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Title Law of Excess Profits Tax Act

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THE
INDIAN EXCESS PROFITS TAX ACT, 1940.

(REVISED AND ENLARGED)

(An International Issue)

Contains

PART I.—Exhaustive commentary with reference to Indian and English case law up-to date together with copious illustrations.
PART II.–Digest of E. P. T. Cases under Indian and English Acts as reported up-to-date
PART III.–Departmental Rules, notifications, Finance Acts uptodate, and income tax Act as applied.
PART IV –Excess Profits Tax Act in Indian State such as Baroda, Bhawalpur, Bhavnagur, Coooh Bihar, Cochin, Gwalior, Indore, Jaipore, Mysore and Travancore etc.
PART V.—Excess Profits Tax Acts in England, Canada, United States of America, Ceylon etc.

BY

B. R. JAIN

Author of

Annotated Digest of Income-tax Cases, (1886-1942.) Commentary on Indian Income-tax Act, Annotated Digest of Company Cases (1913-1939), Indian Income Tax Law Year Book Law, Rules, Procedure of Income-Tax Tribunal Income-tax Act & Allied Laws

&

Editor of

INCOME-TAX GAZETTE

1945-46

3rd Edition

Published by

THE INCOME-TAX LAW PUBLISHING HOUSE

CHANDNI CHOWK, DELHI

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Law Printing Press Delhi.

ABBREVIATIONS USED FOR CITATION.

Indian Law Reports Series—Allahabad		*A. e. g. A. 49.*
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PREFACE TO THE THIRD EDITION.

Since the second edition of this work, there have been certain amendments in the Act. All these amendments together with up-to-date case-law, Indian as well as English, throwing light over various knotty problems have been incorporated herein. The whole work has been thoroughly and critically revised and a great deal of attention has been paid both to accuracy and method of exposition.

As there are various companies and business concerns which carry on their businesses in both British India as well as Indian States and they also have to resort to the Excess Profits Tax Law of the States, it has necessitated the incorporation of the legislative pieces relating to excess profits tax matters passed by the various Indian States in this work. Every effort has therefore been made to add herein all such legislative pieces in whatever state they are in force. Excess Profits Tax Law of Hyderabad State could not however be added inspite of every effort being made for securing it. All these Acts are somewhat similar to the Excess Profits Tax Law in force in British India. Notes on their provisions have not therefore been thought well to be added to them to make the book more bulky in view of scarcity of paper and in their place it is advised that notes given in the first part of this book may be referred.

Likewise enactments relating to excess profits tax in foreign countries such as in United Kingdom, Ceylon, Canada and United States of America have also been incorporated herein in order to make this edition much more useful for the persons having business connections or branches there too.

This present edition, I hope, will prove to be of much importance to all and of great assistance specially to those who have also their business relations in foreign territories and will have the same cordial receiption accorded to the preceding editions of this work.

In the end it is hoped that readers will not mind the printer's mistakes, if any, that may have crept in, in getting the work printed.

25th October, 1945

B. R. Jain

Preface to the Second Edition.

The Excess Profits Tax Act, though a provisinal law, still stands good and is enforceable due to the unexpected prolongation of the war.

Unlike the Excess Profits Tax Act has presented many complicated aspects, calling for amendments so quickly following its enactment. These and other allied matters necessitated a revised and enlarged Edition.

One of the main features of the revised Edition is the innumerable examples on the difficult points. Then Notes, and Instructions relevant on each point have been incorporoted.

B. R. Jain.

16th April 1943. *Author,*

Preface to the First Edition.

The introduction in India of the Excess Profits Tax and the consequent legislation relating thereto, in the shape of the Excess Profits Tax Act. 1940, called for a commentary on the Provisions of the Act, almost all of which have been taken, in some places *verbatim*, from the English law, as embodied in the recent United Kingdom Finance Act, (2) of 1939. Some of the provisions are of a decidedly intricate nature and, though drafted by expert English draftsmen, still needed an elucidation in the light of the previous law and case-law on the subject as it existed in 1915-19

The main and important Section and Provisions of the Act, *e g* those relating to Standard Profits, Deficiency, Inter-connected Companies, Computation of Profits etc. have been exhaustively dealt with and explained by means of apt and appropriate illustrations. The main Provisions of the Income-tax law made applicable to the Act have also been introduced in order to make the book self contained A digest of the English and Indian case law relating to Excess Profits Duty, as enacted in 1915-1919, both in United Kingdom and in India, has also been made a part of the book to render the compilation more helpful. The English and Indian case-law, though already noted in its proper place in the commentary, has also been added in the shape of digest in order to enable a full and complete exposition of the cases in in the light of the detailed facts thereof. Both the United Kingdom and the Indian Excess Profits Duty Act, of 1915 and 1919 respectively and the United Kingdom Excess Profits Tax Act (2) of 1919, as also the Indian Income tax Act, 1922 (Amended 1939), have been given in a separate Part, in order to facilitate easy reference.

A comparative table of the present Indian Excess Profits Tax Act, 1940, indicating the Provisions of the Bill as introduced in the Indian Legislature, as amended by the Select Committee and as finally improved by the Assembly and assented to by the Governor-General has been given, with a view to explain the various changes made and to given an idea of the principles underlying these changes. An exhaustive Subject Index of all the Parts adds to the utility of the Book.

No attempt has been spared to make the book self contained, self-explanatory and useful and it is confidently hoped it will render such useful assistance to all parties concerned as it is intended to do.

It is indeed a point of great regret that the Legislature have, apparently in the hurry of affairs, failed to give illustrations under important and difficult Provision of an Act which relates to a very important branch of a heavey taxation. We hope the illustrations given by us are quite in accord with the Provisions for which they stand.

At the end, I have to express my gratitude to Mr. C. L. Varma for his kind assistance rendered in the course rendered in the course of the compilation of the book.

Author.

Delhi, 15th May, 1940.

THE
INDIAN EXCESS PROFITS TAX ACT, 1940

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EXCESS PROFITS TAX ACT, 1940

PART II

INTRODUCTORY.

General:—The imposition of 'Excess Profits' Tax by the State in cases of emerrgency has ever been justified both from the administrative and the economical point of view. It is a method of equalising the burden of taxation on the nation during exceptional times, such as War.

It also prevents the concentration of wealth in the hands of a few, specially when many in the country have to sacrifice even their ordinary necessities of life at times of emergency

Excess Profits Tax Act, though a comparatively modern legislation, is not a new to India either It was levied in the United Kingdom by the Finance Act (2) of 1915, during the last Great War of 1914—1919 and, in India by E. P. D. Act (10) of 1919.

On the outbreak of the present War in Europe, in September, 1939, the same tax has been levied by a legislation in the United Kingdom, Finance Act 2 of 1939. It has been levied in India by the Excess Profits Tax Act, 1940.

At the time the Bill relating to the legislation was introduced in the Indian Legislature, it was considered that the imposition of the tax was comparatively earlier than it was at the time of the last war. In justifying the introduction of the bill at this stage the Hon'ble the Finance Member observed :—"Once the justice and desirability of the Bill was accepted it was infinitely better to introduce it as early as possible."

Some strong opposition and passionate protest against the Bill was made and exception taken to the introduction of this exceptional measure without first feeling and expressing to the country in facts and figures and details and need for the money to be received by such a sweeping measure, in particular, as it was considered that the measure would tend to cripple the various industries in India, already struggling to exist, and may extinguish many.

Expression was, in some quarters, given even to the idea that it was not intended to be a mere War measure but a 'permanent measure'.

Another accusation laid at its door was that the Bill chose a period for determining standard profits which was a period of general depression. It was tantalized as being inopportune and pernicious also as it affected not only all industries without any exception but indirectly affected agriculture also, ultimately. It was further considered that the measure would affect not only a limited number of assessees but a thousand of share-holders in companies also.

While, as stated in para. 3 of the Statement of Objects and Reasons, the necessary provisions relating to the computation of profits and capital followed closely the provisions relating to Excess Profits Tax imposed in the United Kingdom by the Finance Act 2 of 1915, the Government had, it has been alleged, failed to appreciate the distinctly wide difference existing in the conditions of the two countries.

The English measure, it was pointed out, was the culmination and consolidation of various other measures adopted under "The National Defence Contributions". Each and every measure in the United Kingdom was taken after giving a full hearing to the case of each and every industry, large and small.

It was pointed out that althoug the Dominions of Canada also had adopted the measure of Excess Profits Taxation, yet it had exempted several industries from this tax and that the Canadian Bill had several redeeming features.

The above and similar further objections were taken to the Bill before it was referred to Select Committee Most of these were met by the Hon'ble the Finance Member in the speach while introducing the Bill.

While introducing the Excess Profits Tax Bill in the Assembly, the Hon'ble Finance Member, in dwelling on the justification of the Bill said that it rested on the principle of social justice first, but that he would take his man stand on the concrete fiscal footing, namely, that a country engaged in war was inevitably involved in additional expenditure mainly on defence, and that it was, therefore, just that in raising additional revenues necessary to cope with this additional expenditure, the Government should tax increased profits which, like the increased expenditure, arose out of the war. That, he declared, was a principle which no right thinking man would controvert. To resort to general taxation in these conditions, he said, would be to aggravate inequality.

The Bill was ultimately referred to a Select Committee and many of the provisions thereof, objected to as stringent, were modified The minimum amount of taxable profits was raised from 20,000 (twenty thousand) to 30,000 in the Select Committee and ultimately to 36,000 [Section 6 (4) of the Act]. The charg able accounting period gave up the period from 1st April, 1939 and commenced from 1st September, 1939 Above all, by an amendment to the Preamble of the Act, a periodical review of of the enactment by the Legislature was assured. Profits from Life Insurance business were exempted from taxation under the Act by the Select Committee, mainly on the ground that such profits could not be determined annually but were subject to triennial or quinquennial valuation and that there was a reasonable presumption that life insurance business would not make any additional profits out of war conditions.

The other forms of insurance were, of course, not affected by the above exemption.

Principle of Excess Profits Tax :—As already stated above, the main principle underlying the levy of Excess Profits Tax by the Government is to find funds to meet the extraordinary expenditure to be incurred during times of emergency such as war.

And as it is well nigh impossible to determine whether the abnormal profits sought to be hit by the tax arose directly out of war and war alone, all excess profits from business (excepting a few) are assessed to tax during the war conditions.

It was pointed out by a Hon'ble Member (Dr. R. D. Dalal) in the Legislative Assembly that Excess Profits Tax is a much more equitable way of raising money than an increase in income-tax The principle that the State should get a part of the profits accruing from the war is correct and should be accepted by business men in India. The tax is both inevitable and, in principle, unexceptional.

The point of taxing excess profits not arising directly out of war was explained by the Hon'ble the Finance Member in his reply, thus :—"In times of war profits arise not merely from the direct supply for the materials of war, but from a large number of transactions which are inseparably connected with the essential features of a war time situation. There is a general quickening of the whole tempo of economic activity, and has its roots in the imperious demand for the necessities of war.

The principle of this Bill is not the taxation of profits which can be demonstrated to be due to the war ; it is the taxation of excess profits arising in war time and in war conditions, because it is based on a principle of priority of taxation, namly, that the cost of the additional defence measures should be borne in the first instance by those who in the conditions of war find themselves not worse off but better off.

It would, thus, appear that, though the principle of Excess Profits Tax Act, is *in esse*, to tax mainly such excess profits as arise out of war alone, although it has incidentally to tax such other excess profits also as might arise out of and during the war conditions, no "meticulous distinction" being possible to be made between the two. The principle of such a tax has been well recognized all over.

Nature and Scope of Tax :—(1) Excess Profits Tax, is "clearly of the nature of a temporary tax related to abnormal conditions and likely to be terminated when those conditions are considered to be no longer in existence".

Excess Profits Tax is leviable on profits arising out of cerrain businesses only, and on such profits as are in excess of the pre-war standard period and have accrued during the chargeable accounting period. Like income-tax, the tax is not chargeable on income profits or gains from whatever source arising. It is different from income-tax in that it is chargeable, not on all or 'total income' but only on profits arising from certain business. And it is only the excess of profits calculated in a way (as indicated in the Act) that is chargeable The assessment of the Excess Profits Tax is on the profits of the business and on the person owning the business or entitled to the profits*. Just as under Income-tax Act, capital profits are excluded.

The question whether any activity or set of activities does or does not amount to 'business' is essentially one of fact. Just as in England,† so in India, control of business is the test in case of business carried outside British India.

Profits of a profession carried on by an individual or individuals in partnership, which depend wholly or mainly on his or their personal qualifications are outside the scope of the tax.

The holding of investments or property by an incorporated company or society is however, a business within the scope of the tax.

Again, all businesses carried on by one person shall be taken to be one business and not different businesses separately assessable [Second Proviso to Section 2 (5)].

Measure of Excess Profits :—Excess Profits Tax, as its very name indicates, is levied on the amount of profits of the chargeable accounting period that are in excess of the standard profits. What is chargeable accounting period and how are standard profits to be determined' will be found indicated in Sections 2 (6) and 6 of the Excess Profits Tax Act, 1940.

If the Excess Profits do not exceed thirty six thousand rupees, no question of liability to Excess Profits Tax arises at all [Section 6 (4)].

History of Exeess Profits Tax Act:—

1. **In the United Kingdom**:—Tax on excess profits was first levied in the United Kingdom, at the time of the previous Great War 1914-1919, by the Finance Act (2) of 1915. Under the said Act, the Tax was levied as 'Excess Profits Duty'. How the profits chargeable, with the said Duty, the pre-war standard profits and the capital employed in the business were to be computed formed the subject of the Rules contained in Schedule Fourth (Parts I, II and III) of the said Act. The operation of the provisions of 1915 Finance Act was extended by the various subsequent Finance Acts, some new provisions relating to the Duty being added. The last one of these Acts so extending the provisions was the Finance Act, of 1919.

(2) On the outbreak of the existing hostilities in Europe, Finance Act (2) of 1939 was hurried through the Parliament, having been passed without being as closely examined as it would have been under normal conditions. This time it has been passed under title of 'Excess Profits Tax' and not 'Excess Profits Duty'. Although the Act, as it stands, contains several new features that did not find place in the 1915 Act, yet it bears a 'family resemblance' to the former Exeess Profits Duty Act. Hence, the case-law under the latter may well be referred to with advantage.

The main provisions relating to the Excess Profits Tax are contained in Part III (Sections 12-22) Finance Act (2) of 1939, Schedule 7 contains the Rules. It supersedes the Armament Profits Duty introduced by Part III, Finance Act, 1939 which together with the Ninth Schedule to that Act is repealed by Section 20 Finance Act (2) of 1939.

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n Per Sir W. Ayling Kt C. J. and Coutts Trotter and Ramesami JJ. in Commissioner Income-tax, Madras v N. Govindasami Naidu I I.T.C- 174 (176).

† Ogilvia v. Kitton 5 T. C. 338.

Though the Excess Profits Tax under the 1939 Act is modelled on the lines of the Excess Profits Duty under the 1915 Finance Act, there are many points of difference between the two taxes, in particular, as to the determination of the standard profits.

2. **In India** —(1) An Act for levying Tax on Excess Profits on the lines of the English Finance Act (2 of 1915, was passed in India towards the end of the last Great War of 1914-1919. Its provisions were similar to the United Kingdom Act of 1915. This Act was in force for a very short period and hardly any complications arose in the administration of it in this country, the provisions of the same being meagre and simple.

(2) The present Excess Profits Tax Act, 1940 has been enacted almost entirely on the lines of the English Finance Act (2) of 1939, some of the provisions of the English Law having been taken bodily from the Finance Act (2) of 1939.

The principal differences between the English and the Indian Excess Profits Tax Acts are due to the differences in the income-tax system in the two countries For example it has been possible in India to follow the income-tax profit more closely than in the United Kingdom because in the latter country the basis year for assessment can vary between the current year basis and the previous year basis. For this reason, in the United Kingdom, instead of taking the simpler course of following the income-tax profits for the purposes of computing standard profits, the calendar years 1935; 1936 and 1937 have been taken. These correspond fairly closely to the previous years' for income for the year 1937-38, and 1938-39.

The other main difference between the United Kingdom Excess Profits Tax and that levied in India relates to machinery, but the differences are more a matter of form than of substance.

Excess Profits Duty under 1919 Act and Excess Profits Tax under the 1940 Act.—distinc ion between :—The Excess Profits Duty Act of 1919 followed in India the old Excess Profits Duty formerly charged in the United Kingdom and contained in general same defects as the corresponding United Kingdom Duty Act. Perhaps the most important difference between the 1919 Duty Act and that in the 1940 Act is the exemption from Indian Excess Profits Duty formerly granted to all concerns paying England Excess Profits Duty. The 1940 Act makes no such exemption but does contain the double taxation relief provisions which the incidence of both taxes make absolutely necessary. Another difference is in the machinery provided for administering the tax.

Summary of 1940 Excess Profits Tax Act :—Excess Profits Act, 1940, imposes a tax of 50% on the excess of business profits made after the 1st September 1939 and for the chargeable accounting period beginning after 31st day of March 1941 be an amount equal to Sixty Six and two third per cent (66 2/3 %) (Under Finance Act 1941) over standard profits'. The main points covered by the Act are :—

(1) Business liable to Excess Profits Tax *i.e.* to which the Act applies, (Section 5).

(2) Computation of Standard Profits (Section 6).

(3) Computation of Capital (Schedule II, Rules).

(4) Computation of Profits for Excess Profits Tax purposes (Schedule I Rules).

(5) Relief in case of Deficiency of profits (Section 7).

(6) Cases of Succession and Amalgamation of businesses (Section 8).

(7) Inter-connected Companies (Section 9).

(8) Artificial transactions (Section 10;

(9) Double taxation Relief (Section 11).

(10) Penalties (Section 16).

(11) Provisional assesement (14-A).

Chargeability of tax :—The Excess Profits Tax Act appies only to 'business which includes something more than 'business' under the Indian Income-tax Act Professions are included in business except where the profits depend wholly or mainly on the personal qualifications of the owner and the business is not concerned mainly with the making of commercial contracts Business, the profits of which are subject to tax, are all those which, after 1st September, 1939, make profits in excess of Rs. 36,000 per annum, where they are liable to income-tax [under Section 4 Income-tax Act, 1922, amended 1939 Section 5 and 6 (4)] Exemption under Section 4, Income-tax Act 1922, are maintained as exemptions for Excess Profits Tax purposes also, while profits from Life Assurance businesses have also been exempted (Section 4 proviso).

Applicability of Section 4 (1) of Income-tax Act :—Under the Excess Profits Tax Act, profits only of such business fall within the scope of the tax as are chargeable to Income-tax by virtue of Sections 4(1) (b) (i) and (ii) and 4 (1) (c). Hence the profits in question should be those of a 'resident' or should 'accrue or arise' or' be deemed 'to accrue of arise' in British India ; like Income-tax and Super-tax, mere receipt of profits in British India would not attract Excess Profits Tax. The Excess Profits Tax Act is not applicable to profits of a business accruing or arising in an Indian State [Section 5 Excess Profits Tax Act amended by Section 3 (Amending) Excess Profits Tax Act Section 4 of 1941 adding Proviso 2]

Part profits :—Where part only of the profits of a non-resident or of a person not ordinarily resident accrue or arise in British India or are so deemed to accrue or arise under the Income-tax Act, the Excess Profits Tax Act applies only to the part of profits from business in British India, the same being treated as separate business, although all business to which Excess Profits Act applies are to be treated as one single business. The above case is an exception to the last mentioned Rule. Thus the ambit of the Excess Profits Tax is narrower in certain repects than that of the Income-tax Act Profits shargeable on 'remittance' or or receipt' basis under the Income-tax Act are exempt under the Excess Profits Tax Act.

Standard profits :—Standard profits are determined with reference to the profits of standard period. The selection of 'standard period' is at the option of the assessee, but he must take two of the 'previous years' stated [Section 6 (2) (a) to (d)]. This period cannot be less than nine months Again, a distinction is made in the case of businesses existing before 31st March, 1936 and those started on or after 31st March 1936. In the case of former, the standard profits are to be based only on a standard period. In the case of the latter *i. e* , a business started on or after the 31st March, 1936, standard profits shall, at the option of the person carrying on the business, be calculated by applying the statutory percentatge to the average amount of capital employed in the business during the chargeable accounting period [Proviso 2 to Section 6 (i)]. If such a business has been in existence long enough to have a standard period (not to be less than 9 months), the assessee may choose the period basis.

Deficiency:—In case of deficiency of profits, relief shall be allowed by adjustment, or repayments, the principle of 'carrying forward' being applied to the deficiency amount till it is exhausted [Section 7 (b)].

Succession and Amalgnmation :—Succession and amalgamation of business are to be ignored for purposes of the Act. The change would be ignored and a new business deemed to have been set up after a change (Section 8).

Inter-connected Companies :—Losses and profits of subsidiary companies shall be treated as those of the principal company [Section 9 (4) Schedule III]

Artificial transactions :—Fictitious and artificial transactions are not to be recognised so long as they are intended to reduce profits taxable under the Act (Section 10).

Double taxation Relief :—A number of companies will be liable to the Excess Profits Tax charged in the United Kingdom and also to that charged in India Provisions is, therefore, made for the granting of Double Excess Profits Tax relief.

National Defence Contribution is to be taken as Excess Profits Tax paid in United Kingdom and similar relief is to be allowed in respect of it also. The relief is available in case of Excess Profits Tax paid in Indian States also prior to the amendment of 1941 [Section 11 (1), Proviso].

Deduction of Excess Profits Tax :—Excess Profits Tax is allowed as a deduction in arriving at the profits for income-tax purposes *i e.*, income-tax is charged on the net amount remaining after deducting the excess profits tax which has been charged (Section 12)

Penalty :—Levy of penalty is provided for (by Section 10) for

(a) Default in furnishing return [Section 13 (1)].

(b) Default in production of accounts, documents or other evidence [Section 13 (2)].

(c) Ccocealment of particulars of profits or of capital employed, or deliberately furnishing false particulars as to these.

Previous sanction of Inspecting Assistant Commissioner is necessary for levying penalty. (Section 16 Proviso)

Companies having Direc tors with controlling interest :—Rule 7 of Schedule I relates to deduction or otherwise of remuneration of Directors having a controlling interest in a Company.

Managing Agents :—Rule 8 of Schedule I, relates to non-deductibility of remuneration of managing agents.

This exhausts the principal provisions for determining the amount of Excess Profits Tax payable There is very little to be said for the administrative side. The normal procedure will be an assessment by Excess Profits Tax Officers, (under Section 14, after notice under Section 13). Profits escaping assessment may also be assessed at any time within five yeary (Section 15). Normally, an appeal will lie to an Appellate Assistant Commissioner (Section 17) and a second appeal, only in case of imposition of penalty or enhancement of assessment or penalty, will lie to the Appellate Tribunal (Section 18) The Commissione is also given the power to call for records and pass proper orders therein, where necessary (Section 19). Mistakes may be rectified by the Commissioner within four years (Section 20).

Various amendments have been found necessary to be made in the Excess Profits Tax Act, 1940 during its brief existence. These have been duly noted at their proper plaees.

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EXCESS PROFITS TAX, ACT NO XV 1940

AN ACT TO IMPOSE A TAX ON EXCESS PROFITS ARISING OUT OF CERTAIN BUSINESS.

(*As Amended up to date*)

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 member.

1. (1) This Act may be called the Excess Profits Tax Act, 1940.

(2) It extends to the whole of British India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

Preamble :—A preamble always prefaces all Acts of the Legislature. It has its uses, the main one being the indication of the object and purpose of the particular piece of legistation. It is not a part of the Act itself but a mere recital.[1] It indicate the scope of the Act and furnishes a key to its construction,[2] and may be referred to in case of ambiguity.[3] Where the enactment is not ambiguous the preamble cannot override it.[4] A preamble has other uses also, for instance, it may be used to restrain the general inactments when it is necessary to do so for the sake of convenience [5]

The preamble of this Act has been amended by the Select Committee, with a view that it should contain a definite reference to the real aspect and object of this piece of legislation The Committee observe : - 'Having regard to the proposed objects of the Bill, to tax additional business profits which accrue as a result of the conditions prevailing during the war, we consider that the preamble should contain a definite reference to this aspect of the proposed legislation. We have, therefore, amended the preamble to indicate clearly that this new taxation is related to war conditions.... .....

The term "Excess Profits" is not defined by the Act, though the terms, 'Profits' and 'standard profits' have been defined in Section 2.

The term 'excess' has to be taken in its ordinary sense as meaning 'obnormal' or 'extra' profits Rule 1, Scheduled I, together with the provisos to the said rule, lay down how "profits" are to be computed for the purposes of this Act, to be assessed as "Excess Profits" (See under Rule 1, Schedule 1 *post*).

The term "certain businesses" indicates that the Act is not applicable to all businesses Section 5 *post* points out to what business the Act applies and to what it does not (See notes under Section 5 *post*).

Scope and applicability of Excess Profits Tax Act a English Law —Income from professions is exempted under the English Law [Section 39(c) Finance Act 2 of 1915] and according to the said Section the exemption applies to the profits of any profession depending mainly on the personal qualifications of the person and not an investment of capital. There is abundant English case-law on the point : *The Commissioner of Inland Revenue* v. *Peter McIntyre, Ltd*, [6] the first Division of the Court of Sessions, the Lord President (Clyde) pointed out: —"The exemption is of the profit of any profession the profits of which are dependent mainly on the personal qualifica-

(1) Brindaban Chandra Sircar Chowdhry v. B. C. Dey Choudhry, 13, Bom. I. R. 408 ; Collectors of Trichinopoly v. Lakshaman L. R. I. J. A. 268 (A. C.);

(2) Nga Hong v, The Queen ; 7 M. I. A. 27.

(3) Ibid : Ganesh v. Krishnoji 11 B. 387 Chuma v. M. Fakiruddid, 2 M. 322.

(4) Ibid.

(5) Karmnakar Mahali v. Niladhro Chodhury 5 Bombay L. R. 652.

(6) 12 T. C. 1013, at p. 1013=(1927) Scss. Cas 166-1927) Sc. L. T. 63.

tions of the person by whom the profession is carried on and in which no capital expenditure—or very little—is required. As has been seen, the present case is concerned with the profits earned by a company, in the business carried on by it. That business consists in performing for its clients the services of an auctioneer, valuator and Estate Agent. Such a business is, in part at least, what is known as a profession.

This is common ground between the parties and was the basis of the arrangement and instruction above referred to. But the profits of the company enjoy, exemption unless they are dependent mainly on the personal qualifications of the person by whom the profession is carried, namely, the company itself I do not doubt that the word "person", where it occurs in Section 39, may mean either an individual or a corporate person (See *Moorhead and Co.* v. *Inland Revenue*, 1924 S. C. 845); but the "person" by whom the profession is carried on must obviously be identical with the "person" on whose personal qualification the profits are mainly dependent In the present case the corporate person by whom the profession is carried on, namely the company,- has no personal qualifications upon which the profits can be said to be mainly dependent or, indeed, dependent at all ..... I put nothing upon the second condition—as to whether no capital expenditure is required So far as I can see, the present case raises no question about that..... It follows from what has been said that the profits of a profession may, or may not, fall within the statutory exemption, according as the person who carries it on as an individual on the one hand, or a corporate person on the other hand For a professional businesses may be carried on by a company as well as by an individual but, it by a company it is difficult to see how ths profits can be dependent on the company's personal qualifications for the simple reason that a company is incapable of personal qualifications. That is all, as I understand, that was decided by Mr Justice Rowlatt in *William Esplen, Son and Swainston, Ltd* v. *Commissioner of Inland Revenue* (1919) 2 K. B. 731 and I respectfully think his decision was right

(*Per Lord Sands*) : "The Section provides that where the profits are dependent mainly on the personal qualifications of the person by whom the profession is carried on, the exemption shall hold. *In Currie* v. *The Commissioner of Inland Revenue*[7] assessee carried on the business of the Income-Tax Payer's Appeal Agency and did the work of an accountant. He was not a Chartered Accountant, nor a member of any organized professional body He specialised in income-tax. assisting people in Income-tax matters For his services in connection with income-tax matters, he frequently charged a percentage of the amounts discharged or recovered from the Revenues authorities by way of repayment Little or no capital was required to carry on his business It was held that assessee was not carrying a profession exempt under Section 39 (c).

Durant' case (*Durant* v. *Commissioner of Inland Revenue*[7a] (assessee acted in respect of insurance business as follows : —"Upon receipt of the necessary instructions from any person wishing to effect an insurance against fire he surveys the premises to be insured and makes plans thereof; he advises as to any structural alterations the carrying out of which would, in his opinion, result in a reduction of premiums, and, in conjunction with architects, superintends the carrying out of such alterations : he draws up schedules of particulars of properties to be insured and drafts policies, he advises as to the company or companies with which and the amount for which the insurance should be effected ; and he negotiates with company or companies selected, and carries matters through to their final conclusion. He acted as a surveyor, valuer and appraiser only in connection with his insurance work. It was *held* that he was not carrying on a profession. The profession of a journalist and editor may, however, be carried on as separate from publication business, and the profits of the two may be separable for Excess Profits Duty proposes.) *Commissioner of Inland Revenue* v. *Maxee* 12 T. C. 41 (49, 50, 56, 8, 59-63).

(*b*) **Indian Law;**—Obviously, the same exemptions apply so India also. This has been made clear in Section 2(5) defining the term " business : see notes under

(7) 12 T. C. 245, 247, 260, 261.
(7a) 12 T. C. 245 (249, 250, 256 (1920) I.K.B. 801-1921) 2 K. B. 332-337 I.L.R.

Section 2(5) below. When the Excess Profits Duty was imposed at the time of the last war, the then Excess Profits Duty Act of 1919 contained a Schedule (Schedule of excepted business), which was based on the English Provisions of the 1915 Finance Act.[1]

Section 1 (1) Title :—The Title of an Act is a part thereof through the preamble is not It is an accepted practice to refer to the title of an Act in construing the doubtful portions thereof.[1-a] A title of an Act, however, would not restrict the enacting portion thereof when there is no ambiguity [2].

Section 1 (2) :—Section 1 (2) lays down the area to which the Act applies. The Act applies to the whole of British India. The term "British India" (as distinct from "India", defined by Section 3 (27) General Clauses Act, of 1897), has been defined by Section 3(7) General Clauses Act, 10 of 1897, to mean, "all territories and places within Her Majesty's Dominion which are, for the time being, governed by Her Majesty through the Governor General of India or through any Governor or other officer subordinate to the Governor General of India."

The above definition is now to be read in the light of the Government of India (Adaptation of Indian Laws) Order 1937 according to which, after 1st April 1937, 'British India' would mean and include all territories for the time being governed (1) by the Governors of the Provinces, *e.g* , Bombay, Bengal, Madras, U. P., the Punjab, Bihar, C P., Berar, Assam the N. W. F. Province, Orrisa, and Sindh—(2) by the Chief Commissioner, *e g.*, British Baluchistan, Delhi, Ajmer-Merwara, Coorg. By Section 95, Government of India Act, special notification of the Governor General is necessary for application of an Act of Legislature to British Baluchistan. Such a notification has already been made both with regard to the 1940 Excess Profits Tax Act and the subsequent Amendment Acts (*vide* notification No. 13-W dated 26th June 1940, No. 224-N., dated 19th December 1940 and notification No. 51-F., dated 1st April 1941.)

Section 1 (3) : —An Act of Legislature generally comes into force on the day it is passed or on the date from which it is expressly indicated by an enactment to operate [3]

Usually, an Act has no retrospective effect, unless expressly provided for so to operate.

The necessary notification regarding the coming into force of Excess Profits Tax Act was duly published in the Gazette of India on the 13th April 1940, and the same was the date on which the Act come into force. The Excess Profits Tax Amendment Act, 1940 came into operation on the above date on which the Excess Profits Tax Act came into force (*i.e.*, 13th April 1940.) In other words, the Amending Act 1940 gave retrospective effect to the Amendments therein contained [Section 1 (2)] Excess Profits Tax Amendment Act 1940] When the Bill to amend the Excess Profits Tax Act, 1940, as reported by the Select Committee, was being considered, it was pointed out by an Hon'ble Member of the Legislature (*Mr. Mohd. Azhar Ali*) : "There are two points which I would like to *touch* upon : the first is about the retrospective effect to be given to this Bill. I think it may work a little hardship; it may be difficult for accounts to be sufficiently *adjusted*. To this the reply of the Hon'ble the Finance Member (*Sir J. Raisman*), was: "I should perhaps point out that we have not yet made assessments and that the Act as amended by this Bill will be the enactment which will be applied in making assessments, so that no question of hardship can arise from the fact that these amendments will have restrospective effect."

Thus, the fact remains that both the Excess Profits Tax Act 1940 and the Amending Act XLII, 1949 come into operation on the same date, *viz.*, 13th April 1940.

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(1) Kaladan Suratee Bazar Co. In re. 1 I. T. C. 50 (52).

(1-a) R. B. Sundar Das v. Collector of Gujrat 1 I. T. C. 189.

(2) Mohd. Ali v. Assadunnisa Bibi Suppl. Vol. B. L. R. 774.

(3) Sh. Attur Rehman v. Commissioner Income-tax Punjab 1934 I. T. R. 339 ; 7 I. T. C. 409 Delhi Cloth and General Mills Co. v. Commissioner of I.T. 1928 P. C. 242 2 I.T.C. 439.

The Excess Profits Tax Act (Amendment) Acts, (XI & XXIV) respectively, 1941 came into effect on the dates they received the assent of the Governor General *i e.*, on the 31st, March 1941 & 26 November, 1941.

Definitions.

Section 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 the Indian Income-tax Act, 1922

(2) " Appellate Assistant Commissioner " means a person appointed to be an Appellate Assistant Commissioner of Excess Profits Tax under Section 3 ;

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

(4) "Board of Refrees" means a Board of Refrees appointed under Section 3 ;

(5) " 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 investment or property shall be deemed for 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 shall be treated as one business for the purposes of this Act ;

(6 " Chargeable accounting period " means : -

(a) any accounting period falling wholly within the term beginning on the 1st day of September 1939 and ending on the 31st day of March, 1945,[1] and

(b) where any accounting period falls partly within and partly without the said term, such part of that accounting period as falls within the said term :

(7) " Commissioner " means a person appointed to be or Commissioner of E. P T under Section 3.,

(8) " Company " means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or latters patent or of an Act of legislature of a British possession or of a Law of an Indian State, and includes any foreign association, whether incorporated or not, which the Central Board of Revenue may, by general or special order, declare to be a company for the purposes of this Act ;

(9) " 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 ;

(1) This date shall vary every year on the passing of the Finance Act each year

(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;

(10) "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 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 ;

(11) "dividend" has the meaning assigned to the expression in Section 2 of the Indian Income Tax, Act, 1922 ;

(12) "Excess Profits Tax Officer" means a person appointed to be an Excess Profits Tax Officer under Section 3 ;

(13) "income" has the meaning assigned to the expression in Section 2 of the Indian Income Tax Act, 1922 ;

(14) "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 ;

(15) "Inspecting Assistant Commissioner" means a person appointed to be an Inspecting Assistant Commissioner of Excess Profits Tax under Section 3 ;

(16) "loss" means a loss computed in the same manner as, for the purposes of this Act, profits are to be computed ;

[1](16-A) ordinary share capital" has the meaning assigned to that expression in Sub-section (8) of Section 9 ;

(17) "person" includes a Hindu undivided family ;

(18) "prescribed" means prescribed by Rules made under this Act.

(19) "profits" means profits as determined in accordance with the First Schedule ;

(20) "standard profits" mean standard profits as computed in accodance with the provisions of Section 6 ;

(21) "statutory percentage" means—

(a) in relation to a business carried on by a body coporate (other than a company the directors whereof have a controlling interest therein) eight per cent per annum ;

[2](b) in relation to a business carried on by a partnership of which one or more partners is a body corporate (other than a company the directors where of have a controlling interest therein), such a rate per cent as is equivalent to—

(i) eight per cent. per on so much of the average amount annum 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 July 1938, the foregoing percentages shall be increased from eight, ten and six per. cent. to ten, twelve and eight per cent respectively ;

(1) This clause was inserted by Section 2 of the Excess Profits Tax Amendment, Act, 1941 (XI of (1941).

(2) Clauses (b) and (c) were substituted for the old Clause (b) by Section 2 of the Excess Profits Tax (Amendment) Act, 1910 XLII of 1940.

(22) "written down value" has the meaning assigned to that expression in sub-section (5) of section 10 of the Indian Income Tax Act, 1922.

Section 2:—Section 2 is the general defining or interpretation clause, as it is also called. The marginal note to Section 2 indicates that the Section contains "definitions" of certain terms requiring explanation with reference to their use in the Act.

It is a well recognized principle of legislation that usually, the "definitions" given in an Act of Legislature are meant for that particular Act and are not meant to be imported into any other enactment of the Legislature. For this purpose Rules and Notifications are included in the Act.

Unless there is anything repugnant in the subject or context:—These words almost invariably preface a defining section of an Act and are obviously necessary, being a saving clause, meant to help in the construction of the definition or the meaning of the terms given in the Section. The two terms invariably used to define the particular terms in an Act are "includes" and "means".

There is a distinction between these two terms. The term "includes" is wider than the term, "means"*

The expression "shall include" is not equal to "shall mean 2".† It extends and does not restrict the definitions.‡

The term "includes" is used to extend or enlarge the meaning of the word, so that the term defined as "includes" indicates that, though it embraces or includes, what the defining Sections says, it means something else according to its natural meaning. In some cases, "includes," may be equivalent to "mean and include" and in such a case it may afford an exhaustive explanation of the meaning which for the purposes of the particular Act must be invariably attached to those words or expressions.[1]

The term 'means' is used to indicate that the definition is 'exhaustive'.[2]

(1) Accountiug period:—The term 'acccounting period' is quite as important in connection with assessment to Excess Profits Tax as the term 'previous year' is with reference to the assessment to income-tax.

'Accounting period' primarily is the successive period of twelve months when the accounts of the assessee's business are, in due course, made up for such period.

In any other case, the Assessing Officer has the power to determine the same [Section 2 (1) (b)]. And, in so determining the accounting period, a duty has been cast upon the Excess Profits Tax Officer to have regard to the previous years, if any, of the assessee determined for income-tax purposes. [Proviso to Section 2 (1) (b)].

Cl. (a) 'Business' shall have the meaning assigned to it under Section 2 (5) *infra*.

Made up:—The expression 'made up' means so kept and prepared that the true profits of the 'business' can be deduced therefrom. It has the same idea as is intended to be conveyed by the words 'properly be deduced therefrom' in Section 13. It is notable in this connection that Section 13 Income-tax Act applies to E. P. T. also by Section 21 E. P. T. Act.

An abstract of accounts made from 'quarterly tolals', where stock was taken annually, was not accepted as 'made up' in the sense used herein. [*James Cycle Co.*

(*) Bengal Coal Co., v. Janardhan Kishorelal De 1936 I. T. R. 992

(†) R. v. Keshav 26 L. J. M. C. 19.

(‡) R. v. Herna 27 W. R. 475; 40 L. T. 263.

(1) Dithworth v. Commissioner of stamp 1899 A. C. 105 (106, 68 L. J.P.C. 4; R v. Graud and others 16 B-263; R. v. Asuntosh Chakravarti 4 C. 483, Vyankajo v. Sarjoo Rao Appajoo Rao 16 B, 536.

(2) Royal Turf Club v. Secretary of State 48 C 844, 1 I.T.C. 108, Commissioner of Income tax Bombay v. Mutual Association of Australasia 1933 Bom. 427.

Ltd v. *C. I. R.* 12 T. C. 98, (101). See also *John Marston Ltd.* v. *C. I. R.* 12 T. C. 106, 110].

In another English case *Hall* v. *C. I. R.* 12 T. C. 382, 385, 390 (1921) 1 K. B. (213), profits of the pre-war period, during which contracts was made, were ignored and profits of the period when the goods were actually delivered were taken to be profits of "accounting period". Subsquent receipt of profits is no consideration, where the profits relate to work done during the accounting period (*Isaac, Hilden & Sons Ltd.* v. *C. I. R.* 12 T, C. 768)

Periodical Accounts:—It may be in various business concerns that alternatively, periodical accounts (say, six monthly or three monthly accounts) may be complied for the benefit of the directors in addition to the twelve monthly accounts which are presented to the shareholders. In such cases the question requiring attention is : which are the 'accounts' for the purpose of standard period for computing standard profits. It has been considered in a very recent case of *Jenkins Productions Ltd.* v. *C.I R* (1944) 4 I. T. C. 98 : 1944 A. T. C 329; 1944 1 All E. R. 610 The facts of his case are: The appellant campany had made up for each half yearly ended the 30th June and 31st December a trading and profits and loss account and a balance sheet and the accounts included the figures of stock at the end of each half year. These half yearly accounts were audited and were regularly placed before the directors and were approved by them. The annual general meeting of the company were held on some date in October or November and at each of these meetings the directors presented to the shareholders accounts for the twelve months ending on the previous 30th June. The special Commissioners held that the 'accounts' to be considered in arriving at the standard profits of the appellant's company's trade or business for the period in question are the accounts ended 30th June, and so for the year 1935 accounts ending 30th June, 1936 as presented to the shareholders in the general meeting. On appeal before the Kings's Bench Division, the upholding of the Special Commissioners was reversed and it was held that to determine what periods should be taken for the purpose of ascertaining the standard profits of the appellant in the year 1935, the only periods to be selected can be periods of six months, since the accounts of the appellants were always made for such periods and half years of 1935 must be selected (i. e, two half yearly accounts ending 30th June 1935 and 30th December, 1935 both by aggregation) and not annual account ending 30th June, 1936 as presented before the general meeting of the company because a period falling wholly outside standard year can not be selected.

'Successive period of twelve months'.—In order that clause (a) shall apply, it is imperative that account should have been made up for a '*successive*' (without break) periods of twelve months; else clause (b), and not clause (a) of Section 2 (I) shall apply, (The period of 12 months may be made up by rests of 3 months or otherwise).

Cl. (b):—Clause (b) applies to all cases not falling under Cl. (a) These may be the cases where the assessee has not adopted a period of twelve months as his accounting period or has varied the length of such period or if the accounts as made up are not clear or conclusive.

The Excess Profits Tax Officer's discretion in the matter is not limited to adopting an accounting period of 12 months ; nor to a period ending 31st March ; nor need the successive periods determined by him be consecutive. It is limited, if at all, in the matter by the provisions contained in the Proviso.

Where accounts are made up for a period of more than twelve months, adjustment shall be made by apportionment.

Proviso :—The provision of this Proviso limit the Excess Profits Tax Officer's power as to selection of accounting period. He is to adopt the accounting period with due regard to any 'previous year' of the business determined under the Income-tax Act [Section 2 (11)]. If he adopts any other accounting period, he should give good and adequate ground for it, else these will form subject of appeal. Thus, normally the 'accounting period' for Excess Profits Tax purposes will coincide with

the previous year for Income-tax purposes. (Para 21, Notes and Instructions on Excess Profits Tax Act). A chargeable accounting period is different from an 'accounting period'. See Section 2 (6) below.

(2) **Appellate Assistant Commissioner** :—Excess Profits Tax Authorities are enumarated in Section 3 below. Sub-section (1) (c) of that Section relates to Appellate Assistant Commissioner of Excess Profits Tax. According to Section 3 (2) an Appellate Assistant Commissioner of Excess Profits Tax is to be the same person who is exercising the function of Appellate Assistant Commissioner of Income-tax under the Income-tax Act 1922 (as amended by the 1939 Amending Act). The scheme of administration under the Excess Profits Tax Act is the same as under the Income-tax Act.

(3) **Average Amount of Capital** :—The question of computing the average amount of capital employed in an assessee's business is of primary importance, in connection with his assessment to Excess Profits Tax, as it forms a deduction and is an important item in the calculation of 'standard profits', defined in Section 2 (21) *post*, and dealt within detail in Section 6 below (see notes under both these, post, and also notes under Rules to Schedule II) Rule 1, Schedule III relates to the determination and calculation of the average amount of capital for the purposes of this Act.

The average amount of capital employed in any business is to be computed with reference to and in accordanse with the Rules laid down in the Second Schedule to the Act.

It is a principle of law relating to the determination of profits of a business to take into account the capital employed in it as it forms a fair standard.

Profits and losses of the period for which calculation of the average amount of capital employed in the business is made are to be taken into account (Rules under Schedule II below.)

(4) **Board of Referees** :—Section 3 provides that amongst the Excess Profits Tax Authorities there shall be a Board of Referees. It shall be constituted in accordance with the provisions of Section 3 (6). It shall consist of not less than three and of not more than five persons, not less than half of these being non-officials with business experience, and one shall be a judicial officer not inferior in rank to a Subordinate Judge or Judge of Small Causes Court who has held judicial office for a period of not less than ten years [Section 3 (5)]. For functions of the Board of Referees see under Section 6 *post*.

It is notable that Section 6 (3) of the Excess Profits Tax Act, relating to the function and power of the Board of Referees is based on Section 13 (7), Finance Act (No. 2) of 1939, United Kingdom Law. And, the Finance Act, 1940, United Kingdom has very much amplified the powers of the Board of Referees as would be evident from the following extract from the Debate in the House of Commons (by *Sir J. Simon* in his Budget speech) ;—There is one class of amendment which is of such importance that I ought to mention it now. It has to do with Section 13, sub-section 7, of the Finance (No. 2) Act. That sub-section confers powers on the Board of Referees to allow a substituted standard when the figures of past profits would not constitute a reasonable standard. This particular provision was intended to deal with cases of hardship. It was not intended, and it will not be intended to lay down an alternative standard of general application ; all that will remain in principle as it was ; but I am satisfied that we must amend the wording of that sub-section in order that it may properly carry out the purpose for which it was framed. In particular, we must see that any new wording provides adequately for concerns belonging to depressed industries, or concerns which in the standard period were still in the process of development. In addition, I must meet the legitimate criticism that the limitation of that sub-section in ordinary cases to a percentage calculated in relation to share capital, without having any regard to the financial structure of the Company, is not one that can be defended as fair between one Company and another.

These changes will not, I hope, create controversy, because they are recognised as being called for in order to make a reasonable standard. I propose, therefore, that the machinery of the Board of Referees shall be available in the case of all concerns for which the profits of the standard years were so low as not to constitute a reasonable standard. There will be particular provisions in the case of industries suffering from depression in the pre-war years, so as to ensure that adequate standards will be available. Where the share capital does not adequately represent the trading assets, the real value of those assets will be taken into account in computing the substituted standard.

(5) **'Business'**:—The definition of the term 'business', as given in the Excess Profits Tax Act, 1940, is far wider than the one that existed in the Excess Profits Duty Act 10 of 1919. In the definition as given in the 1940 Act, the provisos have been taken bodily from English Finance Act 2 of 1939 relating to Excess Profits Tax. In the Bill as presented there were three provisos ; the first proviso now forms part of the definition, being the last portion of it. The other two provisos are the same as they stood in the Bill As such, the English case-law on the subject would be applicable

The words used in the first (affirmative) portion of this definition are the same as used in the Indian Income-tax Act, 1922 [Section 2 (4)],

It was pointed ont in an English case [*St. Aubyn's Estate Ltd.* v. *Strick* (1932) 17 T. C. 412, per *Finlay, J*] that the word 'business' is only a convenient way of expressing a trade, manufacture, adventure or concern in the nature of trade. The fundamental conception of 'business' as defined above (the first or affirmative portion) was very ably explained by their Lordships of the Privy Council in the Indian case (*C. I. T.* v. *Shaw Wallace & Co.* 59 I. A. 206 ; 6 I. T. C. 178 ; A I R. 1932 P. C. 138 ; 1. L. R. 59 Cal. 1343 P. C.), where their Lordships observed. "The words used are no doubt wide but *underlying each of them is the fundamental idea of the continuous exercise of an activity*.. .....Under Section 10 I. T Act) tax is p yable by an assessee under the head 'business' in respect of profits or gains of any business carried on by him. Again their Lordships think, the same central idea ; the words italicised are an essential constituent of that which is to produce the taxable income ; it is to be the profits earned by a process of production". The negative portion of the definition beginning ith the words. 'but does not include'.. .....and ending with the words, 'the making of contracts' and the two Provisos, further explains and amplify what a 'business' under the Excess Profits Tax Act is intended to imply. The negative portion of the definition above quoted points out when is a profession a business. The first Proviso includes within 'business' the business of Investment Companies. The second Proviso points out that all separate and different businesses are to be treated as one business All this concludes the definition of business and indicates what the term 'business' embraces under the Excess Profits Tax Act. We will briefly discuss the above elements and constituents of 'business' in detail *seriatim* below :—

Business—Import of:—It has already been stated above that business is wider than 'trade'. But what is the true import of 'business'? Any thing which occupies the time, attention and labour of man for the purpose of profit is 'business'.[1] The word 'business' is one of large and indefinite import.[2] 'Business' includes also any adventure, *e. g.*, the negotiation of the sale of a large mill resulting in a large commission being levied.[3] The idea of profit being predominent in business it is immate-

(1) Smith v. Anderson 15 Ch. D. 358: 50 L. J. Ch. 43, Rolls v. Miller. (1884) 27 Ch. D. 71 (88) Commissioner Inland Revenue v. Marine Steam Turbineco (1920) 1 K. B. 190; 12 T. C. 174, Rogers Pytt Shellac Co, & v. Secretary of State 1 I. T. C. 363 (374)

(2) 15 Ch. D. 258 et seq (p. 20).

(3) Chunilal Kalyandas In re: 47 A. 368; 1 I, T. C. 419.

rial as to how the profits are applied, the motive of making profits also being immaterial.4

In each case whether it is a case of business or not is a question of fact.5 The question also, whether the business is one or many is one of fact.6 For a person may have more that one business.7 A casual dealing or an isolated transaction, even though resulting in profits, is not business, intention gathered from facts and circumstances of these being looked into.8

Trade :—'Trade' has been used in English law for 'business' and though ordinarily speaking, 'business is synonymous with 'trade'9 yet 'business' has admittedly more extensive meaning than 'trade'10 'Trade' in its largest sense is the business of selling, with a view to profit, goods which the trader has either manufactured or himself purchased.11 Buying in itself does not constitute a 'trade'; unless the selling also is taken into account there are no profits.12 Trade is a compound fact made up of variety of incidents 13 A series of retail purchases followed by one bulk sale or a single bulk purchases followed by a series of retail sales may well constitute a 'trade'.14 Where a person habitually does and contracts to do a thing capable of producing profit, and for the purpose of producing profit, he carries trade.15 Though it is perfectly true that trade does, as a matter of fact- it may be in 99 out of hundred cases—include the idea of profit, yet the mere word 'trade' does not necessarily mean profit to be made by the seller from the buyer or by the buyer from the seller 16 As no man can trade with himself, members of mutual societies whose interests in the transaction for which the society exists are identical, cannot be said to trade' amongst themselves.16-a Where, however, services are rendered to non-members income derived therefrom may be income from business' and therefore chargeable (*New York Life Insurance* v. *Styles* 2 T C 460 ; *Dublin Corporation* v *Mac Adam* 2 T. C. 387 ; *Board of Revenue* v. *Mylapore Fund* 1 I. T C. 217) A trustee for creditors who, while winding up the firm's business, carried on a portion of it for profit was, to that extent, held to have been carrying on 'trade'.16-b 'Trade' excludes the idea of single or isolated business (See *Commissioner of Income-tax, Bengal* v. *Shaw Wallace* 6 I. T. C 118 (P. C.)

'Commerce':—The term 'trade' and 'commerce' are taken in ordinary parlance to be synonyms *Stroud* defines 'commerce' as, traffic, trade or merchandise in buying and selling of goods". According to *Webster* 'commerce' is the 'exchange' or

(4) Trustees of Psalms & Hymns v. White Well, 3 T. C, 7. Religious Tract & Book Society v. Forbes 3 T. C. 415; Groves v. Y. M. C A. 4 T. C 613, Mersey Docks v. Lucas, 1 T. C. 385; Commissioner v. Governors of Rotunda Hospital, 7 T. C. 517; C. I. R v. The Incorporated Council of Law Reporting 3 T , C. 105.

(5) Mellers v. C I. R. 3 A. T. C. 359, Athlone Land Co. v. Secretary of State, 1 I. T. C. 167; Edwards v. Old Bush Mills Distilly Co. 10 T. C. 285.

(6) Gloncester Rly. Carriage Co. v. C .I R. 12 T.C. 720.

(7) C. I. R. v. Maxos (1919) 1 K. B. 647, C.I.R. v. Ramon (1918) 2 K. B. 749, Egyptian Hotels Ltd. v Mitchell 1915 A. C. 1022, 6 T. C. 542.

(8) Ganga Sagar (R. B.) Soth v. Commissioner 1 T. U. P. & C. P. 1 I. T. C. 81, 1934. All. 370.

(9) Delomy v. Delamy 15 L. R. T. V. 67.

(10) Harris v. Amory 35 L. J. Ch. 92, L. R. I. C. P. 148, Rolls v. Miller 53 L. J. Ch. 101.

(11) (Per Lord Daney, in Grainger v. Gugh (1896) A. C. 345 ; 3. T. C. 462

(12) (Per Lord Waston) in 3 T. C. 462.

(13) Ber Jessel M. B.) in Erichen v. Last 4 T. C. 420.

(14) (Per Sargent L. J.) in Martin v. Lowry 11 T. C. 297.

(15) (Per Esher M. R.) in Warts v. Cuhoun 2 T. C. 492.

(16) C. I. R. v. The Incorporated Council of Law Reportion 3 T. C. 105.

(16-a) Dublin Corporation v. M. C, Adam 2 T. C. 387.

(16-b) Armitage v. More 4 T. C. 199 (1900) 2 Q. B. 363 Coman v. The Governor of Rotunda Hospital, Dublin 7 T. C. 517.

buying and selling of commodities, specially on a large scale. The distinction between 'trade' and 'commerce' is after all, very subtle, being one of degree only, commerce indicating a larger scale of activities of buying and selling between different countries and communities. The distinction, is however, immaterial.

Manufacture.

'Manufacture':—implies necessarily the idea of making by man of something tangible and substantial from the matters, subject to his art and skill, or at the least, some mode of employing practically his art and skill. This is what is required to satisfy the word 'manufacture'.[1] To work up into form suitable for use is 'manufacture'. (*Murray's New English Dictionary and Annandale's Concise English Dictionary*). "To make from raw materials by any means into a from suitable for use" is 'manufacture'.[2] Although the terms 'trade', 'Commerce' and 'manufacture' are wide enough, yet the underlying idea in each of them is the 'continuity' or the continuous exercise of an activity relation to it.

Adventure.

The term **'Adventure'** according to *Webster*, is mercantile or speculative enterprise or hazard ; it is a bold and dangerous undertaking of uncertain issue, a speculation of any kind commercial or financial.[3] The term connotes the idea of risk, be it even remote.

Concern.

The term **'concern'** means an affair, an establishment, a firm for a transaction of business, a manufacturing or commercial establishment. There is some idea of continuity involved in 'concern' as opposed to risk in an 'adventure.'

In the nature of the trade, *commerce or manufacture* these words qualify only 'concern' and not 'adventure'. The term 'business' is wider than 'trade.'

Profession :—The last part of the definition expands the ambit of 'business'. It includes certain professions and excludes others. According to para 17 (3), Notes and Instructions on Excess Profit-tax Act, 1940 (issued by C. B. R.) professions are in general exempt. The general scheme, however, inclines to the view that professions are generally included in 'business.' Profits of a profession carried on by an individual or individuals in partnership, where the profits depend wholly or mainly on the personal qualifications of the individual or individuals, are exempt by the later part of definitions of the term 'business'. (Section 2 (5). There is, however, an exemption upon the above exemption which is this : a business consisting wholly or mainly of making contracts on other's behalf of giving of commercial advice to others in the making of such contracts. That is to say, a profession of the nature last named shall be chargeable to Excess Profits Tax.

Profession ; What is :—It is impossible to lay down any strict legal definition of what is a 'profession' because people carry on such infinite varieties of trades and business that it is a question of degree in every case whether the form of business is or is not a profession (*Currie's case* 12 T. C. 245).

A profession . . . . . involves the idea of an occupation requiring either purely intellectual skill, or any manual skill, as in painting and sculpture or surgery, skill controlled by the intellectual skill of the operator, as distinguished from an occupation which is substantially the production or sale arrangements for the production or sale of commodities. The line of demarcation may vary from time to time. The word 'profession' used to be confined to the three learned professions, the Church, Medicine and Law. It has now a wider meaning. Per *Scrutton L. J.* in *Maxse's case* 12 T. C. 41, at 61). If a man carries on the occupation of advising people upon purely commercial matters he is not a professional man ; on the other hand if he confines himself to advising on matters that depend upon intellect, he is clearly a professional man.

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(1) V. F. Gibson v. Bran 4 M. and G. 199; 11 L. J. C. P. 177.

(2) Twentieth Century Chomber's Dictionary.

(3) Imperial Dictionary.

(Per *Rowlal J.* in *Durrant's* cases 12 T. C. 245) whether a person carries on profession is a question of fact[1] (Lord *Sterndale* M. R. in *Curries case* 12 T. C. 245).

Before one can say that a man is carrying on a profession one must see that he has some special skill or obility, or some special qualifications derived from trading or experience with regard to the native of the question whether a man is carrying on a profession or not, the answar to the question must depend upon the circumstances with which the court is concerned. In a very recent case of *Webster* v. *Inland Revenue Commissioners* (1942) 2 All. E R. 517 it was held that an optician who was a member of the Worshipful Company of spectacle maker of the British Optician Associations and a member of the Joint council of Qualified Opticians used to test the sight of the spectacles from a spectacle maker and examined the spectacles according to the prescription was carrying on a trade as his accounts did not represent for sight charges and prescription although he alleged that the charges for testing and prescriptions were taken into consideration and as sight testing and making out prescription were the natural consequences of his trade of spectacles.

In an other recent case of *Car* v. *C. I. R.* (1944) 2 All E. R 163, an optician with no medical qualification practising on the ground flour of a house with a waiting room and two consulting rooms and a show window for display of optical frames without glasses and having his income wholy derived from fees paid for advice and from the assembly and supply of optical appliances to his own prescription and charge of an inclusive fee to include sight testing and supply of appliance was held to have carried on a profession in an appeal before the Court of Appeal.

The following should not be regarded as exempt :—

Stockbrokers, Stockjobbers, Insurance Brokers, since they act as agents in making contracts, or give to clients advice of a commercial nature in connection with the making of contracts while, Bookmakers, Publicity Agents, Racehorse Trainers & Ship Brokers, whose activities are rather commercial than professional, should also be treated as chargeable.

It will be observed that the wording of the sub-section bars any claim that might be made by a company that it is carrying on a profession.

Para 18 of the Notes and Instructions enumerates 'profession' that are outside the scope of charge to Excess Profits Tax and those that are subject to the charge.

1. Accountants	8. Fires Assessorics
2. Architects	9. Insurance Assessors
3. Artists	10. Patent Agents
4. Authors	11. Private Schools
5. Barristers	12. Quantity Surveyors
6. Concenthing	13. Solicitors
7. Doctors	14. Surgeons

Proviso 1:—The provisions of this Proviso have been taken bodily from the English (Finance Act, 2) Act, 1939, Section 12 (4). While the Section excluded a particular line of business, i. e , 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, this Proviso includes as business the function of a company consisting wholly or mainly in the holding of investments property.

By the above Proviso to Sectien 2 (5), a company incorporated, holding investments or other properties shall be deemed to carry on business that profits of which

(1) Per Lord Sternales M. R. in 12 T. C. 503, 525.

are chargeable to Excess Profits Tax. Thus Investment Trust Companies, Estate Companies, Property owning companies etc are chargeable. (Para. 16 Notes and Instruction).

This investment Income is to be treated as Profits-tax only in the case of the following classes of business.

(*a*) Building Society.

(*b*) Money lending business.

(*c*) Banks.

(*d*) Insurance business other than life assurance business which is exempt

(*e*) "Dealing businesses *i.e.* stock jobbers consisting wholly or mainly in the dealing in investments; and in investment companies *i-e* businesses consisting work or (*f*) and mainly in the holding investments carried on by companies or incorporated societies.

Under the English Law, a 'holding' company whose principal business consisted of making investment was held to carry on trade or business. [*Commissioner Inland Revenue* v. *The Tyre Investments Trust Ltd.* (12 T. C. 646)].

Holdings in War Loans and other British Government Securities have been held to be investments (*Liberty & Co. Ltd* v. *C. I R.* 12 T. C 630). 'Investment' is a word which must be taken in its ordinary and business sense. "It is 'not to be enlarged figuratively, nor controlled by some motion about the scheme or policy, if there was one, of the Emergency tax *i e.*, Excess Profits Duty.....I think that in such a statute, the plain meaning is the true one, and I am unable to see any ground here for adopting any construction which is less than plain". [Per *Lord Sommer* in *Gas Lighting Improvement Co. Ltd.* v. *C. I. R.* 12 T. C. 503 (543)]

"Investment is to be taken in its ordinary sense as being an investment, whether it be or be not connected with the business that is carried on by the investor [1] The same interpretation was put by Pollock M. R. in *Liberty & Co. Ltd.* v. *The Commissioner Inland Renenue* (12 T. C 630, 642) cited above.

Holdings of war loan were held to be investments, for the purposes of Excess Profits Duty.[2]

In the *Lincoln Wagon and Engine Co. Ltd.* v. *The C. I. R.* [12 T. C. 404 (502] Treasury Bills and War Loans held by a Company were held to be investments. Investments by a company on Treasury Bills as were renewed from time to time on maturity were held to be investments.[3]

Exemptions:—Profits of Life Insurance business (but not of other Insurances) and income from business falling under Section 4 (3) are exempt. In case of tea growing business, only 40% of profits assessable for Income-tax purposes is liable to Excess Profits-tax charge. Professions generally fall outside the scope except those above enumerated (Para 17, Notes and Instructions). The nature of proof required to establish exemption from charge is indicated in para 19 Notes and Instructions.

Proviso 2:—This is also the same as the English Law contained in Section 12 (5), Finance Act, 2 of 1939.

By this Proviso, all businesses carried on by one person, and which are within the charge are to be treated as one business. Thus one assessment to Excess Profits tax is to be made in respect of all such businesses carried on by one person. Para 20, Notes and Instructions).

Same person:—The words used in the proviso are:—

"Carried on by the *same* person". The question would arise whether an individual having his own separate business and also having another business in

1. Para. 39 Notes and Investments.
2. Bourne and Hollindsworth v. C. I. R. 12 T. C. 483.
3. C. I. R. v Dale Steamship Co. Ltd., 12. T. C. 712.

partnership would be the same person. The question is not free from difficulty, but having regard to the proceeding in the legislature, the official view on the point appears to be that a business carried on jointly with others cannot be added on to business carried on individually. (*See* Notes under Rule 4 of Schedule I and Rule 20 under Excess Profits Tax Act *infra.*)

Partnership:—In the well-known English case on the point, *Birt, Potter and Hughes Ltd.* v. *C.I.R.* (12 T. 976), it was decided that a Company (a unit chargeable to E. P. T.) doing one business independently, as its own exclusively, cannot be allowed to consolidate and treadle this up with other activity as shipowners, which business they carried on with others. The two units chargeable being different (Company and Firm) they are not the same person and hence the two businesses cannot be treated as one and the same.

Two important points decided in two English case [*Gittis 2 A.C. 81 and C.I.R.* v. *Maxes* 12 T.C. 41] were discussed and explained in this case (*Per Sargent L J.*) As to the one, it was pointed out that though the unit of the charge was business, there had been successive owners of the same business, that the individual could not comprise the whole series of successive owners of the same business. In the second (*Maxe's*) case, the single individual tax-payer carried on a single enterprise but it happened that the enterprise included both a business in the ordinary sense and certain professional activities, profits derived from which were exempted.

In an Indian case, *Martin and Co.* v. *C I T.* (4 I.T.C. 478) also, where no separate accounts were opened and the purchase price was provided out of private property of the individual partners, the intention of the partners being to embark on a separate venture, unconnected with the business of partnership, assessment was made as 'separate' and not as one business.

One partnership or not:—As to whether in fact there are two or more partnerships, it is laid down in the case of *Krishna Ginning Co.* v. *C.I.T. Punjab* (5 I T.C. 334) that the same persons can enter into more than one partnership under the same deed, and that it is a question of fact whether there is only one partnership or not. The mere fact that two different ventures belong to the same persons and in the same proportion does not necessarily make the two partnerships indentical.

On the other hand the fact that the ventures are called by different names does not in itself make them separate. The test is whether in substance and in truth the business of the two ventures can be held to be so connected as to form a single business. (See the case of *Martin and Co.*, 4 I.T.C. 478).

In practice it may be taken that where there are two or more partnerships comprising the same individuals and the interests of the partners in the different partnership businesses are not identical the separate partnerships should be treated as carrying on different businesses each separately within the charge of Section 4. If, however, it is alleged that there are separate businesses in a case where the same individuals are partners in each, and each partner takes the same share of profits of one business as he takes of the other, the case should be carefully considered in order to determine whether the way in which the alleged separate businesses are carried on is such that it is a reasonable decision of fact that only one business is carried on. The test is whether there is "any interconnection, interlacing, any inter-dependence any unity at all embracing those two businesses." (See *Scales* v. *George Thompson and Co., Ltd.*, U. K. Tax cases, Vol. 13, p. 83).

Circumstances that should be taken into account in determining whether businesses alleged to be separate businesses, are in reality one business include:—

The two businesses being concerned with the same branch of trade, manufacture, etc;

One business being auxiliary to another, *e.g.* a spinning business supplying yarn to a weaving business;

The two businesses being controlled as one;

Accounts being made for the two businesses jointly;

Financial arrangements and bank accounts being in common;

Joint buying of raw materials, trade, stocks, stores, etc. Purchases and sales, material in amount, between the two businesses ;

Interchange of staff, plant, etc ;

Transport arrangements made in common for the two businesses ;

Para. 134 Instructions).

Temporary partnership:—

Temporary partnership is also a partnership under the ordinary partnership law and profits thereof should as such be assessed as separate business and losses disallowed. It has been held under the English law that where parties have contemplated the actual carrying on of business and are jointly concerned in dividing the profits arising from the transaction, partnership ought to be inferred.

[*Atexander* v. *Long* (1884) 1 I.L.R. 145 ; *Crosthwaite* v *Duckworth* (1880) 12 East 421 ; *Lawe* v. *Dixon* (1885) 16 Q.B.D. 455]. The same law should obviously apply in India also

The parties in such a case have been treated as having embarked on a joint adventure in partnership (1915) I.L.R. 39 Bom. 261 (P.C.).

[One single transaction can constitute business. (*Reid* v. *Hollinshed*) (1825) 4 B. and C 876)].

Business or profession and employment:—One point worthy of note in connection with the profits chargeable to Excess Profits-tax is that cases of income from mixed sources may arise. There may be cases of income partly from taxable and partly from non-taxable source. For instance the case of an editor and publisher of a magazine (*C.I.R.* v. *Maxse* 12 T.C. 41) or of a manufacturing chemist and herb grower (*C.I R* v. *Ranson* 12 T.C. 21). In such cases income from taxable source has to be separated and ascertained as a point of fact (not of law) where it cannot be separated, probably the entire profits would be taxable. This was the *obitor dictum* in *Ranson's* case above (12 T.C. at p. 30). Where *Sankey J.* observed " I can conceive, although I am not expressing definite opinion on the point.

Another point is that income as ' salary ' or from employment is at times liable to be mixed up with or mistaken for profits of a business or profession chargeable to Excess Profits Tax. In such a case on close security of facts should be made to find out whether relation is that of master and servant or agent and principal. Employment arises from a contract of employment [*Bensell* v. *Marshall* (1938) 1 K.B. 591 ; 54 T.L.R. 320].

Commercial Travellers:—The liability of excess profits tax of the commercial travellers is dependent upon the nature of their work as to whether they are engaged in a trade or business or hold an employment or carry on a profession. If the Commercial travellers represent various concerns and their products in the employment of any of them but on the other hand act indipendently as commission agents, they carry on a business and are therefor subject to excess profits tax. In case of a person holding employment under one man or employment under more than one concern all having control of him as to the manner in which he carries out his duties as commercial traveller or representative he is exempt from excess profts tax because he is in an employment and does not carry on trade or business.

In case of a person employed by a concern on fixed salary plus commission who represent other concerns also on commission basis and his income from other conerns exeeds what he gets from the concerns in whose employment he is on fixed salary, etc., it was held that he is carrying on a trade or business. *Marsh* v. *C.I.T.* (1943) A.T.C. 13.

An individual in the whole time employment of a firm carrying on a trade or business, and precluded by the term of his engagement from doing any work for any other firm could not be said to be carrying on a business on his own accounts. *Robins* v. *C.I.T.* (1920) 2 K. B. 677.

In a very recent case of *Cammissioner of Inland Revenue* v. *Turbal* 1943 A.T.C.

387. It was held that the respondent was an employee and was not a person carrying on a business on his own account. The facts in the case are: Mr. Turnbull is a marine engineer. From 1919 to 1934, he was the London manager of honry Rolls Ltd., shipbuilders and engineers of Laith, Scotland on the termination in 1939 of his engagement with Henry Robb Ltd. Mr. Turnbill was engaged in a similar capacity by Philip and Sons Limited, a company carrying on the business of ship-builder at sandquay works, Dartmouth in the county of Devon. He was engaged as their sole London representative for five years computed from the 1st January 1935 for the purpose of obtaining enquiriss and order for ship building of vessel upto but not exceeding 230 feet in length, marine building etc etc. In July, 1931 he had entered into agreement with a firm called B and S Massey Limited, engineers, of openshaw, Manchester whereby that company appointed him to be its reprsentative for the sals of their manufacture. For his services, Mr. Turnbull was to receive commission at the rates set out in the schedule to the agreement. Moreover, Mr. Turnbull had an office in the city of London. It was his own office. Philip and Sons Limited contributed towards the expenses of it under its agreement, but B and S Massey Limited made no suce contribution. At his office Mr. Turnbull had a secretary whom he paid out of his own pocket.

Business What is :—

(1) A skilled Engineer acting both as a consulting Engineer and as an inventor [1]

(2) Executors may be carrying on 'trade' to the extent of winding up business left to them by testator [2]

(3) Partners, on dissolution, receiving and delivering goods already contracted for.[3]

(4) Receipt of royalty by a Company.[4]

(5) Income from colliery to a Company which was formed to administer the estate of beneficaries all of whom transferred the estate for shares to to the Company.[5]

(6) Investment of Insurance money and sale-proceeds of a ship by a Shipping Company ;[6]

(7) Company formed to receive assets and liabilities of a theatrical Company receiving rent of rebuilt premises of the theatre ;[7]

(8) Trustee for creditors' firm, liquidating the firm, carrying on a part of business ;[8]

(9) Financing litigation ;[9]

(10) Purchase and sale of Government Securities and Treasury Bills by a money-lender ;[10]

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(1) C. I. R. v. Mar. 4. A. T. C. 467.

(2) The Executive of E. A. Gohan v. C. I. R. 12 T. C. 602.

(3) Hillerus and Fowler v. Murray 17 T. C. 77

(4) Korean Syndicate Inre. 12 T. C. 181, South Bihar Rly. Co. v. C. I. R. 12 T. C. 657; (Followed in Pondicherry Rly Co. 5 I. T. C. 362).

(5) C. I. R. v. Westerley Estates 3 A. T. C. 17.

(6) C. I. R. v. Dale Steamship Co , 12 T. C. 712.

(7) C. I. R. v Birmingham Theatre Royal State Co. Ltd., 12 T. C. 58.

(8) Armitage v. Moore 4 I T. C. 199.

(9) Gya Pd. Chhotey Lal v. Commissioner I. T. C. P. and U. P. 9 I. T. C. 64 1935, I. T. R. 177; 1935 All 495.

(10) Rm. A. R. A. R. Arunachalam Chettiar v. C. I. T. Mad. 8 I. T. C. 219.

(11) Letting out of jute press on rent;[11]

(12) Agreement by an Indian Company to pay to an English Company half of net profits and a lump sum, in lieu of not exercising a certain right;[12]

(13) Money-lender-creditor taking over the properties of one of his failed debtors and making profit out of one of these (Rubber Plantation);[13]

(14) Money-lender, interested invarious kinds of business, purchasing a large quantity of cheap paper and selling it at a profit in one consignment;[14]

(15) Extraction and sale of coal;[15]

(16) Horse-race Club making income from licenses and entrance fees;[16]

(17) Colliery agents purchasing wagon on their own account as a speculation and selling the same on profits, (though isolated transaction).[17]

Business What is not :—

(1) Company holding house property and distributing rent and profits to shareholders;[18]

(2) Income from sale of patent by a managing director of a Company, also a director of several other companies, and an inventor, having sold a patent years ago;[19]

(3) A Barrister using part of the land of his residence for cattle-breeding and growing vegetables; fruits and flowers which he occasionally sold;[20]

(4) Money lender purchasing legacies through Court and realizing profit out of it after incurring costs;[21]

(5) Purchase and sale of shares and securities by a money lender;[22]

(6) Principal residing in British India not controlling his foreign business but merely acquainting himself with the state of that business and occasionally issuing general instructions;[23]

(7) Company incorporated for owning and letting out property making income out of the same; though income assessable under Section.[24]

(8) Owner of stud farm using the land for stud purposes and receiving fee for his stallions serving mares on his farm.[25]

In Commissioner Inland Revenue v. *Sangster* (12 Tax Commissioner 208) royalties received by an inventor, negotiating with companies for use of his inventions were held to be income from property and not from trading. On the other

(11) Sadhu Charn Roy Chaudhri v. C. I. T. Bengal 8 I. T. C. 177; 64 C. 804; 1935 Cal. 344; 1935 I. T. R. 114.

(12) The Indian Radio Cable Communication Ltd. v. C. I. T. Bengal 8 I. T. C. 233. 1936 I. T. R. 114.

(13) Lakshman Chettiar v. C. I. T. Mad. 1930 Mad. 121, 41 T. C. 200.

(14) Rutletge v. C. I. R. 14. T. C. 490.

(15) Isabella Coal Co., v. Commissioner I. T. Bengal, 53 C. 76; 1926 Cal. 396, 2 I. T C. 87.

(16) Royal Calcutta Turf Club v Secretary of State, 48 C. 841, 1 I. T. C. 108

(17) Barton and Co. Ltd. v. Ogg. 7 T. C. 125.

(18) Kaldan Suratee Bazar Co., Ltd., In re. 1 I T. C. 50; 56 I, C. 914.

(19) C. I. R, v. Songster 12 T. C 208.

(20) Re Wallis Esparato Sully. 14 Q B. D 950.

(21) Mothey Gungaram v. Commissioner I. T and Mad 8 I. T. C. 75; 1935 Mad. 387; 58 M. 363; 1935 I. T. R. 58.

(22) Ganga Sagar (R. B. Seth) v. Commissioner U. P., 7 I. T. C. 81; 1934 All. 370; 1934 I. T. R, 110

(23 Commissioner v. S. P. M. A R. Ramanathan Chetty 43 M. 75; 1 T. C. 37.

(24) Commercial Properties Ltd., In re 1928 Cal. 158, 3 I. T. C. 23.

(25) Lord Glamby v. Whilmore 17 T. C. 639 1933 P. C. 615.

hand, in *Commissioner Inland Revnue* v. *Korean Syndicate* (12 Tax Commissioner 181) a Company that simply received bank interest and royalties was held to be carrying on business, as it acquired concession and turned them to account. The decision in *Commissioner Inland Revenue* v. *The Budderpore Oil Company Limited* (12 T. C. 467) was also similar.

As against the above decision, it was held in *Commissioner Inland Revenue* v. *The Marine Steam Turbine Company Limited* (12 Tax cases 174) that mere receipt of royalties on patents sold was not carrying on business.

Cases of Railway Companies receiving an annuity as consideration for constructing a railway and interest on investments are also those wherein it has been held that they were carrying on business. It has been so held in the case of *Commissioner Inland Revenue* v *South Behar Rly Company Limited* (12 Tax cases 687), in *Commissioner Inland Revenue* v. *Edinburgh and Bathgate Rly. Company* (12 Tax cases 895) and in *Commissioner Inland Revenue* v *Bringham Theatre Royal Estates Company Limited* (12 Tax cases 580) The principle was applied to shipping Company also in *Commissioner Inland Revenue* v. *Dale Steamship Company Limited* (12 Tax cases 712).

In the case of companies going into liquidation it has been held that whether an operation constituted the carrying on of a business or simply the realization of capital asset was a question which depended on the facts of each case (*Spicer's and Sons Limited* v. *Ogden* 17 Tax cases 117).

Where a firm realized its trading stock, on retiring from business by a number of transactions, these were held to constitute trading. (*J and R. Okane* v. *Commissioner Inland Revenue* (12 Tax Commissioner 602) In *Cohan Executors*, v. *C. I. R.* (12 T. C. 602) It was held that the executors of the deceased merely realized assets and did not carry on trade In a later case, however, *Hillerns and Fowler* v *Merry*, (17 Tax cases 77) it was held that the completion of contracts after dissolution of a firm coastituted trading.

6. Chargeable accounting period: –The term "chargeable accounting period" was not defined under the Excess Profits Duty Act, 1919.

The definition of the terms as given now has been taken bodily from the English Act. (Finance Act 2 of 1939). In the Bill as presented to the Assembly, the period was the one beginning on or after the 1st day of April, 1939. The Select Committee altered it to what it is now

In the course of debate on the Bill, while accepting the principle that the State should have a reasonable share of war profits, it was pointed out that that share was exceeded in the provisions of the Bill which was characterised as a blind copy of the British Act." The inclusion of the year 1938-39 in the chargeable accounting period' was cited as an instance in point. The Finance Member in his reply admitted having realised that the period between April 1, 1939 and the actual outbreak of the war was not in India a period of abnormal activity But he agreed that the effect of it on the scheme of the bill was to mitigate the excess which would be determined for taxation. If business was making losses, effect of those months was to reduce the incidence of tax. The Finance Member, however, declined to accept the date as 1st April 1940 onwards as suggested in some quarters, because that, he, thought, should be definitely foregoing the application of the principle of the Bill to many months of the war profits which he could not afford to accept. This position was, however relaxed after discussion in the Select Committee and the changes above indicated were made.

'Chargeable accounting periods' are such accounting periods as fall wholly within the term begining 1st September 1939 and ending on the date fixed by the annual Finance Act, and such parts of other accounting periods as fall within this term. As the law stands at present this term end on 31st March 1942.

It should be observed that where an accounting period commences before 1st April 1941 and ends after 31st March 1941 the parts thereof which respectively end before and commence after the end of March 1941 are to be treated as if they were

separate chargeable accounting periods in relation to the two rates of excess profits tax, *i.e*, 50 per cent and 66.2/3 per cent but for no other purpose.

Example :—		Rs.
Year ending 30th September 1941 Excess Profits of whole year	..	90,000
Of this Rs. 45,000 is chargeable at 50%	..	22,000
and Rs. 45,000 is chargeable at 66 2/3%	..	30,000
Total E. P. T. for the C. A. P. of 12 months	..	52,500

(Para 22 Notes and Intructions)

[1]In the case of two or more businesses which, under the second Proviso to Section 2 (5), are to be treated as one, and for which the accounts are made up at different dates, there can only be one series of chargeable accounting periods for the combined business. Consequently, in such a case the accounting dates for one of the businesses should be taken as determining the chargeable accounting periods for excess profits tax purposes. It will be necessary then to make such apportionments and/or aggregations of the profits of the other business or businesses as will give the appropriate profits of such chargeable accounting periods. These apportionments should be made on the time basis under the second Proviso to Rule 1 of the First Schedule. In general, such chargeable accounting periods should be determined as will give the least possible delay in the assessment and collection of the tax.

The above instructions should be read as applying also to the case of a concern with branches whose accounts are made up to dates different from those to which the main accounts are made up

The above has to be read with the definition of the 'accounting period' given above [Section 2 (1)].

7 Commissioners :—The functions of a Commissioner of Excess Profits Tax shall be performed by the same person who is the Commissioner of Income-tax under the Income-tax Act, 1922. See section 3 (2) *post* and notes thereunder.

8. Company :—The definition of the term 'company' in this Act is the same as in the Income-tax Act, 1922 (amended 1939). The definition is intended to include all companies constituted in the dominions of the Crown, while the latter part of the definition is confined to such foreign associations as the Central Board of Revenue may desire to treat as 'companies' under the Act.

The word 'company', as defined in the Indian Companies Act, 1913, widens the scope of the definition so as to include companies limited by guarantee also.

'Company' as defined in the Indian Companies Act, 1913:—Section 2 (2) Indian Companies Act, 1913, defines the term 'company'.

Registration of Company :—Registration is compulsory in the case of companies of more than 20 persons, unless formed in pursuance of an Act of Parliament or Letters Patent or an Act of Governor-General in Council, [Section 4 (2)], and in the case of companies doing banking business, in the case of companies of more than ten persons, subject of course, to the same qualification as to their formation as above [Section 4 (11)].

Foreign Association:—By Notification No. 14 dated 29th March 1941, all foreign associations declared to be companies for Income-tax Act purposes [under Section 2 (6) of the Income-tax Act] have also been declared to be companies under the Excess Profits Tax Act by the Central Board of Revenue.

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(1) Para 23 Notes & Instructions.

9. Deficiency of Profits :- The definition of this expression also follows the English law, as contained in Section 15, Part III Finance Act 2 of 1939. According to the above, the amount of deficiency occurring in any chargeable accounting period shall be taken to be :

(a) Where profits have been made in the period, the amount by which those profits fall short of standard profits.

(b) Where a loss has been sustained in the period, the amount of loss added to the amount of standard profits Thus deficiency is either :—

(1) An amount of profits smaller than the standard profits or (2) a loss sustained in the period The amount of deficiency depends upon whether there has been a decrease in profits or whether there has been a loss in the chargeable accounting period under consideration. Under the English law, relief is allowed on the deficiency of profits in accordance with the provisions contained in Part III, Section 15 (2). Similarly, relief is to be afforded in India on the same principle and according to similar provision as contained in Section 7, *post.*

Loss does not include capital loss. It is to be computed like profits [Section 2 (16)].

10. Director :—The definition of the term "director" is the same in this Act, as given in Companies Act, 1913 Section 2 (5) read with Section 2 (9), 2 (9-A) and explanation to Section 2 (9-A) (Amended 1936).

The three conditions are cumulative.

(1) A person 'concerned in the management of a business' is obviously intended by the Legislature to have wider meaning than the 'manager' [*Thompson Bros. & Company* v. *Anis* (1917) 2 Ch. 211 per *Sargent. J.* at p. 224].

(2) The expression 'remunerated out of the funds of the trade or business' referred to a person *paid* by a Company *out of the profits* of the business as distinct from a person *entitled to a share* in the profits.

[*Collett* v *Lockia Peruberton & Company* (1918) W. N. 262].

(3) 'Beneficial owners' means real owner, thus excluding ownership such as that of a trustee or nominee, *i e* legal ownership is not included.

11. Dividend :—The definition of the term " dividend " has for the purposes of this Act, been adopted from Section 2(6-A) Income Tax Act, 1922 (Amended, 1939) See Notes under Section 2(6-A), B R. Jain's Income-tax Act, 1922 (3rd Ed. 1945).

12. Excess Profits Tax Officer :- An Excess Profits Tax Officer shall be the same person under this Act as the Income-tax Officer under the Income-tax Act. [See Section 3(2) *post*].

13. Income :—The definition of the term 'income' has also been adopted from the 1922 Income-tax Act (Amended 1939). The definition of the term income has been added to the Income-tax Act, by the amending Act, 1939. This is S. 2(6-C) of the Act. For details as to this see notes under S. 2(6-C) and S. 3, B. R. Jain's Income-Tax Act 1939 3rd Ed 1945.

14. Fixed Rate :—The definition of fixed rate has references only to dividends on share capital other than ordinary share capital. If a rate fluctuates in accordance with the maximum rate of income-tax, that is included in the term fixed rate for the purposes of Excess Profits Tax. The definition of 'Fixed rate' as given in the Act has been taken from the English Finance Act, (2) 1939, Section 22 part III.

15. Inspecting Assistant Commissinner :—The Inspecting Assistant Commissioners under the Excess Profits Tax Act shall be the same persons who are Inspecting Assistant Commissioners under the Income Tax Act, *vide* Section 3(2) ***Infra.***

16. Loss :—"Loss" and 'Profits' are relative terms. Profits as defined in clause (2) of the Section, are to be determined with reference to the Rules given in Schedule I to the Act and Losses for the purposes of the Act, are to be determined also in the same manner. Under the English Finance Act (2) of 1939, also, profits and losses are to be similarly computed (*vide* Section 14 (1) and (3) Part III Finance Act, 1939.

16A. "Ordinary share Capital" is defined in Section 9(8) as meaning all the issued share capital (by whatever name called) of a company, other than capital the holders where of have a right to a dividend at a fixed rate but have no other right to share in the profits of the company (Para. 42 notes and instructions).

17. Person:—The definition of the term 'person' as given here, is the same as the one in the Income-tax Act, 1922, except that the words "and local authority", added to the Income-tax Act definition by the 1939 Amendment Act do not find place here.

18. Prescribed:—The term "prescribed" has reference to rules under the Act. Provisions as to Rules under the Act are contained in Section 26 of the Act. (See notes under Section 26 *post.*)

19. Profits:—As already stated under 'Loss' above. Profits and losses under the Excess Profit-tax Act are to be computed in the same manner. The manner of computing profits is to be found in the first Schedule. (See notes under Rules in the first Schedule, *post.*)

20. Standard Profits.—The method of determining standard profits is given in Section 6 below.

The English law as to Standard Profits is contained in Part III Section 13, details whereof have also been given under Section 6 below. (See notes under Section 6 *post*).

21. Statutory Percentage:—(a) The definition of the term Statutory percentage as given here, has been taken bodily from the English law [Section 13(9) Finance Act 1933]. The 'Statutory Percentage' is to be applied in determining the standard profits in certain cases, as given in Section 6 *post.*

Section 2 (21) has been amended so as to secure that in the case of a partnership, one of the partners in which is a Company, not director-controlled, only the appropriate statutory percentage is allowed in respect of the Company's capital therein. (*Notes on Clauses*:—Clause 2, *Gazette of India* dated 16-11-1940].

(b) **Controlling interest**:—The matter of controlling interest is a question of fact, depending apparently, on the voting strength. It includes the power to control the administration, assets and policy of a Company. (*Glasgow Expanded Metal Co.* v. *C. I. R.* 12 T. C. 573; See also *B. W. Nobles Ltd.* v. *C. I. R.* 12 T. C. 911).

In the above case of *Glasgow Expended Metal Co., Ltd.* v. *C.I.T.* the Lord President observed at p. 579. "It seems to me that the only interpretation which can be given to that expression ("Controlling interest") is by reference to the power which the number of shares hold by the directors gives them to control the disposal of the company's assets and the administration of its affairs at a general meeting of the company". In the same case *Lord Cullen* observed:—"The shareholdings of the directors are such as to give them a prepoderating vote on any question that comes before the shareholders at a general meeting *prima facie* that means that they have the controlling interest in the company".

In *B. W. Noble Ltd.* v. *C.I.R.* 1926 K B. D. 6, A.T.C. 142, 12 T. C. 911, when chairman of directors held half of the ordinary shares issued and when presiding at general meeting had a casting vote it was held that he had a controlling interest. *Rowlatt, J.* observed:—

"Controlling interest" is a phrase that has a certain well known meaning, it means that the man whose shareholding in the company is such that he is the shareholder who is more powerful than all the other shareholders put together in general meeting .. ....in as much as he has a casting vote, he does control the general meetings—there is no question about that—and in as much as he does possoss at least half of the shares he can prevent any modifications taking place in the constitution of the company which would undermine his position as chairman ".... ... .".

The term "Controll" not being primarily linked with a "interest" was considered in *Himlay Estates Ltd. and Humble Investments Ltd* 17 T.C. 367. In this case *Rowlatt, J.* observed at p. 375 is respect of the object of the definition of controlling interest given in the Act—specifying "certain in cases where control is artificially to be deemed to exist, though it does not or may not exist in fact.... . . possession of the majority of the shares, divorced from the voting power, is to be deemed arbitrarily a medium of control".

Whether one company has a controlling interest in another company, it is not necessary that it should have a proprietory interest in the other company. "Controlling interest" means such a relationship as brings about a control in fact by whatever machinery or means that result is effected. The degree of control afforded by 51 per cent. holding is controlled within the statute.

In the above case no distinction is drawn between direct and indirect control. Mr. Justice Lawrence, observed :—

"The word 'controlling' is not a term of art, nor is the word 'interest' necessarily so. When the word 'controlling is used to qualify' 'interest'. I think the phrase in its ordinary meaning covers both direct and indirect control."

In deciding whether the directors of a company have a controlling interest therein, the folloing shares should be taken into account :—

(1) shares held by directors in their own name and right;

(2) shares held by directors in their own right but in the name of a nominee (where shares have been purchased by a director and stand in the name of another person in relation to whom the transaction is a *benami* transaction, the shares in question should be regarded as falling within the terms of this sub-paragraph);

(3) shares held by directors in their own right but in the name of a person into whose legal ownership the shares have been transferred as security for a loan;

(4) shares held jointly in the names of directors and others—to the extent of the beneficial interest of the directors.

Shares held by directors as executors or trustees and interests in shares arising in cases where directors are beneficiaries in estates or trusts should not generally be taken into account.[1]

22. Written down value :—The definition of the expression 'written down value' as given in the Act, is nearly the same as in the Income-tax Act Section 10 (vi). See notes under the said Section in Mr. B. R. Jain's Income-tax Act, 1939. 3rd Ed. 1945.

Depreciation.

[2]Rule 3 (1) provides that the income-tax principle of carrying forward unexhausted depreciation and its allowance in a subsequent period is not to be followed. In computing the profits, therefore, of both the standard period and the chargeable accounting period or of any accounting period falling wholly or partly within either

(1) Para 39 Notes and instruction Second Ed.

(2) Para 25 Notes and Instruction,

of these periods, only the depreciation applicable to such accounting period is to be deducted.

[1]Example :—The "previous year" of a business are the years ended 31st December, the first chargeable accounting period being the last four months of the accounting period of 12 months ending 31st December 1939. The chosen standard period is the year 1935 and it is necessary in computing capital to determine the written down value of any building plant or machinery as at 1st January 1935 and 1st January 1939. Plant costing Rs. 100,000 was installed on 1st January 1930 and the depreciation rate on the old basis was 5% while on the written-down value basis from year of assessment 1940-41 it is 8%. For income-tax purposes there is a carry-forward depreciation from the year of assessment 1935-36 of Rs. 6,000 which may be regarded as relating Rs. 5,000 to 1935-36 and Rs. 1,000 to 1934-35. Similarly, there is a carry-forward from the year of assessment 1939-40 of Rs. 7,000 which may be regarded as relating Rs. 5,000 to 1939-40 and Rs. 2,000 to 1938-39.

The written-down value as at 1st January 1939 is arrived at as follow:—

		Rs.
Cost..	.. 100,000,	
Deduct—Depreciation allowable on prime cost basis	.. 45,000	(9 years at Rs.5,000)
	55,000	
Add—Carry-forward of depraciation for years prior to year of assessment 1939-40	.. 2,000	
Written-down value	.. 57,000	

The written-down value as at 1st January 1935 should be similarly calculated as follows:—

		Rs.
Cost..	.. 1,00,000	
Deduct—Depreciation allowable on prime cost basis	 25,000	(5 years at Rs. 5,000)
	75,000	
Add—Carry-forward of depreciation for 1934-35 and (1935-39) being years prior to year of assessment 1939-40.	.. 6,000	
Written down value	.. 81,000	

Exceptional depreciation or Obsolescence of Buildings.

[2]In the case of any building erected on or after 1st September 1939 which, during any chargeable accounting period, has ceased to be required for the purpose of the business or has been sold, allowance is to be made, in arriving at the profits of the chargeable accounting period, of any amount by which the value of the buliding at the date when it ceased to be required or the price obtained, falls short of the written-down value.

(Rule 10, First Schedule.)

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(1) Para 76 Notes and Instructions.

(2) „ 26 „ „

Depreciation and losses carried forward.

[1]It should be noted that in computing the profits of the standard period, a chargeable accounting period or of any accounting period entering wholly or partly into the computing of profits of the standard period or the chargeable accounting period: —

(a) only the depreciation applicable to such period is to be allowed.

(b) no allowance is to be made for any loss allowed for income-tax purposes under Section 24 of the Indian Income-tax Act, 1922 in respect of either.

(i) losses arising from any other source allowed under Sub-section (1) or

(ii) business losses carried forward and allowed under Sub-section (2)

The only case, in which a loss arising in one business in a chargeable accounting period is to be set against the profits of another, is that where two or more businesses in the same ownership are to be treated as one business under Section 2 (5), Proviso or that of interconnected companies under Section. 9.

Although. as explained in paragraph 79 the value, for the purpose of the computation of capital as at any date, of plant, machinery or buildings in respect of which depreciation is allowable, is to be arrived at by reference to the definition of written-down value in Section 10 (5) of the Indian Income-tax Act, 1922 such value have no necessary connection with the amount of the allowance to be made in respect of depreciation in computing the profits of the standard period. In the example set out in that paragraph both for Income-tax, and Excess Profits Tax purposes the written-down value of the plant and machinery as at Ist January 1939, is Rs. 57,000 and the deduction to be allowed for depreciation for the year 1939 is Rs. 4,560.

Rule 2 of the First Schedule requires the profits of the standard period to be computed "on the same basis and in the same manner" as are those of the chargeable accounting period. This requirement may be fulfilled by constructing a series of values and depreciation allowances to cover all accounting periods in question the later terms of which are Rs. 57,000 and Rs. 4,560 respectively.

This series can only be found by working back fram these figures thus :—

Value on which depreciation calculated		Depreciation at 8% allowable for E. P. T. purposes.
	Rs.	Rs.
1939	57,000	4,560
1938 100/92 of Rs. 57,000	61,956	4,956
1937 100/92 of Rs. 61,956	67,343	5,387
1936 100/92 of Rs. 67,343	73,199	5,856

and the deduction in computing the profits Excess Profits Tax purposes of the year 1939 being Rs. 4,560, if the year 1936 in the chosen "standard period" the deduction for deprecation in computing the profits of that year is Rs. 5,856.

It will be observed that, except for the year 1939, when the income-tax basis was changed. there is no correspondence between the values above upon which the Excess Profits Tax allowances for depreciation have been calculated and the values at which, as shown in paragraph 76, the assets in questoin must be valved for the purpose of the computation of capital as at the relevant dates.

(1) Para 27 Notes and instructions.

Depreciation allowances—method of computation.

4. Para 28 Note and instructtone.

[1]Questions have arisen in practice as to the application of the instruction laid-down in paragraph 27 when an asset is in existence in the standard period or In the period which is or includes the firist chargeable accounting period or in both and its written-down value has been reduced to nil, or where an asset which was in existence in the standard period has been disposed of before the commencement of the period which is or includes the first chargeable accounting period. In applying the instructions contained in the penultimate sub-paragraph of paragraph 27.

(i) assets which are assets of the business at the commencement of the period which is or includes the first chargeable accounting period are to be taken at the income-tax written-down value as at that date and the series should be worked back therefrom but not beyond the actual cost of the asset ;

(ii) in the case of an asset which was an asset of the business in the standard period but not in the period which is or includes the first chargeable accounting period the series should be worked back from the date on which the asset ceased to be an asset of the business and from the income-tax written-down value as at that date. If, however, at that date the value has, for income-tax purposes, been written-down to nil, the series should be worked back from the written-down value as at the commencement of the accounting period in respect of which the final allowance of depreciation for income-tax purposes was due.

Example :—

A sugar factory : standard period selected the year 1935 : accounts made upto 31st December each year.

Depreciation rates :—	Old rate	New rate
Buildings 1st Class	2 1/2% on cost	5% on written-down value
,, 3rd Class	10% ..	7 1/2% ..
Plant and Machinery	6 1/4% ..	9% ..

Depreciable assets :—	Rs.			
1.	Building 1st Class Cost	1,00,000	at 1st January	1920
2.	,, ,, ,, ,,	50,000	,, ,,	1930
3.	,, 3rd Class ,,	25,000	,, ,,	1920
4	Plant and Machinery Cost	2,00,000	at 1st June	1920 Scrapped 31st December, 1938, replaced by 8 or 9.
5.	,, ,, ,,	1,00,000	,, ,,	1925 Sold 31st December, 1937 replaced by 8 or 9.
6.	,, ,, ,,	1,00,000	,, ,,	1930
7.	,, ,, ,,	1,00,000	,, ,,	1935
8.	.. ..	2,50,000	..	1938
9.	.. ..	1,00,000	..	1939

Income-tax written-down value	At 1st January 1935	At 1st January 1939
Item 1.	62,500 ..	52,500
,, 2.	43,750 ..	38,750
,, 3.	Nil ..	Nil
,, 4.	12,500 ..	,,
,, 5.	37,500 ..	,,
,, 6.	18,780 ..	43,750
,, 7.	1,00,000 ..	75,000
,, 8.	.. ..	2,34,375
,, 9.	.. ..	1,00,000

(1) Para 28 Notes and Instructions.

Computation of allowances for years 1935 to 1939 (as in paragraph 27).

Item		Value on which depreciation calculated			Depreciation allowable for E. P. T. purposes	
				Rs.	at%	Rs.
1.	1939	.	..	52,500	5	2,625
	1938	100/95 of Rs.	52,500	55,263	..	2,763
	1937	100/95 ,,	55,263	58,171	..	2,908
	1936	100/95 ,,	58,171	61,232	..	3,061
	1935	100/95 ,,	61,232	64,454	..	3,222
2.	1939	..	..	38,750	5	1,937
	1938	100/95 ,,	38,750	40,789	..	2,039
	1937	100/95 ,	40,789	42,935	..	2,146
	1936	100/95 ,,	42,935	45,194		2,259
	1935	100/95 ,,	45,194	47,571	..	2,377
3.	1939	.	..	Nil	..	Nil
	1938	..	..	,,	..	,,
	1937	..	..	,,	..	,,
	1936	..	..	,,	..	,,
	1935	..	..	,,	..	,,
4.	1939	..	..	,,	..	,,
	1938	..	..	,,	..	,,
	1937	..	..	,,	..	,,
	1936	..	..	,,	..	,,
	1935	..	..	,,	..	,,
5.	1939	..	..	..	9	..
	1938	..	..	..	..	..
	1937	100/91 of Rs.	18,750	20,604 (c)	..	1,854
	1936	100/91 ,,	20,604	22,642	..	2,038
	1935	100/91 ,,	22,642	24,881	..	2,239
6.	1939	of Rs.	..	43,750	9	3,938
	1938	100/91 ,,	43,750	48,077	..	4,327
	1937	100/91 ,,	48,077	52,832	..	4,755
	1936	100/91 ,,	52,832	58,057		5,225
	1935	100/91 ,,	58,057	63,799	..	5,742
7.	1939	of Rs.	..	75,000	9	6,750
	1938	100/91 ,,	75,000	82,417	..	7,417
	1937	100/91 ,,	82,417	90,568	..	8,151
	1936	100/91 ,,	90,568	99,525	..	8,957
	1935	..	..	1,00,000 (Cost) (a)	..	475
8.	1939	..	..	2,34,375	9	21,094
	1938	,	..	2,50,000 Cost (b)	..	15,625
9.	1939	..	..	1,00,000	9	9,000

Notes :—(a) 100/91 of Rs. 99,525 exceeds the cost Rs. 1,00,000 and the allowance, therefore, is restricted to the difference between Rs. 1,00,000 and Rs 99,525=Rs. 475.

(b) 100/91 of Rs. 2,34,375 exceeds the cost Rs. 2,50,000 and the allowance, therefore, is restricted to the difference between Rs. 2,50,000 and Rs. 2,34,375=Rs. 15,625.

(c) Rs. 18,750 is the income-tax written-down value at 31st December 1937, the date when the plant was sold.

If in any case, owing to special circumstances, the method set out in the example clearly operates unfairly to the assessee or the revenue the case should be

reported to the Excess Profits Tax Advisor who will issue instructions as to the modifications, if any, that may be made therein. (Para. 28 Notes and instructions.)

Cases will arise in which computations on the basis laid down in paragraph 27 give a "written-down value" as at the commencement of the standard period which is in excess of the written-down value as ascertained for capital purposes in accordance with Section 10 (5) of the Income-tax Act. In such a case, if the assessee so desires and explicity stated his preference therefor, an alternative method of computing the depreciation of the standard period may be adopted, *viz.*, application of of the new depreciation rates to the written-down values ascertained in accordance with Section 10 (5) of the Income-tax Act.

Where this alternative is adopted if the "unexhausted depreciation", included in the written-down value as at the commencement of the standard period is greater than the unexhausted depreciation included in the written-down value as at the commencement of the period which is or includes the first chargeable accounting period, the difference between the two amounts (of unexhausted depreciation) may concessionally be excluded from the written-down value upon which the depreciation of the standard period is to be calculated Where the standard period comprises two ' previous years", this comparison and exclusion should be made at the commencement of each of those previous years

If in any case where the assessee has chosen the method of paragraph 27 the computation for any item on that basis brings out full cost before the commencement of the standard period is reached (as in item 7 in the example set out in paragraph 28), the depreciation for that item must be calculated on the alternative basis *i. e*, by applying the new depreciation rate to the written-down value as found by application of Section 10 (5) of the Income-tax Act. (Paragraph 29 Notes and instructions)

Excess Profits Tax Authorities.

Section 3 (1) There shall be the following classes of Excess Profits Tax Authorities for the purposes of this Act namely:—

(a) the Central Board of Revenue;

(b) Commissioners of Excess Profits Tax;

(c) Assistant Commissioners of Excess Profits Tax, who may be either Appellate Assistant Commissioners of Excess Profits Tax or Inspecting Assistant Commissioners of Excess Profits Tax:

(d) Excess Profits Tax Officers:

(e) Boards of Referees.

(2) Every Commissioner of Excess Profits Tax, Appellate Assistant Commissioner of Excess Profits Tax, Inspecting Assistant Commissioner of Excess Profits Tax and Excess Profits Tax Officer shall be a person who is exercising the functions of Commissioner of Income-tax, Appellate Assistant Commissioner of Income-tax, Inspecting Assistant Commissioner of Income-tax and Income-tax Officer respectively, under the Indian Income-tax Act 1922.

(3) The Central Board of Revenue shall, subject to the provisions of Subsection (2) appoint such persens as Commissioners of Excess Profits Tax, Appellate Assistant Commissioners of Excess Profits Tax, Inspecting Assistant Commissioners of Excess Profits Tax and Excess Profits Tax Officers as it thinks fit and such person shall perform their functions in respect of such cases as the Central Board of Revenue may assign to them:

Provided that such directions shall be made entirely at the discretion of the Central Board of Revenue, and, in particular, it shall be competent for that Board to assign a case or class of cases to an Officer who is not exercising in respect of that case or class of cases the corresponding functions in relation to the charge of Income-tax under the Indian Income-tax Act, 1922.

(4) All Officers and persons employed in the execution of this Act shall observe aad follow the orders instructions and directions of the Central Board of Revenue;

Provided that nothing in this sub-section applies to a Board of Referees:

Provided further that no such orders. Instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the excercise of his appellate functions.

(5) A Board of Referees shall consist of not less than three and not more than five persons, of whom not less than one half shall be non-officials having business experience. and one shall be a judicial officer who has exercised the powers of a District Judge or who possesses such qualifications as are normally required for appointment to the post of District Judge, and who has held jndicial office for a period of not less than ten years.

(6) Subject to the provisions of sub-section (5) the Central Government may make rules regulating the formation. composition and procedure of Board of Referees.

Section 3. Sub-Section (1) :—The Act provides for its administration by the officers of the Income-tax Department under the Central Board of Revenue. As such, with the exception of the Board of Referees the enumeration of Excess Profits Tax Authorities, as given in this Sub-section, is the same in this Act as of the Authoties under Section 5. Income-tax Act, 1922, 3rd Ed. 1945.

Section (3) (2) By this sub-section all the Income-tax Authorities under the Income-tax Act 1922 are to be authorities *ex-ffiocio* for the purposes of Excess Profits Tax Act

Sub-Section 3. The appointment and functions of Commissioners of Excess Profits Tax, Appellate Assistant Commissioners of Excess Profits Tax and Inspecting Assistant Commissioners of Excess Profits Tax and Excess Profits Tax Officers are to be regulated by the Central Board of Revenue.

Proviso :—According to the Proviso to this Sub-section, the direction as to the functions to be assigned to the above mentioned officers is a matter left entirely to the discretion of the Central Board of Revenue.

In particular, as apart from the generality of the above provisions, the Board is given the power to assign a case or class of cases to an Excess Profits Tax Officer who may not be exercising corresponding functions and powers under the Income-tax Act with respect to that case or class of cases

Jurisdiction :—It is notable that is no such provision in the Excess Profits Tax Act relating to jurisdiction as exists in Section 64 Income-tax Act. Nor does Section 21 Excess Profits Tax Act apply Section 64 Income-tax Act to the Excess Profit Tax Act. Hence, the entire law relating to jurisdiction in Excess Profits Tax matters is contained in Section 3. And, as is clear from Section (3) and the Proviso, the Ceneral Board of Revenue has the sole power to assign functions to Excess Profits-tax Officers, Assistant Commissioners (Appellate and Inspecting) and Commissioners in respect of cases entrusted to them. The Proviso further extends the Board's power in the matter of assignment of a case or class of cases. The Board's power in this respect is absolute and an assessee has no right to object, as he can under Section 64 I. T. Act.

The Central Board of Revenue has already issued notification relating to the jurisdiction of the various Excess Profits Tax Officers in different provinces.

Sub-section 4 :—Sub-section (4), in particular, again enjoins upon all the Excess Profits-tax Commissioners, Excess Profits Assistant (Appellate and Inspecting) Commissioners, Excess Profits-tax Assistant Officers to obey and follow the orders, instructions and directions of the Central Board of Revenue.

Section 3(4) Proviso : –While the directions and instructions issued by the Board are to be obeyed by all " officers and persons employed in the execution of the

Excess Profits Tax Act", the Board of Referees and Appellate Assistant Commissioners in the exercise of appellate functions form an exception.

Sub-section (5) :—The Board of Referees is to consist of :—

(1) not less than three and not more than five members ;

(2) half of the above number to be non-officials with business experience;

(3 One is to be a judicial officer who has exercised the powers of, or possesses qualifications normally required for appointment as a District Judge, having held judicial office for a period of not less than ten years.

The functions of the Board of Referees are :—

(1) to determine standard profits in certain cases [Section 6 (3)].

(2) to apportion capital and profits in case of split up business sold as going concern on appeal from Excess Profit Tax Officer's decision [Section 8 (5)],

(3) to determine profits and alter accounting periods (on appeal from Excess Profits Tax Officer's decision) in respect of transferred cases ; [Section 8 ( ), (5), (4), (3) and (6)] and

(4) to allocate expenditure between different periods on appeal from Excess Profits Tax Officer's decision

Sub-section 6 :—Under sub-section (6) the Central Government is going to make Rules regulating the formation, composition and procedure of the Board of Referees The Central Government has framed certain Rules on the point.

Charge of Tax.

Section 4. [1]**(1) 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, in respect of any chargeable accounting period ending on or before the 31st day of March, 1941, be equal to fifty per cent. of that excess and shall, in respect of any chargeable accounting period beginning after that date, be equal to such percentage of that excess as may be fixed by the annual Finance Act :**

[2]**["Provided further that, in the case of any businsss which inclndes the mining if any mineral, any bonus paid by or through the Central Government in respect of increased output of the mineral shall be totally exempt from excess profits tax under this Act].**

Provided that any profits which are, under the provisions of sub-section (3) of Section 4 of the Indian Income-tax Act, 1922, exempt from income-tax, and all profits from any business of life insurance shall be totally exempt from excess profits tax under this Act

[3]**[(2) Where a chargeable accounting period falls partly before and partly after the end of March, 1941, the faregoing provisions of this Section shall apply as if so much of that chargeable accounting period as falls before, and so much of that chargeable accounting period as falls after, the said end of March were each a separate chargeable accounting period[4] and as if the excess of profits of that separate chargeable accounting period were an apportioned part of the excess of profits arising in the whole period determined in accordance with the provisions of Section 7-A.]**

(1) The old Section 4 was re-numbered as Sub-section (1) by Section 3 of the Excess Profits tax (Amendmeut Act, 1941 (II of 1941),

(2) This proviso has been added by E. P. T. (Amendment) ordinance, 1944.

(3) This Sub-section was added by Section 3 of the Excess Profits Tax (Amend-ment) Act, 1941 (II of 1941).

(4) These words were substituted by Section 2 of the Excess Profits tax (Second Amendment) Act, 1941 (24 of 1941).

Previous Law:—Section 4, Act 10 of 1919 contained the corresponding provisions.

Only, the Proviso to the said Section was different from the Proviso to the present Section 4, which relates to a different subject.

Analogous Law:—Section 3 of the Income-tax Act, 1922 amended 1939 contains similar provisions. The corresponding English law is contained in Part III, Section 12 1 Finance Act 2 of 1939. See Part III of the book .

Amendments.—Section 4 (2) was added to the E. P. T Act, 1940 by the amending Act XI of 1941. First proviso has been added by the Excess Profits Tax (amendment) ordinance 1944 for exempting the business from Mineral.

By the further amending Act, Section 2, Act X and IV of 1941, (which received the assent of Governor General on 26-11-1941) and if .the whole chargeable accounting period

Section 4 imposes the charge to Excess Profits Tax, on the amount by which the profits of any business to which the Act Applies during any chargeable accounting period exceed the standard profits.

The tax is charged at the rate of 50% on excess profits arising between 1st September 1939 and 31st March 1941, at 66% on excess profits arising after 31st March 1941. The standard profits are to be computed in accordance with the provisions of Section 6.

Any business to which this Act applies—The succeeding Section (Section 5) points out to what business the Act applies *i.e.*, the profits of what business or businesses are assessable to Excess Profits Tax.

The comprehensive words of Section 5 are quite embracing and wide enough to cover every business. For further refence in this connection see notes under Section 5 *post*.

Charged, levied and paid:—The combination of these three words is meant to indicate the various stages of an imposition by the State. The terms 'charge' indicates liability 'levying' will be an expression or indication of the liability and 'paid' is, of course, recovery or the final stage in the case of an imposition It is discharge of a liability as determined in accordance with law.

Chargeable accounting period:—See note under Section 2 (1) aad (6) *ante* and Schedule I *post*.

Standard Profits:—Standard Profits are so to determined under Section 6 of the Act. See notes thereunder.

Proviso Exemptions:—The Exemptions in addition to profits of insurance business, are the same as are enumerated in Section 4 (3) I. T. Act, 1922 (Amended 1939). For these see notes under Section 4 (3), B. R. Jain's I. T. Act, 1939. 3rd Ed. 1945.

Application of Act.

