proposed Ordinance is published for general information:—

	L. D.—O. 4/46.	4/7/23 (FSO)
Chapter 188. (Vol. IV., p. 609).	<b>An Ordinance to amend the Income Tax Ordinance.</b>	
	BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows:—	
Short title.	1. This Ordinance may be cited as the Income Tax (Amendment) Ordinance, No. of 1946.	
Amendment of section 6 of Chapter 188.	2. Section 6 of the Income Tax Ordinance (hereinafter referred to as the "principal Ordinance") is hereby amended in paragraph (a) (ii) of sub-section (2) by the substitution, for the word "pension", of the words "pension, or any sum refunded under section 38 (1) or section 39 of the Widows and Orphans Pension Fund Ordinance";.	
Amendment of section 7 of the principal Ordinance.	3. Section 7 of the principal Ordinance is hereby amended in sub-section (1) thereof by the insertion, immediately after paragraph (g), of the following new paragraph:— “(gg) the official emoluments and any income not arising in or derived from Ceylon of the persons for the time being holding office as Representative in Ceylon of the Government of India and as Secretary to such Representative: As regards other income the liability to tax of such Representative and such Secretary shall be the same as though they were non-resident persons;”.	
Amendment of section 11 of the principal Ordinance.	4. Section 11 of the principal Ordinance is hereby amended in sub-section (7) thereof, by the addition, at the end of that sub-section, of the following proviso:— “Provided that the provisions of this sub-section shall not apply to any source of profits or income arising in or derived from Ceylon which was a source of profits or income of that person before he became resident.”.	
Amendment of section 20 of the principal Ordinance.	5. Section 20 of the principal Ordinance is hereby amended as follows:— (a) in sub-section (7), by the substitution, for the Proviso thereto, of the following:— “Provided that for the year of assessment commencing on the first day of April, nineteen hundred and forty-five, and the next	

subsequent year of assessment, the rate of tax chargeable as aforesaid shall be increased by a further additional rate of three per centum.”;

- (b) in sub-section (7A), by the substitution in the Proviso thereto, for the words “additional rates”, of the words “further additional rates”;
- (c) by the insertion, immediately after sub-section (7A), of the following new sub-section:—

“(7B) Tax shall be charged for the year of assessment commencing on the first day of April, nineteen hundred and forty-five, and for each subsequent year of assessment, upon the taxable income of any Government, other than the Imperial Government or the Government of Ceylon, at twice the unit rate increased by an additional rate of three per centum:

Provided that for the year of assessment commencing on the first day of April, nineteen hundred and forty-five, and the next subsequent year of assessment, the rate of tax chargeable as aforesaid shall be increased by a further additional rate of three per centum.”;

and

- (d) in sub-section (10), by the substitution, for all the words from “commutation of pension” to “included”, of the words “commutation of pension or refunded under section 38 (1) or section 39 of the Widows and Orphans Pension Fund Ordinance, the sum to which it would amount if no such commutation or refund were included”.

Cap. 296.

6. Section 21 of the principal Ordinance is hereby amended in the Proviso to sub-section (1) thereof, as follows:—

Amendment of section 21 of the principal Ordinance.

- (a) by the re-numbering of paragraphs (b) and (c) of that Proviso as paragraphs (c) and (d), respectively; and
- (b) by the insertion, immediately after paragraph (a) of that Proviso, of the following new paragraph:—

(b) where the marriage subsists during part only of a year of assessment, the foregoing provisions of this sub-section shall not apply to any source of profits or income which is not a source of profits or income of the wife during that part of the year for which the marriage subsists;”.

7. Section 45 of the principal Ordinance is hereby amended in sub-section (4), by the substitution, for sub-paragraph (ii) of paragraph (b) of that sub-section, of the following paragraph:—

Amendment of section 45 of the principal Ordinance.

- “(ii) any additional tax charged under any of the following provisions, that is to say, sub-sections (6), (7), (7A), and (7B) of section 20, not being an additional tax charged under any Proviso to the aforesaid sub-section (7) or sub-section (7A) or sub-section (7B);”.