S. 5. 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 of sub-clause (i) or sub-clause (ii) of clause (b) of Sub-section (1) of Section 4 of the Indian Income-tax Act, 1922, 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 British India where such business is carried on by or on behalf of a person who is resident but not ordinarily resident in British India unless the business is controlled in British India :

Provided further that where the profits of a part only of a business carried on by a person who is not resident in British India or not ordinarily so resident accrue or arise in British India or are deemed, under the Indian Income-tax Act, 1922, so to accrue or arise, then, except where the business being the business of

a person who is resident but not ordinarily resident in British India 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.

[1][**Provided further that this Act shall not apply to any business the whole of the profits of which accrue or arise in an Indian State ; and where the profits of a part of a business accrue or arise in an Indian State, such part shall, for the purposes of this provision, be deemed to be a separate business the whole of the profits of which accrue or arise in an Indian State, and the other part of the business shall, for all the purposes of this Act, be deemed to be a separate business**]

1. **Previous Law** :—Section 3 Act X of 1919 contained corresponding provisions.

2 **Analogous Law** :—(a) INDIAN LAW Section 4 Income Tax Act, 1922 (amended 1939). *See* Mr. B. R. Jain's commentry 3rd Ed. 1945 (b) ENGLISH LAW :—Para III, Section 12 (2) Finance Act of 1939

Amendment :—A further and third Proviso has been added to Section 5 by the Amending Act XXIV of 1941. This amendment brings liability to Excess Profits Tax into line with liability to income-tax as modified by the Income-tax (Amendment) Act (XXXII) of 1941, Section 8 adding clause (C) to Section 14, according to which income, profits and gains accruing or arising within an Indian State have been exempted from tax, unless brought into or received in British India in the previous year. Hence, where the whole of the profits of a business or of part thereof accrue or arise in an Indian State, such profits shall not be subject to Excess Profits Tax (Notes on clauses—clause 3. See Income-Tax Gazette, October 1941 Part V, page 37).

3. **Scope of Section 5** :—Section 5 indicates the applicability of the Act. In fact, Sections 4 and 5 together constitute the charging Sections. Section 5 indicates the business to be charged. The Section renders liable to Excess Profits Tax **'every business'**. The words 'every business' are qualified by the following expression, 'of which any part of the profits.....1922' Looking to the provisions of sub-clause (i) and sub-clause (ii) of clause (b) of sub-section (1) of Section 4, Income-tax Act, 1922 it is clear that the profits must be the profits of a person resident in British India during the chargeable accounting period and must have accrued or arisen or must be deemed to have accrued or arisen to such person during such period, or might have accrued or arisen to him without British India during such period.

Para. 15 of the Notes and Instructions issued by the C. B. R. very clearly defines the scope of Section 5.

Subjects to the exceptions referred to in paragraphs 17 and 18, the charge applies to all businesses.

(a) the profits of which accrue or arise to a person resident in British India whether such profits accrue or arise within or without British India, and whether they are or are not deemed to accrue or arise in British India :

(b) the profits of which accrue or arise in British India or, by the provisions of the Indian Income-tax Act, 1922 are deemed so to accrue or arise, to a person not resident in British India.

Where, however,—

(i) the whole of the profits of a business accrue or arise without British India, to a resident in British India who is not ordinarily so resident, and no part of the profits is deemed to accrue or arise in British India, such business is not chargeable unless it is controlled in India ; and

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(1) This proviso added by Section 2 of the Excess Profits Tax (Second Amendment) Act, 1941 (XXIV of 1941).

(ii) where the profits of part only of a business, carried on by a person not resident in British India or not ordinarily so resident, accrue or arise in British India or are deemed, under the srovisions of the Indian Income-tax Act, 1922, so to arise, only the profits of such part of the business are chargeable unless the business is the business of a person resident but not ordinarily resident in British India and such business is controlled in India.

"Business" includes any trade, commerce or manufacture, or any adventure in the nature of trade, commerce or manufacture, or any profession vocation, (See paragraph 18) as to the circumstances in which a profession is exempt (Para. 15 Notes and Instructions).

The two succeeding provisos qualify the general applicability of the provisions of the Excess Profits Tax Act to the profits of every business carried on by a person residing in British India or to those that might have accrued or arisen to him in British India, even if he was not residing there in the chargeable accounting period.

Section 5, lays down the tests for the profits of a business in order that the same might be hit by the Act. These tests are :—

(1) the profits of the business should be liable to pay income-tax (main Section).

(2) Accrual, in whole or in part of the profits in British India. (Provisos 1 and 2).

(3) that the profits have not accrued or arisen in an Indian State. (Proviso 3).

The position thus is as below (**a**) **Residents** :—In their case, their liability to pay Excess Profits Tax exists in respect of the profits of every business, any part of profits whereof made during the chargeable accounting period accrue, or arise, (or are deemed to accrue or arise) in British India or whether such part of profits accrues or arises without British India and that the profits have not accrued or arisen in an Indian State.

(**b**) **Non-Residents** :—In the case of non-residents, such part of the profits as accrue or arise in British India or is deemed so as to accrue or arise (and which is to be deemed to be a separate business) shall be charged.

In the case of persons (**c**) **not ordinarily resident** the Act shall apply if the whole of the income accrues or arises in British India. It will be so even if the whole income arises or accrues outside British India but the business is controlled in British India.

On the same principle, if a part only of the income arises or accrues in British India only such part shall be charged, being treated as a 'separate business.'

If, however, the control of business is in India, the whole of the business shall be amenable to the provisions of the Act and shall be subject to Excess Profits Tax. Foreign profits shall not be subject to Excess Profits Tax under the Act in the case of non-residents at all. Profits arising or accruing in British India are in all cases available to Excess Profits Tax irrespective of residence, non-residence or of a person being not ordinary resident in British India.

The expression 'trade' or 'business' has been observed to be more comprehensive than 'trade', for there may be businesses which are not 'trade'.[1]

The word "busines' used in the Indian Act, is thus, wider and may include 'profession'. See notes under 'Business' Section 2 (5) *ante*.

(1) Rose v. Miller 3 Ch. D. 71 (85); C. I. R, v. Incorporated Council of law Reporting 3 T. C. 105 (113).

4. Made during the chargeable accounting period:—These words were added by the Select Committee for the purpose of clearing up a rather vague point.

They observe:—"Where a person carried on two businesses during the standard periods aad discontinued one of them before the chargeable accounting period, it is necessary to secure that the profits. loss and capital of the discontinued business should be left out of account in determining the standard profits. While it is arguable that business which has been discontinued before the chargeable accounting period is not a business to which the Act, applies, we have considered it desirable to clarify this point by the insertion of the words during the chargeable accounting period." The importance of "during" has already been noted upon under Section 4 *ante*.

5. Proviso 1.—The provision of this proviso qualify or limit the profits of a business, accuring or arising without British India. They are analogous to the provisions contained in Proviso 2 to Section 4 (1) (c) Indian Income-Tax Act 1922 (Amended 1939).

According to this Proviso, the test of liability to tax of the profits of a business carried by or on behalf of a prson not ordinarily resident in British India there the profits accrue or arise without British India is that the business be controlled in India.

6. Control:—The one great principal as to control, as laid down in these many judicial decisions, both in India and in England, is that it is after all a question of fact in each case.

In an English case The *Egyptian Hotels Ltd.* v. *Mitchell*,[1] the following considerations where held to determin the controlling power of the Company.

(1, The Company was an English Company, having its registered office in England.

(2) The whole of the control of the share capital of the Company was left with the Directors,

(3) The question of increase and reduction of the Company's capital was left to the Directors.

(4) The business to be dealt with at an ordinary meeting included the consideration of the profit and loss account, the balance sheet, the report of Directors and Auditors and the declaration of dividend.

(5) the remuneration of the members of local Boards in Egypt remained with the Director who were also, when deemed expedient, to ascertain the profits of the Egyptian business

The question of control has been closely connected with the question of carrying on the trade or business and residence.

In *De Beers Consolidate Mines, Ltd.* v. *Howe*[2] it was held that the real business carried on where the central management and control actually abides.

7. Proviso 2:—This proviso relates to the assessibility to Excess Profits Tax of a part only of the profits of the business of a foreigner accruing or arising or deemed to accrue or arise in British India where the business is controlled in India.

Such a part shall be deemed to be 'separate business' for the purpose of Excess Profits Tax.

8. Where the profits of a part only of a business:—These words as they stand at present where amended (at a motion by *Mr. S. P. Chamber* in the Assembly).

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(1) 6 T. C. 152 (161, 162) See also 6 T. C. 1, 3 T. 344 & 9 T. C. 356, 357,

(2) 5 T. C. (198 213)

The amendment was really a verbal amendment which makes it clear that we are referred to the *profits of a part* of a business and not to *a part of the profits* of a business. This is merely a matter of clarification."

Two points require consideration in reference to the business to be charged to E P. Tax under Section 5.

(1) **Foreign subsidiary companies**:—The law relating to their taxation to E. P. Tax in British India differs from that in the United Kingdom. If a resident Company in India owns 90 per cent. shares in the foreign subsidiary Company, its foreign profits shall be liable to E. P. Tax.

If an Indian resident Company, however, owns 90 per cent. shares in a subsidiary Company in an Indian State, then in view of the newly added Proviso, (Proviso 3) such profits accruing or arising in Indian State shall not be liable E. P. Tax. Section 9 E. P. Tax Act relates to the subject. See notes thereunder.

(2) **Foreign Partnership**.—Under Section 4-A of Income-tax Act, a firm is resident of British India and as such taxable on world income; unless it is controlled wholly abroad. It would not be a correct view to hold that a foreign business as a whole is chargeable to Excess Profits Tax. To tax non resident on foreign profits would be to assume extra territorial jurisdiction which is not authorised (Section 99 Government of India Act 1935 and Section 1 Excess Profits Tax Act, 1940). Foreign profits of a resident or non-resident, if received in British India, are not liable to Excess Profits Tax and this principle would apply to profits of Foreign partnership also.

9. **Proviso 3**:—See under Amendment *ante*.

Standard Profits.

S. 6 (1) For the purpose of this Act, 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 stnadard 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:

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 31st day of March, 1936, 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 Indian Income-tax Act, 1922, for the purpose of the income-tax assessment for the year ending on the 31st day of March, 1937, or the previous year as so determined for the year ending on the 31st day of March, 1938; or

(b) the "previous year" as so determined for the year ending on the 31st day of March 1937, and that for the year ending on the 31st day of March 1939; or

(c) the "previous year" as so determined for the year ending on the 31st day of March, 1938, and that for the year ending on the 31st day of March 1939; or

(d) the "previous year" as so determined for the year ending on the 31st day of March, 1939, and that for the year ending on 31st day of March 1940 ;

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 13, [1](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 Officer in this behalf, the Excess Profits Tax Officer shall refer the application to the Board of Referees, and if the Board is satisfied that during the standard period the Profits of the businss were less than might at the beginning of that period have been reasonably expected, it may direct that the standard profits shall be camputed as if the profits during the standard period were such greater amount as it 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 Board is satis fied that owing to some specific cause peculiar to the business it is just that a greater amount should be allowed :

[2][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.

(5) Where the standard period includes any period prior to the commencement of Part III of the Government of India Act, 1935 during which Burma was part of British India, there shall, in computing the standard profits of a business under this section, be excluded from the profits of the business during the standard period so much of such profits as arose or accrued or were received in Burma unless such profits are also included in the profits of the business during the chargeable accounting period.

1 Previous Law :—Section 6, Excess Profits Duty, Act, 1919.

2. **Analogous Law**:—Section 13, Finance Act 2 of 1939. It is notable that, although Section 13 Finance Act 2 of 1939, contains provisions similar to those contained in Section 6 of the Indian Act there are minor differences of detail. For instance, while there is a minimum standard fixed both under the English and the Indian Law, under the former law [Section 13 (1), Part III Finance Act, 1939,] if the tax payer so elects, the standard profits of his business shall be taken to be the minimum amount specified in Section 13 (2) whic his £ 1,000, the largest sum which can be, the minimum being £ 3,000 (in case of partnership and of companies). In the absence of an election as above-mentioned the standard profits are to be computed with reference to sub-sections 3 to 9 of the Section *i. e.* (Section 13).

Amendments.—A verbal amendment has been made in sub-section (3) of this Section, adding "or within the extended period allowed by the Excess Profits Tax

(1) These words were inserted by Section 3 of tha Excess Profits Tax (Amendment) Act, 1940 (42 of 1940)

(2) This proviso was added ibib.

Officer under the Proviso to Section 13". This was necessary as under Section 13 (*Infra*) on Excess Profits Tax Officer has power to extend the time for submitting return.

The next amendment is the addition of a second Proviso to Section 6 (3). This has been added to make the directions under Section 6 (3) effective for subsequent chargeable accounting periods and also in order to give finality to such directions.

Notes on clauses (3) published in Government of India Gazette, dated 16-11-1940. Part V.

It may be noted that the amendments made to Excess Profits Tax Act by Amendment Act XLII of 1940 (amended to 3-12-1940), are the result of amendments made to the United Kingdom Law Finance Act 2 of 1939 with a view to remedy certain hardships and anamolies which have been shown by experience as likely to arise The amendments to the Indian Excess Profits Tax Act have also been made with the same end in view

Scope of Section 6 :—Section 6 lays down how "standard profits" are to be determined. What are "standard profits"? Why should the same be determined ? These are the rudimentary, yet important questions relating to assessment to the Excess Profits Tax, under the Act (*i e* the Excess Profits Tax Act) excess profits are to be taxed For this, one has to find out what are excess profits In order to determine these, one has to compare the profits of the chargeable accounting period' with some other profits. These latter are 'standard profits' The legislation has laid down a certain standard of profits, with reference to which the excess profit liable to tax is to be determined. It is only when there is an excess that the liability to tax arises. This excess has to be found out and for the purpose you must compare the profits in question, with what are technically and rightly termed as 'standard profits'. Section 6 (1) lays down how to find out these standard profits. Hence, the value and importance of determining standard profits.

Both under the English and the Indian law, the ascertainment of "standard profits" is not a fixed proceeding. It is on the other hand, a varying proceeding, for the simple reason that standard profits may be determined either with reference to a standard period, (if any is available) which is to be determined as laid down in Section 6 (2) (a) to (d), or they may be determined by applying the statutory percentage [Second Proviso to Section 6 (1)] Standard profits may be either increased or decreased in terms of the first proviso to Section 6 (1).

Again, standard profits may be those adjusted by the Board of Referees under Section 9 (3). Thus, standard profits are naturally varying. They may be determined either (a) with reference to the profits of the standard period, or (b) with reference to statutory percentage or (c) may be adjusted by the Board of Referees Section 6 (2) deals with the "standard period", proviso 2 to Section 6 with statutory percentage and Section 6 (3) with adjustment by the Board of Referees.

If the profits fall short of the minimum as laid down in Section 6 (4) *i. e.* Rs. 36,000 per annum no question of liability to Excess Profits Tax arises.

According to the proviso to Section 6 (4) the minimum sum of Rs 36,000 may be increased or decreased according as the chargeable accounting period is less than one year Standard profits may thus be variable

Variable Standards

The standard profits, which, under Section 4, are to be deducted from the profits arising during a chargeable accounting period to arrive at the excess profits which are to be charged to tax, are to be computed in accordance with the provisions of Section 6, and are to be an amount bearing to the profits of the business during the standard period if a standard period, is available, the same proportion as the chargeable accounting period bears to the standard period. The standard profits, it is to be noted, are to be computed in relation to any chargeable accounting period,

and, apart from the application of the minimum standard, are to be adjusted by reference to the increase or decrease of capital employed during the chargeable accounting period as compared with the capital employed during the standard period. There is thus no fixed standard for the whole duration of the tax but a different standard for each chargeable accounting period varying with the amount of capital employed during that period.

It is possible that different standard periods may be chosen by an assessee for different chargeable accounting periods (see paragraphs 56 and 57 as to the effect of capital adjustments on standard profits) [1]

An amount... ..standard period:—This is the method of determination of standard profits with reference to the period selected *i.e.* the standard period, as given in sub-section (2) of this Section. Supposing the chargeable accounting period is half the standard period and the profits during the said period amount to Rs 10,000, then the standard profits would be Rs 5,000 and any profits over and above that would be excess profits liable to Excess Profits Tax. Under the English law, the standard profits vary in the proportion of the chargeable accounting period *vide* Proviso to Section 13 (1) Part III, Finance Act 2 of 1939 on the point.

Standard period :- The 'standard period' has, for the purpose of computing the 'standard profits,' to be selected, at the option of the person carrying on the business, in terms of Section 6, Sub section (2). See below under Section 6 (2).

Deposit made for security not to be brought into account in the standard period ; In case of certain houses sold by the builders and certain money advanced to the purchaser by a building society and secured by the builders the amount of deposit made by the builders by way of security ought not to be brought into account in ascertaining the profit in the standard period and there was no contract extending beyond the accouating period *Allen Fairhead & Sons* 1944 All. Eng. L R 636 (Vol. 1). The facts of the case are : The appellants carry on a business as building contractors. During the years 1936 and 1937, which constituted the standard period for the purpose of computing the standard profits of the business, the company sold 18 houses which they had erected on a building estate at Southgate Middlesex. The houses were sold to purchasers who had obtained advances from the Hearts of Oak Permanent Building Society to enable them to complete their purchases. These advances, which were secured by mortgages on the houses, were made by the society pursuant to an agreement dated May 1, 1934, as varied by a supplemental agreement, dated November 4, 1936, whereby the appellants agreed, in cases where the amount advanced by the society to the purchaser exceeded 75 per cent. of the purchase price of the house, to guarantee repayment of excess advances, and also to deposit a sum of money with the society by way of security for the performance of their obligation, such deposit to be repaid by the society in due course in accordance with the terms and provisions of the agreement. For the 2 years 1936 and 1937, being the standard period, the deposits so made by the appellants with the society amounted in all to £ 1,000.

Held :—The amount of deposit ought not to be brought into account in ascertaining the standard profit as no contract extended beyond to accounting period.

Meaning of annual accounts by successive twelve monthly accounts:—It may be in various business concerns that alternatively, periodical accounts (say, six monthly or three monthly accounts) may be compiled for the benefit of the directors in addition to the twelve monthly accounts which are presented to the shareholders. In such cases the question requiring attention is : which are the 'accounts' for the purpose of standard period for computing standard profits. It has been considered in a very recent case of *Jenkins Productions Ltd.* v. *C. I. R.* (1944) 4 I. T. C. 98 : 1944 A. T. C. 329; 1944 All E. R. 610. The facts of his case are: The appellant company had made up for each half yearly ended the 30 June and 31st December a trading and profits and loss account and a balance sheet and the accounts included

(1) Para 47 Notes and Instructions.

the figures of stock at the end of each half year. These half yearly accounts were audited and were regularly placed before the directors and were approved by them. The annual general meeting of the company were held on some date in October or November and at each of these meetings the directors presented to the shareholders accounts for the twelve months ending on the previous 30th June. The special Commissioners hald that the 'accounts' to be considered in arriving at the standard profits of the appellant's company's trade or business for the period in question are the accounts ended 30th June, and so for the year 1935 accounts ending 30th June, 1936 as presented to the shareholders in the general meeting. On appeal before the Kings's Bench Division, the upholding of the Special Commissioners was reversed and it was held that to determine what periods should be taken for the purpose of ascertaining the standard profits of the appellant in the year 1935, the only periods to be selected can be periods of six months, since the accounts of the appellants were always made for such periods and half years of 1935 must be selected (i. e. two half yearly accounts ending 30th June 1935 and 30th December, 1935 both by aggregation) and not annual account ending 30th June 1936 as presented before the general meeting of the company beacuse a period falling wholly outside standard year can not be selected.

If in respect of that business a standard period is available :—These words were added by the Select Committee to make the applicability of standard profits clear. The provisions of Section 6 (1) are applicable only if in respect of the business a standard period is available.

The date of commencement of business is naturally an important consideration in this connection in order to see whether a standard period is available or not. The principle on the point has been held to be that where you have a definite commercial asset which has been used in the pre-war period for purposes of profit and the same commercial asset is employed for profit during the accounting period then that brings the earnings within the sweep of the Act (Per *Lord Mackenzie* in *Sutherland* v. *C I. R.* 12 T. C. 63 at pp. 70–71).

See also notes under "Commencement" at page 61 *post.*

To take concrete instance, if a business has commenced, say on 1st May 1939, its age of existence, has been only eleven months No standard period is available in respect of such business under Section 6 (2). In such a case, statutory percentage will apply. If, on the other hand, a business takes its start, say from 1st March, 1937, standard period is available in respect of the same and so the case will be governed by the provisions of Section 6 (1). The following examples illusrtates the case covered by Section 6 (1):—

Examples :—	Rs.
(a) Suppose profits of chargeable accounting period ending 31-3-1940 ..	96,000
Profits of standard period accounting year 1935-36 (Assessment year 1936-37 [elected under Section 6 (2) (a)] ..	48,000
Average capital employed being the same Excess profits for 12 months	48,000
Excess profits for 7 months from 1-9-39 to 31-3 40 ..	28,000
Tax @ 50% of the excess profits	14,000
(b) Suppose profits of the chargeable accounting period ending 31-3-1940.	96,000
Profits of the standard period, accounting year 1935-36, Assessment year 1936-37	30,000
Profits of the standard period accounting year 1937-38 (Assessment year 1938-39)	24,000
Total ..	54,000
[Elected under Section 6 (2) (b)] profits of 24 months ..	54,000
Average profit (standard) for 12 months	27,000

But according to the provision Section 6 (4) the standard profits will be taken as	36,000
Therefore excess profits of 12 months (96,000—36,000) ..	60,000
Excess profits for 7 months (1-9-39 to 31-3-40)	35,000
Tax @ 50% of the excess profits	17,500

Proviso 1:—This proviso is substantially the same as the proviso to Section 13 (3) (United Kingdom). Finance Act (2) of 1939.

The Proviso requires allowances to be made for increase or decrease in the capital employed in the trade or business in the chargeable accounting period as compared with that employed in the standard period. Standard profits will, therefore, increase or decrease in proportion to increase or decrease in the average amount of capital employed in the business in the chargeable accounting period. And the amount of such an increase or decrease shall be determined by applying the statutory percentage.

Adjustment for increase or decrease of Capital.

[The first Proviso to Section 6 (1) requires that the standard profits of any business, computed by reference to a standard period, are in relation to any chargeable accounting period, to be increased or decreased, as the case may be, by the statutory percentage on the increase or decrease of the average capital employed during the chargeable accounting period as compared with that employed during the standard period..]

It should be noted that, in the case of a chargeable accounting period commencing before 1st April 1941 and ending after 31st March 1941, the computation of average capital, for comparison with that of the standard period, is to be made for that chargeable accounting period as a whole The part period before and after the end of March 1941 are not for this purpose separate Chargeable Accounting Periods.

When adjustment to be made:— It is to be noted that adjustments for increase or decrease of average capital are to be made in computing the standard profits in relation to each chargeable accounting period, so that these adjustments are factors in computing the standard profits and (see paragraph 49) may affect the assessee's choice of standard period, in relation to each successive chargeable accounting period. Further, these adjustments are to be made to the profits of a standard period and not to the minimum standard of Rs. 36,000 a year. Thus, if the profits of a standard period of one year before adjustment are Rs. 34,000 and the adjustment for increase of capital during a chargeable accounting period is Rs. 1,500 the minimum standards is Rs. 36,000, not Rs. 36,000 plus 1,500.

[It should be observed also that a direction by the Board of Referees or the Central Board of Revenue that the profits of a standard period are to be computed as if the profits of that period were a greater sum than the profits actually made does not preclude an addition to or deduction from the standard profits so ascertained if the average capital employed during the chargeable accounting period is greater or less than that employed during the standard period.][1]

(1) Variation under Proviso 1 Section 6:—In case of increase of capital employed in the business, Suppose profits of the chargeable accounting period ending 31-3-1940 (Assessment year 1940-41) 100,000.

Profits of the standard period accounting year 1935-36 (assessment year 1936-37)	48,000
Increase in amount of capital in the two years	40,000
Profits of the chargeable accounting period after being reduced by 10 per cent. of 40,000 *i. e.* 4,000	96,000
Excess profits for the 12 months (96,000—48,000)	48,000
Excess profits for the 7 months	28,000
Tax at 50 per cent. of the Excess Profits	14,000

(1) Para 56 & 57 Notes and Instructions.

(2) Variation under Proviso I in case of decrease in capital employment in business.

Suppose profits of the chargeable accounting period ending 31-3-40 (Assessment year 1940-41)	93,000
Profits of the standard period, accounting year 1935-36 (Assessment year 1936-37)	48,000
Decrease in the amounting capital in the two years.. ..	50,000
Profits of the chargeable accounting period after being increased by 6 per cent. of 50,000 *i. e.* 3,000	96,000
Excess profits for the 12 months (96,000—48,000)	48,000
Excess profits for the 7 month	28,000
Tax at 50 per cent of the excess profits	14,000

Two or more businesses carried on by one person:—It should be noted that the provision, that two or more businesses carried on by the same person are to be treated as one business, affects the assessee's option to select a standard period or if the business was commenced on or after 31st March 1936, to choose a percentage standard. In such a case the standard period can only be chosen, or the optional percentage taken in relation to the total of the business which are required to be aggregated, and separate standards cannot be chosen for each of the separate businesses

In the case where the two or more businesses, to be aggregated under the second Proviso to Section 2 (5) have accounts made to different dates so that the combined businesses have not one common "previous year", and "previous year" for the purpose of Section 6 (2) of the Act, should be taken as including each of the "previous years" of the separate businesses in relation to the same income-tax year of assessment.

Thus if *A. B.* carries on business 1 the accounts of which are made up to 31st December, business 2 the accounts of which are made up to 30th November, business 3 the accounts of which are made up to 30th September, the standard period for the purpose of option (a) of the Sub-section is the year to 31st December 1935 for business 1, the year to 30th November 1935 for business 2 and the year to 30th September 1936 of business 3, and the standard profits, if option (a) were excercised, would be the aggregate of the results shown by those three accounts

Similar considerations apply in the case of a business with a branch if the accounts of the main business and the branch are made up to different dates.

In all cases, other than those in which a percentage standard is chosen, the standard profits in relation to any chargeable accounting period are to be increased or diminished by the statutory percentage upon the increase or decrease of average capital.[1]

Proviso 2:—This Proviso was amended by the Select Committee "our amendment of sub-clause1 is intended to provide that a business started after the 31st day of March, 1936, may, at its option, take as the standard profits either the profits of a standard period, where it has been in existence long enough to have a standard period or the statutory percentage or the capital employed in the business."

The provisions of this Proviso are applicable only where the business, the profits of which are in question, commenced on or after the 31st March, 1936.

In the case of a business commenced on or after 31st March 1936, the assessee has the option of taking as standard profits an amount calculated by applying the statutory percentage to the average amount of capital employed during the chargeable accounting period.

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(1) **Para 49 Notes and instructions.**

Commencement:—

This percentage standard will vary for each chargeable accounting period according to the amount of the average capital employed in the business during that period. In order to arrive at it, ;t will be necessary to compute the actual "Average capital" for each chargeable accounting period according to the Rules of the Second Schedule to the Act. This computation should not, however, involve any special difficulties since the assets to be valued will have been acquired since 30th March 1936 and accurate information as to cost, etc. should be obtainable without difficulty.[1]

The question of commencement of business, already noted above is intimately connected with the existence of a business and is a matter of cardinal importance, as this will decide whether profit standard as distinct from percentage standard, is applicable and if profit standard is applicable, which is a period selected as standard period out of those mentioned in Section 6 (2) *post*. This is the case under the English law also.

In an English case, *The Birmingham and Dt Cattle Bye-Praducts Co., Ltd.* v. *Commissioner Inland Revenue*,[2] assess e company was incorporated on 20th June 1913. Between this date and 6th October, 1930 the Company was busy in fixing the preliminaries only, *e a.* erection of works and purchase of plant and machinery. It was on 6th October, 1913 that the Company started receiving raw materials for purpose of manufacture. Its andited 'accounts submitted were for the period 6th October, 1913 to 31st December. 1914 It was held that the Company commenced business not on the date of incorporation *i e* 20th June, 1914 but on 6th October 1913. The basis of statutory percentage on the average amount of capital during the accounting period was employed.

The principle of the above ruling is that the date of commencement of business of a Company is not the date of its inception or incorporation but that of its actually starting business, for the purposes of the determining standard profits.

The same principle should apply to Indian cases also.

The question of the date of commencement of business of Company is, after all, one of fact It was so held in the English case, *Cannop Coal Co , Ltd.* v *Commissioner Inland Revenue* [3] In this case, also, the question of commencement of business gained importance with reference to the determination of standard profits. Assessee was a coal mining Company, incorporated in 1906. It was not till April, 1912, that its pits were on revenue basis The accounts of the Company, were made uy and audited half yearly to 30th June and 31st December and on the assumption that it had three pre-war trade years which ended on 30th June, 1914, two years ending 30th June, 1912 and 30th June, 1914 being the most favourable years of the Company, were selected for the purposes of computing average profits. It was held that the Company had three pre-war years and that the computation was correct.

Where there is a transfer of business, a new business is supposed to have been set up and in such a case a pre-war standard of profits based on the profits of the original business cannot be taken for the purposes of Excess Profits Duty computation.[4]

In this case, a millionery business, carried on for over 40 years, was transferred. Transferees did not take over any stock or books or book debts or contracts or liabilities; nor was there any agreement as to good will or to the making of any payment thereof. The original proprietor simply handed over to some of her saleswomen their order books. The name of the business "Emilie" was also not adopted with her consent. It was held in the case that there was no succession and a new business was set up on transfer.

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(1) Para 49 Notes and Instructions.

(2) 12 T. C. 92.

(3) 12 T. C. 31 (39-41).

(4) Mills Fram Emelie Ltd v. The Commissioner Inland Revenue 12 T. C. 73 (77, 81).

The question as to identity of two concerns is one of fact and not of law. *Alexander Ferguson & Co Ltd.* v. *Alkin* (*Surveyor of Taxes*) 4 T. C 38. A change in ownership by the succession of a company to an individual or partnership is treated as the setting up or commencing of a business. It is immaterial to see the nature of the business being the same as before or being different after change.

To set up and commence a trade means to bring into existence for the first time those activities which constitute trade. *Fry* v. *Burma Corporation Ltd.* 15 T. C. 145; (1930) A. C. 321.

Where assessee sold his business on 6th April 1936 on the hire purchase system to a company and carried on uncompleted and outstanding hire purchase agreements etc., it was held that the assessee sold its business in its entirety to the company on 6th April 1936 and had on this date set up and commenced a trade of carrying through uncompleted and outstanding hire purchase agreements. *Parker* v. *Batty* and *Batty* v. *Parker* 23 T. C. 739

In *Ormond Investment Co* v *Betts* (1928) A. C. 143 ; 13 T. C. 400, the Court of Appaal had by analogy treated the purchase of foreign securities as th setting up and commencement of a trade but it was held on appeal in King's Bench Division that it is impossible by analogy or metaphor to treat a trade which has been going on for years as newly set up and commenced contrary to the facts

In case of loss of one ship of a company and afterwards purchase of another ship out of the proceeds of insurance money received on account of the loss of the first ship and this second ship being started on her first voyage after six-half months from the loss of the first ship, it was held that the company carried on one trade from beginning to end and not "set up or commenced" a business with the second ship. *Merchiston Steamship Co. Ltd.* v *Turner* (1910) 2 K. B. 923

Where the assessee sold the business to a company which also managed to execute the pending order before the date of sale and to recover book debts for the assessee, this execution of orders, etc., for the assessee may constitute a new trade carried on by the assessee *Southern* v. *Cohen's Executors* 23 T. C 566.

In case of six subsidiary companies all the shares of which were owned by the parnet company going into liquidation and the assets of the subsidiaries being taken by the parent company and their activities also being carried on by it, it was held that the company had succeeded to the business of its subsidiaries and the new activities had under Rule 11 (2), to be treated as a separate trade and assessed on the commencing basis *Briton Farry Steel Co. Ltd* v. *Barry* 23 T C 414.

In case of Barristers at-Law being appointed as King's Counsel their appointment has no effect over the discontinuance of the profession as barrister and there is no "setting up or commencement" of a new profession *Seldom* v. *Croom Johnson* (1932) 1 K. B. 759 ; 16 T C. 740

Where a company was formed in 1912 to take over a contractor's business and was engaged in completing old contracts upto 1914 and thereafter the business premises were closed in 1914 and War Office purchased its works and persistent efforts made by the company to secure contracts proved to be furitless between 1914—1920 and during this period all expenses were met and in 1920 with the introduction of fresh capital and adoption of a different business policy a good profitable business was secured, it was held that inspite of the company's failure to secure business between the years 1914-1920, there was no discontinuance of its business and a new business was, therefore, not set up and commenced in 1920 *Kirk and Randall Ltd.* v. *Dun* (1924) 8 T. C 663.

In case of a company carrying on a foundry at Mossend purchased a foundry at Hamilton from another company without any patron and customers of the vending company and with its goodwill, it has been held that there was neither a succession nor an extension of their existing business by the company but there was a set up of a new business at the Hamilton Foundry. *Failwood Foundry Co. Ltd.* v. *C. I. R.* (1924) 9 T. C. 101.

In *H. and G Kinemas Ltd* v. *Cook* 18 T. C. 116, the appellant company was formed to acquire a cinema at Potsmouth in 1929 and purchased another cinema in

the same year and thereafter the company sold both the cinemas in December, 1930. Immediately after the sale of these two cinemas, the company purchased a London Cinema. It was held in this case that there was disconinuance of the business at the time the sale of the two cinemas was effected and a new business was set up on the opening of the London Cinema in 1930.

Statutory percentage on capital employed in the business is to be applied In such cases.

Profits.

In connection with the question of computation of standard profits, a question, at times, arise requiring a determination as to whether a particular sum is or is not profits. Such questions have arisen under the English law. In the case, *The Glenboig Union Fireclay Co., Ltd* v. *The Commissioner Inland Revenae*[1] the Company a fire-clay goods manufacturing Company, received compensation for leaving part of the fire-clay unworked and damages for wrongful interdict obtained against it. The House of Lords held that the compensation so received from the sterilization of capital asset was not a profit As to damages, the majority of the Lords in the Court of Sessions (Edinburg) held that the damages received for wrongful interdict were not profits but merely the equivalent of expenditure incurred in protecting capital asset.

The following have under the English law, been held to be *Profits from trade or business*

(*a*) Addition to reserve fund out of profits ;[1-b]

(*b*) Profits from acquiring concessions and turning them to account ;[2]

(*c*) Profits of a retiring proprietor, made in the course of the realization of trading stock ;[3]

(*d*) Profits of Executor on completion of contract entered into by deceased ;[4]

(*e*) Compensation awarded is respect of loss or damage, due to an act under the Defence of Realm Regulations, under the Indemnity Act ;[5]

(*f*) Compensation for cancellation of contract ;[6]

(*g*) Profits arising out of fooding arrangement ;[7]

(*h*) Compensation received by Shipowners, for compulsory detention of ship by Government ;[8]

(*i*) Agreed payment and settlement of claim for breach of contract ;[9]

(*j*) Compensation paid by Government for carrying on trade under restraint *i.e.* under control of Food Controller.[10]

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(1) 12 T. C 427 (456, 461, 464, 466).

(1-b) Irish Catholic Church Property-Insurance Co., Ltd. v. Commissioners Inland Revenue 12 T. C. 13 20, 21).

(2) Commissioner of Inland Revenue v. The Korean Syndicate 12 T. C. 181=(1920) 1 K. B. 598=(1921) 3 K. B 258.

(3) J. & R. O'Kane v. Commissioner Inland Revenue 12 T. C. 303.

(4) Cohan's Executors v. The Commissioner Inland Revenue 12 T. C. 602.

(5) Commissioner Inland Revenue v. New Castle Brassworks 12 T. C. 927.

(6) The Sunderland Ship-building Co v. The Commissioner Inland Revenue 12 T. C. 955 Commissioner Inland Revenue v. The Northflet Coal & Ballast Co. 12 T. C. 1102.

(7) Lambert Bros. v. Commissioner Inland Revenue 12 T. C. 1053.

(8) Jesse Robinson & Sons. v. Commissioner Inland Revenue 12 T. C. 1241.

(9) Ensign Shipping Co. Ltd. v. The Commissioner Inland Revenue 12 T. C. 1169.

(10) Charles Bros. & Co. v. Commissioner Inland Revenue 12 T. C. 256.

Statutory percentage :—[The statutory percentage is defined in section 2 (21), as amended by the Excess Profits Tax Amendment Act 1940, as follows,]

	Business commenced before 1st July 1938 per cent per annum.	Business commenced on or after 1st July 1938 per cent per annum.
(1) In relation to increase of capital or to the percentage standard available to businesses commenced on or after 31st March 1936 ;—		
(a) in the case of a business carried on by a body corporate (other than a company the Directors were of have a controlling interest therein-see paragraph 39);	8	10
(b) in the case of a partnership one or more of the partners whereof is a body corporate (other than a director-controlled company) ..	*8 and 10	*10 and 12
(c) in the case of a business to which the neither (a) nor (b) applies	10	12
(2) In relation to decrease of capital in all cases ..	6	8[1]

Controlling Interest, Interpretation :—The phrase "Controlling interest" cannot be defined in strict terms. The directors [including any who fall within sub-rule 2 (a) of Rule 7, as defined in Section 2 (10)], should be regarded as having a controlling interest in a company in any case in which they hold, directly or indirectly shares which enable them to control a general meeting of shareholders, either by an absolute majority of voting power or by the aid of a casting vote vested in one of the Directors (see the judgment of *Mr Justice Rowlatt* in the case of *B. W. Nobel Ltd.* v. *The Commissioner of Inland Revenue*. Vol. 12 U. K. Tax Case 923). It would be immaterial that for the purposes of passing certain resolution more than a bare majority of the votes might be necessary.

Where the owners of a particular class of shares have the right to vote only in certain contingencies, *e g.* where the holders of preference shares are entitled to vote only when the preference dividend is in arrear, those shares should be ignored in considering the distribution of voting power so long as the right to vote is dormant.

In deciding whether the directors of a company have a controlling interest therein, the following shares should be taken into account:—

(1) Shares held by directors in their own name and right;

(2) shares held by directors in their own right but in the name of a nominee (where shares have been purchased by a director and stand in the name of another person in relation to whom the transaction is a *benami* transaction, the shares in question should be regarded as falling within the term of this sub-paragraph.

(3) shares held by directors in their own right but in the name of a person into whose legal ownership the shares have been transferred as security loan ;

(4) shares held jointly in the names of directors and others—to the extent of the beneficial interest of the directors.

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* The lower of thes two rates is applicable to such amount of the average capital employed during the chargeable accounting period as represents the share of a body corporate other than a director controlled company.

(1) Para 50 Notes and Instructions.

Shares held by the directors as executors of trustees and interests in shares arising in cases where directors are beneficiaries in estates or trusts should not generally be taken into account.[1]

In an English case, Glasgow Expanded Metal Co., Ltd v. *Commissioner Inland Revenue*[2] :—The directors of the company held 4,300 out of a total of 7,600 shares issued, each share carrying one vote. The remuneration of the directors was, under the Articles of the company, to be fixed in a general meeting of the company. Some of the directors were employees of the company holding positions in respect of which the managing directors had the power to fix the remuneration.

The company contended that the directors did not have a controlling interest. It was held that the directors had a controlling interest.

It was pointed out (*per Lord Clyde, President*) that the only interpretation which can be given to the expression 'controlling interest' is by reference to the power which the number of the shares held by the directors gives them to control the disposal of the company's assets and the administration of its affairs at a general meeting of the company.

(Per *Lord Cullen*) A preponderating vote on any question that comes before the shareholders at a general meeting: *prima facie* that means they have the controlling interest in the Company Statutory percentage was applied in the above case for the purpose of determining 'standard profits' In another English case, (*B. W Nobles Ltd* v. *The Commissioner Inland Revenue,*)[3] it was held that a shareholder had, by reason by his shareholding and having a casting vote, a controlling interest.

In this case, *Rowlatts J.* observed:—"controlling interst, is a phrase that has a certain well known meaning; it means that a man whose shareholding in the company is such that he is the shareholder who is more powerful than all other shareholders put together in general meeting."

Statutory percentage was applied on the average amount of capital employed in the business where there was no pre-war trade year, for instance, where the Company started its manufacturing and revenue operations on 6th October, 1913 by receipt of raw materials though it was incorporated in June, 1913. [4]

The word "interest" is a word of wide connotation and the connception of "controlling interest" may will cover the relationship of one company towards another the requisite majority of whose shares are, as regards their voting power, subject whether directly or indirectly, to the will and ordering of the first mentioned company.

The owners of the majority of the voting power in a company and the persons who are in effective control of its affairs and for times. It is true that for some purposes a 75% majority vote may be required as, for instance (under some company regulations) for the removal of directors who oppose the wishes of the majority.

The facts of this case are : The appellant company's held shares in 11 companies 50% in four of the companies and control of more than 50% of the votes in conjection with a company or companies in which the appellant company had a control of more than 50% of the votes.

Held,—These were controlling interest in the appellant company. *British American Tobacco Co. Ltd.* v. *C. O. T,* (1943) All E. R. 13 (Vol. I).

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(1) Para 39 Notes and Instructions.

(2) 12 T. C. 573 (578, 579, 580).

(3) 12 T. C. 911 (925 & 926).

(4) The Birmingham Dt. Cattle Bye Products Ltd. v. Commissioner Inland Revenue 12 T. C. 92 (66, 97, 98).

Succession:—Similarly, where there is a transfer of business, a new business is set up after the transfer and the transfers cannot avail of the original business for the purpose of computation of a pre-war standard. Statutory percentage is applicable in such a case also, if there is a pre-war trade year counting from the date of transfer.[1] In this case, the orignal owner of the business retired, having sold the lease of the business premises on 16th April 1940. Assessment was computed by taking as the pre-war standard of profits for the purposes of Excess Profits Duty, a percentage standard based on the capital of the assessee (transferees) as at 15th April 1914. The computation was held to be correct.

Average amount of capital employed in the business:—This amount is to be ascertained according to the Rules In Sch. II.

Sub-section (2):—Standard period. The period is to be elected by the aseessee.

It is in contrast with the chargeable accounting period, the profits of which will be in question. The profits of this standard period will be compared with the profits of the chargeable accounting period in order to find out the excess profits chargeable.

The assessee has the option to elect, in fact, he is given the option to elect, 'previous year' determined under Section 2 (1) Income Tax Act, for the purposes of assessment for the year ending 31st March 1937 or 1938, or 1937 and 1939 or 1938 and 1939 or 1939, and 1940 Clause (d) has been added by the Select Committee.

Reading together clauses (a), (b), (c) and (d) of Sub-section (2), it is thus clear that a wide option has been given to the assessee to select his 'standard period' and choose from the years mentioned The standard period is avilable according to when the business began first.

The illustrations given under Section (6) (1) above indicate how the standard period may be selected. The provisions of the English law, as contained in Section 13 (3) to (6) Part III, are also the same.

Sub-section (2) Proviso :—The Proviso to this Sub-section fixes the minimum period to be nine months ; less than this period cannot be taken to be the standard period.

Sub-section (3) :—The provisions of this Sub-section have also been taken from the English law [Section 13 (7) Part Part III Finance Act, 1939].

Within the period specified in the notice :—This period is sixty days [*vide* Section 13 (1) *post*.]

Makes an application :—An application by the assessee is essential, both under the English and the Indian Law. if the matter is required to be determined by the Board of Referees.

Board of Referees—Special Standard.

If, any case, the profits of the business during the standard periods were less than, at the commencement of that period, might reasonably have been expected, the assessee may apply to the Excess Profits Tax Officer who is to refer his application to the Board of Referees for consideration, and the Board of Referees may direct that the standard profits shall be computed as if the profits during the standard period were such greater amount as it thinks just. [Section 6 (3).]

The Proviso to the Sub-section lays it down that the sum so awarded shall not exceed the statutory percentage of the average amount of capital employed in the business, unless the Board is satisfied that owing to some specific cause peculiar to the business it is just that a greater amount should be allowed. It will be noticed that the award of such a greater sum is conditioned by the requirement that the profits of the standard period were less than might have been reasonably expected. It should be noted further that any award of the Board of Referees has relation to the chosen standard period and that it is effective not only as regards the chargeable accounting period in reference to which the application is made but also as regards each subsequent chargeable accounting period.

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(3) Mill Iron Syndicate Ltd. v. C I. R. 11 T.C. 73 (77, 80, 82).

The words "during the standard period the profits of the business were....." make is clear that an application to the Board of Referees cannot be preferred in any case where, under the second Proviso to Section 6 (1), the optional percentage standard is chosen.

The adjustment referred to in paragraph 49 in respect of increase or decrease of average capital during the chargeable accounting period has to be made in all cases where a standard period is chosen, whether a direction is given by the Board of Referees or not.

It is to be noted that any application under this Section is to be made, as regards any chargeable accounting period, within the time allowed for the making of a return of profits under Section 13 (1), or within the extended time allowed under the proviso thereto.

The form of application is E. P. 14 and a copy of the form should be supplied to the assessee at his request.

Applications received by the Excess Profits Tax Officer should be referred by him with the assessee's file containing completed Excess Profits Tax computations, to the Commissioner of Excess Profits Tax. If Excess Profits Tax Officers are consulted by assessees or their representatives, they should draw attention to the provisions of the Act as to the extent of the powers of the Board of Referees and of the Central Board of Revenue in relation to increase of standards.[1]

Board is satisfied :—The term 'satisfied' must mean satisfied by evidence to be produced by the applicant. Thus, while a duty is cast on the Excess Profits Tax Officer to refer the application to the Board, the Board must allow the evidence led by the applicant which it is for him to produce.

Where, on facts, the Board of Referees arrive at a particular finding and states: "the Board takes a different view of the facts, it means that they intend to find, on agreed facts, that they dissented."

Where there was material upon which the Board of Referees might arrive at the conclusion at which they did arrive, the finding of the Board was upheld by the High Court.[2]

Board's Power—nature of :—The powers of the Board of Referees according to this provision are discretionary and not subject to any control by the Income-tax Department or the Central Boord of Revenue. It is not a power to *fix* the standard but to *direct* how to Compute. The Board has no power to vary the statutory percentages, unless, for some *specific cause*, a greater amount can be allowed.

"A Board of Referees is empowerd under Section 6 (3) te award in certain circumstances an increased standard not exceeding the statutory percentage of the average capital employed in the business. The period by reference te the average capital of which the limitation is applicable is not specifically stated. It will be noted, however, that the Sub-section in terms refers to the standard period and any chargeable accounting period, so that to import into its construction the circumstances of the latter would be clearly irrelevant.

If the point is pressed it should be pointed out that an allowance of the statutory percentage on the average capital employed in a chargeable accounting period would involve double allowance in respect of any increase or decrease of capital over that employed in the standard period, since this must be taken into account in applying the first Proviso of Section 6 (1).[3]

Specific cause :—Various meaning have been assigned to the term "Specific Cause" in the various English decisions. In a recent case [*Fiat (England) Ltd.* **v.** *Williams* 17 T. C. 105] abnormal trade competition was held not to be a 'specific cause'. To make specific cause, you want something beyond ordinary fluctuations.

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(1) Para 51 Notes and Instruction.

(2) The Aldwarks Co, Ltd. v. Commissioner Inlaod Revenue 18 T. C. 125, (137, 138).

(3) Para 52 Notes and Instructions

The question is essentially one of fact and degree. (See also 1 T. C. 343, 11 T. C. 56, 123).

Proviso 1:—Under this Proviso the maximum amount fixed is the statutory percentage rate Even then, the Board has been given the discretion to fix a greater amount in any particular case, when the peculiar nature of the particular business requires it for causes to be shown. This provision relating to the companies, has also been taken *verbatim* from the English law. [Section 13 (7) proviso (a) Part III Finance Act, 1939.]

Proviso 2:—The provisions of this Proviso indicate the finality of the Board's decision, which can be made only once and when once so made shall be binding on the assessee in respect of all subsequent chargeable accounting periods.

This Proviso was added by Excess Profits Tax Amendment Act 1940.

Sub-section 4:—Sub-section (4) lays down the minimum amount of standard profits which is Rs. 36,000. This sum is to be taken into account when the standard profits computed under Section 6 (1) are less than the above sum. In the bill as presented it was only Rs. 20,000. The Select Committee raised it to Rs. 30,000 and it was later raised to Rs. 36,000 by the Assembly.

The Proviso to this Sub-section provides for a case where the chargeable accounting period is not just or full one year, but either a greater or less period than that. In such a case, the minimum amount mentioned above shall be increased or decreased accordingly, as the case may be.

It is another case of adjustment, like the one contained in Section 6 (1) or that contained in Section 6 (3).

Sub-section 5:—This Sub-section was added by the Select Committee, with the object as indicated here in below :

"We have inserted a new sub-clause (5) to provide that profits made in Burma during the period when Burma was included in British India should not be included in the standard profits, unless they are also included subsequently, in the profits of the chargeable accounting period which of necessity falls within a time when Burma is no longer a part of British India"

Examples of computations of standard profits:—as given in Paragraph 54 Notes and Instructions.

The *A. B.* Company Ltd., is a public Company, *i. e.*, not director-controlled, which commenced business in 1934, whose accounts are made up yearly to 31st December.

The standard period selected is the years 1936 and 1937.

The profits computed for Excess Profits Tax purposes in accordance with paragraphs 24* *et seq.* before adjustment for capital variation are :—

	Rs.
Year ended 31st December 1936	2,00,000
Year ended 31st December 1937	2,40,000
Year ended 31st December 1939 (including chargeable accounting period of 4 months)	3,00,000

The average capital employed in the business computed in accordance with paragraphs 74† *et seq* was :—

	Rs.
Year ended 31st December 1936	50,00,000
Year ended 31st December 1937	51,50,000
Chargeable accounting period 4 months ended 31st December 1939.	54,00,000

* See under Rule 1 Schedule 1 post.

† See under Section Schedule.

The standard profits for the standard period of two years, before adjustment for variations of capital, is, therefore, Rs. 2,00,000 plus 2,40,000=4,40,000 the average capital of the standard period is $\frac{50,00,000 \text{ puls } 51,50,000}{2}$ =Rs. 50,75,000

The increase of average capital during the chargeable accounting period is Rs. 54,00,000−50,75,000=Rs. 3,25,000, and the standard profits in relation to the chargeable accounting period of 4 months business are :—

	Rs.
Profits for 2 years	4,40,000
Proportion for 4 months—4/24	73,334
Add for increase of capital Rt. 3,25,000 at 8 per cent. per annum for 4 months	8,666
Standard profits in relation to chargeable according period of 4 months	82,000
The profits of the chargeable accounting period=4/12 of Rs 3,00,000	1,00;000
Standard profits in relation thereto..	82,000
Excess profits	18,000
Excess Profits Tax at 50%	9,000

2. AB and Company have a partnership which commenced business on 1st July 1936 hnd has made up its accounts to 31st March.

The profits (computed for Excess Profits Tax purposes in accordance with paragraphs 24 *et seq*) and the average capital employed (computed in accordance with paragraphs 74 et *seq*) are respectively:—

	Profits	Aaerage capital.
	Rs.	Rs.
9 months ended 31st March 1937	81000	6,00,000
Year ended 31st March 1943 (including chargeable accounting period of 7 months) . ..	1,50;000	6,90,000

The standard period chosen, the option afforded by the second Proviso to Section 6 (1) not being exercised, is the "previous year" of 9 months to 31st March 1937.

	Rs.
The standard profits, before adjustment for variation of capital are	81,000
Proportion for 7 months 7/9	63,000
Add for increase of capital during the C. A. P.' say, Rs. 96.000 at 10% for 7 months	5,600
Standard profits in relation to chargeable accounting period of 7 months	68,600
The profits chargeable accounting period 7/12 of Rs. 1 50,000	87,500
Sandard profits in relation thereto	68,600
Excess Profits..	18,900
Excess Profits Tax at 50%	9,450

3. A.X. Ltd. is a Company which commenced business on 1st January 1937. The issued share capital is held entirely by the Directors of the Company. Its accounts are made up each year to 31st December, and its profits and average capital are computed as follows:—

	Profits including Directors' remuneration.	Average capital
	Rs	Rs.
Year 1937	40,000	5,00,000
Year 1938	50,000	5,20,000
Year 1939	1,50,000	6,00,000

The option in the second Proviso to Section 6 (1) is exercised of 4 months to 31st December 1939 is found to be Rs. 5,50,000.

The Excess Profits Tax computation is:—

	Rs.
Adjusted profits of year 1939, applying Rule 7 (1) (b) of First Schedule	1,50,000
Adjusted profits of chargeable accounting period of 4 months, 1/3 ..	50,000
Standard profits for one year = 10% of Rs. 5,50,000 = 55,000 Standard profits for 4 months = 1/3 of Rs. 55,000	18,334
Excess Profits	31,666
Excess Profits Tax at 50%	15,833

Relief of occurrence of deficiency of profits

Section 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 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, so chargeable for the next subsequent chargeable accounting period and so on :

[1][Provided that a deficiency of profits occurring in a chargeable accounting period beginning on or after the 1st day of April 1941 shall first be applied so as to reduce profits chargeable to tax arising in another chargeable accounting period beginning on or after the said 1st day of April, and a deficiency of profits occurring in a chargeable accounting period ending on or before the 31st day of March 1941, shall first be applied so as to reduce profits chargeable to tax arising in another chargeable accounting period ending on or before the said 31st day of March ; and where owing to an insufficiency of profits for chargeable accounting periods ending on or before the said 31st day of March, or, as the case may be, beginning on or after the said 1st day of April the whole or any part of the deficiency is applied otherwise than as aforesaid :–

(a) the application shall be treated as provisional only ; and

(1) The provisoes were added by the E. P. T. (Amendment) Act, 1941.

(b) if it thereafter appears that there is no longer such an insufficiency as aforesaid, such adjustment shall be made as the Central Board of Revenue may, by written order, direct.

Provided further that where a chargeable accounting period falls partly before and partly after the end of March, 1941, the provisions of the preceding Proviso shall apply as if so much of the chargeable accounting period as falls before and so much of the chargeable accounting period as falls after, the said end of March, were each a separate chargeable accounting period, and as if the deficiency of profits of that separate chargeable accounting period were an apportioned part of the deficiency of profits occurring in the whole period ; and any apportionment required to be made by this Proviso shall be made by reference to the number of months or fractions of months in each of the parts of the whole chargeable accounting period.[1]

Analogous Law :— S. 15 (2) Finance Act 2 of 1939 contains the same provision as this Section Section 15 (1) defines what deficiency of profits means. Relief by way of repayment or set off in cases of deficiency available under the English Finance Act 2 of 1915 was also similar, general principles being the same in both case.

Amendments:—The two provisos to Section 7 were added by Section 4, Amending Act (XI) of 1941.

These Provisos provide for the setting off of deficiencies and give the assessee a claim to have a deficiency occuring in a period after the end of March 1941 set off against an excess occurring in a period after the end of March 1941.

They also provide that for this purpose a previous set off against an excess occurring in a period before the end of March 1941, may be cancelled.

Statement of objects and reasons : -The effect of Clause 4, introducing the two Provisos has been illustrated by an example. A concern which makes up its accounts regularly to the 31st December shows the following results :—

Chargeable accounting period of 4 months to 31t December 1939	Excess profits Rs. 20,000 assessed at 50%
Chargeable accounting period of 12 months to 31st December 1940.	Excess profits Rs. 10,000 assessed at 50%
Chargeable accounting period of 12 months to 31st December 1941	Deficiency Rs. 12,000, apportioned, Rs. 3,000 to the 3 months to 31st March 1941 ; Rs. 9,000 to the 9 months to 31st December 1941.

Set off of the Rs. 12,000 deficiency is claimed against the excess profits of previous periods under Section 9 of the Act and tax is refunded at 50 per cent.= Rs. 6,000, the set off being, under the clause, provisional only so far as the Rs. 9,000 for the period after the 31st March, 1941, is concerned.

If in the three months ending 31st March, 1942, excess profits arise amounting to Rs. 10,000, they will be chargeable at the rate of 66 2/3 per cent. It would be to the advantage of the assessee to set-off there against, instead of against excess profits chargeable at 50 per cent the deficiency of Rs. 9,000 of the eriod of nine months ended 31st December, 1941. This is permitted under the clause and the original provisional set-off would be cancelled while the excess profits chargeable at 66 2/3 per cent. would be reduced.

Scope of Section 7 :—Section 7 provides for relief in respects of Excess Profits Tax in cases where there is a deficiency of profits in a subsequent accounting period. In such a case, it will be considered that the profits of the previous accounting period have been reduced by the amount of the deficiency and repayment of Excess

(1) These provisos were added by Section 4 of Excess Profits Tax (Amendment) Act 1941 (XI) of 1941).

Profits Tax paid in an earlier accounting period can be claimed on this basis. This is clause (a).

Again, there may be cases in which there has been no profit in the previous period, or where the losses in the period in question is greater than the profits in the previous period. In such a case, after balancing the previous period profits with an amount of deficiency of the period in question equal to that sum, the balance of deficiency of the latter period (*i.e.* the period in question) may be carried forward. This is clause (b),

This scheme of balancing or setting off losses against profits is meant to give a fair deal both to the Revenue and the assessee, for, according to it the total losses and profits will be set off, one against the other, and the Revenue would thus receive exactly what it is entitled to for this total period The principle of the English provision (as explained by *Sir John Simon*, the Chancellor of Exchequer, in the debate in the House of Commons quoted hereunder) should be of material assistance and value in following the provision of Section 7. "As in the case of Excess Profits Duty, Clause 15 of the Bill provides for relief in respect of what are called deficiencies and I think this is absolutely necessary. The matter may be put bluntly in this way that although a business may have paid Excess Profits Tax in the first year, it would be entitled, when another year had gone by, to ask that the calculation would be made in respect of the whole period, so that, if its profits in the first year had been followed by a severe loss or a drop, it would not be treated unjustly. Otherwise injustice would be done Thanks, however, to this provisions, the taxpayer will be able to obtain relief for any other year in which the profits have fallen short. You may put it broadly like this The aggregate amount of Excess Profits Tax payable throughout the whole operation of the tax will be the tax corresponding with the net excess profits over the whole period, after allowing or any falling off profits in any year."

Para. 92 of Notes and Instructions 57, explains as follows :—

Section 7 provides that a deficiency is to be applied in reduction of the profits of the business chargeable with excess profits tax, and that relief is to be given by repayment or otherwise.

If there is a previous chargeable accounting period in which there was excess profits, the deficiency is to be set off as far as possible against such excess profits, and if the deficiency exceeds such excess profits of subsequent chargeable accounting periods in their order of priority in point of view of time.

When there is no previous chargeable accounting period for which there were excess profits, the whole of the deficiency is similarly to be set off against the excess profits of subsequent periods.

The above principle fully and clearly explains the matter of relief to be granted in cases of deficiency of profits provided for by this Section.

Change of ownership :—There were difficulties under the old Act of 1915, in cases of change of ownership of business. In an English case,[1] it was held that the words 'his profits' in the year 1915, Act showed that deficiency relief was available only to the person who held the business both during the period of deficiency and the period of profits against which it was sought to be set off.

In this case the Revenue's contention that where there has been a change of ownership of business, the new company could not claim relief was allowed by the High Court

As those words do not exist in the 1939 Act, a change of ownership would not now affect a claim on account of deficiency.

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(1) F. W. Millington Ltd. v. C. I. R. (1927) 12 T. C. 1081.

Deficiency of profits :—

A "deficiency of profits" means.

(i) where profits have been made in a chargeable accounting period, the amount by which such profits fall short of the standard profits ;

(ii) where a loss has been made in a chargeable accounting period, the amount of the loss added to the standard profits [1].

The term, deficiency' in relation to profits, in Excess Profis Tax Act, is, after all a comparative term When can you say that there is a "deficiency" in profits ? The answer clearly is when the profits sought to be charged are less; than what ?

The simple reply is less than the "standard profits" as determined under Section 6. If the profits are 'in excess' of the standard profits you tax them under the Act, but if they are less than or fall short of standard profits, or where loss has occurred in that particular period Section 7 provides that, it is not only that they are not chargeable, but, that repayment of Excess Profits Tax in respect of previous accounting period or periods already paid can be claimed on this ground, so that deficiency of profits is to be judged by a comparison with standard profits. Profits less than standard profits are deficiency. Then, losses may cause deficiency for profits would have been over and above the standard profits but for the losses. Section 15 (1), English Finance Act, 2 of 1939 clearly indicates what deficiency is and what shall it be its amount or extent. See Part III.

Loss:—Under Section 2 (10) of the Act a 'loss' is a 'loss' computed in the same manner as profits (computed under Schedule I. Rules) so that losses and profits under the Act are to be computed in the same manner as profits. Under Section 14 (3) English Act also, losses and profits are to be computed in the same way for Excess Profits Tax purposes. From all that has been stated above, and in particular from the provision of Section 7, it naturally follows that the question of there being a deficiency of profits in the sense above stated, has to be considered afresh in every chargeable accounting period. Loss does not include capital loss. Loss of capital, however, incurred in the course of business in a trading loss.[2]

Loss nature of:—(a) The loss must be a commercial loss, *i. e.* an expenditure incurred for the purpose of enabling the person to carry on the business and earn profits) *C. I. R* v. *E. C. Warness & Co. 12 T. C. 227*)

(b) It must be a loss of the chargeable accounting period, as the difiiciency referred to in the Section is relating to the chargeable accounting period.

(c) Loss cannot be carried forward (Sch. I. R. 3)

(d) Set off, of loss in one business against profits in another. This was not allowed before. Now this is permissible, because all businesses carried on by the same person are now to be treated as one.

Clause (a):—clause (a) embodies the principle of set-off being applicable to Excess Profits Tax cases. The Terms *'aggregate' amount* and 'the previous chargeable accounting periods' indicate and relate to more than one 'accounting periods' having gone by already, when the question of 'deficiency' in a subsequent period arises. But, there may be cases where only one accounting period of profits has rolled by when the question of deficiency in the following subsequent period arises and its set off is allowed. In such case, the term 'aggregate amount' would have to be read only as being 'amount' and the term 'previous chargeable accounting period' will be read as chargeable accounting period.

The expression *'So chargeable'* means chargeable with Excess Profits Tax *"Deficiency of profits"* means the deficiency of the profits of the *period in question.* Clause (a) therefore, relates to cases w'.ere there were profits in a previous period

(1) Para 92 Notes and Instruction.

(2) Barnard v. Ghan 18 T. C. 723.

periods, charged to Excess Profits Tax and there is a deficiency in the subsequent following period, which would be set off against profits of the previous periods or periods. Relief under Section 7 (1) (a) shall be given in such a case by 'repayment' or otherwise.

The term 'repayment' is quite clear, meaning that the Excess Profits Tax paid in respect of the profits in excess of and over and above the standard profits shall be repaid or refunded to the assessee after balancing or setting off previous period's excess with the deficiancy of the period in question, or in hand. The term 'otherwise' would seem to indicate an adjustment by set off.

Clause (b):—The principle of the provisions of this Clause is also practically the same as that of those in Clause (a). As is obvious, set off may be either in respect of the profits of a previous period or it may take the form of 'carrying over'. Clause (b) relates to a set off the latter class. This would be the case when there has or have been no profits in the previous period or periods against which the deficiency of the period in question may be set off on alternatively. There may be cases, when a certain amount of deficiency may be left over after setting off a greater portion of it as against the profits of the previous periods. This entire, or balance of deficiency of the period in question may be "carried forward" to be set off against profits of subsequent period. This is Clause (b) of Section 7. Thus, while Clause (a) provides for a set off deficiency of the period in question against the profits of a previous period or periods, already charged to Excess Profits Tax, Clause (b) provides for a set off of the said deficiency, by carrying it over, against the profits of the following period or periods, till it is adjusted in full. The principle of the scheme could not be given effect to otherwise, for it is evident that in cases where there are no profits of the previous period or periods against which the deficiency or loss can be set off, there can be no repayment. And there can be no repayment either when the earlier profits were less than the deficiency in hand. Hence, the deficiency has to be carried forward.

The expression 'amount of deficiency of profits' in this Clause means the amount of deficiency of profits for the period in question or in hand.

The Balance of the deficincy shall be replied:—These words indicate a case where there were profits in the period but not enough to absorb the entire deficiency. The part left unabsorbed only will in such a case be carried forward to be adjusted with reference to the profits of the subsequent chargeable accounting period. The point of the Section in allowing set off and repayment will be quite clear from the English cases cited hereunder wherein it has been held that repayment of Excess Profits Duty are profits assessable to Income-tax. There was a ***similar*** but not the ***same*** relife granted by Section 7 of the Excess Profits Duty Act 1919. It differed from the one given here in details and in other respects.

In connection with the question of set off of loss it is worth nothing that there is no provision in Excess Profits Tax law under which deficiencies suffered in one business could be set off against excess profits made in another (***Wood*** v. ***The Commissioner Inland Revenue.***) It was followed in ***Birds Potter and Hughs Ltd.*** v. ***The Commissioner Inland Revenue.***[1] In this case, assessee company carried on the business of ship-brokers, acting as brokers to ship and ship agents. In the course of this business they acquired ship jointly with other compainies. It was found as a fact that the two undertakings were separate businesses and therefore the deficiency in one business was not allowed to be set off against the profits of the other business.

Excess Profits Duty—repaid; profits assessable to Income Tax:—It is notable, further, that Excess Profits Duty repaid has been held under the 1915 (English) Finance Act to be ascertained and assessable profits in the year of repayment.[2]

(1) 1925 S. C. 144 : 12 T. C. 976.

(2) Eglinton Sillica Brick Co., v. Marrian 9 T. C. 92.

Where the assessee to whom Excess Profits Duty had been repaid, due to having sustained losses in November 21, on his transfer of business in March, 21, he was assessed to Income tax on Excess Profits Duty amount believed as profits assessable.[1] Similarly, another English case, having sustained havy losses in the business for the accounting period, 1st Day to 25th November 1920, the assessee company having gone into liquidation and ceased business on latter date,[2] became entitled to the repayment of the whole of Excess Profits Duty paid for four years ending 31st April 1919. The Excess Profits Duty so paid was deducted in each year from the income assessable to tax.

Repayment of excess Profits Duty having been made to company in April 1924, assessment to income-Tax for 1924-25, in respect of repaid amount was held good. Repayments of Excess Profits Duty in ***Kirks Trustees*** v. ***Commissioner Inland Revenue***[3] also was held to be profits assessable to Income tax,

Amount of Excess Profits Duty repaid on a revision of Company's Excess Profits Duty liability on the basis of half yearly instead of early accounting periods and in respect of postponed renewals and repairs were held to be income or profits assessable to Income-tax under Case VI. Schedule D.[4]

In ***Tarrant*** v. ***Roberts***[5] set off of a sum due by the assessee against a debt of like sum due from him to the Revenue was made by mutual aggreement. It was held to be profits assessable to income-tax.

Succession:—"Relief in respect of deficiency can be claimed only by the same business as incurred the deficiency. If there has been a change in the business the relief lapses. Having regard to the provision of Section 8, Excess Profits Tax Act, relief in respect of deficiency cannot be carried over from the predecessor to the successor except in the case where change takes place in the persons carrying on business by reason of the death of partner after 1st day of September 1939 as mentioned in Section 8 (7). As to who carried on the business, it is a question of fact and law.

Relief in respect of deficiencies against the excess profits of previous chargeable accounting periods will normally be given by repayment application being made on form E. P. 17.

Provisos The provisions relating to "Deficiency of Profits," as noted above, are modified by the Proviso added to Section 7 by Section 4 of the Excess Profits Tax (Amendment) Act 1941, in order to secure that as far as possible, deficiencies of profits arising before 1st April 1941, shall be set off against excesses arising before that date and assessable at 50 per cent, while deficiencies arising after 31st March 1941 shall be set off against excesses arising after that date and assessable at 66 2/3 per cent.

As in the case of excess profits in a chargeable accounting period falling partly before and partly after the end of March 1941, assessable in part at 50%and in part at 66 2/3% a deficiency arising in such period is to be computed for the whole period by reference to standard profits modified in respect of the increase or decrease of average capital for the whole period, and apportioned between the two parts of the whole chargeable accounting period in proprtion to the months and fractions of months in each (See paragraph 21).

The purpose of making the initial set off a deficiency or the apportioned part of a deficiency provisional is to allow the assessee to claim set-off a higher rate deficiency against a lower rate excess if he so chooses and to allow the cancellation

(1) Hill v. Mathews 10 T, C. 25.

(2) A. N. W. Nestill Ltd. (in liquidation) v. Mitchell 41 T. C. 211.

(3) 11 T. C. 323.

(4) Olive & Porrington Ltd. v. Rose (1919) 14 T. C. 701.

(5) (1930) 15 T. C.754.

of such allowance in whole or in part if later there is a higher rate excess available against which, under the Act. such higher rate deficiency is then set off.

Example 1.

	Rs.
1st C. A. P. 10 months to 30th June 1940	
Deficiecy	30,000
2nd C. A. P. 12 months to 30th June 1941	
Excess	*60,000
* Assessable 45,000 at 50%	
15,000 at 66 2/3%	

As the Rs. 30,000 deficiency arose in a 50% period it must be set off wholly against the Rs. 45,000 excess assessable at 50 per cent.

Example 2.

	Rs.
1st C. A. P. 10 months to 30th June 1940	
Deficiency	50,000
2nd C. A. P. 12 months to 30th June 1941	
Excess	*60,000
*Assessable 45,000 at 50 per cent.	
15,000 at 66 2/3 per cent.	

As the Rs. 50,000 deficiency arose in a 50% period it must be set off, as far as may be, agaidst the Rs. 45,000 excess assessable at 50% leaving only the balance of Rs. 5,000 to be set off against the Rs. 150,00 excess assessable at 66 2/3%

Example 3.

1st C. A. P. 10th months to 30th June 1940		
Excess ..	..	5,000
2nd C. A. P. 12 months to 30th June 1941		
Deficiency ..	..	60,000
divisible as ..	..	45,900 upto 31/3/41
	..	15,000 after 31/3/41

Under Section 7, Rs. 5000 of the deficiency may be set off against the excess of Rs. 50,000 and if the tax has been paid, refund is due of the tax Rs. 25,000. The balance of deficiency Rs. 10,000 is available against subsequent excesses, if any.

If in the 3rd C. A. P. of 9 months to 31st March 1942 (assuming that the term of the tax is not further extended) there were excess profits of Rs. 30,000 assessable at 66 2/3% the assessee could then claim-the set-off of the whole Rs. 15,000 deficiency apportioned to the period 1st April to 30th June 1941 against the excess profits of the 3rd chargeable accounting period assessable at 66 2/3 percent.

In such a case the allowance of Rs. 5000 deficiency against the assessment for the 1st C. A. P. should be cancelled by an additional assessment. (Para 93 Notes and Instruction).

Illustration No. 1

Accounts of Messrs. X. Y. Z. and Company were made up to 30th September each year. They suffered a deficiency of Rs. 3,000 in the year ended 30th September, 1941 but had excess profits of Rs. 2,000 and Rs. 5,000 for the years ended 30th September, 1940 and 1942 respectively.

By S. 7-A of the Excess Profits Tax Act for the purpose of giving relief for the deficiency, the six months to 31st March 1941 and the six months from 1st April 1941 must be regarded as separate chargeable accounting periods.

		Rs.
(a) Excess profits of six months chargeable accounting period ended 30th September, 1940 : 6/12th of 2,000	..	1,000
Less deficiency prior to 31st March, 1941 6/12th of 3,000	..	1,500
Unused deficiency	..	500

This unused deficiency be directed against future profits or otherwise as directed by Assistant Commissioner for excess profits before the end of 31st March 1941, If any.

		Rs.
(b) Excess profits of the year ended 30th September, 1942	..	5,000
Less deficiency after 31st March, 1941 6/12th of 3,000	1,500	
Unused deficiency prior to 21st March, 1941	500	
	.	2,000
Profits liable to excess profits tax	..	3,000

Illustration No. 2.

Standard profits of Messrs ABC and company are Rs. 45,000. Their profits are Rs. 50,000, Rs. 55,0000 and Rs. 40,000 for the years ending 31st December, 1940-41 and Rs. 1942

Excess Profits Tax would be chargeable as follows:

		Rs.
(a) Profits of twelve months chargeable accounting period to 31st December, 1940—		
9/12ths of Rs 50,000	.	3,750
Less standard profits 9/12th of Rs. 45,000	..	3,000
		750
Excess profits tax payable at 50%	..	375
(b) Profits of twelve months chargeable accounting period to 31st December, 1941	..	55,000
Less standard profits	..	45,000
Excess profits tax	..	10,000
Excess profits tax payable at 50%	..	5,000
(c) Standard profits	..	45,000
Less—Profits of twelve months chargeable accounting period to 31st December, 1942	..	40,000
Deficiency of profits	..	5,000

The deficiency will be set off firstly against the excess profits after 31st March, 1941. The unused deficiency can then be set off against excess profits earned prior to this date, if the Assistant Commissioner so directs. Otherwise it must be carried forward and deducted from future excess profits tax.

		Rs.
Excess profits, year ended 31st December, 1941	..	10,000

Excess profits after 31st March, 1941 :	..	7,500
9/12th Rs. 10,000	..	5,000
Less Deficiency	..	12,500
Deficiency to be carried forward	..	2,500

Special Provision for chargeable accounting period falling partly before and partly after the end of March 1941.

[1] **Section 7-A :—(1) In the case of a chargeable accounting period such as is referred to in Sub-section (2) of section 4, the excess of profits of each of the separate chargeable accounting periods into which the whole chargeable period is deemed to be divided for the purposes of that Sub-section Shall be determined in accordance with the provisions of Subsections (2) (3) and (4) and in those Sub-sections.**

(*a*) references to the whole period, the first part of the period, and the second part of the period shall be construed, respectively, as references to the whole of the chargeable accounting period deemed to be divided, so much thereof as falls before the end of said end of March;

(*b*) 'excess profits' means the amount by which the profits for any period exceed the standard profits for that period

(2) The profits or loss of, and the standard profits for, the whole period shall be computed first on the basis that Rule 5 A of the First Schedule and Rule 2-A of the Second Schedule do not apply to the period, and secondly on the basis that the said Rules do apply to the period, and it shall then be ascertained, on each basis, whether there are excess profits or a deficiency of profits for the whole period, and, if so, what is the amount thereof

(3) There shall be deemed to be for the first part of the period excess profiits or a deficiency of profits, as the case may be equal to an apportioned part of the excess profits or deficiency of profits ascertained under sub-section (2) of the first basis mentioned therein, and there shall be deemand to be for the second part of the period excess profits or a deficiency of profits, as the case may be, equal to an apportioned part of the excess profits or deficiency of profits ascertained under sub-section (2) on the second basis mentioned therein; and, for the purpose of giving relief for deficiencies of profits under Section 7, the first part of the period and the second part of the period shall each be treated as if it were a separate chargeable accounting period.

(4) Any apportionment required to be made by sub-section (3) shall be made by refereace to the number of months and fractions of months in each of the whole period.

Section 7-A has been added by Section 4, (Amendment) Act XXIV of 1941. As to Cl. 4, it deals with chargeable accounting periods commencing before and ending after the end of March, 1941, in relation to the change of basis, effected by new Rule 5-A of the First Schedule, and new Rule 2-A of the Second Schedule, in the treatment of borrowed money and the interest thereon. The method adopted is to compute the profits or loss and the standard profits of the whole chargeable assounting period, on the old and on the new basis and to take the due proportion of each of the two results.

Example :—

Chargeable accounting perioa of 12 months ending 31st December, 1941.

	Rs.
On the old basis, excess profits for the year	12,000

(1) This Section was added by Section 4 of E. P. T. Act [second Amendment Act 1942 (XXIV of 1941)].

On the new basis, *i. e.* adopting the new provisions as to treatment of borrowed money and interest, excess profits of the year .. 10,000

The assessment for the whole chargeable accounting period of one year would be:—

	Rs.
1/4 year to 31st March, 1941 at Rs. 12,000 Rs 3,000 at 50% ..	1,500
3/4 year 31st December, 1941 at Rs. 10,000	7,500
at 66 2/3%	5,000
Total E. P. T. chargeable ..	6 500

Successions and amalgamation

Section 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 1st day of September, 1939, 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 computations 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 1st day of September, 1939 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 captial employed in the business after the change [1][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 to 1st day of September 1939 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 existance any of the former businesses;

(b) any profiits made or losses incurred or capital employed in any of those former businesses had been made, incurred oremployed in the resulting businesses; and

(c) any assets of any of those former businesses had become assets of the resulting businesses when they become assets of the former business;

and, in particular, in computing the capital employed in the resulting business[2] in (considering, for the purposes of computing the profits of, and the captial employed during, any chargeable accounting period, whether any and, if so what deductions are to be made in respect of depreciation of buildings, plants 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

(1) These words were inserted by Section 4 of the E. P. T. Amendment Act 1942 (42, of 1942)

(2) These words were inserted ibid.

(5) Where, on or after the 1st day of September, 1939, part of business is transferred as a going concern by the person therefore 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 orignal business, and the said provisions, including the provisions of this Section relating to amalgamations shall apply accordingly ,[1]

Provided that for the purposes aforesaid, such apportionments shall be made of the profits made, and losses incurred. and the cnpital 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 Board of Referees, to that Board 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 April, 1936, and that business, or the main part of that business, was transferred after the said day and before the 1st day of September, 1939 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 businoss 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[2]

(7) Where, on or after the 1st day of September, 1939, 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.[3]

(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 coutinua tion 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

(1) The words "subject to any necessary modifications" were omitted by Section 4 of the Excess Profits Tax (Amendment) Act 1940 (42 of 1940).

(2) The words "subject, however to such modifications (including modifications as respect the modification of capital) as he may consider just" were omitted, ibid.

(3) This Sub-section was mainly added ibid.

otherwise be the chargeable accounting periods of the business as he thinks proper :

Provided that if the Excess Profits Tax Officer makes any such modifications and the person carrying on the business is dissatisfied with the modifications so made, or if the person carrying on the business is dissatisfied with the refusal of the Excess Profits Tax Officer to make any such modifications, he may, at any time before the expiry of forty five days from the date on which the order of the Excess Profits Tax Officer is communicated to him, appeal to the Board of Referees through the Excess Profits Tax Officer.

Analogous Law:—(a) *Indian Law* :—Sections 25 and 26 Indian Income-tax Act, 1922 (Amended, 1939) contain similar provisions.

(b) *English Law* : -Section 16, Finance Act 2 of 1939, Part III.

Amendments :—Amendments, as duly noted above have been made to Section 8, by Section 4 (Amending) XLII of 1940 (dated 3rd December 1940). These were made consequent upon the changes effected in the United Kingdom law on the point, with a view to remedying certain hardships and anamolies which experience has shown are likely to arise". The object of the Indian Amending Act was also to amend "so as to remedy similar hardships and anamolies." This was because the Indian Excess Profits Tax Act closely followed the Unided Kingdom Finance Act (2) of 1939.

Statements of Objects and Reasons Cl. 4 (a):—Sub-section (3) and (4) of the Act provide that in the case of a change of ownership or of an amalgamation on or after 1st September, 1939, the successor is to have the advantage of the predecessor's standard of profits on condition that the price paid for any assets is ignored in computing the successor's capital The amendment makes the condition apply also to the value acquired of assets for the purpose of computing depreciation allowances.

Clause 4 (b), (c) and (d) —The amendments, by recasting Sub-section (5) and (6) of Section 8, make it possible, in the case of a change in the constitution of partnership before the 1st September 1939, or the transfer of part of a business on or after 1st September 1939, or the transfer of a business or the main part of a business after 1st April, '36, and before 1st September, 1939, for such adjustments of capital and profits to be made as will secure a fair comparison of like with like.

Scope and object of Section 8:—Section 8 deals with the cases of succesion to and amalgamation of businesses, Excess Profits Tax is, in effect, a tax on business and not on person This explains the provisions of Section 8 (1) (a true copy of Section 16 (1), English Finance Act, 1936). No sooner a change in the ownership of the business or in the person carrying on the same occurs, the old business ceases and a new business is supposed to have commenced from that date. The Rule of law as contained in Section 8 (1) is the main one, others being in effect exceptions to this. A change may be ignored and old business may be taken to have continued (1) if it is a case of partnership, wherein there has been a change due to death or retirement of a partner or the taking in of a new partner and (2) the change has taken place before 1st September, 1939. These two are the conditions precedent to the provisions of Sub-sections (2) coming into play. In such a case, persons continuing the business after the change may elect that for the purpose of computation of standard profits, the old business shall not be deemed to have been discontinued. The condition is that the persons carrying on the business after change must give the Assessing Excess Profits Tax Officer notice that he is so electing, that is, taking the business to have continued after the change.

If a change in the person carrying on a business has occurred before 1st September 1939, it is disregarded. It determines, however, the date of the commencement of business which, under Section 6, is to determine or decide which

form of pre-war standard is to be taken and what is the standard period available. To take a concrete instance, if the particular business began in 1930, on the face of it, it has a profits standard, that is to say, its profits are to be obtained by reference to the profits of a standard period. The standard period will be either 1935-1936 or 1936-1937. If a business changed hands on 1st June, 1937, the standard period will be 1935-36, or 1936-1937. If it changed hands on 1st June 1936, if the standard period be available it may be elected by applying to the E. P. T Officer; else the statutory percentage shall apply.

The provision in the later part of Sub-section (3) to Section 8, is apparently meant to save the excess profits taxable from being affected by any fictitious entry of consideration for transfer being larger in amount than the amount of capital invested in the business already.

This prevents the above principle from applying when there is an increase in the amount of capital consequent on the transfer of the business. The object is to keep the standard profits unaffected by any change in the persons carrying on the business. The very same object and principle is distinctly noticeable in sub-section (4) of Section 8 which deals with the amalgamation of the business, as distinct from 'succession'.

Under sub-section (5), the above principle as to amalgamation will apply also in cases of transfer of a part of business as a going concern Apportionment of profits, losses and capital shall be made in such a case either by the Excess Profits Tax Officer or by the Board of Referees in appeal Lastly, in the case of a business which existed and was carried on immediately befor 1st September 1939, if the same or main part of it is transferred after the above date and before 1st September 1939 the transferee may apply to Excess Profits Tax Officer that the transfer may be disregarded and that he may be deemed to have carried on the business from the date of commencement of the business by the transferor This, however, is subject to the condition that the Excess Profits Tax Officer be satisfied that the business carried on after transfer was not substantially different from that which was transferred. The Excess Profits Tax Officer has also the discretion to make such modifications including modification as to computation of capital, as he may deem fit to make in such a case. Up to this point the provisions as contained in Section 8 Excess Profits Tax Act, are quite the same as in Section 16, Finance Act 2 of 1939. By the Proviso to Sub-section (6) of the English Act 1939, however, an appeal is provided for to the Board of Referees in case of modifications made in sub section (6), while no such appeal was provided for in Section 8 (6) but it is now provided for in Section 8 (8) which now-deals with modifications. It will thus be seen that the principle underlying the entire provisions of Section 8 is that any change in the person or persons carrying on the business, the profits or which are sought to be assessed to Excess Profits Tax, may by ignored by the person carrying on the business at the time of assessment if he so elects. This is so, irrespective of the fact whether the change is due to succession on death or transfer, or to amalgamation of two or more businesses or transfer in part of a business as a going concern.

One great effect of the new provisions relating to succession or amalgamation of business is that a business which may have only a percentage standard, all alone by itself, may on amalgamation have a pre-war standard, [according, to Section 8 Sub-section (4)]. This was not possible under the Finance Act, 1915.

Disclosure of predecessor's figures:—There may be case to which the provisions of Section 8 apply in which the successor to a business has no information as to the profits and capital of his predecessor for the periods from which his standard period is to be chosen. It is to be noted that in the case of charges falling within Sub-sections 3, 4 and 5 the business, for the purposes of compuiing standard profits, is to be treated as if no change had taken place so that the successor has no option to take a percentage standard of profits under the second Proviso to Section 6 (1) unless his predecessor had that option. In such a case the successor is not entitled to disclosure of the figures shown by the accounts or books produced by his predecessor for income-tax purposes, and he should be required to obtain from his predecessor either the particulars necessary for the compilation of his E. P. T. return

or his written authority for the E. P. T. Officer to supply the necessary figures If, in any case, the successor is unable to obtain either the figures or authority for the E. P. T. Officer to disclose them, he should be instructed to complete the return form as far as possible entering "not known" in the spaces which he cannot complete. The E. P. T. Officer having determined the profits and average capital of the chargeable accounting period should himself compute the *most favourable* standard profits and, without giving any details regarding the standard period, issue a Notice of Assessment and Demand showing the standard profits and the average capital. If the assessee objects to either of these figures he should be informed that the only course open to him is to appeal against the assessment. If such a case comes to appeal against the assessment, it is, of course, for him to produce evidence to substantiate his contention that the figure of standard profits or any modification thereof in respect of increased or decreased capital is incorrectly calculated.[1]

Sub-section (1) :—The Rule of law contained in this Sub-section enunciates the general principle relating to change in the persons carrying on trade or business.

Section 8 (1) lays down the general Rule that, as from the date of any change in the persons carrying of a business, the business shall be deemed to have been discontinued and a new business to have been commenced.

The succeeding provisions modify this Rule in so far as they permit in certain circumstances and require in other circumstances the computation of the standard profits of the new business to be made, subject, in some cases, to certain modifications as if no change has taken place. (See Sub-section 8 *past*)

The general Rule laid down in Sub-section (1) of Section 8 applies without modification in the following respects :—

Change in Partnership: New Firm is not liable to E. P. T. on the profits of the old undertaking —In case of change in the constitution of a firm on the death of a partner and the business of the firm being carried on by the surviving partners with new admitted partners and the assets of the old firm being taken by the new firm and the profits of the old firm being divided between the surviving partners and the execution of the deceased partners, these profits are held not to be profits of the new firm and are therefore not liable to pay excess profits tax. *Ghella Dyal* v. *C. I. T., Bombay*[2]

The relevant fact of this case are : The firm of Messrs Ghella Dyal, consisting of three partners, carried on business in and prior to Samvat year 1995. A partnership deed, defining the shares of the individual partners, dated October 20, 1932, is in the record. That shows that Haridas Ghella Dyal had a share of six annas three pies in a rupee, Gokuldas Jivraj had a share of six annas three pies in a rupee and Karsondas Premji, as the manager of an undivided Hindu family, was entitled to a share of three annas six pies in a rupee. The partnership deed further recites that a shop rented in the name of Haridas Ghella Dyal from Ashad Samvat year 1960 (over forty years ago) at the Ghadial Gally in the Mulji Jetha Market was used by the partnership for its business in piece-goods, and the rent of the shop was to be paid by the partnership. On October 30, 1939, (Asovad 2, 1995) Gokuldas died. The account year of the partnership was the Samvat year. As this death occured about twelve days before the close of the Samvat year, nothing appears to have been done for those days. As from November 12, 1939, that is the beginning of the new Samvat year 1996, a new partnership was formed. Three sons of Haridas were included as partners, and the shares of the five partners were reshuffled. Gokuldas Jivraj or his estate represented by his legal representative was not given any share in this business. A partnership deed, recording the terms of the partnership and dated December 1, 1939, was duly executed, and is part of the record. According to that Haridas got a share of five annas ; his three sons—Dwarkadas, Babhoobhai and Ajitsingh—got a share of two annas each while Karsondas Premji's share was raised from three annas six pies to five annas. From the statement of case it appears that at the end of Samvat year 1995 there were several outstanding contracts of

(1) Para 128 Notes and Instructions

(2) (1944) 4 I. T. C. 130 ; 1945 I. T. R. 133.

tho old firm and there was also the stock-in-trade. There existed also the outstandings of the old firm. Before the Income-tax Offices it was pointed out on behalf of the Department that the business conducted by the reconstituted firm was in piece-goods, that the old trade name with its goodwill was used, and the management of the business before and after the change remained identical. The business premises continued to be the same, and the assets and liabilities of the old partnership were after a period of nineteen months taken over by the reconstituted firm. The reconstituted firm was registered under Section 26-A of the Income-tax Act, 1922.

In this case Rs. 56,260 the profits of the old under taking were divided between the two surviving partners add the administration of the deceased partner of the old firm in the proportion of their shares under the old deed.

Held—Rs. 56,260 the profits of the old undertaking are not the profits of the new firm and are therefore not liable to excess profits tax.

Deficiencies.—A set of a deficiency under Section 7 will be made only again excess profits of the same business.

In the case, however, of the death of a partner in a firm on or after 1st September 1939, this provision is abrogated by Sub-section (7) as regards tbe carry forward of the deficiencies of profits for chargeable accounting periods ending on or before the date of his death so far as they have not already been set off against the excess profts of other chargenble accounting periods.

Example.—

A carries on business upto 31st December 1939 and the profits of the chargeable accounting period ended on that date show a deficiency of Rs. 10,000;

B acquires the business on 1st January 1940 and in his first chargeable accounting period makes profits which show an excess over the standard profits of Rs. 12,000 Excess Profits Tax is chargeable on the excess profits of *B* with no set off for the deficiency in the business for the period when it was carried on by *A*. Excess Profits Tax of Rs. 6,000, *i. e.* 50% of Rs. 12,000, is accordingly payable by *B*.

(2) Accounting periods:—The date of change marks the beginning of an accounting period of the new business and the end of an accounting period of the old business. Accounting periods and chargeable accounting periods will be determined and assessments made accordingly. Thus, If, in the previous example, accounts had been made up by *A* to 31st March 1939 and to 31st December 1939, while *B* made up accounts to 31st March 1940, 1941, etc., the 9 months to 31st Decemb r 1939 would be treated as an accounting period and the 4 months to that date as a chargeable accounting period. As regards *B*, the Excess Profits Tax Officer should treat him as having two accounting periods and chargeable accounting periods of 3 months to 31st March 1940 and 12 months to 31st March 1941.

Statutory percentage:—Although a business may have changed hands, the statutory percentage applicable to increases and decreases of capital or to the optional percentage standard in the case of businesses commenced on or after 31st March 1936 is to be taken at the same rate as would have been applicable if the business had not changed hands.[1]

A 'new business' and continuation of old business are absolutely two different things. On death of the holder of a business, his executors may carry on the old business just to realize assets and may not thus be assessable to excess profits duty for carrying on the old business. (*Cohen's Executors* v. *The Commissioners Inland Revenue*)[2]

Miscellaneous:—This Sub-section contain a Rule of law as to Excess Profits tax, to which there is no exception. There is no exception to this Rule, except only in relation to computation of standard profits. The Rule holds good universally, irrespective of the change having occurred before or after the 1st September, 1939

(1) Paras 58 & 59 Notes and Instructions.

(2) 12 T. C. 602 (616, 620).

or of the nature of the change (*i. e.* in the constitution of partnership). Accordingly, a person carrying on the business after it has changed hands is not liable to excess profits tax in respect of chargeble accounting period before the change. The person or person chargeable to excess profits tax in respect of any chargeable accounting periods is or are the person or persons carrying on the business in that period. A successor to a business is censequently not chargeable in respect of the profits of the chargeable accounting period before the change.

Viewed in the light of 'deficiency relief' as contained in Section 7 *ante*, the Rule of law contained in Section 8 (1) gains a new aspect. To take a hypothetical case, suppose that there has been a change in the persons carrying on a business. involving a change in the constitution of partnership by retirement of a partner. Suppose, further, that there was an unabsorbed deficiency, under Section 7 available for being carried forward, when the above change took place. As in this case, the excess profits arising are not profits arising from business *i e.* the business in which the deficiency occurred, it is clear that as a result, the benfit of unabsorbed balance of deficiency will be lost except in the case as mentioned under Sub-section (7).

A similar question may arise in case of amalgamation of business with another, in which case also the unabsorbed deficiency cannot be availed of an a change accordingly.

Except for the purpose of determing the amount of the statutory percentage:—These words were added to this Sub-section in the Legislative Assembly at a motion by an Hon'ble Member (*Mr S. P Chambers*) who indicated the object of the amendment to be "to treat as new business for the purpose of computing the standard percentage in clause 2 only those businesses which are genuinely new businesses. Where there has been merely change in partnership or a change in ownership in an old business, there is no occasion to give a higher statutory percentage. Without this amendement, they would be deemed to be new businesses for all purposes of the Act."

Sub-section (2): —Before the day of September 1936:—This Sub-section relates to a case of change taking place before the 1st September, 1939. It shall apply only then and not otherwise The change must have been caused by either (1) *death or retirement of a partner* (2) the *taking in of a partner.* The effect of this Sub-section is that the change will be ignored if the person succeeding on change so elects.

In an English case (*Mills from Emelie Ltd* v *Commissioner Inland Revenue* 12 T, C. 73) a millionery business had been carried on for the last 40 year by one Miss W, under the name of Emelie"; in April, 1915, she retired from business sending a notice of retirement to all her customers. Before retirement, she handed over to five of her saleswomen their own particular order books, containing the name and address of customers who had always resorted to the particular saleswomen Miss Mills was one of these five saleswomen and she, in conjunction with their former employees of Miss W. formed a Company who started business in the same street. The Company took into their employment three of the saleswomen who had received order books, and about a third of the other employees of the original business. The Company did not take over any assets, stock book debts contracts or liabilities of the late business, and no agreement or payment was mede relative to the good will of that business. The company, in so far as they traded with the old costumers, and they had very few others in the material period, followed the same lines of trading in relation to prices charged, system of payments etc., as those adopted in the original business.

In assessing the Comany to Excess Profits Duty, Commissioners of Inland Revenue computed the pre-war standard of profits on the basis of the statutory percentage on the capital employed during the accounting period. The Company, however, claimed a profits standard based on the profits of the original business. It was held that the person setting up new business was not entitled to have the pre-war standard of profits computed by reference to profits of the old bhsiness, that the Company had set up a new business, and that the original business profits could not be taken into account in computing pre-war standard profits.

The Sub-section will apply only if the change occurred before 1st September, 1939.

This Sub-section also gives the right to the person carrying on the business after the change to elect, by notice in writing before the prescribed date to the Excess Profits tax Officer, that the computation of standard profits. in relation to chargeable accounting periods after the change, shall be made as if the business had not been discontinued.

The successor has the same options as the choice of standard period as if there had been no change of ownership. Power is however, given to the Excess Profits Tax Officer subject to the assessee's right of appeal to the Board of Referees, make such modifications in the computation of profits or capital for the standard period or the chargeable accounting period as he thinks proper.[1] (See Notes under Sub-section 8 *past*).

Notice in writing;—Notice is also a condition necessary for the option in this Sub-section to be exercised.

There is no mention of time-limit within which after the change notice is to be given Another question with reference to notice is that it is only the person holding the business immediately after the change who is competent to give notice A person holding it on a second change after the one that occurred before 1st September, 1939 will, ex-hypothese, be not qualified to give the notice;

Example :—

Messrs A, B, and C, were in partnership for many years and made up accounts regularly to 31st December, each year. A died on 31st December, 1936 The profits of recent years were.

	Rs.
1936	55,000
1937	50,000
1938	52,000

If Messrs B and C did not make a claim under S 8 (2) of the Indian Excess Profits Tax Law, they would select the two years 1937 and 1938 as their standard period since they only have the option of selecting 1937 or 1937 and 1938 (The new business carried on by Messrs B and C would commence on 1st January, 1937). On this basis the standard profits would be,

$$\frac{50{,}000 \text{ plus } 52{,}000}{2} = 51{,}000$$

It would clearly be benficial for Messrs B and C to make the claim under Section 8 (2) as the business would then be treated as continuous and they could select 1936 as the standard period yielding a standard profit of Rs 55,000.

Sub-section (3):—'On or after the first day of September 1939'—The change contemplated by this Sub-section is the one that takes places *'on as after 1-9-1939.*

'In particular.. change':—These words are also intended to avoid the excess profits being effected by a larger amount being shown as consideration of transfer on a change. Similar words occur in the following Sub- section (4) with the same object.

The object of this Sub-section and the following two Sub-Sections is to stop artificial transactions.

Simple change of ownership on or after 1st September 1939:—Sub-section (3) provides that, in all cases of simple changes of ownership on or after 1st September 1939, the standard profits are to be computed as if there had been no discontinuance, and in computing the capital of the business- after the change no regard is to be had to any consideration given for the transfer of the business or any of the assets on the occasion of the change.

(1) Para 60 Notes and Instructions.

The provisions of this Sub-section are subject to the power of the Excess Profits Tax Officer, given by Sub-section (8), to make such modifications in the computations of the profits or capital of the standard period or to chargeable accounting period as he thinks proper. Any modification so made are subject to the right of the assessees to appeal to the Board of Referees.

Examples:—

X. Y. in partnership in a business commenced in 1937 have standard profits proportionate to a chargeable accounting period of one year before adjustment for capital variation .. 50,000

Their average capital for the standard period is 2,50,000

Their capital at 31st August 1939 is.. 5,00,000

X. Y. Z. Ltd. purchases the business at 1st September 1939 for .. 15,00,000

Additions to capital during the period ending 31st August 1940 average over the period amounted to 2,50,000

Excess Profits Tax profits for the year to 31st August 1940 are .. 2,00,000

Computation of liablity of X. Y. Z. Ltd. on the assumption that it chooses the same standard period at X. Y. chose Profits of the 12 months chargeable accounting period 2,00,000

		Rs.	Rs.
Standard profits of X. Y, ..	..	50,000	
Capital of X. Y. at 1st September 1939 ..	5,00,000		
Increase of average capital of X. Y. Z. Ltd. during the chargeable accounting period to 31st August 1940 ..	2,50,000		
Average capital of the period under S. 8	7,50,000		
(3) Average capital of the standard period	2,50,000		
Increase of average capital ..	5,00,000		
at 8%* ..		40,000	
Standard profits in relation to chargeable accounting period of 12 months ..		90,000	
Excess profits			90,000
Total			1,10,000

Assets taken over on the transfer of a business falling within the provisions of Sub-section (3) are to be valued both for the purpose of computing the depreciation allowed for the successor and for the purpose of computing his capital, as they would have been, had there been no such transfer.

In the case of a transfer to which the Sub-section applies, the price paid fo building, plant and machinery transferred is to be disregarded in computing the depreciation deductible from the successor's profits for a chargeable accounting period just as it is disregarded in computing capital. Thus, although for income-tax purposes depreciation is allowable on the basis of the price paid for the assets by the

* The rate applicable to a Company, not Director-controlled, carrying on a business which was commenced before 1st July 1938. It should be noted that Section 8 (1) provides that for the purposes of determining the statutory percentage the business shall not be deemed to have been discontinued. Although the rate applicable to a Company not Director-controlled is to be applied to the increase of capital the Company is not to be treated as one which has commenced business on or after 1st July 1938.

new owner, the depreciation allowable for excess profits tax purposes is to be computed as if no change of ownership had taken place.[1]

Partition of Hindu undivided family on or after 1st September, 1939.

Where a Hindu undivided family which carries on business is partitioned on or after 1st September 1939.

(1) in the case of one business which, after the partition, is carried on as one business by the members of the family or any of them, the Hindu uudivided family is assessable in respect of the excess profits, if any, up to the date of the partittion if that date is later than 1st September 1939. The Hindu undivided family and the successor partnership are separate entities and Sub-section (1) of Section 8 applies and there can be no set off of any deficiency of profits in respect of a chargeable accounting period of the family against any excess profits of the partnership and *vice versa*. Sub-section (3) also applies so that the standard profits and the capital employed by the partnership are to be computed as if there had been no change of proprietorship.

(2) in the case of one business which at the partition is divided between members of the family who, thereafter, carry on business individually or who recombine in smaller groups each of which carried on, as a separate business a portion of the original business, each of those businesses becomes a new business by virtue of Sub-section (1) of Section 8. As neither of the remaining Sub-sections applies to such a case, the only basis for computation of the standard profits of each of the new businesses is that provided by the option given by the second Proviso to Section 6 (1) *viz.*, the statutory percentage applied to the average capital employed;

(3) in the case of two or more businesses, each of which on the partition is taken over by one or more members of the family, then, although the family, so long as it carries those businesses, must choose its standard profits by reference to the aggregated profits of the businesses, each of the successors is entitled, under sub-section (3) of Section 8, to a standard of profits based upon the family's profits of the business taken separately for the years which fall within the terms of Sub-section (2) of Section 6.[2]

Hindu undivided family—Partitions before 1st Septemper 1939—Where a Hindu undivided family which carried on business is partitioned before 1st September 1938—

(1) in the case of one business carried on by the family, which is after the partition taken over and carried on as on business by the members of the family or any of them, if the succession occurs after 1st April 1936 and before 1st September 1939, Sub-section (6) of Section 8 applies and, provided that the business remains substantially the same as before, the successors may apply to have their standard profits computed as if they had carried on the business from the commencement.

(2) if, at the partition, the business is divided between members of the family each of whom thereafter carries on business individually and not in partnership none of the provisions of Section 8, except that contained in Sub-section (1) apply and the standard profiits of each of the new businesses is to be computed according to the provisions of Section 6 (1) as applicable to businesses commenced at the date of the partition;

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(1) Para 61 Notes and Instructions.

(2) Para 117 Notes and Instructions.

(3) in the case of two or more separate businesses carried on by the family each of which is, at the partition, taken over by one or more members of the family and thereafter carried on as a separate business, then:

(a) if the partition occured before 2nd April 1936, each business must be treated as a new business from the date of partition and the standard profits computed as set out in sub-paragraph (ii) above;

(b) if the businesses were carried on immediately before 1st April 1936 and the transfer to different members of the family occurs after that date and before 1st September 1939, each business fulfils the conditions laid down in Sub-section (6) of Section 8 and the successor to any of the businesses may make an application under that Sub-section[2] (See Notes under Sub-section 6 *Post*).

Example :—

A commenced business in 1925 and makes up account annually to 31st December. On December 31, 1939 the business was sold to B. The profits of the business adjusted for excess profits tax purposes are as follows :

Years ended 31st December,	1936	70,000
	1937	65,000
	1938	66,000
	1939	68,000
	1940	72,000
	1941	75,000

B acquired the business assets for Rs. 900,000 made up thus :

Freehold property (Cost to A Rs 150,000)	200,000
Plant and machinery (written down value for excess profits tax purposes as 31st December, 1940, Rs 2,75,000.	300,000
Stock	150,000
Goodwill	250,000
	900,000

For excess profits tax purposes B may select any of the alternative standard periods open to A but in computing the amount of Capital employed in the business in all subsequent chargeable accounting periods. B is not able to include the amount paid for Goodwill Rs. 1,50,000 while the Freehold property must be included at its cost to A (Rs. 150,000) and the Plant and Machinery at its written down value for excess profits tax purposes. Thus the capital employed in the business on 1st January, 1941 will be :

Freehold property	150,000
Plant and Machinery	275,000
Stock	575,000

Sub-section (4):—Sub-section (4) relates to cases of amalgamation of two or more businesses.

The principal of the provisions of this Sub-section also is the same, *viz.*, any change on amalgamation shall be ignored for purpose of standard profits computation, provided the amalgamation took place on or after 1st September, 1939. The period, the profits and losses or capital employed in and the assets of the business resulting on amalgamation shall be taken to be the period, profits and loss or capital and assets of the former business according to clause (a) (b) and (c) of Sub-section (4),

(2) Para 118 Notes and Instructions.

The last part of the Sub-section provides the same safeguared against excess profits being affected by any larger consideration of transfer, as is proved in Sub-section (3). Amalgamation could also affect the change to application of standard profits instead of statutory per-centage.

Amalgamated,—What is amalgamation ? When can one business be said to be amalgamated with another ? Sub-section (4) deals with the case of two or more businesses that were formerly held by diffierent persons being held by one and the same person. That is 'amalgamtion'. Where control of one business by acquiring share capital of another Company is acquired, it is not a case of amalgamation but of merger, and if it is case of Company, it is one under Section 9, relating to inter-connected Companies and not one under Section 8.

The date of commencement of a business is the most important item in this connection. In case of amalgamation the date of commencement of amalgamated is the date of the commencement of the business that has been in existence the longest. As a result of this, it follows that in computing the capital employed in the business resulting from amalgamation, any consideration which may have passed on the occasion of the amalgamation, in respect of any of the former business, or of assets of them, will have to be disregarded. This is a necessary corollary of the principle of this Sub-section. Although the principle of the Sub section is clear enough, its application may, at times, raise difficulty. To take an example.—Suppose two businesses *A* and *B* that commenced on 1st January 1936 and 1st April 1939 respectively are amalgamated on 31st December, 1939, the date of commencement of the amalgamated business will be taken to be 1st January 1936.

This is apparently the right construction of the words of Section 8 (4) (a) looking to their plain meanings as they stand. And, even if another business was to amalgamate with *A* and *B* the date of commencement of the amalgamated business ought, on the face of it, to be the same *viz* 1st January 1936. Thus if a third business *C* was to amalgamate with *A* and *B*, the date of the commencement of their business (*i.e.* 1st January 1936) thus amalgamated should also be the same. Another interpretation, however, of the words of Section is also possible which would seem to create difficulty. It is this:—Supposing the third amalgamated business *C* commenced on 1st January 1939 *i,e.* before the date of amalgamated of *A* and *B* (1st December 1939). The question is, can it be said, if the date of amalgamation of *A* and *B* business to be taken to be the date of commencement of the amalgamated business (A and B which is not the case because the date of commencement of amalgamation of buisiness is 1st January 1936 the date of this commencement of the earlir (or former business) *A* and not the date of amalgamation of *A* and *B*. Apparently, such interpretation creating the difficulty is not a correct one and is obviously imaginary. Another view is possible which would, in consonance with the right interpretation of the words of the Section, be also correct. For instance the date of commencement of third business *C* amalgamated with (*A* plus *B*) is 1st June 1935, a date prior to 1st January 1936. In such a case the date of commencement of the amalgamated business, *A* plus *B* plus *C* could rightly be taken to be 1st June 1935, business "*C*" being "any former business" of three *A*,*B* and *C* illustration of amalgamation under Section 8 (4)

Example:—

Suppose the business of *A* and *B* amalgamated on 31st March 1939.

	Profits Rs.	Capital Rs.
The position of business *A* during 1936-37 for assessment year of 1937-1938 ..	25,000	15,000
The position of business *B* during 1936-37 for the assessment year of 1937-38 ..	23,000	13,000
The position of amalgamated business during the chargeable accounting period ..	40,000	70,000

Computation of excess profits will be as follows:—

Profits during the chargeable accounting period	..	40,000
Less standard profits 1/2 of (25,000 *plus* 23000) 24000 Plus for increased—capital (Rs. 70000 less 1/2 of Rs. 28,000 or Rs. 14,000)=56,000 @ 10%56,000	}	29,600
Excess Profits	.. .. ..	10,400

Another Example is as follows:—

1. *X Y* Ltd. carried on business prior to 1st September 1939.

It purchased on 1st September 1939, for Rs. 2,50,000, the business of *A*, *B* and *C* and its assets.

The profits of *X Y* Ltd. were in year ended 31st December

	Rs.
1935	50,000
1936	46,000
1937	62,000
1938	66,000

The profits of *A B C* were in year ended 31st March

1936	20,000
1937	26,000
1938	12,000
1939	10,000

and at 31st August 1939 the capital of *A B C* was Rs. 1,40,000

The profits of the "previous years" from which *X Y* Ltd. may select its standard period are as follows :—

"Previous year" to year 1936–1937	50,000 plus 20,000=70,000
1937–1938	46,000 „ 26,000=72,000
1938–1939	62,000 „ 12,000=74,000
1939–1940	66,000 „ 10,000=76,000

If the capital of *X Y* Ltd. at 1st September 1939, after acquiring the business of *A B C* was Rs. 7,00,000 computed without reference to Section 8 (4) and including the assets acquired from *A B C* at their cost Rs. 2,50,000, the capital of *X Y* Ltd. at 1st September 1939 should be taken for Excess Profits Tax purposes as Rs. 7,00,000 –(Rs. 2,50,000–1,40,000)=Rs. 5,90,000

2. *A's* profits were for the years ended 31st December

	Rs.
1935	80,000
1936	60,000
1937	50,000
1938	70,000

B's profits w re, he having commenced business on 1st October 1937.

6 months to 31st March 1939	20,000
Year to 31st March 1939	40,000

A's average capital was.

1935	6,00,000
1936	6,40,000
1937	6,60,000
1938	7,00,000

B's average capital was—

For the 6 months to 31st March 1938	2,80,000
Year to 31st March 1939	3,00,000

A B Ltd. purchased both business on 1st September 1939, *A's* for Rs. 10,00,000 and *B's* for Rs. 6,00,000.

A B Ltd. chose, as is probable, the "previous years" for the years of assessment 1938–1939 and 1939–1940 as its "standard period", its standard profits, before adjustment for capital variations, would be.

		Rs.
1937 ..	Rs. 50,000 plus 20,000 (*B's* profits for 6 months to 31st March 1938)	70,000
1938 ..	Rs. 70,000 plus 40,000	1,10,000
	Total ..	1,80,000

For a two years periods

The average capital for this standard period would be :—

		Rs.
1937 ..	Rs. 6,60,000 plus say, 1,40,000 (2,80,000 for half year).	8,00,000
1938 ..	Rs. 7,00,000 plus 3,00,000	10,00,000
	Totol ..	18,00,000
	Divided by 2 ..	9,00,000

If *A's* capital at 1st September 1939 were Rs. 7,50,000 and *B's* at that date Rs. 3,20,000, the capital of *A B* Ltd., at that date would be taken as Rs. 10,70,000 for the assets acquired from *A* and *B* instead of the Rs. 16,00,000 actually paid for two businesses. This value Rs. 10,70,000 subject to appropriate adjustments for subsequent increases or decreases of capital, continues throughout the chargeable accounting periods of *A B*. Ltd.[1]

Example :—

Business X commenced on 1st January, 1936—

Year.	Profits	Capital	
	Rs.	Rs.	Rs.
1936	50,000	1,00,000	
1937	60,000	1,20,000	
1938	70,000	1,00,000	
Average 1936–38	60,000	1,00,000	
Average 1936–37	65,000	1,10,000	
Most favourable standard profits are			65,000

Business X amalgamates on December 31, 1939 with business Y at which date the capital employed in business X is Rs. 1,10,000

Business was commenced 1st January, 1937 by B.

Year.	Profits	Capital	
	Rs.	Rs.	
1937	30,000	1,20,000	
1938	32,000	1,60,000	
Average 1936–37	31,000	1,90,000	
Minimum standard profits			36,000
Combined standard profits			1,01,000

(1) Para 63 Notes and Instruction.

Amalgamated business capital is (including Rs. 25,000 of goodwill) 3,00,000

Year.	Profits	Capital
	Rs.	Rs.
1936	50,000	1,00,000
1937	90,000	2,40,000
1938	1,02,000	2,60,000
Average 1936–38	76,000	1,80,000
Average 1937–38	96,000	2,50,000
C. A. P. 1940	1,00,000	3,00,000

Sub-section (5) :—Transfer as a going concern on or after 1st September 1939, of part of a business.—This Sub-section relates to a case were part of a business only is transferred as a going concern. In such a case both the transferred and the non-transferred part shall be deemed to be a continuation of the original business. Apportionment and adjustment of profits and loses and capital and assets shall be made by the Excess Profits Tax Officer or, in case of appeal, by the Board of Referees.

Thus, the effect of this Sub-section is that the date of commencement of both the transferred and non-transferred parts of businesses is taken to be the date of commencement of the original business.

The underlying principle is that, on the breaking up of business, on or after 1st September, 1939 standard profits are not to be computed on the assumption that a fresh start in business is made, as is the case in amalgamation. The original date of commencement will be taken into account, so that transfer of a part of business (or breaking up a business) is different from amalgamation.

[1]**Example** :—

The profits of business *A* were.

"Previous year" to year" of assessment

	Rs.
1936–1937	1,00,000
1937–1938	1,20,000
1938–1939	1,30,000
1939–1940	1,40,000

and on or after 1st September 1939 part of the business is sold to *B*.

The apportionment made by the Excess Profits Tax Officer under Sub-section (5) are.

"Previous year" to year of assessment	Business *A*.	Business *B* (sold).
	Rs.	Rs.
1936-1937	80,000	20,000
1937–1938	70,000	50,000
1938–1939	60,000	70,000
1939–1940	70,000	70,000

Then although *A* would probably choose as the standard profits of the business retained Rs. 80,000 being profits of the previous year" to 1936–1937, *B* can choose a two years standard profits of Rs. 1,40,000 being the profits of the previous years to 1938–1939 and 1939–1940.

(1) Para 64 Notes and Instruction.

The provision in respect of amalgamations being made applicable to transfers falling under this Sub-section it follows that the assets transferred to *B* are to be valued for the purposes of the computation of *B's* capital or of the depreciation deductible in computing the profits of the chargeable accounting period as they would have been valued had they been retained by *A*, and that no account is to be taken of the price paid by *B* for the transfer of the part business or its assets.

The required apportionments of the profits of the "previous years" available for the computation of standard profits and of the capital employed in the original business are to be made by the Excess Profits Tax Officer, but his apportionments are subject to the right of either assessee to appeal to the Board of Referees (Form E. P. 8-A). It should be noted that a copy of the Excess Profits Tax Officer order as to apportionments of the profits and average capital must be sent to both the transferor and the transferee (Form E. P. 8.)

Sub-section (8) gives the Excess Profits Tax Officer the power, in cases falling within this Sub-section, as in the case of Sub-sections (2) and (4), to make such modifications as he thinks proper in the computations of the profits or capital for the standard period or for any chargeable accounting period after the change of ownership. The assessee has the right of appeal to the Board of Referees also against any such modifications or the refusal of the Excess Profits Tax Officer to make any such modifications.

Apportionments under Section 8 (5) Appeals :— [1]An appeal having been received from either party to the transfer, the Excess Profits Tax Officer should give notice to the other party to the transfer that the appeal has been lodged, giving particulars of the apportionment objected to and of the grounds of appeal, inform him that, if he so desires, he will be entitled, under Rule 18 of the Excess Profits Tax Rules, 1940, to be heard at such appeal, and invite from him a statement of any contentions that he proposes to put forward at the hearing in support of the Excess Profits Tax Officer's apportionments or in rebuttal of the contentions of the appellant.

When the Board of Referees has been chosen Commissioners by the under Rule 3 of the Excess Profits Tax (Board of Referees) Rules, 1940, intimation of its constitution should be given to the "other party" as well as to the appellant, for each party has the right of objection given by Rule 4 of the said Rules.

At the hearing of the appeal both the appellant and the "other party" have the right to give evidence and to be heard in support of or in rebuttal of the appeal and both should accordingly receive notice of the meeting of the Board of Referees to hear the appeal.

The Excess Profits Tax Officer or other person appointed by the Commissioner is to be present at the hearing, and he should be prepared to explain the basis upon which the apportionments objected to, were made to advice the Board as to the relevance or otherwise of the contentions put forward by the respective parties.

Appeal :—Rules 11, 17 18 and 19 Excess Profits Tax Rules relate to appeals. The form of appeal is E. P. 8-A.

Sub-section (6) Transfer after 1st April 1936 but before 1st September 1939, of business or the main part of it carried on immediately before 1st April 1936.— Sub-section (6) is practically a modification of Sub-section (1), being a concession in favour of the person who carried on a business, (or the main part thereof) which commenced immediately before 1st April 1936, and which was transferred between that date and 1st September, 1939. The important part of the Sub section is that the Excess Profits Tax Officer is satisfied that, after transfer the transferee carried on a business not substantially different from the business formerly carried. The transfer may not necessarily be of the whole but of a part of business only. The Sub-section will not apply it is otherwise and there has been a substantial change.

It is binding on the Excess Profits Tax Officer to allow the concession laid down in the Sub-section.

(1) **Para 65 Notes and Instruction.**

The *United Kingdom Law* on the point is different [the word used in Section 16 (6) Finance Act (2) of 1939, being 'may'] There is a right of appeal under Sub-section (6).

Sub-section (6) provides, at the option of the successor, an exception, to the general Rule laid down in Sub-section (1), in respect of a business.

(i) which was carried on immediately before 1st April 1936, and

(ii) which was transferred, wholly or as to the main part of it, after 1st April 1936, and before 1st September 1939, if

(iii) after its transfer the transferred business was not substantially different from the original business or part transferred.

On admission by the Excess Profits Tax Officer of a claim under this Sub-section, the new one is to be treated, for the purpose of computing the standard profits of the business, as if he had carried on the business from its commencement. Sub-section (8) gives the Excess Profits Tax Officer, however, the right, as in cases falling within Sub-sections (2) to (5), to make such modifications in the computations of profits or capital as he thinks proper. While such modifications, if any are made, or the refusal of the Excess Profits Tax Officer to make any such modifications are subject to the right of appeal to the Board of Referees a decision of the Excess Profits Tax Officer refusing an application under the Sub-section, or his Assessment Order, so far as it concerns the computation of excess profits, apart from the effect of any such modifications is subject only to an appeal under Section 17 to the Appellate Assistant Commissioner of Excess Profits Tax

Any case of difficulty or any in which the Excess Profits Tax Officer is in doubt as to the admissibility of a claim, or in which he cannot reach agreement with the assessee as to the consequent modifications that are considered necessary, should be reported to the Excess Profits Tax Advisor, together with the files of the assessee and his predecessor before an assessment order is made.

Example :—

A carried on business in 1935 and carries it on up to 31st December 1938 selling it on 1st January 1939 to *B* who carries it on, with no change in its character, throughout the accounting period of 12 months to 31st December 1939.

It will be noted that, under the general Rule in Sub-section (1), the business carried on by *B* from 1st January 1939 is to be treated as a new business and that, as no standard period is available, *B* is not entitled to a profits standard. He may, however, make an application under Sub-section (6) to be allowed to choose a standard period and, consequently, standard profits, as if he had carried on the business from the date when it was commenced by *A*.[1]

Sub-section (7):—Sub-section (7) to Section 8 has been added by the Select Committee. With regard to this the Committee observed :—"We have added a new sub-clause (7) to provide for the carrying over of a deficiency of profits where a change takes place in the persons carrying on a business by reason of the death of partner after the 1st day of September, 1939, a contingency not provided for by sub-clause (1) or elsewhere in the clause".

Sub-section (8): -- The main object of the provision of Section 8 (8) to empower the Excess Profits Tax Officer to make such modifications and alterations as he may think just in the computation of profits and capital both as regards standard period and any chargeable accounting period in cases falling under Section 8 (2) to (6) and to confer a right of appeal to Board of Referees. The time for filing appeal is one month from the date of commencement of Excess Profits Tax Officer's order.

Examples of such cases in which it may be proper to make such modifications are.[2]

(1) Para 66 Notes and Instruction.

(2) Para 67 Notes and Instruction.

(i) Under Sub-section (2), the death or retirement of a partner upon whose personal qualities the profits of the business had mainly depended;

(ii) the transfer of a business, by an individual or a partnership, to a public Company which in the chargeable accounting period, pays directors' remuneration for which there is no corresponding allowable deduction in the standard period :

(iii) the transfer of a business by one person to another in such circumstances that what has been interest on borrowed money allowable as a deduction in computing profits becomes non-allowable interest payable to the person carrying on the business;

(iv) the converse of the type of case mentioned in (3).

It is to be observed that, as regards any such modifications contained in an order of the Excess Profits Tax Officer on of the refusal of the Excess Profits Tax Officer to make such modifications the assessee has the right of appeal to the Board of Referees.

Inter-connected Companies

Section 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 companies shall be computed for the purpose 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 by paying the royalty or rent.

[1](1-A) where—

(a) any debt is owing to any company by another company;

(b) one of those companies is 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

(2) where,

(a) a company, (hereinafter referred to as "the principal company") is resident in British India and is not a subsidiary of any other company resident in British India; 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 British India (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.

(3) 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

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(1) This Sub-section was inserted by Section 5 of the Excess Profits Tax (Amendment) Act (42 of 1940).

(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

(4) 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 principle company for the principal company for the whole period and shall not be deemed to be an excess or deficiency of profits of the subsidary company.

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

(5) In any case to which Sub-section (3) or Sub-section (4) 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 Central Board of Revenue may direct.

(6) For the purpose 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.

(7) The amount of ordinary share capital of one company owned by a second company through another company or other compaines, or partly directly and partly through another company or other companies shall be determined in accordance with the provisions of the Third Schedule.

(8) In this Section and the Third Schadule references to ownership shall be construed as reference to beneficial ownership, and the expression "ordinary share capital", in relation to a company, means all the issued share capital (by whatever named 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 profits of the company.

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.

(10) The excess profits tax payable by virtue of this sections by the principal company in respect of the profits of any subsidiary company shall, for the purposes of Section 12, be deemed to have been paid by the subsidiary company and not by the principal company.

1 **Previous Law**:—No such Provisions existed in the Excess Profits Duty Act 10 of 1919, as are contained in Section 9 of the 1940 Act

The only provision relating to companies was the one in Section 10 according to which a liquidator of a Company which was being wound up was to give notice to the Collector that the Company was chargeable to Excess Profits Duty.

2. **Analogous Law**:—Section 17, (United Kingdom) Finance Act (2 of 1939), contains the same provisions. In fact the provisions of the Section have been taken bodily from the English Act Section above referred to. The first six Sub-sections are the same as those of Section 17 (1) to 17 (6), U. K. Finance Act, 1939. In Sub-section (7), the definition of the expression, ordinary share capital has been taken from para. 13 (d) of the (U. K,) Finance Act 1937.

3. Amendments:—Section 9 (1. A) has been adeed to Section 9 by the Amending Act 42 of 1940). See notes there under.

4. Scope of Section 9:—The principle underlying Section 9 was explaind by Sir John Simon in introducing the United Kingdom Finance Act (2) of 1939 in the House of Commons thus "In this excess profits tax it is proposed to treat the group of parent and subsidiaries as one unit for purpose of tax. In substance, the group is one business unit and the way in which the profits may be distributed among the family is a matter of internal interest and is of no interest to the State so long as it gets the whole unit treated as one. It is resonable to measure any excess profits by treating the whole group as one unit The main principle of the Sub-section is that the profits and losses of the parent Company and its subsidiaries should be aggregated for the purpose of excess profits tax. Section 9 relates to 'interconnected' companies, The word 'interconnected' points out to the fact that there should be a relation or connection between the companies. This relation or connection is created by the fact of one Company holding a very large number of shares of and controlling the business of the other or others.

Thus, a Compay *A* may hold 90 out of 100 shares in Company *B*. The two companies *A* and *B* are interconnected by shares and as *A* holds a large number of shares of *B*, *A* is the principal company and *B* the subsidiary company

Although the terms, 'principal Company' and 'subsidiary Company' have been used in Section 9, for the sake of convenience, it does not imply that the Section is applicable only to such companies *i e.* companies properly so called. Nor is it that the Section is applicable only to companies incorporated in British India Division of capital of the Company into shares is essential to render the Section applicable. The principal Company must be a resident of British India though the subsidiary Company may not be.

On the lines indicated above, there may be cases where the principal Company is one, holding a major number of shares in and controlling more than one Company that will be 'subsidiaries' to *A*, In such a case obviously there is a group of companies, consisting of the parent or the principal Company and the subsidiary company or companies.

One of the principles to excess profits tax is a group of such companies, wherein the principal Company holds and controls almost cent per cent of the share capital of the other Company, *i.e.*, the subsidiary Company, is to be treated as one unit. Section 9 Excess Profits Tax Act is based on this principle. According to Sub-section (6) of this Section where a Company holds and owns nine-tenths of the share capital of the other Company, directly or through other Company or Companies, the former is the 'principal' or 'parent Company' and the later the 'subsidiary Company.

The requisite proportion of shares (*i e.* 9/, 10th) of the principal Company, should be 'owned' by the parent or the principal Company. By Sub-section (8) 'ownership' means beneficial ownership.

Where the above stated relationship of principal and subsidiary Company exists, the result, under Sub-section (1) of Section 9, is that any rent or royalty paid by one Company to another is to be disregraed.

To be more explicit, the capital of the two companies is computed on the same basis, the profits and losses of both the companies are computed by altogether disregarding the interest, annuity, rent or royalty payable and as if the debt in respect of which interest is payable did not exist, and as if the assets giving rise to royalty or rent belonged to the Company paying the royalty or rent.

The principle thus, is that the business of the subsidiary Company is dealt with as if it was that of the principal Company, as if the latter was carrying it on, and the same principal is applicable in the case of several subsidiary Companies.

The excess profits and deficiency of the principal and the subsidiary companies are also liable to adjustment.

(5) Sub-section (1):—Sub-section (1) of Section 9 deals with the computation of capital, profits and losses of two Companies that stand in the relation of 'principal' to each other;

So far as the computation of profits is concerned, the effect of Section 9 (1) is that interest annuity, royalty, etc. will be taken as if these were not paid.

These will not be deductible in computing the profits of the Company making the payment; nor will these be computed as receipts of the Company to which the payment is made. If for example, Company *A* pays royalties to Company *B*, both *A* and *B* being subsidiaries to *C*, then, for the purposes of computation of capital, the patent in respect of which the royalty is paid shall be treated as the property of *A*, the Company paying the royalty, and not *B*, receiving the same. Thus, the effect of Section 9 (1), will be on the one hand to prevent *A's* profits from being reduced by the amount of royalties and also, on the other hand, to increase the amount of capital employed in *A's* business by the value of the asset represented by the patent. Taking conversely, the effect of Section 9 (1) will be to prevent *B's* profits from being increased by the amount of royalties and also to reduce the amount of the capital employed in *B's* business by disregarding the value of the patent, which, though in fact the property of *B*. is to be treated as the property of *A*. Similar results are to follow in the case of payment of interest or debt, covered by Section (1), (a) and (b)]. The following example will illustrate the working of Section 9 (1):—

Suppose company *A* owns 92 per cent. of the ordinary share capital of company *B*. In consideration of a certain license granted by *A* to B, a royalty of Rs. 500 is payable to *A* by *B* in 1940 Then company *B* leased its premises purchased for Rs. 20,00 to Company *A* at a rent of Rs. 200 per annum. *A* has lent Rs. 2,000 to *B* at 5% interest. The above amounts of royalty, rent, loan and interest are all duly shown in both the company's Account Books. For computation of capital of both the companies employed in the two businesses for Excess Profits Tax purposes, the debt of Rs. 2,000 shall be deemed to be be non-existent

The property purchased by *B* for Rs. 2,000 shall be deemed to be the property of *A*, and not of *B*.

In the case of both companies, the royalty. rent, loan and interest shall be left out of account in computing profits. This is the full and true sense of Section 9 (1) It is so under the English law also. In an English Case. *James Weldie & Sons Ltd.*, v. *The Commissioners Inland Revenue* (12 T 113, 137) assessees, coal merchants, practically controlled another coal Company owning £6,236 out of the latter's capital, besides holding certain debentures of it and being entitled to a fixed rate of comission on the sale of the Company's coal Assessees made advances to the Company to help them financially The assessees contended that these were debts due by the Company while the Revenue contended that the advance were investments.

The advances were held to be capital employed in the business and it was held that, therefore, there was to decrease in the Company's capital with in section 41 (3) Finance Act, 1915 due to these advances.

The company to which advances were made was subsidiary to the assessee the company. The advances were treated as capital of the principal company.

The word 'both' is important, implying the assumpsion that *both* companies (the payer and payee) are within the scope of excess profits tax, the natural inference being that the Sub-section will not apply where any of the parties is not within the scope of exces profits tax. In the absence of clear words, however, to this effect, it is rather difficult to suppose that this is to be understood.

6. Sub-section (1-A).—added by the Excess Profits Tax (Amendment) Act, 1940, provides further that in computing capital loans not carrying interest are to be treated as if they did not exist provided that the circumstance 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. If, in any case, the Excess Brofits Tax Officer is in doubt whether the latter requirement

is fulfilled he should report the facts to the Excess Profits Tax Adviser for instructions. Further if, the other requirements being (fulfilled, the Sub-section is not applicable because the creditor company is a foreign company not within the definition in the substantive portion of Section 2 (8) the matter should be similarly reported with a view to declaration being made by the Central Board of Revenue under that Sub-section.

It is to be noted that this provision applies where one of the two companies is not resident in British India and irrespective of whether the profits and capital of the two companies are to be merged under the provisions of Sub-section (2).

Examples:—

1. *A* (principal company)

B Subsidiary of (*A*)

C (Subsidiary of *B* & of *A*) *D* (Subsidiary of *B* but not of *A*). Payments of interest, rent etc.—

by *A* to *B* or *C*

by *B* to *A*, *C* or *D*

by *C* to *A*, *B* or *D*

by *D* to *B*, or *C*

are all disallowable in computing the profits of the paying Company and are to be excluded from the profits of the recipient Company.

This disallowance and exclusion is applicable even if *A* is a company not resident in British India so that, under Sub-section (2), only the profits of *B*, *C* and *D* are aggregable.

2. *A* is a non-resident company not within the scope of Indian Excess Profits Tax and it holds 90 per cent or more of the ordinary share capital of *B* and of *C* both of which are within the charge

If *B* pays patent royalties Rs, 20,000 to *A* and interest Rs 5,000 to *C*, while *C* pays Rs 10,000 to *A* then although *A* is not assessable and *B* and *C* are separately assessable, not falling within the terms of Sub-section (2), the profits and capital of *B* and *C* are to be computed subject to the provisions of Sub-section (1), *i e* Rs. 20,000 and 5,000 are disallowable in computing the profits of *B* and Rs. 10,000 is disallowable in computing the profits of *C*. If *C* carried on a business within Rule 4 (2) of the First Schedule and were therefore liable to include income from investments, Rs. 5,000 interest received from *B* would be excluded in computing its profits since the debt is to be treated as if did not exist and the interest as if it were not payable.

Interest should be treated as covering interest on debentures, loans or temporary advances but not trade interest such as interest on overdue accounts. The latter interest should be treated as a trading receipt in the hands of the recipient Company.

Rule 4 (3) of the First Schedule provides that where under the provisions of Section 9 (3) the profits of a subsidiary Company are included in the profits of the principal Company dividends received by the principal Company from the subsidiary are not to be included in the profits of the former [1]

7. Sub-section (2):- Under this Sub-section all that is required is that the principal Company should be a resident of British India, while the subsidiary

(1) Para 68 Notes and Instructions.

Company need not be; it may or may not be so. The words, and is not a subsidiary of any other Company' etc., clearly indicate that it is immaterial if the 'principal Company' 'itself is a subsidiary,' provided that it is not a subsidiary of the Company residing in British India. The word used here is *'resident'* and not 'ordinarily resident'. The test of residence of a Company in British India is the control of business from British India, and not its incorporation is British India. [See also notes under Section 2 (8) *ante*]

Under I. T. Act a Company is 'resident' of a place where it carries on business.[2] A company was incorporated in New Zealand, having its registered office there, but having two Boards of Directors, one in London and the other in New Zealand The London Board exclusively controlled the Finances, the administration, major policy of the business, while accounts were also kept and dividends also were declared in London. The Company was held to be residing in London.[3] The *ratio decidendi* of all the English cases on the point, thus, is that (1) Central management and control determines the residence of a Company and (2) that a Company may have more than one residence if the control is divided. The question of the residence of a Company like that of the residence of a person is one of fact.

[4]**Example :—**

A is a Company not resident in British India and not within the charge to Indian Excess Profits tax.

B is a Company resident in British India and is a direct subsidiary of *A*.

C, a Company not resident in British India and only assessable to Indian income-tax under Section 4 (1) (c) of the Indian Income-tax Act, 1922, is a direct subsidiary of *B* and indirectly subsidiary of *A*.

As *B* is resident in British India and is not the subsidiary of any resident Company, *B* with its subsidiary *C* forms a group to which the provisions of Sub-section (3) and (4) apply.

8. **Sub-section 3 and 4 :**—Sub-section (3) deals with cases in which the relationship of principal and subsidiary existed during the whole of the chargeable accounting period of the principal company, while Sub-section (4) deals with cases in which that relationship exists during a part only of such period.

A subsidiary Company may be so (*i. e* subsidary) throughout the entire chargeable accounting period or for a part of it only In the former case, as already stated above, the business of the subsidiary Company is treated as that of the principal Company ; if however, the relationship existed for a part of the period only, the excess profits of the subsidiary Company are regarded as increasing the excess profits of the principal Company. If the subsidiary Company has excess profits but the principal Company has a deficiency, the excess of the subsidiary Company would diminish the principal Company's deficiency. If the principal Company had excess but the subsidiary Company a deficiency, the principal Company's excess is reduced accordingly. If, however, both the companies had deficiency, the total deficiency would go to the principal Company.

In the computation of capital employed in the business, the assets and liabilities of the subsidiary Company are to be treated as those of the principal Company. The assets are to be valued as if they were acquired by the principal Company, of course, for the same price at which the subsidiary Company acquired the assets. Where the profits of the principal Company are to be computed with reference to standard period, the profits and capital of the subsidiary Company shall be added to the profits and capital of the principal Company, irrespective of the fact whether the subsidiary Company was or was not subsidary of principal Company during that

(2) Debeers Ltd, v. Howe 5 T. C. 198.

(3) Newzealand Shipping Co., v. Thew 8 T. C. 208.

(4) Para 69 Notes and Instructions.

period. If the subsidiary Company was not existing at the time when the profits of the principal Company fell to be determined with reference to the standard profits, the entire amount of capital employed in the business of the subsidiary Company in the chargeable accounting period will go to swell the amount of capital of the principal Company in the chargeable accounting period and the standard profits of the principal Company shall be adjusted accordingly.

Sub-section (4) would cover cases where the principal Company acquires the share-capital of the subsidiary at a date different from the one at which one of the chargeable accounting periods of the principal Company commences. In such a case, as already above, the standard profits of the subsidiary Company have to be determined. And, the result of such a computation, whether an excess or deficiency, would go to the principal Company's account for that period. The subsidiaay Company's excess of profits or deficiency, whichever may be the case, shall be its separate entity and shall merge into the principal Company's accounts, whether it is an excess or deficiency

[1]**Example** :—

			Rs
Profits of principal company *A* for "previous year"			
	1935	.. ..	1,00,000
,,	1936	.. ..	85,000
,,	1937	.. ..	60,000
,,	1938	..	60,000
Profits of subsidiary company *B* for "previous year"			
,,	1935	.. ..	15,000
,,	1936	. ..	35,000
,,	1937	. ..	20,000
,,	1938	.. ..	55,000
Totals .	1935	.. ..	1,15,000
	1936	.. ..	1,20,000
	1937	.. ..	80,000
	1938	.. ..	1,15,000

Under Section 9 (3) *A B* could choose standard profits .. .. . Rs. 1,20,000 (year 1936)

But under Section 9 (4) *A* could choose standard profits .. .. Rs 1,00,000 (year 1935)

and *B* could choose standard profits .. Rs. 90,000 (two years 1936 and 1938).

If *B* were a subsidiary company of *A* during a part only of a chargeable accounting period the excess or deficiency of *A* and of *B* would be computed by reference to the standard profits separately chosen by them for that period

In any such case care must be taken to see that the subsidiary Company is separately assessed in respect of any direct liability for the part chargeable accounting period before it becomes or after it ceases to be a subsidiary of the principal Company. (See Notes under Sub-section 5 *post re* : alteration of the normal chargeable accounting period of a subsidiary Company)

9. Sub-section (5) Alteration of the Normal chargeable accounting period subsidiary Company:— The provisions of Sub-section (5) are the necessary consequence of those of Sub-sections (3) and (4). An adustment of the chargeable accounting periods of the principal and subsidiary companies would be necessary if either Sub-section (3) or Sub-section (4) was applicable. Where the relationship of 'principal' and 'subsidiary' covers the entire chargeable accounting period, an adjustment of the chargeable accounting period of the two Companies may be necessary for the sake of convenience, so that the chargeable accounting periods of the one may correspond to those of the other. In a case where Sub-section (4)

(1) Para 71 Notes and Instructions.

applies a line may be drawn in the chargeable accounting period of the principal Company, at the point of time at which the relation of subsidiary and principal commenced.

The adjustment has been left in the hands of the Central Board of Revenue. Para, 72 of Notes and Instructions says that "In" general these powers should be exercised by the Excess Profits Tax Officer with reference to the C. B. R. but any case of difficulty or dispute should be referred to the E. P, Advisors. This provision is at variance with the one contained in Section 5 the Act. Apparently therefore the provision of the Act would prevail unless and until cases arise in which judicial decision to the contary may be deemed expedient. In the United Kingdom, under Section 17 (5), Finance Act (2) of 1939 the commissioners are entrusted with this.

10. Sub-section (6) Definition of subsidiary:—This Sub-section defines and explains the term "subsidiary Company". Where nine-tenths of the ordinary share capital of a Company is held by another Company, whether directly or through the other Company or companies or party directly and partly through another or others, the holding Company is the principal Company (or parent Company) and the other Company the subsidiary Company. The term 'ordinary share capital' is defined in Sub-section (8) *post*. The succeeding Sub-section (7) lays down how the 'ordinary share capital,' held as stated in this Sub-section, shall be determined.

11. Sub-section (7):—Sub-section (7) lays down that the method of determining the amount of ordinary share capital of one Company owned or held by another is the one indicated in Schedule III. For this see notes under Schedule III *post* and the illustrations given therein.

12. Sub-section (8):—This Sub-section defines 'ownership and 'ordinary share capital,' the two terms used in Sub-section (6) *ante*. 'Ownership' means beneficial ownership' A trustee is a beneficial owner; so is a guardian of a minor. Hence holding of 9/10th of a share capital of a Company by a trussee or a guardian, for the benefit of their *cesti quli trust* (or beneficiaries) would mean 'owning' the share capital. 'Ordinary share capital' is defined as 'all issued share capital of the Company (by whatever name called). Capital, the holders whereof are entitled to a fixed rate of dividend but who are not to participate in profits of the Company is excluded from the definition of the term 'ordinary share capital'.

In the United Kingdom law [Finance Act (2) of 1939] the words 'body corporate' appear in the corresponding Section 17 (6) instead of Company. The definition of 'ordinary share capital,' as given in Sub-section (8), is more appropriate to the term Company than to 'body corporate,' which is a more general term then 'Company'

"As an example of the effect of the rules of the third schedule if company X owns 95 per cent of the ordinary share capital of the company Y which in turn holds 9 per cent. of that of company Z, then Z is deemed to be a subsidiary of X for that company owns 95/100 of *i.e.* 90 1/4 per cent. of the ordinary share captal of Z and that is not less than 90 percent of its ordinary share capital.

Further, if A owns 90 percent of the ordinary share capital of B, and A and B, each owns 50 per cent. of the ordinary share capital of B, then A is to be treated as owning directly 50 per cent. and indirectly 90/100 of 50, *i.e.* 45 percent, a total of 95 per cent., of the ordinary share capital of C, so that C as well as B is to be deemed to be a subsidiary of A." (Para 73 Notes and Instructions),

13. Sub-section (9):—This Sub-section was added by the Legislative assembly. The underlying intention wrs described thus:—

"The intention underlying this clause is that the profits for the purposes of the Excess Profits Tax Bill, of all the Companies, principal as well as subsidiary, be

consolidated and the profits collected on the total amount arising as profits from all this group of compainies. This is only a technical point aud empowering the principal Company, if the money is paid by the principal Company, te get their share of Excess Profits Tax paid by the principal Company from tne subsidiary Company.

[1]**12. Allowance in case of principal and snbsidiary Companies:—Section 9 (10)** requires, the Excess Profits Tax payable by the principal Company of a group of inter-connected Companies to be deducted under Section 12 from the profits of a subsidiary Company for the purposes of income-tax assessment so far as such excess profits tax is payable in respect of the profits of the subsidiary Company.

Example:—

1st C. A. P.		Excess Profits	E. P. T. payable
			Rs.
Principal Company	.. ..	50,000	25,000
Subsidiary Company	.. ..	20,000	10,000
	Total ..	30,000	15,000
2nd C. A. P		Rs.	Rs.
Principal company ..	..	..plus 40,000	plus 20,000
Subsidiary company ..	..	..plus 30,000	plus 15,000
		70,000	35,000

It is clear that none of the Rs. 15,000 excess profits tax payable for the first chargeable accounting period is in respect of the profits of the subsidiary and, under Section 12, therefore, that sum is deductible in computing the profits of the principal Company.

As regards the second chargeable accounting period the excess profits tax payable for the two periods jointly should be considered and the deduction under Section 12 should be made as follows:—

		Rs.	Rs.
Principal company ..	..	25,000 plus 20,000—15,000	=30,000
Subsidiary company ..	..	—10,000 plus 15,000	= 5,000
	Total ..	..	35,000

Example—

Company X own 90 percent of the ordinary share capital of Company Y. Company X has granted a manufacturing licence to company Y, in respect of which a royalty is payable by company Y to company X amounting in the year 1940, to Rs 10,000/- Compapy Y owns certain premises which cost Rs. 50,000/- and which it has leased to Company X at a rent of Rs 3000/- per annum Company X has lent a sum of Rs. 50,000 to company Y at 5 percent interest. The following entries appear in the books of the companies in the year 1940.

Company X's books:

Company Y Loan Account

Dr.			Cr.		
Jan. 1, 1940	—To cash in respect of advance made on this date	50,000	Dec. 31, 1940	—By cash one Year's interest to date	25,00

(1) Para 97 Notes and Instructions.

Company Y Royalty Account

		Dec. 31, 1940 —By cash royalties for year to Dec. 31	10,000

Company Y Rent Account

Dec. 30 1940—Cash year's rent	3,000		

Company Y's Books

Company A Loan Account

Dec. 31 1940—To cash one years interest to date	1,500	Jan. 1, 1940 —By cash in respect of advance	50,000

Company X Royalty Account

Dec. 31 1940—To cash royalties for year to Dec. 31	10,000		

Company X Rent Account

		Dec. 31, 1940 —By Cash year's rent account	3,000

Freehold Property Account

1940 Jan. 1—To balance forward, cost of purchase	50,000		

For E. P. T. purposes the following adjustments must be made:—

1. In the case of both companies, the loan interest, rent and royalty must be left out of account in the computation of profits.
2. In the case of both companies, the amount of the capital employed in the trade or business must be computed on the footing that:
   1. the loan of Rs. 50,000 is non-existent
   2. the property purchased for Rs. 50,000 and owned by Company Y is the property of Company X and not of company Y

[1][**Section 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 transaction.

(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, with the previous approval of the Inspecting Assistant Commissioner, 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."

1. Previous Law:—Section 17 of the Excess Profits Duty Act 10 of 1919, contained almost the same provisions as are contained in this Section. The proviso of Sub-section (2) of Section 17 relating to criminal offence no longer exist in Section 10, though Sub-section (3) of Section 10 has provided for penalty.

(1) This Section was substituted for the old Section 10 by Section 5 of the E. P. T. (Second Amendment) Act 1941 (xiv of 1941).

It may be that the case may be straind to be covered by the provisions of Section 25 *post*, in order to bring it within the pale of a criminal offence. The replacement by a penal provision of the criminal liability, however, dislocates any such idea, for two punishments on some facts, are contrary to the elementary principles of law and justice.

2. Analogous Law :—(a) United Kingdom law :—Schedule 7, Part I, Rule 9, Finance Act 2 of 1939, also para. 10, Schedule Fourth, Finance Act, 1937.

(b) Indian law'—The Indian Income-tax Act also contains analogous provisions in Chapter V-B (Sections 44-D, 44-E and 44-F)

Under the present United Kingdom Law on the subject, there is no provision for criminal prosecution, such as existed under the former United Kingdom Law and the Indian Excess Profits Duty Law [Section 17 (1) Excess Profits Duty Act, 1919).

All that is possible for the Assessing Authority now is to ignore the artificial transaction. The present law on the point, however, does contain a provision as to penalty [Section 10 (2)].

Amendments :—Originally, Section 10 had three Sub-section, with an explanation attached to Section 10 (1).

The present Section 10 has been substituted by Section 5. Excess Profits Tax (Second Amendment) Act XXIV of 1941 (dated 26th November 1941). Sub-section 2 is the old Sub-section 3 modified and contains provisions as to penalty.

The explanations to old Section 10 (1) and Section 10 (2) have been dropped.

3. Scope and Section 10 :—Section 10 contains a very simple and rudimentary principle of law, of almost universal application, that artificial or fictitious transactions are not to be recognised, it is not unnatural to suppose that fictitious transactions having the effect of reducing profits will be resorted to Section 10 contains provisions in order to counteract these transactions

Sub-section (1) is in terms mandatory *per se*, as the words "no deduction shall be made" indicate. It means that such transactions shall on no account be countenanced.

Any contravention of the above is by Sub-section (2), met with a penalty, which may be equal to the Excess Profits Tax.

As already stated above, the provisions for a criminal prosecution no longer exist. Apparently, they have been replaced by the provision as to penalty contained in this Sub-section.

4. Sub-section 1 :—It is not only fictitious or *benami* transactions but even fictitious or artificial operations that the Section embraces. The term 'operation' is very wide. Presenting the accounts of a business in a misleading form is one of these operations specifically indicated (1). In fact, these operations may take more forms than one. In an English case, *Nevile Reid & Company Ltd.* v. *The Commissioners Inland Revenue* (12 T. C. 545, 572) there was the question of the date of sale, whether it was before or after the 22nd April, 1918. The assessee contended that the date of agreement to sell may be taken to be the date of sale. If that contention was accepted, which was not done, profits would have been avoided

In order to attract the provisions of Section 10, the transaction in question should (1) be artificial or fictitious and (2) be entered into *with intent* to reduce excess profits tax. Such an intention should be evident ; else the Section shall not apply

for it is possible to have transactions which result, *bona fide*, in reduction, of excess profits tax *e g*, reconstruction of capital and increase in assets. (*Ayrshire Pullman Motor Services and D. M. Rich* v. *C. I. R.* 14 T. C. 754). So long as there is an intention, such as indicated above present, even an attempt to evade or reduce excess profits tax may attract the provision to Section 10.

The recent amendment to Section 10, as already noted above, has brought it into line with the English law on the point (as contained in Schedule seventh, Rule 9, Finance Act, 1939) the words, "the transaction or operation has artificially reduced or could artificially reduce the profits", used in the English law have now been introduced in the Indian Law also.

There has been a conflict of decisions as to the interpretation of the words "has artificially reduced" and would artificially reduce" the profits. Possibly what is meant to be conveyed is that the deduction is to be disallowed, where, if it were not disallowed, the result would be that the transaction or operation would artificially reduce the profits etc. But in such a case, there is it has been pointed out, a false *anti thesis* between the two expressions as above given, because the first expression relates to profits as given in the trader's account and the second relates not to *those* profits but to the profits as corrected by the disallowance. Stein and Marks English Excess Profits Tax 1940).

One instance of such cases has been with reference to payment of remuneration for work done. This was held to be an "artificial transaction" in the English case, *The Scottish Adheris Co.* v. *C. I. R.* 1 A. T. C. 42.

In *Maxse's cases*, however, (12 T. C. 41 at p 62). where an editor and publisher of a magazine carried on the profession of a journalist and also the commercial business of publication, it was pointed out (per *Scutton, L. J.*) that this (*i. e.* the provision relating to artificial transactions) would not cover the fixing of a reasonable remuneration for work done". A similar view was also taken in *Johnson Bros. & Co.* v. *C. I. R.* 12 T. C. 147.

At the same time an arrangement for which it was observed there may be comprehensible business reasons and the book entries relating to which were held to have been made "honestly and above-board" was held to be 'artificial' (*C. I. R.* v. *Young* 12 T. C. 827). Para. 99 Notes and Instructions is also to the same effect.

Has artificially reduced and would artificially:—There has been a conflict of decisions as to the interpretation of the words "has artificially reduced" and "would artificially reduce" the profits" Possibly what is meant to be conveyed is that the reduction to be disallowed, where, if it were not disallowed the result would be that the transaction or operation would artificially reduce the profits etc. But in such a case, there, is, it has been pointed out, a false *anti thesis* between the two expressions as above given, because the first expression relates to profits as given in the trader's account and the second relates not to *those* profits but to the profits as corrected by the disallowances. *Stein and Marks English Excess Profits. Tax 1940*)

Sub-section (2) :—This Sub-section has also been amended and re-cast by the Amending Act XXIV of 1941.

According to its provisions, the entire profits to the full extent of the entire operation or transaction would not be affected. That is why "a penalty not exceeding the tax evaded or sought to be evaded" may be levied, with the approval of the Inspecting Assistant Commissioner

Adjustments to be made even in respect of bonafide transaction:—It is not necessary that the adjustments should be made in respect of artificial or fictitious transaction or operations. Even in case of *bona-fide* commercial transactions the main object of which is to avoid liability to tax adjustments may be made to the extent of such transactions evaded or sought to be evaded by the Excess Profits Tax Officer. Such cases of *bona-fide* transactions are covered by S. 10-A of the Act.

Be careful to note that in these bona-fide transactions, the main purpose must be reduction or avoidance of tax.

Transactions designed to avoid or reduce liability to excess profits tax

[1][**Section 10-A (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 the Excess Profits Tax (Second Amendment) Act, 1941)] was the avoidance or reduction of liability to excess profits tax, he may, with the previous approval of the Inspecting Assistant Commissioner, make such adjustments as respects liability to excess profits tax as he considers appropriate so as to counteract the avoidence or reduction of liability to excess profits tax which would otherwise be effected by the transaction or transactions.**

(2) Without prejudice to the generality or the powers conferred by Sub-section (1), the power conferred thereby extend,

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

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

(3) Any person aggrieved by a decision of the Excess Profits Tax Officer under this Section may appeal in the prescribed time and manner to the Appellate Tribunal.

Section 10-A has been added by Section 6 Excess Profits Tax (Second Amendment) Act XXIV of 1941 While the main object of the bill introducing the Second Amendment of 1941 was different, "opportunity was taken, at the same time, to strengthen the provisions dealing with devices for avoiding or reducing liability to Excess Profits Tax to provide relief for.. ...etc ..(Statement of objects and Reasons).

The provision of Section 10-A distinctly fall within the last mentioned words.

It was further pointed out (*Notes or clauses Cl 5, introducing Section 10-A*) that "Section 10 of the Act deals with fictious or artificial transactions entered into for the purposes of reducing excess profits chargeable to tax, but it does not provide for cases where tax is avoided by transactions which are neither fictitious nor artificial. The present clause remedies this defect and covers any transaction which has for its purposes the avoidance of excess profits tax.

Splitting up of a firm into several firms—The word "transaction" has a very wide meaning. It can be applied to any particular act done in the carrying of a business.

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(1) This Section was newly inserted by Section 6 of E. P. T. [Second Amendment (Act xxiv of 1941)].

(b) S. 10-A (Excess Profits Tax Act)—Firm with four partners—Formation of two new firms. Two partners of firm being the partners of one of the new firm and two of the other. The formation of two firms created for evasion of excess profits tax covered by S. 10-A.

Splitting up of a firms into firms is a transaction within the meaning of S. 10-A *G. S. Ramuswamier and Sons* v. *C. I. T., Madras.*

The fact of the case are : The assessee in this case is the firm of G. S. Rama Swamier and Sons. The partners are four brothers Until 1929 they constituted a Joint Hindu family, but in that year a separation took place. It is not necessary to set out the course of events between 1929 and 1936 because this case turns on what happened after the 13th January 1936 when the brothers formed the firm of G. S. Ramaswamier and Sons. The business of this firm was manufacture of *dhupattas* at Madura and *dhavanies* at Paramakudi. The goods manufactured were sold by branches of the firm at Bombay, Nagpur and Poona. On the 13th April 1940 two new firms were started, one under the style of G. R Narasimha Ayyar and Company and the other under the style of G. R. Ramachari and Company. Two of the brothers were the partners in G. R. Narasimha Ayyar and Company and the other two were the partners in G.R. Ramachari and Company. The new firms commenced the manufacture of the same goods which were sold during the year of account (14th January 1940 to 13th January1941) by the branches of G. S. Ramaswamier and Sons at Bombay, Nagpur and Poona. The Excess Profits Tax Officer regarded the formation of two new firms as a transaction within the meaning of Section 10-A and accordingly asasessed G. S. Ramaswamier and Sons to the Excess Profits Tax on the basis that it had made all the profits for this period. The assessee appealed to the Income-tax Appellate Tribunal which agreed that the formation of the two new firms was a transaction within the meaning of the section and consequently confirmed the assessment.

Whether before or after the passing etc:—The provisions of this newly added Section 10 have been given retrospective effect.

Main purpose:—Intention such as is necessray for an artificial transaction under Section 10 is also essential under this Section.

On finding of the main purpose of a transaction or operation being avoidance or reduction of liability to excess profits tax, appropriate adjustments with regard to such liability to excess profits tax may be made by the Excess Profits Tax Officer with a view to counteract the avoidance or reduction of liabiliry to tax being affected by these types of transactions.

The words main purpose' require much attention to be paid to. A transaction may have been effected for more than one purpose, and a question of fact may be raised as to which of the purpose was the main purpose. A careful consideration is required for transactions of this nature. Regard in respect of the nature of the transaction, circumstances surrounding it and the intention will have to be had.

Aproval of Inspecting Assistant Commissioner:—This is necessary as in the case of levy of penalty under Section 10 (2).

Adjustment:—Adjustment is to be made in two ways, (1) charging of persons and (2) of amounts that would have escaped but for the adjustment. Section 10-A (2)].

What acquisitions to avoid tax are Prohibited :—All acquisitions of property or interest in corporation or property with the object of having reduction through *artifice* of the income or excess profits tax liability are unjust and prohibited and

no deduction which would otherwise nave been made would be allowed. All provisions prohibiting such acquisions are not confined to cases or transactions of "*artifice*". They covered any acquisitions of an interest in or control of a corporation or property if one of the principal purpose of the aquisition was to avoid tax by securing the benefit of a deduction, credit or other allowance. The following illustration will be of great assistance in having an understanding of the topic under-review.

1. Corporation B had for each of the years 1941 and 1942 an excess profits credit (being an amount which together with minimum specific exemption Rs. 36,000 in case of excess profits tax may be earned by the corporation free from excess profits tax) of Rs. 500,000 its excess net income for each year was only Rs. 36,000. It therefore had no use for Rs. 4,64,000 of its credit during the years 1941 and 1942. The unused credit may be carried forward against the excess profits net income of 1943. Because of this a prospective purchaser with profitable war contracts which can be assigned to corporation B is willing to purchase B's stock for more than its true value in the hope that the anticipated profits to the extent of Rs. 4,64 000 will escape excess profits tax.

2. Corporation C in 1942 had a large excess profits credit and plenty of cash but small current earnings It purchased all of the stock of corporation X which because of the war making large earnings but had low excess profits credit. Thereafter corporation C and X filed a consolidated return for 1942 in which the large excess profits credit of corporation C absorbed the earnings of the purchased subsidiary, making the earnings of a subsidiary subject only to income and not to excess profits tax.

3. Corporation D started out with an original capital of Rs. 2,000,000. By the beginning of 1941, it had sustained operating deficits aggregating Rs. 1,900,000 so that its remaining capital was only Rs 100,000. Yet its excess profits credit for 1941 will be measured not by its then capital but by its original capital of Rs. 2,000,000 It will therefore enjoy credit of Rs. 1,60,000. If income producing assets are transferred to the corporation, the resulting income to the extent of Rs 160,000 will be free from excess profits tax.

4. Corporation E owns a manufacturing plant which has an adjusted basis of Rs. 500,000 but which is worth only Rs. 100,000. The operations of E have not been profitable so that if the plant were sold at a loss of Rs. 400 000 the loss would not produce any tax benefit. Corporation Y which is owned by the same interests that control E, is earning substantial profits Y acquires the plant from E in a tax-free exchange, and after operating it for a year or so, sells it for Rs 100,000 Since Y's basis for the plant is Rs 500,000. (Less depreciation since acquisition by E), there is a loss of approximately Rs. 400,000 to Y on the sale which Y seeks to off-set against its operating profits Thus in a merger, motivated, at least in part by business, as distinguished from tax saving consideration. *Gregory* v. *Helvering* 293 U. S. 465 *J D. and A. B. Spreckles, Co* 41 B. T A. 870 (1940), distinguishing *Bishop trust Co. Ltd.* 36 B T. A. 1173 (1937).

5. In case of a firm of four partners, two firms being started by the aforesaid four partners, two of them being partners in one firm and the other two in the other firm, the starting of these two firms are created for the purpose of avoiding taxation. *G. S. Ramaswamier and Sons* v *C I.T.* (1945) 5 I. T. C. 16 : 1945 I. T. R. 24.

Thus the ameliorative provisions (*i. e.* deficiency, merger of one firm into another for amalgamation, etc) are the very provisions which the would-be avoiders sought to turn to their undeserved advantage.

The separate entity of a corporation organised and existing for any business purpose even if tax reduction results but if the corporation is a sham, its only purpose being to escape taxation, the Income-tax Authorities may, if they wish to, disregard it and impose taxes as if it did not exist. The choice to regard or disregard in such a case is with the Income-tax and Excess Profits Tax Authorities alone. The taxpayer has no choice. The choice of taxation authorities would not be arbitrary but would be based on reasonable grounds.

The Revenue authorities will have difficulty in applying the test of principal purpose and they will probably have to rely chiefly on circumstantial evidence. Thus if a steamship company (with high earnings and low credits) were to purchase a defunct spinning company (with high credit) and merge in to the latter, the steamship line there after being operated under the name and under the merged corporate structure of the spinning corporation, the transaction, on its face, is so far outside the normal pursuit of business that to state it is to condemn it. On the otherhand, if the purchasing corporation were in the carpet business and acquired a non-defunct corporation which processed the wool used in manufacturing carpets, and after merger, the profits of the carpet business were offset against the excess profits credit of the wool business, the solution would be far from simple. There would be many illustrations like this in which it will be difficult to draw the line.

Acquisition of control of a corporation :—If control of a corporation is acquired with the main object of aoviding taxation, the transaction comes within the compass of Ss. 10 and 10-A of Indian Excess Profits Tax Law and the attempt should fall. An acquisition of controlling stock of a corporation is equally an acquisition of property. If corporation X controlls corporation Y and Z, and Y owns W, a shift, after the specified date, of W from Y and Z, even though it is a transfer within the controlled group would be an acquisition or control by Z. As indicated in the text, it would not be an acquisition of control by parent. A transfer of the property as distinguished from stock, of W and Z, *e g.* by merger, would be outside the scope of the sections.

The main question that whether the organisation of a new corporation constitutes an acquisition of control. Assume, for example, that corporation Z subdivide itself into t n smaller corporations, the only purpose of the sub-division being to obtain the benefit of Rs 36,000 exemption from excess profits tax, rather than a single exemption. Literally there is an acquisition of control of the new compaines by the original corporation (or by its stock- holders) for the purpose of obtaining an allowance (Rs. 36,000 specific excess profits tax exemption) which the acquiring persen or persons would not otherwise enjoy. Hence the transation is within Section 10-A.

If control P, in a tax-free exchange, acquires all the property of corporation O, and O just prior to the exchange was not controlled by P or its stock-holders, the transaction would fall within the scope of Section 10 of Excess Profit Tax Act.

Section 10-A (3):—An order under this Section has been made appealable to Appellate Tribunal. This is apparently an enongh eye-wash.

Relief in reepect of double excess profits taxation.

Section 11 (1) The Central Government may by notification in the official 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 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 Central Government that the laws of the United Kingdom or of that Indian State or of that other part of His Majesty's Dominions provide for

corresponding relief in respect of excess profit tax charged on profits both in the United Kingdom or in that state or in that part and in British tndia.

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 excesss 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 British India, proves that he has paid excess profits tax under the laws of this said country in respect of the same profits, he shall be entitled to the deduction from the excess profits tax payable in British India 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,

1. **Previous Law**:—No provision for relief in respect of double excess profits taxation existed in the Excess Profits Tax Act, 1919.

2. **Analogous Law**:—(*Bnglish Law*:—Schedule 7 Part I B. 8 and 12 contains provisions similar to those, relating to double taxation relief. (2) *Indian Law* Section 49 Income Tax Act 1922.

3 Scope of Section 11:—Section 11 provides for relief to be granted in cases where excess profits tax has been levied on the profits of any business both in British India, and in the United Kingdom. It includes an Indian State or any other part of His Majesty's Dominions. The provision is based on the rudimentary principle of Income-tax Law that double taxation is to be avoided. Section 14 and 2nd provision to Section 55 of the Indian Income-tax Act, 1922 (amended 1939) are based on the same principle Provisions for relief in cases mentioned in the Section are to be based on a notification by the Central Government to be published in the Official Gazette. The grant of relief under the Section is to be 'reciprocal,' that is to say, relief for double taxation under this Section will be given only on the condition that a similar corresponding relief is allowed by the laws of the United Kingdom, the Indian State of the Dominion concerned. Reciprocal arrangement for relief thus and a condition precedent for relief is provided for in this Section.

With regard to the relief in respect of United Kingdom Income-tax, it has been observed :—"The position of those persons who are called upon to pay tax in two or more different countries on the same source of income is one that gives a rise to much injustice, but by no means easy to alleviate".

When profits are taxed both in a foreign country and in the United Kingdom the only relief given in respect of the United Kingdom tax is that which permits the amount of tax suffered in the other country to be deducted from the amount on which the United Kingdom assessment is computed

It may be a point worthy of note in this connection that income-tax relief under Section 49 Income-tax Act, 1922 proceeds and is based upon a comparison of the *rate* of tax in India with the rate of tax in the United Kingdom and not on the comparative amount of tax paid in either country.

That is to say, what is compared is the rate of the Indian Tax paid by the claimant for the Indian year of assessment corresponding to the United Kingdom year of assessment in respect of the part of the claimant's income liable to United

Kingdom tax and not the particular amount of such part of his income liable to United Kingdom income tax as is charged to Indian Income-tax".

In an English case, *Rolls Royce* v. *Short*,[1] it was held that having regard to the different modes of assessment in India and in England, the profits chargeable in the two countries would seldom be identical and that as a consequence one should look to the source than to the exact amount,

Under the analogous English Law (Schedule 7 part 1, para. 12) the position is the same. (See Part III.)

There is abundant case-law in particular in the United Kingdom, on the principal of double taxation to be avoided.

It is against the principle of the scheme taxation that there should be double taxation.[2] Double taxation has not been regard d as either the purpose or the right effect of taxing Act[3] and it is contrary to the provision of the Income-tax Act.[4] The Income-tax Act nowhere authorize the Crown to take Income-tax twice over in respect of the same source or for the same period of time.[5] You connot so interpret a taxing Act as to tax the subject twice over to the same tax.[6]

The difficulty, however, of finding support for the Rule against double taxation has been felt in the United Kingdom.[7]

The whole and the main principle of the provisions in Section 11 is that there is to be no double taxation in the matter of excess profits tax as in the case of income-tax. And, naturally, the same principle as are applicable in the matter of Income tax Act (under Section 49) should apply in the case of excess profits tax also.

As has been pointed out above, with reference to a case under the English Law (*Rolls Royce* v. *Short*) in the matter of double taxation relief in United Kingdom and India, the source rather than the exact amount has to be booked to in *Assam Rly. & Trading Co., Ltd.* v. *Commissioner Income Tax*.[8] However, it was held that the above observation was to be read with reference te special fact of the case.

The main point in connection with the question in hand is that there should be reciprocity in the matter. Just as there is a reciprocity in the matter of Income-tax, so the Rules under the Excess Profits Tax Act allow such a reciprocity.

Indian State or in any other part of His Majesty's dominions:—Section 49-A (1) and (2) added to the Income-Tax Act, 1922 by the Amending Act, 1939, has now provided for relief in case of tax levied in Indian States or in any Dominion, Before the enactment, this relief was provided for by notification under Section 60 Income- tax Act. The Principle, being recognised under the Income-tax Act, has been given recognition in the Excess Profits Tax Act also. The term "corresponding relief" indicates reciprocity which is the main and essential point of the Rule of Law contained in this Section.

4. Sub-section 1 :—Excess Profits Tax under any law in force in the United Kingdom:—Excess Profits Tax under the United Kingdom Finance Act (2)

(1) 10 T. C. 59 (73).

(2) Schulze v. S. W. Bensted 7 T. C. 30 (35).

(3) 9 T. C. 620.

(4) 8 T. C. 640.

(5) 8 T. C. 513.

(6) 5 T. C. 407.

(7) 8 T. C. 820.

(8) 18 T. C. 509 (1933).

of 1939, is levied under the provisions of Part III Section 12 *et. sq.* The analogous provisions as to double taxation relief are contained in Schedule 7, Part I Section 12. The effect of this last mentioned Rule of Law is that, in the case of trade or business to which the Excess Profits Tax Act applies, the exemption granted in respect of Income-tax is extended to excess profits tax also and this on the basis of reciprocity. The condition is that the relief granted by the other country also extends to excess profits tax and is not limited to Income-tax only.

5. **In any Indian State**:—Double taxation relief will also be available in case of excess profits tax, if levied by any Indian State, provided that the State also, by its legislation, relating to excess profits tax has made provision for double taxation relief. With regard to this the Select Committee observed:—"We desire to record our view that should an excess profits tax be imposed in any Indian State, Government should make every effort to estabish reciprocity in regard to relief with that State.

6. **Any other part of His Majesty's Dominions**:—Double taxation relief is to be allowed in respect of ony excess profits tax payable in any Dominion. The analogous English Law is also the same *vide* Rule 5 Schedule 7 part 1 (Part III, United Kingdom Finance Act, 1939).

7. **Proviso** :—National Defence contribution is taken to be equal to excess profits tax for purposes of double taxation relief. The Proviso was added by the Select Commiitee.

8. **Sub-Section (2)** :—Sub-section (2) was added by the Select Committee. On the lines of Section 49D of the Indian Income-tax Act, 1922, to provide for the giving of relief in cases where no corresponding relief exists in other countries".

Sub-section (2) provides for relief, in the case of excess profits tax paid *in respect of profits arising outside India*, both in British India and in any country the laws of whice do not provide for relief in respect of excess profits tax paid in British India.

Sub-section (2) applies to any country the laws of which do not provide for reciprocal excess profits taxation relief and applies therefore to any country, falling otherwise within the terms of Sub-section (1) the laws of which do not provide for reciprocal relief as well as to countries which are not parts of His Majesty's Dominions.

It should be noted that relief under Sub-section (2) is confined to profits arising *outside India*, and it follows, therefore, that no relief is allowable in relation to profits arising in an Indian State and charged to excess profits tax both in British India and in the State if the laws of the State do not provide for reciprocal excess profits tax relief.

On the other hand, if, for example, profits arising in Kenya were charged to excess profits tax both in British India and in Kenya, then, as the profits arose outside India, relief would be due in accordance with the provisions of Sub-section (2).

The extent of the relief under this Sub-section is not dependent upon any Rules or Orders to be made by the Central Government but is specifically provided by the terms of the Sub-section. The relief is definitely to be the allowance of one-half of the excess profits tax payable in British India or in the other country whichever is the less.[1]

Procedure for grant of relief:—The use of the words "excess profits tax.. period" in both Sub-sections makes it clear that any relief under the Sub-section must be given by repayment.

(1) Para 94 Notes and Instructions.

Applications for refunds in respect of double excess profits taxation should be prepared on form E. P. 18.

The procedure laid down in Section 49 E, 49 F, and Section 50 I. T. Act (made applicable to Excess Profits Tax Act by Section 21, Excess Profits Tax Act.)

Allowances of E. P. T. in computing for Income-tax purposes.

Section 12—(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 11, shall, in computing for the purposes of the income-tax or super-tax the profits and gains of that business, be allowed to be deducted as an expense incurred in that period.

(2) There shall also be so deducted the amount of any excess profits tax payable under any law in force in a country outside British India on the profits of the business in respect of any chargeable accounting period[1] [to the extent to which such profits are liable to excess profits tax under this Act] after diminishing such amount by any amount by 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 British India

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 British India, relief is given by way of repayment from excess profits tax chargeable for any chargeable accounting period pervious 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[2] previous year [as determined for that business for the purposes of the Indian Income-tax Act, 1922] in which the deficiency of profits occurs.

1. **Previous Law**:—Section 20 Excess Profits Duty Act, 1919 contained similar provisions.

2. **Analogous Law**:—Section 18 (1) and Proviso of the English Finance Act (2) of 1939 contains analogous provisions. In fact, this Section of the Indian Excess Profits Tax Act, is almost a true copy of the English Act.

Amendments: -Two changes have been effected in Section 12 by the 1940 Amending Act, the one in Sub-section 2 and the other in the Proviso (duly noted.)

The object of the former was to remove hardship in the case of a company of United Kingdom earning the whole of its profits in India and paying excess profits tax 100 percent in United Kingdom.

Allowance for such excess profits tax has been made possible by the said amendment which was not possible before.

The second amendment in the Proviso is practically a correction of an error as the "chargeable accounting period" (now charged into previous year) applied only to excess profits tax and not to Income-tax or Super-tax.

(1) These words were substituted for the word " to the extent that such profits arose in the country " by Section 6 of the Excess Profits Tax (Amendment) Act 1940 (42 of 1940).

(2) Thesewords were substituted for the words "chargeable accounting period." ibid

3. Scope of Section 12 —Section 12, in effect, lays down that the excess profits tax payable under this Act shall be allowable deduct;on from a person's income for Income-tax Act purposes. For instances, if, say, a sum of Rs. 1,000 is payable to the Revenue, in respect of any chargeable accounting period this this will be deductible from the assessable income of the person for the same period, being deemed to be an expense incurred during that period. It is noticeable in particular that the deduction is allowable for *i. e* in respect of the period *for* which the excess profits tax is paid and not in respect of the period *in* which it is paid in fact. The amount of excess profits tax deductible shall be calculated after making allowance for any relief given under Section 11 *ante*.

Any deficiency relief, under Section 7 *ante* given by way of repayment, in respect of excess profits tax chargeable for a previous chargeable accounting period would not affect the amount to be deducted for Income-tax purpose. On the o her hand the amount repaid shall, for Income tax purposes be treated as a profit of the chargeable accounting period in which the deficiency occured. This is the sense of the provisions contained in the proviso to Section 12.

Sub Section (1) :—It provides that excess profits tax payable in British India, reduced by any relief allowable under Section 11 is to be allowed as an expense in computing the profits of the business for the purposes of income-tax or super-tax. It will not always be possible to arrive at the amount of the relief under Section 11 by which the allowance under Section 12 (1) is to be reduced when computing profits for the purpose of the income-tax and super-tax assessment. In such a case the full British India excess profits tax should be allowed and the increase in the profits for income-tax and super-tax purposes, due to the reduction of the excess profits tax liability by application of the provisions of Section 11, should be subject to an additional assessment [1]

Payable :—(*a*) The term 'payable' would include 'paid'.

(*b*) *Business* :—'Business' would be the business to which Excess Profits Tax Act applies. [See Notes under S. 2 (5)]

(*c*) *Allowable*—The word, 'allowed' was replaced by 'allowable', by the Select Committee.

(*d*) *Or Supertax*:—These words were added by the Select Committee.

(*e*) *That Period* :—The term 'that' would refer to chargeable accounting period.

5. Sub section (2):—deals with excess profits tax payable in a country *outside British India* on profits of a business assessable in British India. and provides that the tax payable in that country less any relief in respect of double excess profits taxation given in that country, is to be allowed as a deduction in computing the profits assessable to British India income-tax and super-tax but *only* to the extent that such net excess profits taxation is in respect of profits that are liable to excess profits taxation in British India

(*a*) *Is allowable* :—These words were changed (from allowed) by the Select Committee.

(*b*) *Providing for granting relief*.—This relief is the same 'double taxation' relief as is allowed in Section 11 in respect of the profits of business carried on in British India.

6. Proviso :—The proviso applies to both Sub-Section of S. 12. It lays down that any relief given by repayment under Section 7 in respect of a deficiency of pro-

(1) Para 95, Notes and Instructions.

fits tax is not to be deducted from the Sub-section excess profits tax which, under Sub-section (1), is to be allowed in computing profits for income-tax purposes, but is to be treated for income-tax purposes as a profit of the business arising in the chargeable accounting period in which the deficiency occurse.

Example :—

	Rs.
(*a*) year 1939 Excess Profits of 1st C. A. P. chargeable at 50% ..	20,000
(*b*) year 1940 deficiency of 2nd C. A. P.	40,000
(*c*) year 1941 Excess Profits of 3rd C. A. P.	36,000

Chargeable

Rs. 9,000 at 50%

Rs. 27,000 at 66 2/3%

Excess profits tax Rs. 10,000 for the first chargeable accounting period having been paid, relief of Rs. 10,000 will be given by repayment there against in respect of the deficiency arising in the second chargeable accounting period The unexhausted depeeciation of Rs. 20,000 arising in this period, a period ending before the end of March 1941, will be carried forward and set off first against the excess Rs. 9,000 chargeable at 50% and as to the remaining Rs. 11,000 against the excess of Rs. 27,000 chargeable at 66 2/3%. The excess profit tax payable for the third chargeable accounting period is, therefore, 66 2/3% of Rs. (27,000—11,000)=2/3 of Rs. 16,000=Rs. 10,667

In arriving at the income-tax profits of the "previous year" 1939 Rs. 10,000 will be deductible under Section 12 (1), in arriving at the income-tax profits of the "previous year" 1940 the Rs. 10,000 repaid must be treated as a profit under the Proviso to Section 12, while the deduction under Section 12 (1) in computing the income-tax profits of the "previous year" 1941 will be Rs. 10,667.

A similar course is to be adopted in respect of relief given without British India, in respect of a deficiency of profits, against excess profits tax charged without British India which has been allowed under Sub-section (2) as a deduction in computing profits for British Indian income-tax purposes. The substitution of the words "previous year (as determined for that business for the purposes of the Indian Income-tax Act, 1922)" for the words "chargeable accounting period" prevents any claim that such a repayment without British India is not to be include in profits for British India is not to be included in profits for British India incecme-tax puropses if the chargeable accounting period in respect of which the repayment is made should happen not to be a chargeable accounting period for the purpose of British Indian excess profits tax.

Issue of Notice for assessment.

Section 13—(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 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 tor relief under Section 7.

(1) Para 96 Notes and Instructions.

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

(2) The Excess Profit 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 Indian Income-tax Act, 1922, for the purpose of the Income-tax assessment for the year ending on the 31st day of March, 1937.

1. Previous Law :—Section 11, Excess Profits Duty Act 10 of 1919.

2 Analogous Law :—(*a*) *Indian Law* :—The provisions of Section 13 correspond to those of Section 22, Indian Income-tax Act, 1922.

(*b*) Rules 1 and 2 Fifth, Schedule Finance Act, 1937 (supplementary provisions) containing provisions relating to National Defence Contribution, which have been made applicable in United Kingdom to excess profits tax, contain provisions as to notice for making of return to be issued by the Surveyor of Taxes.

3. **Scope of Section 13** :—It may be stated at the outset that as the machinery of assessment to excess profits tax starts with Section 13 and the succeeding Section 14 relates to assessmsnt proper, the provisions of the two Sections being intimately connected had better be read together Section 13 provides for the furnishing of a return of the profits and the standard profits. Discretion is given to the Excess Profits Tax Officer to issue notice, calling upon any person whom he belives to be engaged in any business to which the Excess Profits Tax is applicable, or whom he considers liable to pay excess profits tax, to furnish a return of profits and standard profits. The issue of this notice for assessment to excess profits tax is discretionary. The time prescribed is 60 days. This was originally fixed at thirty days, in the bill as introduced in the Assembly, but was raised to sixty days by the Select Committee The date of delivery of the above return may, in the discretion of the Excess Profits Tax Officer, be extended.

A further notice under Sub-section (2) of the Section may also be served, calling on the person served with notice to produce or cause to be produced, such accounts or documents as the Excess Profits Tax Officer may require More than one such notices may issue for production of further accounts or documents or other evidence as may be required by the Excess Profits Tax Assessing Officer. Notice under Sub-section (2) of Section (2) of Section 13 corresponds to Section 22 (1) of the Income-tax Act, 1922.

The provision as to issue of general notice through press does not find place in this Section of the Excess Profits Tax Act.

4 Sub-section (1) :—The provisions of Section 13 (1) are similar to those of Section 22 (2) Income Tax Act, 1922, The proviso to the latter Section regarding extension of time for delivery of returns is also the same as the Proviso to the present Section 13.

(*a*) **May.. .....require**:—The Excess Profit tax Officer has the discretion to issue notice—'Require' means call upon by notice.

(*b*) **For the purpose of the Act:**—*i e.* for the purpose of assessment to excess profit tax.

(*c*) **Any business to which this Act applies**:—By virtue of Section 5 *ante*, the Act applies to every business, of which profit is chargeable to income-tax under Section 4 Income-tax Act.

Subject to the exceptions referred to in paragraphs 17 and 18, the charge applies to all businesses.

(a) the profits of which accrue or arise to a person resident in British India whether such profits accrue or arise within or without British India, and whether they are or are not deemed to accrue or arise in British India;

(b) the profits of which accrue or arise in British India or, by the provisions of the India Income-tax Act, 1922, are deemed so to accrue or arise, to a person not resident in British India. Where however,

(i) the whole of the profits of a business accrue or arise without British India to a resident in British India, who is not ordinarily so resident and no part of the profits is deemed to accrue or arise in British India, such business is not chargeable unless it is controlled in India; and

(ii) where the profits of part only of a business, carried on by a person not resident in British India or not ordinarily so resident, accrue or arise in British India or are deemed, under the provisions of the Indian Income-tax Act, 1922, so to arise, only the profits of such part of the business are chargeable unless the business is the business of a person resident but not ordinarily resident in British India *and* such business is controlled in india 'Business" includes any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture, or any profession.

The holding of the investments or property is to be deemed for excess profits tax purposes to be a business carried on by such company or society.

This provision makes it clear that investment trust companies, estate companies, property owning companies, etc., are chargeable.

It is to be noted, however, that the companies or societies chargeable under this provision are only such as are *incorporated by or under any enactment*, and that while societies so incorporated are included, the scope of this phrase as regards companies is not as wide as the definition of company contained in Section 2 (8).

If any question arises as to whether a company or society holding investments or other property is or is not within the charge, the case should be reported to the Excess Profits Tax Adviser. (Para 15 and 16 Notes and Instructions).

(*d*) **To be otherwise liable:**—These general and comprehensive words are intended to rope in all possible cases that may be covered by the provisions of the Act and in respect of which excess profits may be payable.

(*e*) **Not being less than sixty days**:—In the original bill the period was thirty days but the Select Committee raised it to sixty days. This time is to run from date of service of notice.

In a recent case of *C.I T.* v. *Eqbal & Co.* (1945) 5 I.T.G. 23; 13 I.T.R. 156 *Stone C. J.* observed: "In my judgment expressions 'within thirty days' and 'not less than thirty days' are two quite different things. 'Within thirty days' is within two points of time, one at which the period begins and the other at which it expires. On the other hand 'not less than thirty day's is outside these two points of time. There must be an interval of not less than thirty days and that means thirty days clear". It has been held in this case that the notices issued to the assessee did not technically allow the full period of time provided by the law and were therefore invalid. The promulgation of Income-tax and Excess Profits Tax Ordinance, 1944 providing for

the validity of all notices issued under S. 22 or 34 (1) of the Income-tax Act and Ss. 13 and 15 of the Excess Profits Tax Act.

The same law as has been applied on the point to Income-tax cases must be applicable under this Section also Notice to assessee under Section 22 (2) to file a return within 29 days was held invalid[1] in *Kanji Mal Kalyan Mal* v. *Commissioner Income Tax U. P.* Notice under Section 22 (2) served on the assessee on 31st August 1931, demanding a return of income on or before the 26th September 1931 or within 30 day of receipt, was held as not illegal in *Jamnadhar Poddar and Co.* v. *Commissioner Income-tax Punjab.*[2]

Prescribed form:—It contains an enclosure (E P. I A) "Notes for guidance of persons making returns," but Excess Profit Tax Officers should give all reasonable assistance to assess in the preparation of their returns of profits and, particularly, if asked, in the selection of the most advantageous "standard period."

Verified in the prescribed manner:—Verifications is essential on the return. The form thereof is prescribed by the Rule under the Act.

An Income-tax return is not a public document and, therefore, no one has a right to inspect or to receive a copy of it A return not bearing the signature, nor the verification by the assessee is on propor return[2-a] An issue of notice under Section 23 (2) is not necessary in such a case.[2-b] Similarly, a return though signed, but not filled in and left blank (including the total column) sent with an accompanying letter that there was no business during the year is no return[3] A return not complying with the Rules for filling it in, containing an entry on the margin as to loss of certain item in the preceding year and stating that the *khata's* (ledgers) not being ready, the entries in the return were merely based on surmise, is no return either.[4] Returns filed before the various Income-tax Officers of the branches of the places of assessee's business where no return is filed before the Income-tax Officer of the principal place of business, are not enough and the case is one of no-return, justifying an assessment under Section 23 (4) by the Income-tax Officer of the principal place of business[5] *P K. N P. R. Chettyar Firm* v. *The Commissioner I. T. Burma*[6] was also a case wherein the return filed in response to the notice under Section 22 (2) did not comply with the provisions of Rule 19 of the Rules made under the Act and assessment under Section 23 (4) was justified. A deliberate false entry and account in the first return is not condoned by a correct entry in a subsequent return and prosecution can be based on the first return (both under Section 52, of the Act and Section 177. I. P. C.) as the offence is complete the very day the first return is put in.[7] A letter with a statement in Hindi of assessee's income and the form sent blank with it is a return[8] Where, however, the return

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(1) 1930 All. 209=1930 A. I. J. 78=3 I. T. C. 451.

(2) 8 I. T. C. 191=1934 Lah. 201 : 36 B. L. R. 480.

(2-a) Mathura Dass Chunni Lall v. Commissioner I. T. U. P. & C. P. 7 I. C. 84 ; Behari Lall Chaterji v. Commissioner I. T., C. P. & U. P. 1934 All 190 ; 7 I. T. C. 123 ; 4934 A. L. J 47 ; 3 A. W. 290.

(2-b) Behari Lall Chaterji 7 I. T. C. 123.

(3) Ratan Chand Duni Chand v. The Commissioner I. T., Punjab 9 L. 188 ; 1928 Lah. 944 ; 13 I. T.C. 69.

(4) Mohan Lal Hardeo Dassv. Commissioner I. T. B. & O. 5 I. T C. 127.

(5) Ibid.

(6) 8 R. 209 ; 1930 Rang. 73 (F. B.) 4 I. T. C 340 (See also A. R. A. N. Chettyar firm v. Commissioner I. T. Burma 6 R. 21 : 1921 Rang. 108 (F. B) 2 I. T. C. 447).

(7) Ganga Sagar Seth v. Emperor 1929A : 919 ; 1930 A. L. J. 26 : 31 C. R. L. J 88; 4 I. T. C. 97.

(8) Ibid.

entries in certain columns including the total columns contained the word 'about' with the figures entered therein the return not showing the period to which the return related and the verification space was also left blank it was held that this was no return[9] A return signed and verified by an assessee's *Mukhtiar-i-Am* is not valid return[10]. Section 24-B, of course, now applies to a case where a person served with a notice under Section 22 (2) dies before filing a return[11]. Where return is not furnished in due time, whether it be a statutory return which companies are required to furnish by the 15th day of June under Section 22 (1), or whether it be the return which other persons are required to furnish under Section 22 (2) on receipt of a notice from the Income-tax Officer calling upon them to do so, the person failing to make the return is not only liable to be prosecuted under Section 51 (c) but no appeal* lies under the proviso to Section 30 (1) of the Act against any assessment made by the Income-tax Officer upon the company or other person failing to make a retutn. In the case of a registered firm, the Income-tax Officer may also cancel its registration but not until 14 days have elapsed from the issue of a notice by the Income tax Officer to the firm intimating his intention to do so."[12]

The above case law under Income-tax Act must, on principle, be applicable to cases uuder the Excess Profits Tax Act also.

(*h*) **Profits of the business:**—This means the total amount of the profits of the business in question

(*i*) **Standard Profits**:—mention, after determination, of the profits in accordance with the Rules as laid down in the first Schedule to the Act and of the standard profits as determined under Section 6 of the Act, in the return to befurnished is necessary. For, it is only after a comparison of the total profits with the standard profits that 'excess profits' chargeable can be determined. 'Deficiency' is to be stated in the return if there are no excess profits chargeable. There will either be 'excess' or a deficiency, as compared with standard profits. Either of these, as the case may be, has to be mentioned in the return to be furnished.

Chargeable Accounting Period:—The chargeable accounting period must be specified in the notice. The provision is mandatory, though the difficulty of acting on it is evident, unless the Excess Profits Tax Officer obtains information, say from the Income-tax return of the assessee. The giving in the notice of the dates of the opening and the closing of such period is a difficult matter.

(*j*) **Proviso**:—The proviso contains a discretionary provision of law based on equity and justice, according to which time for furnishing a return may be extended by the Assessing Officer for special cause good reason shown

2. **Sub Section (2)**:—The provision of this Sub-section, as already stated above under 'Analogous law' are the same as those of Sub-section (4), Section 22, Income Tax Act, 1922.

Neglect to furnish accounts or documents asked for by the Income-tax Officer under the Sections [just as under Section 22 (4)] is punishable under Section 23 of

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(9) Lal Mohd. Sardar Mohd. v. Commissioner I. Tax Lahore 7 I. T C. 347 : 1935 Lah. 858 : 1934 1. T. R. 358.

(10) S. Mohd. Mehdi v. Commissioner I. T., U. P. and C. P. 8 I. T. C. 211 ; 1935 Oudh 305 ; 1935 Oudh 305 : 1935 O. W. N. 490 : 1935 1, T. R. 202.

(11) Darabshah Nasserwanji Mehta v. Commissioner I. T., Bombay 7 I. T. C. 456 ; 1935 Bom. 167.

*This is no longer good law.

(12) Para 66 I. T. Manual. (See also para 86 I. T. Manual.)

this Act. Just as under Section 22 (4) so under this Sub-section power to issue notice may be excercised even after the submission of return,[1] such a notice may be issued more than once. This is clear from the language of the Section itself, thought there are judicial decisions on the point under Section 22 (4) Income-tax Act. Forcible production of account books and threat of use of force and police authority is not warranted by Section 22 (4) and an Income-tax Officer cannot, for the purposes, enter the assessee's premises, specially against the latter's wish.[1-a] Legal presumption may be drawn from non-production of account books required to be produced under Section 22 (4); such presumption to be governed by Section 114 [illustrations (g) and (h)] of the Indian Evidence Act, 1872.[2] Where the Income-tax Commissioner directs fresh proceedings to be taken under Section 22 (4) and that steps be taken to produce account books, it merely means that the whole of the circumstances were to be re-examined. When a re-commencement of the whole proceedings is directed, the subsequent Revenue Officers are not to bind themselves to the obvious facts when the case is taken up again[3] [See also notes under Section 22 (4) Income-tax Act by B. R. Jain 3rd Edition 1945]

(*k*) **May require:**—The same words are used in Section 22 (4) Income-tax Act. There under it has been held that the words, 'require' means required as a piece of relevant evidence and not that the Income-tax Officer shall call for books or documents not relevant at all.[4]

The final arbiter of what is required is the Income-tax Officer and not the assessee[5]

3. Proviso:—This proviso, fixing the time limit for which accounts may be called for by the Excess Profits-tax Officer under Section 13 (2), was added by the Legislative Assembly for good reason shown.

As to calling and production of foreign books of accounts an assurance was given in the Assembly by the Government that foreign accounts, if audited, shall not be called for.

'I am prepared to give an assurance that instructions will be issued to all Excess Profits Tax Officers. (S. P. Chambers)'.

Will the Hon'ble Member allow me to amend so that there may be a statutory provision? (Lalchand Navalrai).

It is difficult to make this a matter of statutory provision. I think that the method of giving an assurance is more suitable. (S. P. Chamber).

I will accept the assurance and I take it that the Hon'ble Member will issue instructions in the way he has done here today. (Lalchand Navalrai) (Legislative Assembly Debates).

"In the application of Section 13 (2) of the Act to the case of foreign profits for which accounts have not been received for years earlier than 1938, Excess Profits Tax Officers should note that, in the course of the passage of the Excess Profits

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(1) Ramaswami Chettiar v. Commissioner Income-tax Mad. 52 M. 194 ; 1929 Mad. 66 : 3 I. T.C 290.

Pallumal Bholanath v. Commsssioner Income-tax U. P. 6 I. T. C. 463; 1933 All. 541.

(1-a) Achhru Ram v. Crown 2 I. T. C. 267 ; 1926 Lah. 326.

(2) Sankarallnga Nadar Bros., v. Commissioner I. T., Mad 4 I T. C. 226 (244).

(3) N. A. Concern v. C. I. T. 1938 Rang. 287.

(4) Ganga Sagar (R. B.) v. Commissioner Income-tax, U. P 5 I. C. 1421 : 1931 All. 11.

(5) Tulsidas Naginchand v. Commissioner Income-tax, Punjab 1938 Lah. (553).

Tax Bill, an undertaking was given in the Legislative Assembly similar to that given in connection with the Indian Income-tax (Amendment) Act, 1939.

If, therefore, regular and properly audited accounts are furnished in respect of profits arising outside British India and the Excess Profits Tax Officer has no reason to believe that those accounts are incorrect, the foreign branch books should not be called for and even in other cases books should not be called for and in other cases books should not be called for if the figures of profits can be obtained in more satisfactory way. If properly audited accounts are produced and there is no evidence to indicate that they are incorrect, the Excess Profits Tax Officer should accept the results shown in them making such adjustments as are required by Section 10 of the Indian Income-tax Act, 1922, and the provisions of Schedule I to the Excess Profits Tax Act"[1]

The proviso relates only to *accounts and not to documents.*

Assessments.

Section 14 (1) The Excess Profits Tax Officer shall, by an order in writing after considering such evidence, if any, as he has required under section 13, assess to the best of his judgment the profits liable to excess profits, tax and the 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.

(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 basiness 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.

1. Previous law:—Sections 13 and 14 Excess Profits Duty Act 1919.

2. Analogous Law:—(1) English Finance Act (2) of 1939, Section 21 Part III.

(2) Indian Income Tax Act, Section 23, 1922 (amended 1939).

3. Scope of Section 14:—Section 14 relates to assessment of excess profits tax. While sub-section (1) relates generally to assessment of the tax, Sub-section (2) indicates the person who is liable to pay the same. Provision for assessment in the case of a joint business is made in Sub-section (3) while Sub-section (4) provides for a case where a sole or joint proprietor of a business dies, in which case assesment may be made on his legal represenative. The more usual word 'legal' was substituted for personal representative in Sub-section 14 by the Select Committee.

4. Sub-section (1) To the best of his judgment:—The use of the words, "best judgment' are not to be mistaken for an *ex-parte* best judgment assessment as under Section 23 (4) Income-tax Act. The expression 'best of his judgment' here are to be read along with the preceding words "after considering such evidence, if any, as he has required under Section 13", that is to say, the judgment or decision of the Excess Profits Tax Officer is to be based on the evidence called for by and produced befor him under Section 13 *ante*. Evidence may be produced by the assessee *suo motu* though not called for. It is clearly the right of the assessee to do so and the duty of the Excess Profits Tax Officer to allow such evidence if offered,

(1) Para 2 Notes and Instructions.

5. Profits liable to Excess Profits Tax:—These will be the 'excess' profits, as compared with the standard profits, determined under Section 6 *ante*.

6. Amount of Excess Profits Tax Payable:—The amount of profits liable and the amount of excess profits tax payable in respect of the said profits are two different things and may not be confounded.

7. Or if there is a deficiency:—There may be cases also where on evidence it is determined that, instead of an excess of profits as compared with standard profits, there is a deficiency. Such cases would fall under Section 7, (instead of Section 6) and the matter would be dealt with accordingly, that is to say, the Excess Profits Tax Officer shall detetmine the amount of deficiency under Section 7 and the amount of excess profits tax repayable out of the amount already paid (if any).

8. And shall furnish a copy..made:—These words were added by the Select Committee, apparently to assist the person concerned to be satisfied that the computation and calculation was correct.

Form of Asstt:—Form No. Excess Profits 4 (also containing the form of demand of excess profit tax.)

As soon as an Excess Profits Tax Officer has completed his computation of an assessee's liability or of the amount of his deficiency of profits, the notice of Assessment and Demand or of the amount of the deficiency and a copy of his order are to be sent to the assessee on Form E. P. 4. It will be observed that this form provides for a copy of the computations made to be enclosed therewith.*

9. Sub-section 2:—Person carrying on the business in that period:—The words 'that period' obviously relate to the chargeable accounting period Sub-section (2) points out the person assessable or liable to pay excess profits tax. It is the person carrying on the business in the chargeable accounting period. The words are simple and definite enough so far as they go but may at times give rise to difficulty in assessing the right person, say, when there is a change of persons carrying on the business during the chargeable accounting period.

Supposing there was a chargeable accounting period of 12 months, during the 6 of which *A* held the business, *B* carrying on the same for the remaining six months. The question is, who is assessable *A* or *B*. Is *B* to be assessed for the whole period, or is *A* to be assessed, change being ignored Such a difficulty has arisen under the English law when the previous excess profits [Duty Act Finance Act, 2 of 1915] was in force. Section 45 (2) Finance, Act, 2 of 1915 provided that the duty might be assessed on any person *for the time being* owning or carrying on trade or business. The interpretation of the words 'for the time being' gave rise to difficulty. The question arose whether it meant the time when the chargeable accounting period ended or the time when the person in question ceased to carry on the business or the time when assessment was made. This was the case of *Wankie Colliery Co.* v. *Commissioner Inland Revenue.*[1] The case gave rise to considerable diversity of views amongst the judges of the various Courts though which it passed sought to be assessed. The company in this case contended, in substance, that the words "any person etc." meant the person carrying it on at the end of the accounting period. This contention was, however, rejected in the end and ultimate decision of the House of Lords was that the term in question was the date at which assessment was made.

Section 45 of the 1915 Act gave the Commissioner of Inland Revenue power to split the accounting period if they so thought fit in case of change of ownership and

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* Para 3 Notes and Instruction.

(1) (1930) 3 K. B. 247 ; (1921) 3 K. B. 244 (1922) 2 A. C. 51 ; 12 T. C. 287 17 T. C. 703.

to assess the old and new owner accordingly. In *Wankie's case* aboved cited, *Mr. Rowlatt Justice* in the King's Bench Division Court (High Court) observed: "It seems to me that it is within the scheme of Section 45 that, if there is a change of ownership during an accounting period, the Commissioners need not introduce a new accounting period at the date of the change, but can assess the tax for the one period having it to be adjusted between the parties as in the common case of Schedule A, or rates or charges for water."

The above construction will not hold good where business was sold and the change took place before excess profits duty was imposed. So, the question of the person assessable is not free from difficulty, in cases where change of persons has occurred. This was so, at least, under the United Kingdom law relating to excess profits duty and, as the same words 'exist' in the Indian law, also, they need a judicial interpretation as an authority. Until such a decision be available, it may be assumed that it is a case falling under Section 8, Sub-section (5) or (6) and apportionment shall be made between the predecessor and the successor.

10. Sub-section (3) :—This Sub-section covers the case of a joint business or partnership. Obviously enough, assessment has to be made in such a case in the name of the persons carrying on the business jointly or in the name of partnership.

It will be for the respective persons to adjust their individual liablity and collection of tax may be made jointly or severally.

11. Sub-section (4):—This Sub-section covers the case of the death of a person whose profits it may be sought to assess to excess profits tax, because he carried on the business resulting in profits during his life time, though he may not be available, due to death at the time of the assessment. In such a case, relying on the ordinary principle of law, his legal 'representatives' are to be assessed. For the usual Rule and principle of law is that he who takes the benefit must take the burden also. This provision correspond to Section 24-B, Income-tax Act.

12. Either solely or jointly :—If the business was carried on by one person, his representatives will be liable to be assessed solely, if there was 'another person carrying on jointly' with the deceased, then his legal representatives would be assessed jointly with that other person.

Payment of Tax;—In case of default in payment of excess profits tax the provision of Section 46 Income Tax Act shall apply. (See Section 21 Excess Profits Tax Act) and penalty may be levied. For form of notice intimating penalty, See Form E P. 6, index, Rule 6. As to payment of excess profits tax by instalments, the point was considered by the Select Committee. An assurance was given that instructions, as in the case of income-tax, shall be issued on the point and these will be published by the Central Board of Revenue.

General :—The general principles of law as enunciated in various judicial decisions, relating to convenience and opportunity to the party concerned *e g* opportunity to offer evidence, to procure the same, adjustment shall apply, to excess profits tax cases also.

Adjustments, Stopped and Resjudicata : -As to these see notes under Section 23, Income-tax Act (By B. R. Jain). 3rd Edition 1945.

***Section 14-A—(1) The Excess Profits Tax Officer, before proceeding to make an assessment (in this section referred to as the regular assessment) under Section 14, may, at any time after the expiry of the period specified in the notice issued under Sub-section (1) of Section 13 as that within which the return therein**

Power to make Provisional assessments.

*This section was inserted by the Excess Profits Ordinance, 1943.

referred to is to be furnished and whether the return has or has not been furnished ; proceed to make in summary manner a provisional assessment of the amount by which the profits of the chargeable accounting period exceed the standard profits, and the amount of excess profits tax payable thereon:

(2) Before making such provisional assessment the Excess Profits Tax Officer shall give notice in the prescribed form to the person on whom assessment is to be made of his intention to do so, and shall with the notice forward a statement of the amount of the proposed assessment, and the said person shall be entitled to deliver to the Excess Profits Tax Officer at any time within fourteen days of receipt of the said notice a statement of his objections, if any, to the amount of the proposed assessment.

(3) On expiry of one month from the date of service of the notice referred to in Sub-section (2), or earlier if the assessee agrees to the proposed assessment, the Excess Profits Tax Officer may, after taking into account the objections, if any, made under Sub-section (2), make a provisional assessment, and shall furnish a copy of the order of assessment to the assessee :

Provided that assent to the amount of the assessment, or failure to make objection to it, shall in no way prejudice the assessee in relation to the regular assessment.

(4) In making any such provisional assessment the Excess Profits Tax Officer shall make allowances for any deficiencies of profits for previous chargeable accounting periods which are under the provisions of section 7 to be set off against the excess profits of the chargeable accounting period in respect of which the assessment is being made :

Provided that where such deficiencies of profits have not been determined under sub-section (1) of section 14 the Excess Profits Tax Officer shall estimate the amount thereof the best of his Judgment.

(5) There shall be no right of appeal against a provisional assessment made under this section, and it shall, until a regular assessment is made in due course under section 14, determine the amount of excess profits tax due from the assessee.

(6) If, when a regular assessment is made in due course under section 14, the amount of excess profits tax payable thereunder is found to exceed that determined as payable by the provisional assessment, it shall be reduced by the amount determined as payable by the provisional assessment.

(7) If, when a regular assessment is made in due course under Section 14, the amount of excess profits tax payable thereunder is found to be loss than that determined as payable by the provisonal assessment, any excess of tax paid as a result of the provisonal assessment shall be refunded to the assessee together with interest at 5 per cent. per annum calculated from the date of payment of such excess tax to the date of the order of refund, both day inclusive.

Provisional assessment:—This new section inserted by the Excess Profits tax Ordinance 1943 has been designed to confer powers on the Excess Profits Tax Officer for making provisional assessments in summary manner. Before a regular assessment under S 14 of the Act, has been made and after the exiry of the period specified in the notice issued under S 13 (1), an Excess Profits Tax Officer may make a summary assessment of the amount by which the profits of the chargeable accounting period exceed the standard profits. It is immaterial whether a return has been submited by the assessee.

The condition precedent to an action for provisional assessment is that the Excess Profits Tax Officer is, before making such provisional assessment, bound to

give notice in the prescribed form of his intention to do so and to take into consideration objections, if any, made by the person upon whom the provisional assessment is to be made. Such an assessment may be made by th Excess Profits Tax Officer after the expiry of one month from the date of notice in the prescribed form.

Deficiencies: —An allowance for any deficiencies to set off under S. 7 of the Act shall have to be made. In case of an amount of deficiency not being determined U/S. 14 (1), the Excess Profits Tax Officer shall estimate the same to the best of his best judgment.

Appeal:—There shall be no right of appeal against a provisional assessment.

Ragular assessment exceeding provisional one:—In case of the amount of excess profits tax duly determined according to regular assessment made under S. 14 of the Act, exceeding the amount determined by the provisional assesment, there shall be reduction in the amount of the tax payable under the regular assessment to the extent of the amount ascertained by provisional assessment.

Refund:—On a regular assessment being made under S. 14 of the Act, if it is found that the amount of the tax payable thereunder is less than the amount ascertained as payable under the provisional assessment the excess will be refunded with interest thereon.

Profits escaping assessment.

Section 15 :— 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 under-assessed, 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 13, 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.

1. **Previous Law** :—No such provisions as are contained in Section 15 existed in the Excess Profits Duty Act of 1919.

2. **Analogous Law** :—(1) *Indian* Section 34 Income Tax Act contains similar provisions. (2) *English* Para. 5, Part I Assessment and Collection) of the Fifth Schedule to Finance Act 1937, relating to 'assessment' makes mention of 'Additional Assessment' also, the period of limitation for both being six years, while under Section 15, it is five years for additional assessment,

3. **Scope of Section 15** :—Just like Section 34, Income Tax Act 1922 (amended 1939), Section 15 Excess Profits Tax Act seeks to assess profits that have escaped assessment or have been under-assessed, or in respect of which relief has been granted exceeding in amount what was legitimately to be granted.

The proceeding are to be initiated on the Excess Profits Tax Officer getting some definite information as to above facts, within five years of the end of the chargeable accounting period, the profits of which are in question. Notice of intention to proceed under the Section is necessary to issue to the person sought to be proceeded against, the contents of the notice are to be the same as those of the notice under Section 13, *ante*, relating to original assessment proceedings as to assessment or re-assessment are to be the same as those under Section 14 *ante*, relating to assessment of excess profits tax.

Obviously Section 15, like Section 34 of Income-tax Act, 1922, is applicable to cases in which either no assessment at all has been made in respect of the entire amount of profits liable to be assessed under the Act, or where only a portion of such profits has not been assessed. The Section is equally applicable where any relief fund under any of the persons of the Act as granted already is in excess of the amount in which it ought to have been granted.

The judical decisions under Section 34 Income Tax Act, thought rendered mostly nugatory, by the change of the words, for any reason that perfaced the Section before the expression 'in consequence' of definite information which has come into his possession, replacing it, may yet be useful as indicating the principle underiying the policy and scheme of the Section. For case law please see notes under Section 34 B. R. Jain's, commentary on Income-tax Act, 1922, 3rd Ed 1945

Excess in Relief :– It is notable that any amount got by an assessee by way of excessive relief granted by the C B Revenue and the Board of Referee or any other authority except the Excess Profits Tax Officer would not be counted as income that has escaped assessment for excess profits tax purposes under this Section.

It is notable that the provision of the present Section are simpler than those of Section 34 Income tax Act which are far too many and comparatively complex.

4. In consequence of definite information:– These words are the same as in Section 34 of I T. Act as amended in 1939 The dropping of the words 'for any reason' and the adopting of the more detailed and accurate expression in their place, contained in the words, 'in consequence of definite information which has come into his possession' 'has set lot of controversy at rest'

A finishing inquiry without any sort information whatever which certainly was not the intention of the Income-tax administration nor of the legislature, is not now possible.

5. Discoveries :–The use of these words instead of "is of opinion" also makes the ground surer and the position clearer Then the change brings the wording of Sub-section (1) of Section 34 of Income-tax Act into accord with the wording of the corresponding English provision.

The English Income-tax Act of 1918, Section 125, which deal with re-assessment, when there has been-escapement to tax, authorizes an additional assessment if the Surveyor 'discovers' that income has been omitted from the first assessment It has been held in England under the English Act that 'discovers' may mean 'has reason to believe'. There the condition precedent to making another assessment is that the Surveyor shall do something 'discover'. A 'discovery', may be made anywhere, in the absence of, without the knowledge of, and without reference to the assessee. In the Indian Act the condition precedent is that 'income has escaped'. Opportunity being given to the assessee is necessary.

The true import of the word 'discovers' has been mentioned in some English cases. In the *King* v. *Kensington Commissioners* (6 T. C. 279-92) *Bray J.* pointed out that word 'discover' could not mean 'ascertain by legal evidence'. It means simply, 'come to the conclusion' from the examination which the Surveyor makes, and if he likes, from any information he receives In the same case, *Avory J.* observed:—"I think that word 'discovers' means 'has reason to believe' construed in that way is incosistent with the whole scheme of this legisiation". In another English case, *Ingle* v. *Farrand* (11 T. C. 446) *Pollock M B.* observed: "The Surveyor is not required to form an opinion, which is later held by the Courts to be the correct view, before he takes action There must be information before him which would enable him, acting honestly, to come to the conclusion that a state of facts exists requiring him to take action (see *Rex Bloomsbury Commissioners*, 7 T C. 59 (1915) 3 K B. 768, following *Rex* v. *Kensington Commissioners*, (6 T C. 613) (1913) 3 K. B. 870)". In *Anderson and Halstead Ltd* v. *Birrell* (H. M Inspector of Taxes) (16 T C. 200,208) *Rowlatt J.* observed:—The word 'discover' does not, in my view, include a mere change of opinion on the same facts and figures upon the same question of accountancy, being a question of opinion. The meaning of the word was considered in *The King Kensington* Income-tax Commissioner, (1913) 3 K. B. page 870, T. C. 279 where it was held that it did not mean 'ascertain by legal evidence'. The import of the word 'discover' was considered in a recent English case, *C I. R.* v. *Mackinlay's* (1939), 22 T. C. 305,312) wherein the *Lord President Normand* observed as follows:—

"The question, therefore, is whether a discovery that mistake, essentially a mistake of law, has been made is a discovery within the meaning of Section 25. I think the word 'discover' in itself, according to the ordinary use of language, may be

taken simply to mean 'find out' .....if there were any reason in the context for restricting the word 'discover' to the discovery of an error in fact; that restriction would necessarily receive effect, but in my opinion the context points, not to any such restriction, but, on the contrary, to so wide a meaning that the word ought to be held to cover just the kind of discovery which was made here, when the Special Commissioners found out that, by reason of a misapprehension of the legal position, certain of the profits chargeable to tax had been omitted from the first assessment."

6. **Escaped assessment**:—The same expression is used in Section 34, Income Tax Act, 1922 (amended 1939). There is a heap of case law in connection with the expression 'escaped assessment' under Section 34 and most of it would, it is considered, be of value and assistance in following the true import of the expression under this Act also. The same has, therefore, been cited herein. (See Note under Section 34 Income-tax Act by B. R. Jain, 3rd Ed, 1945.)

7. **Within five years**:—The limitation for taking action under Section 15 has been fixed at five years as against the four or eight years under Section 34. The period is to count from the end of the the chargeable accounting period in question.

The difference of one year's limitation under this Section and Section 34. I. T. Act, is more apparent real'. It sinks into nothing when it is considered that income-tax is leviable on previous year's income, which is not the case so far as E, P. Tax is concerned.

8. **Notice**:—The issue of notice is a condition precedent to the taking of proceedings under the Section. The notice should contain all the particulars required by Section 13 of the Act. The case law under Section 34, on the point of 'notice' may also be of interest utility, for which please see notes under S 34. I. T. Act by B. R. Jain, 3rd Ed. 1945.

10. **And the provisions of this Act shall apply:**—These words mean that assessment has to be made as under Section 14 of the Act and the notice is to be treated as one under Section 13 *ante*.

11. **Burden of Proof:**—Obviously the burden of proving that income has escaped assessment lies on the E. P. T. Officer.

12. **Initiation of procedings**:—Proceedings under Section 15 can be initiated by E. P. T. Officer. The Commissioner or Assistant Commissioner, seeking to do so can direct the E. P. T. Officer to start the same.

Penalties.

Section 16:—If Excess Profits Tax Officer, the Appellate Assistant Commissioner 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 13, or to produce or cause to be produced the accounts or documents or other evidence required by the 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 13, 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:

Provided that the Excess Profits Tax Officer shall not impose any penalty under this Section without the previous approval of the Inspecting Assistant Commissioner.

Previous Law:—Section 12, Excess Profits Duty Act, 1919.

Analogous Law:—

(*a*) *Indian*:—Section 28 (1) Income-tax Act, 1922, (amended), 1939. Only the amount of penalty given in clause (a) and (b) is different from that to be levied under Section 28 Income-tax Act.

(*b*) *English*,—R. 4, Part III, Finance Act, 1937 relating to National Defence Contribution, the Provisions whereof have been made applicable to excess profits tax in United Kingdom, contains provisions penalizing default in submission of return of profits. The said Rule runs as under:—If any person without reasonable excuse contravenes or fails to comply with any of the foregoing provisions of this Part of this Schedule, he shall be liable on summary conviction to a fine not exceeding five hundred pounds, and, in a case where he fails to comply with the requirements of paragraph 2 of this Part of this Schedule, to a further fine not exceeding fifty pounds for every day on which the failure continues".

Scope:—Penalty under this Section (just as under Section 28) is leviable in the course of any proceedings under this Act. As in the case of Income tax returns, so here, the return of profits for assessment to Excess Profits Tax must be verified in the prescribed manner and any false statement in any such verification would be an offence punishable under Section 23 of this Act, which corresponds to Section 52 Income Tax Act.

There is no such provision in this Section as exists in Section 28 (4) laying down that there will be no prosecution for offence when on the same facts penalty has been levied. (See Section 25 *post*) Nor does Section 23 make it clear. Section 16 provides that if the Excess Profits Tax Officer, the Appellate Assistant Commissioner, or the Commissioner, in the course of any proceedings under the Act is satisfied that any person has, without reasonable cause

(i) failed to furnish the return required under Section 13 (1); or

(ii) failed to produce or cause to be produced any accounts or documents or any other evidence required by the Excess Profits Tax Officer under the provisions of Sections 13 (2); or

(iii) conceals particulars of the profits made or the capital employed in his business; or

(ix) has deliberately furnished inaccurate particular of such profits or capital, he may impose a penalty, in addition to any excess profits tax payable, not exceeding

(a) in the case of failure to make the return the amount of the excess profits tax payable; and

(b) in any other case, the amount of the tax would have been avoided if the return had been avoided and if the return had been accepted as correct.

Under the proviso to the Section, no penalty is to be imposed by the Excess Profits Tax Officer without the previous approval of the Inspecting Assistant Commissioner. (Para. 11 Notes and Instructions).

Looking the principle of the Excess Profits Tax Act, the principle of the above rulings should in the face of it be applicable to excess profits tax cases

Appellate Assistant Commissioner:—

An Appellate Assistant Commissioner is competent to levy penalty while hearing an appeal. while there is a gross mis-statement of income. This is so under the Income-tax Law and must hold good under the Excess Profits Tax Act also.[1]

Commissioner:—A Commissioner may also impose penalty where none has been imposed either by the Income tax Officer or the Appellate Assistant Commissioner. This original order of the Commissioner is final, not subject to reference to

(1) Pitta Ram Swamiah v. Commissioner Income-tax, Madras 49 M. 831 : 1927 Mad. 49 : 2 I. T. C. 1936 (197).

the High Court under Section 66.[2] A Commissioner could not, in deciding that the imposition of penalty by Assistant Commissioner was illegal, re-impose it himself.[3]

In the course of any proceedings under this Act:—These words, taken from the Income-tax Act (as amended) widen the scope of the Section so as to embrace all proceedings *i.e.* proceedings under Section 15 (profits escaping assessment), proceedings in appeal and revision (under Section 17 and 18) repayment under Section 7.

The term 'any' is limited to the proceeding in hand at the time before the Income-tax authority.[4] This was a case where the income revealed (though wrong in Section 23 proceedings) was correct in Section 34 (I. T. Act) proceedings (corresponding to Section 13 and 15 of Excess Profits Tax Act). Converse was the case of *Batuk Prasad*[5] wherein income was avoided in Section 34 corresponding to Section 15 of this Act. Penalty was levied in the case. Penalty should not be levied wherein proceedings under Section 34 (corresponding to Section 13) assessee showed a correct amount of income.

These words have been retained in the amended Income-tax Act, also, in a Punjab ruling.[6] it has been held that Sub-section (1) of Section 28 is not happily worded and that for want of clearness and precision in the language disputes arise. Though the Section has been re-cast by the Amending Act, 1939 yet the ambiguous words *i.e.*, 'in the course of proceeding under the Act' are still there. Even according to the Section as it is standing now once proceedings under section 28 have been within the time prescribed, penalty order can be passed even after the passing of assessment order as to payment of tax.[7]

Is satisfied:—In a Burma case under Section 28 Income-tax Act, relating to penalty, it was observed by *Page C. J. A. A. R. Concern* v. *Commissioner of Income Tax*.[8]

Section 28 relates not to assessment of income for the purpose of income-tax, but to the imposition of a penalty for making a deliberately false return of income; and by taking proceedings under Section 28, the assessment of income for income-tax can neither altered nor affected. Under Section 28, however, whether a penalty ought to be imposed and, if so, the amount of penalty, are matters that, subject to Section 30 to 32, lie within the discretion of the Income-tax Officer and upon these questions the assessee, are entitled to be heard [Section 28 (3)]. In my opinion, in such a enquiry, evidence adduced by the assessee purporting to disclose the real income of the assessee is relevant and admissible not for the purpose of varying or affecting the assessment made for the purpose of imposing the tax under the Act, but in order to show either that no penalty ought to be imposed, or that amount of the penalty ought to be less than the maximum prescribed under Section 28

The principle of the above case must be applicable under Section 16 of this Act also. The words 'is satisfied' being the same.

"Satisfied" must mean satisfied by evidence to be adduced by assessee purporting to disclose his real profits.

It may be said that the question of, a cause being reasonable or not is after all, one of fact to be determined with reference to the facts of each case of at least a mixed question of law and fact, just like 'sufficient cause' under Section 27 Income-tax Act, 1922. There has been a conflict of decisions on the point, one of the

(2) Jungi Bhagat Ramawater v. Commissioner I. T. B & O. 1930 Pat. 129=3 I. T. C. 418.

(3) Benarsi Dass v. C. I. T. 1936 Lah. 585=1936 I. T. R. 217.

(4) Maya Ram Durga Pd. 5 I. T. C. 471.

(5) 5 I. T. C. 138.

(6) 5 I. T. C.

(7) Virbhan Bansi Lal v. Commissioner Income-tax 1938 Lah. 748.

(8) 6 I. T. C. 311: 11 R. 75; 1933 Rang. 50.

(9) Kajori Mal v. Commissioner Income-tax U. P. 3 I. T. C. 451.

recent judicial pronouncement on the point being that it is after all a question of fact which may at times be levied into one of law.1 See notes under Section 27 Income-tax Act by B R. Jain, 3rd Ed 1945

Whether there was a reasonable opportunity allowed is a question of law in certain circumstances.2

The burden of proving sufficient cause lies on the assessee.3

Concealed :—Whereon the facts .....the assessee at first shows receipts of interest as loan in his account books, made available to the department but later reverses them and finally closed the loan account in the assessment year but does not show the receipts in the previous year, held that it was not necessary for him to show the receipts when the account was finally closed and that, therefore, he is not guilty of having concealed his income and as such not liable to pay penalty.4

Deliberately :—The use of the word 'deliberately' gives a latitude to the assessee. The burden of proving deliberate intent obviously be on the department. Accidental mistakes, of course, are not penalized by law. Penalty may be levied for filling an incorrect return deliberately even where the subsequent return is correct and assessment is made on.5

Profits or Capital :—These would be the profits or capital as determined according to the Rules laid down in the Schedule I and III to the Act.

Return Made :—These words mean a return made by the assessee himself. At least, this is the interpretation put on similar words, returned by such person used in Section 28 Income-tax Act. Consequently a return filed by an agent of assessee has been held not to be binding on him and the penalty levied in such has been held to be improper.6

Profits :—Profits, the income, would mean profits net after due deductions, hence where a deduction not allowable is claimed, it is a case for penalty.

Appeal :—An appeal lies to the Assistant Commissioner and Appellate Tribunal against an order levying penalty.

Opportunity to assessee :—Although there is no provision in the Section 28 (3) I. T. Act, the assessee is apparently entitled to an opportunity being given to him to explain his conduct before penalty is levied though a *formal hearing* may not be given.

No prosecution under Sections 23, 24 or under the I. P. Code is possible, when once penalty has been levied, in respect of the same facts [see Section 25 (2)]. The words 'Penal Code' were added by the Council of State Act of 1919.

Appeals.

Section 17:—(1) Any person aggrieved by a decision made in pursuance of Section 8, 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 may appeal to the Appellate Assistant 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 accord-

(1) Bhawani Sahai v. Commissioner I. T. Punjab 1936 I. T. R.222.

(2) Ibid.

(3) Abdul Bary v. Commissioner Income-tax 5 I. T. C. 352; 194

(4) 9 I. T. C. 12; 1936 All. 272; 1936 I. T. R. R. 180

(5) Arunachalam Chettiar (A. R. M. A .L. A. v. C. I. T Mad.) 6 I. T. C. 58.

(6) S. Mohd. Mehdi v. C. I. T. U. P. 211; 1935 Oudh 508; 1935 O. W. N. 490.

ance with the[1] (second proviso) to Rule 1 of the First Schedule except in respect of adjustments made under the provisions of that Schedule:

[2]Provided further that [no] appeal shall lie under this section against any apportionment made by the Excess Profits Tax Officer under the proviso to sub-section (5) of section 8, against any[3] (refusal to make modifications or against any modifications) made by the Excess Profits Tax Officer under sub-section (8) of section 8, against any decision of the Excess Profits Tax Officer under Rule 11 of the First Schedule, or against any decision of the Board of Referees or the Central Board of Revenue].

(2) An appeal shall ordinarily be presented within forty five days of receipt of the notice of demand relating to the assessment of penalty objected to, 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, but the Appallate Assistant 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 Appellate Assistant 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 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 Central Board of Revenue.

Previous Law :—Section 8 Excess Profits Duty Act of 1919.

Analogous Law:—(1) *Indian*:—Sections 30 and 31 Income-tax Act, 1922 (amended) 1939.

The provisions of Sub-section (1) to Section 17 are nearly the same as of Section 30, Income Tax Act, 1922 (ameded 1939) *mutatis mutandis* Sub-sections (4) and (5) contain provisions similar to Section 31 of Income Tax Act, briefly put.

English Section 21 Finance Act, 2 of 1939.

Amendment :—The Second Proviso to Section 17 (1) was amended by Section 7, excess profits tax (Amendment) Act, XLII 1940.

The words "refusal to make modifications or" were added by Section 5 excess profits tax (Amendment) Act, XI of 1941 (dated 30th March 1941).

Scope of Section 17 :—Section 17 deals with appeals against assessment to excess profits tax. Other allied matters *i e.* determination of liabilty to the tax or penalty imposed under Section 13 or the amount of deficiency (under Section 7) or relief allowed or refusal to allow the same are all covered by the Section and appeal would be to the Appellate Assistant Commissioner in all such cases also.

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(1) These words were substituted for the words "first proviso" by S. 5 of the Excess Profits Tax Act, (Amendment Act) 1941 (XI of 1941).

(2) This proviso was substituted for the old second proviso by S. 7 of the Excess Profits Tax (Amendment Act,) 1940 (42 of 1940).

(3) These words were substituted for the word "modifications" by S. 7 of the Excess Profits Tax (Amendment) Act, 1941).

Sub-Section (1) :—Section 17, Sub-section (1) enumerates the specific orders of Excess Profits Tax Officers against which an appeal lies. Orders not mentioned therein would not automatically be applicable and would be final, not being liable to be re-opened at any subsequent stage.

This is the Rule of law and the general principle followed under Section 30 Income-tax Act and it must be applicable here also.

An appeal does *not*, however, lie against the amount of the standard profits as computed for Income-tax purposes, but only as regards adjustments made thereto under the provisions of the First Schedule to the Act (see paragraph 24).

Time limit :—An appeal is ordinarily to be presented within 45 days of receipt of the Notice of Demand or of the order objected to, but the Appellate Assistant Commissioner may, for sufficient cause, grant an extension of time [Section 17 (2)].

Appeal forms :—An appeal is to be in the prescribed form and verified in the prescribed manner. Their forms for use in the case of an appeal to the Appellate Assistant Commissioner are E. P. 9, 10 11, 12.

Appeals lie to the Appellate Assistant Commissioner of excess profits tax.

(i) against any decision of the Excess Profits Tax Officer under Section 8, *except* under Sub-section (5) or Sub-section (8);

(ii) against the amount of the excess profits assessed, whether as regards the computation of standard profits or of those of a chargeable accounting period, or as regards the computation of the increase or decrease in the average capital employed in the business during the chargeable accouting period;

(iii) in the case of the claim by an assessee that he is not within the charge to excess profits tax *e. g.*, a claim than an assessee's business is a profession within the exemption conferred by Section 2 (5).

(iv) against the order of an Excess Profits Tax Officer as to the amount of a deficiency of profits;

(v) against the amount of any relief allowed under any provision of the Act by the Excess Profits Tax Officer[1] ;

Once an appeal has been presented, the assessee has no option or power to withdraw the same, just as he can do under the Civil Procedure Code. The Act being a special piece of legislation is self-contained, except in and for as it relates to certain provision of the Income-tax Act made applicable to it, (see Section 20 *post*) It is based on the principle that the power under the Rules of law relating to appeals would be negatived if the assessee could withdraw the appeal at any time, apprehening an enhancement of assessment.[2]

The two provisos to Sub-section (1) contain provisions peculiar to the Act itself, apart from the generality of the other provision. The limitation, the form and verification and the procedure at hearing, being the necessary incidents of an appeal, have all been duly provided by the Section.

While the hearing of appeal forms the subject of a distinction of Section (31) under the Income-tax Act, Sub-section (4) and (5) cover this field of the subject.