8. Section 52 of the principal Ordinance is hereby amended by the insertion, immediately after sub-section (1), of the following new sub-section:—

Amendment of section 52 of the principal Ordinance.

“(1A) Where under sub-section (1) the whole or any part of the undistributed profits of a company is treated as distributed in the form of dividends, and any shareholder is assessable accordingly, the additional amount which becomes payable as tax by that shareholder by reason of the operation of that sub-section shall be recoverable either from the shareholder or from the company as the Commissioner may in his discretion determine.”.

9. (1) The amendments made in the principal Ordinance by section 2 and sections 4 to 8 of this Ordinance shall be deemed to have come into force on the first day of April, nineteen hundred and forty-five.

Retrospective effect of amendments made by this Ordinance.

(2) The amendment made in section 7 of the principal Ordinance by section 3 of this Ordinance shall be deemed to have come into force on the first day of April, nineteen hundred and forty-three.

#### *Objects and Reasons.*

The object of this Bill is to effect in the Income Tax Ordinance amendments which have, in the course of the administration of the Ordinance, been found to be necessary.

2. Under section 38 (1) and section 39 of the Widows and Orphans Pension Fund Ordinance (Chapter 296), a public officer who is a bachelor or a widower without pensionable

children is entitled to receive on retirement a refund of half the accumulated contributions made by him under that Ordinance. Since the actual contributions when made by a contributor to this Fund are deducted in ascertaining the profits or income of the contributor, it is proper that upon a refund of a part of the accumulated contributions the amount so refunded should become liable to income tax.

The object of Clause 2 of this Bill is to amend section 6 of the principal Ordinance so as to include within profits from an employment any amount refunded under the Widows and Orphans Pension Fund Ordinance.

Paragraph (d) of Clause 5 of this Bill effects a consequential amendment in sub-section (10) of section 20 of the principal Ordinance. The effect of the amendment will be that the rate of tax applicable in respect of the amount refunded will be the same as that already provided by the sub-section for the taxation of sums received in commutation of pension.

3. The Government of Ceylon has agreed with the Government of India that as a reciprocal measure the official salary and allowances of the Representative in Ceylon of the Government of India and of the Secretary to the Representative should be exempt from Ceylon income tax with effect from the date of the first appointment to those posts. The object of Clause 3 of this Bill is to implement this agreement by including in section 7 of the principal Ordinance a new paragraph which will cover the case. This amendment will have retrospective effect as from April 1, 1943. (Clause 9 (2)).

4. Sub-section (7) of section 11 of the principal Ordinance contains special provision relating to the statutory income, from sources other than trade, business, profession, vocation or employment, of a person who becomes resident in Ceylon during a year of assessment. The rule applicable is that the statutory income should be computed on the basis of the actual income for the first year and of the income for a period of twelve months for the second year of residence. As the sub-section now stands, it is applicable not only in respect of sources of income which originate at or after the time when the person becomes resident, but also in respect of a source which existed prior to the date on which the person becomes resident. The object of Clause 4 is to add a Proviso to sub-section (7) of section 11 of the principal Ordinance declaring that the special mode of ascertainment of income will not apply in relation to a source of profits or income which was such a source before the person became resident.

5. The shares of companies resident outside Ceylon are not liable to Ceylon estate duty; in view of this, sub-section (7) of section 20 imposes on the taxable income of such a company a special additional charge of three per centum. In the same way, no estate duty is recoverable from a foreign Government, even though it may carry on business in Ceylon, but there is no corresponding provision in the law under which an extra rate of income tax is imposed in such cases. The object of paragraph (c) of Clause 5 of this Bill is to insert a new sub-section (7B) in section 20 of the principal Ordinance under which foreign Governments carrying on business in Ceylon will be taxed at the same rates as those applicable under section 7 to non-resident companies. (The ordinary rate of tax will be twice the unit rate increased by an additional rate of three per centum, but for the years 1945-1946 and 1946-1947 the rate so chargeable will be increased by a further additional rate of three per centum which will bring the rate into line with that imposed for those years by Ordinance No. 34 of 1945).