Enhancement:—No order enhancing an assessment or penalty is to be made by the Appellate Assistant Commissioner unless the assessee has been given a ressonable opportunity of showing cause against such enhancement [Section 17 (4) proviso].

Proviso 1:—This proviso specifically exempts from Appeal an order of determination of standard profits under Proviso to Rule 1, Schedule 1 of the Act.

(1) Para 4 Notes and Instructions.

(2) Commissioner of I. T. Punjab v. Nawab Shah Nawaz Khan 1938 Lah. 741.

An appeal against such an order lies only to adjustment.

Computation of standard profits under Rule 1 Schedule I is based on the principle contained in Section 10, Income-tax Act. See notes under Rule 1 Schedule 1 *post*.

Proviso 2:—This Proviso covers two other specific matters *i.e.* an apportionment made under Section 8 (5) proviso. This relates to transfer of a part of business as going concern and the apportionment to be made consequent thereon, of the profits, losses and capital etc., by the Excess Profits Tax Officer.

Sub-section (2):-This Sub-section prescribes the time or limit for filing an appeal which is forty five days, time being computed from the date of notice of demand or receipt of copy of order in deficiency and other case. In the Bill as presented the time limit was thirty days. The time was exended to forty five days by the Select Committee. Although the word 'ordinarily'[1] has been held to mean that there is nothing to prevent the above time of forty five days being extended, still there are express words added at the end of the Section enabling the Appellate Assistant Commissioner to extend the time in cases of sufficient cause for delay in filing the appeal being shown. 'Sufficient cause' will have the same meaning here as are assigned to the words under Section 27 Income-tax Act, (see notes under Section 16 *ante*.)

After the Expiration of Period:—Powers of extension of time in appeals have been universally recognized in all cases. Section 5 Limitation Act contains a general provision as to it, being applicable and made applicable to almost to all matters, where appeal is prescribed. The provision is based on justice and equality. The power to admit an appeal discretionary where additional grounds of appeal are filed. These have been held to date back to the date of originally filed, appeal, of which the additional grounds, when filed, become a part.

Sub-section (3):—Appeals are usually on prescribed form, the same being prescribed by the Rules of procedure. There is for the usual verification also, to be specified by the Rules. The term shall be presented means "shall be presented", An appeal may be presented by the assessee or by his agent (or even by *post*). Under recent Amendment Act, 1939, the appeal lies against the order under Section 23 (4), therefore, the following case law is now unnecessary:—

When a document purporting to be an appeal under Section 5 Limitation Act contains a Section 30 is filed against an assessment purporting to have been made under Sub-section (4) of Section 23, it should be admitted as an appeal in Bihar and Orissa (as *Kunwarji Anand* 5. I. T. C. 417) elsewhere, it should be treated as an *application for the admission of the appeal*. In neither case should the Assistant Commissioner make an *exparte* order declining to entertain the appeal on the ground that by reason of the proviso to Sub-section (1) of Section 30 no appeal lies. The assessee should be given a hearing on the preliminary issue where the appeal lies, and a finding should be recorded on that issue. (The notice giving the assessee an opportunity of a hearing should not be issued in Form Income-tax 18 except in Bihar and Orissa. The decision on this preliminary issue will depend on whether the assessment expressed to have been made under Sub-section (4) of Section 23 was in fact capable of being made under that Sub-section. If the decision on this issue is adverse to the appellant, the appeal will be *dismissed* in *Bihar and Orissa or its admission refused elsewhere* on the ground that no appeal lies.

The practice of presenting an appeal with written opinion of members of legal profession is to be condemned. Such opinion should be taken off before admitting the appeal (*Maharajadhiraja of Darbhanga* v. *Commissioner I. T. B. and O.* 1933 1. T. R. 206).

Where an appeal is not in the prescribed form nor so verified, it is rightly rejected *in tennie*.[2]

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(1) Mitchell and others v. Mc Neill & Co., 1927 Cal. 518.

(2) Domodar Prasad v. C. I. T. 3 I. T. C. 40 [01].

Sub-section (4):—Hearing of appeal. This Sub-section relates to the hearing and determination or disposal of appeal. Anglogous provisions are contained in Section 31, Income-tax Act, relating to the hearing under the Income-tax Act.

The provisions of Section 31 Income-tax Act are more detailed and specific than those of this Sub-section. For instance, there is no specific provision for any further enquiry by the Appellate Assistant Commissioner, which it cannot, on principle be said is barred. Apparently the term hearing includes it. In ***Bridhe Mal Lodha*** v ***Commissioner Income-tax U. P.***** it has been held that an Assistant Commissioner is not, in the course of hearing an appeal, confined to the record before him; has the discretion, if he so deems fit, to call for further evidence, though be compelled to do so.

As to the right of appellant to adduce fresh evidence at the hearing of an appeal he has no higher right than he would have in a civil suit under Order 41, Rule 27, Civil Procedure Code (15 of 1908)[1] . There is no error of law in refusing to admit fresh evidence in second appeal before the Commissioner where the assessee inspite of opportunity to produce it before the Assistant Commissioner, did not produce the same there.[2] Be it noted, however, that while the scope of letting in fresh evidence under Order 41 Rule 27 C. P Code limited, being available only in certain cases, the power of Assistant Commissioner on the Income-tax side on the matter is less fettered, a wider discretion being given to them [Sub-section (2) to Section 31]. This was the view taken in the case of ***Bridhe Mal Lodha*** just cited above, by the Allahabad High Court. In the matter of letting in evidence, however, the Assistant Commissioner, like the Income-tax Officer is not bound of the strict technicalities and the letter of the law of evidence down in the Indian Evidence Act, see notes under Section 23 ***supera*** on the point.

An important point in connection with the hearing of appeals that at times arises, is this. Under O, 41, R. 17, C P. Code of 1908, if 'the appellant does not appear when the appeal is called on for hearing, the Court ***may*** make an order that the appeal be dismissed.' Under the former Code, the Court was bound to dismiss the appeal but under the present Code, it is ***not bound*** though it ***may*** [3] This applies to adjourn hearing also.[4] The Allahabad,[5] Calcutta,[6] Madras[7] and Rangoon[8] . High Courts have interpreted it to mean that the Court should adjourn it to another date. The Appellate Court may taken up appeal, ***at any time or hour of the day fixed for hearing***, when the assessee may not be present. It may be taken up before the usual Court hours, at times. In such a case, if the assessee appears in due time, in the course of the day' and the Court refuses to hear him, the Court acts with grave irregularity.[8] On the same principle, if an assessee's appeal is taken up at any time, in the course of the usual Court business hours when he happens to be absent, but when he appears ***in due time*** (*i.e* Court time), in the course of the day, (either in person or by representative) and is ready to proceed with the appeal, but the Court refuses to hear him, it also acts with irregularity. The implication is that, if the appellant appears, ***at any time during the Court hours, on the date fixed for hearing*** he must be

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* 1934 All. 217.

(1) E. M. Chettyar Firm v. Commissioner I. T.. 7 R. 635; 1934 Rang. 4. I. T. C. 111.

(2) Ibid.

(3) Basudev v Bideshi 6 R. 612; 1929 Rang 11 (12) Taher Sheikh; Chowkidar v. Otoruddi Howaldar 26-C. 412; 1929 Cal. 476, Musaliarakbath Muhamas v. Manavikrama Zdmorin Raja Avergal 1923 Mad. 13 (14); 45 M. 882.

(4) Gangadhar Keshawa v. Ramchandra (1894) 7 C. P. L. R. 1 (2).

(5) Nazir Khan v. Itwari 1924 All. 144.

(6) Taher Sheikh v. Otarudi Howaldar 1929 Cal. 475 (476).

(7) 1923 Mad. 18 (14); 46 M. 182 (cited supra).

(8) 1929 Rang. II; 6 R. 12 (do.).

(8) Hakeemuniss v. Muodoom 1 South W. R. 246.

given a hearing. It is desirable to accommodate litigants to some extent if their pleaders happen to be absent in another Court and have a chance of attending within a short time so as not to distrub the business of the Court.[1]

Denial of liability :—An assessee may also in appeal deny his liability to be assessed to excess profits tax, though he has not done so before the Excess Profits Tax Officer (*Rani Anand Kuar* v. *C.I.T.* I. T. R, 126).

Factors determining Assessment:—There may be cases where the determination of assessment to excess profits tax depends on more than one factor. For instance, an assessee has the option to select either the 'profits standard' or the percentange standard. If an assessment is made on a standard properly calculated, the assessee would be at an advantage. The matter of application of standard however, is to be decided by C. B. R. their decision being final. As this affects the entire assessment, assessee were held to have a right of appeal against the assessment, inspite of the finality of the decision of C. B. R. as to the one factor, *i.e* selection of standard *The Post of London Authority* v. *C. I. R.* 10 T.C. 122,142,243 per Scrutton L. J.

Determine the appeal :—It means the same 'disposal' in Section 31 Income-tax Act. An Assistant Commissioner must, in disposal of an appeal, state facts and give reason for his decision.[2] A contrary view was, however, taken in a Rangoon case.[3]

Subject to the provisions of this Act :—These qualifying orders are wide enough to include all restrictions and limitation of excess profits tax Assessment and other matters, which may form the subject of an appeal under Section 17 (1). See also notes under Section 18 *post* (1).

Such orders as he may think fit:—These words are too general and comprehensive as compared with the explicit provision contained in Section 31 (3) (1) Income-tax Act, which are 'confirm', 'enhance' the assessment and in the case of an assessment of firm etc.

Only an order enhancing an assessment or penalty has been specifically mentioned, in this Sub-section. Enhancement may be ordered after giving reasonable opportunity to appellant.

Sub-section (5):—This Sub-section relates to procedure at the hearing of an appeal, which is to be governed by the Rules and the subject to be formed by the Central Board of Revenue.

Appeal to Commissioner against Appellate Commissioner's orders, imposing penalties or enhancing assessments or penalties.

Section 18. (1) Any person objecting to an order passed by an Appellate Assistant Commissioner imposing on him a penalty under Section 16 or enhancing his assessment or enhancing a penalty under Section 17 may appeal to the Commissioner within thirty days of the date on which he was served with notice of such order.

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

(3) On the coming into operation of Part II of the Indian Income-tax (Amendment) Act, 1939, this Section shall cease to have effect

Previous Law:—Section 8, Act 10 of 1919 contains similmar provision. Appeals under Section 8, Excess Profits Duty Act 1919 from the decision of the Assessing Officer, the Collector lay to the Chief Revenue Authority which, at the option of the appellant decided the same itself or referred it to the Board of Refe rees.

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(1) Ramdhan v. Bishnu Prasad (1920) 54 I. C. 715 ;5 Pat. M. 917.

(2) Ram Pratap Sukhlal v. C. I. T. Pb. 3 I. T. C. 362.

(3) E. M. Chettyar Firm v. C. I. T. Burma 7 H. 635; 1930 Rang. 224; 4 I. T. C. 111.

2. **Analogous Law**:—(*a*) The administration machinery in the United Kingdom is entirely different. The Assessing Authorities in the matter of excess profits tax are the Commissioners Inland Revenue, from whose decision appeal is heard by Special Commissioners. In this connection see Section 21 (2) Proviso cited under the preceding Section 17.

Then, there is a reference on a case stated to the High Court (King's Bench Divison) Appeal from the latter's decision lies to the Court of Appeal and thence finally to the House of Lords.

(*b*) **Indian Law**:—Section 32 Income Tax Act (1) (3) 1922.

Scope of Section 18:—Section 18, was added by the Select Committee makes provision for a second appeal to the Commisssoner Income-tax in certain matters therein enumerated. It follows the line of Section 32, Income-tax Act, 1922 (amended 1939).

Now second appeals shall lie to Appellate Tribunal [Section 19 (2)].

Appeal lies under Section 19 (2) of the Act to the Appellate Tribunal against any order made by the Excess Profits Tax Appellate Assistant Commissioner under Section 16 or 17. Notice of appeal to the Tribunal must be given within 60 days of the Order appealed against. The prescribed form are E. P. 9 (T) 10/13 (T) 11 (T) 11 (1) (T), 11/13 (T), 12 (T) and (12) (1) (T).

Power of revison

Section 19. (1) 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 or Appellate Assistant Commissioner sub-ordinate 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 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 resonable opportunity of being heard.

(2) On the coming into operation of Part II of the Indian Income-tax (Amendment) Act, 1939 sub-section (1) shall cease to have effect, but thereafter any Excess Profits Tax Officer or any person in respect of whose business an order under Section 14 has been passed who objects to an order passed by an Appellate Assistant Commissioner under Section 16 or Section 17 may, within the prescribed time and in the prescribed manner, appeal against such order to the Appellate Tribunal constituted under the Incom-tax Act, 1922, and that Tribunal shall have all such powers in disposing of the appeal as it has in respect of appeals preferred to it under the Indian Income-tax Act, 1922.

1. **Previous Law**:—No Excess Profits Duty. Such provisions existed in the Excess Profits Duty Act of 1919.

2. **Analogous law**:—Indian Income-tax Act, 1922 Section 38.

3. **Scope**:—Section 19 contains provision as to the powers of revision by Commissioner. These provisions are similar to those contained in Section 33 Income-tax Act. Section 33 (Income-tax Act) enables the Commissioner of his own motion to call for the record of any proceeding under the Act, and after an enquiry to pass, subject to the provisions of the Act, such orders as he thinks fit. The same are the provisions of Section 18 of Excess Profits Tax Act. The power under Section 33 Income-tax Act is that of revision or superiptendence* and for purposes of initiating proceedings of reassessment. Section 33 of the Act is subject to the provisions of Section 34 of the Income-tax Act and the Commissioner has no right of initiating or independently starting re-assessment proce dings[1]. Even though no limitation of time is prescribed for interference by way of revision under Section

* Abdul Kadir v. Commissioner Income-tax, Mad. 2 I. T. C. 357 (879) 1828 Mad. 254.

(1) 2 I. T. C. 380.

33, the court would almost always incline in favour of taking the view that such exercise of power should be within a reasonable time of the proceedings sought to be revised, reasonable time being computed by the Court having regard to all the other provisions of the Act, to the facts of the particular case and the special feature, if any, in it[1]. The powers of review under Section 33 can be exercised by the Commissioner during the pending of an application under Section 66 (2) as is shown by the Proviso to the latter Section, [*Chettyar (C.T.V.S.) firm* v. *Commissioner I.T. Mad.4 I.T.C. 160*].

Section 19 (1) Conferred powers of revision of orders passed by Excess Profits Tax Officers, just like Section 33 I.T. Act 1922.

These were subject to the provisions of the Second Sub-section of Section 19 and on the setting up of Appellate Tribunal, the Commissioner powers of revision were to cease and an appeal (Second appeal) was to lie to Appellate Tribunal. Since the Appellate Tribunal has already been set up since long, these powers of revision naturally are not any longer in existence in view of Section 19 (2) Excess Profits Tax Act.

In this connection it is noteworthy that that the Commissioner power of revision under Section 33 I. T. Act have been revised under Section 33A (newly added) I. T. Act [Section 18 I. T. (Amendment) Act, 23 of 1941].

Since, however, no amendment has been made on the point in the Excess Profits Tax Act, Section 19 (2), the existing provision must be taken to stand and hold good.

An Excess Profits Tax Officer. Just like Assessing Income-tax Officer under the Income Tax Act, Excess Profits Tax Assessing Officers are also given powers to appeal to the Tribunal, if they feel aggrieved by the Appellate Assistant Commissioner's order.

Rectification of mistakes

Section 20. The Commissioner may, at any time within four years from the date of any order passed whether by himself or by any Appellate Assistant Commissioner or 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.

1. **Previous Law**:—No such provision.

2. **Analogous Law** :—Section 35 Indian Income-tax Act.

3. **Scope** :—Section 20 just like Section 35, Indian income-tax deals with rectification of mistakes. The power conferred upon the Commissioner or Appellate Assistant Commissioner of Income-tax or the Income-tax Officer by Section 35 to rectify a mistake, whether on his own motion, or on the application of an assessee is confined to the rectification of mistakes patent from the facts or documents which were before him when he passed his revisional appellate or original assessment order, as the case may be. This Section does not confer on the officers general power of review or authorise any assessee to introduce any new facts in connection with the said assessment.

The object of the Section is to allow corrected mistakes such as are apparent from the record *i.e* obvious or patent mistakes. In a Bombay case under Section 26 of the 1918 Act, (corresponding to Section 35) *Mac Leod C. J.* observed:— That Section only relates to a mistake in the demand of any assessment and cannot enable

(1) 2 I. T. C. 379.

the discontented assessee who has paid the amount demanded from him, to re-open the question of the assessment. The Section provides for the rectification of mistakes caused by the demand not corresponding to the assessment, and does not provide for an appeal to the Commissioner from the order of the Collector under Section 26 either rectifying the mistake or refusing to rectify a mistake on an application made by the assessee."[1]

The scope of Section 20 has been widened by the Select Committee by adding the words 'in any evidence recorded during assessment or appellate proceedings' before the words 'apparent from the record'. The Commissioner is thus given power to correct a mistake subsequently discovered in evidence recorded assessment or appellate proceeding.

A deduction wrongly allowed in respect of Director's remuneration has, under the English Law on the point, been held to fall within a mistake that can be rectified (*Hinshelwood and Co. Ltd.* v. *C. .I R.* 12 T. C. 417).

A wrong deduction however, has, under the Indian law, been held to be covered by S. 34 I. T. Tax Act fit for (additional Asstt.)

(Amir Singh Sher Singh v. C. I T. Lahore, 8. I. T. C. 198 A. 1. R 1935 Lah. 36)

Applications of provisions of Act. XI of 1922.

Section 21. The provisions of Section 4A, 4B, 10, 13, 24B, 29, 36 to 44C (inclusive), 45 to 48 (inclusive), 49E, 49F, 50, 54, 61 to 63 (inclusive) 65 to 67A (inclusive) of the Indian Income-tax Act 1922, 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 :

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

Previous Law:—Section 15 Excess Profits Duty Act, 10 of 1919.

Analogous Law:—Schedule 7, Part Adaptation of Income-tax Principles as to computation of profits Part 1-13. Finance Act, 1937 Fourth Schedule. Part II, Paras, 3, 4 and 7 also contain same similar provisions

Scope of Section 21:—By Section 21, certain provisions contained in the Income-tax Act, 1922, have been made specifically applicable to the Excess Profits Tax Act, they are to be read as part of this Act, *mutatis mutandis* with modifications prescribed by the Rules under this Act.

These provisions are Sections *4 A and 4 B*—Residence in British India and Ordinary residence.

Section 10:—Relating to business including deductions under this head.

Section 13:—Relating to method of accounting.

Section 24B:—Tax of deceased person payable by representations.

Section 29:—Notice of demand.

Section 36 to 44 C. (inclusive).

Section 36:—Tax to be calculated to nearest anna.

Section 37:—Power to take evidence on oath enforcing attendance of persons as notice compelling production of documents and issue of summons for examination of witness proceedings to be judicial proceedings.

1. The Jubilee Mills Ltd. v. C. I. T. Bombay 1925 Bom. 257; Bom. 27 L R. 400 : 2 I. T. C. 25.

Sections 38:—Power to call for information in certain cases *i.e.* firm, Hindu Undivided family, trustees guardians or agents etc.

Section 39:—Power to inspect rsgister of members of the company.

Section 40:—Relates to liability in case of guardian trustees and agents.

Section 41:—Court of wards cases.

Section 42:—case on *non-resident'* liability.

Section 43:—Agents to be are.

Section 44:—Liability in case of discontinued firm or association.

Section 44-A to 44 C,—Stopping cases.

Section 45 to Section 48:—Recovery of tax. Section 45 tax when payable. Section 46 mode and time of recovery of tax. Section 47 Recovery of penalty. Section 48 refunds.

The Provision of Section 45 of the Indian Income-tax Act, 1922, are by Section 21 of the Excess Profits tax Act, 1940, made applicable to the recovery of excess profits tax and penalties. Normally, therefore, payment should be demanded on the same date as specified in corresponding income-tax notice of demand. In the course of the passage of the Excess Profits Tax Act by the Legislature, however, a promise was made that consideration would be given to cases where a payment of incom-tax super-tax and excess profits tax on the same date would create hardship. If therefore, in any case where it is represented that payment onthe same date would create hardship, the Excess Profits Tax Officer is satisfied that in fact hardship would be involved and that deferment of collection would not endanger the Revenue, he may agree to payment by instalments. The instalments allowed should not exceed three in number and should commence not later than the date on which, normally, the whole of the tax would be payable and the interval between any two instalments and the next should not exceed two months.

In the case of an assessment which is under appeal, the Excess profits Tax Officer, in the exercise of the discretion given him by Section 45 of the Indian Income-tax Act, should, provided he is satisfied that the appeal is *bona-fied* assent to deferment, until after settlement of the appeal, of so much of the tax as in dispute.[1]

Section 49-E:—Power to set off amount of refund against tax remaining payable.

Section 49-F:—Power of representations of deceased or disabled person to receive refund.

Section 50:—Limitation claim for refund.

Section 54:—Disclosure of information by a public servant.

Section 61:—Appearance of assessee by authorized representation.

Section 62:—Receipt to be given for money paid or recovered.

Section 63:—Service of notices.

Section 65:—Relates to indemnity.

Section 66:—Reference to High Court.

Section 66-A:—Hearing of references of appeal to Privy Council in certain cases.

Section 67:—Bar of Civil suit.

Section 67-A:—Computation of limitation period—date of pronouncing judgment to be extended.

A glance at the above list will show that even in certain matters of minor details the provisions of the Income-tax Act have been made applicable. These

(1) Para 13 Notes and Instructions.

provisions are to be deemed, as incorporated in and forming part of the Excess Profits Tax Act, 1940 by virtue of this Section.

Modifications as may be prescribed:—The term 'prescribed' has been defined by section 2 (9) as prescribed by the Rules made under this Act. So any modification that may be intended to be made as to the provisions of Income-tax Act, as contained in the various Sections of the Income-tax Act, 1922 enumerated in Section 20, are to form the subject matter of the Rules under the Act.

Section 61:—Appearance of assessee by authorized representation.

The difficulties in the matter of representation by "Income-tax practitioners" with the meaning of Section 61 (2) (iv) (a) have been remedied to a great extent by amendment of the Rules. For instance, see copy of letter D. O. No. 21924 I. T. 41 dated 17-9-1941 from Secretary C. B. Revenue to Secretary I. T. Practitioners. Association, Delhi. (I. T. Gazette October, 1941 Part V page 39.)

Rule 4 has extended some of the Income-tax Rules to excess profits tax proceedings–For instance,

(1) Income Tax Rules 8, - relating to Depreciation allowance.

(2) Income Tax Rules 33, 34 .....ascertainment of British Indian Income partly in British India and partly abroad.

(3) Incom Tax Rules 23, 24 relating to partly of agricultural Income.

(4) Income Tax Rule 844 45 relating to representaition by the Accountants and Income Tax Practitioners in excess profits tax cases.

Proviso-Assessee:—An assessee under the Act is a person to whose business the Excess Profits Tax Act applies.

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

Section 22. (1) Notwithstanding anything contained in the Indian Income-tax Act, 1922, 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.

(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 of this Act, may be used for the purposes of the Indian Income-tax Act, 1952

1. **Previous Law**:—Section 16 Excess Profits Duty Act 10 of 1919.

2. **Analogous Law**;—Regulation No. 7 of the Regulations dated 30th November, 1939, made by Commissioners Inland Revenue under Section 21 of English Finance Act (2) of 1939 cited under Section *ante* contains similar provisions.

3. **Scope of Sections 22**:—Section 22 may well be said to be exception to the certain provisions of the Income-tax Act, 1922, whereby certain papers, documents and other records connected with Income-tax matters is treated as confidential and not generally available. Against these provisions of the Income-tax Act. Sections 22 provides, that these provisions notwithstanding, all such information as is contained in those documents or has been furnished under the Income-tax Act or has been obtained or collected thereunder shall be available for use for the purposes of assessment to excess profits tax.

Sub-section (2) of section 22 contains provisions by way of reciprocal arrangement. While under Sub-section (1) all information in any statement or return furnished, obtained or collected under Income-tax Act, may be used for the purpose of excess profits tax assessment Sub-section (2) lays down that, by way of reciprocity, all information contained in any statement or return and furnished obtained and collected under Excess Profits Act may also be used for income-tax assessment purposes.

The two taxes are allied, and although excess profits tax is levied under special circumstances, it is after all a tax and the principles and Rules of taxation applying to both are naturally akin and almost similar.

The scheme of the two takes naturally differs but the principle does not and in fact, cannot.

Hence, the utility of the provision contained in Section 22. Such a provision must facilitate the work of the assessing department, in particular when the functionaries in both the lines are the same When the same assessing Officer is to enquire into and assess income, profits and gains for income-tax purposes, any information before him as such may well and with advantage be used when he assesses in a different capacity as Excess Profits Tax Officer.

So, the utility and the need of the provisions contained in Section 22 is apparent and its applicability also is after all, no difficult matter:

4. Sub-section (1)—Notwithstanding anything contained in the Indian Income-tax Act, 1922:—Section 54 Income-tax Act contains provisions according to which all particulars contained in any statement made, return furnished or accounts or documents produced under the provision of the Income-tax Act shall be treated as confidential. Sub-section (2) of Section 54 makes any disclosure of the above-mentioned information by a public servant punishable. Sub-section (3) of Section 54 enumerates certain disclosure which have not been penalized by the Income-tax Act

Section 21 may thus be taken to be a string in the long test contained in Sub-section (3) to Section 54 Income-tax Act.

May be used:—The expression 'may be used' both in this and in Sub-section (2) of this Section must mean 'may be used' by the department or the assessing officer or officers. It is not a privilege accorded to the assessee or the person whose business is in question for excess profits tax purposes.

Failure to deliver returns or statements.

Section 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 13, he shall on conviction by a Magistrate be punishable with fine which may extend to five hundred rupees, and with a further fine which may extend to fifty rupees for every day during which the default continues.

Previous Law:—Section 12, Excess Profits Duty Act 10 of 1919.

Analogous Law:—(1) *Finance Act*, 1937 fifth Schedule Para. 4 Part III.

(1) Supplementary provisions contain similar provisions. Section 107 (1) and (3) English Income-tax Act also contains similar provisions.

Section 51 (*c*) and (*d*) Indian Income-tax Act contains the same provisions as are contained in this Section.

Scope of Section 23:—Section 23, makes it a penal offence, in certain circumstances not to furnish in time any return or statement called for by the authorities or any accounts or documents so called for under Section 13 *ante*:—The provisions is entirely similar to the one contained in Section 51 of the Income-tax Act 1922 amended 1939).

Penalties on conviction before a Magistrate.

Section 23 provides for presection before a Magistrate of any person who,

(i) 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* to be produced under Section 13, or

(ii) makes, in any return required under Section 13, any statements which is false, or which he either knows or believes to be false or does not believe to be true. The penalty,

(a) in the case of (i), may extend to Rs. 500 with a further penalty of Rs. 50 for every day during which the default continues;

(b) in the case of (ii), may be simple imprisonment which may extend to six months, or a fine which may extend to Rs. 1,000, or both.

Any case which the Excess Profits Tax Officer considers, should be taken before a Magistrate, should be submitted to the Inspecting Assistant Commissioner for his instructions before any such proceedings are commenced.[1]

"Reasonable cause":—It is a question of fact for the Magistrate to decide whether reasonable cause or excuse exists or not in a particular case.

See also notes under section 13 *ante*.

To furnish in due time:—Section 34 (*b*) of 1886 Act corresponded to this provision. In a case under Section 34 (*b*) 1886 Act, conviction was held as bad where notice calling for return was sent by ordinary and not by registered[2] post. In this case, accused had denied having received the notice. It was held that delivery by un-registered post did not amount to valid service of notice. While Section 23 (2) empowers the Income-tax Officer to require a person making a return to attend at his office, under the provision of Section 61, any person required or entitled to attend before any Income-tax Authority may either attend in person or may be represented by a person duly authorised by him in writing.

The above are provision under the Income-tax Act and must apply to cases under the Excess Profits Tax Act also.

To produce or cause to be produced:—In a case under section 39 (*d*) and 40 Act 7 of 1918 (corresponding to Section 51 and 52 of present Act) it was held that a penal assessment (now under Section 28) under Section 24 (of Act 7 of 1918), for false statement was no bar to a prosecution for failing to produce accounts and documents.[3] This is no longer good law in view of Section 28 (4) Clause 4 of Section 28; provides that were a penal assessment under that Section is imposed by the Revenue authorities, no criminal prosecution for an offence shall be instituted on the same facts. It is obviously not desirable that there should be room for a possible conflict between the Revenue and Judicial Authorities, and it is also unreasonable that a double punishment should be provided for.[4]

Fine and with a further fine:—Though the words in this and in Section 51 Income Tax Act, differ, a recurring fine may be imposed for default under both the Acts. In the case of 'fine' to be imposed for a continuing offense, as contemplated by this Section, 'fine' cannot be levied prospectively. An order for payment of so much fine per day till the default continues is illegal; there must be proof of continuing offence to give Magistrate jurisdiction to make such an order.[5] Whether imprisonment in default of payment of fine can be imposed under this Section, is a point that does not appear to have been decided' In one or two cases under the Municipal Acts imprisonment in lieu of detault in payment of fine was held legal[6] while in cases under the Railway Act, it was held not to be so[7]

False statement and declaration.

Section 24.—If a person make in any return required uuder section 13 any statement which is false, and which he either knows or 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.

(1) Para 12 Notes and Instruction.

(2) Emperor v. Ramchran 17 A. L. J. 146: 1 I. T. C. 21: 29 C. I. J. 22.

(3) K. E. V. S. M. Hussain A[s] & Co. 1 I. T. C. 48, 43 M. 498 ; 21 Cr. L. J. 295.

(4) Para. 87 (v) I. T. M.

(5) B. v. Wazir Ahmad 24 A. 309: Bamkishan Biswas v. Mazumdor 27 C. 565.

(6) In re: Lakhima 18 B. 400. (penalty under Municipal Act, was held to be fine and imprisonment in default of its payment was held legal) R. V. Rappel 18 M. 490 (Imprisonment in default of paymefit of fine held legal.)

(7) R. V. Kutrappa 18 R. 440 : R. V. Subramanya Iyer 20 M. 35 (both being cases under the Rly. Act)

1. **Previous Law** : —Section 12 Excess Profits Duty Act 10 of 1919.

2 **Analogous Law:—**

1. Finance Act, 1937, fifth Schedule Part III, (Supplementary Proviso Para 4)
2. Section 52 Indian Income-tax Act 1922 (amended 1939) contains similar provisions though these are more wide and comprehensive than the provision of Section 24.

3. **Scope of Section 24**:—While offences under section 22 arise out of the non-performance of certain acts and duties imposed by the Act, Section 23 deals with an offence which is so *perse*, bringing a particular statement in a return falsely made within the pale of criminal law and rendering it punishable. It is particularly noteworthy that while the range of Section 52 Income-tax Act is much wider embracing false verifications etc., also Section 23 is limited in its scope to a case of a false statement made deliberately in the return required to be made under Section 13 *ante*:—

4. **Which he either knows etc**:—These words are meant to indicate a deliberately made false statement which alone is punishable. As already noted under *Scope* above, case of inadvertence are not covered.

The case law under the Income-tax Act as to false returns must apply hereunder also.

A revised return filed under Section 22 (3) cannot condone an offence under Section 52 though it might mitigate it.[1] The offence is committed on the day, the return made under Section 22 (2) is verified.[2] Offence under Section 52 can be tried by a Court of the place where the return is verified and not where the return is filed.[3] sanction granted for an offence under Section 82 would not warrant a conviction under Section 81.[4]

No reference lies at High Court on the point whether after filing a revised return an assessee can be proceeded against under Section 52 or on any point arising out of Section 52, because Chapter VIII wherein Section 52 lies, is expressly placed beyond the pale of Section 66 [*See Section 66* (1)].

5. **Simple imprisonment of with fine or with both** :—While an offence under Section 22 *ante* is punishable only with fine, which may be recurring, an offence under Section 23, being more serious, may be dealt with imprisonment also. It is to be noted that imprisonment is not necessary to be implicated as part of sentence under this Section, the conjunction 'or' used indicating that both the fine and imprisonment may be either alternative or may be joined.

Instruction of proceedings and composition of offences.

Section 25. (1) A person shall not be proceeded against for an offence under Section 23 or Section 24 except at the instance of the Inspecting Assistant Commissioner.

(2) No prosecution for an offence puishable under Section 23 or Section 24 or under the Indian Penal Code shall be instituted in respect of the same facts as those in respect of which a penalty has been imoposed under this Act.

(3) The Inspecting Assistant Commissioner may, either before or after the institution of proceedings, compound any offence punishable under Section 23 or Section 24.

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(1) Ganga Sagar v. Emperor 4 I. T. C. 97: 1929 All 919.

(2) ibid.

(3) Mhod. Deen Pakiri 45 M. 839: 1923 Mad. 50; 23 Cr. L. J. 619 1 I. T. C. 193.

(4) Champa Lal Girdhari Lal 1933 Nag. 358.
Narain Das Mohanlal v. Commissioner I. T. U. P. 1933 All. 231: 6 I. T. C. 248.

1. Analogous Law :—(1) Indian Income-tax Act, Section 53 contains similar provisions.

2. Scope of Section 25:—An Inspecting Assistant Commmissioner's sanction is necessary for prosecutions to be launched under Sections 23 and 24 of the Act just as under Sections 51 and 52 Income-tax Act, so under Sections 23 and 24 of this Act' the two offences are distinct and separate. Consequently sanction to prosecute under one would not permit of a trial and conviction under another. This was the finding in *Champa Lal Girdhari Lal* v. *Emperor** and must hold good under this Act also. The powers, to compound is also the same as under the Income-tax Act, (S. 52).

3. At the instance of the Inspecting Assistant Commissioner :—A criminal prosecution cannot, under Section 53 (1) of the Act, be instituted except at the instance of Assistant Commissioner. In most cases action under Section 28 will be effective, although in more serious cases a prosecution might be launched. Under the recent amendment the Inspecting Assistant Commissioner can act. Prsecution of assessees for offences under Section 51 and 52 cannot be commenced except at the instance of an Assistant Commissioner and the Assistant Commissioner, is under Section 53, empowered to stay any such proceedings or compound any such offence. The power of compounding an offence is one that can be exercised not only after proceeding have been commenced, but before proceedings are instituted, at all.[1] An Income-tax Officer can also lodge a complaint, but with the sanction of the Assistant Commissioner and that, even in respect of offence committed before his predecessor.[2] An Assistant Commissioner alone can act under this Section, his powers being exclusive in the matter, not even the Commissioner or Central Board of Revenue can exercise these powers. Prosecutions in England are insituted at the instance of Assessing Commissioner.

4. Sub-section (2) :—The provisions of the Sub-section are the same as those of Section 28 (4) Income-tax Act 1922 (corresponding to Section 16 of this Act). For this very reason, these provisions were added at first to Section 16 of this Act by the Select Committee. They were latter transferred to this Section. They serve the same purpose here, *i e.* of avoiding dealing double punishment on the same facts.

6. Sub-section (3) :—Sub-section (3) of Section 25 of this Act is the same as the newly added Sub-section (2) of Section 53 Income tax (amended 1939).

The word 'may' distinctly points out to the fact that it is entirely within the discretion of the Assistant Commissioner to stay proceedings or to compound. The provision in the Sub-section, however, does not permit or entitle an Assistant Commissioner, under guise thereof, to exact as large a sum as possible from an assessee under threat of prosecution.[3]

The Assistant Commissioner took proceedings for the prosecution of an assessee for offence under Sections 177 and 193 I. P. C., whereupon the assessees applied to withdraw their appeal and also prayed, by a separate application, for withdrawal of prosecution, though an offence under Section 193 I.P.C. is not compoundable, except with the consent of Public Prosecutor acting under direction of the local Government. The Assistant Commissioner dismissed the appeal but passed no order on the application for withdrawal of the prosecution. Thereupon, the assessee sought a hearing of their appeal on merits, alleging that they had withdrawn the appeal only on the understanding that criminal proceedings against them would be withdrawn. The Assistant Commissioner ordered that he had no jurisdiction to re-open the matter, the appeal having been dismissed already. *Held*, on reference, that there was no question of law for the Court to answer and that the remedy of the assessees lay in applying to the Commissioner Income-tax in revision.[4]

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* 1939 I. T. R. 384.

(1) Para 128 I. T. M. (old edition)

(2) P. D. Patel v. Emperor 1938 I. T. R. 363.

(3) Gangasagar v. Emperor 4 I. T. C.

(4) Shyam Sunder Behari Lal v. C. I. T. 6 I. T. C. 290

Prosecution based on Confession:—In a case of prosecution for conspiracy to cheat and defraud Revenue, where false statement of accounts were prepared and delivered, but the books and accounts were produced as a result of being shown a document (Hansard Extract) which also absolved accused from criminal liability on revealing facts voluntarily, which were held to be an "inducement" the conviction was held to be illegal (*R* v. *Barker* 1942 I. T. G. 138).

Powers of Central Board of Revenue to grant relief in special cases

Section 26 (1) If [1](on an application made to it through the Excess Profits Tax Officer) the Central Board of Revenue 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 Central Board of Revenue may direct that the standard profits of the business shall be computed to be such greater amount as the Central Board of Revenue think just.

Provided that such amount shall not exceed the statutory percentage of the average amount of capital employed in the business unless the Central Board of Revenue 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 Board of Referees under Sub-section (3) of Section 6 is inadequate:

[2][Provided further that a determination on an application under this Sub-section.

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

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

(2) Without prejudice to the generality of the provisions of Sub-section (1) the Central Board of Revenue shall, in considering the making of a direction under that Sub-section, have regard to the following circumstances name:—

(a) that the capital employed in a business commenced on or after the 1st day of July, 1938, 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 smaller 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 off 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 British India before the 1st day April, 1932, 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 April, 1937.

(3) If [3](on an application made to it through the Excess Profits Tax Officer) the Central Board of Revenue is satisfied that the compulation in accordance with the provisions of Schedule I of the profits of a business during any chargeable

(1) These words were inserted by Section 8 of the Excess Profits Tax (Amendment Act, 1939 (42 of 1940).

(2) This proviso was added, ibid.

(3) These words were inserted by S. 8 of the E. P. Tax (Amendment) Act, 1940 (42 of 1940).

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 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 British India income arising outside British India where the country in which the income accrued prohibits or restricts by its laws the remittance of money to British India, and loss in the remittance to British India of such income because of fluctautions in the rate of exchange between that country and British India [1](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 present war, an increase for 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 war-time output the source of the mineral might have heen expected to be exhausted)

The Central Board of Revenue may direct that such allowances shall be made in computing the profits of the business during that chargeable accounting period as the Central Board of Revenue thinks just :

Provided that in making such direction the Central Board of Revenue may impose such conditions as it deems appropriate.

[2](4) An application to the Central Board of Revenue 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 18 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 expiry of forty-five days from the date on which the order of the Board of Referees disposing of the application under Sub-section (3) of Section 6 is communicated to the person who has made that application].

1. Analogous Law:—Analogous provisions are contained in Section 13 (7) Part III, United Kingdom Finance Act (2) of 1939, under which action is taken on the application of the person carrying on trade or business.

Amendment:—This clause has been added to Section 26 (3) by Section 7 E. P. T. (Second Amendment) Act XXIV of 1941.

It was pointed out in Notes in clauses. Cl. 6.

'There are business concerns engaged in the mining of oil or other minerals, which are of exceptional importance for the prosecution of the war, in which an increase of output is essential in the national interest, but such increase will bring about an earlier exhaustion of the source of the oil or mineral than would have occurred in the normal course. An increase in the standard profits is inappropriate to the varying circumstances of chargeable accounting periods and it is provided, therefore, that allowance may made for this premature exhaustion in arriving at the profits of any chargeable accounting period.

The words in Sub-section (1) "in an application made to it through the E.P.T. Officer" were added by Section 8, Amending Act XIII of 1940.

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(1) This word and clause (d, were inserted by S 7 of the E. P. T. (Second Amendment) Act, 1941 '24 of 1941.

(2) This Sub-section was added, by S. 8 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940).

The second Proviso to Sub-section (1) & Sub-section (4) were also added by the same Amending Act, 1940.

This amendment rectified the clauses to provide for the manner in which & within what time limits an application was to be made to the C. B. R. (Notes in Clauses),

2. Scope of Section 26 :—The Section deals with the power of Central Board of Revenue to grant relief, in certain cases was considerably altered by the Select Committee. Under this Section the Central Board of Revenue is authorized, in special cases, to vary the method of computation of standard profits of any business. In the bill as presented to the Assembly this was possible only in case of a business which was in existence before 31st March, 1936.

The maximum of the greater amount of standard profits to be applied was fixed under the Proviso, by the Select Committee, no to exceed the statutory precentage of the capital employed in the business. Moreover, the Section has been made applicable by the Proviso to Sub-section (1) to those cases also where relief has been allowed under Section 6 (3) by the Board of Referees, but the Central Board of Revenue considers the same to be insufficient. In such a case the statutory percentage may be exceeded.

With reference to the above alterations, the Select Committee observed. "The alterations made in sub-clause (1) brings the provisions of the clause as drafted into accord with clause 6 as now amended, and empower the Central Board of Revenue to exceed the amount of relief if any granted by the Board of Referees under sub-clause (3) of clause 6, or to grant relief in cases to which *sub-clause* (3) of clause 6 does not apply. The above alterations, thus, are consequential upon the charges made by the Select Committee in Section 6 *ante* (see under.")

4. Sub-section (1) "Is satisfied ...."—It means by evidence and with reference to the circumstances of the case and the business in question.

5. Provisions of Sub-section (1) of Section 6 :—The words of clause (*a*) have been taken off as a consequence of change in Section 6 (1).

6. Insufficient Relief has been granted :—For this see Proviso to this *post*. The Provisos of this Section have been made, by the Committee to be applicable to cases where though relief has already been granted under Section 6 (3), yet it is deemed by the Central Board of Revenue to be *insufficient*.

Under the provisions of Section 26 (1) power is given to the Central Board of Revenue to grant a special standard of profits if they are satisfied that special circumstances exist which render it inequitable that the standard profits in relation to any chargeable accounting period should be computed in accordance with the provisions of Section 6 (1), and that no relief, or insufficient relief has been granted under Section 6 (3).

It will be observed that an application may be made to the Central Board of Revenue through the Excess Profits Tax Officer :—

(a) whether or not an application has been made previously to the Board of Referees;

(b) whether or no in the case of a business commenced on or after 31st March 1936 the optional percentage standard has been chosen.

(c) whether or not on an application to the Board of Referees a direction has been given by that Board.

In cases where no "specific cause peculiar to the business" is proved the maximum amount that may be allowed by the Central Board of Revenue is, as in the case of a direction by the Board of Referees, the percentage of the average capital employed in the standard period. In the case of a business in respect of which the option given by the second Proviso to Section 6 (1) has been exercised the standard profits are already equal to such maximum and no effective direction can be given by the Central Board of Revenue. Where, however, a "specific cause" is proved, a

direction, not so limited, may be given in respect of any business, and, it will be noted, that the Central Board of Revenue is not, as is the Board of Referees, subject to the overriding limitation that their award is not to exceed the amount of profits that might be reasonable expected at the commencement of the standard period.

It is laid down is Sub-section (2) that the Central Board of Revenue, in considering an application under Sub-section (1), shall have regard to the following circumstances :—

(a) in the case of a business commenced on or after 1st July 1938, the smallness of the capital employed in relation to the activities of the business so that the normal computation of the standard profits would be inequitable having regard to the normal profits of similar businesses ;

(b) heavy experimental or development expenditure incurred in accounting periods closely preceding the chargeable accounting period which would normally be written off wholly or partly during the chargeable accounting period ;

(c) the pioneer nature of a business, that is a business concerned with an industrial process or form of manufacture or production not undertaken in British India before 1st April 1932, which 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 yeat of assessment 1937-38.

Applications, on the prescribed form E. P. 15, must be presented to the Excess Profits Tax Officer before the expiry of the period specified in the notice issued under Section 13 (1) or of the extended period allowed by the Excess Profits Tax Officer under the Proviso to that Sub-section, unless the assessee has applied or is applying to the Board of Referees under Section 6 (3). In the later case an application under Section 26 (1) may be presented to the Excess Profits Tax Officer before the expiry of forty-five days from the date on which the order of the Board of Referees on the Section 6 (3) application is communicated to the applicant.[1] See also note under amendments.

7. Proviso Statutory percentage :—This change has been made in the Select Committee. See comparative table for the original provision in the Bill. Also see the observations of Select Committee under note No, 3 *ante*.

The words 'average amount of capital' were substituted, after the words 'percentage' before the word 'capital' in the assembly, as a small drafting point, inserted for classification.

8. Sub-section (2) and (3) :—Sub-sections (2) and (3) were added to Section 26 by the Select Committee. With regard to those the Select Committee observes :— "We have inserted two additional sub-clauses, the first of which specifies two sets of circumstances which the Central Board of Revenue is required to take into consideration in making a direction under sub clause (1) with reference to the determination of standard profits, and the second of which empowers the Central Board of Revenue in certain specified circumstances to grant allowances in computing the profits of a business during a chargeable accounting period."

9. **Sub-section (2) "After the first day of July, 1938"** :—The words 'July, 1938', for 'December, 1938, were changed in the Assembly. As to this change it was pointed out :—Under part (a) special relief is given where a new business is started after 1st December, 1938. It is a very recent date and very few companies or business can take advantage of this Provision. I should like this date to be altered to September, 1937, so that companies which started business two years before the chargeable accounting period under this Act begins will get special relief.

This sub-clause gives power to the Central Board of Revenue to give relief in certain special circumstances. The object of putting in a date there was to give relief to those new businesses—run more by partnership and individuals than by a company—where the business having been started quite recently the amount of capital

(1) Para 53 Notes and Instruction.

employed owing to the nature of the bussiness is very small, and therefore, a percentage on capital might be a quite ridiculous standard profits. Let me take the example of a broker in a jute exchange or produce exchange of something of that kind. In this case, the amount of capital is small in relation to the total volume of the business, and having started after a date when they have any access to a standard period, they have to take a percentage on capital which would be quite unfair. In putting in the date '1st December, 1938', what was in mind, was that there was a period of at least nine months between that date and the 1st September, 1939, and it was thought at that time that there would be in those cases an available standard period. But it has since been pointed out that the last standard period available must under clause 6, as it now stands and not later than 31st March, 1939, and not on the 1st September, 1939. For this reason, the date 'the 1st day of December, 1938' should, therefore, go back, at least as far back as July, 1938, so that there is at least nine months of available standard period. To go back beyond that would be giving extra relief in cases where, although special circumstances where present, there are available standard periods and, therefore, the ordinary process of appeal against the profits of a standard period would be more appropriate, what I would like to suggest, therefore, is that although we are unable to accept the date suggested by my Honourable friend, if he could, with the permission of the House, substitute for his date, 1st day of July, 1938, we could accept that amendment. I ask the Honourable Member whether he will be prepared to accept that suggestion ?
(*Mr. S. P. Chambers*)

"I am prepared to accept the suggestion. Sir, may I substitute the words 1st July, 1938.? (*Babu Baijnath Bajoria.*")

"Business of a pioneer nature":—The condition with such a business is that it should be connected with industry, manufacture or production not undertaken in British India before the 1st April 1932—It means that newly started businesses are not entitled to the benefit of this Provision. In the course of the debate, the Cinama Industry was often cited as an instance—Payment of income-tax by such a business has been considered to be the tax. It is not clear however, that the words imply only illustration of the business. This is evident from the words "without prejudice to the generality of the provision of Sub-section (1)"

Clause (d) was added for reason stated under Amendments above.

Sub-section (4):—See notes under Amendments.

Appeal and reference—There is no right of appeal or reference against the orders of Central Board of Revenue under the Section.

Prowers to make Rules.

Section 27. (1) The Central Board of Revenue may, subject to the control of the Central Government, make Rules for carrying out the purposes of this Act,

(2) Without prejudice to the generally 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 the Indian Income- tax Act, 1922, 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 British India;

(*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 under Section 59 of the Indian Income-tax Act, 1922.

Previous Law:—Section 18, Excess Profits Duty Act 10 of 1919.

Under this Act, the power of Rule-making being vested in the Governer General in Council, Regulations relating to certain matters have been made by the Commissioner Inland Revenue under Section 21, Finance Act, (2) of 1939 and Part I and II of fifth Schedule Finance Act, 1937.

Scope of Section 27:—Section 27 relates to rule-making power under the Act. It now vests in the Central Board of of Revenue, subject to the control of the Central Government.

'Applications for rectification of mistakes,' under Section 20 *ante*, have been added to clause (a) of Sub-section (2) of the Section by the Select Committee. This is consequential upon a change made in Section 20 *ante*. The Select Committee observed:—"In connection with the amendment which we have made in clause 20, it is necessary that there should be power to provide for the procedure to be followed in making applications of mistakes. The amendment in clause (*a*) *sub-clause* (2) provides for this.

Clause (c) to Sub-section (2) of this Section has been added by the Select Committee, clause (c) in the original Bill now being clause (d with regard to the newly added clause (c) to Sub-section (2) the Select Committee observed:—"We have inserted a new clause (c) to give power to provide for the grant of relief to investment companies a part of whose investments are in British India and have been subjected to excess profits tax."

Sub-section (2) application for rectification of mistakes. These words were added by the Select Committee. In connection with the amendment which we have made in clause 20, it is necessary that there should be power for the procedure to be followed in making application for rectification of mistakes. The amendment made in clause (a) *sub-clause* (2) provides for this." Excess Profits Tax Rules are appended here to.

SCHEDULE I.

[SEE SECTION 2 (19.)]

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

Rule 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 principles on which the profits of a business are computed for the purposes of income-tax under Section 10 of the Indian Income-tax Act, 1922 :

[1][Provided that any sums [2](other than any interest paid by a firm to a partner of the firm)] (excluded under the Proviso to clause (iii) or 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 the business for the purposes of excess profits tax :

Provided [3][further that when the profits during any standard period have already been determined for the purpose of an assessment under the Indian Income-tax Act, 1922, 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.

1. Previous Law :—Section 5 Excess Profits Duty Act, 10 of 1939.

2. Analogus Law :—Section 14 (1) Part III, Finance Act, (2) of 1939 and Schedule VII Part I, (Paras. 1 to 13). The words of Rule (1) are practically the same as those of Section 14 (1) Part III Finance Act (2) of 1939.

3. Amendments :—The first Proviso to this Rule has been added by the Amending Act 1940 and amended by the Amending Act 1941. (11 of 1941).

4. Scope of Rule 1 :—Rule 1 contains general provisions relating to the computation of profits for excess profits tax purposes. Generally speaking, the profits shall be computed on 'income tax principles', which is the expression used in the English Act (Section 14 Part III Finance Act, 1939).

The Rule in the Indian Act Schedule amplifies it by expressly stating such profits shall be computed on the principles on which the profits of a business are computed for the purposes of income-tax under Section 10 Act 1922, the words 'or would be so computed if income-tax were chargeable on those profits' which existed in the Bill at the end of Rule 1, before Proviso 1 (which is now 2nd Proviso) have been dropped The 3rd Proviso also aimed at the same thing, *viz*, that profits determined for income-tax purpose may be used for excess profits tax purposes Be it

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(1) This Proviso was inserted by S. 9 of the Excess Profits Tax (Amendment) Act. 1940 (12 of 1944).

(2) These brackets and words were inserted by S. 6 of the Excess Profits Tax (Amendment) Act, 1941 (11 of 1941) and shall have retrospective effect.

(3) This word was inserted by S. 9 of E. P. T. (Amendments Act, 1940 42 of 1940).

noted, however, that the 'previous year' Rule of law is not applicable for excess profits tax purpose. The profits for such purposes are the actual profits arising in the accounting period, in question.

The third Proviso makes provision for a case where a standard period or a chargeable accounting period does not coincide with an accounting period. Such cases must arise where there is no accounting period co-terminus with the standard or chargeable accounting period. In such a case an apportionment of profits (or losses) shall be made after computation as above stated, on income-tax principle having regard to the number of the months of the accounting period and that of the standard or chargeable accounting period That is to say, the profits or losses shall bear the same proportion as the period of accounting period does to the chargeable accounting or the standard period. Where a short accounting period, say of four months, happens to fall wholly within a chargeable accounting period, the entire amount of profits would be liable to excess profits tax.

To take an instance, if a contract lasts beyond one accounting period, the total profits shall be distributed over the various periods of the performance of the contract and the amount of profit to be apportioned with regard to any particular accounting period would depend upon the extent to which the contract was performed during that period.

The concluding words of the Proviso provide for any special cases that might call for a special treatment in which case discretion is given to Excess Profits Tax Officer to depart from the line of apportionment as herein laid down.

Income-tax Principal.

Rule 1 of the First Schedule provides that profits of a business during the standard period or any chargeable accounting period are to be computed on the principles on which the profits of business are computed for income-tax purposes under Section 10 of the Income-tax Act, 1922, subject to the modifications provided by the provisions of that Schedule.

Where the profits during a standard period have been already determined for income-tax purposes such profits are to be taken as the profits for excess profits tax purposes, subject only to the adjustments required by the first Schedule.

It would be unreasonable to compare the profits of a chargeable accounting period which include sums disallowed in respect of payments of salaries and interest made outside British India with the profits of a standard period which are computed exclusive of such sums, which, moreover, form no part of the actual profits of the business. It is provided, therefore, by the first Proviso to Rule 1 of the First Schedule that such sums, although disallowed for income-tax purposes, are to be allowed for excess profits tax purposes.....

Where a standard period or a chargeable accounting period is not an accounting period, the profits or losses of the business for any accounting period wholly or partly included therein as computed on the above principles, are to be apportioned and/or aggregated so as to arrive at the profits or loss of that standard period or chargeable accounting period.

(Second Proviso to Rule 1, First Schedule.)

Such apportionment is normally to be made on a time basis. Power is given to the Excess Profits Tax Officer to make the apportionment otherwise having regard to special circumstances, but it is not intended that this power should be exercised where the profits during different parts of an accounting period vary by reason of circumstances which are ordinary incidents of or inherent in the conditions of the business. The normal time basis should not, therefore, be departed from, whether on the application of the assessee or otherwise, unless the case has been submitted to the Excess Profits Tax Adviser and his direction obtained.1 See also note on page 143 *post*.

(1) Para. 24 Notes and Instructions.

Bad Debt:—An enemy debt not being proved bad and losses incurred in enemy occupied countries should not be allowed as a deduction but the recovery of the estimated tax thereon should be held in abeyance. *Board Circular no. 44 of 1942 D. Dis No. 27 (68) I. T. 42 dated 3rd September 1942, Circular No. 52 of 1942 C. No. 27 (76) I. T. 42, Board's letter D. Dis. No 27 (18) I. T. 41 dated 26th May, 1941.* A formal appeal against the assessment which would be kept pending till loss becomes actually ascertainable may, however, be filed by the assessee. *Circular No. 44 of 1942, D. Dis. No. 27 (68) I. T. 42.* These circulars apply in computation of profits both for income-tax and excess profits tax purposes.

Air Raid Precautions and Air Warden expenditures:—All expenditures incurred on air precautions in connection with property used for business purposes and fees paid to air raid precaution wardens for lecture on air raid subjects are allowable for deduction unless those expenditures bring an asset into being and additions or alterations made to buildings, plant or machinery may have a post war value. *Circular No. 25 of 1941, R. Dis. No. 27 (26) I. T. 41. Circular No. 42 of 1942 C. No. 19 (17) I. T. 42* C. B R, Simla the 22nd August 1942. Extra cost, if any, incurred incorporating natural concealment measures in new buildings which are under construction would not, however, be allowed, *Circular No. 48 of 1942, C. No. 19 (22) I. T. 42 C. B. R. Simla the 16th October 1942.* An expense incurred on air raid precautions in case of a life assurance company should be allowed in addition to the maximum management expenses admissible. *Circular No 36 of 1943, R Dis. No. 54 (13) I. T. 43, C. B. R.* Simla dated the 24th November 1943.

Hire Purchase Agreements:—Under these agreements periodical payments made by the Hirer consist of *consideration for hire* and *payments of purchase*. The former should be allowed as a deduction and the latter be treated as capital outlay subject to depreciation allowed to the lessee on the initial value (i e. the amount for which the hired subject would have been sold for cash at the date of agreement). In order to ascertain the initial value, a certificate from the vendor should be produced or satisfactorily evidence therefore should be brought forward. *Circular No. 9 of 1943 R. Dis. No. 27 (4) I. T. of 1943 C B. R. Simla 23rd March, 1943.*

In case of immediate transfer of ownership to the lessee and the lessor having a right to sue for arrears only, the transaction be considered as one of purchase by instalments and no depreciation in respect of 'hire' should be made although depreciation should be allowed to the assessee. If the equipment eventually becomes the property of the hirer or confers on the hirer an option to purchase the transaction is one of hire-purchase.. *Vide above circular.*

Income from source in Burma, Malaya Indo-China and other countries in the Far East occupied by the enemy:—In these cases, no income should be assessed for assessment years subsequent to 1941-42, although the accounting period falls on a date before the occupation of the territory by enemy and no proceedings shall be discontinued in respect of assessment year 1941-42 and earlier years. In the absence of account books, their copies sent by agents are sufficient compliance with notices calling for accounts. Recovery of tax on all income accrued there for 1941-42 should be kept in absence and under S. 46 (7) of the Indian Income-tax Act. This relief in respect of losses suffered from enemy action will be given to the assessee. *Board's telegram No* 9 *(1) I. T. 42 dated the 24th March, 1942. Circular No. 8 of 1942* dated 10th February, 1942 and Circular No. 9 (1) I. T. 42 C. B. R. New Delhi dated 26th March and 23rd March in case of Madras.

Payment should be allowed in two instalments—the first after 6 months later. The time limit in S. 46 (7) will count from the date of second instalment. *Vide* above *Circular No. 9 (1).* A third instalment payable six months later than the second should be allowed to an assessee who has not been able to obtain the Burma Counter part of the relief. A certified copy of his Burma assessment shall have to be produced and in the absence of such a certified copy, any other document purporting to estimate the amount of relief to be allowed in British India shall be required to be produced. *Circular No. 14 of 1942 and No. 25 of 1942 and No. 25 (8) I. T. 42, C. B. R. Simla the 20th May, 1942.*

Deposit made for security not to be brought into account in the standard period ;—In case of certain houses sold by the builders and money advanced to the purchaser by a building society and secured by the builders the amount of deposit made by the builders by way of security ought not to be brought into account in ascertaining the profit in the standard period and there was no contract extending beyond the accounting period *Allen Fairhead & Sons* 1944 All. Eng. L. R. 636 (Vol. 1). The facts of the case are : The appellants carry on a business as building contractors. During the years 1936 and 1937, which constituted the standard period for the purpose of computing the standard profits of the business, the company sold 18 houses which they had erected on a building estate at Southgate Middlesex. The houses were sold to purchasers who had obtained advances from the Hearts of Oak Permanent Building Society to enable them to complete their purchases. These advances which were secured by mortgages on the houses, were made by the society pursuant to an agreement dated May 1, 1934, as varied by a supplemental agreement, dated November 4, 1936, whereby the appellants agreed, in cases where the amount advanced by the society to the purchaser exceeded 75 per cent. of the purchase price of the hause, to guarantee repayment of excess advances, and also to deposit a sum of money with the society by way of security for the performance of their obligation, such deposit to be repaid by the society in due course in accordance with the terms and provisions of the agreement. For the 2 years 1936 and 1937, being the standard period, the deposits so made by the appellants with the society amouted in all to £ 1,000.

Held :—The amount of deposit ought not to be brought into account in ascertaining the standard profit as no contract extended beyond to accounting period.

In the case of a hotel being requisitioned by the Government and compensation being paid at the rate of £ 7,600 per annum under the compensation (Defence) Act, 1939, the compensation paid was not payable under a lease within the meaning of the latter decision and subject to an assessment under Schedule D case VI, in respect of the excess-*Mellows (H.M. Inspectors of Taxes v. Buxton Palace Hotel Ltd.* 1944 All Eng. L. R. 223 (Vol. 1).

5. Separately computed :—The word 'separately' though a simple word of no numerial significance, is of importance here, in connection with excess profits tax assessment. It means that it shall be computed 'separately' quite apart from the income of the person carrying on the business which he may have from other sources. This is so because, while under Income-tax Act, it is the *'total income'* that has to be taken into account for assessment purposes, for excess profits tax purposes, it is only the *income from business* as 'separate' from income from any other source or sources that comes. To take a concrete instance, suppose *A* has income from two sources, 'business' and 'property' and his income from property in a particular year is 30,000 while his income from business is Rs. 25,000 during the same period. His total income is thus Rs 55,000 computed under the Excess Profit Tax Act, suppose his standard profits come to Rs. 5,000 that could have a balance of Rs. 20,000 as of profits from business assessable to excess profits tax. It is not assessable, the minimum being Rs. 36,000. It would thus be exempt and his income from property would not count towards his profits, from business having been counted 'separately' as above indicated. This makes the expression 'separately computed' clear. Under the English Law, Section 14 (1) Finance Act (2) of 1939, the words 'separately computed' have been construed to mean that 'the computation to be made for excess profits tax is distinct from the computation to be made for any other purpose, *e. g.* income-tax and in computing the profits of the standard period, the computation which was adopted for income tax purposes will not be conclusive.'2 It does not mean that profits of each business shall be separately computed where several businesses are carried on by the same business under Section 2 (5) and all these are to be treated as one business.

Allocation of Profits :— The question of allocation of a particular item, be it income or expenditure, presents several aspects, particularly in regard to excess pro-

(2) Glenboing Co. Ltd. v. Commissioner Inland Revenue 12 T. C. 427.

fits tax. These have received consideration under the English law in various judicial decisions that are noted below,

Compensation in advnnce:—In the English case, *Pegg and Ellam Jones Ltd.* v. C. *I. R.* (12 T. C. 82), in computing the profits for excess profits tax purposes, no deduction was allowed in respect of bonuses paid, in excess of remuneration, in the last pre-war year. Similarly a lump sum paid on retirement to a Director, spread over three years, in the Company's trading account, in excess of the actual amount due was not allowed as a deduction.

Date of sale of stock:—The point of date of sale of stock is obviously a matter of very great importance in regard to the computation of excess profits tax purposes. The question depends in each case upon how and when the contract was completed. Where the original offer of sale was accepted on 12th April 1918 put several items were left unsettled, *e g* wine and spirit stock and certain loans which were to be taken at a valuation, and a further vending agreement was made on 17th May 1918 according to which trading stock and loan etc. were to be purchased at a valuation as on 24th June 1918, it was held that the sale of trading stock did not take place before the 22nd April 1918. No opinion was expressed as to whether the sale took place on 17th May or 24th June 1918.

In order to overcome the difficulties in supply of coal during the last war, a pool of Coal Merchants was formed, which administered the supply of coal. On the closing of the pool on 15th March 1919, the actual stock in hand was far greater than the closing stock shown in the books of the pool. Government claimed the surplus stock and the whole of the address commission realized by them. These were held to be trading profits of the Company assessable to excess profits tax (*Lambert Bros. Ltd.* v. *C. I R.* 12 T. C. 1053, 1054),

Payment made for capital lent:—A non-cumulative rent charge of £ 42,500 per annum was agreed to be created, in priority to debenture and other charges by a Company in favour of a railway Company for constructing a railway line in order to meet the construction costs. The said sum was held to be a distribution of profits and assessable to excess profits tax (*C. I. R.* v. *The Mashonland Rly. Co., Ltd.* 12 T. C. 1159).

Promise to give shares as bonus:—Shares promised to be paid by a Company to its employees as bonus, in the shape of shares in recognition of their increased work and responsibility during the War, were held as not deductible from taxable profits. *C. I. R.* v. *Bill* 12 T. C. 181).

Substituted contract:—Loss under a substituted contract could not be brought in as a deduction in the final accounting period, (*C. I. R.* v. *Barrie Ltd.* 12 T. C. 1223).

Compensation payable in instalments—Where damages for breach of contract are paid in settlement of claim for damages,but are spread over instalments. the sum so paid is all the same a profit for excess profits tax purpose. (*J. Robinson & Sons* v. *C. I. R.* 12 T. C. 1241.]

Allocation of interest:—Interest paid may first be debited to taxed funds and then to untaxed funds. The main idea to be kept in view in such cases is to avoid double taxation. (5 *T. C. 472 foll*) (*C. I. R.* v. *Sterling Trusts Ltd.* 12 T. C. 868),

Computed for the purpose of Income-tax under Section 10 etc:—This means that the profits shall be computed after allowing the deduction which are allowable under Section 10 Income-tax Act, 1922. The words used in the corresponding Section 14 of the United Kingdom Finance Act (2) of 1939 are:—shall be computed on income-tax principles as adopted in accordance with the provisions of Part I, seventh Schedule to this Act."

Income-tax Principle:—The expression 'income-tax principles' has, in Section 14 United Kingdom Finance Act (2) of 1939, in relation to a trade or business, been put down to mean the principle on which profits arising from trade or business are computed for the purposes of Income-tax under Case I Schedule D, or would be so computed

if income-tax were chargeable under that case in respect of the profits so arising. Schedule 7 relates to computation of profits so for excess profits tax purposes and Part I of that Schedule is headed 'Adoption of Income-tax principles as to computation of profits'. The following have *inter alia* been held not to be allowable deduction for purposes of computing profits for excess profits tax purposes, under the United Kingdom Law:—

1. Sums set apart from time to time for making good the depreciation in the value of securities, as required by the Assurance Companies Act, 1909,[1]
2. Bonus paid to Directors.[2]
3. Lump sum paid to a retiring Director, in addition to remuneration.[3]
4. Advance made by a manufacturing company from securing raw material.[4]
5. Loss incurred by company in paying penalty under Customers' Act and legal expenses.[5]
6. Penalty under Customers' Act and costs of proceedings.[6]
7. Compensation paid for unexpired contract.[7]
8. Managers' remuneration.[8]

Section 10 and 13 are to be particularly kept in view in interpreting the words "Income-tax principles". Then, the fact of trade in investments and merely holding investments has to be kept in view. Appreciation or depreciation of these would affect profits in former but not in the latter case.

Profits of mutual concerns and capital receipts not being taxable are other considerations. Most of the litigation relating to excess profits tax in U. K. hinges on above points.

The artificial transactions are to be ignored (Section 10). See notes under Income-tax Act, 3rd Ed. 1945 (by B. R. Jain) on the points above noted (*c. g* capital receipts, profits of mutual concern, etc)

6. Proviso 1 :—The newly added Proviso to Rule 1 of the Schedule provides that interest or salaries paid without British India which are included in profits for Income-tax purpose only in order to secure collection of tax, are not to be included in profit for excess profits tax purposes (Notes and clauses). Interest paid by a firm to a partner of the firm will not be allowed as deduction.

7. Proviso 2:—Have already been determined for the purposes of assessment under the Income-tax Act 1922 : —As already stated above, these words point out to the fact that profits ascertained for income-tax purposes may be used for excess profits tax purposes also.

8. Proviso 3 : —Is not an accounting period :—The expressio , 'is not accouting period' means that the standard period or chargeable accounting period is *not the same as* accounting period *i. e.* does not synchronize within point of period or time. It will sometimes be the case that an accounting period of the business will not coincide with the chargeable accounting period or with the standard period. In such a case the method of apportionment as laid down in this Proviso is to be followed. See also notes under Scope *ante*. The words of Proviso 2 are the same as those of Section 14 (1) Proviso United Kingdom Finance Act.

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(1) Irish Catholic Church Property Insurance Co , Ltd. v. Commissoiner Inland Revenue 12 T. C. 13 (18, 20, 21).

(2) Pegg and Ellan Jones Ltd. v. Commissioner Inland Revenue 12 T. C. 82 (88, 90, 92).

(3) Pegg and Ellan Jones Ltd. v. Commissioner Inland Revenue 12 T. C. 82 (89. 92).

(4) Charles Marsden and Sons Ltd. v. C. I. R 12 T. C. 217, 220; 255.

(5) C. I R. v. E. C. Warne- and Co., Ltd. 12 T. C. 221 (230, 232).

(6) C. I. R. v. Alexander Von Green Co., Ltd. 12 T. C. 232 233, 234, 241).

(7) John Smith and Sons v. Moore 12 T. C. 266 (272, 277, 297).

(8) Ibid.

9 Profits or losses computation of:—Under Section 16 (2) *ante*, defining 'losses' for excess profits tax purposes, are to be computed in the same manner as 'profits'.

Accordingly, when, in any case the contingency, mentioned in the 3rd Proviso to Rule 1, arises losses also, like profits may be apportioned over several accounting periods.

It is noteable in this connection under the United Kingdom Law, that losses cannot be carried forward from one period to another for excess profits tax purposes and cannot be set off against profits, as is possible under the Income-tax Law. The same is the case in India. (In this connection please also see notes under S. 7 *ante*.)

Under Rule 3 (3) Section 24 (2) Income-tax Act 1922, relating to the carrying forward of losses is not applicable for excess profits tax purposes

Then the term 'loss', for excess profits tax purposes, is confined by Rule 3 (2) to loss sustained in the business to which the excess Profits Tax Act applies and to no other.

Rule 2—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 Indian Income-tax Act, 1922 as amended by the Indian Income-tax (Amendments) Act; 1939, computed for the chargeable accounting period, notwithstanding that the Indian Income-tax (Amendments) Act, 1939, may not have been in force in the standard period

1 General.

Rule 2 is new, having been added by the Select Committee with regard to this, the Select Committee observed :—This new provision is intended to secure that the computation of profits in any standard period should be made on the same basis as the computation of profits in the chargeable accounting period, and in particular that depreciation should be, calculated on the written down value basis instead of on the cost basis and that income assessable on the arising basis in the chargeable accounting period but on the remittance basis in the standard period for income-tax purposes should be computed on the arising basis of excess profits tax purposes."

Thus, fairly enough, the Select Committee have chosen to make an express provision in the Rules for computation of profits that the basis of computation, both in the case of 'standard period' and chargeable accounting period should be the same.

Deprecation, in particular, is to be calculated on ' written down value" and not on cost basis.

Above all, income for excess profits tax purposes, is to be computed on arising or accrual basis, and not on basis of remittances in the chargeable accounting period. The arising or accrual basis has been adopted though remittances basis may have been adopted in the standard period.

"To secure the comparison of with like, it is provided by Rule 2 that the profits of the standard period are to be computed on the same basis and in the same manner as those of the chargeable accounting period are computed under the Indian Income-tax Act, 1922, as amended by the Indian Income-tax (Amendment) Act, 1939.

Cases may arise in which in the standard period for the assessee's accounts have been kept on the cash basis and accounts are produced on the mercantile basis for the chargeable accounting period. The latter may be accepted provided that the assessee agrees to the computation of the profits of the standard period on the same basis. A change over from the mercantile basis to the cash basis should not be accepted in any circumstances.[1]

This Rule fulfils the undertaking given by the Finance Member in the Assembly that in computing excess profits and in computing profits of standard period and the accounting period, *like shall be compared* with like and that any changes in the law of Income-tax in doing so, would be ignored.

(1) Para 24 Notes and Instructions.

"Rule 2 of the First Schedule requires the profits of the standard period to be computed" on the same basis and in the same manner as are those of the chargeable accounting period. This requirement may be fulfilled by constructing a series of values and depreciation allowances, to cover all accounting periods in question, the later terms of which are Rs. 57,000 and Rs. 4,560 respectively. This series can only be found by working back from these figures thus:—

Value on which depreciation calculated.	Rs.		Depreciation at 8% allowable for excess profits tax purposes. Rs.
1939	57,000	..	4,560
1938 100/92 of Rs. 57,000=	61,956	..	4,956
1937 100/92 of Rs. 61,956=	67,343	..	5,387
1936 100/92 of Rs. 67,343=	73,199	..	5,856

and, the deduction in computing the profits for excess profits tax purposes of the year 1939 being Rs. 4,560, if the year 1936 is the chosen "standard period" the deduction for depreciation, in computing the profits of that year is Rs. 5,856.

It will be observed that, except for the year 1939, when the Income-tax basis was changed, there is no correspondence between the values above upon which the excess profits tax allowances for depreciation have been calculated and the values which... ....the assets in question must be valued for the purpose of the computation of capital as at the relevant dates.[1]

2. **Profits of a business during the standard period**:—It is a well known fact that, under the Excess Profits Tax law, the determination of profits of a particular standard period is a matter of basic importance. It is indeed, the most relevant and material point whether the particular profits sought to be assessed to excess profits tax relate to the particular standard period. There are a number of English cases on the point. In *J P. Hall and Co Ltd.* v. *Commissioner Inland Revenue*,[2] it was held that the profits out of contracts for delivery of goods should be taken to have accrued when the goods were delivered and that they should be brought into accounts as and when they were realized.

In *Short Bros. Ltd.* v. *Commissioner of Inland Revenue*,[3] it was held that profits by way of compensation received for cancellation of contract must be included in the profits for the accounting period in which the compensation became payable and was in fact paid.

In the *Sunderland Shipbuilding Co. Ltd.* v. *Commissioner Inland Revenue*[4] compensation for cancellation of contract was held to be a profit of the period during which the agreement for cancellation of contract was entered into. Similarly in *Commissioner Inland Revenue.* v. *The North Fleet Coal and Ballast Co. Ltd.*[5] lump sum paid in lieu of annual sums, in consideration of foregoing delivery of check for the unexpired period of the contract was held to be profits of the accounting period during which the sum was agreed to be paid.

In *Jessee Robinson & Sons* v. *Commissioner Inland Revenue*[6] contract entered into on 30th March, 1920 was cancelled on 29th June, 1920 upon condition of payment by purchaser of a certain sum, to be received under the original and substituted contract. The sum, though received in two instalments in January and August, 1921, was treated, as trading receipt or profits of the accounting period of one year ending 30th June, 1920. In the case of another contract, in this very case, contracts were made for sale of certain quantities of yarn on 20th August, 1919 and 15th March, 1920. In July. 1920 the purchaser cancelled the contracts. In June, 1921, the purchaser agreed to pay a certain sum as damages for breach of contract.

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(1) Para 27 Notes and Instructions.

(2) 12 T. C. 382.

(3) 12 T. C. 955,

(4) 12 T. C. 955.

(5) 12 T. C. 1102. (6) 12 T. C. 1241

This sum was paid in June, 1921. It was held that the sum formed part of profits for the accounting period of the year ending 30th June, 1921.[1] Where damages suffered during the final accounting period were repaid after close of that period, the costs thereof were held as deductions allowable in respect of that period. [2]

Rule 3.—(1) The principal 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.

(3) Nothing in this Act, shall be constructed as permitting the application, in computing profits for the purposes of the excess profits tax, of the provisions of Sub-section (2) of Section 24 of the Indian Income-tax Act, 1922.

1. Analogous Law :—Part 1 Schedule 7. Finance Act 2 of 1939 contains similar provisions to prohibition against carrying forward of losses.

Scope of Rule 3:—Rule 3 relates to 'depreciation' losses. The connotation and scope of the term 'loss' has, by this Rule, been restricted to such losses as are sustained in a business to which the Act applies [Rule 3 (2)]. By Rule 3 (3), the carrying forward of losses have been prohibited for excess profits tax purposes. Section 24 (2) Income-tax Act, 1922 being made expressly inapplicable. This, as already indicated above under the general provision contained in Rule 1 *ante*, is in accordance with the English law.

Sub-rule (1) of Rule 3, this prohibits the carrying forward of 'depreciation allowance' for one period to a subsequent period 'depreciation allowance' and adding to it.

The intention of the Rule was to make explicit provision to prevent the carrying forward of losses under Section 24 (2) of the Indian Income-tax Act, 1922, although that Section is not one of the Sections of the Income-tax Act which are applied by Clause 20 (now 21) of the Bill. We have revised the drafting of the Rule to exclude to possibility that by a wider interpretation of the Rule than was intended expenses charged in the accounting period might be disallowed on the ground that the loss though appropriate to the accounting period was not actually made in that period. It is notable that though 'losses' are previous are not to be carried forward, such losses are not ignored in Excess Profits Tax law. The said loss is reflected in the shape of 'deficiency' under Section 7 of the Act." See notes Section 2 (22) *post*.

The following is the circular regarding Computation of Depreciation and written down values of assets for the assessment years 1942–43 onwards.

"The new definition of the term written-down value" as introduced by the recent amendment of Section 10 (5) of the Act has come into operation from 1st April, 1942. According to this definition the written-down value of the assets acquired before the "previous year" has to be computed by deducting from the actual original cost of such assets all depreciation actually allowed to the assessee concerned. The word "allowed" in its strict literal interpretation and having reference to the word 'allowances' in Sub-section (2) of Section 10 would mean the depreciation allowance considered in any particular assessment irrespective of whether effect was given thereto in that assessment or not.

"The second Proviso to Section 10 (5) having, however, been altogether omitted, the unabsorbed depreciation prior to 1939–10 can no longer be capitalised and by virtue of clause (b) of the Proviso to Section 10 (2) (vi) such unabsorbed depreciation cannot either be carried forward. To obviate the hardship arising in such cases it has been decided that the unabsorbed depreciation at the end of the 1938–39 assessment (which had not been wiped off by profits assessable for 1939–40) should not be taken into account in arriving at the amount of depreciation 'actually allowed' within the meaning of the new clause (b) of Section 10 (5). So far as the assess-

(1) 12 T. C. 1241.
(2) Neval Colliery Co., Ltd. v. C. I. R. 12 T. C. 1011 (1017).

ments for 1939–40 and onwards are concerned the words "actually allowed" must, however, be interpreted in their strict literal sense as stated above, as the unabsorbed depreciation from 1939–40 ouwards can be carried forward definitely until absorbed.

"Where the unabsorbed depreciation at the end of the 1938–59 assessment relates to more than one class of assets to which different rates of depreciation were applicable the allocation of the net balance of unabsorbed depreciation remaining at the end of the 1938–39 assessment should be made proportionately on the basis of the quantum of depreciation allowance calculated on each class of asset upto and including the assessment for 1938–39. For this purpose it must be assumed that the profits made in any year have been applied first to reduce or wipe off the unabsorbed depreciation brought forward from the earlier year before they are applied against the depreciation allowance of the year of such profits. The result will be that the unabsorbed depreciation remaining at the end of 1938–39 assessment will be treated first as the allowance or part of the allowance for 1938–39, the balance remaining being treated as the allowance or part of the allowance for 1937–38 and so on, backwards. If the unabsorbed depreciation at the end of 1938–39 assessment is equal to or less than the depreciation or less than the depreciation allowance for 1938–39, then it should be assumed that the entire unabsorbed balance represents the allowance of part or the allowance for 1938–39, as the case may be.

"If any part of the unabsorbed depreciation remaining at the end of 1938–39 assessment has been wiped off by the profits assessed for 1939–40, the part thus wiped off must be left out for the purpose of arriving at the net unabsorbed balance to be allocated among the various assets."

"As regards non-existent assets in respect of which there was unabsorbed depreciation at the end of the 1938–39 assessment (not wiped off by profits assessable for 1939–40), it has been decided that if any asset of the particular class (*e. g.* motor car to which the non-existent asset belonged) is in existence, the unabsorbed depreciation relating to the non-existent asset in respect of years prior to 1939–40 should be included in the written down value of any asset of that class which is in existence. If, on the other hand, no asset of that particular class is in existence, the unabsorbed depreciation in respect of the non-existent asset for years prior to 1939–40 should be spread over the remaining assets proportionately with a view to such unabsorbed depreciation being adjusted against future assessments at the various rates of depreciation applicable to the remaining assets.

"If any assessee seeks to depart from the method described above on the ground that it would be unfair to spread the unabsorbed depreciation on a discarded item over all the various classes of depreciation carrying assets the case should be submitted to the Board for instructions."

Illustration No. 1:—showing the working of first two paras of the above circular.

A & Co. purchased machinery of Rs. 2,00,000 on April 1928, and the company is running at a loss in some of the years. The depreciation in such a case will be calculated for the assessment year 1939–40 as follows.

Assessment Year.	Loss.	Profits.	Depreciation at 5%	Unabsorbed depreciation.
1929–30 ..	20,000	Nil	10,000	10,000
1930–31 ..	Nil	25,000	10,000	Nil
1931–32 ..	5,000	Nil	10,000	10,000
1932–33 ..	5,000	Nil	10,000	20 000
1933–34 ..	Nil	5,000	10,000	25,000
1934–35 ..	20,000	Nil	10,000	35,000
1935–36 ..	Nil	5,000	10,000	40,000
1936–37	Nil	10,000	10,000	40,000
1937–38 ..	Nil	5,000	10,000	45,000
1938–39 ..	Nil	20,000	10,000	35,000
1939–40 ..	5,000	Nil	10,000	45,000

Illustration No:—2

Example in view of Para. 3rd of the above circular.

A & Co, purchased in April 1928 Machinery for Rs. 100,000, building 1st grade for Rs. 100,000, building 2nd grade for Rs. 50,000

The written down value of the above assets would be calculated for assessment year 1939-40 as under.

Assessment year	Depreciation Building 1st Grade 2 1/2%	Depreciation on Building 2nd Grade 5%	Depreciation on Machinery 5%	Total of Depreciation	Profits	Loss	Unabsorbed Depreciation
1929-30	2,500	2,500	5,000	10,000	5,000	nil	5,000
1930-31	2,500	2,500	5,000	10,000	nil	5,000	15,000
1931-32	2,500	2,500	5,000	10,000	nil	12,000	25,000
1932-33	2,500	2,500	5,000	10,000	30,000	nil	nil
1933-34	2,500	2,500	5,000	10,000	nil	15,000	10,000
1934-35	2,500	2,500	5,000	10,000	nil	12,000	20,000
1935-36	2,500	2,500	5,000	10,000	15,000	nil	5,000
1936-37	2,500	2,500	5,000	10,000	nil	5,000	15,000
1937-38	2,500	2,500	5,000	10,000	nil	1,000	25,000
1938-39	2,500	2,500	5,000	10,000	nil	500	35,000
1939-40	2,500	2,500	5,000	10,000	15,000	nil	30,000
Totals	27,500	27,500	55,000	1,10,000	65000		30,000

Illustration No:—3

3. Unabsorbed depreciation from the begining upto the ending of 1938-39	..	..	35,000
Less Depreciation can be set off against the profit of 1939-40	..	..	15,000
Balance of unabsorbed depreciation		..	20,000

Rs. 20,000 unabsorbed depreciation will be considered as the allowance or part of allowance for 1937-38 and so on backward.

Now written down value of at end of 1939-40.

		Building 1st grade 1,00,000		Building 2nd grade 50,000		Machinery 1,00,000	
Original Cost							
Less Depreciation due 1939-40	27,500		27,500		55,000		
Less unabsorbed depreciation upto 1938-39 assessment year	8,725	.. 18,775	8,725	.. 18,775	17,500	.. 37,500	
	18,775		18,775		37,500		
Written down value=		81,225		31,225		62,500	62,500

Rs. 15,000 the depreciation allowance will be carried forward against the profits of future next year's profits.

Illustration No. 4. showing the working of para. 5th of the circular as regards the present existing assets in respect of which there was unabsorbed depreciation.

A & Co. purchased building 1st grade for Rs. 1,00,000, building 2nd grade for Rs. 50,000, Machinery Rs. 1,00,000 on 1st April, 1928 and 3 motors for Rs. 20,000 on April, 1935

The written-down value of the existing assets would be as under for the year 1939 40.

Assessment Year.	DEPRECIATION ON				Total	Profits	Loss	Unabsorbed depreciation
	Building 1st Grade 2 1/2%	Building 2nd Grade 5%	Machinery 5%	Motor 15%				
1929-30	2,500	2,500	5 000		10 000	5,000	nil	5,000
1930-31	2,500	2 500	5,000		10,000	nil	5,000	15,000
1931-32	2,500	2,500	5,000		10,000	nil	12,000	25,000
1932-33	2,500	2,500	5,000		10,000	30,000	nil	nil
1933-34	2,500	2,500	5,000		10,000	nil	15,000	10,000
1934-35	2,500	2,500	5,000		10,000	nil	12,000	20,000
1935-36	2,500	2,500	5,000		10,000	15,000	nil	5,000
1936-37	2,500	2,500	5,000		13,000	nil	5,000	18,000
1937-38	2,500	2,500	5 000	3,000	13,000	nil	1,000	31,000
1938-39	2,500	2,500	5,000	3,000	10,000	nil	500	41,000
1939-40	2,500	2,500	5,000	*Sold*	10,000	2,000	nil	49,000

Motor purchased in April 1935

Total unabsorbed depreciation upto 1938-39

Building 1st grade	Rs. 8,750.
Building 2nd grade	Rs. 8,750.
Machinery	Rs. 17,500.
Motor	Rs. 6,000.
Total.....	Rs. 41,000

As the motor cars case is not in existence, therefore Rs. 6,000 relating to the unabsorbed depreciation for Motors will be divided proportionately on the remaining assets.

Total unabsorbed dep. upto 1938-39 *i. e.* Building 1st grade. 8,750 + 1,500 = 10,250

Building 2nd grade. 8,750 + 1,500 = 10,250

Machinery 17,500 + 3,000 = 22,500

Hence written down value at the end of 1939-40 assessment year would be as under

	Building 1st Grade		Building 2nd Grade		Machinery	
Original Cost	1,00,000		50,000		1,00,000	
Less						
Depreciation due	27,500		27,500		55,000	
Less						
Unabsorbed depreciation upto 1938-39	8,750	18,750	8,750	18,750	17,500	37,500
	18,750		18,750		37,500	
Written down value =		81,250		31,250		62,500

The unabsorbed depreciation of Rs. 10,000 for 1939-40 will be carried forward against the future next year's profits.

Rule 4 (1) Income received from investment shall be included in the profits in the cases and to the extent provided in Sub-rules (2) [1] [(2A)] and (4) of this Rule and not otherwise.

(2) In the case of the business of a building society, or of a money lending 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 investment, whether or not such income is included in the profits charged under Section 10 of the Indian Income-tax Act, 1922, 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.

[2][(2-A) In the case of a business part of which consist 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 person carrying on the business are beneficially entitled.]

(3) Notwithstanding anything contained in Sub-rule (2) [3][or 2 (A)] 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.

(4) 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 under Section 9 of the Indian Income-tax Act, 1922, or under any other Section of that Act.

(5) 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, on 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.

1. Analogous Law:—Rule 6 Part 1 Schedule 7 English Finance Act (2) of 1939 contains similar provisions,

2. Scope of Rule 4:—Rule 4 deals with income from investments and points out how for and in what particular cases would such income be taken into account in computing profits. Such Rules (2) and (4) indicate this and restrict the computation of profits from investments to those cases and to the extent therein mentioned only. This is the clear sense of Rule 4 (1).

3. Rule 4 (1) (a) "Income received from investment":—There may be cases where investment income is received under deduction of tax, or where dividend is paid free of income-tax. In such a case apparently, the 'gross' and not the 'net' amount of investment income shall be taken into account in computing profits.

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1. The bracket, figure and letter "(2A)" were inserted by S. 9 of the E.P.T. Act, (Amendment) Act 1940 (42 of 1940),

(2) Sub-rule (2A) was inserted by the Amending Act 1940 (42 of 1940).

(3) These words, brackets and figures were inserted ibid.

The words 'or has been subjected of tax at source, or is free etc.' in the succeeding Sub-rule (2) clearly support the view above indicated.

Rule 4 (1). (b) "Shall be included in the profits":—Seems clearly to mean that investments shall be treated as a receipt or a self contained item of profit." The expression nearly means that investments shall also form part of the profits to be computed, though it may be that even after this inclusion, the net result may be a "loss" and not 'profits'.

The Rule is concerned only with 'income received from *investments*,' with no reference to "other property". This is supported also by the use of the words, 'or business consisting wholly or mainly in the dealing in or holding of investments', occuring in Sub-rule (2), there is no reference to 'other property', In the English decisions under Excess Profits Duty Act (2) of 1915 it has been held that the words 'investments' is to be taken in its ordinary sense, and it is to be taken in its ordinary sense as being an investment whether it be or be not connected with the business that is carried on by the investor [1] In the same case, it was observed[2] that "investment"... does include all money embarked in the business itself.....but....it includes money embarked in the business and with a view to the advantage of the business invested in an outside security.

In the case of shares and debentures, the motive of purchase did not prevent the same from being treated as 'investments'.[3] In another English case, *Liberty & Co. Ltd.* v. *Commissioner Inland Revenue* [4] War Loans and British Government securities were held to be investments, although those had been acquired for the purpose directly connected with the business and it was observed (*Per Pollock M.R.*) that it was impossible to place a restricted meaning on the word 'investment.' In *James Waldie & Sons Ltd.* v. *Commissioner Inland Revenne*,[5] however advances made without interest or security by a coal company and secure supplies of coal were held to be capital employed in business and not investments.

4. Sub-rule 2:—In the cases mentioned in this Rule *viz.*, in the case of the business of

1. a building society.
2. a money-lending business.
3. Banking business.
4. Insurance business.
5. Holding (wholly or mainly) of investments the entire income from above mentioned business shall be included as 'profits' assessable to Excess Profits Tax, and this would be so, irrespective of the same having been charged under Section 10 or any other Section of Income Tax Act or irrespective of the fact whether tax on such income has been recovered at source or whether such income is free as exempt from tax.

Investment of Income

Sub-rules (1) (2)—of Rule 4 provide for the inclusion of all income received from investments in the case of the classes of business specified in Sub-rule (2) but in no other case.

This investment income is to be treated as profits liable to excess profits tax only in the case of the following classes of business:—

(a) building societies;

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(1) Per Lord Sterudale M. R. in C. I. R. v. The Gas Lighting Improvement Co., Ltd. 12 T. C. at p 503: 525.

(2) Per Viscount Cove L. C. at p. 535-530.

(3) ibid per Lord Finlay a. p. 539].

(4) 12 T. C. 630.

(5) 12 T. C. 113 (119, 120, 123).

(b) money-lending businesses;

(c) banks;

(d) insurance businesses, another than life assurance business which is exempt;

(e) "dealing" businesses, *i.e.*, businesses *e.g.*, stock-jobbers consisting wholly or mainly in their dealing in investments; and

(f) investment companies, *i e.* businesses consisting wholly or mainly in the holding of investments carried on by companies or incorporated societies. [Proviso to Section 2 (5)].

In the case, however, of a business part of which consists, in banking, insurance of dealing in investments, Sub-rule (2A) of Rule 4 requires the inclusion in profits of all income from the investments which are held for the purposes of the *part* of the business.

It should be noted that, while on companies and incorporated societies carrying on the business of holding investments are within the charge any "person" carrying on the business of dealing in investments is liable to assessment.

It will be observed that, where the profits of a subsidiary company are, under Section 9, treated as the profits of the parent company, dividend from the subsidiary company received by the principal company are to be excluded in computing profits of the latter. (Sub-rule 3 of Rule 4.)

Relief is provided in the case of companies within classes (e) and (f) above, the profits of which for excess profits tax purpose *include* dividends from companies themselves liable to Indian excess profitst tax. This relief is to be computed according to the provisions of Rules to be made by the Central Bord of Revenue in pursuance of Sectian 27 of the Act.[1]

XYZ Ltd carried on a retail business and had a profit of Rs. 60,000 in the C. A. P The company had investments of a capital value of Rs. 60,000 yielding an income of Rs. 300/- and paid loan interest at 5 per cent on a loan of Rs 30,000 The debit of Rs. 1,500/- for loan interest will. therefore, be restricted as follows :

Capital value of loan	..	..	30,000
Less capital value of investments	..	..	6,000
			24,000

The debit for interest will therefore be limited to Rs. 24,000 at 5 per cent - 1200 in respect of C.A.P. to 31st March 1940. After that date, no interest will be deducted.

Sub-rule 2 A:—It secures that, in the case of banking, Insurance or dealing in investments which forms part of a business not consisting wholly or mainly in such activities and not, therefore within Rule 2 (2) of Schedule 1, the investment income from such part of business is to be included in profits for excess profits tax purposes.

5. Sub-rule 3:—This Sub-rule was added by the Select Committee and relates to a case of subsidiary company, where its profits are included in the Excess Profits Tax assessment of the principal company. In such a case, the dividends given away by the subsidiary company out of its profits shall not be included in the assessable profits of the principal company. With regard to this Sub-rule the Select Committee observed:—A new Sub-rule (3) has been inserted to secure that where, under Clause 9 of the Bill, profits of a subsidiary company are included in the excess profits tax assessment of the principal company, dividends from the subsidiary company out of such profits should not also be included in such assessment.*

6. Sub-rule 4 (4):—Rule 4 (4) [which was R. 3 (3) in the original Bill as referred to Select Committee], relates to busin ss of letting out property on hire. With regard to this Sub-rule, the observations in the minute of dissent by Sir Cowasji

(1) Para. 31 Notes & Instructioh;

* This Sub-rule may well be said to be an addition consquential on the provisions of Section of the Act.

Jehangir, one of the member of Select Committee will help in the understanding of the scope of the Rule. He observed:—"It has been admitted that there should be like between the standard period and the chargeable accounting period. I would like to point out one case in which it appears to me there will not be like-to-like under Schedule 1, Rule 3 (3).

As is well known, in several large cities in India there were a large number of vacancies in buildings, due to the activity of building enterprise and a lack of demand. The result is that there was a greater supply than demand. There may be in the standard period a deficiency in revenue due to such vacancies in real property, while in the chargeable accounting period such vacancies may decrease, correspondingly increasing the revenue. This may not be due to the war. If we are to compare like with like, I think, there should be some allowance in Bill whereby the extra revenue in chargeable accounting period is comparable with the revenues in the standard period".

Under Sub-rule (4), income from letting out property on hire shall count towards profits assessable for Excess Profits Tax purposes, irrespective of any assessment of that income under Section 9 or any other provision of the Income-tax Act.

Letting of property on hire.

Sub-rule 4 of Rule 4 provides, for the inclusion in the profits of a business, of income received from the letting out of property on hire in the case of any business consisting *wholly or partly* in such activities, whether or not such income has been charged to income-tax under Section 9 of the Indian Income tax Act, 1922, or under any other Section of that Act.

In the case of a business in which premises are owned or rented and a portion used for the purpose of the business while parts are let or sublet, the rents received should be included in the computations of profits and all proper outgoings in respect of the property allowed.

Similarly, if incidentally to the carrying on a business, machinery or other property is let on hire the income received from such activities should be included in the computation of business profits.

Patent rights, etc., are property, and if, in the course of a business of manufacture licences are granted for the use of the patented process, etc, any income from should be treated for excess profits tax purposes as income of the business.

The case of a business consisting for example wholly in the letting of plant and machinery on hire is a business within Section 10 of the Indian Income-tax Act, and no special difficulty arises in the computation of its profits.

The same of a business carried on by a Company which consists wholly in the holding of investments or other property is only to be treated as a business for excess profits tax purposes by virtue of Section 2 (5) Proviso. In such a case its profits will not have been computed for income-tax purposes as the profits of business under Section 10, but Rule 1 of the First Schedule to the Excess Profits Tax Act, provides that they shall for excess profits tax purposes be so computed.

Similarly in the case of business property partly sublet referred to in sub-paragraph 2 of this paragraph, the profits from such letting are to be computed under the provisions of Section 10, not Section 9, of the Income-tax Act.[1]

Income from the letting out of profits on hire.

Doubts having been expressed as the exact application of Sub-rule (4) of Rule 4 of Schedule1 the following interpretation of the Rule should be noted.

The business to which the charge to excess profits tax extends are defined by Sub-section (5) of Section 2 of the Act, and apart from the first Proviso thereto, they include only trade, commerce or manufacture and any adventure of a similar nature and professions or vocations which are not exempt as coming with the exception to the charge contained in the concluding words of the Sub-section.

(1) Para 31 Notes and instruction.

The first Proviso operates to bring within the charge certain business which are not covered by the Sub-section itself, such businesses being businesses carried on by companies or societies, incorporated by or under any enactment whose functions consits wholly or mainly in the holding of investments or other property.

The scope of the charge thus defined cannot be extended by any Rule of Schedule I to the Act, for that Schedule merely provides rules for the computation of profits of such businesses as by Sub-section (5) of Section 2 are brought within the charge to excess profits tax.

It follows that the words "business" in Sub-section (4) of Rule 4 can only refer to a business that is within Section 2 (5), and that the words "which consists wholly or partly in the letting out of property on hire" cannot be read bringing within the charge a business which is properly described by the words just quoted unless that business is with the definition in Section 2 (5) read with its first Proviso. Thus.

(i) the business of owing landed property and letting it is not within the charge unless such business is carried on by a company or society incorporated by or society incorporated or under any enactment;

(ii) a business consisting, for example, of letting out on hire radio apparatus or any other plant, machinery, etc., is within the charge since it falls within the description "trade, commerce or manufacture;"

(iii) a business within the words of Section 2 (5) which carries on the ancallary or subordinate activities of letting out on hire plant, machinery etc., is assessable as a whole to include the rentals from such letting out ,

(iv) a business consisting of the exploitation of leased minerals, some portion of which is worked by the lessee while the other portion is sublet at rent or royalty should be assessed as one business to include the rents or royalties received.

(v) a *proprietor* of minerals, who is not a company or society falling within the first Proviso to Section 2 (5). who works some deposits and leases, others is assessable only in respect of the business of working minerals, exclusive of the rents and royalties received from the other properties;

(vi) where in the course of carrying on business within the definition in Section 2 (5), premises are rented for the purposes of the business, any rent received from subletting a portion of those permises should be included in profits for excess profits tax purposes.[1]

This is an exception to the general Rule that letting out property, on hire is not 'business' (*Sangsters' Case* 12 T. C. 208 at 216; *Korean Syndicate* 12 T. C. 181; *C. I. R.* v. *Birmingham Theatre Royal Estate Co*, 12 T. C. 580.

7. Sub-rule S. (5):—This Sub-rule (5) of Rule 4 is the same as the English para. 6 (3) Schedule VII, Finance Act, (2) of 1939.

This Sub-rule relates to cases of beneficial owner of investments, whose income is not to be computed as 'profits', assessable to Excess Profits Tax. If investment has been made out of borrowed capital, interest on such borrowed money has to be deducted.

The Sub-rule provides that borrowed capital would count after deducting the value of investments from it deductible would be computed on the balance left after the deduction of the above value.

Interest on borrowed money.

An exception to the general Rule that interest on borrowed money is, on income-tax principles, deductible in computing profits for excess profits tax purposes is provided by Sub-rule 5 of Rule 4. This paragraph provides that were the person carrying on a business other than one of banking' insurance, etc , has investments the income from which excluded from profits under this Rule, deduction in respect of interest on borrowed money is to be restricted.—

(1) Para. 32 & 33 Notes & Instruction.

(i) in the case of a company to interest on the excess of the borrowed money over the value of the investments; and

(ii) in any other case to interest on the excess of the borrowed money over the value of any investments mortgaged, charged or pledged as security for the loan.

It should be noted that it is the value, not the cost, of the investments that is to be set against borrowed money.

Example:—

X. Y. Z. Ltd. Accounting period of 12 months ended 31st March 1940.

	Rs.
At 1st April 1939, Debentures outstanding were	1,00,000
Other loans amounted to	50,000
Bank overdraft was	1,20,000
The Company held (excluded) Investments valued at ..	1,20,000
At 1st October 1939, the company repays Debentures ..	25,000
and borrows on loan	10,000
At 31st March 1940, the Bank overdraft has increased to ..	25,000
and its Investments (no sales or purchases) are valued at ..	1,40,000
The interest debited in the year is	
Debenture interest	4,375
Loan interest	30,300
Bank interest	675
	8,350
The borrowed money for 12 months' accounting period is:—	
Debentures Rs. 1,00,000 Less Rs. 25,000 for 6 months ..	87,500
Loan Rs. 50,000 plus Rs. 10,000 for 6 months	55,000
Average Bank overdraft, say	23,000
	1,65,500
The average value of the Investments to be set off is, say, ..	1,30,000
Leaving	35,500

as the borrowed money the interest on which is to be allowed.

The interest on the borrowed money, 1,65,500 being Rs. 8,350, the interest allowable is

$$\frac{35,500}{1,65,500} \times 8,350 = \text{Rs. } 1,791$$

Proviso.—The Proviso restricts the deduction to be made as above, in cases where the person carrying on the business is not a company, only in cases where the investments are mortgaged, charged or hypothecated form reyayment of the principal borrowod for investment purposes, and interest therein. The provision thus, specifies the restriction placed on the deduction of interest as borrowed money in cases of business carried on by a company.

Rule 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.

This Rule is new, having been added by the Select Committee to the Rules in this Schedule 'to provide relief in cases a business has been expanded with capital borrowed from a bank or on debentures by securing that the interest paid on the loan should be disallowed and the loan itself should not be deducted from the total capital. The effect will be to substitute as a charge, in computing the profits liable to excess profits tax, the statutory percentage for the interest paid on the loan.'

In an English case, *A. W. Walker & Co.* v. *The Commissioner Inland Revenue*[1] it was held that a certain fixed share, 3/20th of the profits of a firm to be paid, along with a fixed annual amount, payable towards money borrowed for business was not 'interest' on money borrowed, and was therefore not, deductible in computing profits assessable to Excess Profits Duty.

Capital raised by bank loan or debentures after end of stand period: Rule 5 provides that, if, at any time after the close of the standard period selected by the assessee, an 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 capital shall be deducted in computing profits and that the amount of such loan or debentures shall not be deducted in computing capital.

The effect of the Rule is that in the circumstances set out therein the assessee obtains allowance of the statutory percentage upon the increased (loan) capital employed in the business less the interest actually payable upon such loan capital.

It is to be noted that in the case of debentures they must be a *public* issue and secured upon the property of the company while in the case of a bank loan the bank must be one carrying on a *bona-fide* banking business.

The functions of a bank are to accept money from customers on current account, to make loan to its customers and to provide for transfer of money from one persons to another Unless a "bank" carries on each of these functions it cannot be regarded as carrying on a "*bona fide* banking business". It should be observed that, provided that the business is "*bona-fide* banking business" as herein defined, Rule 5 may be applicable whatever the status of the "person" carrying it on. The Rule is not defined to Banking Companies. If the Excess Profits Tax Officer has any doubt as to the acceptance of a claim that a particular concern carries on a *bona-fide* banking business within the meaning of the Rule he should report the to the Excess Profits Tax Adviser.

It should be noted further that is only in so far as the borrowed money increases the capital employed in the business, as the capital computed for excess profits tax purposes under the provisions of the second Schedule, that the Rule applies.

Example:—

			Rs
Net assets at 31st December 1937 close of standard period			10,00,000
Less borrowed money ..	Rs. 10,00,00		
Less Excluded investment ..	Rs. 50,000	..	50,000
Excess profits tax capital ..	..	..	9,50,000
Net assets at 1st September 1939 beginning of chargeable accounting period ..	..	..	12,00,000

(1) 13 T. C. 297 (331) (302).

		Rs.		
Less Borrowed money	..	3,00,000		
Less Excluded investments	..	1,00,000	..	.. 2,00,000
Apart from Rule 5 the excess profits tax capital			..	.. 10,00,000
At say, 1st July 1938 public issue of debentures			..	.. 2,00,000

The whole of the Rs. 2,00,000 which is deductible from the business assets of Rs. 12,00,000 under Rule 4 may be regarded as represented by the Debenture issue of Rs. 2,00,000 which comes within the terms of Rule 5, and, therefore, under that Rule the Capital is to be taken at Rs. 10,00,000+2,00,000=Rs 12,00,000.

Thus the increase of capital before application of Rule 5 is Rs. 50,000 and Rule 5, converts that increase into Rs. 2,50,000.

On a strictly literal reading of the Provisions of Rule 5 of Schedule I, it is possible to argue that it excludes from its operation the case of newly started business to which none of the optional standard period provided by Sub-section (2) of Section 6 are available. Such differentiation between old and new concerns is, however, clearly unfair. The Rule should, therefore, be applied to the case of all new concerns which have no standard period and for this purpose the *entire* borrowings effected by means of loans from a bank carrying on a *bona fide* banking business, on by means of a public issue of debenture should be treated as capital of the business within the meaning of Rule 5.

'Notwithstanding the provisions of Rule 2 Schedule II':—Schedule II, Rule 2 *post* enjoins deduction of any borrowed money for purposes of computation of capital. So, the Rule is an exemption to Rule 2 Schedule II.

The dissenting note on this Rule by Sir Cowasji Jahangir, member of Select Committee, throws a flood of light as to the Rules and the question of recognizing loans from Banks carrying on *bona fide* banking business (and not from private banker).

The said dissenting note says:—Until the Select Committee had decided to include this Rule in the Bill, the Bill had provided that borrowed moneys, and debts shall be deducted from the capital employed in the business.

It is a matter of common practice that apart from the paid-up share capital and the various reserve funds which have been accumulated out of past profits, moneys have to be borrowed and debts have necessarily to be incurred for the expansion and the carrying on of the day to day business, the computation of the capital employed in the business, as was provided in the Bill, did not represent the actual capital employed in the business, which alone makes it possible for the business to earn its profits. If profits are made subject to the excess profits tax and the basis on which these profits are earned is determined on a footing which excludes a large part of the moneys constituting such capital employed, businesses would be placed at a serious and disadvantage. Moneys borrowed by businesses are not only from Banks carrying on *bona fide* banking business, or by means of public issue of debentures. Businesses also have deposits—public and others—like deposits against contracts; they also have funds, like provident funds, which are used as a part of the working capital of the business; they also have liabilities like purchase of goods not paid for, wages due and claims under dispute. The New Rule 3 (a) only gives relief when the loans are from *bona fide* Banks, or if the money is raised by the issue of debentures. It takes no account of moneys borrowed in any other way. Considering the conditions that prevail in India, this constitutes a real hardship".

On the same Rule, another member of the Select Committee (*H. P. Mody*) observed:—"The distinction sought to be drawn between capital borrowed from a Bank and capital raised by means of deposits and loans from firms and private in-

(1) Para. 34 Notes and Instruction.

dividuals is unsound, and goes counter to a very widely adopted practice of raising finance in this country, It is only fair that this type of borrowed capital should be recognized". (See Rule 5-A. for borrowed money newly inserted).

[1]**Rule 5-A—(1) In computing for any chargeable accounting period ending after the end of March, 1941, 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 Schedule applies, or the profits of a part of a business other than a part of a business to which Sub-rule (2-A) 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, as respects any such chargeable accounting period which commences before the said end of March, the application of this Rule shall be subject to the provisions of Section 7-A of this Act:

Provided further 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 a Board of Referees under Sub-section (3) of Section 6, or by the Central Board of Reuenue 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 it thinks 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 2-A of the Second Schedule 'borrowed money' means borrowed money, which, apart from the provisions of the said Rule 2-A, would have been deductible in computing capital.

This Rules should be read with Rule 2-A of this Schedule. These Rules recognize not only what has been claimed be an invidious distinction made by the existing Rule 5 of the First Schedule to the Act between money borrowed from a person carrying on a *bonafide* banking business and other borrowed money, but also the fact that the borrower bears some risk in respect of *any* borrowed money. The Rule therefore, as from the 1st April, 1941, treat all borrowed money as capital both as regard standard period, if any, and as regards the chargeable accounting period, so that the comparison of average capital required by the Act is to include the borrowed money as well as the proprietor's capital so far as this capital is employed in the business, and they provide for the corresponding inclusion of profits of the interest etc., payable in respect of the borrowed money. The effect of this clause may be illustrated by an example:—

Example :—

	Standard period	Chargeable accounting period.
	Rs.	Rs.
Average capital	5,00,000	6,00,000
Average borrowed money	1,00,000	2,00,000
Profits for excess profits tax purposes on old basis ..	50,000	1,00,600
Interest payable	5,000	10,000
Liability on old basis profits of chargeable accounting period		1,00,000
Standard profits	50,000	..
Add 10 per cent. on increased capital (Rs. 1,00,000) ..	10,000	60,000
Excess profits		40,000

(1) Rule 5A was inserted by S. 8 of the Excess Profits Tax (Second Amendment) Act, 1941 (24 of 1941).

Liability on new basis profits of chargeable accounting period	1,00,000	
Add interest payable	10,000	
		1,10,000
Profits of standard period	50,000	
Add interest payable	5,000	
	55,000	
Add 10 per cent. on increased capital (Rs. 2,00,000) including borrowed money	20,000	75,000
Excess profits		35,000

Provirion is made to secure that in the case of a business to which, for any chargeable accounting period, the minimum standard of Rs. 36,000 a year applies, or, in respect of which an award of a substituted standard of profits has been given under Section 6 (3) by a Board of Referees or under Section 26 (1) by the Central Board of Revenue, the new Provisions shall not operate to deprive the assessee of the benefit that ensures to him by reason of the minimum standard or of such award.

Interest on borrowed money.—As from 1st April 1941 new Rule 2A, Schedule II, provides that all borrowed money, irrespective of whether or not it is covered by the value of excluded investments or may already be treated as capital employed in the business by virtue of Rule 5, Schedule I, and irrespective of whether it is borrowed from a person carrying on a *bona fide* banking business or from any other person or persons, is not to be deducted in computing the capital employed in the business ; and new Rule 5A, Schedule I, provides that the interest or other consideration paid for its use is to be disallowed in computing the profits of the business for Excess Profits Tax purposes.

These provisions have effect, in relation to C. A. Ps. ending after 31st March 1941, both as regards the computation of profits and average capital of the standard period and as regards the computation of profits and average capital of the C. A. P. itself.

[See paragraph 24A Notes and Instruction, as regards C. A. Ps. ending after, *but commencing before* the end of March 1941.]

The following examples show the difference between the two bases of computation in given circumstances :—

Example 1.—

A partnership which has borrowed money at 6% per annum from a person other than one carrying on a *bona fide* banking business and to which, therefore, the provisions of Rule 5 of Schedule I are not applicable :—

	Standard period (12 months).	C.A.P. (12 months to 30-6-1941).
	Rs.	Rs.
(*a*) Profits before any adjustment in respect of interest on borrowed money	57,400	63,400
(*b*) Interest payable on the borrowed money ..	1,200	4,800
(*c*) Part of (*b*) disallowable as interest on borrowed money covered by value of excluded investments	600	600
(*d*) Profits for E. P. T. purposes, old basis [(*a plus* (*c*)]	58,000	64,000

(*e*) Average capital after deduction of all borrowed money			3,90,000	4,40,000
(*f*) Average borrowed money ..			20,000	80,000
(*g*) Part of (*f*) covered by value of excluded investments			10,000	10,000
(*h*) Average capital on old basis [(*e*)+(*g*)] ..			4,00,000	4,50,000
computation on old basis.				
Profits of C.A.P.				64,000
Standard profits			58,000	
Add 10% of increased of capital (4,50,000–4,00,000)			5,000	63,000
Excess Profits				1,000
computation on new basis.				
Profits of C. A. P. as before	Rs.			64,000
Add Interest on borrowed money ..			4,800	
Less already included			600	4,200
				68,200*
Standard profits as before			58,000	
Add Interest on borrowed money ..		1,200		
Less already included ..		600	600	
			58,600*	
Average capital of C. A. P. old basis	4,50,000			
Add borrowed money not already included	70,000			
		5,20,000*		
Average capital standard period old basis	4,00,000			
Add borrowed money not already included	10,000	4,10,000*		
10% on increase of capital		1,10,000	=11,000	69,600
			Deficiency of profits Rs.	1,400

Notes—1. The difference Rs. 2,400 between the two results will be seen to be difference between 10%, the statutory percentage, and 6% the rate of interset paid, on the additional Rs. 60,000 treated as capital employed in the business.

2. The figures marked* may be found alternatively by taking the sum of items (*a*) and (*b*), *i.e*, Rs. 57 400+1,200=58,600 or Rs. 63,400+4,800 =68,200 and of items (*e*) and (*f*), *i.e.*, Rs. 4,40,000+80,000=5,20,000 or Rs. 3,90,000+20,000=4,10,000.

Example 2.—

A director-controlled limited company which has borrowed money from a person carrying on a *bona fide* banking business or by the issue of debentures and to which, therefore, the provisions of Rule 5, Schedule I apply.

	Standard period (12 months).	C. A. P. (12 months to 31-12-41).
	Rs.	Rs.
(*a*) Profits before adjustment in repect of interest payable ..	50,000	1,00,000
(*b*) Interest on borrowed money ..	6,000	12,000
(*c*) Proportion of (*b*) disallowed for borrowed money covered by value of excluded investments ..	600	600
(*d*) Proportion of (1) disallowed under Rule 5, Schedule I ..	..	4,800
(*e*) Profits as computed on old basis ..	50,600	1,05,400
(*f*) Average capital before any adjustment in respect of borrowed money ..	4,00,000	5,00,000
(*g*) Borrowed money added as covered by value of excluded investments ..	10,000	10,000
(*h*) Borrowed money added under Rule 5, Schedule I.	..	80,000
(*j*) Average capital on old basis ..	4,10,000	5,90,000
(*k*) Average borrowed money (all from *bona fide* banks) ..	1,00,000	2,00,000
(*l*) Actual borrowed money at end of standard period	1,20,000	

Computation on old basis.

	Rs.	Rs.	Rs.	
Profits of C. A. P.				1,05,400
Standard Profits			50,600	
Add 10% on increased capital	5,90,000			
Less ..	4,10,000			
	1,80,000	=	18,000	68,600
Excess Profits Rs.				36,800

Computation on new basis

	Rs.	Rs.	Rs.	Rs.
Profits of C. A. P. as before				1,05,400
Add Interest on borrowed money		12,000		
Less already disallowed		5,400	..	6,600
				1,10,000*
Standard profits as before			50,600	
Add Interest on borrowed money ..	6,000			
Less already disallowed ..	600	..	5,400	
			56,000*	
Average capital of C. A. P. on old basis.	5,90,000			
Add Borrowed money not already included ..	1,10,000	7,00,000*		
Average capital of standard period on old basis ..	4,10,000			

Add Borrowed money not already included ..	90,000	5,00,000*		
10% on Increase ..		2,00,000	20.000	76,000
Excess Profits ..				36,000

Notes —1. The items marked* may be found more directly or checked by taking the totals of items (*a*) and (*b*), *i. e.*, Rs. 50,000+6,000=56,000 or Rs. 1,00,000+12,000=1,12,000, and of items (*f*) and (*k*), *i. e.*, Rs. 4,00,000+1,00,000=5,00,000 or Rs. 5,00,000+2,00,000=7,00,000.

2. The reduction in the excess profits given by the new basis of computation, *viz*., Rs. 800, represents 10% the statutory percentage, *less* 6%; the rate of interest actually paid, on the additional Rs. 20,000 borrowed money treated as capital.

[See also paragraph 24 A for instructions regarding chargable accounting periods beginning before and ending after the end of March 1941, paragraph 48-A for the effect of the new borrowed money provisions upon minimum standard cases and paragraph 52-A for their effect upon substituted standards under sections 6 (3) and 26 (1)][1]

Rule 6.—No deduction shall be made on account of liability to pay, or payment of, income-tax super-tax, or excess profits tax.

Analogous Law;—The United Kingdom Finance Act to of 1939. Schedule 7, Part 1 para. 8 contains the same Rule Income-tax and excess profits tax are both non-deductible under that Rule. So is National Defence contribution. Super-tax finds no place in the English Rule as it does under Rule 5.

2. Scope of Rule 6:—The Rule excludes from deduction not only any amount payable but even that paid in respect of income-tax, super-tax, or excess profits-tax.

In connection with this see the Provisions of Section 12 *ante* also. The following example would illustrate and explain the above Rule.

Assessment year 1940-41				Rs.
Suppose total Income	..	..	..	2,00,000
Less standard profits	..	..	..	1,00,000
Net Profits	..	..	..	1,00,000
Excess Profits Tax	..	..		50,000

The sum of Rs. 50,000 shall be deductible for Income-tax assessment purposes under Section 12 of Excess Profits Tax Act.

Income-tax being payable on the total income of Rs. 1,50,000 only and not on Rs. 2,00,000.

Coming to the assessment for 1941-42			Rs.
Suppose the income is again	..	..	2,00,000
Standard Profits	..	..	1,00,000
Sum for excess profits purposes is	..	..	1,00,000

Then, for computation of profits for assessment to excess profits tax for 1941-42, the amount of Rs. 50,000 paid as excess profits tax or any amount paid as income-tax or super tax in past year 1940-41 shall not be deductible. Thus the excess profits tax payable would again be the same sum of Rs. 50,000.

Rule 7.— [2][(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

(1) Para. 34-B Notes and instructions.
(2) Sub-rule (1) was substituned for the old Sub-rule by S. 9 of the Excess Profits Tax Amendment) Act, 1940 (42 of 1910).

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 director's remuneration.]

[1](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 per cent, 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.

[2](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 director 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 Central Board of Revenue otherwise directs, 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).

1 **Analogous Law** :—Schedule 7, Part I, para. 10, English Finance Act (2) of 1939 contains similar Provisions.

Amendment :—Present Sub-rule (1) was substituted for the old and Sub-rule 3 was also newly added by Amending Act (42) of 1940.

2. **Scope of Rule 7** :—Rule 7, relates to the point of deduction of remuneration paid to director of a company, where the directors have a controlling interest. Clause (*a*) of Section 10 (1) of United Kingdom Law relates to cases where standard profits are computed by reference to the profits of standard period while clause (*b*) relates to a case where standard profits are not so computed. In an English case, *Moore* v. *Stewards*[3] a case under the Income-tax Act, sum paid for obtaining a commanding interest by one company in the management of another, was allowed as deduction. Obtaining a majority of issued shares in a company has been held to be a controlling interest.[4] In a case under the corporation profits tax, a director holding one half of shares in the company and having a casting vote was held to

(1) These words, brackets and figures were inserted by S. 9 of the Excess Profits Tax (Amendment) Act, 1940 (24 of 1940).

(2) Sub-rule (3) was added by S. 9 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940).

(3) 6 T. C. 501.

(4) Glasgow Expended Metal Co., Ltd. v. C. I. R. 12 T. C. 573.

have a 'controlling interest' in the company.[1] The power that the number of shares held gives to the holder to control the disposal of company's assets and the adminstration of company's affairs at a general meeting has been held to be 'controlling interest'.[2] In the same case it was held that to cast a preponderating vote at a general meeting of a company implies *prima facie* a controlling interest. A shareholder has a controlling interest whose holding in the company is such that in general meeting he is more powerful than all other share-holders put together.[3] Clause (*a*) of Sub-section (1) has reference to cases where standard profits are computed by reference to profits of a standard period. In such a case only the amount paid during the standard period as directors' remuneration shall be allowed as deduction. If the accounting period and the standard period do not synchronize, a proportionable amount will be deductible, with reference to the proportion that the length of the accounting period bears to the length of the standard period. Supposing, the accounting period is four months, the standard period being a year, then only one third of the sum paid shall be allowed as deduction. Where standard profits are not computed by reference to standard period, no deduction on this account (*i. e.* directors' remuneration) shall be allowed.

Example:—

ABC Ltd had been in business for many years and always made up accounts to 31st December. The three directors did not have a controlling interest in the company until 1st January, 1940 when they acquired all the shares holding them equally between them. The results were as follows :

	Profits	Directors' Remuneration
Standard period	60,000	45,000
Year to 31st December, 1939	50,000	55,000
Year to 31st December, 1940	55,000	58,000

The above profits are after charging the directors' remunerations.

(a) Nine months chargeable accounting period to 31st December, 1939 .

As the directors did not have a controlling interest in the C. A. P. or in any accounting period falling within the standard period, no adjustments for directors' remuneration are required in computing the excess profits tax liability for the 9 months ended 31st December, 1939, which would be ascertained as follows :

Profits of 9 months to 31st December, 1939 ..	
(9/2 x 50,000)	37,500
Less—standard profits (9/12X60,000)	45,000
Deficiency	7,500

(b) Chargeable Accounting Period to 31st December, 1940

The directors had a controlling interest throughout the chargeable accounting period, and, accordingly, no deduction for directors' remuneration can be made in computing the standard profits and the profits of the chargeable accounting period.

Profits of Chargeable Accounting Period	
(Rs. 55,000+58,000)	1,13,000
Less—standard profits (60,000 + 45,000)	1,05,000
Excess profits	8,000
Less deficiency B/F	7,500
Excess profits	500

(1) C.I. R, v. B W, Noble Ltd. v. C. I. R. 212 T. C. 911
(2) 12 T- C. 579 (above cited).
(3) 12 T. C. 911 (926) (above cited).

N. B.—If the directors had no controlling interest in the chargeable accounting period to 31st December, 1940 there would have been a further deficiency of Rs 5,000 /- .

Profits of C. A. P. to 31st December, 1940 ..	55,000
Less standard profits	60,000
Deficiency	5,000

Companies director controlled throughout chargeable accounting period, Directors' remuneration.

Sub-rule (1) and (2) of Rule 7 deal with companies the directors of which have a controlling interest therein throughout a chargeable accounting period, and provide that:—

(i) in computing the profits of the chargeable accounting period, and

(ii) if the standard profits are computed by reference to the profits of a standard period, also in computing the profits of the standard period, *no* deduction is to be made in respect of directors' remuneration.

It will be observed that the Rule as amended corrects the anomaly which, resulted from the wording of the original Rule, of providing for disallowance when director' remuneration during a chargeable accounting period is greater than it was in the standard period while providing, no compensating relief if the remuneration during the chargeable accounting period was less than during the standard period.

Cases may arise in which, if the Rule as originally enacted were in operation, the standard profits would be ascertained by reference to the minimum standard of Rs. 36,000 a year and, consequently, the assessee is penallised by the application of the Rule as amended.

Example 1:—	Standard period (One year)	Chargeable accounting period
(*a*) *Old Rule 7*,	Rs.	Rs.
Profits as computed before application of Rule 7 ..	20,000	40,000
Excess remuneration disallowed Rs. 10,000—5,000) ..		5,000
		45,000
Minimum Standard..		36000
Excess profits		9,000
(*b*) *New Rule 7*		
Profits as above	20,000	40,000
Remuneration disallowed	5,000	10,000
	25,000	50,000
Minimum standard		36,000
Excess profits		14,000
Example 2:—		
(*a*) *Old Rule 7.*		
Profits as computed before application of Rule 7 ..	33,000	40,000
Excess remuneration disallowed (Rs. 10,000—5,000 ..		5,000
		45,000

	Standard period (one year.) Rs.	Chargeable accounting period. Rs.
Minimum standard		36,000
Excess profits		9,000
(b) New Rule 7		
Profits as above	33,000	40,000
Remuneration disallowed	5,000	10,000
	38,000	50,000
Standard profits (minimum standard not being application		38,000
Excess profits		12,000

If any company complains that it suffers hardship in such a case a full report of the facts should be made to the Excess Profits Tax Adviser who will issue instructions as to the course to be followed.

The amendment of the Rule makes no difference to a director-controlled company which elects a percentage standard of profits under the second Provision to Section 6 (1). In such a case all remuneration, except that of whole-time-service director, charged in a period which is or includes a chargeable accounting period was disallowable under the old Rule.[1]

Companies director controlled during part of chargeable accounting period, standard period etc., directors' remuneration.

Sub-rule (3) of Rule 7 deals with the case of a company which is director-controlled.

(a) during a part only of an accounting period which constitutes or includes a chargeable accounting period, or

(b) during the whole or any part of any *previous* accounting period which includes the whole or any part of a chargeable accounting period or of the standard period (if any), provided that for the first mentioned accounting period the case is not one to which Sub-rule (1) of the Rule applies. In such a case no allowance is to be made in respect of directors' remuneration in computing the profits of any accounting period which includes the whole or any part of the standard period or which constitutes or includes the chargeable accounting period unless the Central Board of Revenue otherwise directs.

It is to be noted that directors' remuneration in Sub-rule (3) includes the remuneration of whole time service directors within the definition contained in Sub-rule (2), although the remuneration of such directors is excluded from the operation of Sub-rule (1).

In order that instructions may be given as to what allowance, if any, is to be made in computing the profits of the accounting periods in questions, a report is to be made to the Excess Profits Tax Adviser in every case.

(i) where a company is director controlled during *part* only of an accounting period which constitutes or includes a chargeable accounting period, and

(ii) where a company is not director controlled in any part of the accounting period mentioned in (i), but it was director-controlled, either

(a) during any part of the standard period, if the standard profits are computed by reference to the profits of a standard period, or

(1) Para 36 Notes and Instruction.

(b) during any part of any accounting period which included the whole or any part of a previous chargeable accounting period.

Such report should set out in each case for the accounting period immediately in question, for any accounting period which constituted or included a previous chargeable accounting period and for the standard period, if any.

(1) the names of all directors [including any who come within the Provisions of Sub-rule (2) of Rule 7],

(2) the names of the holders of the "ordinary share capital" of the company, with particulars of their share-holdings, and

(3) a statement as to the periods during which the directors held a controlling interest in the company.[1]

Directors' Remuneration.

It should be observed that the phrase "directors' remuneration" is wide enough to cover all remuneration received by the Director in whatever capacity or under whatever description the remuneration is payable, but that the remuneration of any managing agent is excluded, even if the managing agent is also a director, provided that the remuneration is included in the profits of the managing agent's business for excess profits tax purposes. Any claim that the Rule applies in other cases only to remuneration payable to a director as director and that it does not cover remuneration received as manager, etc., should not be accepted.

"Directors' remuneration" for the purposes of the Rule does not include the remuneration of any director who is required to devote substantially the whole of his time to the services 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 5% of the ordinary share capital of the company. This makes it clear that an indirect interest in the ordinary share capital as well as direct holdings either in the director's own name or in that of nominees is to be taken into account. Any case in which there is a conflict of opinion as to whether or not a director falls within the exception above referred to, should be submitted to the Excess Profits Tax Inspecting Assistant Commissioner.

Where, in assessing the remuneration of a director to income-tax, allowance has been made in respect of expenses, the amount to be regarded as the remuneration of the director for the purposes of this Rule is the gross remuneration less the appropriate proportion of such expenses.[2]

Rule 8.—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 and 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.

Rule 8: -The Rule has been added by the Select Committee and is, as they observe, a consequential addition. "In consequence of the change made in Rule 7 (2), by which remuneration paid to managing agents has been excluded from directors' remuneration in certain cases we have inserted this provision to disallow for the purposes of the excess profits tax computation the payment to managing agent of remuneration at a higher rate than the rate in force in the standard period.

"Except whether such remuneration.... agents."—These words were added at motion in the Assembly. We have understood this particular Rule and we suggest that it does, as it stands, inflict a hardship. Under the Rule, an increase in the remuneration of the managing agent is not taken into consideration in arriving at the profits of the assessee, in this case the company : but it is taken into conside-

(1) Para 37 Notes and Instructions.
(2) Para 38 „ „ „

ration in arriving at the profits of the managing agent. Hence the Excess Profits Tax is really charged twice on the amount of the increase. This we suggest, is really inequitable and there would be a number of cases affected ...(Mr. F. B. James).

"Sir I admit at once that the Rule as provided would, in some cases, involve double excess profits tax, that is to say there would be a disallowance in the company's assessment and the same remuneration would appear in the managing agent's assessment and I admit that is a hardship which should be remedied....The substituted wording is more precise and does exclude the possibility of abuse.', (Mr. S.P. Chambers.)

Subject to tax:—The use of the words 'subjected to tax' should be noted. It is not sufficient that the managing agent carries on a business which is within the charge to excess profits tax but to avoid application of Rule 8 to the computation of the company's profits, there must be an assessment upon the managing agent in an amount equal to the sum of the amounts disallowable under the Rule in respect of his remuneration from all the companies for which he acts.

Rule 9.—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.

Analogous Law:—Rule 11, Schedule 7, Part 1, English Finance Act, (2) of 1939 is similar to this Rule,

1 Scope of Rule 9:—The Rule is applicable to and covers cases where a contract cannot be or is not complied within the accounting period. It condifies English decision like Hall and C. I. R., 12 T. C 382.

2. In such a case, profits or loss resulting from the performance of the contract shall be adjusted in proportion to the period taken in the performance of the contract It is a case of adjustment or apportionment of profits or loss as the case me be, resulting from the performance of the entire contract, with reference to the entire period taken in the performance, by presuming that the performance has taken place during the accounting period and having reference to the event to which performance was made during that period.

The Rule, though providing, that an apportionment has to be made with reference to the extent to which the contract was performed in the accounting period, does not, in effect lay down this to be the decisive determining factor as to the proportion 'property attributable to the accounting period.

Illustration No 1

A contract was commenced on 1st September, 1940, and at the close of the twelve months chargeable accounting period to 31st March, 1940 , one third of the contract had been completed. It was estimated that the contract would yield a total profit of Rs. 15,000/- , The amount to be added to profits of the chargeable accounting period for excess profits tax purposes will therefore be 1/3 x 15,000 = 5,000.

Illustration No 2

A contract was commenced on 1st January , 1940 , which was estimated to produce a total profit of Rs. 30,000. On 1st April , 1940 , one quarter of the con-

tract had been completed, and at the conclusion of the 9 months' chargeable accounting period to 31st December 1940 , three fifths of the contract had been finished. The amount to be included in profits of the chargeable accounting period will therefore be :

	Rs.
3/5 of 30,000	18,000
Less one quarter of 30,000	7,500
Amount to be included in profits.	10,500

Applicability:—Rule 9 should, therefor, in general be applied only:—

(a) where its application is sought by the tax-payer ;

(b) when it appears, from the accounts or otherwise (*e g*..an increase or decrease of the item "work on uncompleted contracts" where the full profit on the work performed is not credited year by year), *i.e.* application would effect an important change in the amount assessable, to the advantage either of the assessee or the Revenue.

In other case, if the accounts have been consistently made up on a basis other than the allocation of profits over the periods during which the contracts were performed, the application of the Rule will be unnecessary.[1]

3. **Unless the Excess Profits Tax....otherwise directs**':—The words 'otherwise directs' seems to govern the application of the entire provision of the Rule as a whole. The Excess Profits Tax Officer might direct that there will be no apportionment at all. The matter is entirely within the Excess Profits Tax Officer's discretion. In England, the Commissioner's discreation takes the place of the Excess Profits Tax Officer and according to the case law there the exercise of discreation by the Commissioner was not open to appeal.

4. **Proviso**:—The Proviso to the Rule has been added by the Select Committee, who observe as to it:—"We have added a Proviso providing for the adjustment of the profits of a completed contract when finally ascertained."

So, the Proviso thus makes provision for final adjustment of a profiits, when a contract, the performance of which extends beyond the accounting period, has been fully performed.

Rule 10.—In respect of any building erected on or after the 1st day of September, 1939, which during any chargeable accounting period has ceased to be required for the purposes of the businsss 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 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.

This Rule has also been added by the Select Committee with a view to accord special treatment to building erected during the war.

Any loss incurred on the construction of such building, computed with reference to its, written-down value' and the sale price or market value at the date it ceases to be of use for the business for which it was built, be an allowable deduction.*

The Select Committee observed:—"We have provided for special treatment of buildings erected during the period of war which might on the cessation of war conditions become almost valueless. The case of new machinery and plant which may have to be scrapped at the end of the war is provided for by the obsolescence Provisions of Section 10 of the Indian Income Tax Act, 1929".

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(1) Para 45 Notes & Instruction.

*Smith & Sons v. Moore 12 T. C. 266.

[1][11.—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 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.

Any person who is dissatisfied with a determination of the Excess Profits Tax Officer under this Rule may, at any time before the expiry of forty-five days from the date on which such determination is communicated to him, appeal to the Board of Referees through the Excess Profits Tax Officer.]

Rule 11, which was added by Excess Profits Tax Amendment Act, 1940 is designed to secure a fair comparison of the profits of a chargeable accounting period with the standard profits of a business, in cases where, either in an accounting period constituting or including a chargeable accounting period or in the standard period, if any, a deduction is allowed for income-tax purposes which does not in its entirety, represent a sum reasonably and properly attributable to the particular period in question. The Rule modifies the normal computation of profits for excess profits tax purposes by providing that only so much of the deduction, as is reasonably and properly attributable to the period in which it is allowed for income-tax purposes, is to be allowed against the profits of that period for excess profits tax purposes the disallowed balance being attributed to and allowed against the profits of such other accounting periods as the Excess Profits Tax Officer thinks proper.

It will be observed that such a deduction may be so spread whether for income-tax purposes its allowance affected the profits of the standard period or of a chargeable accounting period and also that a deduction affecting the profits of a chargeable accounting period may be so spread even if there is no standard period by reference to which standard profits are computed.

Examples of deductions which may be proper subject for the application of Rule 11 are,

(a) initial payments for Cinema apparatus under hire-contracts such as that in question in the case of *In re Hakim Ram Prasad* (9 I. T. C 181);

(b) allowances under Section 10 (2) (vii) of the Indian Income-tax Act.

(c) mineral royalties, with a minimum rental, payable under mineral leases.

It should be noted that allowance such as allowances for bad or doubtful debts are allowable for income-tax purposes in arriving at the profits of the accounting period to which they are properly attributable and that, therefore, the provision o Rule 11 are not applicable to such deductions.

In any case where, in computing the profits of a business, whether for the standard period which constitutes or includes a chargeable accounting period, a deduction has been allowed for income-tax purposes to which the provisions of this Rule are considered by the Excess Profits Tax Officer to be applicable, he is to seek the instructions of the Excess Profits Tax Adviser. He should make a report stating the facts and giving his opinion as to the proportion of the deduction that should be disallowed and as to the periods, either preceding or following the period in question from the profits of which the sum so disallowed should be deducted.

As in the case of modifications under Section 8 (8), the assessee is entitled to appeal to the Board of Referees against any adjustments made under Rule 11.[2]

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(1) This Rule was added by S. 9 I. E. P. T. Act. (Amendment) 1940 (42 of 1940.)

(2) Para. 46 Notes and Instruction.

[1]**Rule 12.—(1) 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 requirments of the business and, in the case of directors fees or other payments for services to the actual services rendered by the person concerned.**

Provided that no disallowance under this Rule shall be made by the Excess Profits Tax Officer unless he has obtained the prior authority of the Commissioner of Excess Profits Tax.

(2) Any person who is dissatisfied with the decision of the Excess Profits Tax Officer under this Rule may appeal in the prescribed time and manner to the Appellate Tribunal.

[2]**(3) In relation to chargeable accounting periods ending after the 31st day of December, 1942, the Central Government may make rules for determining the extent to which deductions shall be allowed in respect of bonuses or commission paid.**

It is designed to prevent the dissipation of excess profits by expenditure that has no relation to the requirments of the business, the major part of the cost of which might be met out of the reduced taxation. In order, however, that this power of disallowance should not be exercised without the fullest consideration, it is provided that the authority of the Commissioner of Excess Profits Tax is to be a condition precedent to its exercise, and further the assessee is given the right of appeal to the Appellate Tribunal in the the case of any disallowance under this provision.

All expenses in excess of what is reasonable and necessary and beyond requirments of a trade or business are not be allowed as a deduction. In case of remunerations, regard should be had to the actual services rendered. In *Stott and Ingham* v. *Rehearne* 9 T.C. 69, in a firm the father had been sole proprietor and had employed two sons on fixed salary plus certain percentage on profit. The percentage on profits in the beginning before 1915 was 5, and thereafter the figure was raised to 19 per cent. The younger son was at war. In 1918 when the health of the father broke down throwing the entire responsibility upon the elder son, the percentage of the profits to be paid to each of the two sons was raised from 10% to 33· 1/3 percent It was held 33· 1/3 of the profits paid to the sons was in excess of their actual services rendered by them.

(1) This Rule was inserted by S. 8 of the Excess Profits Tax (Second Amendment) Act, 1941 (42 of 1941).

(2) This sub-rule was inserted by E. P. T. ordinance No 16 of 1943

SCHEDULE II.

[SEE SECTION 2 (3).]

Rules for computing the average amount of capital.

Rule 1. (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 required, subject to the deductions here after 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 its 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 deduction for depreciation as are necessary to reduce the asset to its written-down value (1)[and to such other deductions in respect of reduce values of assets as are allowable in computing profits for the purpose 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.

1. Analogous Law:—Schedule 7, Part II Para. 1 English Finance Act (2) of 1939 contains similar Rule.

Scope of Rule 1 :—Rule 1 is a general Rule indicating the amount of capital employed in the business generally to be the price of the assets or the nominal value of debts, if the latter from the assets.

There is nothing in the Act to suggest that the capital must be gainfully or productively employed in the business during the chargeable accounting period If the repondents had, of their own volition, demolished the theatre with a view to building a more modern building on its site, it would not have been said that untill the moment arrived when the new theatre was in existence as a going concern, the capital employed in the business must be taken to have been decreased by the amount of the value of the old theatre. And the fact that the demolition was the work of the King's enemies and not of traders themselves does not make any difference. *C. I. P.* v. *Terence Byron Ltd.* 1944 All. Eng. L. R. 608 (vol. 1)

The facts of this case are : The respondent company carried on the business of theatre proprietors and one of the company's theatres was totally destroyed by enemy action. It was contended on behalf of the Crown that the cost of the demolished theatre was no longer capital employed in to business. It was hold on appeal that the destroyed theatre remained the capital employed in the business.

Valuation of assets.

Rule 1 of the Second Schedule provides that the amount of capital employed in a business is to be computed by reference to the value of the business assets. Apart from cash, which must obviously be taken at its actual amount, the assets of a business are to be valued as follows : —

(a) assets acquired by purchase on or after the commencement of the business, the price at which the assets were acquired ;

(b) assets being debts due to the business, the nominal amount of these debts;

(1) These words were inserted by Section 10 of the Excess Profits Tax (Amendment) Act. (42 of 1940),

(c) assets acquired otherwise than by purchase as aforesaid, the value of the assets when they become assets of the business.

The amount arrived at as above is subject in each case to the deduction set out in the Rule 1 (2).

Rule 1 (3) deals with the valuation of assets acquired otherwise than for cash, and lays down that such an assets is to be valued at the then of the consideration actually given when the asset was acquired.

It should be noted that the Rule deals only with assets *acquired*. Assets which have been created without expenditure are not capital for excess profits tax purposes. Thus, if good will has been purchased by the person carrying on the business it will rank as capital of the business at its cost when purchased, except when such treatment would be contrary to Section 8. If, however, good will has merely been created by the growth of a business it must not be included in the computation in the computation of capital[1]

2. **Sub-rule (1) (a) assets acquired by 'purchase'**:—Sub-rule (*a*) of Rule (1) relates to a case where assets are acquired by purchase. The words in his sub-rule 'the price at which the assets were acquired have to be read with Sub-rule (3). In this Sub-rule (3) the words 'the then value' is notable. Suppose the consideration for purchase was paid in the form of the shares, the words "then" would seem to indicate the value of the shares at the time of purchase. There is no authority on the point, however. The words in the corresponding Legislation on Excess Profits Duty in the 1915 Finance Act, is (Fourth Schedule Part III Para. 3) are clear. They are 'value of the consideration at the time the assets was acquired'. Again, for the purposes of application of this rule, it may not be very easy to identify the assets to be valued. The assets may have undergone a change, due to improvement in or addition to it.

In an English case, *Sungi Rinching Rubber Co., Ltd.* v. *C. I. R. 1925 133 L. T. 610*, a rubber company having purchased a jungle, an uncleared land, tranferred it into a rubber cultivation, at all material times. It was held that the case fell within Sub-rule (3) of Rule 1 that the purchase price of not an uncleared jungle but of a rubber estate was to be taken into account in computing capital.

The question, however, is one of fact (as held per *Lord Wrenbury* 1823 A. C. 283,291). In the above case, it was held that the asset did not lose identity necessarily because of the development made to it. In the above case it was made clear that the only question to be considered was whether, by the improvements or additions made, a new estate had been created, whereby the case goes out of clause (*a*) and passes into clause (*c*). If the case is covered by clause (*a*), the price at which the asset was acquired is to be considered, nothing being allowed for expenditure on improvements of additions *i. e.*, which is to be considered only if the case falls within (*c*) clause.

It can not be suggested that the word 'asset' as applied to a trade or business, is restricted to material things that you can touch and see, because it includes debts. It includes rights of every sort. In case of contribution made by a company to super annuation fund to equalise benefits for its employees, by the payment the company did acquire the right as against the trustees of the fund to compel them to pay the increased benefits to its employers and the transaction was a purchase of benefits by way of allowances and benefits and the company thus acquired an asset. So the capital of the company ought not to be decreased by the amount of the contribution. *Lever Brother & Unilever Ltd.* v. *C. I. R.* 1944 All E. R. 285 (Vol. II)

3. **Sub-rule (1) (b) being debts:**—In case the assets are the debts due to, *i.e.* debts which the person carrying on the business is entitled to recover deductiions allowable under Income-tax Act shall be allowed in respect of debt also. Only the nominal amount of debt is to be taken into consideration.

(1) Para. 75 Notes and Instruction.

In a very recent case of *C. I. R.* v. *Trinidad Petroleum Development Co. Ltd.* 1944 All E. R (vol. 1) 141 before the court of Kings Bench Division it has been held that in case of a debt payable by a subsidiary company to a principal company being discharged in the standared period and the subsidiary company ceasing to be a subsidiary of the principal company for the standard period, the debt paid by the subsidiary company should be deducted in computing the capital of the said company for its standard period and be not ignored in computing the capital of both companies as S. 17 relating to interconnected companies whereby a debt payable by a subsidiary to its principal is to be taken as not existing and thus to be ignored from computation of capital does not apply to companies interconnected before 15th April 1939 and ceasing to be as such thereafter.

The facts of the above case are : The respondent was incorporated on May 7, 1918, as a company limited by shares for the purposes of acquiring and operating oilfields and oil concessions. It had a capital of £ 100,000 divided into 10,000 shares of 10 £ each. Down to the end of the year 1936 a company called the British Controlled Oilfield Ltd. was the beneficial owner of all those shares, and the respondent was indebted to that company for money lent to an amount exceeding £ 8,00,000. In December 1936, the respondent increased its capital from £ 100,000 to £ 1,000,000 by the creation of 9,00,000 shares of £ 1 each and, at the same time, each of the original shares of £ 10 was divided into to shares of £ 1 each, so that the capital became £ 1,000,000 divided into a million shares of £ 1 each. In the following month the public subscribed for 5 00,000 of the respondent's shares in cash and the respondent then took the opportunity of discharging its debt to the British Controlled Oilfield Ltd by the payment of £ 200,000 in cash and the issue of 4,00,000 & 1 shares as fully paid In this case as the respondent company ceased to be the subsidiary of the British Controlled Oilfields in the standard period (*i e.* the year 1937) and the debt payable by it to the lending company is deductible in computation of capital and S. 17 relating to ignoring of debts payable by a subsidiary to the principle ought to be read as applying only to companies interconnected after April 1, 1939 and the companies which ceased to be inter-connected before that date, and are therefore, chargeable to the excess profits tax separately; do not come within it provision.

In *C. I. R.* v. *Trinidad Petroleum Development Co. Ltd.* 1944 All. E R. 667 (vol. 1) on an appeal before the Court of Appeal the above holding of the court of appeal was reversed and it was held that S. 17 relating to interconnected companies applies not only to a company which is subsidiary in both the standard and the chargeable accounting periods but also to one which is a subsidiary only in the standard period or a part thereof.

Sub-rule (1) (c)—"Value of the assets". This would mean the market value of the assets.

Sub-rule (2).—Income-tax deductions from the nominal amount of debts forming assets shall be taken into account under the Sub-rule.

Assets other than cash.—Rule (2) as amended provides that from the cost or value arrived at in accordance with Rule (1) there are to be deducted.

(i) such deductions as are necessary to reduce the value of the asset to its "written-down value".

(ii) such other deduction in respect of reduced values of assets as are allowable in computing profits for income-tax purposes.

(iii) in the case of debts any deduction which has been allowed in respect thereof for income-tax purposes.

"Written-down value" is defined in Section 2 (22) as having the meaning assigned to that term in Section 10 (5) of the Indian Income-tax Act, 1922, and accordingly "written-down value" for the purpose of computation of excess profits tax capital must be determined in accordance with the wording of that Sub-section.

Example.

The "previous years" of a business are the years ended 31st December, the first chargeable accounting period being the last four months of the accounting period of 12 months ending 31st December 1939. The chosen standard period is the year 1935 and it is necessary in computing capital to determine the written-down value of any building, plant or machinery as at 1st January 1935 and 1st January 1939. Plant costing Rs. 1,00,000 was installed 1st January 1930 and the depreciation rate on the old basis was 5% while on the written-down value basis from year of assessment 1940-41 it is 8%. For income-tax purposes there is a carry forward depreciation from the year of assessment 1935-36 of Rs. 6,000 which may be regarded as relating Rs. 5,000 to 1935-1936 and Rs 1,000 to 1934-1935. Similarly, there is a carry-forward from the year of assessment 1939-1940 of Rs. 7,000 which may be regarded as relating to Rs. 5000 to 1939-1940 and Rs. 2,000 to 1938-1339.

The written-down value as at 1st January 1939 is arrived at as follow:—

	Rs.	
Cost	1,00,000	
Deduct—Depreciation allowable on prime cost basis	45,000	(9 years at Rs. 5,000
	55,000	
Add—Carry-forward of depreciation for years prior to year of assessment 1939-1940	2,000	
Written-down value ..	57,000	

The written-down value as at 1st January 1935 should be similarly calculated as follows:—

	Rs.	
Cost	1,00,000	
Deduct—Depreciation allowable on prime cost basis	25,000	(5 years at Rs. 5,000)
..	75,000	
Add—Carry-forward of depreciation for 1934-35 and 1935-1936 being year of assessment 1939-1940 ..	6,000	
Written-down value ..	81,000	

The words of the Sub-rule "such other deduction in respect of reduced values of assets" cover the case of trading stock which, being regularly valued on the basis of "cost or market value whichever is the lower" is valued for income-tax purposes at a particular accounting date at market value which is less than cost. In effect, in computing profits, the difference between cost and market value has been allowed as a deduction in respect of the reduced value of the stock and the words quoted make it clear that, in computing capital for excess profits tax purposes, such stock is not to be valued at any higher figure than the value at which it has been taken in computing profits.

The further words referring to debts which are assets of the business ensure similarly that where, in computing profits, trade debts have been treated as bad or doubtful they are not, in computing capital to be valued at a figure greater than their nominal amount less any allowances made there against,[1]

Sub-rule (3). Where the price for any asset is not paid in cash, the value of the consideration given *actually* for the price would be treated as the price of the assets. See also notes under (1) (*a*) *ante*.

(1) Para. 76 Notes and Instructions.

Rule 2.—(1) Any borrowed money and debts shall be deducted, and in particular [1][**there shall be deducted any debt incurred in respect of the business for income-tax or super tax or excess profits tax or for advance payments due under any provision of Indian Income-tax Act Act 1922, or for any further sum payable in relation to excess profits tax under Section 2 of the Excess Profits Tax Ordinance 1943 (16 of 1943)**] **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 under Section 45 of the Indian Income-tax Act, 1922;

(b) in the case of excess profit tax, on the 1st 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.

[2][**(c) in the case of any advance payment due under any provision of the Indian Income-tax Act, 1922, on which, under the provisions of that section, the payment first became due ;**

(d) in the case of any further sum payable in relation to excess profits tax under Section 2 of the Excess Profits Tax Ordinance, 1943 (XVI of 1943) on the date on which, under the provisions of that section the further sum became payable.]

[3][**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.]**

(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.

1. **Analogous Law**:—The corresponding English Rule is para 2, Part II, Schedule 7, Finance Act 2 of 1939.

2. **Scope of Rule 2**:—Rule 2 allows deduction of borrowed money and debts (*i.e.* debts payable by the business), Income-tax, super-tax and excess profits tax are also to be deducted as debts of (*i.e* due by) the business in question. The Proviso clears up and fixes the particular income-tax, super tax and excess profits tax to be deducted, under the Rule.

Sub-rule (2) makes provisions for determination of excess profits tax in case of deficiency that may occur subsequently.

Borrowed money or debt.

Rule 2 (1) provides for the deduction from the value of the assets, computing in accordance with the preceding paragraph, of any borrowed money or debts. The deductions will be, of course the actual amounts thereof.

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(1) Amended by the Indian Finance Act, 1944.

(2) Sub-clauses (c) and (d) were added by the Indian Finance Act, 1944.

(3) These words were inserted by S. 10 of the E. P. T. (Amendment) Act 1940 (42 of 1940).

The dates at which Income-tax, super tax and excess profits tax payable in respect of business profits are to be treated as debts deductible in computing capital are as follows :—

(a) income-tax and super tax on the last day of the period allowed for payment of the tax under Section 45 of the Indian Income-tax Act, 1922;

(b) excess profits tax on the first day after the end of the chargeable accounting period in respect of which the tax is payable. This date applies although the tax may not have been assessed until after the date in question.

Rule 2 (2) provides that where relief is given against the excess profits tax liability of one period by reference to a deficiency in a subsequent period, the debt deductible under Rule 2 (1) is not to be reduced by the amount of the relief, but the amount of the relief is to be treated as being an asset of the business on the first day after the end of the chargeable accounting period in which the deficiency occurred.

In the case of reduction of an excess profits tax assessment on appeal, the reduced liability is deductible as a debt under Rule 2 (1) while in the case of an increase in the liability by reassessment or by an additional assessment the ultimate liability is the sum to be deducted. On the other hand, in the case of income-tax and super-tax while it is the ultimate liability which is deductible in the case of reduction on appeal, in the case of an additional assessment the increased tax is only deductible in computing capital as from the last day allowed for payment of the additional tax.

As the actual tax liabilities are to be deducted as at dates laid down in the Schedule, it follows that any balance of the Income-tax account or Income-tax Reserve account appearing in the Balance Sheets should not be deducted in the computation of capital

Where relief from income-tax or super tax, *e., g.* double taxation relief, is given by way of repayment the sum repaid should be treated as an addition to the capital of the business from the date of the business and from the date of the repayment.

Where under Rule 5 of the First Schedule interest on money borrowed after the end of the standard period is not deducted from profits (see paragraph 34) such borrowed money is not to be deducted in computing the capital employed in the business.[1]

The addition to Sub-rule (1) of Rule 2 made by the Excess Profits Tax Amendment Act, 1940, secures that accrued liabilities which have been allowed in computing profits shall be deducted also in computing capital as if such liabilities were debts. An example of the deductions which are thus dealt with is the 40 per cent. of the years premium income which is allowed in computing the profits of fire insurance business. (See also Para. 103 Notes and Instructions.)

3. Sub-rule (1) 'Debts'—The term 'debt' under the Excess Profits Duty law of the United Kingdom (Schedule 4 Part III, para. 11, Finance Act, 1915) was held to mean debts in the proper sense of the term and not as a mere synonym for liabilities, in general. Similarly, in the same case it was held that 'borrowed money' meant 'real loan', a sum actually borrowed. The expression 'debt' for income-tax.... in respect of the business might seem not to be very clear. Apparently, the words, 'in respect of the business' confirm the term income-tax to tax payable on income computed under Section 10, Income-tax Act, 1922 (just like income taxable under Schedule D in the United Kingdom law).

4. Sub-rule (1) Proviso :—The Proviso relates to the period of time when the debt for income-tax or super-tax or excess profits tax becomes due. The date under clause (a) in respect of income-tax and super-tax is to be the one when the same is payable, under Section 45 Income-tax Act. The date under the English Act is different, being normally 1st July in the year of assessment for which tax is assess-

(1) Part of London Authority v. C. I. R. (1923) A. C. (514).

able. In case of late assessment, it is due on the day next after that on which assessment is signed and allowed (English Income-tax Act, 1918, Section 157).

Under Section 45 Income-tax Act, 1922, income-tax is usually payable on the date mentioned in the notice of demand under Section 29 of the Act or if no date is mentioned in the notice then or before the first day of the second month following the date of service of notice.

Under clause (b) excess profits tax the end of chargeable accounting period marks the time. The day after that is the date on which excess profits tax is treated as a debt irrespective of whether it is assessed upto that date or not.

5. Debentures issued at a discount.—When debentures have been issued at a discount then although ultimately it will be the full nominal amount of the debenture that must be repaid, the deduction to be made in computing capital in respect of this borrowed money should be limited to the net amount actually received from the issue. If the discount appears in the Balance Sheet as an asset of the business it should not, of course, be so treated in computing Excess Profits Tax capital.[1]

6. Debentures repayable at a premium.—When debentures issued at par are repayable at a premium the deduction from capital in respect of the borrowed money, while the debentures are outstanding, should be limited to the amount, *i. e.*, the par value, actually received from the issue.[2]

7. Treasury Bills and Defence Bonds.—The question has been raised whether and, if so, to what extent investments in Treasury Bills and Defence Bonds may be regarded as capital employed in a business and not excluded under Rule 3 of Schedule II in computing the capital of businesses other than those of the nature specified in Rule 4 (2) of Schedule I to the Act.

The following instructions are to be followed by Excess Profits Tax Officers :

"In computing for Excess Profits Tax purposes the capital employed in a business during a chargeable accounting period Rule 3 of Schedule II to the Act requires, in the case of businesses other than banking businesses, insurance businesses or businesses consisting mainly or wholly in the holding of or dealing in investments, the exclusion of investments and of monies not required for the purposes of the business.

In deciding what monies are required for the purposes of a business regard should be paid to any increased stocks carried, increased debts owing by the business modified by consideration of any increase in debts owing to it and to the amount of any existing or pending liabilities in respect of taxation, dividends, etc."

In the application of the Rule, the following instructions should be observed:—

"(1) That investment in Treasury Bills have to be treated on the same basis as bank deposits and other monies capable of ready realisation ;

(2) Defence Bonds must be considered from the point of view of whether the investment is likely to be of a permanent or a temporary character. If in fact and intention the investment is clearly the merely temporary investment for a limited period of monies subsequently employed in the business such investments will be treated as capital employed in the business ;

(3) Denence Bonds purchased with money arising from the realisation of investments previously excluded from Excess Profits Tax capital should, however, in general be excluded ;

(4) Defence Bonds purchased with borrowed money should also be excluded."[3]

Rule 2-A—In computing for any chargeable accounting period ending after the end of March 1941, 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

(1) Para 111 Notes and Instruction.
(2) „ 112 „ „
(3) „ 112A „ „

other than a part of a business to which Sub-rule (2-A) of the said Rule applies, no deduction shall be made in respect of borrowed money :

Provided that as respects any such chargeable accounting period which commences before the said end of March, the application of this Rule shall be subject to the Provisions of Section 7-A of this Act :

Provided further 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.

This Sub-rule has been newly added. It should be read with Rule 5-A of the Schedule I. (See notes thereunder).

This New Rule 2-A, Schedule II, provides that, as from 1st April 1941, in the case of any business *other than* a business to which sub-rule (2) of Rule 4 of Schedule I applies and in the case of a part of a business *other than* a part of a business to which sub-rule (2-A) of that rule applies, no deduction is to be made in respect of borrowed money in computing the capital of the business or of the part of a business.

Reference should be made to paragraph 34-B for examples showing how this provision should be applied.

It is to be noted that, in the case of the business of a building society, a money-lending business, banking business, insurance business or of a business consisting wholly or mainly in the dealing in or holding of investments and in the case of a business part of which consists in banking, insurance or dealing in investments, the capital computations are unaffected by the new rule, borrowed money in such cases being deductible as before.

(See also paragraph 24-A for instructions regarding chargeable accounting periods beginning before and ending after the end of March 1941.)[1]

Rule 3.—(1) 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 [2][or as regards any chargeable accounting period ending after the 31st day of December, 1942, any trading stock or stocks of raw materials] 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.

[2]"**(2) The Central Government may make rules defining for the purposes of this rule the principles to be followed in leaving out of account trading stock and stocks of raw materials.**"

1. Analogous Law :—The corresponding Rule under the English Law is Rule 3 Schedule 7 Part III Finance Act 2 of 1939.

2. Scope of Rule 3 :—Investments disregarded in computing profits and moneys not required for purpose of business shall not count towards capital employed in business. The provisions of this Rule would affect those of the preceding Rule relating to deduction in respect of borrowed money.

Investments :—Rule 3 of the Second Schedule provides that any investments the income of which is by virtue of the First Schedule not to be included in the profits of the business and any moneys not required for the purposes of the business

(1) Para 77A Notes and Instruction.
(2) Sub-clause (2) and the words printed in bracket in sub-clause (1) were added by the E.P.T. Amendment Ordinance 1943.

are to be left out of account in computing capital. Taken in conjunction with Rule 4 of the First Schedule (see paragraph 33) the effect of the Rule is as follows :—

(a) in the case of the business of a building society, or of a money-lending business, banking business, insurance business or business consisting wholly or mainly in the dealing or in holding of investments, the capital of such business for excess profits tax purposes is to include the value of the investments, arrived at according to the provisions of Rule 1 of the Second Schedule. (In the case of a business part of which consists in banking insurance or dealing in investments the investment which are assets of that *part* of the business are to be included.) This value is to be cost if they were acquired by purchase or other value at the date acquisition if they were acquired otherwise, less only any sum by which they have been written down and which has been allowed in computing profits An example of the deduction last mentioned would be a concern mainly dealing in investments which has been allowed to value its investments as stock in trade at a value below their cost.

(b) in the case of all other businesses investments are to be excluded from the computation of capital. See, however, paragraph 79 (Notes and Instruction) which deals with the inter relation between excluded investments and borrowed money Subject to this no difficulty should arise under (b) as in practice all that is necessary is to exclude whatever figure appears in the Balance Sheet for the investments.

Treasury Bills and Treasury Bonds should be regarded as investments. Bank balances on current account are not investments, but it may be necessary to deal with some part of them as moneys not required for the purposes of the business.[1]

Excluded investment and borrowed money.

The effect of the Rule is that, in the case of businesses other than banking, insurance etc.:—

(a) if the business is carried on by a company, the value of the investments is to be deducted from the borrowed money in all cases in order to arrive at the deduction to be made therefore in computing capital.

(b) if the business is carried on by any "person" other than a company, the value of the investments is to be deducted from the amount of the money *only* to the extent that the investments have in fact been mortgaged, charged, or pledged as security for repayment of the borrowed money and payment of the Interest thereon.

If the investments have in fact been mortgaged, then it is immaterial whether they do or do not appear in the business balance sheet.[2]

Value of excluded investments to be set against borrowed money.

No guidance being given in Rule 3 or elsewhere in the Act as to the meaning of the term "value of those investments", the word 'value' must be given its normal meaning which, in view of its context, must be taken to be 'market value'. If during an accounting period the value of the investments should change and if the value of the investments is less than the amount of the borrowed money such variations in value will affect the average amount of capital employed in the business during that period. In such a case the increase or decrease in the value of the investments would involve a corresponding increase or decrease of the avarage capital employed because the deduction from the borrowed money in respect of excluded investments is increased or decreased accordingly. There is no need for meticulous calculation in such a case, but if a claim is made that the value of the investments to be deducted from borrowed money under the Rule is greater than the average of the value at the beginning and end of the accounting period, such intermediate valuations should be taken into account as will give a fair average for the period.

(1) Paaa. 78 Notos and Instruction.
(2) Para. 79 Notes . ,.

If the value of the investments is greater than the borrowed money throughout the period, no variation in the value of the investments affects the calculation of excess profits tax capital, for none of the borrowed money is deductible throughout.[1]

Principal of the borrowed money-fixed loans.

If the value of the excluded investments exceeds the amount of the borrowed money throughout the accounting period, the borrowed money will not be deducted in computing capital as at the beginning of the period, and if the borrowed money consists of fixed loans adjustments will only be necessary when further sums are borrowed or when sums are repaid. In those circumstances there will be an increase or decrease in the average capital of the period of the amount of the further borrowing or of the repayment for a proporation of the accounting period which readily ascertainable and should be dealt with as set out in paragraph 91. Notes and Instruction).

If the value of the investments is less than the amount of the borrowed money further borrowings have no effect upon average capital and repayments of the borrowed money will not affect average capital until the borrowed money is reduced to a figure below the value of the invesments.

It is assumed in the foregoing that further borrowings are employed as buisness assets or in reduction of business liabilities and that repayments are made out of business assets.[2]

Principal of the borrowed money-Bank overdraft:—There is no difference in principle between the treatment of fixed loans and that of bank overdrafts in relation to excluded investments, but in view of the possibility of a bank overdraft fluctuating widely during an accounting period, the average amount of the bank overdraft is not spreadily computed as is the case with fixed loans.

As in the case of fixed loans, the average capital is not affected by variation in a bank overdraft in a case where the value of the investments is less than the amount of the bank overdraft throught the period.

Where, however, the excluded investments exceed the amount of the overdraft, than although the capital as at the beginning and end of an accounting period may be readily computed, the values as computed at these dates take no account of any increase or decrease in the overdraft which, being covered by excluded investments, ranks an additional capital for the appropriate portion of the accounting period. For example;—

Excluded investments during a chargeable accounting period were of a value never less then Rs 1,60,000. The business bank overdraft was Rs. 1,00,000 at the commencement and Rs. 1,20,000 at the end of that period. If the average overdraft over the period were Rs. 1,40,000, there would be an increase of capital on this account of Rs. 4,00,000 as compared with that at the commencement of the period.

In any case, therefore, in which there are excluded investments the value of which exceeds the bank overdraft and in which it is claimed that the amounts of of the bank overdraft at the Balance Sheet dates do not give a fair measure of the average bank overdraft over the period a more exact computation of the average over draft may be made by averaging quarterly or monthly balances or by any other method which will give a reasonably accurate result.

If such a method is claimed in relation to the capital of a chargeable accounting period, it should, of course, be applied also to that of the standard period.

In computing capital no such adjustment should, however, be made in respect of either fluctuations in the value of excluded investments or in the amount of borrowed money unless,

(1) Para. 80 Notes and Instruction.

(2) Para. 81 Notes and Instruction.

(i) the tax-payer claims it, and submits particulars giving a reasonably reasonably accurate result;

(2) the fluctuations are of such a magnitude that they must clearly have a material effect upon the liability.[1]

Monies not required for the purposes of the business.

Rule 3 also provides that moneys not required for the purposes of the business shall be left out of account The provision is not one which will often need to be brought into operation. Its primary purposes is to prevent assessees from taking advantage of the privileges allowed for increased capital to secure a higher net yield on surplus moneys than they would obtain by investing them. For example, if money which would earn 5% outside the business is left on business current account at the bank at only 2%, the assessee's loss of 3% in interest would be more than offset by a gain of 50% in his saving of excess profits tax on the, say, 10 or 12 per cent allowed if the money were treated as capital for excess profits tax purposes. Such a result would be unreasonable and Rule 3 is designed to prevent it. The amount of the cash in hand and at bank should be considered at each accounting date but the Rule should not be invoked unless it is clear that some part, material in amount, is in excess of the requirements of the business. Temporary increases which in due course are converted into business assets call for no action under the Rule, but continued increases of undue amount or increases that are ultimately invested outside the business call for the application of the Provisions of the Rule.[1-a] (See also Para. 104 Notes and Instructions).

War loan holdings of a partnership business, though intended to be realized when occasion should arise, with the object of employing the proceeds of sale in the trade or business have been held to be investments and have been deducted in computing the amount of capital employed in trade or business.[2] Similarly treasury bills and shares and debentures held in companies[3] and investments in British Government securities[4] were so held and were excluded from capital employed in business. Advances, however, made without security and carrying no interest made by a coal company to a colliery were treated as capital laid out in business.[5]

The question whether a company was an investment company or not was held to be one of fact [6]

The Proviso relates to the case where it is not a company that carries on business. In such a case reduction as above stated shall be made only if the investments are mortgaged, charged or pledged as security for repayment of principal sum borrowed and interest.

3. 'Investment.' The term 'investment' here has no particular or technical meaning and is used in the general sense. See also notes R. 4 (1) *post* of this Schedule.

The word "investment" though it primerly means the act of investing, is in common use as a meaning that which is thereby acquired, and the primery meaning of the transitive verb to invest, is to lay out money in the acquisitions of some species o property Royalties received an account of licenses granted for letter patent covering inventions of aluminium alloy and resilient pipe invented by the workers employed in the research department of the assessee do not amount to investments since the employment of workers is not laying out of money *C. I. T.* v. *Rolls Royce*

(1) Para. 82 Notes and Instructions.

(1-a) Para. 83 Notes and Instruction.

(2) Bourne and Hollingworth v. C. I. R. 12 T. C. 483 (488, 492, 493); The Lincoln Wagon and Engin Co,, Ltd., v. C. I. R. 12 T. C. 394 (501, 502, 503).

(3) The Lincoln Wagon and Engin Co., Ltd., v. C. I. R. 12 501, 502, 503 T. C, 494.

(4) C. I. R. v. The Gas Lighting Improvement Co., Ltd, 12 T. C. 503.

(5) Liberty and Co., Ltd. v, C. 1. R. 12 T. C. 620 (634, 645).

(6) James Waldie and Sons Ltd. v. C. I. R. 12 T. C. 143, 120, 122.

Ltd. 1944 All Eng. L. R. 340 (vol 2). The facts of the case: "The respondent in this case, Rolls Royce, Ltd., a company incorporated in 1906 and carrying on business as manufacturers of motor chassis and aero engines, is the registered proprietor of latter patent covering inventions of (1) an aluminium alloy known as R. R. 50, and (ii) resilient pipe joints. In January, 1930, the respondent granted an exclusive licence to manufacture and sell the alloy R. R. 50 to a company called High Duty Alloys, Ltd., and in August, 1940 the respondent and High Duty Alloys, Ltd., granted a limited licence to manufacture and sell that alloy to a company called wellworthy Piston Rings, Ltd. In October, 1939, the resdondent granted an exclusive licence to manufacture and sell reslient pipe joints made in accordance with its patent to a company called Avimo, Ltd. Each of these licences provided for the payment of a royalty to the respondent. Royalties received from licences for the manufacture self or inventions made by the employees of the licensores are therefore held not investments liable to excess profits tax, since the employment of workers is not a laying out of money.

4. **'Moneys not required etc.'**:—Not only are investments excluded from the operation of computation of capital by this Rule, but the Rule also excludes money not required for purposes of business. The expression, 'though seemingly paradoxical has a meaning which is intelligible.' Apparently, the words are intended to make it clear that assets to be left out of account in computing capital would also include such moneys as may not be required for immediate use in the business and which may consequently be invested, to be drawn upon and used when needed, e. g. liquid securities kept available for meeting further commitment. See the case of *Liberty & Co.. Ltd.* v. *C. I. R. 12 T C. 630* and other case above cited under Scope note 2 of this Rule.

Rule 4.—Notwithstanding anything contained in Rule 3, 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 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.

This Rule together with the Proviso was added in the Assembly at a motion by an Honourable Member. It relates to shipping industry. The moving Honourable member, in proposing the addition of this Rule observed :—"The position of the shipping industry, particularly the Indian shipping industry is of momentous importance during the war particularly. Ships are requisitioned for war services and if they are lost, it is difficult to replace them. It is also not always practicable to utilise the reserves for depreciation for replacement of old ships, the cost of replacement under conditions of war being a very important factor. It is, therefore, quite essential that funds lying with shipping companies either as cash or as investments being the proceeds of the sales or the amount of compensation for losses of ships or the accumulation of the amounts of depreciation should be treated as capital employed in the business. Unless such a consideration is shown, the position of the shipping industry will be rendered very difficult, It must be remembered that even after the war for a few years, at any rate, the cost of replacement is going to be substantially higher than it would be the case under normal circumstances In this connection the report of the Joint Taxation Committee of the Chamber of Shipping and the Liverpool Steamship Owners' Association is of interest. They say :—"A special reserve should be allowed out of profits to replace vessels lost during the war, or vessels in commission at the end of the war, which would have to be replaced at a cost which would exceed the cost of the fleet replaced and this is of paramount importance if the shipping industry is to be maintained after the war. The creation of any such reserve should not be confined to the Excess Profits Tax Provisions, but provided for if necessary against the national defence committee."

The Honourable, the Finance Member in accepting the proposed addition observed that the amendment embodied a reasonable principle

Rule 4 of the Second Schedule introduces in favour of the business of shipping an exception to the terms of the Rule 3. In the case of any such business 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, are all to be treated as capital employed in the business whether such moneys would or would not, under the general provisions of rule 3, fall to be excluded either as investments or as moneys not required for the purposes of the business. It will be noted that it is the source of the moneys and not their method of employment that determines whether or not they are to be included in the capital of the business. In effect it may be said that it is only investments which were made out of the original capital of a shipping company that, under Rule 3 as modified by Rule 4, should be excluded from computation of the company's capital.[1]

Rule 5 —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.

Analogous Law:—The English Finance Act 2 of 1939 Rule 5, Part II, Schedule 7 is the same.

2. Scope of Rule 5:—The Rule relates to the accrual of profits and losses during the period the average amount of capital employed during which is to be computed. The Rule lays down that the sum or even rate shall be deemed to apply both to profits and losses during such period. Naturally, such profits and losses would affect the amount of the capital, by way of increase or decrease as the case may be.

Average Profits or losses.—Rule 5 of the Second Schedule provides that for the purpose of ascertaining the average amount of capital employed in a business during any period, the profits or losses of the period shall, except so far as the contrary is shown, be deemed:—

(a) to have accued 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.

Profits and losses would without this Rule affect the average capital employed in a business since they are reflected in the assets and liabilities of a business at the end of the period during which they arise, but the Rule provides that they shall be deemed to have accrued at an *even* rate over the period and to have increased or decreased the capital at that rate except so far as the contrary is shown.

It can be shown that profits have not so increased the capital if, for example, they have been invested outside the business or if they have been taken out of the business as dividends or proprietor's drawings. The latter events will, however, be taken specifically into account in computing average capital. If it should be claimed that profits or losses have not in fact evenly over a period full evidence should be required before such a claim is admitted.

It is possible that a claim may be made in some cases that the difference between,

(a) the depreciation allowed for income-tax purposes by reference to which the written-down value of depreciable assets is computed under Rule 1 (2) of the Second Schedule, and,

(b) the depreciation which has been allowed, in computing the excess profits tax profits of the standard period, in accordance with paragraph 27, Notes and Instruc-

(1) Para 85 Notes and Instruction.

tion which difference increase those profits as compared with the profits for income-tax purposes, forms a part of the accruing profits which must be taken to have increased the capital during that and subsequent periods. That portion of the excess profits tax "profits" should not be so treated and should be excluded from the capital computations. Rule 5 provides that provides that profits are only to be taken as increasing capital if the contrary is not shown. Clearly the ' profits" in question are not represented by any asset apart from the depreciable assets in question, which must be valued in accordance with the provisions of Rule 1 (2). It follows that the so-called "profits" cannot be treated as capital employed in the business.

The profits to which the Rule applies are the profits as computed for excess profits tax purposes, and, subject to the adjustment mentioned in the preceding sub-paragraph, the effect upon average capital of accruing profits so computed.2 See also Para. 87, 88, 89, 90 Notes and Instruction.

Even rate,—In view of the words 'even rate' used in clause (a), the effect of this Rule, which has been taken bodily from the English law, illustrated by example, would seem to be this. Suppose profits amounting to Rs. 60,000 are made in an accounting period, consisting of the year which ended on 31st December, 1940, then taking the profits for one month, which would be 1/12th part of above sum, it would amount to Rs. 5,000 for one month.

Taking the words of clause (a) of the Rule into account, it would mean Rs. 30,000* for 11 days (being 1/2* of Rs. 60,000) a month. This would be in addition to the average amount of capital employed in the year up to December, 1940. As the above figure is for 11 months only and (not for 12 months of the whole year) the last month *i.e.* December, 1940 having been left out of calculation, as the profits of the last month *i.e.* that December 1940, could not have been employed at all in the business in respect of the year which begin on January, 1940. This is the calculation on the basis of 'even rate' throughout the period.

Circumstances may, however, arise where this basis of calculation may not hold good and in such cases some other basis may have to be adopted as is possible according to the words, 'except so far as the contrary is shown' according to the Rule.

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(2) Para 85 Notes and Instruction.

*If the profits made during the whole year amounting to Rs. 60,000 the increase of capital at an *even rate* will be worked out as follows :—

				Rs.	
1.	Suppose the increase in the average capital in the beginning of	2nd	month	5,000	being the profit of 1st month
2.	,, ,,	3rd	,,	10,000	,, 2nd month and previous months
3.	,, ,,	4th	,,	15,000	,, 3rd month and previous months
4.	,, ,,	5th	,,	20,000	,, 4th month ,,
5.	,, ,,	6th	,,	25,000	,, 5th ,, ,,
6.	,, ,,	7th	,,	30,000	,, 6th ,, ,,
7.	,, ,,	8th	,,	35,000	,, 7th ,, ,,
8.	,, ,,	9th	,,	40,000	,, 8th ,, ,,
9.	,, ,,	10th	,,	45,000	,, 9th ,, ,,
10.	,, ,,	11th	,,	50,000	,, 10th ,, ,,
11.	,, ,,	12th	,,	55,000	,, 11th ,, ,,
By adding the above average, we get				3,30,000	

The increase in the aaerage capital employed at *even rate* is 1/11th of Rs. 3,30,000=30,000.

To take an illustration of the above case:—Suppose the entire amount of profits, Rs. 60,000 has accrued during the period from 1st September, 1940 to 31st December, 1940, owing to war the income and expenses during the remaining eight months (1st January, 1940 to 31st August, 1940) having been equal. The increase in the average amount of capital employed in the business would be Rs. 30,000 taking the even rate 'into account' for four months *i.e.* increase in capital. The average amount of the capital during the whole year will be Rs. 10,000. *i.e.* 1/3rd of Rs. 30,000.

An extreme case would be where in a business (say of an agent) the entire amount of profits occurred on the last day of the year of the accounting period, say 31st December, 1940, by way of receipt of commission of a sum of Rs. 60,000 on that date In such a case, there will be no increase in the average amount of capital, the profit having accrued in its entirety on the last day, *i.e.* 31st December. 1940. In the above illustrations it has been assumed that the profits were allowed to be used in the business for the entire accounting period upto 31st December, 1940. There may, however, be cases where sums be withdrawn from profits or dividend paid to shareholders in cases of companies.

Naturally, therefore, in such cases the capital will not be increased to the extent of the profits that accrued but only to the extent that they (*i e.* profits exceed the withdrawals made or dividend paid).

Capital reconciliation and average capital

It will be useful in the more important cases to connect the figures of capital as computed for successive dates by a reconciliation statement.

This statesment may take some such from as that shown in the Appendix to this paragraph and it may be used also to bring out the *average* capital of the period which covers two successive dates.

The example given in the Appendix is that of a Company which is not within the terms of Rule 4(2) or 4(2A) of the First Schedule. It shows the calculation of capital as at the commencement of the standard period and gives the capital at the end of the year which should be taken as the starting point for the computation of the capital of the next succeeding year. The capital of later years may be similarly built up from that of each preceding year. It does not purport to be exhaustive but is illustrative of a practicle method of giving effect to the considerations set out in the preceding paragraphs. Further, it does not necessarily show the absolute capital that would be required to be computed in a precentage standard case or as a limiting factor in the case of applications under Section 6(3) or 26(1).

With regard to the computation. —

Investment income.—Tbere being a specific receipt at a given date its effect upon capital has been calculated exactly, but in any case where such items are numerous and arise at different dates there is no objection, if the assessee so desires, to dealing with such income in the aggregate and to treating it as arising half-way through the period.

Capital Loss.—The investment which stood in the books at Rs. 50,000 realised Rs. 40,000 which was thereafter, employed in the business The two entries "plus Rs. 50,000" and "minus Rs. 10,000" have the effect of adding to business capital the real addition *viz*, Rs. 40 000.

Tax liabilities.—These are deducted as at the date when they first became due and payable [Rule 2(1) Proviso]. Even if further time is given for payment the tax was due on the date prescribed in the original order and that is the date on which it must be regarded as having became a liability and, therefore as deductible from capital. If the Balance Sheet shows a taxation reservea thsat should be treated a

general reserve and not deducted from the business assets, the specific deduction for actual liabilities being the only adjustment necessary therefor.

Cases will arise in which at the commencement of the third chargeable accounting period excess profits tax liability is unpaid for both the first and second chargeable accounting periods. In such a case while the liability for the first period is deductible from capital as at the beginning of the second period, both liabilities must be deducted as at the beginning of the third period.

Accruing Profits.—(Rule 5, Schedule II). The various items making up the assessable profit have been separately dealt with in the example to show the varying treatment necessary according to the nature of the item. It will be observed—

(*i*) that the net profit of the year Rs 1,14,000 and dividends received Rs. 2,000 increase the assets of the business and are included therefore in the figure of Rs. 17,49,000 total assets at 31st December 1936 so that they require no further entry in Column 4;

(*ii*) that the item Rs 30,000 has created a capital asset which is not shown in the Balance Sheet and which therefore needs to be added to the assets in Column 4;

(*iii*) that the items—

	Rs.		Rs.
Depreciation	20,000	less	14,000
Obsolescence	2,000	„	4,000 and
Debts written off ..	8,000		
Total ..	30,000	less	18,000

represent an application of profits Rs- 12,000 to the writing down of business assets below their value for excess profits tax purposes, and these items also need entries to reconcile the capital as shown by the Balance Sheet with the capital as computed for excess profits tax purposes at 31st December 1936.

It should be noted that such items as these are *cumulative in their effect* so that the entries made in later years to reconcile the excess profits tax capital with that shown by the Balance Sheet must include these adjustments for each year from the commencement of the standard period.

(*iv*) No entry is strictly necessary in respect of the Rs. 2,000 personal expenditure debited in the accounts and disallowed, but the entries plus Rs. 2,000 minus Rs. 2,000 show that while the item represents an appropriation of profit it is not such an application as increases the business capital.

All these items so far as they are taken into account in computing average capital at the mean date for they are all subject to the provisions of Rule 5.

Dividends paid

are deducted at the actual dates when due for payment. Withdrawals by proprietors or partners should be dealt with similarly, but if these are spread reasonably evenly over the period they may be dealt with in the aggregate and treated as a withdrawal half-way through the period.

See also paragraphs 81 and 82 re variations in capital computed by reference to borrowed money and investments, and paragraphs 83 as to moneys not required for the purposes of the business.[1]

(1) **Para 91 Notes and Instruction.**

ASCERTAINMENTS OF CAPITAL

(Appendix to paragraph 91.)

	Capital for Excess Profits Tax purposes				Computation of average capital during period				Notes
	At 31st December 1935		At 31st December 1936		Effective date	Fraction of period	Average for the period		
							Plus	Minus	
	Rs.	Rs.	Rs.	Rs.			Rs.	Rs.	
Total assets per Balance Sheet.	14,21,000	..	17,09,000	.	..	..	..	.	(*a*) Loan Rs. 2,00,250 less excluded investments Rs. 50,000=Rs. 1,50,250.
Deduct—									
Investments ..	..	50,000		*Nil*					(*b*) Loan Rs. 1,20,250=full amount: no excluded investments to be set off.
Loans	..	1,50,250*a*	..	1,20,250*b*	..	..	..	..	
Sundry liabilities ..	..	2,20,000	..	3,50,000	..	..	..	..	
Unpaid dividends ..	..	500	..	750	..	..	..	..	
Suspense account ..	..	250*c*	..	*Nil*					(*c*) This Suspense account represents a liability which has been allowed in computing profits.
	4,21,000		4,71,000						
E. P. T. Capital per Balance Sheet.	10,00,000	..	12,38,000	..	1-1-36	Whole	10,00,000	..	
Add—									(*d*) The computation of profits is:—
Additional paid-up Capital.	2,00,000	..	..	..	1-4-36	3/4	1,50,000	..	

Dividends received and employed in the business	2,000	.	..	..	1-4.36	3/4	1,500	..	Balance P&L a/c	Rs. 1,14,000
Depreciation written off ..	20,000		20,000	..	1-7-36	1/2	10,000	..	Bad debts written off	8,000
Less depreciation allowed for income-tax purposes..	..	.. 14,000	..	.. 14,000	.. 1-7-36	.. 1/2	..	.. 7,000	Non-business expenditure	2,000
Obsolescence written off ..	2,000	..	2,000	..	1-7-36	1/2	1,000			
Less Obsolescence allowed		4,000		4,000	1-7-36	1/2		2,000	Capital expenditure	30,000
Bad Debts written off not allowed ..	.. 8,000	.. ..	.. 8,000	..	1-7-36 1-7-36	.. 1/2	.. 4,000	.. ..		
Capital expenditure debited P, & L. ..	.. 30,000	.. ..	.. 30,000	.. ..	. 1-7-36	.. 1/2	.. 15,000	..	Obsolescence written off	2,000
Less Loss on sale (*e*) ..	10,000	10,000	.. ..	.. ..	.. 1-7-36	.. ..	.. ..	.. ..	Depreciation written off	20,000
Non-business expenditure disallowed ..	. 2,000	2 000	.. ..	.. ..	.. ..	.. ..	.. ..	.. ..		1,76,000
Balance Profit and Loss a/c ..	.. 1,14,000	..	..	.	.. 1 7-36	1/2	.. 57,000	..		
	(*d*)									
Deduct										
Income-tax and Super-tax due 15th May 1936 paid 1st November 1936 ..	..	.. 18,000	..	.. ..	.. 15-5-36	.. 5/8	..	.. 11,250	*Allowable.*	
Dividends—										
Final for 1935 ..	..	50,000	..		15-2-36	7/8	..	43,750	Obsolescence ..	4,000
Interim 1936 ..	..	10,000	.	..	15-8-36	3/8	..	3,750	Depreciatien ..	14,000
	13,88,000		13,98,000	Reconci-			12,38,500			1,58,000
	1,08,000		18,000	liation.			67,750			
	13,20,000		13,80,000				11,00,750			

(*e*) Investments standing in the balance sheet at Rs. 50,000 were sold for Rs. 40,000.

Rule 6. Where, in accordance with [1][the second or third Proviso] to Section 5 of 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 bnsiness only.

This Rule relates to a special case where the Act is applicable only to a part of the business, of a non-resident, which in view of of the second Proviso to Section 5 is to be deemed to be a separate business. Capital employed in such a business would be computed separately in regard to the particular part to which the Act is applicable.

[2][Rule 7.—(1) If :—

(a) the Central Board of Revenue is satisfied, as respects any assets of any business the standard profits of which are computed by reference to the profits of a standard pesiod, 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 Central Board of Revenue by the person cayying on the business, than, 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 he treated as not having been assets thereof during any part of the period during which, in the opinion of the Central Board of Revenue, they were inherently unporductive :

Provided that in the case of a business the standard profits of which depend directly or indirectly upon a direction of the Board of Referees under Sub-section (3) of Section 6 ; or of the Central Board of Revenue under Sub-section (1) of Section 26 of this Act the provisions of this Rule shall have effect to such extent only as the Central Board of Revenue thinks proper :

Provided further that an application to the Central Board of Revenue 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 13 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]

[3]Rule 7 of the second Schedule provides for relief where any assets of a business, *e.g.*, a factory in course of construction, were inherently unproductive during the standard period or any part of it, and gives power to the Central Board of Revenue, on the application of the person carrying on the business, if it is satisfied that the assets were inherently unproductive, to direct that for the appropriate proportion, of the standard period and also for the appropriate proportion if any, of all chargeable accounting periods the value of such assets shall be excluded in computing the average capital employed in the business.

In dealing with such an application the Central Board of Revenue is empowered also to order similar exclusion of the value of any other assets which during any part of the standard period of any chargeable accounting period were inherently unproductive. Thus if, for example, a new factory was in course of construction in the standard period and is completed and ready for use in a chargeable accounting

1. This Rule was added by Section 10 of the Excess Profits Tax (Amendment) Act, 1940 (42 of 1940).

2. Ibid.

3. Para. 86 Notes and Instruction,

period, and in the chargeable accounting period there is expenditure, upon a further uncompleted factory, if an application is made by the assessee under this Rule not only will an adjustment be directed in respect of the value of the first mentioned factory in computing the capital of the standard period but the direction will also provide for an adjustment of the capital of the chargeable accounting period in respect of the second factory.

It should be noted that it is not sufficient for an asset to be unproductive, for example, by reason of non-user; it must be *inherently* unproductive in order that it may be the subject of an adjustment under the Rule.

It should be noted further that in no circumstances may the Rule be applied unless an application is made by the assessee.

Power is given to the Central Board of Revenue, when giving a direction upon an application under the Rule, to modify the direction that would otherwise be given in a case where the standard profits depend directly or indirectly as, for example in the case of a change of ownership falling within the provisions of Section 8 (3), upon a direction given under Section 6 (3) or Section 26 (1). Such modifications would clearly be due if the value of the unproductive asset in question had entered into a computation of capital which was effective as a limiting factor in relation to such a direction.

A direction given under this Rule for exclusion, from the capital of the whole or any part of the standard period, of the value of the inherently unproductive asse- is to be given effect to in relation to all chargeable account periods, and if any excess profits tax assessment has been made for any chargeable accounting period before the giving of such a direction the assessment is to be amended accordingly, and, if necessary, a refund made under Section 48 of the Indian Income-tax Act 1922 as modified by Rule 3 (xv)b of the Excess Profits Tax Rules 1940.[1]

Computation of average capital.—While there should be little difficulty in computing capital at an assessee's accounting dates, particularly where, the standard profits being the profits of a standards period, it is only the increase or decrease of capital in the chargeable accounting period that is relevant, care must be taken in computing average capital during the standard period where two "previous years" are chosen which are of unequal length.

If the two "previous years" are of equal length then the average capital during the standard period is the arithmetical average capitals determined for those two years.

If, however, for example, one of the "previous years" extended to 53 weeks while the other extended to 52 weeks, and the average capital during the first period was Rs. 10,00,000 while that during the second period was Rs. 12,00,000, the average capital would be:—

$$\text{Rs. } \frac{(53 \quad 10{,}00{,}000)+(52 \quad 12{,}00{,}000}{150}\text{)}=\text{Rs. } 10{,}99{,}047.$$

In the majority of case an assessee's first chargeable accounting period will not coincide with an accounting period, and consequently, before the average capital employed during the chargeable accounting period can be determined, it will be necessry to compute the capital employed as at the commencement as well as at the end of that period.

(1) Para. 86 Notes and Instructions.

Example:—

Accounting period 12 months ending 31st December 1939.

Chargeable accounting period 4 months commencing 1st September 1939,

	Rs.
Capital as at 1st January 1939..	1,00,00,000
Capital as at 31st December 1939	1,20,00,000
Profits for excess profits tax purposes of accounting period of 12 months to 31st December 1939	10,00,000
Dividends paid 1st July 1939	6,00,000
Investment sold 1st June 1939 and invested in trading assets (leaving value of investments still in excess of borrowed money)	6,00,000
New Capital issued 1st October 1939	10,00,000

(For sake of simplicity minor matters which might affect computation of capital employed are omitted.)

The capital employed at 1st September 1939 is:—

	Rs.
As at 1st January 1939	1,00,00,000
Plus 8 months' profits at Rs. 10,00,000 for the year ..	6,66,667
Plus additional capital, investments sold 1st June 1939 ..	6,00,000
	1,12,66,667
Less dividends paid 1st July 1939	6,00,000
	1,0 ,66,667

The average capital employed during the period 1st September to 31st December 1939 is:—

	Rs.
Capital as at 1st September	1,06,66,667
Plus profits of 4 months Rs. 3,33,333 spread evenly over period, average 1/2	1,66,667
Plus additional capital, new issue, Rs. 10,00,000 for 3 months, i e., 3/4 of period, average1	7,50,000
	1,45,83,334

Computation of capital at accounting dates—Profits standard cases—In cases where a standard period is available and the optional percentage standard allowed under section 6 (1), second proviso, is not chosen, only increses and decreases of capital need to be computed with exactitude, and it follows that the value taken origiginally for an asset which remains an asset throughout the standard period and the chargeable accounting period is immaterial. Balance Sheet values as at the commencement of the standard period may be adopted subject only to such adjustments as are mentioned herafter.

The capital at this date may be taken as the difference between the assets and the borrowed money or debts shown in the balance sheet exclusive of any assets not employed in the business after making the necessary adjustments as regards investments and borrowed money required by Rules 3 and 4 of the Schedule and Rule 5 of the First Schedule. If the value of the stock in the balance sheet has been adjusted for income-tax purposes a similar adjustment must be made in the computation of capital, and in cases where Rule 9 of the First Schedule has been applied to

(1) Para. 87 Notes and Instruction.

the profits on long term contracts a corresponding adjustment of the capital employed will be necessary. In the case of interconnected companies further adjustments may be necessary in respect of debts for borrowed money which are deemed not to exist and for assets which are deemed to be the property of a company paying rent, royalty, etc. therefor.

The capital employed in the business may also be computed by reference to the share or proprietor's or partners' capital, profit and loss account balances partners' drawing accounts and any reserves not allowed for income-tax purposes adjusted by reference to assets not employed in the business, investments and borrowed money, stock, income-tax, contracts, etc., as mentioned in the preceding sub-paragraph. In the more important cases the one method of computation may provide a useful check upon the other.

Having arrived at the capital as at the first relevant date, the capital at subsequent accounting dates should be similarly computed, taking care to restore any sums written off for depreciation, bad debts, etc. and to allow such sums as are allowed for income-tax purposes. Adjustments are necessary also in respect of revenue expenditure debited to capital or capital expenditure debited to revenue account.

This computation should be carried on from the commencement of the standard period through all intervening periods up to the end of each chargeable accounting period in order to obtain the correct increase or decrease of capital during the chargeable accounting period.

If any assets included in the capital at the beginning of the standard period at their balance sheet value are subsequently disposed for care must be taken to make the correct adjustment for increased or decreased capital.

Thus, assume a building which was taken into the capital computation at the commencement of the standard period at its balance sheet value of Rs. 1,00.000 while its written-down value at that date was Rs. 1,50,000. It was sold during a chargeable accounting period for Rs. 50,000 when its written-down valve had become Rs. 1,20,000.

The Rs. 30,000 depreciation allowed since the beginning of the standard period should have been deducted from capital year by year, and the decrease of capital then becomes Rs. 1,20,000 (its written-down value at the date of sale) less the cash received from the sale Rs. 50,000, *i. e.*, a decrease of Rs. 70,000.[1]

Computation of capital—Percentage standard cases.—In a case where the option given by the second proviso to Section 6 (1) is exercised, the standard profits are the statutory percentage of the average capital of the chargeable accounting period. No question arises, therefore, of increase or decrease of capital but it is important that the capital at the commencement of the chargeable accounting period is properly computed and adjustments made for any increase or decrease of capital during that period. This involves the computation of capital strictly according to the provisions of the Second Schedule and not necessarily by reference to the balance sheet figures. The basis on which the assets are to be valued and the deductions to be made therefrom are set out in paragraph 75 *et seq.* Adjustments to the result so obtained are mainly in respect of stock, contracts, income-tax and super-tax, excess profits tax, etc., as set out in paragraph 91 of Notes and Instruction.[2]

Capital charges.—The capital employed in a business at any given date is represented by the difference between the business assets and the amount of the borrowed money or debts. Althongh the assets may vary between themselves from day to day this, apart from accruing profits or losses, does not involve any increase of capital except so far as the variations result from additional capital intorduced or capital withdrawn. For example, an increase in stock may be counter-balanced by an increase in debts or a decrease in cash.

(1) Para 88 Notes and Instructions.

(2) Para 89 Notes and Instructions.

Apart from accruing profits or losses it will be seen, therefore, that increase or decrease of capital in relation to the capital at a given date may be computed by reference to

(*a*) profits or losses arising ; and

(*b*) additional capital introduced and/or withdrawal of capital or distribution of profit between that date and the end of the period in question.

Since the computation must have regard only to *capital employed in the business*, (*b*) may include :—

(*i*) investments sold or purchased, the proceeds or cost increasing or decreasing business capital ;

(*ii*) "capital-profits" or losses similarly ;

(*iii*) investment income increasing the business capital ;

(*iv*) liabilities to income-tax, super-tax or excess profits tax ;

(*v*) proprietor's or partners' drawings or dividends paid.[1]

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(1) Para 190 Notes and Instructions.

SCHEDULE III.

[SEE SECTION 9 (7)]

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

Rule 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 the fourth the first shall be deemed to own ordinary share capital of a 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.

General:—Schedule III relates to a special case of companies holding capital through other companies. How the process may be carried on is detailed in Rule 1 clearly.

Section 9 *ante* covers the entire case of such companies one of which is the principal or the parent company and the other or others—for there may be a number of them termed a 'series', 'subsidiary' or 'subsidiaries'.

The Rules in this Schedule have to be read in the light of Section 9, taken as a whole, and in particular with reference to Section 9 (8). The underlying principle of Section 9 is that (like profits and losses) the capital employed in the business of the subsidiary company/companies shall be treated as the capital of the principal or parent company.

This is also the United Kingdom law, as laid down in Section 17 Part III, Finance Act 2 of 1939, which is analogous to Section 9 of the Excess Profits Tax Act, 1940. All the Rules in Schedule III are a *verbatim* copy of the Provisions of the United Kingdom Finance Act, 1938, Fourth Schedule Part I (Provisions for determining amount of capital held through other bodies corporate), with the one exception that the word 'body corporate' is used in the United Kingdom Finance Act, where the word 'company' is used in the Rules in this Schedule.

Rule 1. Rule 1 is a general Rule explaining what is meant by 'holding through'. This is explained not only when there is one but there are more than one subsidiary companies.

The first one is a simple case where is only one subsidiary company. The first company owning directly the ordinary share capital of the second is the principal or parent company and the second, the subsidiary company. Now take, the case where there is one parent company owning directly the ordinary share capital of the second and the latter directly owning the ordinary shall capital of the third. In such a case, the first shall be deemed to own ordinary share capital of the third through the second. If there is a fourth subsidiary company the first shall be said to own the share capital of the fourth through the second and third and second being deemed to own that of the fourth through the third. The process may be continued as above indicated, so as to form 'series' of such companies.

Example:—

The above Rule would be better understood by a concrete example.

Suppose company *S* owns ordinary share capital of Company *T*

" *T* " " " " " " *X*

" *X* " " " " " " *Y*

" *Y* " " " " " " *Z*

then *S* is supposed to own ordinary share capital of *X*, *Y*, *Z* companies,

T.....of *Y* & *Z*

X.....of *Z*.

Rule 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—"

(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.

According to clause (a) of this Rule, any three or more of such companies as own ordinary share capital on the line above indicated, are referred to as *'series'*

Clause (b) of this Rule explians the *denomination* of the various companies thus connected by holding ordinary share capital of the other or others.

These are (*i*) the first owner, (*ii*) the last owned and (*iii*) the 'intermediary' or 'chain of intermediaries'. The explanation of all these is very simple. According to clause (*c*) 'owner' is the company which owns the ordinary share capital of another, irrespective of its position, in the chain of the series. While, under Clause (*d*) one owning the ordinary share capital and the one whose share capital is owned are said to be 'directly' related to one another. *S*. directly owns share capital *T*, *T* owns that of *X*, *X* that of Y and *Y* of *Z* being more than three number, here is a series in terms of Rule 2 (*a*). In above series, *S* is the last owned company *T*, *X* and *Y* are intermediaries. *S* is the owner of *T*, *T* of *X* and so on.

Rule 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.

This Rule relates to the holding of the *'whole'* of the ordinary share capital. The position of the interconnected 'companies' remains the same. It is only the amount of the share capital which the Rule fixes or specifies, the same being the *'whole'* of the ordinary share capital against a part or *fraction*, which forms the subject of the succeeding Rule.

This Rule is simple enough Suppose :—

S owns the whole of the ordinary share capital of *T*
T ,, ,, ,, ,, ,, *X*
X ,, ,, ,, ,, ,, *Y*
Y ,, ,, ,, ,, ,, *Z*

then S is supposed to hold the whole of the ordinary share capital of Z.

Rule 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 though the intermediary or chain of intermediaries.

This Rule, presuming, of course, that there is a series of subsidiary companies, inter-connected with each other, relates to cases where a *fraction* (as against *whole*) of the ordinary share capital of a company out of the series to which the holding company is directly related, is held by one of the owners, every other owner holding the 'whole' of the share capital of the company to which it is directly related. In such a case it shall be presumed that the first owner shall be deemed to own the fraction of the ordinary share capital of the last owned company through the intermediary or chain of intermediaries. The rule of land contained in this Rule is the first of the Rules where a fraction of share-capital is held The succeeding Rules 5 and 6 cover the other possible cases of the holding of fraction of share capital.

Be it noted carefully that in all these cases covered by the Rules in this Schedule, where a 'series' of subsidiary companies is concerned, it is the share (be that *whole or fraction*) of the first owner in the last owned *Company* that is to be determined.

Rules 5 and 6 also point to the same process.

The following example illustrates this Rule.

S	owns the whole of the ordinary share capital of	*T*
T	owns 60 p. c. of the ordinary share capital of	*X*
X	,, whole of ,, ,, ,, ,,	*Y*
Y	,, ,, ,, ,, ,,	*Z*

S is, in this case, supposed to hold the ordinary share capital of *Z* to the extent of 60%.

Rule 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.

Rule 5 :—Case (*a*) of this Rule is the one where each of two or more owners own a fraction, the others owning the whole of the ordinary share capital of the company to which the holding company is directly related. Case (*b*) is the case where every owner owns a fraction, none owning the whole. In this case, the share of the first owner shall be determined by a multiplication of all the fraction.

Case (a) may be illustrated as follows :—

S	owns 60% of the ordinary share capital of	*T*
T	,, 40% ,, ,, ,, ,,	*X*
X	,, the whole of ,, ,, ,,	*Y*
Y	,, ,, ,, ,, ,,	*Z*

S is supposed, in the case, to own 24% (*i. e.* 60% of 40%) of the ordinary share capital of *Z*.

Case (b) may be illustrated as follows :—

S	owns 60% of the ordinary share capital of	*T*
T	,, 40% ,, ,, ,, ,,	*X*
X	,, 30% ,, ,, ,, ,,	*Y*
Y	,, 20% ,, ,, ,, ,,	*Z*

S is supposed to own 1·44% (*i. e* 60% of 40% of 30% of 20% of the ordinary share capital), of *Z*.

Rule 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 orddinary share capital of the last owned company, either :—

(a) directly ; or

(b) through any intermediary or intermediaries which is not a member or are not member or 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 purposes 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 fraction.

Rule 6 :—While the process to be employed in cases covered by Rule 5 is that of multiplication of the various fractions the process in cases covered by Rule 6 is that of aggregating, or adding the various fractions the sum total of these being the share of the first owner.

The details of the holding of fraction in the cases covered by Rule 6 are the result of all permutations and combinations that are possible in the case of series of subaidiary companies. To take examples of all the four cases :—

(*a*) Suppose

1. *S* owns 30% of the ordinary share capital of *Z*
2. *S* „ 63% „ „ „ „ *T*
   T „ 40% „ „ „ „ *X*
   X „ 30% „ „ „ „ *Y*
   Y „ 20% „ „ „ „ *Z*

S. owns 30% of the ordinary share capital of *Z* directly. *S*. also owns indirectly 1·44% of the ordinary share capital (*i. e.* 60% of 40% of 30% of 20% full of ordinary share capital) of *Z*. Thus *Z* is supposed to be the owner of 30 + 1·44 share capital of *Z*. Illustrations of cases (*b*), (*c*) and (*d*) under this Rule may also be obtained by the processes of multiplication ard aggregation as above, following the permutation and combination system.

PART II

DIGEST OF EXCESS PROFITS DUTY CASES

(Under United Kingdom Law)

ACCOUNTING PERIOD.

Section 38 (2), Finance Act, 1915 and Section 51, Finance Act, 1916—Accounting Period, computation of—Books actually made up quarterly.

Assessee company used, as a matter of practice, to have their books audited annually on 31st August, each year, stock being taken at that date and a full statement of accounts being drawn up. This practice was followed up to 31st August, 1915. The trade books of the company were totalled every month and balanced every quarter and, apart from the actual taking of stock, such books contained a complete record of the whole of assessee company's trade, including purchases, wages and sales for each quarter. On being served with the usual requirement to make a return for Excess Profits Duty in respect of the accounting period or periods of its trade or business before 1st July, 1915, its return was received on the 15th April 1916, being for the accounting period of 12 months to 31st August, 1914, About April, 1916, quarterly account to 30th November, 28th February, 31st May and 31st August, commencing with the quarter from 1st September to 30th November, 1911 and ending with the quarter, 31st August, 1915, were prepared and were sent to Commissioner, Inland Revenue on 23rd June, 1916. The figures in these accounts were taken from totals in the books, with the exception of the stock item but the stock was not taken at any date other than 31st August in each year and no proper or complete stock accounts were kept. The value of the stock at the end of each quarter was estimated by taking the value of the stock at the preceding actual stock taking and deducting from that amount the value of the goods sold during the quarter and adding the purchases of productive material plus manufacturing costs and wages during the same period. Such ' value of the goods sold" was taken at the figure of the sales in the book for the quarter less a percentage of gross profit. The gross profit, the percentage of which was so deducted from the sale in each quarter was the rate of gross profits earned in the year to 31st August. The company contended that on the above facts the stock was ascertained accurately and that the profits could be and were really ascertained. It, therefore, contended that it was entitled under Section 51, Finance Act, 1916, to substitute accounting period to 31st May, in lieu of the yearly accounting period ending 31st August and to have the pre-war standard amended accordingly.

The Commissioners came to the conclusion that the profit for each quarter shown in the quarterly accounts was not the profits for that quarter but merely the profits for the year distributed over the quarters of the year and that it was impossible from books kept as they were by the assessee company and from such quarterly accounts, to ascertain readily, or indeed to ascertain at all, with any approach to

accuracy, the profits of such quarter without either actually taking the stock or without keeping elaborate and accurate stock accounts. Section 51 Finance Act 1916 was, therefore, held not to apply.

On appeal the King's Bench and the Court of Appeal both upheld the Commissioners finding, holding that it was justified on evidence.

The James Cycle Co. Ltd. v. *The Commissioner Inland Revenue.*
12 T. C. 98 (101, 103, 104, 105).

Finance Act, 1915 Section, 38 (2) and Finance Act 1916, Section 51—Accounting period, computation of—Books actually made up and audited on 31st August, each year– Constructin of Section 51.

Assessee company was registered in England on the 29th March, 1895. It had been the practice of the company to have its books audited annually on 31st August, each year, stock being taken and a full statement of accounts being drawn up. Such accounts included a profit and loss account showing the results of the company's trading after deduction of expenses and a balance sheet showing the position as regards its capital assets and liabilities. This practice was followed up to 31st August, 1915, but not at any intervening date or dates. On assessment to Excess Profits Duty for the accounting period of one year, ending 31st August, 1914, the pre-war standard of profits was arrived at by taking the statutory average [under Section 40(2), Finance Act, 1915] of the 2 years ending 31st August, 1912 and 31st August 1913, these being the years most favourable to the company.

In preparing the accounts to 31st July, 13, 14, and 15, accounts were arrived at by taking an account of the profits or losses of the month of August and each of the years 1912, 13, 14 and 15 and amending accordingly the audited accounts. Stock was not taken on any date other than 31st August in each year. The value of stock at 31st July was computed by taking the stock value as computed at 31st August following and adding or deducting to or from the account as the case might be, the difference between the value of goods sold during August and the purchase plus manufacturing costs and wages during August.

According to the witnesses any stock taking was at best approximate.

The company claimed that they had a legal right, on the above-mentioned facts, to elect, under Section 51, Finance Act, 1916, to substitute accounting periods ending on 31st July in lieu of accounting periods on 31st August and to have the pre-war standard and subsequent computations amended accordingly.

The Revenue contended that the company could not so elect and that the 12 months to 31st August 1914, was the first accounting period prescribed by the Act. The Commissioner, having taken time to consider the matter, came to the conclusion that Section 51 did not give any right of election to the tax-payer or the Revenue, but enacted that if the books had been made up so as to come within its

operation, the period for which they had been so made up shall be taken as an accounting period. In the case in hand, the Commissioner observed, as whatever was done was repeated monthly, it would follow that each year there would have to be 12 assessments for one year. The wordings of Section, though not quite clear, yet, left no doubt that this could not be the intention of the legislature.

The Commissioners were, therefore, of opinion that the books of the assessee company were not actually made up within the meaning of Section 51, Finance Act, 1916, to any date other than 31st August for or during the year commencing 1st September 1913 and ending 31st August, 1914 or any part thereof. They, therefore, confirmed the assessment The finding was upheld by the King's Bench Division also.

An appeal having been given notice of, to the Court of Appeal, the appeal was not pursued later by the assessee company.

John Marstan Ltd, v *The Commissioner Inland Revenue.*

12 T. C. 106 (110,112)

S. 20 (2), (English Finance Act, 19137) and Ss. 13 (4), 14 (1) and 22 (4) (English Finance Act, 1939)—Accounting period selected 1935 year—Accounts prepared every half yearly and presented for 12 months ending 30th June before the annual meeting Accounts for 12 months ending 30th June, 1936 taken as standard period-Two half yearly accounts made for1935 be taken as standard period.

It may be in various business concerns that alternatively, periodical accounts (say, six monthly or three monthly accounts) may be compiled for the benefit of the directors in addition to the twelve monthly accounts which are presented to the shareholders. In such cases the question requiring attention is: which are the 'accounts' for the purpose of standard period for computing standard profits.

The facts of this case are. The appellant company had made up for each half yearly ended the 30th June and 31st December a trading and profits and loss account and balance sheet and the accounts included the figures of stock at the end of each half year. These half yearly accounts were audited and were regularly placed before the directors and were approved by them. The annual general meeting of the company were held on some date in October, or November and at each of these meetings the directors presented to the shareholders accounts for the twelve months ending on the previous 30th June. The special Commissioners held that the 'accounts to be considered in arriving at the standard profits of the appellant's company's trade or business for the period in question are the accounts ended 30th June, and so for the year 1935 accounts ending 30th June, 1936 as presented to the shareholders in the general meeting. On appeal before the King's Bench Division, the upholding of the Special Commissioners was reversed and it was held that to determine what periods should be taken for the purpose of ascertaining the standard profits of the appellant in the year 1935, the only periods to be selected can be periods of six months, since the accounts of the appellants were always made for such

periods and half years of 1935 must be selected (i.e. two half yearly accounts ending 30th June, 1935 and 30th December, 1935 both by aggregation) and not annual account ending 30th June, 1936 os presented before the general meeting of the company because a period falling wholly outsides standard year can not be selected.

Jenkins Production Ltd. v. *C. I. R.*

(1944) 4 I.T.G. 98, 1944 A.T.C. 329, 1944 All E.R. (Vol. 1) 610.

ADDITIONAL ASSESSMENTS

Finance Act, 1915, R. 5. Part IV, Schedule IV—Excercise of discretion by Commssioner Inland Revenue under—Commission dependent on profits payable to directors—Shown—for one year income-tax return—Not referred to for Excess Profits Duty purposes—Additional assessment to Excess Profits Duty in subsequent year valid.

Assessee company carried on the business of Oil, colour, paint and varnish manufacturers etc., at Glasgow and elsewhere. By an agreement, two of the company's directors were to receive, in addition to salary, a further remuneration by way of commission at 10% on the balance of company's profits after deducting depreciation etc., and at 10% dividend payable to shareholders.

In the accounting period ending 31st December 1916, the two directors each received commission amounting to £4,570-3-5 and, in the accounting period ending 31st December, 1917 a commission amounting to £4992-16-6 in addition to their salaries under the agreement. The company was duly assessed to Income-tax on the statement of account submitted by its Secretary to the Surveyor of Taxes, in respect of the year 1916.

The items, under heads 'salaries' and 'commission' in the said account of 1916 included the amount under these two heads paid to the two directors but they were not detailed separately; nor were they so detailed in the account and return supplied to the Surveyor on 28th June, 1917.

In the return, however, made on 3rd May, 1917, by the secretary of the assessee company, under Section 21, Finance Act 1907, to the Assessor of Income-tax, showing the persons employed and payments made to them, the commission paid to these to directors was specifically set out. In May, 1918, when copies of accounts for the period ending 31st December, 1917, were furnished by the assessee company to the Surveyor of Taxes, the latter learnt of the commission paid to the two Managing Directors in the accounting period ending 31st December, 1916.

Thereupon, an additional assessment of Excess Profits Duty was made in respect of the amount of the above commission which was formally, at the time of assessment to Excess Profits Duty for 1916, was allowed as a deduction, unwillingly.

Thereupon, the assessee contended that the term "remuneration" in Para.

5, Part 1, Schedule IV, 1915 Act, included both salary and commission and that in making the original assessment in 1916, the Commissioner of Inland Revenue may be taken to have exercised the discretion conferred upon them by Para. 5, Part 1, Schedule IV and that, therefore, there was no power left in them to make an additional assessment in respect of payments allowed already as deduction in the original assessment. The special Commissioner, on appeal, disallowed the above contention, upholding the Crown's contention that the additional assessment was valid and that no discretion such as vested in the Inland Commssioners was exercised by them in making the original assessment.

On a case being stated, the Court of Sessions also upheld the special Commissioner's decision that the additional assessment was valid.

Thos. Hinshelwood & Co. Ltd. v. *The Commissioner Inland Revenue.*

12 T. C. 417, (423, 426).

AGENT—LIABILITY TO E. P. D:—

Section 31, Finance Act, 1915 Agent, chargeability of to Excess Profits Duty—Scope of Section 31 (6)

Section 31, Finance Act, 1915, provides that in the case of factor, agent, receiver or manager, he should be chargeable, although he may not have been in receipt of profits or gains of the non-resident

Section 31 (6), however, places a limitation upon the provision of Section 31, by providing that an agent is to be charged for profits or gains on transactions carried out through him and only if he is an authorized person carrying on a non-resident's regular agency.

Where the business of steamship line was carried on, a line of steamers coming in, for cargo or passengers, and the steamship line was a big one and the assessees were the only people that the steamship line (non-resident) had in the United Kingdom, they were supposed to carry regular agency and to be "authorized person" within the meaning of Section 31 (6), Finance Act 2 of 1915. They were held to have been rightly assessed in respect of the cargo put on board through them, whether they received the freight or not.

It was also held, in this case, that where the persons charged as agents, described themselves as agents on their letter paper, where they carried out the shipping of goods, the unshipping thereof, the turning round of the steamer on which the foreign company was performing services for which the freight was receivable and they collected all outward freights, such persons were "authorized person", within Section 31 (per *Scrutton L. J.*)) "It is odd language, of course how you can carry on agency if you are not authorized, I do not quite understand, and what was the object of putting in the word "authorised" I do not follow. The emphasis I lay on the term "regular".

Nielsen, Anderson & Co. v. *Collins and (2) Tarn* v. *Scanlan.*

13 T. C. 91 (110 122, 125)=42 T. L. R. 420=135 L. T. 744=42 T. L. R. 704= 97 L. J. K. B. 267=138 L. T. 241=44 T. L. R. 53=1928 A C. 34.

AGENT—ASSESMENT, PRINCIPLE GUIDING OF:—

Section 31 (31) Finance Act 2 of 1915—Place of contract—conclusive—existance of trade being carried on—Principle guiding assesment of agent.

The fact that a contract is made in England is almost conclusive that a trade is carried on here, but if neither party is resident of United Kingdom assessment can only be made in the name of the agent who received in England the profits of the transaction. In particular, a contract for carriage made abroad between non-residents of which a substantial part is to be performed in United Kingdom, including receipt of freight by an English agent does not seem to get any protection from section 31 (7). A contract for shipment made in United Kingdom the only parties to which are non-resident, and the freight on which is payable abroad, is not protected. It is otherwise, however, if any party to such a contract is a resident, in that case it is immaterial where freight is payable. In cases which are otherwise protected by sub-section (7) the English agent must receive the profiits of the transaction to render. His foreign principal is liable to assessment in the agent's name. These principles and the consideration of the completed documents should enable a just conclusion as to the amount in which the agent is assessable to be arrived at.

W. H. Muller (London) v. *Lethem.*

138 L. J. 241=(1927) 1 K. B. 780=96 L. J. K. B. 4=136 L. T. 107.

13 T. C. 126 (151,152). = 44 T. L. R. 53=1928 A. C. 34=97 L. J. K. B. 267=

APPEAL—ENHANCEMENT OF, ASSESSMENT ON:—

Section's 40,44 & 45—Schedule IV, Part 4, R. 5 Remuneration paid to sons of the proprietor of business—Deductibility from profits - Extent—Special Commissioner's power to enhance assessments in appeal.

Assessee carried on the business of waterproofing materials. For the last thirty years he had been the sole proprietor of it. Later, he employed three of his sons with him in different capacities. Upto 1910, they were paid solely by salaries upto about £150 per annum each In 1910, by an agreement, two of them were to be remunerated out of profits, a sum equal to 25% of the net profits being paid to them. The agreement was for three years but was acted upon thereafter also, though not formally renewed. In the course of 1912, a third son, who was so far taking a salary of £3 per week, was by verbal arrangement, to take 25% of the net annual profits Thus the three sons took 75% and the assessee himself 25% out of the profits.

Assessee managed the entire business himself. The sons were not consulted in matters of policy and had no hands in the management of the business.

Additional assessment was made on the assessee by revising the deduction on account of sons' remuneration to which the assessee objected.

One of the sons was permanently invalid but he admittedly received his full remuneration, even for the large period he was abroad. Assessment to income-tax under Schedule D was made in the original assessment to Excess Profits Duty, the assessing Commissioner followed the income-tax basis and regarded the full remuneration of the sons as an admissible deduction.

It was contended that the Commissioner could not raise the additional assessment in appeal by revising the deductions allowed in the first assessment. The special Commissioner disallowed the assessees' objection as to additional assessment.

For the assessee it was contended that the arrangement under which the sons were getting the remuneration was not "artificial", nor has it reduced the profits certificially within Section 44 (3), the same being inapplicable.

The special Commissioner held that the assessee was the sole proprietor of the business, that the sums paid as remuneration to the sons was not wholly and exclusively laid out for the purposes of business, that a sum of £750 per annum constituted the remuneration of the three sons which was deductible. The special Commissioner accordingly increased the additional assessment. On appeal, held (per *Rowlett J*)by the King's Bench Division, the above finding was upheld.

Johnson Brother & Co. v. *The Commissioner Inland Revenue.*

12 T. C. 147 (159, 160, 161, 166)=(1919) 2 K B 717 = 121 L. T. 648 = 82 L. T. K. B. 94.

APPEAL—JURISDICTION:—
Sections 45 (5) and 40 (2)—Standard to be adopted—Appeal lies to Special Commissioner.

In the above case,the assessees, the Port of London Authority, applied to the Inland Commissioner for assessment to Excess Profits Duty being made on percentage standard, as provided for in certain cases by Section 40 (2), Act 1915. This was not acceded to by the Inland Commissioner, as it was said by the latter that it was not proved to their satisfaction that the amount of profits arising from the trade or business carried on by the assessees on a profit standard less than the percentage standard.

On appeal, the assessees urged that they were entitled to assessment on percentage basis. The special Commissioner however, declined jurisdiction with regard to this point, as no appeal, they thought, lay to them on that point. Their decision on the point was upheld by the High Court, i.e., the King's Bench Division (per *Rowlett J.*)

On appeal the Court of Appeal held that an appeal lay on the point. As a reason for this, they observed:—(*per Lord Sterndale M. R.*)

"I think it should be open to review, first on this ground. An appeal is given against the amount of the assessment. On very important element in such an assessment is the basis on which it is made and if the basis be wrong, it is difficult to see how the amount of the assessment can be right. There are too possible basis for the assessment of post-war profits *minus* pre-war profits standard and post-war profits *minus* pre-war percentage standard; and the first element the assessing authority has to determine is which is the basis to be adopted. When that is determined the amount of the pre-war and post-war profits have to be ascertained the one deducted from the other and the assessment, completed ..I do not agree..... in considering this decision of the Commissioner a matter collateral to the assessment, I consider it the determining of a necessary element of the assessment, and ..... as this is a taxing Act it should be determined so as not to deprive the subject of a right which in any opinion on principle he ought to have (per *Warrington L. J.*) "The true view is, in my opinion, that the expression 'to the satisfaction of the Commissioners In section 40, proviso, finance Act, 1915) means to the satisfaction of the tribunal entrusted with the duty of making the assessment'. If this view of the construction of the Act is correct, then I think the decision on the matter in question is as much open to review as any other decision of the Commissioners".

(Per *Scrutton L. J.*)....."which standard should be applied is a matter to be decided by the Inland Revenue Commissioners, the assessing authority, without appeal If they are not satified, no appeal lies, however wrong they may be, in their calculations..... ..the contention involves the result that a Government department, as an assessing authority, can fix the amount of tax to be recovered from a tax-payer without any appeal as to a vital part of the assessment. This is in my experience quite novel as a taxing principle and contrary to the language of the sub-section (5) of Section 45"

In the result, the case was remitted to the special Commissoners, on this point, to hear the appeal and decided what was the proper basis of assessment and whether the percentage standard, properly calculated, was really not greater than the profiit standard.

The Port of London Authority* v. *The Commissioner Inland Revenue.

(1918) 1 K. B. 143 and (1918) 2 K. B. 720 Disting.

12 T. C. 122 (131, 132 136, 139, 143 144, 145)=(1919) 2 K. B. 608=(1920) 2 K. B. 612=89 L. J. K. B. 547=123 L. T. 318=36 L. T. R. 460

APPLICABILITY OF ACT:—

Section 31 (7) Finance Act 2 of 1915—Applicability.

Sub-section (7) of Section 31, Finance Act 2 of 1915, reproduced in Rule 11 of the General Rules applicable to all Schedules of the Income Tax Act 1918, also protects a non-resident trading in England from being assessed, so far as that trade consists of contracts between two non-residents, in the name of his agent here, unless that agent is in receipt of the profits of such transactions. But this Section does not apply if one party to the contracts constituting the trade is a resident, and where the ship-owner's resident agent is himself liable on the contract, or where the resident shipper though making the contract on behalf of a non-resident consignee is himself liable on the contract, the sub-section does not seem to give any protection.

W. H. Muller & Co. (London) Ltd. v. *Lethem.*

13 T. C. 126 (151)=44 T. L. R. 53=138 L. T. 241=97 L. J. K. B. 267=(1927) 1 K. B. 780=96 L. J. K. B. 4=136 L. T. 107.

CAPITAL EMPLOYED IN BUSINESS

Section 41 (2) and (3) and Schedule IV Part III, Rules 1 (b) & 2—Advance by a coal company to colliery—Made without security and carried no interest—Exclusion of advances from capital for purposes of computation of Excess Profits Duty—Advances treated as capital laid out in business.

Assessees, a limited coal company practically controlled a colliery company, owning £6,236 out of £1,000 of the company's capital, besides holding certain of the company's debentures. They had the sole disposal of the whole of the coal company's output, for which sale they got a fixed rate of 3d. per ton commission on the sale of the company,s coal. The coal was not purchased by the company but was merely sold by them in their own name to their customers. Assessees took the risk of bad debts and monthly accounts were rendered between them and the coal company of the sale and the commission.

As the coal company had been doing badly for some years, the assessee company made advances to it to provide it with sufficient resources to raise the coal. The payments were largely in excess of the sums due for coal received. Advance amounts,being £11,174 on 31st May, 1915 and £18,388 on 31st May, 1916 were without security and bore no interest; nor were they covered by any document. The said sums were equal in value to about three months supply of coal.

Assessee company contended that the advances made, being against future delivery of coal, were book debts or balance on open account, that they were temporary items in the running agency account and were not of the nature of permanent investment of capital,that they were in accordance with the practice of coal trade, that in veiw of R. 1(b) Part 111, Schedule IV, Finance Act, 1915, they were debts due to trade and must be treated as capital employed in business in the accounting period and alternatively, it was contended that as Excess Profits Duty was already

paid on the 3d. per ton profit, and that if the advances were to be treated as investments, they brought in no profits and that by the method of computing Excess Profits Duty adopted by the Surveyor of Taxes it became a case of double taxation.

The Crown contended that the assessee company's business was that of coal merchants (*i.e.* of selling coal) and not of producing coal, for which the monies were advanced, that the sums in question, having been advanced with a view to assist coal producing, through periods of stress, must be regarded as an investment and be excluded from the capital for computing Excess Profits Duty. As to the alternative plea of the assessees it was contended that the profit from the advances accrued to the coal company and not to the assessees.

The Commissioners upheld the above contentions of the Crown and according to their view, the money so advanced was not required for the assessees, proper business. On appeal: ***held*** in a commercial sense, the sums in question were employed in the assessees' business, for if they had not made the advances and had no other business they would have had no profits as agents and there would be nothing to assess and that, therefore, the Commissioners' decision was wrong.

3 T. C. 279 (285) Disting.

James Waldie and Sons Ltd. v. *The Commissioner Inland Revenue.*

12 T. C. 113 (116, 117, 119, 120, 122)=(1919) See case 697.

CAPITAL EMPLOYED IN BUSINESS—COMPUTATION OF

Finance Act, 1915, Section 41, Schedule IV, Part 1, R. 8 & Part 111, R. 2—Computation of capital employed in the business—Holdings of War Loan, whether such capital.

Assessees carried on in partnership a business as drapers, which had been built up with their resources. They never borrowed. Their transactions were large and the capital employed during the pre-war trade years, by reference to which the profits standard was arrived at was £2,43,103. In December, 1914, £9,442-19-3 was spent on the purchase of war loan and the total cost of war loan held was increased to £59,784/- in the course of the year ending February, 1916. In the year ending February 1917, the cost of holding the war loan was increasedto £ 134,721. In the accounting period of twelve months ending February 1918, further purchases of war loan amounting to £ 45,000 were made. No Part of the war loan was realized during the accounting period; nor was the war loan actually used as security for a loan or otherwise in connection with the business.

Assessees, trade commitments also increased as they had to deal directly with manufacturers and to enter into forward contracts with them for supply of goods. For this they were required to take and pay for within a few months.

Then, in April 1916 and March,1917, they entered into a contract, to pull down and rebuild their premises. Contracts relating thereto had to be postponed till after the war, due to restrictions imposed on account of war.