6. Section 21 (1) of the principal Ordinance provides that during the subsistence of a marriage the assessable income of the wife will be treated as part of the assessable income of the husband. Cases arise in which a woman who is employed gives up her employment upon or immediately before her marriage. In such a case, under proviso (a) of section 21 (1), even the profits from employment (which ceases to be a source of income upon the marriage) is added to the husband's assessable income and taxed accordingly. It is proposed to remove the hardship caused thereby by adding a new proviso to the effect that income from a source which does not exist during the subsistence of a marriage should not be treated as part of the assessable income of the husband. (Clause 6).

7. Section 45 of the principal Ordinance provides for relief in respect of double taxation in Ceylon and the United Kingdom. The definition of "Ceylon tax" in sub-section (4) (b) of section 45 contains a paragraph (ii) the object of which is to give effect to the principle that the additional tax charged in certain cases in lieu of estate duty should not form part of the tax in respect of which relief is given. The

relevant provisions under which an additional tax is charged in lieu of estate duty are sub-sections (6), (7), and (7A) of section 20, and the new sub-section (7B) to be added to that section by Clause 5 (c) of this Bill. In sub-sections (7) and (7A) (as amended by Ordinance No. 34 of 1945) and in the new sub-section (7B), however, there is provision for an additional tax which is not in lieu of estate duty but is purely additional income tax. Hence it is necessary to make it clear that such additional income tax falls within the definition of "Ceylon tax".

The necessary amendment in sub-section (4) (b) of section 45 will be effected by Clause 7 of this Bill.

For drafting purposes, it is necessary as a consequential amendment to recast the terms of the proviso to sub-section (7) of section 20 and to make a minor alteration in sub-section (7A) of section 20. The necessary amendments will be effected by paragraphs (a) and (b) of Clause 5 of this Bill.

8. Under section 52 of the principal Ordinance, power is taken to treat as distributed in the form of dividends the whole or a part of the undistributed profits of a private company. Hardship sometimes arises in the operation of this section in that a shareholder in the company becomes liable to tax in respect of income which he does not actually receive. It is considered expedient, therefore, to provide that, in such a case, the Commissioner will in his discretion determine whether the extra amount of tax falling due from a shareholder in consequence of the operation of the section is to be recovered from the shareholder or from the company. Effect is given to this proposal by Clause 8 of this Bill.

9. As stated above, the amendment relating to the emoluments of the Representative of the Government of India and his Secretary is to take effect from the first day of April, nineteen hundred and forty-three. It is proposed that the other amendments to be made by this Bill should take effect as from the year of assessment commencing on April 1, 1945. They will thus coincide with the increased rates which were charged by the amendments effected by Ordinance No. 34 of 1945.

Colombo, May 8, 1946.

O. E. GOONETILLEKE,  
Financial Secretary.

## MINUTE.

The following Draft of a proposed Ordinance is published for general information :—

L. D.—CF. 22/38.

C. S. O.—CFD. 1551/1/46.

**An Ordinance to amend the Defence Force Ordinance.**

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows :—

Short title.

1. This Ordinance may be cited as the Defence Force (Amendment) Ordinance, No. of 1946.

Amendment of section 19 of Chapter 258.

2. Section 19 of the Defence Force Ordinance is hereby amended in sub-section (1), by the substitution, for the words "with the following modifications only", of the words "whether within or without the limits of the Island, with the following modifications only".

*Objects and Reasons.*

Section 19 (1) of the Defence Force Ordinance provides that the Army Act applies subject to specified modifications in cases where members of the Defence Force are called out under section 13, but are not on active service within the meaning of the Army Act. The sub-section, however, only has effect while the members of the Defence Force are in Ceylon. The object of this Bill is to make the provisions of the sub-section applicable in cases where members of the Defence Force having been called out are for the time being on duty outside the Island.

Colombo, 17th May, 1946.

ROBERT H. DRAYTON,  
Chief Secretary.