There was evidence given that in view of their liabilities under the rebuilding contract and trade commitments, the assessees could not go on with their trade without holding liquid assets which included war loan (as shown in their balance sheet). This evidence was accepted by the Commissioners.

In computing the capital of the assessee employed by them in their business the Commissioner Inland Revenue had excluded from their profits for the accounting period ending 16th February, 1918, the value of the war loan holdings from the assets, for the purposes of Section 41, Finance Act, 1915. Assessees contended that their war loan holdings were not investments and ought to be treated as capital employed in their trade or business for the purpose of Excess Profits Duty. The Crown contended *inter alia*, that these were investments and not capital employed.

The Commissioners held that the said war loan holdings, though intended to be realized when occasion should arise with the object of employing the proceeds of sale in the trade or business, were investments and had been rightly deducted in computing the amount of capital employed in their trade or business.

The finding was upheld by the King's Bench Division on appeal, finding being one of fact and of evidence.

3 T. C. 279 and 6 T. C. 399 (423, not appl.)

Bourne and Hollingsworth v. *The Commissioner Inland Revenue.*

12 T. C. 483, (486, 492, 493).

Finance Act,1915, Section 41 & Schedule IV,Part 1, R. 8 and Part 111, R. 2 –Computation of capital employed in the business – War Loans and Treasury Bill investment, whether such capital—Question one of fact.

Assessees company' s business consisted of financing the purchases of wagons by traders desiring to use them. For the above purpose the company had to purchase wagons itself under "hire Purchase" agreement. Under this agreement, the company remained in law the owner of wagons and let them out to traders on hire. The trader was entitled to use the wagons on payment of a fixed yearly rental for a definite term and on completion of such payments could, for a sum of one shilling, become the owner of the wagons. Before the war, the company made its computations of the hire instalments or deferred payments on a 6½% basis. It was itself able to borrow at a lesser rate.

During the war, the business done by the company in financing wagons decreased in volume. The capital moneys of hire, having been accumulated in the hands of the company, were placed and invested by it in treasury bills and and war loans,

issued by the Government and their equivalents were included in "Stock', There was evidence, which was accepted by the Commissioners that usually one half of the business of the company was in contracts for new wagons, the other half of the business was in second hand wagons or extensions of existing contracts; the company sold wagons outright very occasionally, the company, repaired wagons at its own works; it sometimes let out wagons on simple hire agreements, the company placed the capital moneys accumulated in its hands during the war, in war loan intending to draw it out again for use in its ordinary business as soon as circumstances pemritted. It was contended on company's behalf that the company was one whose principal business consisted in the making of investments and alternatively that the sum placed by the company in war loans were not investments but must be regarded as employed in the company's business. The Commissioner held that the treasury bills and war loans were investments, that the principal business of the company did not consist of the making of investments and that the paid bills and loans had been rightly excluded in arriving at the company's capital and that the money represented by these has not been employed in fact in the company's business. On a case being stated the King's Bench Division (per *Sankey J.*) upheld the above finding, with the discretion that the question whether the company was an investment company was one of fact and guidance and that there was evidence before the Commissioners on which they could and did find that the company was not an investment company.

12 T. C. 483 ref.

The Lincoln Wagon and Engine Company Ltd. v. *The Commissioner Inland Revenue.*

12 T. C. 494 (501, 502, 503)

Finance Act, 1915, Sections 40 & 41, Schedule IV, Part 1, R. 8, Part 111 R. 2—Computation of capital for Excess Profits Duty purposes—Shares and debenture held in Companies deductible in computing capital.

Assessee company carried on the business of refining and distribution of patroleumspirit and other patroleum products.

The company held 170 shares of ano her company, the Belgian Benzine Company, being one third of the capital of the company. In respect of these, the company paid, under the Belgian law a total amount of £ 1,3441 in cash (10% nominal value of shares on formation and10% on prolongation). The said shares were transferable only by a Board of Directors and by a unanimous resolution. Under two other agreements entered into between the assessee company and the Beciu (Roumania) Oil Fields Ltd., and the Stavroposteo Moreni, (Roumania) Oil Properties Ltd., respeetively, the company took up in 1913, 25,000 ordinary shares in the Beciu company, paying in cash for such shares s. 7-6 d per shares. In the same year, the company also took up in 1913, £18,825 ordinary shares in the Stavroposteo company, paying; therefore, the sum of £ 1 per share in cash and further reduced a sum of £2,000 to this latter company on the security of debentures issued by the company.

There was evidence to the effect that the assessee company would have been unable to obtain from the Roumanian Companies above mentioned the supplies of oil required for company's trade or business unless they had agreed to assist them financially as above stated.

On a computation of the assessee company's capital employed in business.t he company contended that the capital employed to acquire their holdings in the Belgian Benzine Company and the two Roumanian Oil Companies was capital employed in the trade as business of the company and should be included in computing the capital of the company employed in business. It was contended, on the other hand, by the Commissioner Inland Revenue that it was not the principal business of the company to make investment and that the shares and debentures held by the assessee company were an investment within the meaning of Finance Act, 1915, Schedule IV, Part 1, R. S. and that under the said Rule the income from such investment fell to be excluded in estimating profits for Excess Profits Duty purposes.

The Commissioner held that the money invested as above by the company was money employed in the business of the company as capital and not as an investment. The above finding was upheld by the King's Bench Division.

On appeal, however, the Court of Appeal reversed the finding of King's Bench Division, holding that the contention of the Crown as above stated was correct. The House of Lords upheld the decision of the Court of Appeal.

5 T. C. 358 ref.

The Commisrioner Inland Revenue v. *The Gas Lighting Improvement Co. Ltd.*

12 T. C. 503 (511,521,526,537,544) = (1922) 2 K. B. 381 = (1923) A. C. 723 = 91 L. J. K B 694 = 127 L. T. 732 = 38 T. L. R. 613.

Finance Act, Section 41 and Schedule IV Part I, R. 8 and Part III, R. 2—Computation of capital employed in business—Exclusion of investment in British Government Securities.

Assessee company carried on the business of manufacturers of and dealers in artistic fabrics and wares.

In order to extend their business, the company wanted to rebuild their premises in Regent Street, London, where they carried on their business with this object, the company accumulated their profits in a Reserve Fund which, by 31st January, 1914, amounted in round figures to £ 1,52,000.

In connection with the work of rebuilding their premises the company entered into agreements, with contractor and as the work involved demolition it was commenced before the war but the contractor defaulted the company.

Between 1916 and 1920, put to reserve further position of their profits, which was applied in the acquistion of 5% war loan, National War Boards, Victory Loan

and Finding Loan. In September, 1920 the assessees deposited a part of their holdings in British Government Securities with their bankers as security for an overdraft which was paid off in March, 1921. In thus applying their surplus funds the assessees were informed by certain circulars issued by the Commissioner Inland Revenue on 12th March, 1917 and 1st July 1919.

The pre-war standard of profits of the assessees was a profit standard and in making the assessments in question of Commissioners Inland Revenue excluded from the profits of their trade or business, for the accounting periods to 31st January, 1920 and 31st January, 1921 respectively the income of the assessees from the holding of the British Government Securities above mentioned. Under Section 41, the Inland Commissioner also excluded the said value of the holdings from the assets of the company for the purposes of computation of their capital employed in trade or business, for the above said accounting period.

The assessees contended that the entire sum of the above holdings, together with the sum of £ 25,003, deposited by them under the agreement of September, 1913 with the Commissioner of Woods and Forests, in connection with the contract for the rebuilding of their premises, was capital employed, in their trade or business that their holding of British Government Securities were not investment and the price of acquiring the same should be included in the computation of capital employed by them in their business. The Commissioner held that the British Government Securities held by the assessees including the war loan inscribed in the joint name of the assessees and the Commissioner of Woods and Forests were investments, to be excluded in the computation of their capital employed in trade or business. The Commissioner relied on the cases reported as 12 T. C. 483 and 12 T. C. 503 and another unreported case from Inland *Revenue (Boland Ltd.* v. *The Commissioner Inland Revenue* decided on 13th June, 1918). The above finding was upheld both by the Kings's Bench Division and the Court of Appeal.

12 T. C. 503 ref.

Liberty and Co. Ltd. v. *The Commissioner Inland Revenue.*

12 T. C. 630 (634, 635, 639, 643, 645).

COMMENCEMENT OF BUSINESSS

Sections 38 & 40, Sch. IV Part, 11, R. 4—Computation of pre-war standard for purposes of Excess Profits Duty assessment—Date of commencement of business.

Assessee company was incorporated on 20th June, 1913. It carried on the trade or business of usage skin etc., manufactured in Birmingham. In the month of June and July 1913, and on subsequent occasions, prior to 6th October, 1913, the directors of the company were, according to the evidence submitted, engaged in various transactions, prior to starting business, *e. g.*, viewing other places of business of a similar character in various parts of the Country entering into a contract for the erection of works purchase of machinery and plants etc. In October, 1913, directors began to take,the raw materials and turn out their product.

On assessment to Excess Profits Duty, for the accounting period from 9th October, 1913 to 5th October 1914 and from 6th October 1914 to 31st December 1914 respectively company contended that their business commenced on the date of incorporation, *viz.* 20th June, 1913 or alternatively that the company had had firm to 3rd August 1914, a pre-wer trade year and that under 4th Schedule, Part II, No. 4 Finanec Act, 1915, the profits shown for the period 24th June, 1913 to 30th June, 1914, or alternatively that the profits during such a per'od as was a pre-war trade year should be the basis for the pre-war standard in computing the liability to Excess Profits Duty.

The Commissioners were of opinion that the assessee company commenced carrying on their trade or business on 6th October 1913 and that there was not a pre-war trade year and that the assessments were rightly based on a statutory percentage on the capital employed in the business.

The above finding of the Commissioners was upheld by the Kings Bench Division in appeal.

The Birmingham and District Cattle Bye-Products Company Ltd. v. *The Commissioner Inland Revenue.*

12 T. C. 92 (96,98).

COMPUTATION OF PROFIT.

Finance Act (1915) Sections 38 & 40, Sch. IV. Pt. 11—R 4—Coal Mining Company—Computation of profits for excess profits duty purposes at pre-war standard on profits of two out of three pre-war trade years—Carrying on of business for more than three pre-war years justified on evidence—Computation and assessment correct.

Assessee company, registered under the companies Act, on 28th June, 1906, carried, on the business of colliery and mine owners, for which purposes it purchased, took over on lease or otherwise acquired the hereditaments and sale of coal known as the Prince Albert and Union Cannop Engine in the Forest of Dean and County of Gloucester, together with the mines and minerals therein, and thereunder. The company acquired the lands in the Forest of Dean and commenced sinking pits in 1906. It expected the pits to produce 1,000 tons of coal per diem, in the course of two or three years, but owing to various unforseen causes, their expectations were not fulfilled and the pit-sinking could not be completed till late in 1911. The company's original capital proved to be inadequate and it had to borrow on the security of mortgage debentures, from the Crown and to overdraw from their Bankers.

In 1908, the company made a drift, or a sloping shaft, in the hill side, which it was stated by the company's Chairman, was done in order to obtain the coal needed for working the pit-sinking machinery. The drift, however, in fact yielded far more coal than had been anticipated and was required for the above purpose. Consequently, the company was, from the year 1909, able to sell, and did sell, at a profit, the bulk of the coal thus obtained by the drift. According to the report of the

company's directors, the dirft was placed upon a working basis from 1st April, 1909. The figures of tons of coal raised from the drift for the two years ending 31st December, 1910 and 31st December, 1911 showed high figures. The pit shafts, on the other hand, were completed late in 1911 and the pits started working on revenue basis from 1st April, 1912, whereafter the drift and the pits worked together. On the 26th February, 1916; the drift ceased to be worked.

The Director's Report showed that the profits arising to the assessees company from the sale of coal obtained from the drift in the two years ending 31st December,1910 and 1911,amounting; after meeting all expenses, and the full two years interest on loans, to 8 per cent and 11 per cent of the company's paid up capital.

The company's income-tax returns and assessments to income-tax made on the company for 1912-13 and subsequent years did not proceed on the assumption that trade or business of the company was a new one as from any date in June, 1912, but have been based on the average of the preceding years since the year when the drift yielded profit. For income-tax purposes, the company was taxed every year from and since 1909.

On being assessed to Excess Profits Duty and on computation of its profits on the basis of three pre-war trade years, the company contended that there had not been three pre-war trade years of the company within the meaning of Part II (4) of the 4th Schedule to Finance Act (1915) and that the trade or business of the company did not commence till 1st July 1912 or, in any case till 1st April,1912, and that the company was entitled to exercise the option of taking as the pre-war standard the profits of the one year ended 30th June, 1914.

In support of the above contention it was stated that the company was formed to obtain coal by pits and not by a drift and that it was not until 1912 (1st July or 1st April) that it was not possible to obtain coal by pits. The Crown contended that the company's object was to obtain coal and to carry on the trade or business of mining and selling coal (irrespective of the means, be it by pits or by drift) and that this business had, in fact, been carried on for more than three pre-war trade years and that hence the pre-war standard adopted was correct.

The Commissioners having considered the entire facts were of opinion that the company had been carrying on trade or business for three pre-war trade years and that the computation of their profits for Excess Profits Duty purposes was correct. On appeal the above finding was upheld by the King's Bench Division (per *Sankey J.*) as, the assessee company, was on facts proved, able to raise and sell coal from 1909. Though obtained by drift, which yielded more coal than the company required and which they actually sold and raised profits from and that, as such, the company had, *in fact*, been carrying on colliery business both before and after the war.

The Cannop Coal Company Ltd. v. *The Commissioner Inland Revenue.*
12 T.C. 31 (36,40,41).

CONSTRUCTION OF ACT—CHARGING SECTION.

Finance Act, 2 of 1915—Section 22 (c)—"Purchase annuity", Meaning of—Effect of the Section.

In this case, the lands in respect of which the assesment was made under schedule, on annual value, were purchased in 1875, under the provisions of the Landlord and Tenant (Ireland) Act, 1870. One third of the purchase money was provided by the purchaser, the other two thirds being advanced by the commissioner of Public Works, Dublin or the Board of Works, under Sections 44, and 45 of the said Act.

In consideration of the advance made by the Board of Works, the lands were charged with an annuity of £41-2 in favour of the Board, payable for 35 years, The annuity was subsequently reduced to £ 32-17-8 and the time extended under Section 24 of the Land Law (Ireland) Act, 1887. A further reduction of the annuity has since been made by virtue of the provision of Section 25 of the Land Law (Ireland) Act, 1896. The annuity stood at£17-19-8 in 1918, the Poor Law Valuation of the land being £39-5 The assesment was leased on the Poor Law Valuation, which was less than the original annuity The assessee contended that the annuity of £ 17-49-8 was the purchase annuity and that the assesment should be based on that amount and not on Poor Law Valuation. The assessee relied on Section 22 (c) Finance Act 1915. The Commissioner held that the amount payable by the Board of Works constituted a "purchase annuity" under lands Purchase Act. In this case, as the annuity represented 2/3 only of value of lands it was held by the Commissioners to be somewhat doubtful whether it fell within Section 22 (2) of the Finance Act, 1915. On a case being stated, the Court held, that the construction put on the term "purchase annuity" by the commissioners was correct that the words · annuity and originally fixed" could not be substituted for annuity payable, as the annuity originally fixed" was not payable, and then the amount of annuity may have been estimated year ago and there might have been change of title since then—It was further, observed. "The purchase annuity, originally, fixed if the whole purchase money had been advanced by the State might have been taken as a basis of taxation, and the sub-section was evidently framed on the assumption that this was so, and that the purchase annuity remained unaltered since the date of the purchase."

The letter of the Act was not to be departed from it was observed, in construing Section 32 (c) and its effect.

Corceran v. *Judge.*

7 T. C. 119 (120, 123, 129), (1919) 12 K. B. (1R) 60

CONTROLLING INTEREST

S. 13 (2),(3),(9),-Holding of shares as trustees with contingent beneficial interest-Such shares be included in ascertaining controlling interest in company

In order to ascertain whether directors have controlling interest in a company, they are entitled to include as shares held by them as trustess of settlement and in which they have beneficial interest.

The facts of this case are: The holdings of the directors of the company, eight in number, were as follows. Between them they held in their own right 209332 out of the issued ordinary share capital of £ 500,000 in shares of £ 1 each. Three of them were the registered joint holders of a further 57,500 ordinary shares which they held as trustess of their sister's marriage settlement under this settlement subject to the interests of the sister, her children and issue they have beneficial interests in the entire capital of the settled funds contingently on their surviving their sister. The ordinary shares are the only shares in the issued capital of the company which carry voting rights. The 57, 500 ordinary shares held by the three directors who are trustees of the marriage settlement right to be taken into account ascertaining whether the eight directors between them have a 'Controlling Interest" in the company.

J. Bibby and Sons v. *C.I.R. 1944 All E. R. 549 (Vol 1)*

DEDUCTIONS

Schedule V11, Part 11, r 2, E- Payment of a sum in settlement of underpaid excess profits duty - Sum not qualified - Neither fraud nor wilful default admitted or proved- Sum not a debt

A sum of 10,000 £ being paid in settlement of an amount of £ 14,449 under paid excess profits duty as a result of investigations made in 1932 to 1935 without proving any fraud or wilful default on the part of the assessee does not amount to a debt payable in 1937 and is therefore not deductible in computation of capital for the standerd period 1937 year as wilful default or fraud was never proved or admitted, nor was there an ascertained sum.

The facts of this case are. The respondent company was incorporated as a private company limited by shares under the companies Act,1862, so long as the year 1887. It sellected the years 1935 and 1937 as its standard period for the purposes of excess profits duty. As a result of investigations by the Inland Revenue Authorites in the years 1932-35 it transpired that the respondent had under-paid a net sum of £ 14,449,119. No claim for this unpaid sum could due sustained unless it could be established that there had been fraud or wilful default on the part of the respondent on April 1937 a sum of £ 10,000 was offered by the respondent to the Board of Inland Revenue and was accepted in settlement of the liablity. In computing the capital of the respondent company, the special Commissioners took this sum of 10,000 £ as a debt due to the Revenue and allowed it as deduction saying that the unquantitified of this sum is immaterial and that when the matter was taken up by the revenue authorities it became clear, and it was admitted both sides, that something had escaped assessment. Now on appeal before King's Bench Division it was held by *Macnagten, J.* that the sum of £ 10,000 debt doe not mount to as there had been no evidence on which it could be found that there had been any admission of liability on or before lst January, 1935, nor was there any fraud or wilful default proved or admitted. The sum was also not quantitified.

C. I. R. v. *Bagnal Ltd. 1944 All E. R. 204 (Vol 1)*

DEDUCTION FROM PROFITS.

Excess Profits Duty, assessibility to—Loss deductible—Cost of Conversion—Loss of Capital not an allowable deduction.

The assessee company occupied work in Edingburgh for the manufacture of T. N. T. under contract with the Minister of Munitions. The situation of the works being dangerous for manufacture, the production was discounted in June 1917. Thereafter, the company carried out experiments in the manufacture of Calcium Nitrate and these experiments proving satisfactory, an arrangement was entered into with the Minister of Munitions in October 1917 for the conversion of company's plants and works with the object of rendering them suitable for the manufacture of Calcium Nitrate. The arrangement was ultimately entered in an agreement date 22nd April 1918, by which the company was to be recouped by the Ministry of Munitions for the whole cost of conversion up to a maximum of £ 15,000 which was the company's estimte of the probable cost of conversion, in the conditions then prevailing. In consideration, the works on conversion, were to be the property of the Ministry and the company was given the option to purchase the same within three months at the expiration or sooner on determination of the agreement at a valuation, else the Minister was to have the option within 12 months to remove all plants, machinery and buildings or to purchase for the company its interest in the land or any part of the buildings. Conversion commenced in November, 1917 and was carried out by autumn of 1918. The contract was determined, following upon the Armistice, towards the end of the year 1918, after only one week's output had been manufactured. Due largely to the increase in the prices of materials the actual cost of work of conversion exceeded £ 15,000 by a sum of £ 4174 agreed to be taken at £41.044 which was written off by the company as bad debt in its accounts for half year ending March, 1921

In October, 1924, the company raised an action against the Lord Advocate for recovery of the above loss of £ 4,174. The action was settled in February by payment to the company of £ 2087, of which 208 was absorbed by legal expenses so that the net sum received by the company was £ 1,879.

The company claimed to deduct the loss of £ 2,165 being the difference below £ 1879 and £ 4044 being the agreed excess cost of conversion, on the allegation that the net loss of the above sum was a trading loss as bad debt,

The Commissioners held that the loss was a capital loss and as such not deductible. On a case being stated the Lords of the Sessions Court confirmed the above finding of the Commissioners held that the loss was a capital and not deductible.

The Lohion Chemical Co.,Ltd. v *The Commissioner Inland Revenue.*

11 T. C. 508 (512, 522, 524).

Finance Act (2 of 25) Schedule IV, Part. 1, R. 8 and Part 111 R. 2—Insurance

company inevsting reserve funds—Not an investment company—Depreciation on securities made good out of profits—Not allowable as deductfon—Not covered by exception to R, 8, Part 1.

Assessee company carried on Fire Insurance and Employer's Liability Insurance business. For the latter business which it started on the passing of the Employer's Liability Insurance Companies Act 1907, the company had, under the provisions of the said Act, to deposit and invest a sum of £ 20,000 in approved securities, which it did. It carried on the latter business from 1st July 1908. Profits and loss arising from the company's two businesses were shown separately in the company's accounts, but the two funds were dealt with as one for assessment purposes·

Prior to 1908 and subsequent thereto, the company had a reserve fund, the accumulation and additions to which upto the year 1915 amounted to £ 25,968-16-11.

Under the requirements of Section 4, Assurance Companies Act 1909, the company was required to make such provisions in its balance sheet for any reduction in value below the purchase price of any investment of which it is the owner as will enable the person signing the balance sheet to certify the assets set forth in the balance sheet to be in the aggregate fully of the value therein stated less any investment reserve fund taken into account. The company had complied with the said provision of the law and the amount of £25,968-16-11 above mentioned included the amount required as above.

All sums received by the company, except those required for immediate expenses were invested by it as soon as possible. The company had no agents and carried on the entire business by correspondence or through its Dublin Office. The risks insured by the company exceeded £12,000,000. The company was assessed to Excess Profits Duty, under Finance Act (2 of 1915) Part III, for the accounting periods of one year each ending 31st December 1914 and 1915 respectively by reference to the profits of the company as shown in its published accounts, excluding altogether from the computation both all the income received by the company on its investments and all the capital and accumulated profits represented by such investments; this was under Rule 8, Part I and Rule 2, Part III, Schedule IV of the said Act.

The company contended:

(1) that it should be treated as a company having its principal business, the business of investment, within Schedule IV, Part 1, Rule 8.

(2) that the accumulated profits of it should be treated as capital employed and jeopardized in the business; and

(3) that the sum set apart from time to time for making good the depreciation in the value of securities, as required by the Assurance Companies Act, 1909, should be allowed as deduction and that in view of the fact that all the capital and accumnlated profits of the company were invested, the company was not liable to Excess Profits Duty.

The commissioners negatived the company's contention as above stated and confirmed the assessment.

On a case being stated, as desired by the company, the King's Bench decided unanimously in favour of the Crown upholding the Commissioners' finding as not being erroneous in law and on facts justified by the evidence before them.

On appeal, the Court of Appeal also upheld the finding. (1901) A. C. 477 appl.

Irish Catholic & Church Property Insurance Co., Ltd., v *The Commissioner Inland Revenue.*
12 T. C. 13 (18,20,21)=(1918) 2 In. R. 510

Section 4o & Schedule IV Part 1, R. 2 & 5 – Bonus paid to directors—not a trading expense deductible—Lump sum paid to a retiring director in addition to remuneration—Not an allowable deduction.

Assessee, a registered company, carried on business at Derby, its accounts being made up annually upto 31st May.

By two resolutions dated 25-6-12 and 3-7-12 the company decided to pay surplus profits, after paying 7½% dividend and transfering £500 to reserve fund, as bonus to directors. At this time the company had three directors, each of whom was its manager also, entitled to a salary and a commission upon the net profits of the company, after payment of 10% dividend. Then, in November, 1912, one of the directors gave up his employment as manager upon the terms stated in an agreement entered into between himself and the company according to which he received immediate payment of a sum of £550, being the salary which he would have been entitled as a manager under the previously subsisting agreement had he continued in the employment of the company, until the expiration of the agreement, *i.e.* 26th August, 1915. In addition to the amounts paid to the directors by the company in the years ending 31st May, 1915 and 1916, the company resolved to pay the Directors a bonus or commission of £ 300 which in 1915, was charged in the company's accounts as an appropriation of the profits of the year and in 1916 was charged in the company's trading account as an additional working expense. In ascertaining the profits of the company for the purposes of income-tax, a sum of £ 350 appropriated to the Directors out of the profits for the year ending 31st May, 1912 was not claimed to be or treated as a deduction, and the tax in respect thereof thus fell to be borne by the company and was not charged upon the Directors personally.

For the purpose of arriving at the pre-war standard of profits of the company under Section 40, Finance Act, 1915, the Commissioners deducted the said sum of £ 350 as being a working expense of the company properly allowable in arriving at the profits of the year ended 31st May, 1912.

As regards the lump sum of £ 550 paid to the retiring director, the Revenue agreed to the method of accounting adopted as to this sum in charging it to their

accounts not to the year ending 31st May, 1914 and 1915. In respect of the increased remuneration, however, paid to the manager, the Revenue refused to regard as a deduction for Excess Profits Duty, any sum paid in an accounting period in excess of the salary to which they were entitled under the agreement.

In the exercise of the discretion vested thereunder in R. 5, Part 1, Schedule IV, Finance Act, 1915, the Commissioner Inland Revenue, directed the allowance for such remuneration for the year ending 31st May, 1915, to be fixed at £850 but gave no direction in respect of the year ended 31st May, 1916.

Thus the questions arising in the case were:—

(1) Whether the sum of £ 350/- is deductible in arriving at the profits for the year ending 31st May, 1912;

(2) the amount deductible for the salary and remuneration of Directors and Managers in the year ending 31st May, 1916.

The assessee company contended.

(1) That the computation made for income-tax purposes should be followed for Excess Profits Duty purposes also, as to the manner of treating the £ 350

(2) that the said sum was a voluntary payment out of profits and not necessary expenses of the company in earning profits, and

(3) that the sum to be allowed for remuneration of Directors and Managers for the accounting period ending 31 st May, 1916 should not be less than the sum allowed for that item in the last pre.-war trade year.

The Commissioners decided that the sum of £ 350 must be deducted in arriving at the profits of the company for the purposes of pre -war profits standard.

They allowed no deduction on account of remuneration of Managers and Directors for the accounting period ending 31 st May, 1916. They amended the assessment accordingly. On appeal, the King's Bench allowed the appeal as to the first point of dealing with £ 350 but disallowed the appeal on the second point.

2 T.C, 100 ref.

Pegg and Ellam Jones Ltd. v *The Commissioner Inland Revenue.*

12 T,C. 82 (88,90,92.)

Excess Profits Duty—Advances made to secure raw material—Not a deductible allowance from Profits.

Assessee company carried on the business of paper making at Sheffield, the chief raw material used being wood pulp. Prior to the war,raw mateial for paper manufacturing was got from Scandinavia but after the war,hostilities between Britain and Sweden led to the former getting her supply of wood pulp from Canada

Pursuant to this, the assessee company entered into a contract with a Canadian company (called 'Ha') for the supply of 30,000 tons of sulphate pulp to be delivered at 3,000 tons per annum from 1917 to 1927.

In accordance with the terms of the above contract, the company made an immediate advance of a sum of £30,000 to 'Ha' against future deliveries to enable 'Ha' to develop its business, the company undertaking to pay net cash less £1 per ton in repayment of the afore-mentioned advance on delivery of the goods. Interest to the ompany was pay-able by 'Ha' at 6% per annum on the said advance.

The company had to make further advances to 'Ha' in the sum of £15.000 for which the company received preference shares in 'Ha :—

In the spring of 1916, the British Government placed restrictions on many imported goods, including wood pulp, with the result that 'Ha' was unable to ship or deliver any pulp whatever in 1917 or even later.

'Ha' did not pay the company any interest and disclaimed any liability in the circumstances with respect to the sum advanced by the company.

On assessment to Excess Profits Duty, the company claimed to deduct the sum of £30,000 advanced to 'Ha' as part of its annual expenditure incurred in the carrying on of company's assessment to Excess profits Duty.

The Commissioners disallowed the company's contention and confirmed the assessment. The above finding was upheld by the King's Bench Division also (per *Rowlett J.*) and it was observed that the company ventured the sum in the nature of capital expenndiure and not as a trade expenditure of the year at all.

5 T. C, 529 Disting.

5 T. C. 327 foll.

Charles Marsden & Sons Ltd. v. *The Commissioner Inland Revenue.*

12 T. C. 217 (220,225 226).

Excess profits Duty—Loss incurred by company in Paying penlty under Customs Act and legal expenses—Nota deductible amount from profits.

Assessee company carrired on the business of oil merchants at Hall and elsewhere.

They were sued for a penalty on an information exhibited by the Attorney-General under the provision of the Customs (Consolidation) Act, 1876, Section 139, as extended by the Customs (War Powers) Act. 1915, Section 5 (1) for an offence alleged against them in breach of certain orders and proclamations relating to the requirements of the Board of Customs and Excise with respect to a consigment of oil shipped by them to Norway.

The action was settled in Court by consent, the assessees agreeing to pay a mitigated penalty of £ 2,000, such sum to cover the costs of the Crown. All imputations as to the assessee's moral capability were to be withdrawn and it was to be made clear to the public that there was no intention from the beginning to the end of the transaction that the assessees had, by connivance or consent, been taking part in trading with the enemy but had only been capable of carelessness. The penalty of £2,000 was duly paid and the assessees incurred legal costs amounting to £ 560-18-10.

The above sum of £2,000 plue £560 and odd was not deducted form assessee company's profits in computing profits for Excess Profits Duty purposes. The company claimed to deduct this sum as an expense deductible from profits.

Tho Commissioners allowed the deduction claimmed. On appeal, the King's Bench Division reversed the Commissioner's finding and disallowed deduction claimed.

5. T. C. 215 (220) foll.

The Commissioner Inland Revenue. v. *E. C. Wavner & Co.*

12 T. C. 227 (230, 231, 232.)

Excess Profits Duty—Customs (War Howers) Act, 1915—Penalty under and costs of Proceeding—Not deductible allowance

Assessees were general produce merchants, carrying on business in the city of London. Their business was an old and established one, founded in or about 1885, by a Sussian subject, who became naturalized British subject. A large part of the company's trade consisted of the export of goods no Russra and Scandinavia. After the passing of the Customs (War Powers) Act, 1915, the company adopted several precautions to avoid the infringement of the provisions of the Act. In spite of this, in 1916, informations were brougnt againts he company for penalties under the said Act, by in Attorney-General in respect of the infringement of the said Act in respect of their trade and upon proceepings in the High Court of Justice comming on for hearing before the Low chief Justice, the company paid a sum of £3,000 without costs on the condition that the record was withdrawn. The company also incurred legal costs in the proceeding to the extent of £ 1,074-12-7. The company, on assessment to Excess Porfits Duty, contended that the said sum of £ 3,000 and' £ 1,0£4-12-7 were proper deductions in arriving at profits for purposes of Excess Profits Duty. The commissioners held that the deductions are admissible. The above finding was reversed by the King's Bench Division (*Per Rowlett J.*) and this fiinding of the King's Bench Division was also upheld by the Court of Appeal.

12 T. C. 227 foll.

5 T. C. 215 ref. 215 ref. (220)

The Commissioner Inland Revenue v. *Alexander Von Green Co., Ltd.*

12 T. C. 232 (233, 234, 238, 244j)=(1920) K. B. 553=89 L. J. K. B. 590=123

L. T. 338=36 T. L. R. 463.

Finance Act 1915, Section 40 (1) and (2), Schdule IV, Part 1, R, 1, 3 and 5—part III, R. 1 (a)—Deductions from profits of trade—Compensation paid for unexpired con tract—Manager's remuneration—Not allowable deductions—Change of ownership does not affect.

The business under the name and style of John Smith & Son had been carried on for many years. John Smith, the sole partner, died on 7th March, 1915 By a trust disposition and settlement, date 17th October, 1908 and contract dated 7-1-1909, the said John Smith left tne business after his death to his son, for a valuation to be ascertained from balance sheet at the time of his death, nothing being charged for goodwill.

A profit and loss account was prepared from 7th March 1915 to 31st December 1915, from which was deducted a sum of £ 30,000 as "sum paid to the trustees of the late John Smith, being agreed on value of current contract taken over by the new firm". The said coal contracts were entered into, by the late John Smith and several colliery owners and by the contract the latter agreed to deliver to the former certain quantities of coal at fiixed prices. The said contracts had various terms of duration none extending beyond 31st December 1915. Assessees contended that they were entitled to deduct £ 3,000 iif arriving at their profits and also claimed a deduction o £ 20,615-17-9 paid to the Manager of the business.

The Commissioners held that the sum of £ 30,000 was not deductible from the profits of the period from 7th March 1915 to 31st December, 1915 and that the questions as to the Manager's remuneration was not within the cognizance of the General Commissioners in Glasgow but was one entirely for the determination of the Commissioner Inland Revenue (London.)

The fiinding was upheld by the Court of Sessions and the House of Lords. (*Viscount Finlay* dissentind) as to the question of unexecuted coal contract compensation amount of £ 30,000. On the point of the remuneration of the manager, the Court of Sessions upheld the Commissioner's finding, observing that this part of the appeal depended on the construction of Rule 5, Part 1, Schedue IV, and that the said rule entirely supported the Commissioners' view.

(1918) 1 K. B. 143, (1918) 2 K. B. 720 & (1919) 2 I. R. 66 ref.

Lord Salveson dissenting and referring to 5 T. C. 693 (705) *held* that the assessees were entitled to a deduction of £ 30,000. On the other point, he agreed with the Commissioners' finding.)

John Smith & Son v. *Moore*

12 T. C. 266 (272, 277, 278, 280, 283, 292, 297)=(1921) 2 A. C. 13=58 Sc. L.R. 313=60 L.J.P.C. 149=125 L. T. 491=37 T.L. R. 613.

Finance Act, 1915, S. 44 & Schedule, IV, Part 1, R. 2—Deduction from profits of trade—Payment of fixed annual sum towards loan taking for business—Not interest on money borrowed.

Assessee firm borrowed £ 4,000/-agreeing in consideration thereof, to pay to the lenders a sum of £ 200 yearly, plus 3/20th profits, excess of £1000 but not exceeding £ 3,000.

In the accounts of the business of the assessees for the years ending 30th September, 1916 of the £ 500 a sum of £ 200 was included in an interest and bank Commission account, the debit balance of which was carried to the profit and loss account. The balance of the £ 500 *i. e.* £ 300 was entered as a separate item as a payment to Mrs. Walkers in such profit and loss account. The assessees claimed to deduct the entire sum of £ 500 as a trade expense, necessarily incurred by the firm in order to earn profits, that the annual consideration payable to the lenders was "interest on money borrowed", and not a 'dirtribution of profits'. The Commissioner Inland Revenue contended that only £ 200 out of £ 500 should be deducted. The Commissioners, accepting the Commissioners' contention, allowed a deduction of £ 200 fixed interest, disallowing as interest the share of profits.

The finding was upheld on appeal by tne King's Bench Division (per *Rowlett J.*)

A. D. Walker & Co. v. *The Commissioner Inland Revenue.*

12 T. C. 297 (300, 301, 302) = (1920) 3 K B 648=90 L. J. K. B. 287.

Finance Act, 1915, S. 40 (1) and Schedule IV Part 1—Deductions from profits of trade—Legal expenses incurred in the transfer of bonds on business Premises—Capital expenditure, not deductible.

Assessee was the sole proprietor of the outfitter's business carried on at 106, Princess Street, Endinburgh, and was also the owner of the said premises,

Prior to the beginning of the accounting period 1916-17 the said premises were to the extent of £ 23,300 under five separate bonds. In 1915, one of the bondholders died, whereupon his executors called up the money due under a bond to the sum of £ 9,300. Thereafter, one of the beneficiaries of the deceased bond-holders agreed to take over the said bond, the amount thereof at this time being £8,500 after two payments of £ 300 and 500 each. The assignment in favour of the beneficiary aforesaid was duly made and the legal expenses incurred in connection therewith amounting to £ 832-19-0. Assessee, on being assessed to Excess Profits Duty, claimed deduction of the said amount of legal expenses as being expenditure incidental to maintaining borrowed capital

The Commissioner held that the amount was not an admissible trading expense.

On a case being stated the Second Division of the Court of Sessions held that the expenditure in question was of the nature of capital expenditure.

5 T. C. 529, 5 T C. 215,6 T. C. 671 (675), 6 T. C. 562, 7 T. C. 258 (371), 3 T. C. 149 (153) & 5 T C. 168 (171) ref.

Small v. *Easson*

12 T. C. 351 (354, 355, 356, 358)=57 Sc. L. R. 636=1920 Sess Cas 758.

Finance Act, 1915, Sections 38 and 40, Schedule IV, Part 1-deductions from profits of trade—Loss on ship partly insured—Not an allowable deduction for Excess Profits Duty purposes.

During the year 1916, 1917 and 1918, assessee company carried on the business of coal importers and ship-owners. The company owned three steamers and their practice since the beginning of war was only to insure these steamers to the extent of half their value with marine insurance companies and only in respect of marine risks. As regards war risks, as also as to any value exceeding one half, the ship were unconvered. They, however, had an Insurance Fund account and they set out a part of their profits to the credit of this fund, and invested the money of this fund in war loans in their own name, receiving themselves the dividends on this investment They claimed that this was equal to an Insurance Policy and that they were entitled to retain their Excess Profits to the credit of the said fund and to apply the same in renewing and restoring any ships that might be lost. In 1918, one of the company's steamers met with a collision and became a total wreck. It was insured for £ 8,000 as against its value of £ 15,000. The Insurance Company disputed the claim to £ 8,000 also, and the sum was retained by the company, pending decision of appeal in the case.

The company thus claimed to deduct £ 7,000 excess profits in order to recoup them for the loss of the steamer. The Recorder of Belfast held that the company was not entitled to the deduction claimed, the loss being the loss of capital, as it was held, it was not a case of insurance but only a reservation out of profits of business to provide for future losses.

The finding was upheld by the King's Bench Division also.

44 S. L. R. 715 foll.

C.M. Legg & Son., Ltd. v. *The Commissioner Inland Revenue.*

12 T. C. 391 (394, 398, 399).

Finance Act, 1915, Section 40 (1) & Schedule IV, Part 1 and S. 45 (7) Deduction from profits of trade for Excess Profits Duty purposes—Money paid to Mutual Insurance Association—Onus of proof.

Assessees, a steamship company, were members of the North of England Protecting and Indemnity Association, being a mutual insurance association, which in turn was the member of the Shipping Federation, Ltd.

The association, in accordance with the provision in one of its Articles and the relative rules, made certain calls on the assessee company. In each case the call was

consequent on a call for a like amount having been made upon the Association by the Federation in accordance with a resolution of its Executive Council. Assessee company duly paid the amount of these calls. The amounts of these calls were debited in the assessee's accounts from year to year.

It was contended on behalf of the assessee that payments of such calls were payments expended for purpose of earning profits, being simply premiums of insurance payable to the Association, that it was necessary for them to pay these in order to have their vessels insured by the Association, default ending in having the steamers insurance lost and that the payments were made for the purposes of the assessee's trade and that it was not necessary to prove how the call money was spent.

The Commissioners called upon the assessee to produce the Memorandum and Articles of Association of the shipping Federation Ltd., the Rules and Regulations, the accounts for 1911 to 1918 and a statement showing how each call was applied.

To this the reply was that the precept to produce the above was *ultra vires* of the Commissioners, that the documents and accounts called for were not in assessees' possession and power, nor under their control and that at any event the information called for was irrelevant. The Commissioner, accordingly found that, in default of full information showing how the calls were spent, they were not in a position to determine whether the amount of the calls, was deductible in arriving at the assessees' liability to Excess Profits Duty. They accordingly confirmed the assessment.

On a case being stated and on the assessee company requesting the Court of Sessions to remit the case to the Commissioners to enable the company to produce information as to how the calls were expended the Court accordingly recalled the confirmation of assessment made by the Commissioners and as the case appeared to be a test case, the assessees were, by a remit given a renewed opportunity of producing the information first sought of them.

The Adam Steamship Co., Ltd., v *Matheson (Surveyor) of Taxes.*
12 T.C. 399 (410,415 416, 417). =58 Sc. L. R. 168=1921 Sess. Cas 141.

Finance Act, 1915, Section 40, Schedule IV, Part I, R. 3—Finance Act, 1916, Section 47—Deduction from Profits of trade—Costs of repairs of ship.

In December, 1919 the assessee company bought a ship built in 1906 for £ 97,000 which at the time of purchase, was ready to sail with freight booked. The periodical survey of the ship was then considerably overdue, indeed, for the purposes of the voyage about to commence exemption from survey had had to be obtained. On return from voyage, the ship underwent survey and the purchaser had to spend £ 51,558 on repairs in addition to a further expenditure of an admittedly capital nature.

The pre-war profits were calculated with reference to the profits arising from the use of the ship by the purchasers' predecessors during the pre-war trede years.

Assessee company claimed a deduction of £51,558. The Commissioners on the evidence before them allowed a deduction £ 12,000, and amended the assessment accordingly. On a case being stated, the Court of Sessions upheld the above finding.

2. T. C. 435 appl.

The Law Shipping Co., Ltd., v. *The Commissioner Inland Revenue.*

12 T.C. 621 (624,627,629).=1924 Sess. cas 74.

Finance Act, 1915, Section 40 & Schedule IV, Part 1, R.1—Deductions from Profits —Loss on forward contract not deductible.

Assessee company was a paper manufacturing company. It entered into three contracts (A.B.C.) for the purchase of raw materials (esparto grass, bleaching sulphite pulp and "Siwan" brand of bleaching sulphite pulp). The contracts were negotiated and made through the company's agents, Messrs. Andrews & Co., Ltd., London.

The accounting period of four months ending 30th April, 1921, was the last accounting period of the company, to which the assessment to Excess Profits Duty in question in this case related.

Before and in the course of the accounting period it became clear to the company that owing to the great depression in trade and fall in prices it had contracted for above the supplies of the esparto grass and sulphite at prices far in excess of the prices ruling or likely to rule during the periods fixed for delivery and in excess of its requirements owing to the said depression in trade.

In case A (esparto grass) the company did not arrange to take; nor did actually take any delivery of the grass during the accounting period. On about the 21st. April, 1921, the company received upon its own request a *pro forma* invoice for the whole of the grass at full contract price. The document, issued by the agents, stated, that "this grass is being held in stock for your account", In case of contract B, 300 tons of sulphite had actually been delivered before the end of the accounting period, 650 tons remaining undelivered. In case C, no goods were to be delivered or contracted to be delivered before the end of the accounting period.

In both the cases"*pro forma* invoices" were received at company's request, dated 30th April, 1921, and marked and *pro forma.*

In both cases, a cetificate was produced to the effect that the goods contracted for had been set aside in warehouses, prior to 1st April, 1921.

Or assessment to Excess Profits Duty, the company contended that the 2000 tons of esparto grass and 1150 of sulphite must be treated as stock of goods belonging to the company on the 30th April, 1921 and that, alternatively, the company was entitled to charge a loss the estimated loss on contracts.

The Revenue, while admitting that in commercial practice it was right for the

company to make a reserve against contingent loss on the contracts, claimed that no allowance, therefore, could be made in calculating the profits of the accounting perind

The Commissioner held that:

(1) that the assessees were not entitled to treat any part of undelivered goods under the three contracts as stock in hand at the end of the final accounting period; and

(2) the loss could not in terms of the Act, be treated as a loss which has already been incurred when, in fact, it is still to come.

The assessment to Excess Profits Duty was, therefore, confirmed. On a case being stated, the Court of Session ,as a Court of Exchequer in Scotland upheld the Commissioners' finding,

6 T. C, 59 Expl,

Edward Collins & Sons Ltd. v. *The Commissioners Inland Revenve.*

12 T.C. 773 (774, 783, 784)=1925 Sess Cas Sc 151=125 S. L, T. 5.

Finance Act,1915, Section 40 (1)—Deduction from profits of trade for Excess Profits Duty purposes—Pensions and compensations for loss of office paid to employees, not admissible deductions.

Assessee company carried on general business of brewers. In October, 1920, the Directors of the company decided to close down its business. The company decided to grant various sums to the staff and workmen as compensation for loss of office and the instance of some employees of long service pensions were granted.

The company ceased trading on 30th June, 1921 and by a special resolution passed on 17th February 1922 and confirmed on 10th March, 1922, it was resolved that the company be wound up voluntarily and a liquidator was appointed on 10th March, 1922.

The amount of compensation proposed to be awarded to the employees came to £ 14,041 and that of pensions to £4,288. This sum was dedited in the profit and loss account of the company for the year ending 31st March, 1921, though not paid within that year. The company claimed to deduct the said sum from their profits for Excess Profits Duty purposes. The Commissioners held that the amount was deductible from assessable profits of the company, as money exculsively laid out for purposes of trade. *Held,* on appeal by the King's Bench (*per Rowlett J.*) that the deductions could not be allowed, as the sum paid were not money expended for the benefit of trade or business but were *ex gratia* payments, as the result of the company dealing generally with their employees and not as a result of any contract with them.

The Commissioner Inland Revenue. v. *The Anglo Brewery Co Ltd.*

12 T. C. 803, (812,813)

Finance Act, 1915, Section 40 (1) and Schedule IV, Part I, Rule II—Deductons, from profits of trade—Anticipated loss on ship-hiring not deductible.

Assessees carried on, in Glasgow, the business of ship owners and ship managers. It was part of their business to hire ships on time charter. In such a business, profits are made if the freights received exceed the amount of hire of the vessel chartered and the expenses of running her and losses if reverse is the case.

Assessees balanced their account books on 31st December, each year. During the earlier part of 1920, shipping business was good but in the latter part of the year, it experienced a severe depression which extended over 1921. On 31st December, 1920, when the appellants had a number of vessels on time charter, the assessees were practically certain that in 1921, rates of hire for vessels on time charter the quantity of cargo and the freights for carriage of goods by sea would fall very seriously. In framing their balance on 31st December, 1920, therefore, they estimated the loss that they had to face in the circumstances above stated by debiting the whole of the hire of the vessels chartered by them to become payable by them after the 31st December 1920 and *per contra* arrived at the freight they would receive by taking the hires current for vessels on time charter on 31st December, 1920.

By the above process, the assessee company arrived at a loss greater by £6,063 than the amount allowed by the Inland Revenue Commissioner as the deficiency to be taken into account 1920, in fixing their liability to Excess Profits Duty.

On the balance sheet account prepared, according to which the above figure was shown, the Company's senior partner retired from 31st December, 1920 and was settled with his partners and paid out his interest in the firm, with reference to the said balance sheet.

The company contended that the method of calculating the anticipated loss, as adopted by them, was right and proper in the circumstances stated above.

The Commissioners, however, did not allow their contention.

On a case being state the Court of Sessions unanimously upheld the Commissioners finding, observing that, as the company sought to exclude future, anticipated losses from the account of their profits of trade for the accounting period, their contention could not be allowed.

12 T C. 773, ref.

Whimster & Co. v. *The Commissioner Inland Revenue.*

12 T. C. 813 (819,824,828,826, 827).=(1926) Sess Cas 30=(1925) Sc. L. T. 623.

Finance Act, 1915, Section 40 (1) and Schedule IV, Part 1, R. 1 and 5, deduction from profits of trade or business—Anticipated losses on forward contracts not deductible.

Assessee company carried on partnership business as muslin manufacturers.

On various dates between December 1919 and April, 1920, assessees entered into forward contracts for the supply of yarn. Deliveries under these contracts were to be made, "as required." In the usual course of the particular trade deliveries under contracts of this kind began to be made one month after the date of the contract and the completion was effected annually within six months, though extended at times to beyond one year. In March, 1921, when the deliveries under the above contracts were not complete, assessees anticipated, owing to a depression in trade and fall in prices they were under a liability, by reason of the contracts to pay a sum of £ 6000 for the undelivered yarn in excess of the prices at which yarn was available then.

Assessees accordingly, entered into negotiation with the contracts not to obtain any reduction in prices but to settle a lump sum as the difference between the market prices on 16 th March 1931 and the contract prices and to treat this as a debt due by the assessee company. This was agreed to and the amount fixed at £6,287 and an invoice passed for the amount.

The senior member of assessees' firm died in October 1920 and in a settlement of account between his representatives and the surviving partners, the above sum of £6,287 and odd was treated as a loss.

The assessee company claimed to deduct the above sum from their profits for Excess Profits Duty assessment purposes, as being an ascertained liability of theirs.

The Reveneue contended that the sum was not deductible, not being trading expenses, of the assessees, for the accounting period in question.

The Commissioners disallowed the deduction, holding that the sum of £ 6,287 and odd was a reserve in their accounts to meet contingencies which had not in fact arisen during the accounting period to 25th March,1921.

12 T. C. 382 foll.

On a case being stated, the Court of Sessions upheld the above finding of the Commissioners.

J. H. Young Co. v. *The Commissioners Inland Revenue.*

12 T. C. 827 (834, 839, 840)=(1925) Sc. L. T. 628=(1926) Sess. Case 30

Finance Act, 1915, Section 40 (1) Schedule IV, Part I, R, I, &, 3—Deductions from profits of trade—Demurrage subsequently abandoned not an allowable deduction.

Assessee company carried on the business of grain merchants. During tha period from 1st October, 1919 to 3rd September, 1920, being the accounting period in question, the company bought grain in Argentine and sold it to the Royal Commission upon Wheat Supplies. The terms of agreement between thh Commission and sellers were embodied in an agreement technically known as "Centrocon Charter". A clause in the said agreement related to the payment of demurrage by the sellers.

The grain to be sold to the Commissioners by the assessees was purchased by the latter in all parts of Argentine. In February, 1920 there was a stevedore strike at Rosario and elsewhere in Argentine, and it lasted till April, 1920. As a result, transit facilities having been disturbed, contracts for delivery of wheat could not be carried out, whereupon the wheat Commissioners claimed demurrage, which in the case of assesees, involving 11 ships, totalled £ 33, 847, Assessees protested the claim immediately after it was made that no time admitted it.

The Commissoners demanded immediate payment and in June, 1920, they began to deduct the amount of the claim from the various invoices presented to them by the assessees for grain loaded.

In view of the dificulties due to strike and the uncertainties of the position generally, the Commissioners were persuaded to discontinue the practice and to leave all claims to be dealt with when the relevant facts could be fully ascertained. A deduction which had been made in the case of one steamship was refunded to the sellers by the Commissioner.

The amount of £ 33,847 was however, put in by the assessee company in their balance sheet as their ascertained liability on 30th September, 1920, being treated as an expenses in the trading account for that year.

Following the stevedore Strike, above-mentioned, the shipowners claimed demurrage from the Commissioner, which, in order to resist the claims, negotiated with the suppliers (assessees included) to procure and give exact evidence as to the supplies of wheat being available for shipment at the time of the above strike. In consideration of this, the claim against the suppliers by the Commissioner for demurrage was abandoned and in consequence, the assessee company did not have to pay £ 33,847 above-mentioned or any sum as demurrage to the Commissioner. The assessee company, however, on assessment to Excess Profits Duty claimed to deduct this sum from their profits as they contended' that their to pay demurrage remained, which they discharged by rendering services to the Commissioners in the shape of evidence.

The Commissioners disallowed the claim to deduction, as the company never admitted the Commissioners' claim to demurrage and that what the Commissioner give up for services rendered was indeed not the above sum lent on an ascertained future liablity for further claim and that the liability was mere contingent.

The finding was upheld by the King's Bench Division (per *Rowlett J.*)

12 T. C. 768 & 12 T. C. 927 ref.

H. Ford & Co., Ltd. v. *The Commissioner Inland Revenue.*

12 T. C. 997 (1001, 1002, 1006)

Finance Act, 1915, S. 40 (1)—Schedule IV, Part 1, Excess profits Duty.—Deductions from—Damage to coal mines—Cost of repairing—Repair after close of

accounting period—Not a deduction allowable in respect of accounting period.

Assessee companies carried on business as colliery proprietors.

From April, 1921 to July 1921, there was what was known as the "National Stoppage in the Coal Mining Industry" and consequently there was a complete stoppage of work in companies coal mines, as also in every other coal mine in Great Britain.

As a direct result of the said stoppage of work, the companies coal mines suffered serious damage and a large amount of repairing work had to be undertaken to recondition the said mines. This work, started immediately at the end of the national stoppage on 2nd July 1921' was fully completed within about six weeks.

The total cost of the said work, in the case of one company was £ 38,930 and that in the case of the other £ 33,072.

In both cases, the companies claimed to deduct the sum of £ 37,808 and 33,072 as a deduction properly and reasonably attributable to the accounting period ending 30th June 1921 within reference to Section 40 (1) Finance Act, 1915 as amended by the First Part to Schedule IV of the Act.

The Commissioners found that the sums were not deductible as claimed.

The finding was upheld by the King's Bench Division (*Rowlett J.*) observing that it was not an expense of the accounting period but of running the mine after the accounting period, although it was due to an accident that happened during the accounting period.

The Court of Appeal and the House of Lords also upheld the above finding.

(*Sergeant L. J. dissenting*) 1 T. C. 217 (312) and 2 T. C. 321 (327) ref.

(*1*) *The Naval Colliery Co. Ltd.* v. *The Commissioner Inland Revenue. and* (2) *The Glamorgan Coal Co., Ltd.* v. *The Commissioner Inland Revenue.*

12 T.C. 1017 (1020, 1025, 1029, 1036, 1041, 1045, 1052, 1053)=136 L. T. 28=138 L. T. 593.

Excess Profits Duty Assessibility to—Deductions of profits—Hire of ship paid to owners deductible—Profits of coal transactions assessable to Excess Profits Duty.

Assessee company carried on the business of ship owners, merchants, ship-brokers etc. In 1910, and 1911 the company chartered two ships. The terms were that the owners were not to bear any part of any losses during the currency of the hiring and were to receive from the company for hire a sum for depreciation calculated with reference to the cost of the vessels to the owners and a sum as net profits deducting depreciation.

The company wanted to include the above sums in the computation of pre-war standard profits for Excess Profits Duty purposes, as payments made out of profits. The company had entered into contracts for delivery of coal with a company to deliverd the same upto a fixed maximum and at a fixed price per ton. In January 1916, some of the company's ship were requisitioned by the Australian Government and the company, having a surplus of coal to be delivered under contract, transferred the benefit of the contract, upto 15,000 tons. The company was to receive 6 s. per ton as a consideration Under another similar transfer of contract of coal, the company was to receive 10s. per ton with regard to 8,000 tons.

The company did not sell coal as a matter of practice. The company contended that the premium amounts received under the transfers were not part of their profits for Excess Profits Duty purposes, being profits not of sale of coal but of transfers of contracts, which were capital assets, or at least, that they were casual profits only.

The special Commissioners on appeal, decided as to depreciation and share of profits payable to owners of two chartered ships that in respect of the depreciation depending on the earning of the profits and also in respect of the shares of profits payable to the owners of the ship after the said profits had been ascertained the company's contention did not succeed but that in respect of the depreciation payable to the owner of the ships in any event, without consideration to the earning of profits by the ships, the crown should succeed.

As regards the premium received from the sale of the coal contracts, the company's contention was disallowed.

On appeal' both by the King's Bench Division decided on both the points in favour of the Crown

12 T. C. 297 ref.

George Thompson & Co. Ltd. v. *The Commissioner Inland Revenue and The Commissioner Inland Revenue* v. *George Thompson & Co.,Ltd.*

12. T. C. 1091 (1097, 98, 1099, 1002).

Finance Act, 1915, Section 38(3) Finance Act, 1921 Section 38, Part 1 Schedule 11, Sale of business person entitled to deduction and relief.

A company (the Old Company) incorporated in 1903, carried on business at Manchester. An agreement to sell the business of the company was entered into on 25th October, 1920 according to which, the purchasers agreed to buy the undertaking and assets of the Old Company, subject to its liabilities and obligations at a price equal to £ 5 per £ 1 fully paid up shares (issued ordinary) and £ 1 per £ 1 issued preference shares of the company. The deposit paid at the time was £ 22,20 the purchase was to be completed within six weeks.

On the 15th December, 1920 the New Company was incorporated under the Companies Act 1908 to 1917. The Old Company was wound up by a special resolut-

ion passed on 31st December 1920 and confirmed 17th January, 1921 and a liquidator was appointed.

By a sale deed dated 25th July 1921, the premises of the Old Company were conveyed to the New Company by the liquidator, for a consideration paid In cash. The Old Company paid Excess Profits Duty in respect of the profits of the said business for the accounting period upto and including the accounting period ending 31st December, 1919, a further sum of £16,8314-12-0, being due by them for the said period.

For the accounting period ending 31st December, 1920 a loss in trade was sustained producing a deficiency for Excess Profits Duty purposes amounting to £43,914.

The New Company claimed that the amount of deficiency in respect of which the Old Company was entitled to a repayment of or a set off against the Excess Profits Duty under Section 38 (3) was the above sum of £43,914. The new company, further relief under Section 38, Finance Act, 1921, and Part I, Schedule II to the extent of £23289, being the amount by which the value of the whole of the trading stock in hand at the end of the final accounting period *i. e.* 31st December 1920 exceeded the value of an equal quality of similar stock as on the date when the said business changed ownership (R, 1 & 7 Part Schedule II Act, 1921.)

The Commissioner Inland Revenue determined that the amount of the said deficiency was the sum of £ 35,875 the proportion of the sum of £ 43,914 from 1st July 1920 to 25th October 1920 on the ground that the old company ceased business on 25th October, 1920 and that any loss sustained after that date was not a loss sustained by the old company. The Commissioner Inland Revenue declined relief under Section 38 Finance Act, 1921 on the ground that the old company were not owners of the business at the end of the final accounting period.

The assessee company contended that the old company owned the said business at the end of the final accounting period, *i. e.*, 31st 1920, that the old company held the business till the date of sale of premises on 25th July 1921, that the old company was entitled to relief under Section 38, Finance Act, 1921. The Commissioner held that the old company ceased to held the business on 25th October, 1921,that the determination of the Commissioners as to the amount of the deficiency amounting to £35,875 was correct and that the company was not entitled to relief under Section 38 Finance Act, 1921.

The finding was upheld by the King's Bench Division.

Fred W. Millington Ltd. v. *The Commissioner Inland Revenue.*
12 T. C. 1081 (1088, 1091.)

Excess Profits Duty—deductions from profits of of trade—bonus to employees in the shape of share of company yet to be formed.—Not deductible from profits.

Assessee, a naturalized subject of Great Britain carried on business in partnership for many years before the outbreak of the war of 1914.

Under an agreement dated 27th January, 1915, however, he became the sole proprietor of the business, including the goodwill and assets etc. Thereafter the assessee carried on the business in his own name. On the outbreak of war, his employees (one-third) were absent on war service. Assessee had thus largely to depend upon the assistance of his principal employees remaining in his service and it became essential for him to retain their services.

Thus, the conditions under which business was carried on involved greater responsibility and additional labour on the part of the employees. In 1915 and 1916, the assessee promised that when he turned the business into a limited company (as he intended to do at the end of the war) he would recognize their assistance by giving them, in return for extra service required of them, a bonus in the shape of a propor tion of share in the limited company when formed. No definite number of shares was promised and there was no written contract but he intended to distribute approximately ten percent of share capital.

A private company was limited in 1921 and bonus in the shape of shares, as promised were awarded by the assessee to the value of £ 11,200. The company claimed deduction of this sum from profits assessable to Excess Profits Duty.

The Commissioner on appeal allow the sum as deduction. On a case being stated, the Court of Sessions revised the Commissioners' finding and held the sum as not deductible.

The Commissioner Inland Revenue v. *Bell.*
12 T. C. 1181 (1186 1190).

Excess Profits Duty—Deductions from Profits of trade—Biscuit manufacturing company—Loss on tins and tin plates.—Capital loss not deductible for Excess Profits Duty purposes.

The assessees, Messrs Huntley & Palmers Ltd., were the well known manufacturers of biscuit at Reading. Their tin boxes were supplied by an allied or subordinary company Messrs. Huntley Bourne & Stevens, Ltd.

In the early part of the year, 1920 this company, which was a company of comparatively small resources entirely controlled and owned by Messrs. Huntley and Palmers's ordered a great quantity of tin plates with a view to making tin boxes to meet the very large demand for Messrs. Huntley and Palmer's biscuit.

The great depression set in 1920 and was established by March, 1921, when the assets came to be made up and the demand for biscuits, therefore, for time had dropped away almost to nothing. The company (Steven Ltd.) was faced with difficulty whereupon, on their approaching Huntley Palmers & Co., the latter took over unfinished tin plates and even these lying at the manufacturers. Huntley Palmers entered the cost of taking one of these tin plates as their expenses. They were entered in the stock at half that figure. The resulting loss the assessees, Messrs. Huntley & Co. wanted to bring into accounts.

They contended that the transaction of taking over tins, unfinished and even undelivered, from Stevens Ltd, and making entries in respect of these, as they were done by the assessees, as to their value and the consequent loss was all done in the course of their trade or business and that they were entitled to claim deduction in respect of the loss on this account. The Commissioner accepted the assessee company's contention and allowed the deduction claimed. On appeal, the King's Bench Division held that the money thus used (said to be loss by the assessee company to help the Stevens Co. in order to ensure their supply of tin) was used by them in another business and that as such it was a capital risk and not an allowable deduction from their profits, assessable to Excess Profits Duty.

5 T.C. 327 ref. & 12 T. C. 217

The Commissioner Inland Revenue v. *Huntley & Palmer Ltd.*

12 T. C. 1209 (1219, 1222).

Finance Act, 1915, Section 38 (3) Excess Profits Duty—Deduction of loss out of profits assessable—Date of accrual.

Assessee company carried on business as potato merchants in belfest.

For the accounting period ending 30th June 1921, being the last accounting period of the asseessee company, the Commissioner Inland Revenue determined the deficiency for Excess Profits Duty and the assessees at £ 6,081. Under a contract between the assesee company and Messrs. J. W. &. D. Martin, the assessee company agreed to purchase 250,000, bags to be delivered from September, 1920 to February, 1921, in six equal monthly deliveries. Assessees later took delivery of 35,300, bags only as a part of contract and refused to take delivery of the balance of 214,700 bags. The market price fell in March, 1921, to approximately 3d. per bag.

Upon an action being taken by Messrs. Martinagainst the assessee company, for damages for breach of contract, on 28th April, 1921, a settlement was arrived at on 5th August 1921 according to which the assessee company agreed to take delivery of the bags undelivered at a reduced price. These were delivered to the assessee company on the 30th June, 1921 and the latter paid for them on the agreed terms

In their balance sheet, as of 30th June,1921 the company showed a loss of £ 5,814-15-10 but it was in evidence that the actual net loss incurred was £4, 733-5-2 The assessee company contended that the said loss represented damages for breach of contract and accrued as at 24th March, 1921, the date of the said breach and that it should be taken into account for the accounting period ending 30th June, 1921.

The Recorders of Belfast allowed the contention. On a case being stated the two Judges of the King's Bench Division differed with the result that, according to the practice then prevailing, the junior Judge dissenting, was not allowed to with draw his judgment.

The position, in consequence was that the Recorder's finding stood, and costs

were allowed to the assessee company. On appeal to the Court of Appeal, the case was eventually compromised.

In this case a preliminary point was also raised that the King's Bench Division had no jurisdiction to hear the case, which was not stated within time (seven days) as required by Section 149 (1) (*d*) Income Tax Act, 1918. The contention was allowed and the case was dismissed with costs.

On appeal, however, facts transpired according to which the statement of case, was, in the special circumstances, held to have been lodged in time.

The case after being stated was handed over by the Recorder to an official for attaching the neccessary documents to it. The said official handed it over to the H. M. Inspector of Taxes for the purposes. Considered from the date that it was on completion by the said Inspector it was within time and it was accordingly so held by the Full Court It was, however, observed (*per Andrews, L. J.*)

We feel it our duty at the same time to add our expression of regret that the case stated was permitted to be handed over to Mr. Roy, who was really one of the litigants, before completion, for the purpose of having it completed by such party. As was stated by *Holmes, L. J. in Whelan* v. *Fisher.* 26 L.R.J. 340 at page 356, it is clear that the duty and responsibility of stating the case rests with the Court, which in that case was the Justices. We fully recognise that in the performance of this duty in so far as it is of a purely ministerial character the Court may reasonably call to its aid the services of its duly recognised official, but the ultimate responsibilty for the due and proper performance of such duty still rests with the tribunal. The Court cannot lawfully delegate to another the duty imposed upon it by Statute. These observations apply with special force to any attempt to delegate such duty to either of the parties or their advisers. Such an attempt is unauthorised by statute, is fraught with grave danger, and is calculated both to mislead the other party and to create a situation such as that which has unfortunately arisen and had let to the incurring of uery considerable unnecessary costs in the present case.

The Commissioner Inland Revenue. v. *Hugh T. Barrie Ltd.*

12 T. C. 1223 (1127, 1228, 1230, 1231, 1240)-(1928) K. B. (N. I.) 129

S. 38(3) (Finance Act, 1915)—Price paid by members of a mutual trading association for quantity of goods purchased for the association—Deductibility.

Assessees in this case were members of a trade association called the Gold Rolled Brass & Copper Association, which was an unincorporated body governed by rules and was for the advancement of the interests of its members who were engaged in business in this class of materials. Under one of the rules, governing the association, it was provided that there should be a common fund, that members should pay an entrance fee to it and also s. 10 per ton or such other sum per ton as might be fixed on the member's monthly output until the fund should be thought large enough. The amount paid by each member was to remain the property of the association until winding up

order. On winding up, by a rule, the sum standing to the credit of the members was to be divided among them. After the war, the Ministry of Munitions had copper & brass materials to dispose of and they sold them to this Associatian.

The Association was expressly authorized to enter into this contract by members because it was not part of their ordinary business. The members were asked by a a circular letter to purchase the stuff.

The question was whether the difference between the price paid by the Association to the Government and that paid by the members to the Association was deductible out of profits assessable to Excess Profits Duty.

The Commissoners have held that this was not deductible, because, they said, the assessee must be regarded as parties to the transaction with the Government.

On appeal, the King's Bench Division (per *Rowlett J.*) gave judgment in favour of the assessees holding that the sum in question was deductible from the profits of the assessees for the purposes of Excess Profits Duty computation.

Charles Clifford & Son Ltd. v. *Commissioner Inland Revenue*
14 T C. 189 (208)

Finance Act 1915 Section, 35 (1) & Schedule IV, Part 1, R. 6 Excess Profits Duty —Deduction of for income tax purposes—Scope of Section 35.

Assessee company was an incorporated company, limited by shares. Until the 31th March, 1918, the whole of share capital of the company was owned by a company called Richard Dickeson & Co., Ltd. which carried on the same trade or business. The assessee company was accordingly for the purpose of Excess Profits Duty treated as a subsidiary of Richard Dickeson & Co., Ltd, and the profits of the two companies were not separately assessed to Excess Profits Duty pursuant to the provisions of R. 6, Part 1 Schedule IV, Finance Act, 1915.

The Excess Profits Duty payable in respect of the year 1915 1916, and 1918 (upto 31st March only in the case of 1918) upon the profits of the two companies was paid by Richard Dickeson & Co., Ltd.

On the 31st March, 1918, Richrad Dickeson & Co. Ltd. ceased to trade and on the 30 th May 1918 went into voluntary liquidation. The Excess Profits Duty paid by Richard Dickeson & Co. Ltd. was allowed as a deduction,under Setion 35 (1) Finance Act, 1915, for income tax assessment purposes.

In the above circumstances, the company claimed that under terms of Section 35 (1) the company was entitled in the computation of Income Tax assessment to a deduction in respect of the Excess Profits Duty so paid by Richard Dicke on & Ltd. so far as that company by reason of having ceased to trade had not recovered the full benefit of the deduction allowed by Section 35 (1). They accordingly

claimed deduction of the four items of Excess Profits Duty, in respect of the years 1915, 1916, 1917, and 1918 and that the said sums, though assessed on and paid by Richard Dickeson & Co., Ltd. were, by Section 38 (1) Finance Act, 1915, charged on the profits of the trade or business of the company.

The Crown contended that the company were not entitled to deduction, which they claimed under Section 35 (1)

The Commissioners found that Excess Profits Duty attributable to the business of the company had been paid and held that under Section 35 (1), Finance Act. 1915, the amount so paid should be allowed to the company as deduction in computing their profits and gains for purposes of income tax.

On appeal, the King's Bench Division, held (per *Rowlett J.*) that the deduction claimed could not be allowed. The finding of the King's Bench Division was upheld by the Court of Appeal also. It was observed.

(Per *Lord Hanworth M. R.*.....looking at the whole section it appears to me that the Excess Profits Duty which can be deducted from the income-tax is identified with the person who has made that payment of Excess Profits Duty. Looking at Rule 4 and which appears in it, the same view, I think arises..." Per *Lawrence L. J.*) In my Judgment, that claim cannot succeed. Section 35 of the Act, allows a person who has paid the Excess Profits Duty to bring that payment into his account for income tax purposes as an expense; it seems to me, however, that it is impossible successfully to contend that Reynolds ought to be allowed to bring in as a deduction from their own income any thing in respect of the sums which were paid not by them but by Dickeson Reynolds did not make the payments, nor did they bear the burden of them; they were not liable for them; and they in fact, never became chargeable in respect of them. Section 35 is, I think, confined exclusively to payments made by the person who is claiming to have them allowed as a deduction.

Ogston v. *Reynolds, Sons & Co Ltd.*

15 T. C. 501 (505, 510.513, 515)

Excess Profits Duty—Computation of—Deduction of value of goods destroyed by accident—Less made good in subsequent year—Period of accounting.

Assessee company was an incorporated company, carrying on the business of whole-sale and export iron-mongers, ironfinders and hardware merchants. Certain goods of the company was lost by fire or sea water, in 1918. The company received three sums from under-writers, on account of the above mentioned loss in 1919.

The company contended that this sum formed part of their trade receipt for 1919 when the sum were received and not for 1918, when the losses were made.

The company had dealings with the Ministry of Munition and the Disposal and Liquidation Commission. The company made up a separate account of its transa-

ction with the Minister of Munition and the Disposal Commission upto 31st December, 1920, showing the result of these transacton according to which there was a loss amounting to £59,649. The alleged loss did not in the end fall to be borne by the company, because, under the later agreement, not only was the company entitled to set all its expenses against the resale price in accounting to the Minister of Munitions or the Disposal Commission but, under the provisions of agreement, it received in 1923 in addition to two sums of £36,472 & £10,000 from the Disposal Commission. The company contended (1) that the three sums received by the company from the under-writers formed part of the company's trade receipts for the year 1919 when the sums were so received and for the year 1918, when the losses were made; (2) that in the year ended 31st December, 1920 the company made a trading loss of £59,649 in its dealings with the Minister of Munitions and that the two sums received in 1923 were incapable of being divided or allocated to any particular period and that, therefore, no part of these two sums was attributable to the year ended 31st December, 1920. The Commissioners held that the three sums received from the under-writers were property to be taken into account as trade receipt of the company for the year 1918, when the losses were incurred and not for the year 1919, when the payments were received, that the company did not in fact make a loss of £59, 649 of any loss on its transactions with the Minister of Munitions, and that a proportional part of the two received by the company from the Ministry related to the transactions of the year 1920. The Commissioner fixed the proportionate part of these two sums to be £7,275 and £ 3,272 respectively, On appeal, the High Court (King's Bench Divison) decided the first two points in favour of the Crown agreeing with the Commissioners, but decided in the third point against the Crown.

Rownson, Drew & Cydesdale Ltd. v. *The Commissioner Inland Revenue,*

16 T. C. 595 (601,605)

Excess Profits Duty—Computation of—Deduction of Accounting fee for revision —Not an expense allowable in respect of the years revised.

Assessee was a brewery Company, which was assessed to Excess Profits Duty in respect of its profits for the years, 1914, 1915, 1916, 1917. 1918, 1919, & 1920. For each of these accounting periods assessees, in the ordinary course, instructed the firm of accountants usually employed by them, to audit their accounts and to settle the amount of Excess Profits Duty or the deficiencies for the purposes of the said duty. The fee paid for this work was allowed as a deduction for purposes of assessment to Excess Profits Duty. As the computations made by the said accountants were erroneous, assessees instructed another firm of accountants to revise the computations made for the above accounting periods. A result of the revision a sum of £ 6,491-6-0 was repaid to the assessees by the Commissioner Inland Revenue in August, 1928 and February, 1930. Assessees claim to deduct the revising fee paid by them to the accountants for obtaining the above said repayment, as an allowable expense.

The Commissioners did not allow the above accountancy fee as an expense of Excess Profits Duty and dismissed the appeal.

On appeal, the King's Bench Division upheld the above finding which was upheld by the Court of Appeal also.

12 T. C. 927, 12 T. C. 768, 12 T. C. 997, & 12 T. C. 1053 Disst.

Worsley Brewery Co. Ltd. v. *The Commissioner Inland Revenue.*

17 T. C. 349 (351, 353, 358, 359, 360, 61).

DEFICIENCY.

Excess Profits Duty—Repayment of, due to deficiency—Valuation of stock in trade for the purpose—method of valuation.

Assessees in this case were textile merchants. They were not manufacturers but bought pieces of woollen goods from weavers, 'in the grey', which were got dyed by dyeing firms and were then sold.

Frequently pieces of cloth got from weavers are imperfect in condition and these imperfections are discovered by a process called 'perching'. According to the custom of the trade, a price is not imperfect if it has defects up to a certain number in each piece, but it is imperfect if it has defects above that particular number.

Defect could be discovered easier after dyeing and so defects could not be discovered till rate after delivery of pieces, as they were kept 'in the grey' and were not dyed till as late after delivery as upto 12 months. The arrangements between the assessee firm and the weavers in case of imperfect pieces, varied.

(1) In case of goods purchased from a firm of weavers, Peel Bros. & Co., Ltd., it was agreed that Peel Brothers would take back the defective goods on discovery of defect and that the firm, on return of the defective goods was to take from goods of a perfect quality at the original contract price.

(2) In the case of goods purchased from another firm of weavers, T. & H. Harper Ltd., defective pieces were to be changed or sold and any loss in price was to be debited to them. In other cases though there was no definite agreement existed, the practice was the same as in the case of T. & H. Harper Ltd.

No definite contract existed in case of faulty dyeing, but really the difference in price due to faulty dyeing was debited to the dyer.

The firm's final accounting period for Excess Profits Duty was 31st March, 1921.

In making up the accounts upto the above date, no account was taken by the firm in respect of any sums which the firm might be entitled to charge against the weavers or dyers on account of defective weaving or dyeing then discovered.

The firm valued their stock on 31st March, 1921 for the purpose of making up their accounts to that date. Their method of stock taking was as under:

(*a*) Parfect cloth (*i.e.*, pieces which had been examined and found perfect) was valued (at 31st March, 1921, market value was lower than cost price).

(*b*) All undyed cloth with the exception of the 268 pieces mentioned in paragraph 15 hereof was valued as perfect cloth.

(*c*) Cloth which had been dyed and in which weaving defects had been discovered which entitled the firm to charge the weavers with the original cost price *plus* the cost of dyeing was valued at a price less than market value of perfect cloth The price adopted was the estimated selling value of the cloth with its defects.

(*d*) Cloth which was defective owing to faulty dyeing was valued at a price less than market value of perfect cloth. The price adopted was the estimate selling value of the cloth with its defects.

In making up their accounts up to 31st March, 1921 no account was taken by the assessee firm of the sums which the firm might be entitled so charge against the weavers or dyers on account of defective weaving or dyeing which had been discovered. The defective pieces of cloth out of those purchased from Peel Brothers, numbering 24, were discovered by the firm after 31st March, 1921. These were replaced by perfect pieces at original contract price, the dyeing cost being paid by Peel Bros., Ltd., From T. & H. Harper Ltd., 309 pieces were defective, and they were debited with contract price and cost of dyeing as regards 41 of these before 31st March, 1921 and as regards 268 after the above date (as these defects were discovered later, not having been examined at 31st March1921). The assessee contended that their method of stock valuation was correct The Commissioner found that that method was incorrect, that the deduction of one third of two-thirds so far as perfect stock was concerned was a provision for a future unascertained loss, and so far as imperfect stock was concerned was a provision for a loss which would not be incurred and therefore a value arrived at on the firm's method was not in either case the market value.

On the further facts set out in paragraph 15 hereof with reference to the 268 imperfect pieces of cloth received from T. & H. Harper, Ltd., the defects in these pieces were discovered by the firm before 31st March, 1921 and treated as so discovered and the said pieces fell to be dealt with in accordance with paragraph 4 of our decision as set out in paragraph 22 hereof.

In all cases where defects in the goods had not been discovered before 31st March, 1921, we hold that the appellants are entitled to value the said goods at 31st March 1921, at the current market value of perfect goods of the same description (market value being lower than cost price.)

The Commissioner, on getting further facts, held:—

Stock Valuation at 31st March, 1921. We hold that the correct method of stock valuation at 31st March, 1921 is cost price or market value whichever is the lower. By market value we mean the price at which Brigg Neumann & Co., could purchase the goods in the market. If in fact there is no spot market for goods of the same description as the goods dealt with by Brigg Neumann & Co., enabling market value at 31st March, 1921, to be readily ascertained; then market value at 31st March 1921 will be the price which ruled at the time when contracts for delivery at 31st March, 1921, were entered into.

In our opinion there is no justification in law for the deduction of one third of two thirds as representing the anticipated fall in wages.

The 268 pieces under Harper's Contract. Upon the evidence called before us we are unable to hold that the defect in the 268 pieces were discovered before 31 st March, 1921. These pieces, therefore, fell to be dealt with under paragraph 3 of our first *interim* decision.

As regards the treatment under paragraph 4 of our first *interim* decision of goods which have been kept by Brigg Neumann and not returned to the manufacturer we adhere to the second paragraph of paragraph 4 that appellents must bring in as receipts the difference between cost price of the goods *plus* cost of dyeing and the value at which the said goods were brought into stock at 31st March, 1921.

The King's Bench Division upheld the above finding.

Brigg Neumann & Co. v. *The Commissioner Inland Revenue and The Commissioner Inland Revenue* v. *Brigg Neumann & Co.*

12 T. C. 1191 (1200, 1207).

Finance Act, 1922 Section 35—Section 38 (3)—Finance Act, 1315—'Voluntary in Section 35, meaning of—Repayment claimed by son ground of deficiency not allowed.

Claimants, in this case, claimed, under Section 38 (3) Act, 1915 and Section 36 Act, 1920 repayment of a certain sum of Excess Porfits Duty on account of defiiciency arising in the accounting period to 31th December 1919 and 31st December, 1920.

The claimants carried on business as day-setters in Glasgow. By a contract dated 13th March, 1919, R. A. Bird and his son W. T. Bird and one J. M. entered into partnership as dry-setters.

The period of contract of partnership was extended to five years from 1st January, 1914.

Mr. R. A· Bird died on 10th September, 1917 and Mr. J. M. on 27th September, 1921. Under 'the contract, as extended, J. C Bird, R. A. Bird's son, took over his father's share of the business after the latter's death and carried on the same under the style of R. A. Bird and Co, Repayments had been 'made to R. A. Bird & Co. of a certain sum in respect of deficiencies arising for the years ended 31st December, 1918 and 1919. The said sum represented the share of total Excess Profits Duty previously paid by the firm R. A. Bird & Co. calculated as attributable to the two partners (J. N. and J. C. Bird) who owned during the years 1918 and 1919

The said sum, was made up of two items, (1) £ 1,377, being the full amount claimable in respect of the deficiency arising in the account of the firm R. A. Bird & Co., for the year ending 31st December,1915 and (2) £60 being duty on £150 which formed part of total deficiency of £2,075 arising in the accounts of the firm for the year ending 31st December 1919. If it was held that the interest of Mr. R. A. Bird passed to Mr. J. C. Bird, and terms of Section 36, Finance Act, 1922, the said sum of £13 s6. 1d. fall to be repaid to him under Section 38 (3) Finance, Act. 1915.

It was contended on claimants behalf than in order to obtain the benefit under Section 36 Finance Act, 1922, the claimants had to show that Mr. R. A. Bird's interest in the said business had passed to his son Mr. J. C. Bird, either by voluntary disposition *inter vires* made by Mr. R. A. Bird or under his will, that any deed or even verbal arrangement whereby interest had passed, constituted a disposition, that the contract above referred to form such a volunatry disposition by Mr. R. A. Bird of his 8/10 interest in the business, as he had been a party to them voluntarily. On the other hand, the Revenue contended that under the said contract there was on free gift, that this was not a voluntary disposition *inter vires* within Section 36, Finance Act. 1922,' the claim to repaymeut under Section 38 failed.

The Commissioners agreed with and gave effect to the contention of the Revenue.

On a case being stated, the Court of Sessions upheld the Commissioners finding as above.

It was observed (per *Lord Saunders*) "Section. 38 (3) of the Finance Act, 1915, gives an equitable relief where Excess Profits Duty has been paid in one year and there is a deficiency in a subsequent year." The remedy is personal and does not subsist where there is a change of ownership of the business. It was held that the words "voluntary disposition ' are terms of act in English and Revenue Law and they have been interpreted to mean, "without consideration or at all events without adequate consideration."

In this case the Court refused to allow the case to be remitted to Commissioners for a finding of additional facts, relating to which no evidence was led before the Commissioners.

R. A. Bird & Co. Tv he Commissioner Inland Revenue,

12 T. C. 785 790, 802, 803=1925 S. C. 186=1925 S.L.T. 96

EXEMPTIONS.

Finance Act 1915, Section 39 (C) Exception under—Limited Company carrying on auctioneers' business, not entitled to—Personal qualification—element of lacking.

Assessee company carried on the business of agricultural and general auctione ers, live stock salesman agents, farm managers, appraisers etc. In 1912, on the retirement of Mr. Mc Intyre, from, the whole of the shares in the company were acquired by Mr. A Fraser and his father, mother, brothers and sister, Mr. A. Fraser holding more than half,Mr.A. Fraser was the managing director of the company while his father and brother were directors and the entire conduct of business was in Mr. A Fraser's hands. In 1919, the question of liability of surveyors, auctioneers and estate agents to pay Excess Profits Duty arose. An arrangement was arrived at between these and the Inland Commissioners, according to which in case of certain income, salaries and commissions, profits, to be excluded under Section 39 (c), Finance Act, 1915, were to be arrived at after deducting appropriate expenses. Assessee company were employed by the Ministry of Foods under the Meat Control Orders 1917 and earned grading fee and other remuneration, falling within the agreement above referred to. They also had receipts from sale of live stocks and movables falling within the said agreement too.

Persons desirous of becoming auctioneers did not require any special qualifications. On the above facts, the company contended that it was entitled to relief in terms of the arrangement between the Inland Commissioners and auctioneers, etc. and that they were so entitled to the extent of the business carried on by Mr. A. Fraser as the arrangement did not differentiate between business carried on by an individual and by a company.

The Crown contended that the above arrangement, relied on by the assessee was merely a working arrangement made by the department and that the case was to be determined by provisions of the Act and that the exempti on under Section 39 (c) did not apply to the case of the assessee company which had a large capital, while Section 39 (c) covered a case of a profession which required no capital.

The Commissioners held the company entitled to the relief. On a case being stated the Court of Session in Scotland, however, revised the finding and gave judgment in favour of the Crown holding that the exception in Section 39 (c) did not apply to the cases, as it applied to professions requiring personal qualifications and the company in the present case required no personal qualification and that there was nothing in the arrangement, which only contained instructions, to qualify, the Act, in this respect and if there was, it would have been *ultra vires* and the provisions of the Act' would prevail

1924 S. C. 345 ref.

The Commissioner Inland Revenue v. *Peter Mc Intyre Ltd.*

12 T. C. 1006 (1011, 1914, 1016).

Finance Act, 1915, Section 39—Fixed remuneration for managing Government ship by Ship-brokers—Not 'separate business'—exempt from Excess Profits Duty.

Assessees carried on business as ship-brokers and managers sf ship for companies in which they were interested as shareholders Sometimes early in 1917, they were asked by ths Director of Transport and Shipping to uudertake the management of a steamship belonging to the neutrals, which had been commandeered by the Government in the course of the war. They agreed to do so and their remuneration was fixed at £ 300 a year as managers and £ 300 year for acting as brokers.

A further superintendence fee of £ 50 was payable also for the use of the Finance Superintendent Engineer. Later on they were entrusted with and under took the management of two more neutral ships.

During the accounting periods of one year ending 18th April, 1919 payments were received by the assessee company in respect of the last two ships as arranged from the Government.

On assessment to Excess Profits Duty on the above sum it was contended on behalf of the company that the business of managing neutral ships was a 'separate' business, being that of 'an agent' whose remuneration consists of a fixed and definte sum not depending on the amount of business done or any other contingency and was consequently a business the profiits of which was not assessable to Excess Profits Duty. The Commissioners, being divided in their opinion, discharged the assessment to Excess Profits Duty relating to above profits.

The King's Bench Division agreed with the Commissioners and dismissed the apyeal. On appeal, the Court of Appeal reversed the finding, holding that the profits were assessable to Excess Profits Duty, as the business was not wholly different, severable and severed and was not a separate business.

12 T. C. 41. ref.

The Commissioner Inland Revenue v. *Turnbull Scott & Co.*

12 T. C. 749 (753, 761, 764 766, 767)=132 L. T. 296.

Finance Act. 1915, Section (C)—Exception under—Not applicable to profits of trade or business of an Insurance Broker.

Assessee carried on the trade or business of Insurance Broker in the County of York. He did not act as an agent for any insurance company. His part in the Insnrance business was this. Upon receipt of the necessary instructions from any person wishing to effect an insurance against fire he surveys the premises to be insured and makes plans thereof; he advises as to any structural alterations the carrying out of which would, in his opinion, result in a reduction of premiums, and

in conjunction with architects superintends the carrying out of such alterations; he draws up schedules of particulars of properties to be insured draft policies; he advises as to the company or companies with which the amount for which the insurance should be effected; and he negotiates with the company or companies selected, and carries matters through to their final conclusion.

About 6/7th of his business consisted of fire insurace relative to textile trade. On completion of necessary negotiations, assessee, informed the party of the premium payable by him. The party paid the premium to him which he paid on to the insurance companies after deducting commission at the rate which the company allowed to agents.

Assessee was not a member of the Surveyor's Institution but was a founder, and was on the Council of the Corporation of Insurance Brokers and Agents, London. He acted as a surveyor,valuer and appraiser only in connection with has own insurance work.

His moneys were accepted at Lloyd. On these facts, he claimed exemption from Excess Profits Duty under Section 38 (c) as carrying on a profession. The Revenue contended that within the last paragraph of Section 39 he was an agent and as such assessable to Excess Profits Duty on his business which was not a Profession.

The Commissioners upheld the contention of the Revenue that the assessee was carrying on a business and not a profession and was, therefore, not exempt under Section 39 (c)

This finding was upheld by the King's, Bench Division, the Court of Appeal, with the observation that there was evidence before the Commissioners to support their finding of fact.

Durrant v. *The Commissioner Inland Revenue.*

12 T. C. 245 (249,251,256,261,265)=(1920) 1 K.B. 801

Finance Act 1915—S. 39(c)—Profession or business—question of fact—Exception when applicable,

Assessee had been carrying on the business of Income-tax Appeal Agency and doing the work of an accountant for upwards of 20 years. He was not a chartered accountant, nor a member of any organized professional body. He had however, from time to time, employed a chartered accountant as a member of his staff.

He specialised in income-tax, assisting people in the preparation of their income-tax returns and claims for repayment of income-tax and Excess Profits questions. He was paid fixed fee for accountancy work. For his services,however, in connection with the repayment of and relief from income-tax, he frequently charged a percentage of the amount discharged or recovered by way of refund.

This percentage varied, being ¼th and ⅛rd in certain cases. No capital was required to carry on the assessees' business and he occasionaly advertised. On assessment to Excess Profit Duty, he contended that he was carrying on a profession, the income of which was exempt from assessment to Excess Profits under Section 39 (c), Finance Act, (2)'1915 and that his work required personal qualifications and not capital and that hence, he was not assessable. The Commissioners disallowed the contentions of the assessee and found that the case fell within the last paragraph of Section 39. The King's Bench Division (on appeal) upheld the Commissioner's finding.

On appeal to the Court of Appeal it was held that the question whether a particular trade was a profession or a business was one of fact and case was remitted to the Commissioner for a finding of fact as to whether they found that it was a profession and not business that the assessee carried on. The Commissioner found that the business was not a profession whereupon, the Court of Appeal upheld the the finding of the Commissioner and the King's Bench Division that the assessee's case did not fall within the exemption under Section 39 (c).

Currie v. *The Commissioner Inland Revenue.*

12 T. C. 245 (248,253,257,261,265)=37 T. L. R. 37.

Sections 39, 44 and 45 (5)—Remuneration of advising engineer and courtesy director—assessability to Excess Profits—Action for declaration as to non-liability to make a return and to pay Excess Profits Duty.

Assessee plaintiff was by profession an advising engineer. In 1915, a company, desiring of making munition of war, sought his assistance. The negotiations resulted in an agreement according to which the plaintiff was to be paid 3d for each shell and 1d. for each fuse as soon as payment was received from the Government by consulting and employing company. When the first 50, 000 shells were to be completed and the price reduced, the allowance per shell was to be 2d. instead of 3d. By a further agreement, he was to be paid a retaining fee of £ 5 per week during the continuance of the war. In order to give him some official standing, he was to design himself on his printed cards as "Local Director for general contracts." The retaining fee was later raised to £10 per week. In March 1917, plaintiff received the usual form of notice from the Commissioner Inland Revenue, requiring him to furnish a return of profits of the trade or business in which he engaged during the accounting period for the purposes of Excess Profit Duty assessment. Plaintiff declined to furnish a return on the ground that his profits were not assessable to Excess Profits and that he was neither an agent nor a person taking commissions in respect of the transactions or services rendered with Section 39. He denied his liability to make a return under Section 44. On the case coming before the Chancery Division (*Pelerson J.*) it was held that while the Court had jurisdiction to make such a declaration the exercise of such a jurisdiction was discretionary and a declaration where made was in cases where the Commissioner's requirement were wholly unauthorized [*i.e.* in (1911) 1 K.B. 410, 1912, 1 Ch. 158 1911, 2 Ch. 139 and 1912, 1 Ch. 173 which were distinguishable] the present case was not one where declaration could be given as sought by the plaintiff.

Smeeton. v. *Attorney General.*

12 T. C. 166 (172, 173, 174)=(1920) 1 Ch. 85=88 L. J. Ch. 535=122 L. T. 223=35 T. L. R. 206.

Finance Act (1915) Section 39 (c)—Exemption claimed under by an editor & publisher or a magazine as exercising a profession—Allowed—Profits as publisher assessable,

Assessee purchased a magazine. the "National Review" for a sum of £ 1500 and was the sole proprietor, editor and publisher thereof.

From 1893 to 1905, the publication resulted in a loss but since that date profits had been made each year. Trading and profits and loss accounts and balance sheets were prepared annually to 31st May each year and the year to 31st May, 1915 was the first accounting period under Section 38, Finance Act, 1915. The profits of the first accounting exceeded the pre-war standard (*viz.* the average profits of the best two of the three pre-war years plus the statutory allowance of £ 200) by approximately £ 2,000. Duty on this excess at 50% was £ 1000 the amount assessed.

The appellant claimed exemption under Section 39 (c) as exercising the profession of an editor of a magazine. The "National Review" was a monthly magazine dealing with policies and matters of general interest, more particulary from the national and imperial stand-point. It was sold at s. 2 6 d a copy, or for annual subscriptions of 30s. The subscriptions were all paid in advance, the sales were for cash.

The earnings were derived from the sales of single copies, from subscriptions, from advertisements, and from sales of sundry publications, being reprints of articles which appeared in the magazine and were practically all written by the assessee. The expenses were payments to contributories, costs of paper and printing, advertising distribution rents and office expenses etc. The assessee bought the paper and had the magazine prined for him by an independent contractor. Prior to out break of war the assessee wrote a large part of each monthly number of the magazine himself, but the bulk of the matter was contributed by others. The sale of the magazine was due largely to the popularity of the assessees own writings. When the last war (1914-15) broke out the assessee, fearing that the manazine might be ruined and to effect economy greatly increased his personal contributions. From 1893 to 1905 onwards in years when the assessee faild to realize profits; he had to provide capital. In 1915, he required practically on capital to carry on the magazine.

On being assessed to Excess Profits Duty, the assessee claimed exemption by virtue of Section 39 (c) Finance Act, as carrying on a profession of journalism. He was a journalist, pure and simple, and the purchase of the magazine did not alter his position.

The Commissioners held that the appellant was entitled to the exemption claimed. On appeal, the King's Bench Division (per *Sankey J.*) gave judgment against the above decision. On appeal, the Court of Appeal held that the assessee was entitled to the exemption claimed as a journalist, and his profits as publisher, which were separable, were liable to be assessed is to Excess Profits Duty.

The Commissioner Inland Revenue v. *Marse.*

12 T. C. 41 (50, 56, 59, 62, 63)=(1918) 2 K. B. 715=C. A. (1919) 1 K. K. 647.

Finance Act, S. 39 (a)—company being manufacturing Chemists and herb-growers—assessment to Income-Tax under Schedule D—Deduction of Schedule B assessment on land—Exemption claimed on ground of business being "husbandry" allowed.

Assessee company was incorporated under the Companies Act (1908), in 1912. It carried on the business of manufacturing chemists. It owned free-hold works and premises whereon it carried on the manufacture and distillation of herbs. etc. It also had an area of land and held some of the land under lease, upon which they grew herbs which were dealt with in their factory.

In computing the profits of the company for ascertaining its liability to income-tax, under Schedule D, its profits were viewed as a whole and a deduction of £ 22-17-0 was allowed for the occupation of farm under Schedule B, Income Tax Act. On assessment to Excess Profits Duty under Finance Act (2) of 1915 the company claimed to exclude the profits arising from the farm, as having been derived from a trade or business separate from the business of manufacture of chemicals and drugs, distillation etc. *viz*, the trade and business of husbandry in the United Kingdom, which was exemp. from Excess Profits Duty under Section 39 (a). The Crown, contended that the company's business was one business and that there was authority in the Finance Act of 1915 for the division of one business into two parts.

The Commissioner found as a fact on evidence, that the company occupied the farm in connection with and mainly for the purpose of the factory in which the herbs grown on the farm were distilled and treated.

They were nevertheless of opinion that the farm occupation was "husbandry", the profits of which were liable to exclusion for the purposes of Excess Profits Duty. They accordingly reduced the assessment.

On appeal, the King's Bench Division also gave judgment against the Crown with costs.

On appeal to the Court of Appeal, held (per *Sankey J.*) that, as from the documents put in it appeared that the produce of the company was sold not only to the distillery but was sold in other places, and to other persons also, the finding being one of fact based on evidence, was correct and could not be interfered with and that if public policy, which lay behind the Excess Profits Duty Act was to be considered, it was to be considered on both sides. It was, accordingly, held that the business of

the company, apart from the manufactu re of drugs, was "husbandry" exempt under Section 39 (a) Finance Act, 1915, and that they were, therefore, entitled to the exemption claimed.

6 T. C. 542 (550) ref.

The Commissioner Inland Revenue. v. *William Ramson & Son Ltd.*

12 T. C. 21 (24,25,29,30,31)=(1918) 2 K.B. 709=88LJ.

K. B. 342= 119 L.T. 369=34 T. L. R. 533.

Section 39 (a) Finance Act. (No.2) 1915—Excess Profits Duty—Exemption from Co-operative Diary Society doing creamery business—Business if 'husbandry' within the exemption.

The Canvan Central Co-opertive Society Ltd., was established in the year, by a number of farmers in the district, for the better marketing of some of their farm products. It was duly register under the Industrial and Provident Societies Act, 1893. The only business carried on by the Society, during the accounting period ending 21st December, 1914, was that of creamery. The method of working was this. The members, all of whom were farmers, brought milk each day to the creamery. This was entered in a supplier's pass book. The milk was churned, the skim milk returned to the suppliers and the butter sold. The process continued for a month, no case return being made, during the period, to the suppliers of milk and no price or rate per gallon being struck therefor. At the end of each month, a meeting was held by the committee and the return for the yield for butter sold and also for the aggregate working expenses for the month were laid before the committee. The sum to be distributed for the past month's milk was thus ascertained and was subsequently received rateably by the suppliers and was in proportion to the respective quantities of milk supplied by each of them. The price thus received by the farmers on milk basis depended entirely on the total amount received for the butter. Cheques were issued to the suppliers in respect of the butter sales of the immediately preceding month.

Occasionally, the committe refrained from deciding out the entire proceeds at once and deferred paying a part thereof to meet some heavy expenses in any one month. These were treated as deferred payments and were ultimately distributed amongst suppliers,if not required for expenses.

For the period ending 31st December, 1914, the Society was assessed to Excess Profits Duty in the sum of £108. The Special Commissioner confirmed the assessment. On appeal, the County Judge was of opinion that in point of law there were no "Excess Profits", or "surplus of" the Society, which could be assessed with Excess Profits Duty under the Finance Act 2 of 1915. He was also of opinion that milk producing of the keeping of milk cows by a farmer for dairy purposes including the making of butter, was" husbandry" and that it did not cease to be so if two or three or more farmers joined together and worked for the common purposes of butter-making. He, therefore, allowed the exemption claimed and discharged the assess-

ment to Excess Profits Duty. On appeal to the King's Bench Division, *held*:the manufacture and sale of butter was not such husbandry as the statute contemplated, that the business of the Society was, on the whole commercial, that it was doubtful whether Section 39, relating to the exemption claimed contemplated husbandry carried on by the Societies were liable to Excess Profits Duty unless they could bring themselves with Section 39, and that it did not appear quite reasonable that a Society liable to income-tax should be exempt from Excess Profits Duty. Hence, the assessment to Excess Profits Duty was held to be correct and was allowed to stand.

Per (*Madden J*) A Society of the kind worked like the Cavan Society may be of great advantage to husbandmen but in would be a misuse of language to describe its operation as husbandry.

(*Per Kenny J*) The work of this Society in connection with the milk which it received was not work of producers but a mere mechanical operation which could not in its essence, be regarded as husbandry.

The objects of the Society were composite conversion of milk into butter being one.

The Commissioner Inland Revenue v. *The Cavan Central Co-operative Agricultural Diary Society Ltd.*

12. T. C. 1 (9,10,12),- 1917 jr R. 594 & 606)

EXECUTORS OF DECEASED—LIABILITY OF.

Finance Act, 1915—Section 45 (2)—Executors of deceased not liable to assessment to Excess Profits duty—Distinction between Excess Profits—Duty and Income Tax on the point.

Assessees were the executors of one Mr. Cohan, who was partner in a well-known firm of persons carrying on the business of building, hiring and charting ships. From 1906 to 1912, deceased carried on the said business alone. In 1912 he took four other persons with him into partnership (two of these being his sons). Deceased was a wealthy man and with a view to assist the business of his firm, he entered into agreement in his own name which shipbuilders for the construction of ships. He then transferred the ship either to a single ship company, promoted by him for the purpose or to clients of the firms. The purpose of the production and transfer of the ships was that H. E. Moss & Co. should be appointed brokers to the ship and earn their profiits in the ordinary legitmate way. On three occasions the deceased contracted with shipbuilders to build him three ships, which were built and were transferred to a company who appointed H. E. Moss & Co., as brokers. In respect of these the deceased did not receive any profits apart from the fact that his own firm received the usual commission and brokerage on the building and management of the ships. The deceased made several other contracts for ship-building. One of these, the last, he made on 26th November, 1914 and the ship covered by this contract was still under contract, when he died. His executors

found themselves liable to pay for this ship. The contract, looking at the state of affairs of the term, was a very profitable one. This vessel, when complete, was sold at a large profit of £ 57,000. The executors were assessed on this. They contented that they did not carry on any trade or business but simply realised the assests of the deceased.

The Commissioners disallowed the executors' contention in this as well as in another case of a similar nature, wherein the executors had acted similarly after death of the deceased and they confirmed the assessment.

The King,s Bench Division upheld the said assessments. The same, were however, set aside by the Court on Appeal with the following observations:—

"Now there is a peculiarity with regard to the Excess Profits Duty. While the tax can be collect d from and is payable by and in respect of a business that is carried on it is to be paid, under Section 45, by the person for the time being owning or carrying on the trade or business or acting as agent for that person; but the system of the Income Tax Act whereby, if a return has not been made, a return can be asked for and an assessment can be made in respect of liability to income tax which was not paid by the deceased person, that particulars system is not inroduced into the Finance (No. 2) Act of 1915, which is the Act which imposes the Excess Profits Duty. The result is that, although it would have been possible to have collected excess profits in respect of such profits had the late Mr. Cohn lived, it is not possible to collect those profits from his executors unless the executors fulfil the terms of subsection (2) of Section 45, namely, that they are persons for the time being owing or carrying on the trade or business in respect of which the profits arise. They cannot be agents for the late Mr. Cohn because upon his death that became impossible."

It was also observed—"It is largely a question of degree as to whether or not a business is being carried on by the executors for their own purpose; or not."

(12 T. C. 303) ref.

Cohns' Executors The Commissioner Inland Revenue.

12 T. C. 602 (608, 610, 613, 615, 620)= 129 L. T 797 –131 L. T. 377

Finance Act, 1915, Section 45 (2) Finance Act, 1926—Section 38 Excess Profits Duty—Liability of Executors of deceasesd—carrying on trade of deceased.

Deceased commenced business as a wholesale jeweller and diamond merchant at Manchester until his dealth in June, 1927. In 1926, deceased was interviewed by representative of Inland Revenue and he admitted irregularities in his taxation affairs. In consequence, a notice under Section 38 (2) Finance Act 1926, was served upon the deceased by the Inland Commissioner to the effect that his liability to Excess Profits Duty was considered to be as undetermined. The investigation of the deceased's affairs and his liability to Excess Profits Duty were still going on when

be died. Early in 1930, assessment to Excess Profits Duty was made on the Executrices of the deceased.

By his will, the deceased left his real and personal property to his sisters but the will did not contain any specific direction to the sister to continue to carry on the business of the deceased. The executrices took legal advice as to their position and they were advised that they were not empowered to continue thed eceased's business except for the purposes of realizing the assets as beneficially as possible. So the executrices decided to wind up the business as soon as was precticable. They did not employ any manager. The premises were kept open for sale purposes all along, except for the mourning week. No new sign bearing the names oft he executorices and indicating that the business was carried on by them was exhibiteda nd no revised invoices or letter- heads were printed. Customers were notified that the intention was to close the business. In March, 1928, business premises were vacated and therefore the last of the stock remaining in hand was transferred to the retail business. The rest of the st ock which was old fashioned and was not suitable for the business was sold by auction for £ 1,011. The stock in hand at the death of the deceased was valued at £4,034. During the period from that date upto 31st March, 1928 when the premises were vacated the total sales effected, amounted to £ 7,984. Of this £ 3397 represnted sales to the Rochdale (retail) business, £ 1,011 the proceeds of the sale of the stock sold by auction as above mentioned, leaving a sum of £ 3,576 derived from ordinary sale to other customers. During the same period goods were purchased to the amount of £ 1,572. Of this about £ 300 was in respect of orders given by the deceased before his death and the remaining purchases were made for enabling the executrices to fulfil orders from customers for longer quantities of certain classes of goooods then they had in stock.

The executorices on being asseessed to Excess Profits Duty cootended that they were not liable to assessment to Excess Profits Duty in their representative capacity as executors of the deceased, that the notice on the deceased under Section 38 (3) could not render them, that the trade or business to which the assessment purported to relate, had ceased on the death of the deceased and that the same had not at any time been owned and carried on by the assessees, the executrices of the deceased.

The Commissioners held that in the case of a person on whom notice had been served under Section 38 (3), Finance Act, 1926, before 30th September, 1929 his liability was undetermined and that the terms of the Section enabled the assesment to be made on the executors of the deceased and that in the present case the executrices, the assessees had continued to carry on the trade of the deceased.

The assessment was confirmed but reduced, as the trade was, on evidence, held to have been continued upto 31-3-1928.

On appeal the finding was upheld, by the Kings Bench Division.

Executrices of Phillip Weisberg, deceased v. *The Commissioner Inland Revenue.*
17 T. C. 696 (701, 704, 705)

EXCESS PROFIT DUTY, LIABILITY,AGREEMENT TO

Finance Act, (1926 Section 38 (3) Excess Profits Duty Settlement of by mutual agreement—Notice of final determination valid.

For many years, Sir Walter H. Cookerline had carried on the business of ship-brokers and ship-owners under the style of W. H. Cockerline & Co. In the year 1925, the Commissioner of Inland Revenue, having reason to doubt the accuracy or adequacy of Sir Walter's return in connection with Excess Profits Duty set up an enquiry in the course of which Sir Walter's books and accounts were thoroughly investigated. It commenced from November, 1925 and continued until May, 1928. It became evident during the course of enquiry that very substantial sums were due from Sir Walter to the Revenue on account of Excess Profits Duty. A sum of £670,769 was allocated to Excess Profits Duty out of the total sum of £10,710/- found out to have been unpaid. Upon this amount, the matter as to Excess Profits Duty had been finally determined. A mutual settlement at this sum was considered to be fair to the Crown and to Sir Walter. The settlement was according to the evidence, intended by both the parties to be a final settlement of Sir Walter's liability.

On the 10th December, 1928, the Commissioners Inland Revenue gave notice to the assessee (Sir Walter) that in their opinion, all questions as to his liability in respect of Excess Profits Duty had been determined. On the 5th July, 1929 assessees gave notice of appeal agalnst the said notice. The assessees appellant contended that there having been no assessment in respect of any part of £67,076 paid under the name of Excess Profits Duty, there was no basis in law for the so called settlement and that, therefore their rights and liability cannot be displaced by an agreement to pay duty which has not been assessed and that therefore, the notice was erroneous. The Special Commissioner, having considered the evidence before them, found that all questions as to assessee's liability in respect of Excess Profits Duty and his right to any relief from or reduction or repayment at Excess Profits Duty had been finally determined on the 10th December, 1921 the date of notice.

The finding was upheld by the King's Bench Division and the Court of Appeal.

W. H. Cockerline & Co. v. *The Commissoiner Inland Revenue.*
16 T. C. 1 (6,10,20,27).=46 T. L. R. 493=144 L. T. 84=47 T L. R. 13.

EXCESS PROFITS DUTY—SCOPE & NATURE—PROFITS—ASSESSABLE—REPAYMENT OF E. P. D.

Section 38 (3) Repayment of Excess Profits Duty—in case of loss—Amount repaid profit of the year in which received, for income-tax assessment under Schedule D· Scope and nature of Duty—R.4 (1) of the Rules under Schedule 1 Case I & II& S. 35 (1) Finance Act 1915.

Assessee company carried on the business of brick making. In the year 1904, it went into voluntary liquidation and the business was thereafter carried on by the

liquidator until the year 1921, In 1921, the liquidator sold the business (including plants and good will) to E. M Brick Co., Ltd., on 5th October, 1921, whereafter it was carried on by this latter company and the business of the assessee company ceased on that date. Assessee company had been assessed to Excess Profits Duty from time to time under the provisions of Part III, Finance act, 1915 During the final accounting period which ended 30th April, 1921 the assessee company made a loss and claimed a repayment of Excess Profits Duty under section 38 (3) of the Act. The liquidator received two repayments of Excess Profits Duty in March and December, 1922, afrer the assessee company had ceased business. These repayments of Excess Profits Duty were treated as profits of the company assessable to income-tax for the year 1921-22 and 1922-23 and assessment was made in respect of these repayments under Rule 4 (1) of the Rules under Schedule D. Cases I & II, which is re-enactment of Section 35 (1) Finance Act, 1915.

On appeal, the company contended that the mere receipt of the payments of money did not amount to carrying on trade which was carried on after they had ceased business by the E. M. Brick Co. Ltd., that the repayment were received after the date they had ceased business and so their profits were not assesable under Case 1, Schedule D, that assessment under Case VI was not possible as the treatment of Excess Profits Duty repaid was dealt with by R. 4 (1), under Case I and II and that repayments not being annual profits or gains were not assessable under Schedule D. Case VI. The special Commissioners, following the previous decisions in similar cases held that repayment were assessable under Schedule D, generalley, irrespective of the notices, which were issued under Cases I and II and that the assessment was correct.

On a statement of case being submitted to the Court of Sessions, the Court held; the appellant assessee company was rightly assesed. Pointing out the nature of Excess Profits Duty and the distinction between it and income-tax it was observed: "In accordance with the nature of Excess Profits Duty, no assessment to that duty could be made except in respect of ascertained and assessable profits. Excess Profits Duty was simply a share of the net balance ot profits and gains, in other words, of the actual profits computed by methods faimliar under the income-tax Act of certain defined kinds of business or trades. A share of that net profits, corresponding to the excess or such profit over and above the "standard profit" was appropriated by the Revenue under the name of Excess Profits Duty. But. in the computation of profits for the purposes of Excess Profits Duty, there was this peculiarity, that regard was held to the "accounting period", and not to the three years' average characteristic of the assessment of trading profits to Income Tax.

(Per *Lord Sherrington*);—

When it was enacted that the amount of Excess Profits Duty repaid "shall be treated as profits for the year in which the repayment is received" I think that the legislature intended that the sum so repaid should be deemed to be part of the

ascertained and taxable profits of that year and should not merely be regarded as a factor for ascertaining the amount of the taxable profits of a subsequent year different from the year in which the repayment was received.

Eglinton Silica Brick Co. Ltd. v. *Marrian. (H. M. Inspector of Taxes)*
9 T. C. 92 (96, 98, 100)=1924 S.C. 946=61 S.L.R. 601.

NEW BUSINESS

Finance Act (1915) Schedule IV Pt. II R. 4 & 5—New business set up—Pre-war standard of profits on the profits of original business not allowable.

Prior to April 1914, a millinery business was carried on for upwards of 40 years, under the name of "Emelie," by one Miss "W". In April, 1914, she retired and handed over to five of her saleswomen their own particular order books as the customers were in the habit of always seeing the same sales women. One of those was Miss Mills, who, later, formed a small private company in conjunction with other two milliners one of them being the employee of the late Miss W. This company was titled, "Mills from Emelie Ltd." It was registered in 15th April,1914. The company took in their employ 3 of the other sales women who had got the sales books from the late Miss "W", with about 15 more of Miss "W's" employees.

The company did not take over any assets or stocks or books or book debts or contracts or liabilities of Miss W; nor did it enter into any agreement with Miss W or any of her employees as to the good will of the business carried by the late Miss "W". Nor did the company obtain the consent of Miss "W" to the use of the name of the firm. The Company opened their business at different premises at or about the same time as Miss W's business was closed. On being assessed to Excess Profits Duty, for the accounting period from 5th April, 1914, to 19th August 1914, the assessee company contended that their business was a continuation of and in succession to Miss W's business as such, that the company's business having changed ownership since the commencement of the last three pre-war trade years within the meaning of R. 5, Part II Schedule IV, the provision of Part III, Schedule IV, should apply, as if the business had not charged ownership subject only to the modifications to be made under the said Rule.

The modification suggested was that the Crown should take as the pre-war standard of profits any two years of the business of "Emelie", alternatively that there should be taken as a profit standard a figure based on the pre-war trading of the assessee *viz.* of the period to 4th August 1914. A further alternative suggestion was that pursuant to the second Para of Schedule IV, Part—11 R 4, Finance Act 1915, the pre-war standard of profits should be completed by reference to the part of trade of Emelie carried on by those persons who carried on the trade of Mills from Emelie Ltd., as if it was the same trade or business,

The Crown contended that the assessee's business could not be regarded as a continuation of the business known as "Emelie", that Rule 5 Part II Schedule IV, of Finance Act, 1915 did not apply and that the assessment was correct.

The Commissioners found that the assessees had not succeeded to the business of Emelie and that their profits were assessable as those of a new business. They accordingly confirmed the assessment. On appeal, the above finding was upheld by the Kin's Bench Division (per *Rowelit J.*) with the observation that Miss W's business was discontinued and the assessee's was a new business altogether, not one of having changed ownership only.

19 T. C. 41 (Maxes Cases disting)

Mills from Emelie Ltd. v. *The Commissioners Inland Revenue.*

12 T. C. 73 (77,81,82)

NON-RESIDENT ASSESSMENT OF, THROUGH AGENTS.

Finance Act, 1915—S. 31 (2) Assetsment of non-resident for profits of trade exercised in United Kingdom—Agent an authorized person carrying on regular agency—Assessment in agent's name good—scope of S. 31—Construction of Section 31 (6)

Messrs. Bernasconi were Italian subjects, having their place of abode in Italy where they carried on silk trade. They appointed the assessee, Mr. Balfour, as their agent in United Kingdom in 1916, for the sale of all their products except certain articles. This aggreement was to terminate on 30th July, 1919.

Under the agreement orders taken by the agent for transmission to the principals in Italy were not to be considered as accepted by the latter, till the purchaser got the principals copy order.

All goods were to be offered and invoiced on the terms specified on the copy order in the name of the principals. The agent was to get a commission of 30% on the net amout of invoices made during each accounting period. The agent was to maintain an office, ware-room accommodation and necessary staff at his own expenses while the principals were to pay him the postage and telegram expense and outlay for carriage and packing materials. The agent incurred no responsibility for bad debts but commission was not to be paid to him on any account forming part of a bad debt. The agent was to be credited with commission at the same rate as above on any business done director with the principal by any customers from agent's market. The agent was free to act as such for others in any other line not clashing with the principals business. Though the agent was working for others also the bluk of business done by him was for Bernaseconi, for whom he was the sole agent.

The course of business was this:—Balfour solicited orders from customers and transmitted them to the principal. If the order was accepted, which was not always the case, the principal transmited a form in duplicate to the agent who posted one copy on to the customer with another form. Goods were sent to to customer direct by the principal, through forwarding agents. The principals kept no stock in United Kingdom and had no room or office, and they did not contribute to the office of the agent.

Assessment was made in the name of the agent, who, thereupon, contended that the principals carried no trade in United Kingdom, that the contracts were all made in Italy and that there was nothing in Section 31 (2) Finance Act, 1915 to render the non-residents chargeable in respect of profits of a trade not assessable within United Kingdom. The Commissioners held that principals Messrs, Bernasconi were in view of 31 (2) Finance Act, 1915 (read with Section 41, Income Tax Act, 1842) liable to British Income Tax and had been rightly assessed.

The finding was upheld by the King's Bench Division (per *Rowlett J.*) with the observation that the assessee was the agent of Messrs. Bernasconi clearly within the meaning of Section 31 (6) and that he was an authorized person carrying on the non-residents regular agency.

This finding was upheld by the Court of Appeal also. It was observed (per *Scrutton L. J.*)

"In 1915 a change was made in the statutory liability, and the change was this, "that by the Section 31 of the Finance (No. 2) Act, 1915, Section 41 of the Act of 1842 which allowed the agent in respect of profits to be assessed, was extend ed so as to make non-resident persons so chargeable though the agent may not have the receipt of the profits or gain of the non-resident."

It was further held (per *Scrutton L. J.*) following the decision in *Wilcox* v. *Hinto* 9 T. C. 111 that the term "authorized person" does not mean a person having a full authority to carry on the business without consulting the principal abroad, that a regular agency can be carried on by a person only with authority but that the expression "authorized person" has made the meaning clearer. (pe *Eve. J.*) "On the question of the construction of sub section 31, Act, 1915, we are, undoubtedly, I think bound by the decision of this Court in the case of *Wilcok* v. *Pin'o*". (9 T.C.111).

Balfour v. *Mace.*

13 T.C. 539. (554,555 560, 561, 564).=133 L.T. 385=C.A. 138 D.T. 338.

Finance Act, 1915 Section 31—Assessment of non-resident through agent, agent an authorized person, carrying on regular agency.

Messrs. E. & P. Gavazzi, non-resident, Italian firm of silk manufacturers in Milan (Italy). Assessee took on the representation, in United Kingdom of Gavazzi, for whom they have since acted as sole agents in the United Kingdom.

Since 1890 and onwards, the assessee also acted for two or three other firms and to a certain extent carried on general business of their own. Their commission from Gavazzi, however, represented by far the greater portion of their total earnings. Gavazzi had no office in the United Kingdom neither had they any plate or room in the assessees, office. They did not advertise in the United Kingdom. Assessees had

no written agreement from Gavazzi. No authority to accept orders vested in the assessees but they were able to quote prices from price lists received from Gavazzi.

The assessees had no stock of Gavazzi on hand nor did they have authority to deal with disputes with customers nor to sum them. Assessees were not responsible for bad debts. They got 3% commission on gross sales in the United Kingdom and the same amount on all orders sent direct by British customers, whether they were introduced by them or not. Goods always came to the assessees in order to be delivered to customers who were instructed to pay by cheques to the order of the assessees. assessees advised Gavazzi weekly of the persons from whom money had been received by them together with the amount received.Assessees received the money until Gavazzi instructed them as to what to do with it. On assessment under Section 31 Finance Act, 1915, as agents of Gavazzi assessees contended that Gavazzi was neither resident nor trading within the United Kingdom and that contracts were made abroad and that assessees were general commission agents and not authorized person carrying on Gavazzi, regular agency. The Commissioner held that Gavazzi exercised a trade in United Kingdom and was rightly assessed in the name of agents. *Held;* on appeal by King's Bench Dfvision (per *Rowlett J*) that the Commissioner's finding was correct, that as contracts were made in United Kingdom habitually there was an exercise of trade in United Kingdom and that the assessees were liable as agents under Section 31, Finance Act, 1915.

9 T. C. 111 foll.

E. & P. Gavazzi v. *The Commissioner Inland Revenue.*

10 T. C. 698=(702, 745, 747)=135 L. T.634=42 T. L. R. 389.

Finance Act, 1915, Section 31 (7) Assessment of non-resident in the name of agent-Profits from sale by non-resident not received by London firm—Exclusion of, from assessment—effect of Section 31 (2)

The Java business, established as far back as ninty years, was a business of marchants set up in the Dutch East Indies. They had a London agency to carry on the business. For many years the London Agency worked without remuneration, only on payment of expenses by Java firm. In 1916-18, a commission was fixed to be paid annually to the London firm, not to be less than £ 12,000 in any year. The London firm had no capital of its own. The course of business between the Java firm and London firm took various forms. On being assessed as agents of the London firm contended that they were not so assessable. It was held that in all cases whereon the London firm acted as agent of the Java firm, the London firm was assessable where the contracts were all made in the United Kingdom.

As regards the transactions carried through the assessee, agents in view of the provisions of Section 31 (7) Finance Act, 1915, the profits arising from sale, to non-residents through the London Agency, where such profits were not received by the London firm where to be excluded from assessment in the name of the London firm as agent.

It was held (per *Rowlett J.* in the K. B. D.) The effect of Section 31 (2) is that an agent is assessable, or to be more accurate, the non-resident is assessable in his name, in respect of the profits directly or indirectly arising from his agency. The consequence of the alteration of the law in 1915 will be vast increase in the number of cases in which the Revenue will be able to attach the profits made by non-residents by exercising a trade in the United Kingdom, but the important thing to be borne in mind is that the main question is still the same, namely: Does the non-resident exercise a trade within the United Kingdom,

8 T. C. 193 & 8 T. C. 382 ref,

(per *Viscount Cave L. C.*)

Sub-section (7) of Section 31 has not yet received full consideration any reported case.

'This sub-section applies only to sales or transactions by a non-residentn circumstances which would make him chargeable in pursuance of this Section in the name of a resident person," and in the case of sales and transactions wholly made or entered into abroad, those circumstances do not exist. The sub-section must, therefore, apply to sales made here through an agent or other person resident here and no construction can, I think, be accepted which makes, it applicable only to sales made abroad. Having read the sub-section more than once, I have come to the conclusion that its intention and effect is to exempt from taxation in the name of a resident agent or other person in the position of an agent all sales and transactions between non-residents, even though effected through the medium of thati agent or other person receives the profits.

Section 31 contains two provisions designed to avoid the danger lest so large an extension of the machinery for taxing persons, residents, abroads, or transactions in this country should damage the position of the country as a centre of foreign trade and accordingly the section contains two provisions designed to avoid that result. Sub-section (6) ensures that a non-resident instructing a broker or other casual agent in this country shall not be chargeable in the name of such broker or agent in respect of the profits arising from his activities, and sub-section (7), as I read it provides that when one non-resident sells goods to another non-resident through the regular agent of the former in the United Kingdom and the proceeds of sales do not pass through the agent's hands, the agent shall not (in the absence of other circumstances which make him chargeable) be chargeable with the tax. In both these cases there were good reasons for the exemption, for in both cases the proceeds of the transaction would not normally pass trough the hands of the broker or agent, who would, therefore, have no direct means of protecting himself against the charge of incom-tax, and in both cases the imposition of the charge would tend to divert business from this country. It appears to me that that the juxtapositions of the two sub-section is not accidental and that similar reasons of policy may well account for them both It is true that in order to arrive at this construction a wide meaning must be given to

the expression executes, sales, or carries out transaction, for that expression must be held to include the actual contracts of sale but it is plain that the words, sales or transactions carried out; contained in sub-section (6) have that wider meaning, and it appears to me that like meaning, must be given to the similar expressions in sub-section (7) the alternative is to hold that sub-section (7) is a mere unintelligible collection of words and this I am unwilling to do.

(Per *Lord Shaw of Dunfermline.*)

"With special reference to sub-section (7) of Section 31 of the Act of 1915 the House is confronted in this case directly, and apparently for the first time, with the necessity for a decision upon the question of what I will for shortness call 'doubleforeigner transactions,' that is to say, transactions is which the goods of one foreign merchant are sold to another foreign merchant and are delivered direct from the vendor's premises in one foreign country to the vendee's premises, in another."

Granted that the goods passed from vendor to vendee as described, namely, without reaching or passing through this country, it is, however, one of the admitted facts of the case that the vendor namely the Java firm, had regular agents (the London firm) and that the contract of sale for the goods so transferred, say, from Java to Vancouver was made in London. In substance nothing else took place in London. The payment was made into a credit by the Java firm with a London Bank, but was received by the Java firm in Java.

No point arises in the case as to the agency of the Appellants. It was not that of a firm casually employed or of a broker on change. The appellants were regular agents.

"My first proposition upon the Finance (No. 2) Act of 1915, Section 31, is that in my view no repeal either express or implied was effected on the liability of a foreign resident exercising s trade within the United Kingdom that foreign resident still remains liable to income-tax under the British taxation statues. How he, the foreigner, is to be got at and the tax recovered from him is a question for the taxing authorities.

But the question before this house is not as to the liability of that foreigner direct but as to the vicarous liability of his English regular agent who has made the contracts in England. This raises the peculiar question of the position of those agents as persons responsible to the English taxing authorities for the taxation not upon profits which they themselves make by way of commission but also upon the actual profits of the transactions arising to their foreign principals.

It is manifest that the question is of wide importance, the object of the legislature being the imposition of a tax upon profits from all trade exercised in England but, upon the other hand, to avoid the injury to or destruction of that great volume

of foreign trade the central exercise of which by the making of contracts is through agents in Britain.

But there still remains a large branch of agency business to be preserved, business which had neither the protection of a contracting party being here nor of the goods being here. These protections appear to me to be contained in sub-section (6) and (7). After full consideraation I think these two sub-sections should simply be read together.

The first, namely, sub-section (6), is that a non-resident person in not to be chargeable in the name of a casual, but only of a regular agent, and the second, namely, sub-section (7) is that in the case of what I have called "double foreigner" transaction the agent is not responsible in respect of profits arsing from sales or transactions between one non-resident person and another non-resident person, that is to say, that "double foreigner" business, though transacted through a regular agent in England does not make that agent responsible for taxation upon it. To that extent, namely, when there is neither one of the parties to the transaction in this country, or when the goods never reach this country but are sent direct from one foreign country to another, the agent conducting the bussiness in London has no vicarious responsibilily for the taxation. That taxation will rest directly upon his principal in respect of having exercised a trade in England.

Maclaine & Co. v. *Escott* (*H. M. Inspector of Taxes.*)

10 T, C. 481 (494, 545, 576, 577, 580, 581, 582 583.) K. B. 131 L.T. 601=C. A 132 L. T. 173=H. L. (1926)=95 L. J. K. B. 616=135 L. T. 66 A. C. 424=42 T. L. R. 416.

NON-RESIDENT, ASSESSABILITY

Finance Act. 1915, Section 31—Assessibility of non-resident through agent.

P & Co., cotton merchants of Alexanderia in Egypt arranged with K to be their agent for the sale of their cotton in Manchester (U. Kingdom). He was to get 10% commission on sales as his remuneration, out of which he was to meet with his own expenses also. The business conducted by K took two forms: (1) He either sold cotton for P & Co. on their instruction as to limits of prices fixed by them, such sales being only specified quantities cabled by P. & Co. from time to time and the terms of each of which were separately fixed when cabling permission to offer any quantity. (2) to obtain offers to purchase cotton, the terms of which were transmitted by him to P. & Co. for their acceptance or rejection in these cases, the offer or acceptance was carried out by K on receipt of instruction from P. & Co.

Under the above arrangements goods were shipped and P. & Co. received payments upon bills drawn in Alexandria and discounted with a bank there. The bills so drawn and discounted, together, with a copy of the bill of lading were forwarded by the discounting bank to the United Kingdom and the goods were only released to the purchaser upon his discharging and making himself responsible for

the discounted bill The assessee K took no part in the transactions mentioned. K was not responsible for bad debts and was at liberty to do other businesses not competing with P. & Co. but his only business was that of P. & Co. The name of P. & Co. was used in his letter paper but not displayed at his office. He had samples of Cotton which he showed to mills for securing orders.

On being assessed as agent of P. & Co., K the assessee contended that P. & Co, exercised no trade in United Kingdom and that he was in any case exempted under Section 31 (6), Act 2 of 1915. The Commissioner held that P. & Co. exercised no trade in United Kingdom and they discharged the assessment accordingly The King's Bench Division on appeal affirmed the decision of the Commissioners. On appeal to the Court of Appeal, the finding of the Commissioners and the King's Bench Division was reversed and it was held that K was assessable for the exercise of trade by the principals P. & Co. in United Kingdom under Section 31, Finance Act. 1915. (per *Bankes L. J.*)

"The question, therefore, is whether or not upon the facts of the case it is shown that this non-resident person can be chargeable in the name of an agent who is an authorised person or carrying on the non-resident's regular agency. It seems to me that Mr. Kummer is carrying on Messrs. Pinto's regular agency in Manchester—'in your market', as the letter describes it. The only question, therefore is: Upon the true construction of this sub-section is he an authorised person carrying on the non-resident's regular agency ? Well, I say, as Lord Justice Brett said in the case, I have already quoted, it would be very unwise to attempt an exhaustive definition of what constitutes an authorised person, but it seems to me that in this case, in reference to part of the business which he is employed to carry on, class (a), there can be no question that this gentleman, Mr. Kummer, is an authorised agent to carry on Messrs. Pinto's regular agency".

(Per *Lord Scrutton L. J.*)

Before the Act of 1915, to assess through an agent you must assess an agent having the receipt of profits and gains, and Mr. Kummer, about whose position I will say a word or two in a moment, did not receive the money due as price, and consequently was not in receipt of profits and gains. But in 1915, a change was made in the Machinery of assessing non-resident principals Section 31 of the Act of 1915 in its first sub-section allowed non-resident persons to be chargeable in the name of their agent, although the agent may not have the receipt of profits or gains of the non-resident. That was followed by sub-section (2), which positively enacted that a non-resident person shall be chargeable in respect of any profits or gains arising whether directly or indirectly through an agency. Now, I am disposed to agree that it is rather difficult to know what that clause exactly means. At any rate I have the guidance of the House of Lords, in *Smidth* v. *Greenwood* (8 T. C. 193) that is not a new charging Section. I think it is clearly a new machinery section, that it does not impose an additional charge on the non-resident. Then comes sub-section (6), which is of importance in

this case: "Nothing in Section 41 of the Income Tax Act, 1842 (as amended by any subsequent enactment or by this section), shall render a non-resident person chargeable in the name of a broker or general commission agent, or in the name of an agent, not being an authorised person carrying on the non-resident's regular agency.

Wilcock v. *Pinto & Company.*

9 T. C. 111 (118, 125, 131, 136, 137)=(1924) 1 K. B. 304=93 L. J. K. B. 149 =129 L. T. 534=(1925) 1 K. B. 30=94 L. J. K. B. 101=132 L. T. 74.

Finance Act, 2 of 1915—Section 31(1) & (2)—Effect and scope. (Per *Rowlett in K. B. D*).

The scope of Section 31(2) Finance Act. 1915 is not very clear but its effect is not to bring into taxation profits made by non-residents from a trade not exercised in the United Kingdom to make an extension in the scheme of taxation of that magnitude and importance the Court is entitled to look for words of clear and direct enactment.

Per *Master of the Rolls Lord Sterndale*:—"Section 31, sub-section (1), I think clearly does nothing more than extend the method provided by Section 41 of carrying out the charge imposed by Schedule D, and it would be very strange if another subsection of the same Section imposed an entirely new charge not within the Schedule at all. I agree with Mr. Justice Rowlett that such a thing, if intended, should be carried out with the greatest clearness, and that, if a reasonable meaning can be given to the sub-section without producing that effect, it should be done. I think this meaning can be given to it by adopting the construction suggested by the respondents, namely, that it merely points out or, so to speak, sums up the effect of Section 41 of the Act, of 1842, as extended by Section 31 of the Act of 1915 still keeping within the limits of the charge of Schedule D. It is true that, looked at from this point of view, sub-section (2) is not of much use and might have been left out without much, if any, loss of effect, but redundancy is not unknown in legislation. I think it is better to impute such redundancy than to hold that such an important alteration has been made on the basis of taxation as the abolition of the condition of exercise of trade within United Kingdom before a person not there resident can be taxed. To take the latter course would, I think, be to violate the well known cannon of construction of taxing Acts that no one is to be taxed except by express words.

Per *Lord Buckmaster*—It is I think, important to remember the rule, which the Courts ought to obey, that, where it is desired to impose a new burden by way of taxation, it is essential that this intention should be stated in plain terms. The Courts cannot assent to the view that, if a section in a taxing statute is of doubtful and ambiguous meaning, it is possible out of that ambiguity to extract a new and added obligation not formerly, upon the tax-payer. Sub-section (2) here is at the best a sub-section of an extremely doubtful character, and I think there is very great weight in the argument that has been placed before your Lordships by Sir William Finlay and Mr. Brember that, as the original charging power of the earlier statutes was

derived from their Schedules, if it were desired to affect and alter the operation of those Schedules some clearer and bettter reference should have been made to their terms than the obscure and indirect reference that must be found in the Section under consideration."

F.L. Smidth & Co., v. *F. Greenwood.*

8 T.C. 193 (199)=(1920) 3 K. B. 275=89 D. J. K. B. 993 = 124 L. T. 192=36 T. L. R 760 = (1921) 3. K. B. 583 =37 T. L. R. 949 = (1922) 1 A. C. 417 = 91 L. J. K. B. 349 = 127 L. T. 68=38 T. L. R. 421.

FOREIGN POSSESSION—PLACE OF ASSESSMENT.

Finance Act, 2 of 1915 Section 32—Territorial jurisdiction—Place of assessment in case of foreign possessions profits—Scope of Section 32.

Section 32 of Finance Act, of 1915, in a way, repealed Section 108 Act 2 of 1842 containing provision as to foreign possessions.

By Section 32, the whole of the liabilities including those in respect of foreign possessions, were swept into the operative part of Section 32 and the places indicated as to where any liability under Schedule D. was to be ascertained.

The Act of 1918 has replaced both the Act of 1842 and the Finance Act of 1915 and Section of the Miscellaneous Rules applicable to Schedule D now lays down the rules as to the territorial jurisdiction of assessment.

Rex v. *Marylebone (Income-tax Commissioners)*

13 T. C. 746 (768).

PROFITS ASSESSABLE.

Excess Profits Duty—Pooling arrangement between Ministry of shipping and coal merchants—Profits of surplus stock at close of pool and of address Commission—Interest on profits after close of Pool—Assessibility to Excess Profits Duty.

Assessee company carried on business as ship's bunkers, oil, fuel merchants and coal exporters.

At all times material to the case, the company had a coaling depot at Gibralter for the supply of bunker coal to merchant vessels of all nationalities. There were eight other merchants also doing the same business at Gibralter.

Upon the outbreak of war in 1914, the coal trade at Gibralter having suffered severe dislocation, the price of coal rising rapidly as a consequence.

1917, the assessee company having been approached by the Government, a pooling scheme was formed in December 1917 and was agreed to by all the Parties.

It worked from 1st January, 1918 and was continued until 15th March, 1919.

The pool was closed on 15-3-1911 and on this date there was a nett surplus of 38,515 tons, the value of which was £ 30,4,197-12-8 of which £ 179,215 was allocated to the assessee company's coaling depot. The company retained an aggregate sum of £33,117 as "address commission." This was the usual commission of 2% allowed on the freight on signing the bills of lading, by the ship-owner to the charterer.

The Government claimed the entire surplus stock vlaue of coal and the "address commission" amount and the Gibralter merchants resisted the Government's claim. Except the assessee company, who were of opinion that the merchants had no right to either of the two. Negotiations on the subject terminated in or about July, 1923, when the assessee company received a sum of £89,607, in respect of surplus stock and interest accrued therein to date of payment and £17,211 on account of "address commission" (paying ½ *i.e.* a similar amount to the Accountant General Shipping Liquidation Department of Board of Trade).

The company's accounts were made up to 30th June each year.

The company contended that the two sums were not profits of the company arising from trade or business and were not assessable to Excess Profits Duty, that the interest was not profits, that the said sums did not at any rate, accrue as Profits to the company during the accounting period, as these were paid to them under the settlement of June, 1923. The Commissioners held that the two sums were assessable to Excess Profits Duty as Profits arising from trade or business of the company and were liable Excess Profits Duty during the accounting period to 30th June, 1918 and 1919. The finding was upheld both by the King's Bench Division and the Court of Appeal.

12 T. C. 927 ref.

Lambert Bros. Ltd v. *The Commissioner Inland Revenue.*

12 T. C. 1053 (1064,1069,1076,1081).

Excess Profits Duty—Compensation for debenture of ship paid by Government—Profits of trade—Accounting period.

Assessee company carried on the business of ship-owners. In and prior to the year 1920, the compay were the owners of two ships which were sold in November, 1921, and March 1924. One of the ships of the company was detained when it was to sail with cargo, and was released after a detention of 15 days and 1¾ hours.

Similarly, the other ship was detained for 19 days. The company lodged a formal claimant for compensation. Ultimately, the company was paid a sum of £1,078 as compensation in April, 1914.

This sum was treated as the assessee company's trade receipt for the year ending 31 st December, 1920, and assessment was made thereon and confirmed the appeal by the special Commissioners.

The above finding of the commissioners was upheld both by the King's Bench Division and the Court of Appeal.

12 T. C. 427 Expt.

Ensing Shipping Co., Ltd. v. *The Commissioner Inland Revenue.*

12- T. C. 1169 (1173,1176,,1180,1181)=138 L.T.180 and C. A. 139 L. T. 111.

Finance Act (1915) Sections 38 & 39—Owner of ship and steam drifter using it for fishing—Hiring it out Admiralty compulsorily—Profits from hiring part of profits of trade or business—liable to assessment to Excess Profits Duty.

Assessee was the managing owner of a steam drifter. "B. Sutherland" which was owned jointly by him and his two sons. Prior to November, 1915, he and his said two sons had owned and worked a sailing boat for the purposes of catching fish for sale. The drifter, built in 1915, (completed in October, 1915) was acquired by them for use for the same purpose and was engaged in the herring fishing for a few weeks until 15th Debember, 1915 when it was requisitioned for use by the Admirality, on terms fixed by the latter and embodied in a charter party dated 12th January, 1916, was a hire purchase agreement, more or less. The Admiralty had the option, at any time, after giving notice to the owners, the option to purchase the drifter at a price of £ 3,048. The terms of agreement were later amended in October,1916, according to which for the sum above stated, the market value was to be paid on purchase. Another article in the amended agreement provided that the compensation payable by the Admiralty in respect of the loss of the ship was to be computed on the basis of its market value at the time of such loss. By another clause, the rate of hire was also increased from £ 45-14-5 to £60-17-8 per calendar month. For the short period during which the steamer was engaged in the business of herring fishing, certain profits were earned, which, according to the trade custom accrued, in certain shares to the boat, the net and the crew and the assessee as the owner of the boat got $\frac{1}{3}$ of the profits for the period ended 15th day of December, 1915, as the boat's share thereof.

Accounts for the period ending 31st March,1916 were made by the assessee and furnished to the Surveyor of Taxes in response to an application for a return for the purposes of assessment to income-tax and the amount received from the Admiralty by way of hire was included in the said accounts in the credit side together with the above mentioned $\frac{1}{3}$ share of boats share of profits from fishing. Assesment to Excess Profits Duty for the accounting period ending 31 st March, 1916 was made by including the Admiralty hire less expenses and depreciation, and the prewar standard as a percentage standard based on prime cost loans. It was, thereupon, contended by the assessee that the owners of the drifter had not during the accounting period, or at any event subsequent to the 15th December, 1915 carried on any trade or business and that the payments received from the Admiralty in respect of compulsory acquisition did not form of the assessee's trade or business, but represented compensation to them for having been deprived compulsorily of the means of

carrying on their trade and that hence such payments could not be legitimately be taken into account for Excess Profits Duty purposes.

The Surveyor of Taxes contended that ownership of a vesel for the purpose of profits was a trade or business.

The special Commissioners, (relying on *Attorney General* v. *Borrodaile*, [(1814) I Price 148] found that the letting on hire of the drifter to the Admiralty was trade or business and that, therefore, the assessment was correct.

On a case being stated at assessee's request, for the opinion of the Court of Section at the Court of Exchequer in Secotlad, the latter gave jndgment for the Crown, It held that the assessee acquired the ship as an instrument or...as "a commercial asset, susceptible of being put to a variety of different uses in which gain might be acquired and that whichever of these uses it was put to by the assessee and profits earned, he was carrying on the same business, 'that though the fishing was a different industry from the uses that the ship was later put to by Admiralty viewed from the standpoint of the owners, they were the same as in each his vessel earned profits and was employed for gain.

(1750) 1 Ves, Sen, 496, (498, per *Lord Hardwicke* ref.)

Sutherland v *The Commissioer Inland Revenue.*

12 T. C. 63 (68,69,70,71)=(1918) Sess. Cas. 788=45 Sc. L. R 674,

Section38 & 39, Finance Act, of 1915—Income of annuity payable for fixed periods —assessibility to Excess Profits Duty.

Assessee company was engaged in the manufacture of dyes, including, the manufacture of synthetic indingo. After the outbreak of the war, 1 having become necessary increase the manufacture of dyes in the United Kingdom and for this purpose the assessee company acquired a factory for the manufacture of synthetic indgo. Thereby, the company acquired the knowledge of the several process of making the said indigo. The same necessarly having arisen in United States of America, an American company also, previously engaged in the manufacture of explosives, decided to embark on the manufacture of dyes.

For this purpose, the American entered into an agreement with the assessee company in 1916. Under the said agreement, the two companies agreed to cammunicate to each other all such information as they then possessed or controlled in connection with the manufacture of dyes, intermediate raw materials, including particulars of all patented or secret processes and of all apparatus, machinery and plant for such manufacture. Assessee company was to get from the American company £ 25,000 each year for ten years, starting from 1st July, 1917 to 1st July, 1927, the fist payment to be made on 1st July,1918. A royalty of 5% was payable by each party to the other for disclosing a patented or seeret process and for obtaining a license in respect of the same.

The agreement was for a fixed period and related to a particular territory. In arriving at the profits of the company for Excess Profits Duty purposes the several sums of £ 25,000 falling due in the accounting periods covered by the assessment were included.

The Company contended that its agreement with the American company was one of sale, of its principal capital assets, *i.e.* its special knowledge of the secret processes, an the exclusive right to use those processes and the company patents and that, therefore, the sum received in consideration thereof was not a receipt of trade of assessable to Excess Profits Duty.

On the other hand, the Revenue contended that the several sums referred to were income or business receipts, properly included in the profits for Excess Profits Duty purposes.

The Commissioners upheld the contended of the Revenue. On a case being stated, the King's Bench Division also upheld the above finding, which was sustained by the Court of Appeal also.

British Dyestuffs Corporation (*Blackley Ltd.*) v. *The Commissioner Inland Revenue.*

19 T. C. 586 (593, 595, 601)=139 L. T. 538.

Section 31—(Finance Act, 1915) Excess Profits Duty—Profits from sale of Patents-assessibility.

Assessee company was incorporated in October, 1906 to purchase and acquire in the United Kingdom or elsewhere, any patents, patent rights, *brevets d'invention*, licenses concessions etc., inproving them, using them, and turning them to account and with special purpose of acquiring from a Mr. Rees and Thomas Parker & Co., Ltd., the rights in regard to a particular invention that had relation to centrifugal turbine pumps. The company carried on business in conjunction with the vendors in whom one third of their right in foreign patents was reserved. The company undertook from the beginning never to manufacture under these patents but it was either to grant licenses to other people to manu facture or to deal with the patent as it thought fit. In the course of its business the company acquired further patents in France, Switzerland, Belgium, Germany, the United States of America, and the Dominion of Canada. It dealt with the patent rights with regard to the United States by granting to an America company the right to use the invention, which the patent protected, upon terms of paying certain royalties, with an ultimate rights of acquiring the whole patent by purchase. As a result of the various agreements, entered into by the company, there was a substantial sum of money owing in respect of royalties from the American and this sum, brought into account with another sum made up the purchase price of £ 26,500 for which the patent was sold. The company's share of this sum, less expenses, was assessed to Excess Profits Duty (in addition to income-tax.)

The company contended that the patents sold were capital assessments, that in selling the patents the company was realizing a part of its capital assets, that the company had not made a business of buying or selling patents but had acquired only a part share as tenants in common of a single group of patents relating to one invention and improvement thereof with the main object of holding such patents and and obtaining an income from royalties for use of them and that the sum received by them was not assessable to Excess Profits Duty.

The Commissioners held that the profits on sale of patents arose in the course of the company,s business and were as such assessable to Excess Profits Duty".

The King's Bench Division on appeal, upheld the above finding. The Court of Appeal, however, decided against the Crown. *Held*, an appeal (by the House of Lords) that the profits from sale of patents were assessable to Excess Profits Duty. The findings of the Commissioners and the King's Bench Divison were restored and that of Court of Appeal set aside.

5 T. C. 159 (166) & 1914 A. C. 1001 ref.

The Rees Roturbo Development Syndicate Ltd. v. *The Commissioner Inland Revenue.*

13 T. C 366, (377,383, 394, 398)=(128) 1 K. B. 506=H. L. (1928) A. C. 132= 96 L. J. K. B. 944=97 L. J. K. B., 317=138 L. T. 598=44 T. L. R. 307.

Finance Act, 1915' Section 38—Excess Profits Duty—Profits of "turning over a mill assessibility.

In the year 1919, there was a boom in the Lancashire spinning trade. Many spinning mills were being sold by their old proprietors or were passing from one set of shareholders to another. Where the shares in a spinning company changed hands it often happened that the old mill manager was dismissed by the new Board of Directors and a new one engaged, who was personally known to the group of men who had obtained control of the business. Assessee, who was manager of one spinning company and director of another, joined with one Mr. W. & three others who were also connected with cotton trade. These five persons were able between them to command sufficient funds on credit to undertake the purchase of all the shares of a limited mill spinning company. As a result of negotiations opened with the company, the five persons bought in August 1919 all the shares of the company for a sum, including a sum paid to the directors of the company for loss of office. They then liquidated the old company and formed a new company which should buy from the liquidators all the assets and liabilities of old company. Having been allotted all the shares in the new company the five associated persons retained the director's qualification shares (2,000) and sold the remainder at a profit.

Transactions of this nature (known locally as turning over a mill) were very common in Lancashire at this time. Assessee entered into another similar transaction and his activities in this direction having become generally known he was

approached in 18 further cases out of which he selected two. In all these four cases, the assessee formed syndicates, sold shares of the new and became director, profit in each of such transaction.

He was assessed to Excess Profits Duty on such profits. *Held;* the assessees activities constituted a trade and that he was rightly assessed to Excess Profits Duty.

Pickford v. *The Commissioner Inland Revenue.*

13 T. C. 251 (258,266)=138 L. T. 500=43 T L. R. 659=44 T. L. R. 15.

Section 38 (3)—Excess Profits Duty—Assessibility income from of "shop rights" purchasers consequential on sale

Assessee was the managing director of a limited company and in addition carried on the business of selling yarn and machinery on his on account. He was also inventor of apparatus for dyeing. In 1912,13, he invented a new process of beam dyeing he took out six petents for apparatus for dyeing by a new process in the United Kingdom in the course of 1912,1913 and 1914 and subsequently took out corresponding patents in the United States of America. The assessee exploited this invention in the United States by entering into agreements with various cotton manufacturing companies there; under which he received various sums from six companies in that country. In each of these cases, there was an original agreement and a subsequent memorandum of agreement. The memorandum of agreement provided for a separate consideration equal in amount and additional to the consideration specified in the original agreement. The second instalment was made payable only a considerable time after the signing of the original agreement. The company contended that the sums payable under the agreement with the respective companies were paid for acqisition of land an exclusive license for use by the company of the patented and secret processes in limited area, (called "shop rights") that the sums paid were portions of patent rights which were to be left out of account in computing the appellant's liability. The Commissioners held that the profits of the business of inventor carried on by the assessee was not separable from the profits of the business of selling machinery and that the whole profits were assessable to Excess Profits Duty on income-tax principles. The finding was upheld by the King's Bench Division (per *Rowlett L. J.*) It was observed : Looking at the matter as governed by the original agreements only, they (the Commissioners) say that the leading transaction in each case was the sale of the machines and this grant of the shop-right was consequentail on the sale. They have held that the moneys received from the sale of the shop-right are to be included with the money received from the sale of the machines as profits of the assesses' business.....I do not think it is possible for one to reverse the view which the Commissioner have taken,

Branwood v. *The Commissioner Inland Revenue.*

14 T. C. 44 (55,77).

PROFITS ASSESSABLE—COMPENSATION.

Finance Act' 1915, Section 40 (1) & (2) and Schedule IV Part 1, R. 1 Part II R. 1 —Excess Profits fcr Excess Profits Duty purposes—Computation of pre-war standard—compensation and damages received by Fire-clay company not profits —assessable.

Assessee company carried on business as manufacturers of clay goods and as merchants of raw fire-clay. It was the lessee of numerous clay fields. It was also the lessee of fire-clay at Gartverrie Glenberg and in 1908 its working having approached the Caledonina Railway line running over that fiield, on the 25th January 1908 the company gave notice of its intention to work that- fire-clay, to the Caledonian Railway Company. The Railwey took the position that fire-clay was not mineral and that it was the property of the Caledonian. On the company repudiating the claim and proceeding to work the fire-clay underneath the Railway line, the Caledonian Railway raised an action of interdict against it to prevent it from working the fire-clay underneath any part of the Railway at Gartverrie point.

On the 28th February 1908, *interim* interdict was granted. It remained operative till it was recalled by the House of Lords ultimately on 28th April, 1911.

During the two periods of interdicts, from 29th February, 1908 till 15th April, 1910 and from 12th November, 1910 till 28th April, 1611, the company had to bear the expenses of keeping open in a workable state the portion of fire-clay field which it had been interdicted from working, although the company was not getting any return during these periods from this expenditure. The expenses so incurred were debited to the company's revenue account.

Following the decision of the House of Lords to the effect that fire-clay was mineral and so was excluded from Caledonian conveyance, the Caledonian by notice dated 29th June, 1911 intimated its desire in terms of its powers under the Railway clauses consolidation (Scotland Act, (1845) that a certain portion of red fire-clay soould be left unworked and offered compensation therefor. They gave further two notices offering compensation, in respect of other portion of fire-clay.

The clay covered by these three notices formed a small portion of the interdicted area. Finally, a sum of £ 15,316-11-4 was determined by arbitration as the amount of compensation which was paid with interest by the Caledonian to the assessee company

The said sum and relative interest was credited to the revenue account of the company for year ending 31st August, 1913. Income-tax was duly paid by company on the said sum.

On the 29th August, 1913, the assessee company received payment from the Caledonian a sum of £4,500 as compensation for damages suffered by the company in respect of interdict proceedings and the company granted a discharge in respect thereof to the Caledondian. Income-tax was duly paid on this sum.

As to Excess Profits Duty, the pre-war standard of profits of the company fell to be fixed on the average for the years ending 31st August, 1912 and 1913 respectively.

In arriving at the pre-war standard of profit the Survery of Taxes contended that there should be eliminated from the company's revenue account the aforementioned two sums received by it as compensation and damages. Tne company contended that these should not be eliminated. The company contended that by accepting income-tax on the above sums, the Inland Revenue could not eliminate them from revenue and that these should be treated as income and not capital, for Excess Profits Duty purposes, in ascertaining the pre-war standard of profits.

The Commissioners holding the computation to be on proper basis, confirmed the assessment to Excess Profits Duty as made. On a case being stated the Court of Session (of seven judges) by a majority upheld the Commissioner's finding (Lord salveson dissenting on both the points and Lord Ormdale on the point of of damages). On appeal to the House of Lords, there was unanimous judgment in favour of the Crown, upholding the Commissioner finding and confirming the decision of the Court of Sessions.

As to the sum of damages a comprise was arrived at accordin to which a part of the sum was treated as trading receipt and this was not accordingly dealt with by the House of Lords.

The Glenberg Union Fire-clay Co., Ltd. v. *The Commissioner Inland Revenue.*

12 T. C. 427, (434,458,459, 460,461, 462, 466.)=(1921) Sess. Cas 400=(1922) Sess. Cas (H.L.) 112=58 Sc. L.R. 378=59 Sc. L.R. 162.

Finance Act, Section 38, Profits of trade—Accounting period—Compensation for cancellation of Contract, trading profits assessable.

Assessee company carried on the business of chalk, quarryowners and sellers of chalk. It made its accounts upto 31st December, each year.

The company entered into a contract, on 21st October 1912, with another company, the latter agreeing to purchase a certain quantity of chalk for ten years form 1st January, 1914.

The assessee Company built a new wharf under the contract at a cost of about £ 8,000 thus performing their part of the contract. The purchasing company had agreed to purchase not less than 75,000 tons of chalk each year during the ten years of the contract.

Delivery of chalk under the said contract was made and taken for some time but during the war the purchasers had difficulty to find ships for transport.

Delivery was, therefore, suspended. Later, the purchasing company approached the assessee comyany to relieve them of their further liability to purchase under

the contract. By an agreement, the contract was cancelled the purchasing company paying £ 900 per annum for four years, from 1st January 1920 to 1924. There was no formal agreement executed but the terms were negotiated at verbal interviews and by correspondence. By further negotiations it was finally agreed, in August, 1920, that the assessee company should receive a lump sum of £ 3,000 in full settlement. This sum of £ 3,000 was paid to the assessee company, on 13th August 1920.

The company applied the said sum in writing down the cost of the erection of the wharf.

The company contended that the sum was a capital payment and not a trading income. The Commissioners allowed the company's contention. On appeal, the King's Bench, (per *Rowlett J.*) reversed the above finding deciding in favour of the Crown.

12 T. C. 955 Disting.

The Commissioner Inland Revenue v. *The North Fleet Coal and Ballast Co., Ltd.*
12 T. C. 1102, (1106, 1009, 1110).

PROFITS ASSESSABLE—COMPENSATION.

Excess Profits Duty—Compensation for loss of sale on Prices under control of Food Controller—profits of trade.

Assessees carried on the business of Millers for many years prior to the war. During the war a number of regulations were made relating to mill business and under these regulations a very considerable control was imposed on them. In consequence of these regulations and orders, assessees' business was carried on under the control of Food Controller from the 30th April, 1917 to 31st March, 1921. They were compelled to sell and buy at prices fixed by the Controller. The losses in consequences were agreed upon to be made good to them.

During the period from 16th September, 1917 to 5th January 1918 there was a loss of some £ 53,000 and the assessees were paid £ 59,141. From the 6th January, 1918 to 31st December 1918, the loss was £ 183, 560 and they were paid a sum of £ 197,230. In the next two years also, similarly, large sum were paid to the assessees to mark good the loss which was suffered by them in the course of carrying on their business by reason of the control.

The assessees contended that these sums were not their trading receipts but were paid to them as compensation for direct loss and damage sustained by them by reason of the Food Controllers interference with their business. The Commissioners held that the sums received by the assessees were their profiits assessable to Excess Profits Duty. The King's Bench Division and the Court of Appeal also upheld it.

12 T. C. 1169
12 T. C. 427 and } Refered.
12 T. C. 227

Charles Brown & Co. v. *The Commissioner Inland Revenue.*

Finance Act, 1915, Section 38—Profits of trade—compensation received as consideration for cancellation of contract—Allocation of, to period when paid.

(1) Assessee company carried on business as ship-builders. In February, 1920, the said company entered into contract with a Steam Shipping Company to build a steamer for the latter company. In March, 1920, the assessee company entered into contract to build another steamer for the said company. The Steam Ship Company cancelled the contracts and paid £ 100,000 to the assessee company as compensation, on 26th November, 1920.

The assessee company carried the amount to the credit of suspense account.

It contended that it was a capital receipt and not a profit, a compensation, in fact, for being prevented from exercise of trade and that, even if it was a revenue receipt, it should be apportioned over the various periods in which the said contracts would have been performed.

The Commissioners were of opinion that the said sum was liable to Excess Profits Duty, subject to such deductions as might be agreed between the parties and that the period in which it was to be charged was the period in which it was received.

(2) In the other case, the assessee company, also a shipbuilding company entered into a contract to build a ship for a Steam Ship Company. The latter was to pay the cost of labour and materials to be employed in the construction of the ship and in addition a sum of £ 38,000 and a further sum of £ 15,000 to cover the cost of machinery and boilers. Payment was to be made by instalments, £ 10,000 when the keel was laid, £ 20,000 when the vessel was framed, £ 40,000 when the vessel was plated, £40,000 when vessel was launched and the balance on completion. This was about the hull account. The machinery account payment was to be similarly made by instalments as the work progressed.

No date of delivery was guaranteed but it was anticipated that delivery should be made about the middle of 1921.

The time required for completion was estimated to be about eleven months and the assessee company expected to be able to commence building in August 1920. Some preliminary work in connection with the contract had been carried, out at a cost of £ 952 when early in 1920, the Steamship Co., Ltd., went into liquidation and the liquidator wrote to the company that he did not want the work of the building of ship to be completed. The assesee company having ordered for the supply of engines and machinery with B. &. Co Ltd., arranged to cancel the the contract on payment of £ 10,000 to them. Assessee company claimed the agreed sum from the Steam Ship Co., and after negotiations, agreed on 17th December, 1920 to accept approximately 2/3rd of the amount originally claimed. The liquidator

accepted the offer on 29th December, 1920, subject to confirmation by shareholders, Ultimately, a sum of £ 35,000 was agreed upon to be paid by the Steam-ship Company to the assessee company, out of which £ 10,000 was paid to B. &. Co. Ltd, by the Steamship Company.

The payment of the balance of £25,000 was, by desire of the assessee company, was deferred till 19th July, 1921. The sssessee company contended that the sum of £ 25,000 was not liable to Excess Profits Duty for the accounting period in question or, alternatively, that in should be apportioned over the several periods during which the work would have been performed and the purchase price earned, had the contract been carried out.

The Commissioners held that the sum was liable to Excess Profits Duty during the accounting period.

On a case being stated in both the cases, it was held by the King's Bench Division in both the case that the Commisioners' findings were correct in both the cases.

In the first of the case, the Court of Appeal also upheld the above finding.

(1) *Short.Bros., Co., Ltd.* v. *The Commissioner Inland Revenue.*

(2) *The Sunderland Ship Building Co., Ltd.*, v. *The Commissioner Inland Revenue.*

12 T. C. 9 5 (956,964,969,974,975)=136 L. T. 689.

PROFITS ASSESSABLE—DATE OF ACCRUAL OF.

Finance Act, 1915 Section 38—Profits from commission not determined till the end of accounting period—Date of accrual—Liability to assessment to Excess Profits Duty.

Assessee company on the business of wool-combers on commission. Prior to June 1217, the wool trade was placed under Government control and the rates of commission were settled between the war office and the Wool Combing Employer's Federation. Assessees were members of Federation. During the accounting periods ending 30th June, 1918, assessees ware engaged in combing wool for the Government and were remunerated on the basis of tariff as fixed from 1st June, 1917. The rates were later raised by 10% and again by another 10%.

In July 1919, the assessees got £12,126 as extra of the second enhancement of 10% in respect of work done between 1st January, 1918 and 30th June, 1918.

The sole question was whether the above sum was to be included in the profits of the assessees for the accounting periods of twelve months ending 30th June, 1918 for purposes of assessment to Excess Profits Duty.

Assessees contended that account should be taken of profits, until they became assets that the profits had not arisen during the accounts, prepared on commercial basis, shonld be accepted as basis of liability to Excess Profits Duty.

The Commissioners held that the extra 10% paid a second time, being the final settlement should be included in profits for the accounting periods for Excess Profits Duty purposes. They accordingly raised the assessment. The Commissioners finding was upheld by the King's Bench Division (per *Rowlett J.*)

Issac Holden & Son Ltd. v. *The Commissioner Inland Revenue.*

12. T.C. 768. (771,773)

PROFITS ASSESSABLE, ISOLATED TRANSACTION.

Finance Act, 1915, Section 38—Excess Profits Duty assessability of profits from single transaction of purchase and sale—Transaction in the nature of trade.

Assessee was a business man with many interests; he lent money, he was connected with film business and dealt also in real property. At one time, he happened to be at Berlin and while there he had an opportunity of making a purchase of a very large quantity of toilette paper from a bankrupt German firm for £1,000. He had the paper sent to United Kingdom and in endeavouring to market it, he found a purchaser for the whole quantity at a price of £ 12,000. He was assessed to Excess Profits Duty on the profit of £ 11,000 which thus accrued to him. He contended that the profits made was a capital accretion, the profit of an isolated transaction, and not a part of the assessees trade.

The Commissioners held that the profits were form an adventure in the nature of trade and assessable to Excess Profits Duty.

11 T.C. 538 Disting.

Rutledge v. *The Commissioner Inland Revenue.*

14 T.C 490 (495,496,497,468)=1959 S. C. 379=1929 S. L. T. 296.

PROFITS ASSESSABLE, REPAYMENT OF EXCESS PROFITS DUTY.

Finance Act, 1915, S.38(3)—Repayment of Excess Profits Duty—Profits assessable in the year in which received.

Assessee carried on business as a metal merchant up to 31st March, 1921. For each of the four years ended 31st December, 1919, he was assessed to Excess Profits Duty. Deduction of this sum was duly made in computing the assessee's liability to income-tax, for each of the four years ended 5th April, 1920.

For the year to 31st December, 1920 assessee made a loss in his business and proved to the satisfaction of the Commissioner Inland Revenue that he was entitled, under Section 38(3) Finance Act, 1915, to the repeyment of the whole of Excess Profits Duty paid by him in respect of the previous accounting periods.

The repayment was made to the assessee on the 3rd November 1921. In March, 1921, the business was transferred to a limited company by the assessee.

The assessee admitted having received and held the Excess Profits Duty.

On assessment on this amount of Excess Profits Duty repaid, assessee contended that having ceased to carry on business a valid assessment could not be made upon him, that if at all, a valid assessment could, under R. 4(1) Schedule D, be made under Cases 1 & 11, and not under Case VI,that the sum repaid was not amount profit within Case VI, and that the assessment was invalid also because it had not been made under any particular case.

The Commissioners held that the assessment could not be mentioned. On appeal, *held* (relying on 9 T. C. 92 (98, 99, 100 the Excess Profits Duty returned was assessable to income-tax in the year in which it was received, the same having been treated by the Court (in the above cited case) as being "a special profit of a particular year disentangled from all calculation."

Hill v. *Mathews.*
10 T. C. 25 (2),:28. 29),

Section 38 (3) and S. 35—Excess Profits Duty repaid—Profits assessable—character and nature of repayment.

Assessee company was registered in 1913 to take over the business of another company, during the business of skin brokers. The assessee company went into liquidation on the 25th November, 1920 and thereupon ceased to trade. For each of the four years ended 30th April, 1919, the assessee company had been assessed to Excess Profits Duty. The amount was duly deducted for income tax purpose under Section 35, Finance Act, 1915. In the accounting period, 1st May to 25th November, 1920, the assessee company made losses which resulted in its liquidation and having proved to the satisfaction of the Commissioner Inland Revenue that it was entitled under the Finance Act, 1915, Section 38 (3) to repayment of the whole of Excess Profits Duty previously paid by it for the previous accounting period.

Repayment was made to the assessee company on 22nd April, 1924, and assessment to income-tax was made for the year 1924-25, in respect of the sum repaid as being profits. The company contended that it was not assessable under any other case of Schedule D, except Case I, not being annual profits or gain and that under Case I, assessment should be made on the average profits of three preceding years.

Relying upon the case reported in 9 T. C. 92, judgment by agreement was given by the Commissioners against the assessee and the assessment was confirmed. On appeal to the King's Bench Division, the case was not argued, relying on the above cited case and the appeal was dismissed.

On appeal to the Court of Appeal, *held*: the amount of Excess Profits Duty repaid was assessable to income-tax as profits of the year in which it is received. In so deciding and upholding the finding of the Commissioners and the King's Bench Division, *Lord Hanworth M. R.* observed: "As I have pointed out, this is a case where the company has received payment of an amount previously paid by way of Excess Profits Duty and having that characteristic attaching to it; and we are told by the Statute that when such a sum is repaid it is to be treated as a profit for the year in which the repayment is received. It is said it may be treated as a profit, but it ought not to be treated as an assessable profit. The answer, to my mind, is that it is paid back not by way of a sum which has no origin or ancestry; it is a sum which represents a repayment of the amount previously paid by that company in the form of Excess Profits Duty upon their trading. If it is to have that character and is to be treated as such a profit, although it is to be a repayment of sums paid in respect of profit, it is to be treated as a profit for the year in which the repayment is received. The word "treated" indicates that it is to be deemed to be something which in fact it is not, or whether it is so or not it is to be treated as a profit, and, therefore, it is, to my mind, impossible to discuss the question of whether or not difficulties may arise or whether it may be criticised as financially not quite sound that it should be treated in this method in that particular year; but we are told by the Statute that it is to be treated as a profit for the year in which the repayment is received. When it is repaid treating it as a profit, we find that the company had for some years ceased to trade. Does that prevent it being possible to assess it to Income-tax ? If it is treated, as I think it is intended to be treated, as an assessable profit for the year, for the reason which I have given and for the very purpose for which its repayment has been made, then it it possible to do so, because we have only to look at one or other of the same Rules in which this particular Rule finds its place, and there it is laid down that where business has been set up and commenced within the year of assessment, the computation shall be made according to the Rules applicable to Case VI". It cannot be said in the facts of the present case that there is a business which has been going on for three years prior to the time when this repayment was made. It cannot be said that it was commenced within a period of three years and by a process of exclusion we get the fact that here is an assessable profit received by the liquidator of Nesbitt Limited, which is to be treated as a profit for that year. As to the character and nature of repayment the same *Honourable Lord M. R.* observed: "It comes back, therefore, not having lost its character but being still the repayment of a sum—too much, it is true,—but a sum taken out of the profits which were made by the company in the course of its trading, profits which at the time they were made subject to income-tax and to Excess Profits Duty, and that is the character of the repayment that has been made."

Scrutton L. J. Dubitans referring to the case reported as 9 T. C. 92, observed:—

"I am quite satisfied that Parliament never thought of the facts that have given rise to this case, and it is not surprising that I also find it difficult under those circumstances to be sure of what they meant by the language they have used about

facts that they did not think about. But I am not suffiiciently strongly convinced of the error of that case formally to dissent from the conclusion that my brothers have arrived at, and I am content myself with remaining in the position of Lord, Saids—*Dubitans,* I am the more satisfied to remain in that position because I do not think the decision of the Scotch Court or of my brothers will do any particular harm.

A. & W. Nesbitt Ltd. v. *Mitchell.*

11 T. C· 211 (214, 217, 218; 219, 220).

S. 38 (3) Repayment of Excess Profits Duty in case of loss—Amount assessable to income tax as profits under Schedule D. Case VI.

Assessees carried on a business of managing a sugar Plantation. On 12th August, 1921, the said business was transferred to and taken over by a limited company incorporated in Scotland, and after the above date, the asseseees ceased business. Assessees were assessed to and paid Excess Profits Duty for all accounting periods to which that duty was applicable upto and including the accounting period of 12 months ending 30th June, 1912. Deudction of sum paid of as Excess Profits Duty was allowed in calculating profits for income tax purposes.

For the accounting period of 12 months ending 30th June 1921 assessee's profits did not reach the point which involved liability to Excess Profits Duty and on or about the 22nd April, 1922, assessee received repayment of a sum of £ 16,242 by way of Excess Profits Duty for previous accounting periods, under Section 38 (3) Finance Act, 1915. On assessment to income-tax on the above sum of £ 16,242 Excess Profits Duty repaid, the appellants contended that they were not so assessable, as they were not carrying on any trade within the year of assesment that the said sum was not annual profit, and that in any event, the effect of Rule 4 (1) of Rules applicable to Cases 1 and 11, Schedule D that the sum so received should be treated as profit of the year in which it was received, and thus should be included in the average of profits or gains on which liability (if any) to tax under Cases 1 and 11, Schedule D would be compiled and that accordingly the sum of £ 16,242 received on 22nd April, 1922, would not involve liability to tax.

The Commissioners held that repayment of Excess Profits Duty was a profit assessable under Case VII Schedule D and that the form of notice was immaterial to so long as the assessment was generally under Schedule D.

On a statement of case, the Court of Sessions upheld the above finding.

9 T.C. 92 foll. 8 T.C. 57 not appl.

Kirke's Trustees. v. *The Commissioner Inland Revenue.*

11 T.C. ·323 (326, 328, 333)=(1927) Sess cas (H. L.) 56=(1927) Sc. L.T. 53=136 L. T. 582.

Excess Profits Duty—Repayment of—Profit assessable to Income-tax.

Assessee company obtained license to buy milk, from the Food Controller. By virtue of the licenses the company purchased milk in the south west area and the sums payable to the Food Controller under the said licenses for the Milk so purchased were debited monthly in the company's trading account under head "purchase", as and when the company received monthly debit notes from the Food Controller the amount so payable and so debited, amounted in the year ended 30th April, 1020 to the sum of £ 8,236.

It was not until April, 1924, that the House of Commons agread to the omission of the milk charges and following the resolution of the Board of Trade, the said sum of £ 8,236 was repaid to the company in May, 1924.

On assessment on this sum, the company contended that the sum of £ 8236 in question was no part of the trading profit of the company for the year ending 30th April, 1920, that the said sum became an asset of the company's trade which was not until after the close of the year 1920.

The Commissioners held that the sum was profit arising to the company in the year ending 30th April, 1920, the year in which the sum recovered had originally been debited in the company's acoounts and in which the transaction took place out of which the payment arose.

They accordingly confirmed the assessment. On appeal, the King's Bench Division (per *Rowtatt J.*) upheld the finding of the Commissioner observe that the question involved was one of reopening accounts, the principle of which had already been established.

12 T. C. 768, 12 T. C. 997, & 43 T. L. R. 477 ref.

English Daires Ltd. v. *The Commissioner Inland Revenue.*

12 T. C. 597, (601, 602, 605, 606.)

PROFITS, ASSESSABLE—REPAYMENT OF E. P. D.

Finance Act, 1921, S. 38 and Finance Act, 1915, S. 40—Repayment of Excess Profits Duty—Assessibility as profits.

Assessees company got a repayment, resulting from a claim under Section 38, Finance Act, 1921 on the 31st December, 1922

This sum was credited in the accounts of the company for the year ended on that date, the profits of which were brought into the average for purposes of assessment to income tax. No question, therefore, arose as to this sum. He got another sum as a result of a claim under Section 38, resulting from a revision of the computation of Excess Profits Duty on the basis of half yearly accounting period in lieu of yearly ones over the life time of the duty. A further refund was made as the

result of a claim made in respect of the postponement of the renewals and repairs under the provisions of Section 40 (3) Finance Act, 1915.

Reducing from the above two amounts of £ 50,000 as to the last two items a sum of £ 6,250 as nececsary expenses incurred by the company, in the recovery of the above sums, the assessees were assessed to income-tax on the difference, being £ 43,750.

Repayment of his amount was made in May and November, 1927, and the amount was entered in the accounts of the company for the year ending 30th November, 1927, and was not included in computing the liability for 1928-29. The company contended that the last amount relating to renewal and repairs was not a repayment of Excess Profits Duty and that the sum was the equivalent in duty of repairs a deduction for which was admissible when the Excess Profits Duty was first computed, and that the allowance was then due and the subsequent admission of repairs in its effect upon tax could not be termed a repayment of Excess Profits Duty. The Commissioners confirmed the assessment. On appeal to the King's Bench Division the above finding was upheld (per *Rowlatt L. J.*) with the following observation "when one looks at Section 37 (2) of the Act of 1921 it is to be observed that when, upon the final determination of any modification provivionally applied under Section 40(3), it is found that there is a deficiency or excess it is to be taken into account in computing the excess profits or deficiencicies on losses, as the case may be, for the final accounting period."

Olive & Parlington Ltd. v *Rose.*

14. T. C. 701, (7044, 709)

Section 36, Finance Act, 1921 and Section 38 (3), Finance Act, 1915—Excess Profits Duty repaid—Profits assessable-tax.

Assessee carried on business of a bulider and contractor. His profits were assessable to Excess Profits Duty.

The Excess Profits Dnty payable for the accounting period of 12 months, 31st December, 1918 and 31st December, 1919 was £ 52,683 and £ 4,387 respectively. Only £ 2,000 cash, however, was paid in respect of these sums, the remainder being allowed to stand over as an amount due to the Revenue. The deficiency in duty estimated in accordance with the provisions of Section 38 (3) Finance Act 1915, in respect of the accounting period 12 months to 31st December, 1920, was £49,3?; while in addition further relief was admitted by the Revenue under the provision of Section 36, Finance Act, 1921 being an adjustment of Excess Profits Duty over the aggregate period of the charge. Finally, after adjustment of sums due to revenue authorities and the sums due to be repaid to the assessee, a sum of £3,110 was paid in cash to the assessee in July, 1923 the sum having been agreed between the parties.

The assessee contended that the sum actually repaid *i. e.* £,3110 only was profit for purpose of income-tax assessment.

Held: the entire amount set off (being £55,070) was, repayment and as such the profits of the assessee for income-tax purposes) the payment being a payment at Common Law.

8 Ch. App.407 (414) ref.

Tarrant v. *Roberts H. M. Inspector of tax.*

15 T. C. 754 (756, 769)=47 T. L. R. 199.

POFITS—COMPUTATION OF.

Finance Act, 2 of 1915 Section, 38 (3)—Re-opening of computation of Excess Profits and adjustment of actual loss.

Assessee carried on the business of exporting cloth to the Far East. During the years 1918, 1919 and 1920 assessee sold large quantity of goods to the National Marcantile Corporation, which carried on business at Shanghai. The course of assessees' business was this. Goods sold by the assessee were shipped to Shanghai. Assessee draw a bill at four month's sight on the corporation for the invoice price of each shipment of goods. Each bill carried interest @ 7% per annum from its date to the approximate date of the arrival of remittance in London. Each bill, as it was drawn, was sent with the relative shipping documents to the Mercantile Bank of India in London and the assessee obtained from the Bank a temporary advance equal to the amount of the bill. The Bank then sent the bill and documents to Shanghai branch for obtaining the corporation's acceptance. The Shanghai branch of the Bank took delivery of the goods which was kept in its own warehouse as security till the bill was paid.

The goods were then handed over to the corporation and the advance made by the Bank to the assessee was satisfied in the ordinary course out of the bill. Assessee remained liable to the Bank for the amount of advance if in any case the amount of bill was not received.

In 1920, the market in the East broke and the Exchange suffered great depreciation and as a consequence traders got in difficulties. The result was that the corporation was unable to meet its acceptances. From Jannary, 1920 onwards, there was at all times a large sum owing on the bills which the corporation was unable to meet —the amount outstanding on 28th October, 1920, being £47, 982.

In the course of 1921, goods in the Bank's warehouse were sold and proceeds taken in part satisfaction of the amount advanced to the assessee. After giving credit for these sums, there was a net claim of the Bank against the assessee amounting to £22, 410. This was paid and setteled at £8,000 in Decemler, 1922 by the Bank cumbering the assessee's financially distressed position. For the assessee's the full

sum of £22, 410 was shown as the bank's claim which was allowed as a deduction. Later, when it was discovered that a settlement was arrived at £8,000, additional assessment was made on the balance of £14,410.

The appellant contended that the liability related to the year ending 31st March, 1921 and that the fact of the Bank having given accommodation for a part of the liability later on was immaterial for the purposes of computation of his liability.

The Commissioners upheld the assessment. The finding was upheld by the King's Bench Division also in appeal. On appeal, the Court of Appeal also upheld the finding, observing that the sum of £22,410 was nothing more than an *Interim* determination of the liability which could be reversed later as it was indeed done.

12 T. C, 927 & 12 T. C. 768 not appl.

Bernahard v. *The Commissioner Inland Revenue.*

13 T. C. 723 (728, 736, 741, 745, 646),

Excess Profits Duty—Computation of—Payment of sums by employers to secure annuities—Payment of Pension equal in amount to annuity to pensioners—Sums paid not deductible.

Assessee company was incorporated in June, 1930, in pursuance of a scheme whereby the said company acquired and took over all the business, assets and liabilities of another limited company. For the purposes of taxation the assessee company was treated as the successor to the old company.

The prodecessors of the old company had set up a scheme under which pensions were paid to its employees who had retired or became incapacitated, reserving the uncontrolled discretion to vary or cease payment of such pensions. In or about the year 1918, or early in 1919, the Board of directors of the old company decided to purchase on its behalf annuities on the lives of those persons who had been granted or were receiving pensions under the said pension scheme. The company accordingly entered into negotiations with the Equitable Life Assurance Society for the purchase from that society of annuities payable during the lives of the serving persons who were receiving pensions of amounts equal to their respective pensions. As a result of the negotiations, a policy was, on 5th day of March, 1919 issued by the Equitable Life Assurance Society under which the latter undertook, in consideration of a sum of £ 23, 100 paid to it by the old company, to pay to the old company during the remainder of the life of the each pensioners annuities of the respective amounts by quarterly instalments, the first of which was to fall due on 15th April, 1919. The said policy was dated as 31st December, 1918 and the annuities payable under it were Payable from 1-1-1919. The said policy was cancelled as to certain annuities in 1924 and the old company received £ 7,309 in consideration of this cancellation. The pensioners did not at any time know of the existence of the policy, nor were they consulted as to this cancellation. The amount undertaken

in pursuance of the said policy to be paid by the society to the old company during the remainder of the life of each pensioner was equal in amount to the pension which was being paid by the old company to the pensioner.

The company claimed to deduct the sum of £ 23,100 from the profits in computing the deficiency for the purposes of Excess Profits Duty for said accounting period.

The Commissioners held that the sum of £ 23,100 was wholly and exclusively laid out or expended for the purposes of the old company's trade but that it constituted capital expenditure and was prohibited as a deduction from the profits in arriving at the computation under R. 3 (f) of the Rules applicable to Cases I & II Schedule D. They further held that the transaction in question was not one which would artificially reduce the amount of profits of the trade of the appellant company within the meaning of Finance Act, 2 of 1915 Schedule IV Aara 5. The finding of the Commissioner was upheld in appeal by the King's Bench Division.

7 T. C. 358 ref.

Margan Crucible Co. Ltd. v. *The Commissioner Inland Revenue.*

17 T. C. 311 (315,317)=(1932) 2 K. B. 185=101 L. J. K. B. 764=147 L.T. 174.

Finance Act, 1918—Section 35—Computation of Excess Profits Duty—Date of sale of stock in trade.

Assessees carried on the business of brewers and maltsters, wine and spirit merchants at Windsor. By a letter dated 11th April, 1918, the Solicitors of a limited firm made an offer to the assessee company for the purchase of their assets etc., at a certain specified price. Assets of any description, except wine and spirit stock, was to be included, the latter to be sold at a valuation. On the 12th April; 1918; the managing directors of the assessees assured the above letter by a letter on the 17th May, 1918, a contact made between the assessees company and the offering company was executed. The contract provided that the purchaser company shall also take and pay in cash at valuation to be made as on 24th June, 1918 and all the wine and spirit stock of the vendor company. Completion under the contract for sale took place on 24th, June, 1918 and the actual sum payable for wine, spirit etc., ascertained by valuation on 24th January, 1918 was paid shortly afterwards.

Negotiations had been pending between the assessee company and the purchasing company for several months prior to the exchange of the letters above referred to and parties had practically agreed as to the terms for some time previous to the exchange of these lettere. The quantity and quality of the stock held by the assessee company was well known at the time the letters were writtten. Assessee company carried on its business as usual upto 24th June, 1918 and as per terms of the contract of 17th May, 1918, were entitled to and received the profits of the business accruing to that date.

Assessment to Excess Profits Duty was made on the assesee company in respect of the profits of the business for the accounting period ended on that date. In arriving at these profits two sums of £ 589 and £ 41,103 were included under Section 35 (1), Finance Act, 1918 as receipts of business. These were paid by the purchasing company for brewery stock and wine and spirit stock respectively sold under the contract. The point in the case was whether the sale of the stock took place after 21nd April, 1918. The assessees contended that the sale took place before 22nd April, 1918, having been effected by the above-mentioned letters of 11th and 12 April, 1918.

The Commissioners Inland Revenue contended that the said sum of £ 41,103 was rightly included in the computation of profits and that the sale did not take place till the 24th June, 1918. The Commissioner upheld the above contention of the Inland Commissioners and confirmed the assessment.

The above finding was upheld by the Revenue Judge (*Sankey J.*) in King's Bench Division. It was observed that the two letters of 11th and 12th April, 1918 did not constitute a concluded agreement for sale and that the sale did not take place before the 22nd April, 1918 it besing immaterial to decide whether it took place on 17th May, the date of formal contractor 24th June, the date of passing of part of sale money for stock.

(1921) 3 K. B. 152 ref.

Nevil Reid & Co., Ltd., v. *Commissioner Inland Revenue.*

12 T. C. 545 (554,571,572).

PROFITS.—COMPUTATION OF SET OFF—APPLICABILITY.

Finance Act, 1915, Sections—38 & Business of ship brokers, on own account and jointly as partner—Businesses separate for Excess Profits Duty purposes—Set-off inapplicable.

Assessee, company, carried on business as ship-brokers on their own accounts and also as agents. They were also partners in other ship-broking firms. For Excess Profits Duty the profits arising from the company's business of ship-brokers etc. in each accounting period from 1914 to 1920 were computed separately and in those accounting periods when the results showed an excess of profits over the pre-war standard and allowance assessments were made upon the company.

Similarly the profits arising from firms in which the asressees were partners in the said accounting periods 1913-1920 were computed separately. As regards these assessments, the company have always reserved the right to claim that the business of the company and their share of the joint steamers is one and the same business in dealing with any liability for Excess Profits Duty.

The Commissioners Inland Revenue, purporting to act, by way of concessions only, have allowed the deficiencies incurred in the company's business as ship-brokers

etc. to be set off against Excess Profits Duty payable by the company in respect of their shares of the profits in the joint business, in co-terminus accounting periods.

The Commissioners of Inland Revenue in accordance with the alleged concession, allowed the company to set off a certain amount of their deficiency but refused to allow further deficiency to be set off.

The company contended that it carried on only one business and that their share in profits of joint business was profit of the companies in which they held shares and that set off was possible and under term of Part III, Eidance Act, 1915, business could not be treated as separate.

The Commissioners held that the company's own and joint businesses were separate and that no set off could be allowed.

The above finding was apeald by the King's Bench Division and the Court of Apeal. The Court of Appeal observed that set off Excess Profits Duty cases was not possible like income-tax, the nature of charge in the two cases being different.

1926 Sc. 144 & 10 T. C. 88 (112) & 4 T. C. 265 (301) ref.

Birt Potter & Hughes Ltd. v. *the Commissioner Inland Revenue.*

12 T. C- 976 (914, 985, 986, 992, 997).

PROFITS—DATE OF ACCRUAL

Finance Act, 1915, Section 38—Profits of trade or business—date of accrual,

Assessee company carried on the business of brewers and wine and sprit merchants. In the course of this business, the company imported rum and sold it either in retail through public houses managed by itself or wholesale to tied public houses and free customers,

On the 6th October, 1917, the Admiralty issued an order under Regulation 2 B of the Refence of the Realm Regulation, issued under the Defence of the Realm Act, 1914, giving notice of their intention to take possession of all stocks of rum in bonded ware-houses in the United Kingdom. On 16th October, 1917, the assessee company made a return of all the rum in its bonded ware-houses, which amounted to 700 puncheons (a puncheon being equal to 150 proof galons). In November, 1917 gave notice that they decided to take provisionally part of the rum only 230 puncheons being some 2/7th of company's stock and that it was decided for the present to pay the actual purchase-price, pluse incidental charges, carriage, rent and interest at 5% up to 31st then next. further amount as to further payment to be made later on.

The managing director of the assessee company stated that the above action of the Admiralty had injured the company's stock seriously and had upset their business for some years up.

The assessee company was paid by the Admiralty a sum of £ 10,315-1-4 which was payable into accounts by the company under head "Tale of Rum" This sum was included in the profits of the company for Excess Duty purposes for 12 months ending 30th October 1918.

A dispute, however, arose between the Admiralty and the company over the said rum, and on 7th October, 1920, the comapany presented a claim to the war Compensation Court' claiming £ 28,571 as compensation, less the above mentioned amount received on account. The said Court adjudged the right sum to be awarded to the company to be £ 15,624-11-4½ as compensation, credit being given for the sum already paid, by the Admiralty to the company in January.

The company contended that this last mentioned balance was not a receipt of their profit The Commissioners discharged the assessment. On appeal, however, the King's Bench, Division reversed the Commissioner's finding which was upheld by the Court of Appeal and the Houses of Lords also.

The Commissioner Inland Revenue v. *The New Castle Breweries Ltd.*

12 T. C, 927 (934 ,939, 945, 951, 954, 955). =95 L. J K. B. 936=96 L. J. K.B. 735=42 T. L. R. 115=42 T. L. R. 609=43 T.L.R. 476=134 L.T. 506=137 L.T. 126

Excess Profits Duty--Claim for damages for breach of contract—Payment made by agreement, whether profits—date of accrual.

Assessee company carried on business as worsted spinners. Their last accounting period was the one ending 30th June, 1921. By a contract dated the 30th March, 1920, assessees sold to Messrs. Taylor & Co. 15,000 lbs. of yarns at 20s. 6 d, per lbs. On 29th June, 1921, assesses agreed to cancel the said contract and to substitute therefore a new contract of sale of the same quantity of yarn at 18s. per lbs. upon payment by taylor & Co. £ 1,875 of the difference due to reduced rate, Messrs. Taylor & Co. paid the said sum to the assessees in two instalments of £500 on 27th January, 1921 and £1,175 on 16th Augst, 1921.

In computing the profits of the assessees' trade for the accounting period 30th June, 1920 the Commissioners Inland Revenue treated the whole of the said sum of £18,75 as trading receipt of the period.

On two other contracts with F. Shirley Ltd. and A. W. Wood and Co. assessee got £200 and £12,500 respectively which sums were also treated as their trading receipt for the said period.

Assessee contended that the same were not trading receipts, at any rate not of the periods ending 30th June 1920 and 1921 in the case of the sum of £1,875 and £200 respectively and that the sum of £12500 was for damages for breach of contract.

The Commissioners held the £1875 to be trading receipt for the period ending 30th June, 1920 and the two sums of £200 and £12,500 as the trading receipts for the accounting period ending 30th June 1921.

The finding was upheld by the King s Bench Division.

(per *Rowlatt J.*)

Jessee Robinson & Sons v. *The Commissioner Inland Revenue.*

12 T. C. 1241 (1246, 1247).

PROFITS—FORWARD CONTRACTS.

Finance Act, 1915, Section 38—Forward Contract—Date of accrual of profits.

Assessee company carried on business as Electrical and Mechanical Engineer.

On 24th March, 1914, the company entered into a contract for the supply of 55 electric motor cars, complete with control gear, delivery of which was to commence on 1st July, 1914 and was to terminate on 3rd September, 1914. The company itself manufactured motors, but it sub-contracted the control gear to another company to "Test", by a contract dated the 3rd April, 1914. The resultant profit to the assessee company under the sub-contract was to be £1,064. Owing to war, deliveries under the contract were delayed. For the six months ending 31st December, 1914, only £628 selling value of control gear was delivered, with a profit of £ 85. For the six months ended 3rd June, 1915, and £ 1766 selling value was delivered, with a profit of £224 for the six months ended 31st December, 1915, further delivery were made with a profit of £ 184 and the final delivery took place in July, 1916, with a profit of £ 570. The profits were credited to the several periods (all of them accounting periods) in in which deliveries were affected. The assessee company contended that the profit on the transaction in question was ascertained and made on the completion of the contract for the purchase and sale, *i. e.* on 3rd April, 1914, that the said profits resulted from pre-war contract and did not form part of the company's profits and gains of the various accounting periods in which delivery took place and that the way in which the company's accounts had been drawn up could not bind the company for taxation purposes.

The Commissioners disallowed the Company's contention. On appeal, the King's Bench Division (per *Rowlatt J.*) Reversed the Commissioner's findings and allowing the appeal, remanded the case. The Court of Appeal reversed the order of the King's Bench Division, on appeal and restored the Commissioner's finding. It was observed that the profits were neither ascertined nor made, at the time that these contracts were concluded and that the only proper way in which the profits arising from the working up of this contract ought bo be brought into account was to ascertain them as and when they were realized.

The directors of the company held 4,300 shares out of a total number of 7, 000 shares. They thus had a controlling interest and proceedings were taken under Section 49 (1) and the company was treated as a firm and the directors as partners thereof. It was contended on company's behalf that the directors did not have a controlling interest in the company and that consequently their fee and salaries should be allowed as deduction in computing Excess Profits Duty.

The Commissioners held that the directors of the company possessed a controlling interest and that consequently the Commissioner Inland Revenue could treat the company as a firm and the directors as partners thereof. They accordingly dismissed the appeal and confirmed the assessment.

A case having, thereupon, been stated to the Court of Sessions, the Court upheld the above finding.

The Glasgow Expanded Metal Co . Ltd. v. *The Commissioner Inland Revenue,*

12. T. C. 573. (578, 580)=(1923) Sess Cas 365.

TRADE OR BUSINESS.

Finance Act, 1915, Schedule IV, Part 1, Rs. 8 & Section 38—Business of making investments—Trade or business—Chargeable to Excess Profits Duty.

Assessee company was formed in 1917 to acquire, hold and guarantee the subscription of shares, stocks, debentures, debenture stocks, bonds, obligations and securities, issued by any company constituted or carrying on business in United Kingdom or in any colony, dependently and also those issued by any government or sovereign and to purchase and deal with real and personal property and rights of all kind.

The assessee company held the whole of the share capital of a Japanese company, purchased in 1917, the whole of the common stock of Canadian company a holding of £ 550,000 in the Victory Loan, purchased in 1919, and a holding of reference shares in Amalgamated Cotton Trusts.

The Chairman, the Managing Director and other directors of the assessee company. A majority of the meetings of the company was held for the purpose of passing transfer of shares in the assessee company.

The company contended that it exercised no control, other than that of a shareholder over the Japanese and Canadian companies in which it held shares, that it was a holding company and stood in the same position as an individual acquiring and holding investments and that it did not carry any trade or business and was thus not within the charge to Excess Profits Duty.

The Crown contended that the principal business of the company was to making investments that the respondent company was carrying on trade or business within Section 38(1) and that its profits were chargeable to Excess Profits Duty. The Commissioners were of opinion that the Company was a holding company only, not carrying on any trade or business. They accordingly discharged the assessment. On appeal, the King's Bench Division reversed the above finding, holding that the company's business was that of investment and thus its profits were within the charge of Excess Profits Duty.

The Commissioner Inland Revenue v. *The Tyre Investment Trust Ltd.*

12 T. C. 646 (654,655 656)=132 L. T. 59.

Ss 39 and 40 (2)—Port of London Authority carrying on trade—Assessable of Excess Profits Duty—Standard of charge.

Assessee, Por of London Authority, are the authority appointed by the Port of London Act, 1908. Under the said Act, assessees were entrusted with certain duties for improving and administrating the London Port, which duties they have been discharging. They have, for the said purposes taken over and carried the undertakings of the Dock Companies, have exercised the powers conferred on them of purchasing their main undertaking affording facilities for the loading, unloading or ware-housing of goods in the Port of London by acquiring with the consent of the Board of Trade and carrying on the business of two companies, the one being the business of discharging and loading grains and other goods and the other of constructing granaries, cranes, and ware-houses. They were in fact owners of docks and of lands, buildings, railways and other works *e g.* ware-houses, hotels and other properties.

Their revenue was derived from dues and rent on shipping and rates and charges for accommodation and services rendered and they also received income from ware-housing goods and from rents of properties, railway rates and tolls, dredging licenses, river tolls, hire of dredging plant, canal tolls and fees for the registration, and licensing of craft and watermen and receipts from various other sources.

On their profits derived from the businesses transferred to them for Dock Companies, etc., or subsequently acquired or purchased by them, they were assessed to Excess Profits Duty upon the basis of pre-war standard of profits. The assessees, on appeal, contended that they were not a body carrying on a trade or business within the meaning of Part, III, Finance Act, 1915, that they did not and owing to their constitution could not make any profit and that any surplus accruing to them in their revenue account was purely of a temporary and accidental nature and was not profit assessable.

The Commissioner determined that the London Port Authority, the assessees, were carrying on trade or business within the meaning of Finance Act, 1915, Part III and made profit in so doing, within the meaning of that Act, On appeal, *held.* (by the High Court) the assessees did carry on trade or business and that they were rightly assessed as above. The finding was upheld by the Court of Appeal also.

(1919) 2 K.B. 650 & 2 T.C. 25 ref.

The Port of London Authority. v. *The Commsisioner Inland Revenue.*

12 T.C. 122 (132,134)=(1919) 2 K. B. 608=(1920) 2 K. B. 612=89 L. J. K. B. 547=123 L. T. 316=36 T. L. R. 460.

S. 38—Receipt of royalty by a company for sale of patents —Not a trade or bussiness.

Assessee was a company incorporated under the Acts relating to limited companies. By an agreement, the company agreed to take over and work certain inventions

on payment of royalty. Later, a new company was formed, the former company having been wound up. The liquidators of the old company agreed under an agreement to transfer all the old company's rights and assets to the new company in consideration of £30,000 in cash, £ 80,000 in fully paid up shares and a royalty of 50 per effective horse power on every machine sold.

Under the agreement as above-mentioned, large sums became payable to the liquidators and it was found inconvenient for the old company to continue in liquidation. By an order obtained on 15th June, 1900 the winding up of the old company was stayed and since that the said company has continued as a company to receive the sums to which it was entitled and to make distribution to its shareholders.

The above agreement was later modified by subsequent agreements in 1901, 1904 and 1905, entered into between the two companies and Mr. P. whose inventions the old company had undertaken to work.

No part of the expenses of the new company in connection with the experimental work on the patents was charged to or borne by the old company, which had no separate office or staff and the new company did the Secretariat work repuired by the old company for calling directors or shareholders' meetings and the payment of dividends.

It was contended on behalf of the old company that it was not carrying on any trade or business within the meaning of the Finance Act, 1915, Part III, and that it was not liable to Excess Profits Duty assessment. The special Commissioner determined on facts and evidence that no trade or business within the meaning of Finance Act 1915, part III was carried on by the old company.

The finding of the Commissioners was upheld in appeal by the King's Bench Division (per *Rowlatt J.*) it being held that the royalties were in effect payment by instalments of part of the price of the property which the old company had disposed of to the new company and that the right to the royalties being practically the only interest in the undertaking that the old company retained, it had nothing to do but simply to receive the royalties.

As such, it was held that the old company carried on no trade or business within the meaning of Finance Act 1915 and was assessable to Excess Profits Duty.

The Commissioner Inland Revenue v. *The Marine Steam Tarbin Co. Ltd.*

12 T. C. 174 (178, 180=(1920) 1 K. B. 193=89 L. J. K. B. 49=121 L. T. 368=35 T. L. R. 599.

Finance Act, 1915, Sections 38 & 39—Syndicate formed to acquire concessions and rights—Profits of syndicate—assessment to Excess Profits Duty.

Assessee, syndicate was a company incorporated on the 10th January, 1905, under the Companies Act. It was formed to apply for purchase or otherwise acquire

concessions, rights and privileges of every kind in relation to mining, electrical, agricultural land, and water in the control of works of any kind in Korea or elsewhere and to work, exploit and turn the same to account.

The business of the company was to be managed by directors who were to exercise all powers of the company, and do on behalf of the company' all such acts as were within the scope of the Memorandum and Articles of Association of the company.

The Syndicate acquired in February, 1905 a half right to concession in Korea extending over 216 square miles on which was situate a gold mine. The title to this concession was granted by the Korean Government and was held jointly with an American firm of Collbran and Bostwick under an agreement dated the 7th February, 1905. It was originally intended that the Syndicate should itself develop and work the concession and should also obtain and develop other concessions for which preliminary negotiations had been made. These expectations, however, were not fulfilled and on the 2nd March, 1908, the Syndicate executed a lease of their share in the concession to the A erican company. During the year ending 31st March, 1916 and 31st March, 1917 the income of the Syndicate had been derived solely from the interest on bank deposit and from royalties received under the lease.

The Syndicate employed as its agent a resident in Korea at a small retaining fee of some £ 25 per annum.

The Syndicate was assessed to Excess Profits Duty on the above profits. It was contended on behalf of the Syndicate that it was not carrying on any trade or business within the meaning of Finance Act, 1915, Section 39. The Commissioners allowed the appeal and discharged the assessment, holding that the company was not carrying on any business, the receipt of interest and royalties alone which the company had been doing, not being a business.

The above finding was upheld by the King's Bench Division (per *Rowlatt J.*) The finding was reversed by the Court of Appeal. In appeal, it was held that the effect of the agreement between the assessee and the American company was the carrying out of the object which they undertook to attain, *i. e.* of acquiring a concession and working, exploiting or turning the same to account that in such a case Section 39 has to be read with the changing Section 38 and that the purpose of acquiring concessions and turning them to account was a 'business' as contemplated and spoken in Section 39 of the Finance Act, 1915.

The Commissioner Inland Revenue. v. The Korean Syndicate Ltd.

12 T. C. 181 (186, 197, 198, 201, 202, 205'208)=(1920) 1 K. B. 598=(1921) 3 K. B. 258=89 L. J. K. B. 779=90 L. J. K. B. 1153=122 L. T. 371=125 L. T. 615=36 T. L. R. 179=37 T. L. R. 735.

TRADE OR BUSINESS

Ss. 38 and 39 Income of inventor from receipt of Royalties—Not profits assessable to Excess Profits Duty.

Assessee had for many years been an inventor and had applied for and been granted a large number of patents, in all amounting to rather under 400. Of these, he had only sold one, twenty five years ago. He did not himself manufacture the patented articles.

Assessee had for some time past been the managing director of a company, manufacturing and dealing *inter alia* in cycles and cycles parts and accessories. On 15th February 1907, the respondent entered into two agreements with the above mentioned company. One of the agreements provided that assessee should continue to hold the office of the managing director for a further period of five years from the date of execution of the above agreement on the terms therein set out, receiving a salary of £ 800 per annum and commission dependent on results. The other agreement provided that on the terms and with the limitations therein expressed, the company should have the right to elect to be interested in and entitled to a share in any discovery, invention or design made by the assessee while in the employment of the said company.

Assessee was the director of another company. From the latter company it received royalties. The question was whether the receipts of these royalties were receipts from trade or business within Section 39 Finance Act 1915. There was a difference of opinion amongst the Commissioners, one holding that while profits from royalties were not profits arising from trade or business, within section 38 (1) Finance Act 2, of 1915, in this particular case, as the facts showed that the respondent had made it the business of his life to discover and invent means whereby profits could be realized in the course of trade and to take active part in the supervision; management and control of the manufacturing and trading operations necessary to such realizations,the profits accrued to the assessee from a business within the meaning of those words as used in Section 38 (1) and that, therefore, he was not within the exemption in Section 39 (c) Finance Act, 1915. The other Commissioner, however, took the contention put by the assessee as correct. The Commissioners' determination was in favour of the assessee and they discharged the assessment.

The above finding of the Commissioners, that the assessee was not carrying on a business, the profits of which were liable to Excess Profits Duty, was upheld by the King's Bench Division in appeal.

The Commissioner Inland Revenue. v. *Sangster.*

12 T. C. 208 (213, 214, 216, 217)=(1920) 1 K. B. 587=89 L. J. K. B. 673= 122 L. T. 374=36 T. L. R. 158.

TRADE OR BUSINESS CARRYING ON OF.

Section 38—Carrying on of trade or business.

A tramway company (called the Old Company) sold the whole of its undertakings, with the exception some lands to another Tramway company, (Anglo-Argentine)

in consideration of an annual sum of £70,000 to represent the payment over 80 years of the capital sum treated as the undertaking and interest, year by year, on the unpaid portion. By an arrangement, a New Company superseded the Old Company. The right to receive the above mentioned sum of £ 70,000 a year was assigned to the New Company. The Old Company handed a further sum of £111, 500 to the New Company. Lands excepted from sale to Anglo Argentine Co., also were assigned to the New Company. The New Company in return for the extinguishment of the debentures of the Old Company issued debentures of its own to the face value of 50% in excess of the face value of old debentures, being a lower rate of interest, so that the income was the same. It also issued shares, extinguishing old shares, the new shares being greater in total face value than the old. Under an agreement between the Old and the New Company, the debenture stock of the New Company was to be redeemed at par in 1935 (the termination of the annual payments of £70,000 year). This latter sum was to be held under special trust to pay the interest of debentures yearly, administration expenses and dividend. The income of the farm was to be accoumulated to form a fund, which would be the equivalent of the share capital at the end of the time.

In the above circumstances, it was contended that the New Company did not carry on business or trade. It was held that the New Company was carrying on trade or business.

The Commissioner Inland Revenue v. *City of Buenes Ayres Tramway Co.*, (1904) *Ltd.*

12 T. C. 1125 1125, 1142.)

Finance Act, 1915—Section 38, Carrying on of trade or business.

Assessee company in this case was formed to acquire steamships and other vessels, to build, charter and let out on hire and trade with ships, to carry on business as shipowner and to invest and deal with company's money not required for any immediate purposes.

The company held certain treasury Bills. It was held by the King's Bench Division (per *Rowlvtt J.*) that the Company did carry on trade or business.

12 T. C. 657

(South Bihar Ry. case) ref.

The Commissioner Inland Revenue **v.** *Dale Steamship Co. Ltd.*

*12 T. C. 712 (718—720.)

*This was also a case under Section 52, Finance Act, 1920. relating to Corporation Profits Tax. It has also been noted briefly here for reasons similar to that given under the Westleing. The South Bihar Railway and the Eccentric Club Ltd.

Finance Act, 1915, Section 38—Carrying on trade or business—company formed to construct a railway—fixed annual rent, transfer fees, interest and dividends, receipt of company.

Assessee company in this case was formed to construct a railway in Scotland. It was incorporated by an Act. The company was, under the Act, to receive 4% on the amount spent on construction of the railway, together with a further fluctuating and contingent rent dependent on receipts from the railway. By an amending Act, passed later, a fixed rent of £ 12,500 was to be paid to the assessee company, free and clear of all deductions except income-tax.

Apart from this, the sole revenue of the company consisted of a small amount of interest on cash at its bankers, of dividends on investments and a trifling amount received by way of transfer fee on the transfer of company's shares.

The company was scheduled as a "Railway company," under the Railway Act, 1921.

On the company contending that it did not carry on any trade or business, it was held that the company was carrying on trade or business.

*12 T. C. 657 ref.

Finance Act, 1915—S. 38 carrying on of trade or business.

Where a company, formed to acquire interests in free hold estate, held investments, had power to exchange any of its investments and deal with the mines of the company the revenue of the company consisting of rents from leases, it was held by the Court of Appeal that the company carried on trade or business.

12 T. C. 181 '197) ref.

The Commissioner Inland Revenue v. *The Westleigh Estate Co, Ltd.*

12 T. C. 657 (687, 693, 698)=(1923) 2 K. B. 514=(1924) 1 K. B. 390=1925 A, C. 476=92 L. J. K. B. 990=93 L J. K. B. 289=94 L.J.K.B. 386=155 L. T. J. 387=130 L T 538=132 L. T. 802=39 T. L. R. 461=40 T. L. R. 308=41 T. L. R. 328.

Finance Act, 1915, S. 38—Carrying on of trade or business.

Assessee company was formed to supply to the Secretary of State for India in Council, funds and materials required for the construction, completion and making ready and fit for public traffic a railway. Its receipts were derived from annual payments made by the Secretary of State. It was concerned in the business of disposing and dividing profits.

It was held by the Court of Appeal that the Company carried on trade or business. The finding was upheld by the House of Lords also.

*The case related to corporation Profits but as the point involved was one of "carrying on trade or business" also, which is necessary for the determination of Excess Profits Duty assessment, it has been noted briefly here.

The Commissioner Inland Reveuue v. *The South Bihar Railway Co., Ltd.* 657 (689, 694, 695, 698, 712).

Finance Act, 1915, S. 38-Carrying on of trade or business.

In this case the company in question was a social club. The income and property of the club was to be applied towards the promotion of the objects of the club and no member of the club in his character as such was entitled to receive directly or indirectly any dividend, bonus or other profit out of such income or property. It was held by the Court of Appeal that the company did not carry on trade or business.

2 T.C. 100, & 2 T. C. 460 (482,483) ref.

The Commissioner Inland Revenue v. *The Eccentric Club Ltd.*

*12 T. C. 657 (691, 697, 703, 704).

Finance Act, 1915, Sections 38 & 39—Carrying on of trade or business for Excess Profits Duty purposes—Company assigning rights and receiving royalty—Liability to Excess Profits Duty.

Assessee company, incorporated in 1912, acquired certain properties and rights to bore for oil in Budderpore, Assam. The company proceeded to drill wells for oil on some of the properties and lands, the subject of the said rights and erected certain buildings and plants thereon in connection with the said drillings.

By an agreement dated the 8th April, 1915, made between the assessee company and the Burma Oil Co , Ltd., the assessee company transferred the rights to bore oil, in consideration of payment of royalty and a fixed sum as expenditure of the assessee company up to 31st March, 1915 The Burmah Oil Company was to render account of the production of petroleum and of the quantity of fuel used and the royalty due, every month, to the assessee company. The said company was not either to mortgage or assign the rights so sublet to them under the above-mentioned agreement. The Burmah Oil Company duly acted on the agreement and paid the sum of £ 12,500 expenditure as therein provided. The royalties payable under the said agreement were also duly paid to the assessee company's agent at Calcutta.

Assessee company employed a resident representative to check the quantities of oil produced by the Burmah Oil Company and to forward a monthly statement to the company in London and did from time to time distribute by way of dividend the balance of the royalties payable after defraying therefrom the above cost of checking. The company contended that as from 8th April 1915 the date of agreement, it ceased to carry on trade or business for Excess Profits Duty purposes. The Commissioners found as a fact on evidence that the company was not carrying on trade or business within Section 38 Finance Act, 1915 and they accordingly discharged the assessment.

* These three cases occurred under Section 52, Finance Act, 1920 for the purposes, not of Excess Profits Duty, but of Corporation Profits Tax as they touched and decided the question of "carrying on trade or business" also useful and necessary to be looked in to for the purposes of Excess Profits Duty assessment, they have been noted briefly here also.

On a case being stated, the King's Bench Division (per *Rowlatt J.*) held that the Commissioners' finding was, on the facts above-stated erreneous in law, that the question was one of fact only and that, under the agreement of 1915, the assessee company had not transferred the whole of their property, as they had imposed upon them certain delegations left in respect of the property and certain rights, of getting the property back again if the Burmah Oil Company did not carry out their agreement.

12 T.C. 181 ref. & rel.

The Commissioner Inland Revenue. v. *The Budderpore Oil Co Ltd.*

12 T.C. 467 (473 , 477, 480, 481 .)

Finance Act, 1915. Section 38—Finance Act. 1918, S. 35—Profits of trade of a party intehding to retire from business—Assessibility to Excess Profits Duty.

Assessees had carried on business as wine and spirit merchants in Belfast for a number of years. Early in 1916 they decided to retire from business. This decision they communicated to their customers in a circular dated the 18th March, 1916. On the 24th March, 1916, they also issued to their customers a circular setting out the amount and nature of goods which they had for sale and in this circular they specifically stated that they were retiring from business.

It was found as a fact that the assessees did nor want to sell their business as a going concern but that they wanted to dispose of their stock to their regular customers.

In 1916 there was not much demand for their stock but in 1917 they were practically able to dispose of their entire stock,realizing thereby a sum of £48,402-18-1. They purchased no stock after they had decided to retire except that they made some purchases to meet ruuning contracts with some distillers to take certain amount of spirit in each year up to 1917. At the close of 1917 they still had stock in hand amounting to £ 1,020 in value.

There was no purchase of stock in 1918.

On a return for assessment to Excess Profits Duty made by the assessees on 11th April 1918 they stated that they desired to discontinue the business at the earliest possible date, showing thereby that they were still in business. The profits for the accounting period to 31st December, 1917, the subject of the return were £36,689. Assessees contended that they were not liable to be assessed to Excess Profits Duty in respect of the year 1917 and that Section 35 Finance Act 1918, observed on the face of it that there was no such liability. The Commissioners held that the assessees were carrying on trade or business and were liable to be charged within Excess Profits Duty in respect of the profits arising therefrom for the account-

ing period from 1st January to 31st December 1917. On appeal, the King's Bench Division upheld the Commissioners finding but the Court of Appeal reversed the finding of the Commissioners and the King's Bench Division. The House of Lords upheld the finding of the Court of Appeal. It was observed that if the facts determined warranted the conclusion that the sales were realization sales and were capital transactions incidental to winding up of the business, Excess Profits Duty could not be charged.

12 T. C. 327 & 4 T. C. 618 ref.

J. & R. O. Kane & Co. v. *The Commissioner Inland Revenue.*

12 T. C. 303 (309, 339, 346, 358)=55 I. L. T. R. 75=126 L. T. 707.

Section 38—Carrying on of trade for Purposes of assessment to Excess Profits Duty.

Assessee had, since 1910, carried on a business of a wholesale agricultural machinery merchant in the city of London. He had any connection with the linen trade; nor had he ever had any transaction in surplus Government stores.

On 5th May, 1919, assessee happened to visit the Government Depot in company of some other persons and a large quantity of unbleached linen lying there, that had been acquired for the purpose of covering aeroplanes, attracted the assessee's attention and its use were explained to him by an official on the spot. Assessee decided to purchase the same before leaving the spot and after brief negotiations, did actually purchase the same in the quantity of 44,803,888½ yards at Is. 8d. per lineal yards for a total sum of £ 3,733,625-5-5 without regard to quality or width. The assessee, feeling that the Belfast Manufacturers were his best purchasers organised, in order to alarm them, an advertising campaign, by leading them to think that their market would be undermind. For this purpose he rented an office for which he paid rent, rates and taxes; he furnished his office; installed it with a telephone and employed a staff of a number of clerks and an adversiting manager at a high salary. He issued circulars, inserted advertisements on a large scale in the trade journals and important newspapers. He offered commission of 1¼ percent to any body who introduced orders. He incurred an expenditure of large sum on postage and telgrams. The result was that the entire quantity of unbleached linen was sold off in the same state in which it was purchsed. A sale book, a delivery book and a ledger was kept and generally all the books were kept that would normally be kept in a trading concern.

On the above facts, the assessee contended that he did not carry on any trade, or concern in the nature of trade in connection with linen that the transaction was a gambling one and that the profits were not annual, chargeable under Case VI.

He was assessed to Excess Profits Duty on the profit arising out of this linen transaction. On appeal against the assessment, the Commissioners held that in exer-

cising the above activities, the assessee was carrying on a trade, the profits of which were assessable to Excess Profits Duty. On appeal to the King's Bench Division held (per *Rowlatt J.*) that the assessee carried on a trade and that the fact that he made only one purchase did not prevent the subject matter being a trade.

5 T. C. 159, 12 T. C. 358 and 7 T. C. 125 ref.

Martin v. *The Commissioner Inland Revenue.*

11 T. C. 297 (302, 308, 310).=(1926) 1 K. B. 550=95 L. J. K. B. 497=135 L.T 523=42 T.L.R. 233=(1927) A.C. 312=96 L. J. K. B. 379=136 L. T. 580=43 T. L. R. 116.

TRADE OR BUSINESS—POST-WAR ISOLATED TRANSACTION

Finance Act, 1915, Ss. 38,39,40, Schedule IV. Part II Isolated transaction—Business commenced after the 1914 War—Assessibility to Excess Profits Duty—Construction of Finance Act 1915 and subsequent Act.

Three persons, members of three firms, engaged in wine trade, entered into a speculation independently of their firms, forming together a little syndicate for speculative purpose. They bought a large quantity of cape brandy from the Government of South Africa. They did not buy the entire quantity there all atonce but piecemeal, as they did not know how much of it was there, but ultimately they did buy the whole lot.

They succeeded in selling some of it at a profit for export to the East and they brought the remainder home to the United Kingdom. They blended it with French Brandy for which they employed three firms whom they paid. They, recorked it in more casks, of course, and then they disposed of it piecemeal in some hundred transaction within a period of fourteen months. It was admitted that the intention of these gentlemen forming the syndicate was to sell the whole of the brandy in question at a profit. This intention was successfully carried out in the manner above indicated. None of these three persons had ever before been engaged in a simlar transaction. On assessment to Excess Profits Duty on the profits of the sale of the said brandy in the above mentioned manner, the assessees' syndicate contended that the profits were capital profits on the realization of speculative investment and were not profits arising from any trade or business carried on by them that theirs was an exceptional and isolated transaction, not amounting to carrying on of trade or business. Alternatively they contended that as their trade or business, if at all taken to be so, commenced in 1916, *ie.* after the outbreak of the 1914 war, they were not chargeable to Excess Profits Duty.

There was no question or dispute as to the amounts or figures. The Commissioners held that the profits were from trade or business carried on during the accounting period and that the same were chargeable to Excess Profits Duty.

On appeal, the King's Bench Division (Per *RowlettJ.*) upneld the Commissioner's findings. The Court of Appeal also upbeld the said finding, on a true construction

of the 1915 Act and the subsequent Finance Act, connected therewith. Referring to Section 45 (1), Finance Act, 1920, it was observed :—

(Per *Lord Sterndale M.R.*)

"Therefore, it speaks, of a business which had no pre-war trade year and contemplates that such a business might and would be chargeable with Excess Profits Duty".

Subsequent litigation on the same subject, it was observed, might be looked into to see what is the proper construction to be put on an earlier Act, where that earlier Act is ambiguous on any point.

(1900) 1 Q B. 156 ref.

The Cape Brandy Syndicate v. *The Commissioner Inland Revenue.*

12 T.C. 358 (262, 368, 373, 382)=(1921) 1 K. B. 64=(1921) 2 K. B. 403=90 L. J. K. B. 461=150 L. T. J. 266=125 L. T. 108=37 T. L. R. 402.

Ss. 38,39 and Schedule IV Part I, R. 81 lease of property—income from dividend and of interest of investments and from rent under leases—Trade or business—Assessibility to Excess Profits Duty.

Assessee company was formed to take over the lease of a theatre and some other theatrical proparties. During the several five accounting periods from 1st April 1914 to 31st Maroh, 1919 it had no interest in any theatrical property or effects. During the said five years the whole of the real estate belonging to the company was let to five tenants under leases the period of which was in no instance less than 89 years.

Apart from the secretary and derictors, the company had no officers. An accountant audited the company's accounts and was paid fee for his services. The income of the company consisted of the rents payable by the aforesaid five lessors and of interests and dividend from investments. The business transacted at the directors' meetings was purely formal; accounts were received and passed, dividends declared and officers elected.

On these facts, the company contended that that it did not carry on any trade or business and was not liable to payment of Excess Profits Duty, or that, alternatively, its income was excluded from liability under Rule 8. Part 1, Schedule IV, Finance Act, 1915. The Commissioners, accepting the company's contention, discharged the assessment. On a case being stated, the King's Bench Division reversed the Commissioners finding and held that the assessee company was carrying a trade or business and was assessable to Excess Profits Duty.

12 T. C. 181 ref. 12 T. C. 174 not appl.

The Commissioners Inland Revenue. v. *The Birmingham Theatre Regal Estate Co. Ltd.*

12 C 580 (582, 584, 585, 586)

Digest of Excess Profits Duty Cases

(Under India Excess Profits Duty Act No. X of 1919)

BUSINESS, IF ONE

Section 2 (5) Proviso 3 and Section 4—Assessee having two shops at different places—Business of one retail, of the other wholesale—Number of articles dealt with at the two shops varying—Not a single business—Excess Profits Duty Assessment, nature of.

Assessee had two shops at two different places, N. & E. For the purpose of assessment to Excess Profits Duty the income of his both shops were concluded together and created a single business.

Assessee contended and sought a reference to the High Court on the point, that the businesses of his two shops were different, that of shop at N being retail and dealing in over 70 articles of merchandise while that of shop at E was wholesale dealing with only four or five articles, that the accounts of the two shops were different though the goods at the two shops were of the same class.

On these facts, assessee was assessed to Excess Profits Duty on the assumption that the business was a single one with in Section 2 proviso (5) and Section 4. It was held that the expression in Section 4 inrespect of any business to which this Act applies appeared to indicate a single business.

Held (by the High Court in refernce) that the businesses at the two shops were different as contended by the assessee.

Commissioner of Income-Tax, Office of the Board of Revenue Madras (Referring Officer) v. *N. Govindasami Naidu (Assessee).*

1. I. T. C. 174, (176).

BUSINESS, WHAT IS.

Section 2(3)—Business' meaning of—Meanig of the term, the same as under Income-tax Act—Company owning house property, stalls etc.—Letting out on rent and distriburing same as dividend—Not carrying on 'business'—Nature of Excess Profits Duty—English law.

The definition of business in the Income-tax Act is reproduced *verbatim* in the Excess Profits Duty Act. Accordingly in spite the wide language used in Section 3, it is difficult to hold that the Act contemplates any expansion of the word 'business' beyond the meaning assigned to it under the Income-tax Act.

The Kaladan Suratee Bazar Company Ltd. (at Moulmein and Rangoon) had its income derived solely from rents of houses and bazar stalls belonging to them. The

Financial Commissioner held that as these companies existed for the purpose of owning houses and buildings to be divided into tenaments and stalls and to be let out, they carried on business. According to the Financial Commissioner's view looking to the definition of the term, 'business' in Section 2 Excess Profits Duty 1919, which as he observed was not exhaustive, the business of the companies was business for the purpose of excess Profits Duty because they were not exempted in the Schedule of the Act as prefessions were.

On company's behalf it was contended that the connotation of term 'business is the same both in the Income-tax and the Excess Profits Duty Acts and that a person or company drawing income from house property was clearly not contemplated by the Income-tax Act as carrying on a business but was assessed on income from property. The Lower Burma Chief Court held (per *Sir Daniel Twomey* Chief Judge and Mr. Justice *Robinson*) that the companies were not carrying on business for the purposes of Excess Profits Duty Act. It was pointed out that although the definition of 'business' in the two Indian Acts (*i. e.* the Income-tax and Excess Profits Duty Acts) is not exhaustive, its looseness will not justify the introduction of things which according to the scheme of the Income-tax Act are wholly dissimilar and that an examination of the Acts did not support the Financial Committee's view.

It was further pointed out that on general considerations also it would be difficult to hold that these Bazar companies were 'carrying on business.

It was also pointed out (with reference to the English case Commissioner of Inland Revenue *versus* Korern Syndicate (1920) 1 K. B. 598=12 T. C. 181) that it did not make any difference that assessees in this case were companies and not individuals. Lastly it was observed:— The mere fact that they have each a place of business and that they have registered under the Companies Act is not material. A man who has invested his capital in house property and who keeps a rent office and a staff of rent collectors, clerk etc., for the purpose of letting out his houses and collecting the rents is not carrying on a business. He is merely taking the ordinary steps necessary for enjoying the income from his property. If he bought and sold house property continually he would then, no doubt, be carrying on a business. He would be trading in house property but not if he only bought a house or sold one, from time to time, as incidental to his position as owner of house property. And this is apparently the position of the companies now under consideration. They may add to their property by purchase or by sale of a particular part of their property, from time to time, but this is only incidental to their main purpose which is to hold property and distribute the rents in the forms of dividends to the shareholders. They are no doubt an association for acquiring gain, but the method of acquiring gain is passive by owning property and not by the active carrying on of a business. I would therefore, decide that these two companies are not liable to Excess Profits Duty.

(1880, 15 Ch. D. 247 reference).

As to the nature of Excess Profits Duty and its distinction from Income-tax it was observed:—

In framing the Excess Profits Duty Act the legislature had before them the Income-tax Act with its clear distinction between income derived from house property and income derived from business and yet we find that they impose the Excess Profits Duty only on excess profits arising out of certain business (*vide* the preamble of the Act), not on 'certain sources of income' as we might, I think, expect if it was really intended to throw the net wider and bring under assessment to Excess Profits Duty sources of income other that those classed as business in the Income-tax Act.

As to the English law on the point that the same remark may be applicable to the term 'business' in the Indian Act, as under the English Law. It was pointed out that in the Commissioners of Inland Revenue *versus* Sangster (1920) 1 K.B.587 10 T. C. 208: *Mr. Justice Rowlatt* remarked: "It looks as if in the use of the vague word 'business' the legislature was not glancing at anything more than what is taxable under Case I of Schedule D. Income-tax Act 1842."

Kaladam Suratee Bazar Co. Ltd and Suratee Bazar Co. Ltd. In reference.
1 I. T. C. 50 (51, 52, 53, 54)=(1920) 56 I. C. 914.

CAPITAL EMPLOYED IN BUSINESS.

Excess Profits Duty Act, Sections 5 & 6 (1) (b) R. 20—Excess Profits Duty Rules 1920—Enhancement of Excess Profits Duty—Investment in shares of public companies and war loan and Government Securities—Loans to private individuals and business concerns—Capital employed in business period.

In this case, which was one for enhancement of Excess Profits Duty under R. 20 of the Excess Profits Duty Rules 1920, the question was whether monies invested by the partnership business, the assessees in the case, in shares or public companies, in war loans and Government securities, and loans advanced to private individuals was 'capital employed in the business.'

It was held that amounts invested in shares of public companies, in Government securities and loans to business concerns and private individuals were all items of the nature to be treated as part of the capital of the firm and were consequently to be included as such, in computation, both for the accounting and the standard periods.

Martin & Co. v. *Secretary of State.*
1921 Cal. 639 (641)=25 C. W. N. 875=67 I. C. 909.

CAPITAL EMPLOYED IN BUSINESS—INCREASE OF.

Excess Profits Duty Act, (1919) Section 6, Proviso 1 —Increase in average capital—Burden of proof on assessee.

An incometax assessee wishing to obtain the benefit of the proviso to Section 6, Excess Profits Duty Act 1919, is duly bound to put before the Collector and the Board of Revenue satisfactory evidence that his capital has been increased, as alleged by him. Where he did not do so, but contented himself by putting in some very

inconclusive returns, in spite of the fact that he had an opportunity of putting further evidence or further explanation before the Collector but he refused to avail himself of it and stood on the return already furnished all that could be said was that he had not brought himself with the exemption provided for in Section 6, Proviso 1.

Deputy Commissioner & Secretary to Chief Commissioner I. T. Madras v. *S. Hajee Abdulla Sahib.*

1921 Mad. 717 (718)=14 M. L. W. 413=70 I. C. 30.

EXCESS PROFITS DUTY, NATURE OF.

Excess Profits Duty Act 20 of 1919—Assessment under Excess Profit Duty—nature of.

The assessment of Excess Profits Duty under the Excess Profits Duty Act 10 of 1919, is on the profits of the business and on the person owning the business or entitled to the Profits.

The Commissioner Income-Tax, Offce of Board of Revenue, Madras v. *N Govindasami Naidu.*

1. I. T. C. 174 (176).

EXCESS PROFITS DUTY ACT INTERPRETATION.

Excess Profits Duty Act (1919) Construction of—Intention of Legislature—Section 4, Provision of.

The Excess Profits Duty Act contains no provisions that the tax is to be paid within one year. A comparison of the Act with the Incom-tax Act makes it clear that this was not the intention of the legislature.

The Excess Profits Duty Act simply provides in Section 4 that it is to be "charged, levied and paid" and the legislature whilst making Sections 21 to 24 and 26 to 27 as well as other Sections of the Indian Income-tax Act, 1918 has omitted Section 25, which as already mentioned, provided for the assessment in the following years, of income which has escaped assessment in any year.

Deputy Commissioner & Secretary to The Chief Commissioner I. T. Madras v. *Lekshmi Dass Pursuhotam & Co.*

1911 Mad. 228=44 Mad. 768=41 M. L, J. 189=14 M. M. L. W. 57=1921 M. W. N. 513=63 I.C. 420.

EXCEPTION.

Schedule 1, Excess Profits Act (10 of 1919)—English and Indian Law—Part III Finance Act 2 of 1915, Section 39 and English Income Tax Act 1842 Schedule D—Foundation of excepted business uuder the Indian Law.

It is interesting to compare the English legislature on the subject with the Indian enactment. The first case in Schedule D, (English) Income tax Act, 1842

deals with duties on trade profits. It is headed, "Duties to be charged in respect of any trade, manufacture, adventure or concern in the nature of trade not contained in any other Schedule of this Act."

The first case in Schedule D is evidently the source from which the definition of 'business' in the two Indian enactments, (*i.e.* Income-tax Act. 1922 and the Excess Profits Duty Act, 1919) comes. Turning now to the English Provisions for Excess Profits Duty which are contained in Part III of the Finance Act. (No. 2) of 1915, Section 39, we find that 'Excess Profits Duty' applies to all trades and businesses of any description excepting:—

(*a*) husbandry in the United Kingdom.

(*b*) offices or employments : and

(*c*) any profession the profits of which are dependent mainly on the personal qualifications of the person by whom the profession is carried on and in which no capital expenditure is required, or any capital expenditure of a comparatively small amount; but including the business of any person taking commissions in respect of any transactions or services rendered, and of any description (not being a commercial traveller, or any agent whose remuneration consists wholly of a fixed and definite sum not depending on the amount of business done or any other contingency.)

This is clearly the foundation of the excepted businesses schedule (Schedule 1) of our Indian Excess Profits Duty Act, X of 1919."

Kaladan Suratee Bazar Co. In re.

1. I. T. C. 50 (52)=(1920) 56 Ind. Cas 914.

Excess Profits Duty Act, 1919—Schedule 1, clause (2) Exception under offices or employments remunerated by commission not within "Excepted business"—Persons acting as agents not being whole-time servents not wnthin the exception.

Assessees in this case persons acting as agents in Bombay of the Aurangabad Mill Ltd. They were entitled to receive from the company a remuneration of ten percent on the net annual profits of the company for their services as agents, subject to a minimum of Rs. 12,000 per annnm. They were assessed to Excess Profits Duty.

They claimed exemption under clause (2), Schedule 1, Excess Profits Duty Act, 1919. The Chief Revenne Authority did not entertain their contention. *Held*: on reference, by the High Court that they were not entitled to the exemption claimed that obviously it was never intended that persons in the position of the petitioners acting as agents, secretarier or treasures, or agents of a mill company under the usual form of agreement and remunerated by a commission which would depend on

outturn or amount of profits were to be considered as carrying on a business excepted under Sch. I., and that, even if under the agreement, they were to have the general conduct and management of the business and affairs of the company, it could not be said that they were whole-time officers or servants of the company as there was nothing in the agreement to prevent them from carrying on other business.

Doraiswami Iner & co. In re.

1 I.T.C. 93 (96)=(1921) I.L.R. 45 Bom. 1064=23 Bom. L.R. 609=63 I.C.775.

INTERPRETATION OF STATUTE ENGLISH LAW.

Excess Profits Act, 1919, Schedule 1, Clause 3, provisio, Interpretation of—English law.

The proviso which comes after No. 3 in Schedule 1 is obviously taken from Section 39, Chadter 89, of the English Finance Act, 1915. That section provided that the trades and businesses to which that part of the Act applied were all trades or businesses (whether continuously carried on or not) of any description carried on in the United Kingdom or owned or carried on in any other place by persons ordinarily resident in the United Kingdom excepting those described in (a) (b) (c), but included the business of any person taking commissions in respect of any transactions or services rendered, or any agent of any description not being a whole time officer or servant of the business or a commercial traveller of an agent whose remuneration consists wholly of a fixed and definite sum not depending on the amount of business done or any other contingency.

The draftsman of Schedule 1 evidently took that Section for his mode, but did not exercise sufficient care in the transposition of its terms which became necessary owning to the businesses excepted being entered in a schedule instead of in the body of the Act.

The last paragraph of Section 39 of the English Finance Act, made it clear that certain businesses were included in the term "all trades and businesses" and did not come within any of the exceptions. The proviso in Schedule 1 can, strictly speaking, only be appropriately attached to Exception 2 and possibly to Exception 1, but I think the only way in which the proviso can be given any meaning is to read it as governing generally the three kinds of businesses which were enumerated under headings Nos. 1, 2 and 3 or, put in another way, as including the businesses mentioned therein as within the terms of Section 3 of the Act. Any other construction given to the proviso would result in absurdity if attached to heading No. 2 onla it becomes meaningless.

Dorriswami Iyer & Co., In re.

1 I. T. C. 93 (96)=(1921) I. L. R. Bom. 1064=23 B. L. R. 609=63 I. C. 775

INTERPRETATION OF WORDS & PHRASES.

Excess Profits Duty Act, 1919, Schedule II Clause, 2, Proviso—"Employed in the business meaning of":—Accumulated profits, if and when can be 'capital employed in business'—Schedule II (1) (c) proviso.

Assessees in the case were a company carrying on business as ship-owners in Bombay. On being called upon to furnish a return of their profits for Excess profits Duty purposes, they pointed out in their return that they were not liable to Excess Profits Duty.

On being assessed to Excess Profits Duty by the Collector of Income-tax and on notice of demand being issued, they appealed, contending that the Collector had refused to take into account cash and investments amounting to Rs. 1, 08,11,684, as forming part of their capital on 31st December, 1918, except to the extent of 40 lacs, whereas, even on 31-12-1917, the cash and investments amounted to Rs. 89,82,434. They alleged the said sum of Rs. 1,08,11,684, had been retained in business for the purpose of discharging liabilities, except sums kept in liquid form for the purpose of business *e. g.* purchase of steamship as soon as conditions permitted, The said cash investments had, since 31st December, 1918, been reduced to Rs. 83, 45,224.

The Chief Revenue Authority confirmed the assessment made by the Collector, refusing to refer the question to the High Court (as requested on the ground that the law on the point was quite clear.

It was observed: "This company made very large profits during the war and invested a large amount of them in securities. They did not distribute these investments as dividends nor employ them in the business. They now claim that the securities are assets of the business and capital employed in the bussness, saying that they have entered into large contracts for laying out the money, and were prevented by the war from doing so, also that those are assets employed in the business because if the company were liquidated these sums would be used to meet the liabilities and if the business were sold, the securities would be assets.

Under the Act, it is not the company which is liable but the *business* of the company. The first proviso in Section 6 states the basis for determining the average profits of the standard years, and states clearly that it is the average capital employed in the business' which is the basis. The words capital so employed' make this still clearer. Again Schedule II (1) (c) proviso shows that accumulated profits must be employed in the business if they are to be taken as capital.

It is quite clear to me that a great part of the profits which were invested are in the present case under appeal in no sense capital employed in the business, but merely immense profits obtained in exceptional circumstances which the firm did not and could not employ in the business. To allow such profits to be counted as capital would defeat the whole letter and spirit of the Act, and the result would be that those concerns which made the heaviest profits would escape all Excess Profits

Duty by investing them in securities.

On the assessee obtaining a rule under Section 45, Specific Relief Act, the High Court holding that a reference to them had been rightly disallowed by the Chief Revenue Authority, the High Court discharged the Rule and upheld the assessment. The High Court, in doing so, observed :—The petitioners claimed that the whole of their cash and investments were employed in the business. They made no attempt to assist the Collector or Chief Revenue Authority in deciding how much was employed in the business with the result that a haphazard guess was made at the amount, instead of employing proper accounting methods. The questions which the petitioners formulated in their letter of the 5th August to the Chief Revenue Authority, were really question for a Chartered Accountant and not question with regard to the interpretation of the Act. Supposing those questions were before the Court, they could only be answerd with the assistance of experts. But it may be permissible to make a few remarks on the facts as presented to us. Ordinarily speaking the excess in balance sheet of assets over liabilites is profit. On the balance sheet produced before us that excess is over sixty laces, if the reserve fund is not considered is a liability since it represents past profits which have not been distributed. But if the ships are valued as the petitioners wish them to be valued for the purpose of increasing the capital as at the end of the accounting period, the profits would be over rupees eighty-six lacs including, of course, the profits earned during the accounting period. This amount is actually represented by cash and investments and could be distributed among the share-holders by way of dividend. If, however, it was represented by ships, even though they were purchased at the end of the accounting period, it would be profits employed in the business.

As on the 31st December, 1918 it had not been so employed, it cannot be argued that it makes no difference so long as it was intended to be employed."

The Act, it was further observed: did not say that the profits *intended to be employed* in the business could be treated as capital.

(Per *Fawcett J.*) "The words 'employed in the business' in the proviso to Rule 1 of Schedule 11 to the Excess Profits Duty Act, 1919. *prima facie* bear their natural meaning of '*actually* employed in the business' and cannot properly be construed as if the words were "employed or *intended to be employed* in the business." If the latter had been intended, they would presumably have been used, just as they are used in Schedule D, Cases 1 and 2, Rule 3 (f) of the English Income-tax Act, 1918, whic specifies "any sum employed or intended to be employed as capital in such trade, profession, employment or vocation."

Bombay & Persia Steam Navigation Co. v. *In re.*

1 I. T. C. 97, (94) (102)=(1921) I. L. R. 45 Bom. 881=23 B. L. R. 193=60 I.C. 964.

The above decision was reversed by thier Lordship of the Privy Council. See Alcock, Ashdow'ns case reported infra).

Excess Profits Duty Act (X of 1919) Section 18, Rules under—R. 24 (3), Proceedings for the recovery of any sum meaning of—commencement of proceedings.

Under Section 18, Excess Profits Duty Act, 1919, there are certain rules made. In R. 24 (3) of these rules, the words, "proceedings for the recovery of any sum" occur. The sub-rule provides that, same in accordance with the provisions of sub-rule (1) of rule 11 the proceedings for the recovery of any sum payable under the Act or these rules shall be commenced after the 31st March, 1921. The question in the case was whether the words, "proceedings for the recovery of any sum" refer to proceedings taken after default has been made in payment or whether such proceedings began when a notice of demand has been served on the assassee.

It was held that the above expression means the proceedings taken under sub-rule (1) of this rule (*i.e.* R. 24) after default has been made in payment.

Gian Singh Bahadur Singh v. *The Crown.*

1924 Lah. 54=4 L. 165=73 I. C. 106.

PROFITS ASSESSABLE

Excess Profits Duty Act, 1919—Ss 2, 3, 15 and R. 31 E P. D. Rules—Income from racing if profits liable to Excess Profits Duty—Income from non-members, liability of, to Excess Profits Duty—"Carrying on of business".

Assessee, in this case, the Royal Calcutta Turf Club was assessed to Excess Profits Duty on its income from racing under Excess Profits Duty.1919.

The Club requested the Chief Revenue authority for a case to be stated for the opinion of the High Court, under Section 15 Excess Profits Duty Act. modifited by R. 31, of the Excess Profits Duty Rules.

The club was for the first time assessed to income-tax in 1918 and its liability to income-tax was not disputed. It was, however, contended that its income did not includes any profits from a business within the meaning of Excess Profits Duty Act.

Entrance fee to the stand, paddocks and enclosures, or gate money, entrance fee paid by owners of horses, horsekeepers, license fees, percentage on the totalizators and percentages on sweeps on the Derby and St. Ladger, all received from non-members were the heads of income treated by the Board of Revenue as profits liable to Excess Profits Duty. It was considered that the facts that the members of the club did not derive any profits or that a part of the income was employed in charity did not, affect the case, in the Board's opinion.

The club controlled and encouraged racing and country horse breeding and looked to the general convenience and comforts of the members and of those atten-

ding the races.

The High Court held that the Club was liable to Excess Profits Duty, on the income of the club from the sources above enumerated except "percentage on sweeps on Derby and St Ledger".

It was also held that the club were carrying on either a trade or an adventure or concern in the nature of trade (it not being decided whether the definition of the term 'business' in Excess Profits Duty Act, Section 2 was exhaustive.)

Carlisle and Silleth Golf Club v. *Smith.*

(1912) 2 K. B. 177=(1913) 3 K. B. 75=12 T. C. rel,

The ovservations of the Master of Rolls, Lord Justice, Buckley and Lord Justice Kennedy, as under, were cited by the High Court as authority and interpretation of the term, carrying of of business (*Master of Rolls*): It seems to me that there is a real difference between the moneys received from members and applied for the benefit of members and moneys received by the Club from strangers. I cannot draw any distinction between gate moneys, which might be, and, I believe, sometimes are, received by a Golf Club, and green money, in each case the Club would be assessable."

Lord Justice Buckley:—If it were necessary (which it is not) to decice whether the Club were carrying on an adventure or concern in the nature of trade, I am of opinion that they were, to determine this question it is not the character of the person who curries on but the character of the concern which is carried on that has to be regarded. If a land-owner laid down upon his land a golf course and charged fees for admission and used it, that is to say, the links were a proprietory golf links carried on with a view to profits,—there can be no question but that the proprietor would be assessable.

Lord Justice Kennedy:—But upon the facts appearing in the case, it appears to me that this club is really carrying on the business of supplying to the public for reward a recreation ground fitted for the enjoyment of the game of golf, and that the receipts derived from this business are in the nature of profits and gains in respect of which it is liable to assessment for income-tax. As to the point that the members did not derive any benefit from the club and and that surplus is used for charity, it was observed: "It does not seem to me material what is the ultimate destination of the surplus, if any, which the Royal Calcutta Turf Club receives in respect of these matters. The test is whether the moneys are received by the Club from non-members of the Club and in exchange for something high is given by the Club and in respect of which profits is made.

The Rogal Calcutta Turf Club v. *The Secretary of State for India in Council*

11. T.C. 108 (111, 112 & 113)=(1921) I.L.R. 48 Cal. 844=25 C. W. N. 734=66 I.C. 473.

PROFITS—ASSESSABLE, SUPERTAX.

Excess Profits Duty Act' 1919—Section 19—Scope and applibability of.

Section 19 merely provides for the protection of the taxpayer, that the profits of any business shall not be chargeable both with super-tax and excess profits duty, but with whichever is the higher, and has no application to a case in which profits are chargeal le only with Excess Profits Duty and not with super-tax. It does not relieve profits from the liablity to Excess Profits Duty by Section 4 unless such profits are chargeable with supertax and the super-tax exceeds the Excess Profits Duty.

Deputy Commissioner & Secretary to Chief Commissioner Income tax, Madras. v. *Lahshmi Dass Purushotham & Co.*

1921 Mad. 228=44 Mad. 768=41 M. L. J. 189=14 M. L. W. 57—1921 M.W.N. 513=63 I. C. 720.

REFERENCE TO HIGH COURT.

Excess Profits Duty Act, 1919—S. 6 & proviso to S. 6 (1) Interest bearing securities whether capital employed in business—Question of law, fit for reference to High Court Point of law—duty to state a case, S. 45 Specific Relief Act, applicability of English and Indian Law, difference between.

In this case, assessees were assessed by the Collector of Income-tax to Excess Profits Duty for the accounting period ending 31st December 1918. They had elected to have the standard profits of the business ascertained under Section 6 (1) (b) (iii) Excess Profits Duty Act, 10 of 1919.

They claimed a deduction in accordance with the first proviso to Section 6 (1) (b) of the said Act in computing the profits chargeable, on account of an increase of average capital employed in the business at the end of the accounting period. In the alternative they prayed for a statement of case to the High Court for opinion.

The Chief Revenue Authority declined either to discharge the assessment or to refer the case to the High Court for opinion. Assessees, obtained a rule under Section 45. Specific Relief Act, which was later discharged by the High Court (Bombay) (*vide* 1 1. T. C. 97, 98 Bombay Persia Steam Navigation Company case above) on the ground that the question involved was one of fact and that, therefore, as the Chief Revenue Authority had rightly decided, a reference to the High Court was unnecessary.

On appeal to the Judicial Committee of the Privy Council, the finding of the Bombay High Court was reversed and the Rule *nisi* was made absolute.

Re: the application of Section 45, Specific Relief Act, while holding that Section 45 applied, their Lordships of the Privy Council observed : "In their Lordships view, the order of the High Court to a Revenue officer to do his statutory duty wo-

uld not be the exercise of 'original jurisdiction in any matter concerning the revenue,' and the latter part of the clause need not be considered , for the proceedings in this case had not to do with the collection of the revenue, but with the preliminary assessment to ascertain what that revenue was.

On the point of the duty of the Revenue Authority to state a case, it was pointed out "In their Lordships view, always supposing that there is a serious point of law to be considered, there is a duty upon the Chief Revenue Authority to state a case for the opinion of the Court, and if he does not appreciate that there is such a serious point, it is in the power of the Court to control him and to order him to state a case.

On the facts of the particular case and as to the question involved as being one of land, their Lordships observed:—

"The High Court has apparently considered that there is no serious point of law involved in this case. It was, indeed, contended by counsel for the respondent that the High Court had accepted the position that there was a question of law and then had gone on to decide it adversely to the appellant but their Lordships think this contention inadmissible. If there is a point of law, it ought to be decided in a regular manner and upon prorer materials; and here it should be said that the manner is not regular and that it is at least doubtful whether the material are complete."

Their Lordships then, proceeded to observe:—"In their Lordships' view, an important question of law upon the construction of the statute is involved. This may be most tersely expressed by asking the question what are the interest bearing securities which form part of the assets of business and are, therefore, to be treated as part of the capital; and one guide in arriving at this conclusion may well be the difference of language between the later Indian and the earlier English Act."

Pointing out the difference between the Indian and the English Law on the point their Lordships observed :—"It is true that these are not Acts of the same legislature, and that the Indian legislature and the draftsman whom it employed may have thought it unnecessary to introduce provisions like those coined in paragraphs 8 and 12 of Part 1 of the fourth schedule of the English Act, and may have meant to variation from the scheme of the English Act when it and he introduced the word 'securities' and spoke of interest on certain securities as being profits from the business. Too much stress, therefore, should not be laid on these differences. At the same time, it is noteworthy that the Indian Act takes of the English Act in Schedule 1, para 4, and the Court may come to the conclusion that the reason for the differences between the two Acts not a mere difference of drafting' but a deliberate variation due to the difference of condition,' under business is carried on in India and in England."

Alcock, Ashdown & Co., Ltd. v, *The Chief Revenue Authority*

1 I. T. C. 221 (225, 226, 227)=(1923) I.L.R. 47 Bom. 742=50 I A. 227=25 Bom.L. R. 920=45 M. L. J. 592=(1923) M. W. N. 557=33 M. L. T. (P.C.) 267 =18 L. W. 918=21 A.L.J. 689=39 C.L.J. 302=28 C.W.N. 762=A.I.R. (1923) P.C. 138=75 I. C. 392.

Excess Profits Duty Act, 1919—Section 15—Reference by Chief Revenue Authority to High Court—when may be made—Sectien 45 Specific Relief Act, 1877—Wise exercise of discretion by Chief Revenue Authority—Court's Power.

Under Section 15 of the Excess Profits Duty Act, Sections 49 to 52 of the Income-tax Act 1918, were applicable. According to Section 51 of the last mentioned Act, the Chief Revenue authority had the discretion and power to draw up a statement of the case and refer it to the High Court for opinion, where a question arose with reference to the interpretation of any of the provisions of the Act or of any rules thereunder.

Under the said Section 51, the Chief Revenue Authority was authorized to come to a decision that a reference was unnecessary where application for reference is thus refused, the Court might consider whether it was incumbent on the Chief Revenue Authority to make the reference. For this purpose, it may as well be to consider the petition on its merits and to see whether the Chief Revenue Authority exercised a wise discretion in coming to the conclusion that a reference was unnecessary.

Doraiswami Iyer & Co. In re.

1 I. T.C. 92 (95)=(1921) I.L.R. 45 Bom. L.R. 1064=23 BOM. L.R. 609=63 I.C. 775.

United Kingdom Excess Profits Tax

(Under The English Finance Act, 1939)

ASSETS DEFINITION OF

S. 13 (3), Sched 7, Part 11, Para 1,—Meaning of assets—Payment of contribution to superannuation fund to obtain benefit for employees—Transaction amount to purchase—Acquisition of assets—Asset : Meaning thereof.

It can not be suggested that the word "asset" as applied to a trade or business, is restricted to material things that you can touch and see, because it includes debts. It includes right of every sort. In case of contribution made a company to super annuation fund to equalise benefits for its employees, by the payment the company did acquire the right as against the trustees of the fund to compell them to pay the increased benefits to its employers and the transaction was a purchase of benefits by way of allowances and benefits and the company thus acquired an *asset*. So the capital of the company ought nor to be decreased by the amount of the contribution.

By a trust deed dated March 27, 1922 a large trading company, called Van den Berghs, Ltd., established a contributory superannualtion fund for the benefit of its empoyees and of their widows and other dependants. The employess contributed 5 percent of their annual salaries to the fund and the company contributed an amount equal to the contributions of its employees. The contributions were payable as from Jan.1, 1921: but, since the amount of the allowance or pensions payable out of the fund was calculated on the length of service of the employees, the company paid into the fund, in respect of those employees whose employment had commenced before Jan. 1 1921. an amount equal to the sum which would have been contributed by it the and those employees who entered its service before that date if the fund had then been established when their employment commenced, and thus, from the very first, self supporting.

The fund was administered by four trustees, two of whom were appointed by the directors of the company, and two by the employees.

In 1928 a newly formed company called Margarine Union, Ltd. acquired a controlling interest in Van den Berghs., Ltd. and also in another large trading company called Jurgens, Ltd., and thererfter the name of the new company was was changed from Margarine Union, Ltd., to Unilever, Ltd.

By deed dated December 28, 1928, the trust deed of March 27th, 1922 was revised, so as to admit the empoyees of Jurgens, Ltd. to the benefits of the superannuation fund, and they were accordingly admitted to it on terms which entitled them to the same allowances and pensions for themselves and for their widows and dependants as if they had been contributors to the fund from the commencement of their service with Jurgens, Ltd. They were placed, in all respects, on a parity, with empoyees of Van den Berghs, Ltd. By a further deed, dated Feburary 18 th 1932 provision was made for the admission of the emplyees of the appellaut company,

which had been incorporated in 1894 under the name of Lever Bros., Ltd. to the fund as from July 31st 1931, and the number of trustees was then increased from four to six, three to be appointed by the employers and three by the employees. The employees of the appellant company were not, however, placed on a parity with employee of Van den Bergh and Jurgers, since the benefits to which they became entitled were not calculated on the basis that they had been admitted to the fund at the date when they entered the service of the appellant company; their benefits were calculated as from the date when they were in fact admitted to the fund, namely, July 31st 1931.

In 1937 the appellant acquired the undertaking Unilever, Ltd., and changed its name from Lever Bros. Ltd., to it present name, Laver Bros., & Unilever, Ltd; and the appellant then arranged with the trustees of the fund to mark an annual contribution which would entitle the widows of those of its employees who had entered its service before July 31st, 1931, to receive the same benefits as were payable to the widows of the employees of Van Den Berghs and Jurgens; that is to say, that the benefits would be calculated on the basis that their husbands hed been admitted to the fund when they entered the service of the appellant company; but no such arrangement was made with regard to the pensions payable ty the employees themselves.

In accordance with that arrangement, the appellant paid to the trustees of the fund for each of year 1938 and 1939 the appropriate contribution as computed by the actuary. The amount paid for the year 1939 was £ 18,993. In 1940 the year for which the assessment to the excess profits tax in question on this appeal has been made—the computed value of the future contributions to be made by the appellant to the fund pursuant to the arrangement made with the trustees in 1937, was ascertained, on an actuarial valuation, to be £ 131, 196 12 s., and the appellant then paid that sum to the trustees and thereby put the widows of its employees on a parity with the widows of the employees of Van den Berghs and Jurgens.

In the same year the appellant paid to the trustees the sum £ 895,329 16 s. in order that all its employees might receive allowances and pension on the same scale as the employees of Van den Berghs and Jurgens; that is to say, on the basis that they had been contributors from the date when they entered the employment of the appellant. By these two payments, amounting together to £ 1,026,526 8s., the appellant placed its own empoyees on an exact parity, both as regards the contributions payable to the fund and the benefits receiveable from it, with the employees of Van den Berghs., Ltd., and Jurgens, Ltd.

Lever Bros. & Unilever Ltd. v. *C. I. R.*

1944 All . E. R. 285 (Vol. II). (K.B.D.)

ARTIFICIAL TRANSACTION

S. 35, (Finanacs Act, 1941)- Two directors owning bulk of the capital- One recuri-

ng- The other transafring sufficient shares to two m ore persons to enable to be working proprietor. Transaction of transfer of shares meant for pruposes of reducing liability to excess profits tax-artificial transaction.

Where two directors *A* and *B* owned bulk of the shares and one of them A returned to his country and the other *B* transfered sufficient shares to *C*. nd *D* who had been the secretary and the indoor manager of the company to enable them to become "*working proprietor*" it was held that transfer of shares to *B* to *C* and *D* was meant to reduce the liablity of E P. T. and *C* and *D* were not to be regard as "working proprietors"

Pinner and Willis Limited v. *C I. R.*

(1944)All E. R. 320 (Vol 2) (K.B.D.)

BUSSINESS & PROFFSSION DISTINCTION BETWEEN

Optcian charging for sight testing and prescription-Carrying on business-(S.12(3) Finance Act No 2 of 1939.)

The case states that the premises occupied by the appellant consist of waiting and consulting rooms which have two shop windows facing into Northgate for the exhibition of various kinds of spectacles or sepetacle frames; that a small neon sighn is displayed which has not been illuminated during the *war perioa and was therefore not illuminated during the* taxation periods in question; and that the appellant inserts advertisement is in the local newspapers in a form approved by the joint council. It further finds that the "activities" of the appellant are carried out in the following manner. A person requiring spectacles has his eye-sight tested by the appellant, who then makes out a prescription for the spectacles required. These spectacles are not made by the appellant but are ordered by him from a spectacle maker, and on being supplied to him his sole concern is to see that they comply with the prescription and that they fit the customer. Neither the appellant' s books of accounts nor the statements rendered by him to his customers show a separate fee for sight testing or prescribing. The figure shown in each case in one sum stated by the appellant to be inclusive charge. The appellant stated in evidence before the Commissioners that in computng his charges he took into account a sum of 5s. for sight testing and, except in Nationsl Health Insurance cases, a further sum of half a guinea for the prescribing. He further stated that if, after he had made and charged for a sight test, and had provided a pair of spectacles, the customer later required antother pair of spectacles, the only charge made in such case was for the second pair of spectacles and no addition of a sight testing fee was made in computing the amount payable unless it had in fact been necessary actually to make a further sight. Held that the appellant was carrying on the business of supplying and selling spectacles to which the eye testing was ancillary and they therefore confirmed the assessments.

Webster v. *Commissioner of Inland Revenue* (*King's Bench DivisionMacnagthen J. July 23, 1942*) All. E. R. (Vol 2 page 517)

CAPITAL EMPLOYED IN THE BUSINESS

Demolishing of theatre by enemy action—Cost thereof continued to be employed as capital employed in the business.

There is nothing in the Act to suggest that the capital must be gainfully or productively employed in the business during the chargeable accounting period. If the respondents had, of their own volition, demolished the theatre with a view to building a more modern building on its site, it would not have said that until the moment arrived when the new theatre was in existence as a going concern, the capital employed in the business must be taken to have been decreased by the amount of the value of the old theatre. And the fact the demolion was the work of King's enemies and not of traders themselves does not make any difference.

The facts of this case : The respondent carried on the business of theatre proprietors and one of the company's theatres was totally destroyed by enemy action. It was contended on behalf of the Crown that the cost of the demolished theatre was no longer capital employed in the business. It was held on appeal before Court of Appeal that the destroyed theatre remained the capital employed in the business.

C.I R. v. *Terence Byron Ltd.* 1944 All E. R. 608 (Vol 1) (Court of appeal)

S. 12, (English Excess Profits Tax Act)—Commercial travellers employed by one concern, Also representing others- Carrying on trade or business.

In case of a person employed by a concern on fixed salary plus commission who represents other concerns also on commission basis and his income from other concerns exceeds what he gets from the concern in whose employment he is on fixed salary etc. It was held that he is carrying on a trade or business. The facts of the case are :—

The facts with regard to Marsh are that, although for the past 22 years he has been employed by Messrs. Pillman and Phillips as a commercial travellers he has during that period travelled for other firms also, obtaining in each case the permission of Messrs. Pillman and Phillips to do so. At all times material to this appeal, Marsh acted for four other firms who sold various products such as chemical cream, cream powder, jam and bakers sundries. He had no agreement in writing either with Messrs. Pillman and Phillips or with any of these other firms, who were all customers of Messrs Pillman and Phillips. From these other firms the appellant received commission on the orders contained by him for them. The remuneration which he received commission on the orders obtained by him for them. The remuneration which he received from these other firms, according to the account for the year ended March 31, 1940, which forms part of the case, was quite substantial. Out of his total receipts of nearly £ 2,500, the amount received from Messrs. Pillman and Phillips was no more than £ 778 4s. 10d. The whole of the balance of the money was made up by remuneration

received from these other four firms; indeed, the remuneration received from one of the firms, Messrs. Goldrei, Foucard & Sons, egg importers and Manufactureres of bakers' sundries, exceeded £ 1,000.

In these circumsrances it was held by *Macnagthen* J in an appeal before *King's Bench Divison* that in these circumstances there was ample evidence for arriving at the conclusion that Marsh was carrying on the business of a commercial traveller and was therefore assessable to excess profits tax in respect of that business.

Marsh v. *Commissioner or Inland Revenue.*

1943 A. T. C. 13, (1943) All. L. R. 199 (Vol. 1). (K. B. D)

COMPENSATION

Compensation paid for requisition—Amounts to rent under lease—Assessable.

In case of a hotel being requisitioned by the Government and compenstation being paid at the rate of £ 7,600 per annum under the compensarion (Defence) Act, 1939, the compensation paid was rent payable under a lease within the meaning of the latter decision and subject to an assessment under Schedule D case VI, in respect of the excess.

Mellows (H. M. Inspectors of Taxes) v. *Buxton Palace Hotel Ltd.*

1944 All E. R. 223 (Vol. 1). (Court of appeal)

COMPUTATION OF PROFIT IN STANDARD PERIOD

Sched VII, pt I, Para 11 (Finanace Act 2 of 1939)-Deposit made for security-Note to be brought into account in the standard period No extension of contract beyond accounting period.

In case of certain houses sold by the builders and certain money advanced to the purchaser by a building society and secured by the builders the amount of deposit made by the builders by way of security ought not to be brought into account in ascertaining the profit in the standard period and there was no contract extending beyond the accounting period.

The facts of the case are: The appellants carry on a business as building contractors. During the years 1936 and 1937, which constituted the standard period for tht purpose of computing the standard profits of the business, the company sold 18 houses which they had erected on a building estate at southgate Middlesex. The houses were sold to purchasers who had obtained advances from the Hearts of Oak Permanent Building Society to enable them to complete their purchases. These advances, which were secured by mortgages on the houses, were made by the society pursuant to an agreement datad May 1, 1934, as varied by a supplemental agreement, dated November 4. 1936, whereby the appellants agreed, in cases where the amount advanced by the society to the purchaser exceeded 75 per cent. of the purchase price of the house, to guarantee repayment of excess advances, and also to deposit a

sum of money with the society by way of security for the performanace of their obligation, such deposit to be repaid by the society in due course in accordance with the terms and provisions of the agreement. For the 2 years 1936 and 1937, being the standard period,the deposits so made by the appellants with the soceity amounted in all to £ 1, 000.

Held:—The amount or deposit ought not to be brought into account in ascertaing the standard profit as no contract extended beyond to accounting period.

Allen Fairhead & Sons v. *C. I. R.* (1944) All E. R. 636 (Vol. 1) (K. B. D.(

COMPUTATION OF PROFIT

Sched VII pt 1, (Finanace Act No 2 of 1939)-Director holding more than 5 % shares in a director controlled company in standard period but not in chargeable accounting period. No deduction of the director's remunerntions be made in standard—Deduction be Chargeable Accounting period.

Tha Finanace Act 2 of 1939 Sched VII, pt 1, para 10 (1) as amended by act of 1940 provides that in the case of a company whose directors have a controlling interest therein no deduction shall be made in respect of *"directors remunerations"* which does not include the remuneration of a director who (1) is required to denote substantially the whole of his time to the service of the company in managerical of technical capacity, and (2) is not the beneficial owner of or able to control more than 5% of the ordinary share capital of the company.

In this case in both the standard and Chargeable Accounting Period, one F was one of the directors of the company. He was required to devote subs antially the whole of his time to the service of the company in a managerical capacity. In the standard period he was the beneficial owner of 440 ordinary shares or more than 5%of the ordinary shares capital. Accordingly in the computation of the profits of the company in the standard period no deduction was made in respect of his remuneration which amounted to £ 720 p2. In Chargeable Accounting Period F ownedn one of the ordinary share of the company, he had sold his 440 shares on April 4, 1939 Accordingly the Special Commissioners have held that for the purposes of computing the profits of the company in the Chargeable Accounting Period the remuneration of F ought to be deducted. Against this decision the Crown enters this appeal and the Solicitor- General deducted in both-Standard and Chargeable Accounting Periods or not deducted in either with a view to have like compared with like.

Held:—There should be an inclusion of F's remuneration in standard Period as he had more 5% of shares and a deduction in the Chargeable Accounting Period when he owned no shares.

C. I. R. v. *Ash Bros. & Heaton Limited.* (1943) All E.R. 417 (Vol. 2) (K.B. D.)

CONTROLLING INTEREST MEANING THERE OF.

Sched IV paras 4, 7, (b) 11, (Finance Act 1937)-Controlling interest Meaning

thereof Its Respondent Company's two directors holding all shares in an another company—Company a director Controlled one- II appellant company holding shares in 11 companies-fifty percent in four non-resident companies- More than 50 percent in the rest companies, in conjunction with other companies in whom the second company held more 50 shares-II company a director controlled company.

In the lst case if the two sole directors of a company, held, all the issued shares capital in another company, the respondent company has, by reason of holding of majority of the sahres, has controlling interest in the company in which the two directors were the sole directors, directors were the sole directors.

In the 2nd case, the appellant, company held shares in 11 companies- 50 percent of the shares in 4 non-resident companies and more than 50 percent in the rest of companies in conjuction with a company or companies in which the appellant company had more than 50 percent of the shares.

Held:—Before the K. B. D. on 27th March, 8th April 1941

The appellant company had a controlling interest in other companies and controlling interest included direct as well as indirect interest- This decision was upheld in the court of appeal on June 18th , 19th, 20th, 1941.

C. I. R. v. *F. H. Clark & Sons Ltd.*

British American Tobacco. Ltd v. *C. I. R.*

(1941) All E. R. 86 (Vol. 2) (K. B. D)

Sched IV, Pares IV, VII (b) (Finanace Act 1937) Controlling Interest Meaning thereof-Holding of 50% or more sha/as-Amounting to controlling interest.

The word "interest" is a word of wide connotation and the conception of "controlling interest" may will cover the relationship of one company towards another the requisite majority of whose shares are, as regards their voting power, subject whether directly or indirectly, to the will and ordering of the first mentioned company.

The owners of the majority of the voting power in a company and the parsons who are in effective control of its affairs and for times. It is true that for some purposes a 75% majority vote may be required as, for instance (under some company regulations) for the removal of directors who oppose the wishes of the majority.

The fact of this case are: The appellant company's held shares in 11 companies 50% in four of the companies and control of more than 50% of the votes in conjection with a company or companies in which the appellant company had a control of more than 50% of the votes,

British American Tobacco Co. Limited. v. *C. I. R.* (1943) All F.R. 13 (Vol. 1) (House of Lords)

EMPLOYMENT WHAT IS.

S. 12, (Finanace Act 2 of 1939)-Respondent a marine Engineer-Acting as sole representative of a ship building company—Also representing another engineering company Holding an independent office with a paid secretary Contribution to the office expenses by ship builders company and not other Respodent not carrying a business—But in an employment

The respondent Mr. Turnbull is marine engineer and he is a member of the Institute of Marine Engineers from 1919-1934 he was the London Manager of Henry Robb Ltd., ship builders and engineers of Leith , Scotland. On the termination in 1934 of his engagement with Henry Robb Ltd. Mr. Turnbull was engaged in a similar capacity by Phillip and Sons Ltd a company carrying the business of ship builders at Sandquay works Dartmouth, in the county of Devon. In 1931 he had-entered into an agreement of service with an engineering company as is representatives in cartain specified areas on Commission over tu·n over.

Moreover Mr. Turnbull had an office in the city of London. It was his own office. Phillip and Sons Ltd. contributed towards the expenses of it under its ageement, B & S. Massey Ltd made no such contribution. At his office Mr. Turnbull had a secretary, whom he paid out of his own pocket.

Held Mr Turnbull was not carrying on the business,

Commissioner of Inland Revenue v. *Turnbull* (1944) A.T.C. 386. (K. B. D.)

INCOME

Discovery of an alloy by workers-Grant of patents for manufacture and sale of alloy-Royalty received therefrom-Assessable (Sched. IV ,27 (Finansce Act ,1937)

Two of the research workers of Rolls Royce, Ltd., discovered an alloy of aluminium. A patent was taken out by the company for that invention or discovery, and it granted to another company, which is called High Duty Alloys, Ltd., a licence for the manufacture of aluminium alloys in accordance with those patents. The licence provides that High Duty Alloys Ltd., shall pay to Rolls Royce, Ltd., so much for every pound of aluminium alloy made in accordance with the letter patent which shall be sent away from the factory of High Duty Alloys, Ltd., or any other place where the same may be made. That licence agreement does not provide that Rolls Royce, Ltd. shall purchase any of these aluminium alloys from High Duty Alloys, Ltd. but it undoubtedly contemplates that they will, because it provides, that, if, at any time after the expiration of 5 years from the commencement of the licence, Roll Royce, Ltd., shall have ceased for a period of not less than three calendar months to manufacture for sale articles made out of, or made partly out of, any of the alloys, and shall during the same period continuously have manufactured and sold articles made out of metal or alloys at no time the subject of the licence, the minimum royalty payable under the licence shall cease.

Held:—Royalty payments constitute income from other investments and property and are assessable and the payment made for grant of licence should be allowed

as an expense the same being quite separate and distinct for the purchase of the alloys.

I. R. C. v. *Rolls Royce, Ltd.* (*K.B.D. Lawrence*, (1941) All E. R.(Vol. 1) 196

INTERCONNECTION MEANING OF

Ss. 13, (4), 14 (1), 17, Sched V 11. Part 1, Paras 1 and 4, Part 11 Paras 2 (1)—Company subsidiary to another in the standard period—Ceasing to be subsidiary as such in the standard period—S. 17 relating to inter-connected companies applicable or not—debt due to the money-lender deductible.

In this case before King's Bench Division, it has been held that in case of a debt payable by a subsidiary company to a principal company being discharged in the standard period and the subsidiary company ceasing to be a subsidiary of the principal company for the standard period, the debt by the subsidiary company should be deducted in computing the capital of the said company for its standard period and be not ignored in computing the capital of both companies as S.17 relating to intercon nected companies whereby a debt payable by a subsidiary to its principal is to be taken as not existing and thus to be ignored from computation of capital does no apply to companies interconnected before 15th April, 1939, and ceasing to be as such thereafter.

The facts of the above case are : The respondent was incorporated on May 7, 1918, as a company limited by shares for the purpose of acquiring and operating oilfields and oil concessions. It had a capital of £ 100,000 divided into 10,000 shares of £ 10 each. Down to the end of the year 1936 a company called the British Controlled Oilfield Ltd was the beneficial owner of all those shares, and the respondent was indebted to that company for money lent to an amount exceeding £ 8,00,000. In December 1936, the respondent increased its capital from £100,000 to £ 1,000,000 by the creation of 9,00,000 shares of £ 1 each and at the same time, each of the original shares of £ 10 was divided into 10 shares of each, so that the capital became £ 1 000,000 divided into a million shares of £ 1 each. In the following month the public subscribed for 5,00,000 of the respondent's shares in cash and the respondent then took the opportunity of discharging its debt to the British Controlled Oilfield Ltd by the pyment of £ 200,000 in cash and the issue of 4,00,000 shares as fully paid . In this case as the respondent company ceased to be the subsidiary of the British Controlled Oilfields in the standard period (i.e. the year 1937) and the debt payable by it to the lending company is deductible in computation of capital and S 17 relating to ignoring of debts payable by a subsidiary to the principle ought to be read as applying only to companies interconnected after April 1, 1939 and the companies which ceased to be interconnected before that date, and are therefore, chargeable to the excess profits tax separately, do not come within its provisions.

On an appeal before the Court of Appeal the above holding was reversed and it was held that S 17 relating to interconnected companies applies not only to a

company which is subsidiary in both the standard and the chargeable accounting periods but also to one which is a subsidiary only in the standard period or a part thereof.

C.I.R. v Trindad Petroleum Development Co Ld 1944 All F R 141 (Vol. 1)

INVESTMENT MEANING OF

Sched V 11, Para 6 (1) and (2), Royalties received from licences for manufacture and sale of inventions—Not amounting to investments.

The word "Investment" though it primarily means the act of investing, is in common useas a meaning that which is thereby acquired; and the primary meaning of the transitive verb to invest, is to lay out money in the acquisitions of some species of property Royalties received on account of licenses granted for letter patent covering inventions of aluminium alloy and resilient pipe invested by the workers employed in the research department of the assessee do not amount to investments since the employment of workers is not laying out of money. C.

The respondent in this case, Rolls Royce, Ltd; a company incorporated in 1906 and carrying on business as manufacturers of motor chasis and aer engines. is the registered proprietor of leter patent covering inventions of (1) an aluminium alloy known as R. R. 50 and (2) resilient pipe joints. In January, 1930, the respondent granted an exclusive licence to manufacturer and sell the alloy R, R. 50 to a compay called High Duty Alloy, Ltd and in August, 1940 the respondent and High Duty Alloys Ltd granted a limited licence to manufacture and sell that alloy to a company called Wellworthy Diston Rings, Ld. In October, 1939 ,the respondent granted an exclusive licence to manufacture and sell reslient pipe joints made in accordance with its patent to a company called Avimo, Ltd. Each of these licences provided for the payment of a royalty to the respondent.

Royalties received from licences for the manufacture and sale of inventions made by the employees of the licensors are therefore held not investments liable to excess profits tax, since the employment of workers is not apaying out of money.

C. I.T. Rolls Royce Ltd 1944 All E R. 340 (Vol. 2) (K. B. D.)

PROFESSIONAL INCOME WHAT IS ?

S. 12 (3), (English Excess Profits Tax Act.) Qualified optician—Income derived by fee for advice and prescription—Carrying on profession.

There is difficulty in defining where is or what is not a profession within the meaning of that word. Personal qualifications referred to some such qualifications as are needed in what one know as learned professions. Before one can say that a man is carrying on a profession, *who at the same time* one must see that he has some special skill or ability or some special qualification derived from training or experience. Even there one has to be very careful, because there are many people whose work demands great skill and ability and long experience and many qualification, would not be said by any body to be carrying on a profession.

The facts of this case are: The respondent who gave evidance before us stated that, after saving an apprenticeship to his father for five years, he gained experience by working with and assisting oculists at clinics and surgeons at hospitals under the Lancashire County Council and with Opthalmic surgeons at Home Office schools in Lancashire for upwards of 17 years including experience in to fitting of contact lenses. He then become a Member of the National Association of Opticians and the Joint Council of Qualified Opticianes after furnishing evidence of his training and experience and recommendations of members of the medical profession. He further stated that his profits are wholly derived from fees paid for his advice to patients who consulted him as to appliances necessary to improve their eyesight and from his own assembly of such appliance to his own prescription and the subsequent supply thereof to his said patients. The fee charged in and inclusive one to include the sight testing and the appliance supplied (such item not being shown separately on the statements rendered by him to persons consulting him) except in case where after examination no appliance is applied when a fee for examination is charged. The proportion of such latter cases is very small compared to those where an appliance is supplied. The respondent also stated that glasses prescribed by him have in fact been supplied by other opticians but that had happened only very occasionally.

The accounts kept by the appellant, copied from his own books, were put in evidence. He had a waiting room and two consulting rooms at his premises in St. Helens. The special case adds.

He further gave evidence that he did not advertise his profession or premises in any journal.....On either side of the entrance was a small shop window front, each measuring 3 ft. 6 ins. wide and 18 ins. in depth, which are used for the display of seven or eigh types of optical frames without glasses and unpriced as normally supplied by him with glasses to his own prescription. The respondent's name appears once upon the front of said premises but without the addition of any advertising matter beyond his description.

It was held that the appellant was carrying on a profesion.

Carr v. Commissioner of Inland Revenue.

(1944) All. E. R. 163 (Vol. 2). (Court of appeal)

Jenkins Production Ltd. v. *C. I. F.* (1944) 4 I. T. G. 98, 1944 A. T. C.329, 1944 All E. R. (Vol 1) 610 (*See digested on Page 4 of this part*)

J. Bibby and Sons v. *C. I.R.*; 1944 All E. R. (Vol 1) 549 1944 A. T. C. 449 (*See digested on Page 17 &18 of this part*)

C. I. R. v *Bagnal Ltd.* (1944) All. E. R. (Vol.) 204 (*See digested on 'page 18 of this part*)

S. 13, Sch. 7, Pt. 11, Para 1, (English Finance Act of 1939) Contribution to super-annuation fund for the benefit of employees—Advantage gained-No asset in existence-Contribution not to be considered in computation of average Capital—

There are two sums £ 131, 196 and £ 395, 329 paid into a super annuation fund by a group of companies which, for the purposes of excess profits Tax, are to be grouped together. The respondents are the principal company in that group. Nothing turns upon the fact that it is a group, and that payment in question were made by the group. For convenience, when referring to the respondents, the group as a whole has been included in that expression. The former of the two sums was paid in connection with the provision of incressed widow's pensions and the latter in connection with the provision of employes's pensions. The object of these payments, putting it shortly, was to provided a capital sum, calculated actuarily, sufficient to cover certain payments which the person interested under the fund would not have received owing to certain matters in the history of the fund. In other words, the payment were made in order to put the fund in a position to pay sums which otherwise it would not have been able to pay. The payment in each case was not a commutation of any existing liability, because it so happened that the increased pensions which these sums were intended to cover were not pensions for the payment of which the respondent in law were responsible.

Held : No assets came into existence by the payments in question, though there was an advantage of the like value. There were also no contractual relations between the respondent company and the trustees of the fund. Even, if they were mere nominal.

Lever Bros and Unilever Ltd. v. *C. I. R.* (1945) Vol. 1 All. E. R. 145. (Court of Appeal

Sch VII. Pt 1, Para (10 (2), and S. 13, (Finance Act, 1939)—Controlling interest meaning thereof-Directors holding shares as trustees with contingent reversionary interest-Such shares to be considered in determining control—

Control is the power by the exercise of voting rights to carry a resolution at a general meeting of the company

If there are eight directors who beneficially own and are registered as the holders of 209, 332 ordinary shares. In addition three of them are registered as the holders of 7 500 ordinary shares which they hold as trustees of a certain marriage settlement under which they have a contingent reversionary interest in the fund

Held : These 7,500 shares ought to be added to the 209, 332 for the purpose of determining whether the directors have the controlling interest in the company.

C.I.R. v. *J. Bibby and sons* (1945) All E.R. 667. (1945) 24 A T.C. 70. (House of Lords

Sch VII, Pt. 11 Para 1, and Ss. (13) (3) and 14 (2), (English Finance Act of 1939) Assessee theatre proprietors- Destruction of a theatre by enemy action No effect on the value of the asset—Original value of the destroyed theatre to be taken in computation of average capital in C. A. P —No consequent decrease in Standard profits.

Destruction of a threatre by enemy action has no effect on the value of the destroyed theatre. But its original value would be taken in computation of average amount of capital in the Chargeable Accounting period and consequently there would be no decrease in the standard profits.

C I R v *Terence Byron Ltd.* (1945) Vol. 1 All E.R. 536. 24 A.T C. 66. House of Lords

Sch D, Case 1, Income-tax Act, 1918 Ch Pt VII, - Assessee manager of a shipping company Shipping company into liquidation- Managing agreement not expired—Remunerations payable for the unexpired period under the agreement becoming immediately due—Managing agency agreement an asset as stock in trade Payment of remuneration in the nature of capital receipt on the liquidation of the company.

The assessee-appellant company was the manager of a shipping company. From the beginning of the shipping company's existence the appellant company did act as its ship manager under various agreements. By a minute of agreement dated

25th May, 1937, which varied a previous minute, the appellant company was to continue to act as manager for the shipping company, and the contract was to endure until 1st January, 1951. Under the third article of that ag eement the appellant company was to receive a management fee of £500, a commision of 1 per cent on the price of any vessel built, purchased or sold, and a commi-sion of 5 per cent on the profits of the shipping company as defined in the agreement. By the fourth article the remuneration to be aff orded to the appellant company by the shipping company in terms of the third article until the termination of the aggreement was not to be less than £ 2,000 per annum. The fourth article continues that on the shipping company going into liquidation or ceasing to carry on its business, the remuneration payable to the appellant company in respect of the period from that date until the day of the expiry of the agreement was to become immediately due. On 5th November, 1942, that is 8 1/2 years before the expiry of the agreement, the shipping company went into liquid ation, and it paid to the appellant company the sum of £16,306-16s-11d. Under the fourth article of the agre ment. During the whole joint lives of the-e two companies the appellant company's business had consist d almo-t entirely of the agency which it carried on as manager for the shipping company. For the 16 years from 1924 to 1940 no le-s than 88.23 per cent of the appellant's income was derived from managing the shipping company ; 1. 78 per cent was derived from othe, managements, and 9 99 per cent from sundry resources such as interest on loans. In the following three years the company did succeed in obtaining from the Ministry of War Transport the management of four ships, but this was an abnormal and temporary business which will cease if the ships are sunk–and one already has been sunk—or the one of the war Over the whole 19 years during which the agreements between the two companies were in force, 84.32 per cent of the appellant's profits were profits which were earned by the management of the shipping company's ships, 7·65 per cent by other management, and 8.02 per cent from sundry other income resources

Held :—The payment of £ 16,306 16s-11d under the fourth article of the shipping company for the unexpired period is in the nature of capital receipt as the managing agency contract is an asset as stock in trade.

Barr Crombir and Company Ltd. v *C. I. R.* (1945) 24 A. T. C. 55. Court of Session

DIGEST EXCESS PROFITS TAX CASES

(UNDER INDIAN EXCESS PROFITS TAX ACT, 1940.)

S. 2 (5) (Indian Excess Profits Tax Act XV of 1940) Assessee a supplier of goods to various Govt. departments—Employed by a Bombay mill for securing orders on commission basis—Carrying on business as a commission agents.

The asse-see in addition to his business of making supplies to the various Indian Government Departments has also since 1937 represented in Delhi a Bombay co ncern for securing orders on certain percentage commission on the proceeds of the order. It was held to be carrying on bussiness as a commi-sion agent as the exemption allowed to the profession is not absolute since the exemption will not apply if the profession consists wholly or mainly in the making of contracts or the giving to other persons of advice of a commercial nature in connection with the making of contracts.

Basheswar Nath & Co , Delhi v. *C. I. T.* (1945) 5 I. T G. 109, 110.

Ss. 2 (5) and 8 (1), (Indian Excess Profits Tax Act of 1940) Change in the constitution of a firm Business of the firm carried on by a new firm as constituted by the two surviving partners—New firm is not liable to Excess Profits Tax on the profits of the old firm.

Where a change has taken place in the constitution of a firm on the death of a partner and the business of the firm is carried on by a new firm as constituted by the surviving partners and three new admitted partners and assets and liabilities were takan by this new firm, the new business is not liable to excess profits tax on the profits of the old firm earned in the accounting period.

Ghella Dayal v. *C. I. T. Bombay* (1945) 5 I. T. G. 130

S. 2 (5) and (19), Indian Excess Profits Tax Act, 1940) and first Schedule Assessee a money lender—Income from acquisition of house property and foreign rubber gardens to be included in money lending profits Chargeable to excess profits tax

Income from house properties acquired in the course of business and rubber gardens is, it has been held, rightly included in the profits of the assessee's money lending business.

RMP RMP Villiappa Chettiar Madura v. *C.I.T., Madras* (1945) 5 I.T.G. 127.

S 6, (Indian Excess Profits Tax XV of 1940)—Scope of—Ascertainments of average amount of capital for the standard period—And not on the amount of capital as in use on the last day of the standard period.

The scheme of the Excess Profits Tax Act, is to tax the excess profits over the standard profit. What is provided by the first proviso to S. 6 (1) is that in order to compare the standard profit, the average amount of capital during the standard period and the average amount of capital during the chargeable accounting period are to be compared. For this purpose it is only the average amount of capital for the standard period and not the amount of capital ascertained as in use on the last date of the standard period should be taken into consideration.

Killick, Nixon & Co. v. *C. I. T., Bombay.* (1945) I. T. G. 92.

S. 10-A (Indian Excess Profits Tax Act, XV of 1940) Two firms carried on by a firm of four partners—Two of them partners in one firm and two in another These two firms carrying on the business of manufacture of the old firm Creation of these firms meant to avoid tax.

Where two firms are carried on by the applicant firm of four brothers as partners and two of them are partners in one firm and two in another, and these two firms carried on the business of the manufacture of goods that was being done by the applicant firm restricted their sales to the goods manufactured by two firms, the formation of these two firms is a transaction within the meaning of S. 10-A. of the Indian Excess Profits Tax Act and the Excess Profits Tax Officer can go behind the transaction to see the consequences.

Messrs. C S. Ramaswamier & Sons Madura v. *C I.T. Mad.* (1945) 5 I. T. G 16

S 10-A, (Indian Excess Profits Tax Act, 1940) Formation of two firms to evade the payment of excess profits tax - Finding of fact Transaction - Meaning thereof.

The question whether in the circumstances of the case the formation of two new firms is a transaction within the meaning of S 10 A of the Act in order to evade the payment of Excess profits tax is a question of fact.

The word *transaction* has a very wide meaning. It can be applied to any particular act done in the carrying on of a business.

The definition of the word "transaction" as "it must be confined to a transaction in the course of the business of the assessee and not to the formation of a new partnership for the carrying on of the same business" cannot be accepted within the purview of S. 10-A.

Messrs. G. S Ramaswamier & Sons Madura v. *C. I. T.* (1945) 5 I. T G. 17

Sch 1, S 4, (Indian Excess Profits Tax Act, XV) Plantiff managing agents of the respondent—Managing agency commission to be ascertained before setting aside income-tax, super-tax or any tax on Income—No deduction of excess profits tax to be made in calculation of the commission.

The plaintiff were the managing agents of the defendant company, the term of their remuneration being commission of ten per cent on the net annual income of the company before setting aside any sum to reserve or depreciation funds or for pay-

ment of Income-tax or super tax or any other tax on income". The question was whether the excess profits tax was to be deducted before the ascertainment of the net annual income for the calculation of the Commission.

Held : Excess Profits Tax is not to be deducted before the ascertainment of the net annual income for the calculation of the commission as it is a tax on income derived from any business.

James Finlay and Co. Ltd v. *Finlay Mills, Ltd.* (1945) 5 I. T. G. 79

Sch 1,-Agreement between the managing agents and the company for a certain per cent of commission to be paid on profits Practice of inclusion of income and super-tax in ascertaining profits—No term of deduction of tax on income Excess Profits Tax rightly held deducted from profits.

In accordance with an agreement between a company and its managing agents, a certain per cent of commission was to be given to the managing agents on annual net profits of the company and all proper allowance and deductions were to be made from revenue for ascertaining the annual net profits for calculating the managing agents' commission. But there was no provision in the agreement for deduction of any tax upon income though it was the practice of the company to make no deduction in respect of income tax and super-tax. The contention of the managing agents was that no deduction with regard to the amount of excess profits tax payable or paid by the company should be made while ascertaining such annual net profits.

Held : In the absence of any provision in the agreement for deduction of excess profits tax, an allowance must be made for such deduction while ascertaining annual net profits for the purpose of calculating managing agents' commission. The practice of the company for not deducting income tax super-tax is in accordance with law and has nothing to do with the principle for an allowance to be made in respect of excess profits tax.

Walchand and Co Ltd. v. *Hindustan Construction Co Ltd.* (1945) 5 I. T. G. 67.

Sch. I, r. 1, (Indian Excess Profits Tax Act, 1940)—Scope of -Profits to be computed on income-tax principles.

The rule I says that the profits of business during the standard period, or during any chargeable accounting period, shall be separately computed and shall, subject to the provision of the schedule, be computed on the principles on which the profits of a business are computed for the purposes of income tax under S. 10 of the Income-tax Act, 1922.

Killick, Nixon & Co. v. *C. I. T., Bombay.* (1945) 5 I. T. G. 92.

Ssh I. 5 (Indian Excess Profits Tax Act, 1940)—Privilege of non-exclusion of interest on barrowings granted for increase in capital after the termination of the standard period—Interest be calculated on borrowings throughout the year and not at the end of the year--Interest be excluded and retained on debit side.

The construction of r. 5 of Sch I is not free from difficulty. While computing profits, if there is an increase in the capital effected by means of loan from banks or debentures at any time after the close of the standard period, the interest to be paid on such loans or debentures must not be deducted from those profits as it would have to be done if the borrowings were totally excluded. That is what is provided by the first part of the rule 5. Its second part lays down that the increased amount of loan or debentures shall not be deducted in arriving at the average amount of capital employed for the chargeable accounting period. Thus there is nothing inconsistent in first and second part of the rule. The better drafting might however been provided for the non exclusion of such borrowings in Sch. II.

Killick, Nixon & Co. v. *C. I. T., Bombay.* (1945) 5 I. T. G 92.

INDIAN EXCESS PROFITS TAX.

(Under Act No. X of 1919)

PART III

[PASSED BY THE INDIAN LEGISLATIVE COUNCIL]

(Received the assent of the Governer General on the 20th March, 1919.)

An Act to impose a duty on excess profits arising out of certain businesses.

WHEREAS it is expedient to impose a duty on excess profits arising out of certain businesses; it is hereby enacted as follows:—

Short title and commencement.

1.—(1) This Act may be called the Excess Profits Duty Act, 1919.

(2) It shall come into force on the 1st April, 1919.

Definitions.

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

"accounting period" means the twelve month ending on the 31st March, 1919, or if the accounts of the business have been made up within the said twelve months for the purposes of the Indian Income-tax Act, 1918, in respect of a year ending on any date other than the said 31st March, then the year ending on that other date;

"business" includes any trade, commerce or manufacture, or any advenfure or concern in the nature of trade, commerce or manufacture;

"Chief Revenue-authority" means the Board of Revenue or the Financial Commissioner in provinces where those authorities exist, and in any other case such authority as the local Government may declare to be the Chief Revenue-authority for the purposes of this Act;

"prescribed" means prescribed by rules made under this Act.

All expression used or embodied by reference in this Act which are not hereinbefore defined shall have the same meaning as is attributed to them by the Indian income-tax Act, 1918.

Application of Act.

3.—This Act shall apply to every business (other than the businesses specified in Schedule I) which is, during any part of the accounting period, either carried on in British India by any person or carried on in any place in India by a person ordinarily resident in British India.

Imposition of excess profits duty.

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 in the accounting period exceed the standard profits, a duty (in this Act referred to as "excess profits duty") of an amount equal to fifty per cent, of that excess-

Provided that the amount of the said duty shall not exceed such sum as would reduce the profits in the accounting period below thirty thousand rupees.

Ascertainment of profits in the accounting period.

5.—The profits of a business in the accounting period shall, at the option of the person by whom the excess profits duty in respect of that business is payable, be or be deemed to be,—

(a) the taxable income as finally ascertained for the purposes of the Indian Income-tax Act, 1918, or

(b) when the accounting period in respect the business ends on any date other than the 31st March, 1919, and the accounts of the business are made up

for an additional period ending on the said 31st March, a sum which bears the same proportion of the taxable income of the total period (such taxable income being ascertained as nearly as may be in accordance with the provisions of the said Act) as a period of one year bear the total period.

Explanation—The profits in the accounting period shall, notwithstanding any composition in force for the purposes of the said Act, be actually ascertained in accordance with the provisions of that Act.

Standard Profits

6.—(1) The standard profit of a business shall be as follows:—

(*a*) an amount calculated at the rate of 10 per cent, or at such rate not being less than 10 percent as may be prescribed, on the capital of the business as existing at the end of the accounting period in which case the capital of the business shall, for the purposes of this Act, be ascertained in accordance with the provisions of Schedule II ; or

(*b*) at the option of the person by whom excess profits duty in respect of the business is payable—

(*i*) if the profits of the business have been assessed in the years 1913 and 1914 for the purposes of the income-tax law then in force—the aggregate of half of the profits so assessed and half of interest, if any received in those years on securities forming part of assets of the business ; or

(*ii*) if the profits of the bussiness have been assessed for the said purposes in the years 1913 and 1914, and in two only of the three years 1915, 1916 and 1917—the aggregate of one-fourth of the profits so assessed and one-fourth of the interst, if any received in the same four years on securities forming part of the assets of the business; or

(*iii*) if the profits of the business have been assessed for the said purposes in all the five years 1913, 1914, 1915; 1916 and 1917—the aggregate of one-fourth of the profits assessed in the years 1913 and 1914 and in such two of the years 1915, 1916 and 1917 as may be selected by the said person and one-fourth of the interest, if any, received in the same four years on securities forming parts of the assets of business :

Provided that if the average capital employed in the business in the years adopted for the purpose of determining the standard profits is less or more than the capital so employed end of the accounting period, there shall be made to or from the standard profits an addition or a deduction, as the case may be which shall bear to the standard profits the same proprortion as such increase or decrease of capital bears to the average cepital so employed in the years so adopted.

Explanation:—For the purpose of ascertining the average capital employed, the capital employed in the business in any year shall be deemed to be the capital so employed at the end of that year ;

Provided further that if the assessment in any of the said years was made in respect of a period of less than twelve months, that assessment shall, for the purpose of determining the standard profits, be proportionately increased.

(2) If a composition for income-tax was in force in any of the years 1913, 1914, 1915, 1916, and 1917, such composition shall be deemed for the purposes of clause (b) of sub-section (1) to have been the assessment, and the profits shall be determined in accordance therewith.

Provided that the person by whom excess profits duty in respect of the business is payable shall, notwithstanding any such composition, be entitled to have an assessment of the profits of the business made for the purpose of determining the standard profits, in the same way as the assessment would have been made if no such composition had been agreed upon.

(3) Each of the years referred to in sub-sections (1) and (2) shall be deemed to be the twelve months commencing with the 1st of April in the year mentioned.

(4) Notwithstanding anything contained in this Section no increase of capital made after the 31st December, 1918, shall be taken into account in any case, and no such increase before that date shall be taken into account when it appears or to the extent to which it appears that the increase was made with intent to evade or has the effect of evading the payment of the excess profits duty.

Power to Collector to make allowances for special circumstances.

7.—On the application (made in accordance with the provisions of clause (b) of sub-section (2) of section (11) of any person chargeable with excess profits duty alleging that, owing to any of the following circumstances, namely:—

(*a*) any change in the constitution of a partnership of which he is or was member,

(*b*) any postponement or suspension, as a consequence of the present war, of renewals or repairs,

(*c*) any exceptional depreciation or obsolescence (including the cost of replacement during the accounting period), due to the present war, of assets employed in the business,

(*d*) the provision, in connection with the requirements of the present war, of plant or machinery which will not be required for the purposes of the business after the termination of the war,

(*e*) the fact that the assets of the business consist to any material extent of shares in a company the business of which is it itself chargeable to excess profits duty,

(*f*) the liability of any part of the profits of the business to excess profits duty in the United Kingdom, or

(*g*) any special circumstances connected with the nature of the business or the period for which any profits are ascertained or determined,

the provisions of this Act for the calculation of excess profits duty operate unfairly in his case, the Collector may make such allowances in calculating the amount of the duty as seem to him to be necessary to meet the special circumstances, provided that any such allowance shall not reduce the amount of duty payable under the provisions of the Act by more than twenty-five per cent without the previous sanction of the Commissioner.

Appeal to Chief Revenue-Authority.

8.—(1) if any person who has applied under Section 7 is dissatisfied with the decision of the Collector on his application, he may appeal to the Chief Revenue authority which shall, at the option of such person, either itself decide such appeal or refer it to a Board of Referees to be appointed by the Local Government. The Board shall hear and consider any appeal so referred and shall communicate its decision to the Chief Revenue-authority.

(2) The Chief Revenue-authority and the Board shall be entitled to take into account any of the circumstances specified in Section 7, and modify the decision of the Collector with reference thereto in such way and to such extent as they may consider just and equitable.

(3) Every Board of Referees appointed under this Section shall consist of three or, in cases which the Local Government considers to be of difficulty or importance, of four persons. When the Board consists of four persons, the Local Government shall appoint one of the members to be Chairman. In any case at least two members of the Board shall be persons not in the service of Government and having in the opinion of the Local Government adequate business experience.

(4) In case of a difference of opinion between the members of the Board, the opinion of the majority shall prevail. When the Board consists of four members are equally divided in opinion, the Chairman shall have a second or casting vote.

(5) The decision of the Chief Revenue-authority on any appeal under this Section or of the Board where an appeal is referred to it shall, notwithstanding any other provision of this Act be final, and shall be deemed to be the basis of assessment in the particular case.

Power of Governor General in Council to deal with hardship in case of a class of business.

9. (1) The Governer General in Council may, on the application made before the 30th June 1919, of any person alleging that owing to special circumstances to be stated in the application the provisions of this Act for the calculation of excess profits duty would operate unfairly in the case of any class of business in which such person is engaged, refer such application for the report of a Board of special Referees to be appointed in this behalf by the Governor General in Council.

(2) Every Board appointed under this Section shall consist of four persons, of whom at least two shall be persons not in the service of Government. The Governor-General in Council shall appoint one member to be Chairman.

(3) On receipt of the report of the Board, the Governer General in Council shall consider the same and pass thereon such orders as he thinks fit. Any such order may vary the basis or method of assessment in respect of the class of business so reported on, and any variations so made shall be deemed to be modifications of this Act in respect of the matters to which they relate, and this Act shall apply accordingly.

Notice to be given by liquidator that excess profits have been made.

10 — Every liquidator of a company which is being wound up at the commencement of this Act or is wound up after the commencement of this Act and which is chargeable to excess profits duty shall before the 31st may 1919, or within two months of the commencement of the winding up, as the case may be, give notice of the fact to Collector.

Returns of the purpose for this Act.

11 — (1) The Collector 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 the accounting period or in the year ending on the 31st March, 1912, or on the 31st March in any year thereafter, to furnish him within two months after service upon him of a notice to that effect with such particulars in connection with the business as the Collector may require.

(2) At the time of furnishing such particulars such person shall—

(*a*) state the method which he desires to be adopted for the purpose of—

(*i*) ascertaining the profit of the business in the accounting period under Section 5, and

(*ii*) determining the standard profits under Section 6, and

(*b*) make any application which he desires to make under Section 7 for an allowance in the calculation of the amount of the excess profits duty.

(3) Where any person fails, without reasonable cause or excuse, to comply with the provision of clause (*a*) of sub-section (2), the Collector shall proceed to ascertain the profits of the accounting period and to determine the standard profits by such metbod provided in this Act as he thinks fit.

Penalty.

12.—If a person fails, without reasonable cause or excuse, to give to the Collector in due time any notice required by Section 10 or to furnish any particulars referred to in Section 11, he shall on conviction by a Magistrate be punishable with fine which may extend to thirty rupees for every day during which the default continues.

Assessment.

13.—The amount of excess profits duty to be paid in respect of any business shall be assessed by the Collector, who may in any case where he thinks fit allow the duty to be paid in instalments of such amounts payable at such times as he may direct.

Person liable to be assessed.

14. The duty may be assessed on any person for the time being owning or carrying on the business whether as agent for the owner or otherwise or, where the business has ceased during the accounting period, on the person who owned or so carried on the business immediately before the time at which the business ceased, and where there has been a change of ownership of the business during the accounting period. the Collector shall make the assessment in the prescribed manner.

Application of provision of Act VII of 1918.

15.—The provisions of Section 20, 21, 22, 23, 24, 26, 27, and of Chapters IV and V and of Sections 42, 45, 46, 47, and 49 to 52 of the Indian Income-tax Act, 1918, shall apply, with such modifications, if any, as may be prescribed, as if the said provisions referred to excess profits duty instead of to income-tax, and every officer or authority exercising powers under the the said provision may exercise the like powers under this Act in regard to excess profits duty as he or it exercises in regard to income-tax under the said Act :

Provided that references in the said provisions to the assessee shall be construed as references to a person by whom excess profits duty is payable.

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

16.—Notwithstanding anything contained in the Indian Income-tax Act, 1918, or in any Act repealed thereby, all information contained in any statement or return made or furnished under the provisions of any of the said Acts or obtained or collected for the purposes of any such Act may be used for the purposes of this Act.

Prohibition of and penalty for fictitious transactions.

17.—(1) A person shall not for the purposes of avoiding payment of excess profits duty enter into a fictitious or artificial transaction or carry out any fictitious or artificial operation, and if he has entered into any such transaction or carried out any such operation before the commencement of this Act, shall inform the Collector of the nature of the transaction or operation.

Explanation.—For the purposes of this Section an artifical transaction or operation includes every device of whatever nature adopted for the purposes of presenting the accounts of a business in a misleading form or manner with intent to evade or having the effect of evading any obligation imposed by this Act.

(2) If any person acts in contravention of, or fails, without reasonable cause or excuse, to comply with, the provisions of sub-section (1), he shall on conviction by a Magistrate be punishable with fine which may extend to one thousand rupees.

Power to make rules.

18.—(1) The Governor General in Council may, by notification in the Gazette of India, make rules for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the rate to be allowed in respect of any business or class of business for the purposes of clause (*a*) of sub-section (1) of Section 6 ;

(*b*) the procedure to be followed by Boards of Referees appointed under this Act ;

(*c*) the basis and method of assessment when there has been a change of ownership during any period which can be selected for the purpose of determining standard profits, or during any subsequent period prior to the commencement of this Act ; and

(*d*) the adaptation to excess profits duty of any of the provisions of the Indian Income-tax Act, 1918, which are made applicable to that duty by Section 15.

(3) All rules made under this Section shall have effect as if enacted in this Act.

Excess profits duty and super-tax to be alternately chargeable.

19.—Where the profits of any business in the accounting period are chargeable to excess profits duty under the provisions of this Act and Super-tax Act, 1917, then—

(1) if the amount chargeable as, excess profits duty exceeds that chargeable as super-tax, excess profits duty shall alone be charged, and

(2) if the amount chargeable as super-tax exceeds that chargeable as excess profits duty, super-tax shall alone be charged, and the provisions of this Act and the Super-tax Act 1917, shall be construed accordingly.

Excess profits duty an allowance for the purposes of Act VII of 1918.

20.—The amount of excess profits duty paid in respect of any business shall be allowed as a deduction at the adjustment made in the year ending on the 31st March, 1920, in respect of the profits of that business for the purposes of Section 19 of the Indian Income-tax Act 1918 :

Provided that, if the amount of excess profits duty payable has not been ascertained at the time when the said adjustment is made, the amount by which the income-tax would have been reduced if effect had been given to the deduction shall be deducted from the amount payable for excess profits duty.

SCHEDULE I

EXCEPTED BUSINESSES

(*See Section 3.*)

1. Any business the income from which is agricultural income.

2. Offices or employments

3. Any profession the profits of which are dependent mainly on the personal qualifications of the person by whom the profession is carried on, and in which on capital expenditure is required or only capital expenditure of an amount which is small when compared with the profits which the person carrying on the profession makes :

Provided that the business of any person taking commissions in respect of any transactions or services rendered, or any agent of any description (not being a whole-time officer or servant of the business or a commercial traveller, or an agent whose remuneration consists wholly of a fixed and definite sum not dependent on the amount of business done or any other contingency) shall not be included in this exception.

4. Any business which is liable to pay in respect of the accounting period excess profits duty in the United Kingdom.

5. Any business of which the profits in the accounting period do not exceed thirty thousand rupees.

SCHEDULE II.

ASCERTAINMENT OF CAPITAL.

(*See Section 6.*)

1. The amount of the capital of a business shall, so far as it does not consist money, be taken to be—

(*a*) so far as it consists of assets acquired by purchase, the price at which these assets were acquired, subject to any proper deduction for depreciation or for unpaid purchase money,

(*b*) so far as it consists of assets being debts due to the business, the nominal amount of those debts subject to any deduction which has been allowed or is allowable in respect of those debts under the Indian Income-tax Act, 1918, and

(*c*) so far as it consists of any other assets which have not been acquired by purchase, the value of the assets at the time when they became assets of the business, subject to any proper deduction for depreciation :

Provided that nothing in this provision shall prevent accumulated profits (other than those made in the accounting period) employed in the business being treated as capital.

2. Any borrowed money or trade debts shall be deducted in computing the amount of capital for the purposes of this Act.

3. Where any asset has been paid for otherwise than in cash, the cost price of that asset shall be taken to be the value of the consideration at the time the asset was acquired, but where the business has been converted into a company and more than two-thirds of the shares in the company are held by the person who was the owner of the business no value shall be attached to those shares, so far as they are represented by good-will or otherwise than by material assets of the company, unless the Collector in special circumstances otherwise directs. Patents and secret processes shall be deemed to be material assets.

THE INDIAN INCOME TAX ACT, 1922

(Act XI of 1922)

As applied to Excess Profits Tax by Section 21 of the Excess Profits Tax Act, 1940, and Rule 3 of the Excess Profits Tax Rules, 1940.)

S-4A.—For the purposes of *the* Act—

Residence British India. (a) any individual is resident in British India in any year if he—

(i) is in British India 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 dwelling place in British India for a period or periods amounting in all to one hundred and eighty two days or more in that year, and is in British India for any time in that year ; or

(iii) having within the four years preceding that year been in British India for a period of or for periods amounting in all to three hundred and sixty-five days or more, is in British India for any time in that year otherwise than on an occasional or casual visit ;

(b) a Hindu undivided family, firm or other association of persons is resident in British India unless the control and management of its affairs is situated wholly without British India ; and

(c) a company is resident in British India in any year (a) if the control and management of its affairs is situated wholly in British India in that year, or (b) if its income arising in British India in that year exceeds its income arising without British India in that year.

(iv) is in British India for any time in that year and the Income-tax Officer is satisfied that such individual having arrived in British India during that year is likely to remain in British India for not less than three years from the date of his arrival.

S. 4-B.—For the purposes of *the* Act.—

Ordinary residence (a) an individual is 'not ordinarily resident' in British India in any year if he has not been resident in British India in nine out of the ten years preceding that year or if he has not during the seven years preceding that year been in British India for a period of, or for periods amounting in all to, more than two years ;

(b) a Hindu undivided family is deemed to be ordinarily resident in British India if its manager is ordinarily resident in British India ;

(c) a company, firm or other association of persons is ordinarily resident in British India if it is resident in British India.

S. 10. (1) The tax shall be payable by an assessee under the head "Profits and gains of business, profession or vocation" in respect of the profits *Business* or gains of any business, profession or vocation carried on by him.

(2) Such profits or gains shall be computed after making the following allwances, 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 *Excess Profits 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 bussiness, 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 British India, not being interest on a loan issued for public subscription before the 1st day of April, 1938, except interest on which tax has been paid or from which tax has been deducted under Section 18 or in respect of which there is an agent in British India who may be assessed under Section 43 or, in the case of a firm, for any interest paid to a partner of the firm ;

Explanation.—Recurring subscriptions paid periodically by shareholder 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 playing 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 ;

(*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 of the assessee of the animals and the amount, if any, realised in respect of the carcases or animals ;

(*ix*) any sums paid on account of land-revenue, local rates or municipal taxes 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 respects 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 bussiness 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 the ordinary course of such business as the *Excess Profits 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 amonnt 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 of expended wholly and exclusively for the purpose of such business, profession or vocation.

(2) where any building machinery, plant or furniture in respect of which any allowance is due under clause (*iv*), clause (*v*), clause (*vi*) 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 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 case, 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 British India and tax has not been paid thereon nor deducted thereform under Section 18; or

(*b*) any allowance in respect of any payment by way of interest, salary, commission of 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 ths 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 voeation ; 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, or under executive orders issued when the Indian Income-tax Act, 1886, was in force.

Provided that where the provisions of the Proviso to Sub-section (2) of Section 26 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 purposes of this Section to carry on bussiness in respect of those services, and the profits and gains therefrom shall be liable to tax accordingly.

(7) Notwithstanding anything to the contrary in this Section or in the Excess rofits Tax Act, 1940, the profits of any bussiness of insurance, other than life

insurance, shall be computed in accordance, with the rules contained in the Schedule to the Indian Income-tax Act, 1922, in so far as they are applicable to such business.

Method of accounting

S. 13.—Income, profits and gains shall be computed for the purposes of Section 10 ... 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 Excess Profits Tax Officer, the income, profits and gains cannot properly be deducted therefrom, then the computation shall be made upon such basis and in such manner as the Excess Profits Tax Officer may determine.

Tax of deceased person payable by representative.

S. 24-B.—(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 of the tax assessed as payable by such person, or any tax which would have been payable by him under the Act if he had not died.

(2) Where a person dies....before he is served with a notice under Sub-section (1) of Section 13 or Section 15 of the Excess Profits Tax Act, 1940, as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under Sub-section (1) of Section 13 or Section 15 of the Excess Profits Tax Act, 1940, as the case may be comply therewith, and the Excess Profits Tax Officer may proceed to assess the Excess Profits 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 Sub-section (1) of Section 13 of the Excess Profits Tax Act, 1940 or having furnished a return which the Excess Profits Tax Officer has reason to believe to be incorrect or incomplete, the Excess Profits Tax Officer may make an assessment of the excess profits 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 Sub-section (2) of Section 13 of the Excess Profits Tax Act 1940 have required from the deceased person.

Notice of demand

S. 29.—When any tax or penalty is due in consequence of any order passed under or in pursuance of the Act, the Excess Profits Tax Officer shall serve upon the assessee or other person liable to pay such tax or penality or interest a notice of demand in the prescribed form specifying the sum so payable.

To be calculated to nearest anna.

S. 36. In the determination of the amount of tax or of a refund payable under the Act fractions of an anna less than six pies shall be 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.

S. 37. The Excess Profits Tax Officer, Appellate Assistant Commissioner, Commissioner and Appellate Tribunal shall, for the purposes of Sections 8 to 20 (inclusive of the Excess Profits Tax Act, 1940, have the same power 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 Excess Profits Tax Officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal under Sections 8 to 20 (inclusive) of the Excess Profits Tax Act, 1940, 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 Indian Penal Code.

Power to call for information.

S. 38.—The *Excess Profits Tax Officer* or Assistant Commissioner may, for the purposes of the Act,—

(1) require any firm, or Hindu undivided family to furnish him a return of the members of the firm, or of the manager or adult male members of the family, 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.

Power to inspect the register of members of any company.

S. 39.—The *Excess Profits Tax Officer* or Assistant Commissioner, or any person authorised in writing in this behalf by the Excess Profits Tax Officer or Assistant Commissioner, may inspect and, if necessary, take copies or cause copies to be taken, of any register of the members, debenture-holders or mortgages of any company of any entry in such register.

Guardianr, trustees and agents.

S. 40.—In the case of any agent of any person residing out of British India being entitled to receive on behalf of such person any profits chargeable under the Excess Profits Tax Act, 1940, the tax shall be levied upon and recoverable from such agent in like manner and to the same amount as it would be leviable upon and recoverable from such person if resident in British India and in direct receipt of such profits, and all the provisions of the said Act shall apply accordingly :

Provided that the tax may be levied upon and recovered from such non-resident person direct.

Courts of Wards etc.

S. 41.—(1) In the case of income profits or gains chargeable under the Act which the Courts of Wards, the Administrators-General, the Official Trustees or any receiver or manager (including any person thatever 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 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 Wakf Validating Act, 1913), are entitled to receive on behalf of any person, the tax shall be levied upon and recoverable from such Court of Wards, 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, profits or gains are receivable, and all the Provisions of the Act shall apply accordingly.

(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.

Non-residents.

S. 42—(1) All income, profits or gains accruing or arising, whether directly or indirectly, through or from any business connection in British India, or through or from any property in British India, or through or from any asset or source of income in British India, or through or from any

money lent at interest and brought into British India in cash or in kind, shall be deemed to be income accruing or arising within British India, and where the person entitled to the income, profits or gains is not resident in British India, shall be chargeable to *excess profits tax* either in his name or in the name of his agent, and in the latter case such agent shall be deemed to be, for all the purposes of the Act, the assessee in respect of such *excess profits tax* :

Provided that where the person entitled to the income, profits or gains is not resident in British India, 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 British India.

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 the amount to be so retained, such agent or person may secure from the Excess Profits 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 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 British India, carries on business with a person resident in British India, and it appears to the *Excess Profits 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 *excess profits tax* in the name of the resident person who shall be deemed to be, for all the purposes of *the* Act, the assessee in respect of such *profits tax*,

(3) In the case of a business, of which all the operations are not carried out in British India, the profits and gains of the business deemed under this Section to accrue or arise in British India shall be only such profits and gains as are reasonably attributable to that part of the operations carried out in British India.

Agents to include persons treated as such

S. 43.—Any person employed by or on behalf of a person residing out of British India, or having any business connection with such persons. or through whom such person is in the receipt of any income, profits or gains upon whom the Excess Profits 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 the Act, be deemed to be such agent :

Provided that where transactions are carried on in the ordinary course of business through a broker in British India in such circumstance 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 carring on such transactions in the ordinary course of his business and not as as 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 Excess Profits Tax Officer as to his liability.

Liability in case of a discontinued firm or association.

S. 44.— Where any business carried on by a firm or association of persons has been discontinued every person who was at the time of such discontinuance a partner of such firm or a member of such association shall, in respect of the profits of the firm or association, be jointly and severally liable to assessment under Section 14 of the Excess Profits Tax Act, 1940, and for the amount of tax payable, and all the provisions of the said Act shall, so far as may be apply to any such assessment.

Liability to tax of occasional shipping

S 44-A.—The Provisions of the applied Sections 44B and 44C shall, notwithstanding anything contained in the other Provisions of the Act, apply for the purpose of the levy and recovery of tax in the case of any person who resides out of British India and carries on business in British India 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 Excess Profits Tax Officer is satisfied that there is an agent 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.

S. 44-B.—(1) Before the departure from any port in British India of any ship in respect of which the Provisions of the applied Section 44 A apply, the master of the ship shall prepare and furnish to the Excess Profits 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 there-at

(2) On receipt of the return, the Excess Profits 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 accuring 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 Excess Profits Tax Officer shall determine the sum payable as tax thereon ..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.

Adjustment.

S 44-C – Nothing in the applied Sections 44-A and 44-B 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 the applied Sections 44A and 44B, that an assessment be made of his actual excess profits in the chargeable accounting period, and that the tax payable on the basis thereof be determined in accordance with the Provisions of the 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·

Tax when payable.

S. 45.—Any amount specified as payable in a notice of demand under Section 29 or an order under Sub-section (4) of Section 17 or Section 18 or Section 19 of the Excess Profits Tax Act, 1940, 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, provided that, when an assessee has presented an appeal under Section 17 of the Excess Profits Tax Act, 1940, the Excess Profits 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 British India in a country the laws of which prohibit or restrict the remittance of money to British India, the Excess Profits Tax Officer shall not treat the assessee as in default in respect of that part of the tax *which relates to excess*

profits arising from such income as reason of such prohibition or restriction cannot be brought into British India, 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 British India if it has been utilized or could have been utilized for the purposes of any expenditure actually incurred by the assessee without British India or if the income whether capitalized or not has been brought into British India in any form.

Mode and time of recovery.

S. 46.—(1) When an assessee is in default in making a payment of excess profits tax, the Excess Profits 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.

(1-A) For the purposes of Sub-section (1), the Excess Profits 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.

(2) The Excess Profits Tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, 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 Collector in this behalf, he shall for the purpose of recovering the said amount have the powers which under the Code of Civil Procedure, 1908, a Civil Court has for the purpose of the recovery of an amount due under a decree.

(3) In any area with respect to which the Commissioner 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 the Province, the *Excess Profits Tax Officer may proceed to* recover the amount due by such process.

(4) The Commissioner 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).

(6) If the recovery of excess profits tax in any area has been entrusted to a Provincial Government under Section 124 (1) of the Government of India Act, 1935, the Provincial Government may direct with respect to that area or any part thereof, that excess profits 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.

(7) Save in accordance with the provision of Sub-section (1) of Section 42 or of the Proviso to Section 45, no proceedings for the recovery of any sum payable under the 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 the Act.

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

Recovery of penalties.

S. 47.—Any sum imposed by way of penalty under the Provisions of * * * Sub-section (1) of Section 46 and any interest payable under the provision of Sub-section (4) (6) (7) or (8) of Section 18 A or under the provisions of Section 10 or Section 16 of the Excess Profits Tax Act, 1940, shall be recoverable in the manner provided in the applied Sections 45 and 46 for the recovery of arrear of tax.

Refunds.

S. 48.—(1) If any person, to whose business the Excess Profits Tax Act, 1940, applies, satisfies the Excess Profits Tax Officer that the amount of tax paid by him for any chargeable accounting period exceeds the

amount with which he is properly chargeable under the said Act for that period, he shall be entitled to a refund of any such excess.

(2) The Appellate Assistant Comme ssioner or the Appellate Tribunal in the exercise of their appellate powers, if satis fied to the like effect shall cause a refund to be made by the Excess Profits Tax O fficer of any amount found to have been wrongly paid or paid in excess.

* * * * * *

(4) Nothing in this Section s hall operate to validate any objection or appeal which is otherwise invalid or to a uthorise 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 the Act, to entitle any person to any relief other or greater than that relief * * * *

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

S. 49-E.—Where under any of the Provision of the Act, a refund is found to be due to any person, the Excess Profits Tax Officer, Appellate Assistant Commissoner 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 an y, remaining payable by the person to whom the refund is due.

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

S. 49-F.—Where through death, incapacity, bankrupcity, liquidation or other cause, a person who would but for such cause, have been entitled to a refund under any of the Provisions of the Act, or to make a claim under Section 48 or under Section 7 or Section 11 of the Excess Profits Tax Act, 1940, 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 sush claim for benefit of such person or his estate.

Limitation of claims for refund.

S. 50.—No claim to any refund of tax under the Excess Profits Tax Act, 1940, 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 accounting period which constitutes or includes the chargeable accounting period in respect of which the claim to such refund arises.

Disclosure of information by a public servant.

S. 54.—(1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of the Act, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under the Act other than proceedings under Sections 23, 24 and 25 of the Excess Profits Tax Act, 1940, or in any record of any assessment proceeding, or any proceeding relating to the recovery of a demand, prepared for the purposes of the Act, shall be treated as confidential, and, notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall, save as provided in this Act, 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.

(3) Nothing in this Section shall apply to the disclosure—

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

(*b*) of any such particulars to any person acting in the execution of the Act where it is necessary to disclose the same to him for the purposes of the Act, or

(*c*) of any such particulars occasioned by the lawful employment under the 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 Government is a party, which relates to any matter arising out of any proceding under the Act, or

(*f*) of any such particulars to any officer appointed by the Auditor General of India or the Central Board of Revenue to audit excess profits tax receipts or refunds, or

(*g*) of any such particulars, relevant to any inquiry into the conduct of an official of the Excess Profits Tax Department, to any persons appointed Commissioners under the Public Servants (Inquiries) Act, 1850, or to an officer otherwise appointed to hold such inquiry, or to a Public Service Commission established under the Government of India Act, 1935, when exercising its functions in relation to any matter arising out of any such inquiry, or

(*gg*) of any such particulars, relevant to any inquiry into a charge of misconduct in connection with excess profits tax proceeding against a lawyer or registered accountant, to the authority referred to in sub-section (3) of Section 61, when exercising the functions referred to in that Sub-section, or

(*h*) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Indian Stamp Act, 1899, to impound an insufficiently stamped document, or

(*i*) of such facts, to an authorised officer of the United Kingdom, or of any Indian State or any part of His Majesty's Dominions which has entered into an agreement with British India for the granting of double taxation relief, as may be necessary for the purposes of enabling such relief or a refund under Section 11 of the Excess Profits Tax Act, 1940 to be given, or

(*j*) of such facts, to an officer of a Provincial Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax imposed by it on agricultural income, or

(*k*) of such facts, to any authority exercising powers under the Sea Customs Act, 1878, or any Act of the Central Legislature imposing a duty of excise as may be necessary for enabling it duly to exercise such powers, or

(*l*) 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

(3) No prosecution shall be instituted under this Section except with the previous sanction of the Commissioner.

Appearance, authorised representative.

S. 61 (1) any assessee, who is entitled or required or required to attend before the Appellate Tribunal or any Excess Profits Tax authority in connection with any proceeding under the Act otherwise than when required under Section 37 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 or a lawyer accountant or Income-tax practitioner, and not being disqualified by or under Sub-section (3),

(2) in this Section,—

(*i*) a person regularly employed by the assessee shall include and 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 British India;

(*iii*) 'accountant' means a registred accountant enrolled in the Register of Accountants maintained by the Central Government under the Auditors Certificate Rules, 1932, or a holder of a restricted certificate under the Restricted Certifiate Rules, 1932, or a member of an association of accountants recognised in this behalf by the Central Board of Revenue;

(*iv*) 'Income-tax practitoner' means—

(*a*) any person who, before the 1st day of April, 1938, attended before an Income-tax authority on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee;

(*b*) any person who has passed any accountancy examination recognised in this behalf by the Central Board of Revenue; or

(*c*) any person who has acquired such educational qualifications as the Central Board of Revenue may prescribe for this purpose.

(3) No person who has been dismissed from Government service after the 1st day of April, 1938, shall be qualified to represent an assessee under Sub-section (1); and if any lawyer or registered accountant if found guitly of misconduct in connection with any excess profits 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 Excess Profits Tax, the Commissioner of Excess Profits Tax may direct that he shall be thence forward 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 resonable 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 Central Board of Revenue 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.

S. 62. A receipt shall be given for any money paid or recovered under the Act.

Service of notice.

S. 63. (1) A notice or requistion under the Act may be served on the persons therein named either by post or, as if it were a summons issued by a Court, under the Code of Civil Procedure, 1908.

(2) any such notice or requisition may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or to the manager, or any adult male member of the family and in the case of any other association of persons be addressed to the principal officer thereof.

Indemnity.

S. 65. Every person deducting, retaining or paying any tax in pursuance of the Act in respect of income belonging to another person is hereby indemnified for the deduction, retention or payment thereof.

Statement of case by Appellate Tribunal to High Court.

S. 66. (1) Within sixty days of the date upon which he is served with notice of an order under Sub-section 3 of S. 10-A or Sub-section (2) of Section 19 of, or Sub-rule 2 of rule 12 of Schedule 1 to the Excess profits Tax Act, 1940 read with Sub-section (4) of Section 33 of the Indian Income-tax Act 1922 the assessee or the Commissioner may, by application in the prescribed form, accompained where application is made by the assessee by a fee one hundred

rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order, and the Appellate Tribunal shall within ninety days of the receipt of such application draw up a statements of the case and refer it to the High Court;

Provided that, if, in the exercise of its power under Sub-section (2), the Appellate Tribunal refuses to state a case which it has been required by the assessee to state, the assessee may, within thirty days from the date on which he receives notice of the refusal to state the case, withdraw his application and, if he does so, the fee paid shall be refunded.

(2) If on any application being made under Sub-section (1) the Appellate Tribunal refuses to state the case on the ground that no question of law arises, the assessee or the Commissioner, as the case may be, 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 may, if it is not satisfied of the correctness of the decision of the Appellate Tribunal to state the case and to refer it, and on receipt of any such requisition the Appellate Tribunal shall state the case and refer it accordingly.

(3) If on any application being made under Sub-section (1) the Appellate Tribunal rejects it on the ground that it is time-barred the assessee or the Commissioner, as the case may be, may, within two months from the date on which he is served with notice of the rejection, apply to the High Court, and the High Court, if it is not satisfied of the correctness of the Appellate Tribunal's decision, may require the Appellate Tribunal to treat the application as made within the time allowed under Sub-section (1).

(4) 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 Appellate Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf.

(5) The High Court upon the hearing of any such case shall decide the question of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgement under the seal of the Court and the signature of the Registrar to the Appellate Tribunal which shall pass such orders as are necessary to dispose of the case conformably to such judgement.

(6) Where a reference is made to the High Court the costs shall be in the discretion of the Court.

(7) Notwithstanding that a reference has been made under this Section to the High Court, excess profits 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 unless the High Court on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that he intends to ask for leave to appeal to His Majesty in Council, makes an order authorising the Commissioner to postpone payment of such refund until the disposal of the appeal to His Majesty in Council.

(7-A) Section 5 of the Indian Limitation Act, 1908, shall apply to an application to the High Court by an assessee under Sub-section (2) or Sub-section (3).

(8) For the purpose of this Section "the High Court" means—

(*a*) in relation to British Baluchistan, the High Court of Judicature at Lahore:

(*b*) in relation to the province of Ajmer-Merwara, the High Court of Judicature at Allahabad; and

(*c*) in relation to the province of Coorg, the High Court of Judicature at Madras.

Reference to be heard by Benches of High Courts, and appeal to lie in certain cases to Privy Council.

66 A. (1) When any case has been referred to the High Court under Section 66, 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 98 of the Code of Civil of Procedure, 1908, shall, so far as may be, apply notwithstanding anything contained in the Letters Patent of any High Court established by Letters Patent or in any other law for the time being in force.

Provided that where in any reference heard by the Bench of the Court of the Judicial Commissioner of the North-West Frontier Province, a difference of opinion arises between the Judicial Commissioner and the Judge of the said Court, the opinion of the Judicial Commissioner shall prevail.

(2) An appeal shall lie to His Majesty in Council from any judgement of the High Court delivered on a reference made under Section 66 in any case which the High Court certifies to be a fit one for appeal to His Majesty in Council.

(3) The provisions of the Code of Civil Procedure, 1908, relating to appeals to His Majesty in Council shall, so far as may be, apply in the case of appeals under this Section in like manner as they apply in the case of appeals from decrees of a High Court ;

Provided that nothing in this Sub-section shall be deemed to affect the provisions of Sub-section (5) or Sub-section (7) of Section 66 ;

Provided, further, that the High Court may, on petition made for the exceeution of His Majesty in Council in respect of any costs awarded thereby, transmit the the order for execution to any Court subordinate to the High Court.

(4) Where the judgement of the High Court is varied or reversed in appeal under this Section, effect shall be given to the order of His Majesty in Council in the manner provided in Sub-section (5), and (7) of Section 66 in the case of a judgment of the High Court.

(5) Nothing in this Section shall be deemed —

(*a*) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or

(*b*) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeales to His Majesty in Council, or their conduct before the said Judicial Committee.

Bar of suits in Civil Court.

67. No suit shall be brought in any Civil Court to set aside or modify any assessment made under the Act, and no prosecution, suit or other proceeding shall lie against any officer of the Crown for anything in good faith done or intended to be done under the Act.

Computation of periods of limitation

67-A.—In computating the period of limitation prescribed for an appeal under the Act or for an application under Section 66, the day on which the order complained of was made, and the time requisite for obtaining a copy of such order, shall be excluded.

INCOME TAX RULES, 1922.

[*As applied to Excess Profits Tax by Rule 4 of the Excess Profits Tax Rules, 1940*]

Rules 8, 23, 24, 33, 34, 45 and 46 of the Income Tax Rules with the modifications shown here in italics, apply to Excess Profits Tax :—

8. An allowance under Section 10 (2) (vi) of the Act in respect of depreciation of buildings, machinery, plant or furniture shall be made in accordance with the following statements:—

Class of asset	Rate. Percentage on the written down value	Remarks.
I. Buildings—		
(1) First class substantial buildings of selected materials	2.5	Double these rates will be allowed for factory buildings excluding offices, godowns, officers, and employees, quarters.
(2) Second class buildings of less substantial construction	5	
(3) Third class buildings of construction inferior to that of second class building but not including purely temporary erections ..	7.5	
(4) Purely temporary erections such as wooden structures ..	..	No rate is prescribed; renewal will be allowed as revenue expenditure.
II. Furniture and Fittings—		
(1) General ..	6	
(2) Rate for furniture and fittings used in hotels and boarding houses ..	9	
III. Machinery and Plant—		
(1) General rate ..	7	

An extra allowance up to a maximum of 50 per cent. of the normal allowance will be allowed by the *Excess Profits Tax Officer* where a concern claims such allowance on account of double or multiple shift working and satisfies the *Excess Profits Tax Officer* that the concern has actually worked double or multiple shift. This extra allowance will be proportionate to the number of days during which double or multiple shifts are worked. For the purpose of granting this extra allowance the normal number of working days throughout the year will be taken as 300 and if for example a concern has worked double or multiple shifts for 100 days the extra allowances will be 1/3 of 50 per cent, of the normal allowance for the whole year. This applies to all concerns whether the general rate or any special rate applies to them but does not apply to an item of machinery or plant specially excepted by the letters "N. E. S. A" † being shown against it.

Class of asset	Rate percentage on the written down value	Remarks
(2) Special rates to be applied to the whole of the machinery and plant used in the following concerns.—		[1]The specified there-in-after may be adopted at the option of the assessee for electrical machinery, air conditioning machinery, locomotives, rolling stock, tramways and tramways, weighing machines, calculating machines type- writers, Neo-post Franking machines, accounting machines, other office machinery, refrigeration plant containers, etc., and motor vehicles used in these concerns.
A.—(i) Flour Mills* .. .. (ii) Rice Mills .. .. (iii) Bone Mills .. .. (iv) Sugar works* .. .. (v) Distilleries .. .. (vi) Ice Factories . .. (vii) Aerating Gas Factories . (viii) Match Factories .. .. (xi) Tea Factories . .. (x) Shoe and other leather goods factories .. .. (xi) Starch Factories .. (xii) Coffee manufacturing concerns	9	*Replacements of Rollers will be allowed as revenue expenditure.
B.—(i) Paper Mills .. .. (ii) Strawboard Mills.. .. (iii) Ship building and Engineering works .. .. (iv) Iron and Brass Foundries .. (v) Aluminum Factories (vi) Electrical Engineering works (vii) Motor car repairing works .. (viii) Internal combustion Engines repairing works . .. (ix) Galvanizing works .. (x) Patent stone works .. (xi) Oil extraction factories .. (xii) Chemical works .. (xiii) Soap and Candle works .. (xiv) Lime works .. (xv) Saw Mills .. (xvi) Tin and can making works .. (xvii) Dyeing and bleaching works .. (xviii) Cement works using rotary kilns (xix) Rod Mills .. (xx) Hydraulic Presses .. (xxi) Brick manufacture .. (xxii) Tile making industry .. (xxiii) The manufacture of vegetable ghee .. (xxiv) The manufacture of optical instruments ..	10	

(1) These words are substituted by Notification No. 46, dated the 15th August 1942.

Class of asset.	Rate. Percentage on the written down value	Remarks.
(xxv) Chok manufacture ..		
(xxvi) The manufaiure of conctrete pipes		
(vxvii) Glass manufacture and the manufacture of vacuam tubes and vacuam bulbs ..	10	
(xxviii) Telephone operating concerns ..		
(xxix) Wire and nail making mills —		
(xxx) Iron and steel industry Blatt furnace plant. steel-making plant,steel rolling plant, forges, generators, boilers and she.t mills) ..		
(xxxi) Tanneries ..		
(xxxii) Battery manufacture ..		
(xxxiii) The manufacture of Healds and Reads (knitting, Reed-making varnishing, doubling, winding and polishing machines) ..		
[(xxxiv) The manufacture of confectionary including biscuits and peppermints.[* ..		
C—(1) Rubber goods factories: ..		
(a) Feneral machinery and plant ..	12	
(b) Moulds (N. E. S. A.) ..	40	
D.—(i) Silk manufacture—weaving machinery worked by electric motors including winding machines, twisting frames, doubling machines: prin winding machines, wareing machiners looms, stontering machines and hydroextractors.	12	
(3) Special retes to be applied to other machinery and point ..		
A.—Ropeway structures (N,E.S.A.)—		
(i) Trestle and Station steel work ..	6	
(ii) Driving and tension gearing ..	10	
(iii) Carriers ..	12	
(iv) Ropeway ropes and trestle sheaves and connected parts .	30	
B.—Salt work;—		
(i) Machinery; plant, locomotives, wagons and rolling stock ..	10	
(ii) Barges and floating plant N.E.S.A.	10	
(iii) General plant and machinery used in Engineering shops ..	10	
(iv) Reservoirs condensers salt pans, delivery channels and piers, if constructed of masonry, concrete cement asphalt or similar materials (N. E.. S. A.) ..	6	

*Inserted by Notification No. 20, dated 21st February 1942.

Class of asset	Rate. Percentage on the written down value	Remarks.
(NOTE). Repairs to similar works made of earth will be allowed as revenue expenditure ..		
(v) Piers, quays and jetties constructed entirely or mainly of steel (N.E.S.A.)	7 5	
(vi) Pies, quays and jeties constructed entirely or mainly of wood (N. E. S. A.) ..	12	
(vii) Pipe lines for conveying brine of constructed of masonry, concrete cement, asphalt or similar materials (N. E. S. A.) ..	12	
C.— Electrical machinery—		
(i) Batteries ..	20	
(ii) Other electrical machinery including electrical generators and motor (other than tramway motors.) ..	10	
(iii) Switchgear and investments, transformers and other statainary plant and wiring and fitting of electric light and fan installations (N. E. S. A.) .	10	
(iv) Under-ground cables and wires (N. E. S. A.)	7·5	
(v) Over-head cables and wires (N. E. S. A,) ..	5	
(vi) X-Ray and Electro-therapeutic apparatus and accessories thereto (N. E. S. A.) ..	20	
D.—Machinery used in the production and exhibition of cinematograph films— (N. E. S A.)		
(i) Recording equipment reproducing equipment, developing machines, printing machines, editing machines, synchronisers and studio lights*	20	* Renewals of Bulbs of Studio lights will be allowed as revenue expenditure.
(ii) Projecting equipment of film exhibiting concerns ..	20	
E.—Electric supply undertakings—		
(i) Electric plant, machinery, boilers ..	10	
(ii) Hydro-electric concerns—hydraulic works, pipe lines and sluices (N. E. S. A.) ..	2·5	
F.—Electric tramways—		
(i) Permanent way (N. E. S. A.)		
(a) Not exceeding 50,000 car miles per mile of track per annum ..	9	

Class of asset.	Rate. Percentage on the written-down value	Remarks.
(*b*) Exceed 50,000 and not exceeding 75,000 car miles per mile of track per annum ..	10	
(*c*) Exceeding 75,000 and not exceeding 1,25,000 car miles per mile of track per annum ..	12	
(*d*) Exceeding 1,25,000 car miles per mile of track per annum ..	15	
(ii) Cars—trucks, car bodies, electrical equipment and motors (N.E.S.A.).	10	
(iii) General plant, machinery and tools.	9	
G—Tramways run by internal combustion engines (N. E. S. A.)—		
(i) Permanent way ..	The same rates as have been prescribed for the permanent way of electric tramways.	
(ii) Tram cars including engines and gears ..	10	
H.—Mineral oil concerns (N. E. S. A.) –		
Refineries—		
1. Boilers ..	10	
2. Prime movers ..	10	
3. Process plant ..	12	
Field Operations—		
1. Boilers ..	10	
2. Prime movers ..	10	
3. Process plant ..	12	
Except for the following items—		
1. Below ground ..	100	
2. Above ground—		
(*a*) Portable boilers, drilling tools, well-head tanks-rigs etc. ..	30	
(*b*) Storage tanks ..	10	
(*c*) Pipe lines—		
(i) Fixed boilers ..	10	
(ii) Prime movers ..	12	
(iii) Pipe line ..	10	
Distribution—		
1. Returnable packages ..	.	Cost of packages actually used up will be allowed as revenue expenditure.
2. Kerbside pumps including under ground tanks and fittings ..	15	

Class of asset.	Rate Percentage on the written down value	Remerks.
I.—Ships (N. E. S, A.)—		
(i) Ocean—		
(a) Steamers [and Motor Vessels[1]]	5	[1]These rates are percentages on the original cost. For (1) the increased rate of depreciation on ocean-going steamers and motor vessels due to war time conditions, (2) the rate of depreciation on second-hand ocean-going steamers and motor vessels and (3) the rate of depreciation on additions to ocean-going steamers and motor vessels—See Appendix. A]
(b) Sail or tug ..	4	
(ii) Inland—		
(a) Steamers [and Motor Vessels]	10	
(b) Tug boats ..	12·5	
(c) Iron or steel flats for cargo ..	10	
(d) Wooden cargo boats upto 50 tons capacity ..	10	
(e) Wooden cargo boats over 50 tons capacity ..	10	
(f) Motor launches ..	12·5	
(g) *Speed boats ..	20	
J.—Mines and quarries (N. E. S. A.)—		
(i) Machinery—		
(a) Surface and under-ground machinery (except electrical machinery) head gear, moving parts and rails ..	15	
(b) Boilers and head gears (excluding moving parts) ..	8	
(ii) Coal tubs, winding ropes, haulage ropes and sand stowing pipes.	..	Renewals will be allowed as revenue expenditure.
(iii) Shafts and inclines ..	7	
(iv) Portable under ground machinery.	25	
(v) Safety lamps ..	..	Cost of lamps actually used up will be allowed as revenue expenditure.
(iv) Tramways on the surace ..	10	
K.—Aeroplanes (N. E. S. A.)—		
(i) Aircrafts ..	20	
(ii) Aero-engines ..	40	
(iii) Aerial photographic apparatus ..	25	
L.—(i) Textile machinery excluding silk manufacturing machinery—		
(a) Cotton ..	10	

*"Speed Boat" means a motor-driven boat by high speed internal combustion engine capable of propelling the boat at a speed exceeding 15 miles per hour in still water and so designed that when running at speed it will plane, *i. e.*, its bow will rise fram the water.

(1) These wards were substituted by Notification No. 46, dated the 15th August 1942.

Class of asset.	Rate. Percentae on the written down value	Remarks.
(b) Jute excluding generating plant ..	9	
(c) Woollen and Worsted ..	10	
(d) Carpet ..	10	
(ii) Ginning and pressing machinery ..	9	
M.—(i) Air compressors and pneumatic machinery ..	10	
(ii) Electro-plating and Electro-welding plant ..		
(iii) Newspaper production plant and machinery ..		
(iv) Air-conditioning machinery ..		
(v) Locomotives, rolling stock, tramways, and railways used by concerns excluding railway concerns (N. E. S. A.) ..		
N.—(i) Tube well boring plant ..	12	
(ii) Concrete pile driving machines ..		
(iii) Weighing machines (N.E.S.A.)		
(iv) Works instruments ..		
(v) Automatic and semi automatic machine tools ..		
(vi) Precision machine tools, *e. g.*, grinding machins ..		
O.—(i) Calculating machines (N.E.S.A.)..	15	*Replacement of wooden part plant and of machinery will be allowed as revenue expenditure.
(ii) Typewriters (N.E.S.A.) ..		
(iii) New Post Franking Machines (N. E. S. A.) ..		
(iv) Accounting machines (N E.S.A.)..		
(v) Other office machinery (N.E.S.A.)		
(vi) Sewing and knitting machines employed in the manufacture of hosiery and woollens goods ..		
(vii) Sewing and stitching machines for canvas or leather		
(viii) Hand or automatic embroidery machines and their accessories (N.E.S.A) ..		
(ix) Refrigeration plant, containers, etc. (N.E.S.A.) ..		
(x) Road making plant and machinary		
(xi) Artificial silk manufacturing machinery* ..		
(xii) Surgical instruments (N.E.S.A.)..		
(xiii) Wireless apparatus and gear, wireless appliances and accessories (N.E.S.A.) ..		
(xiv) Building contractors' machinery (N.E.S.A.) ..		

Class of asset.	Rate. Percentage on the written down value	Remerks.
P.—(i) Indigenous sugar cane crushers (Kuhlus and Belans) (N.E.S.A.) ..	18	
Q.—(i) Motor car (N.E.S.A.) ..	20	
R.—(i) Moulds used in the manufacture of concrete pipes (N.E.S.A.) ..	25	
(ii) Motor taxis, motor lorries, motor buses and motor tractors (N.E.S.A,	55	
S.—(i) Railway sidings (N.E.S.A.) ..	7	

APPENDIX A.*

1 Increased rate of depreciation on ocean-going steamers and motor vessels due to war-time conditions.—The rate of depreciation allowable on ocean-going steamers and motor vessels will be increased from 5 per cent. to 6·25 per cent. per annum for the period commencing 1st September 1939 and ending six months after the cessation of the present hostilities,—the date whereof will be notified. This increase will affect years of assessment 1940–41 on wards. In order to secure that all the shipping concerns receive the increased allowance for the same length of time, the allowance for the year of assessment 1940–41 will have reference to the proportions falling before and after the end of August 1939 of the trading year which is the "previous year" for income-tax purposes for that year of assessment.

Example 1.—

If the "previous year" was the calendar year 1939, the depreciation allowance for the year of assessment 1940–41 will be computed at the rate of 5 per cent. for 8 months and at 6·25 per cent. for 4 months.

Example 2.—

If the "previous year" was the year ending 31st March 1940, the allowance will be computed at the rate of 5 per. cent. for 5 months and at 6·25 per cent. for 7 months.

If the assessment for 1940–41 has been closed, then where that assessment has been made at nil due to the depreciation allowances not being entirely wiped off, the additional allowance due for that year under this paragraph will be deducted from the profit assessable for the year 1941-42 and in any other case an adjustment will be made in the tax demand and for 1941-42 equal to the difference in the tax demand which would have resulted if the additional allowance had been given in the assessment for 1940-41

2. The rate of depreciation on second-hand ocean-going steamers and motor vessels.—In the case of a steamer or motor vessel purchased second-hand the normal allowance will be computed by reference to the actual cost of the steamer or the motor vessel concerned to the new owner and its reasonable expectation of life at the date of purchase. The new rate and the method of computation will have effect from the assessment for 1941-42 and not from any earlier assessment.

The following scale is to be used to determine the fractional part of the cost of a steamer or motor vessel that is to be allowed year by year as depreciation for Income-tax purposes, *except* where at the date of purchase the steamer or the motor vessel concerned is more than 24 years old. In such a case the rate of depreciation to be allowed will be decided by the Central Board of Revenue on the facts of each case :

*Appendix A was inserted by Notification No. 46, dated the 15th August, 1942.

Age at date of purchase.		Expectation of life.	Fractional part of cost to be allowed as depreciation each year.
Over years.	Under years.	Years.	
0	1	20	1/20
1	2	19	1/19
2	3	18	1/18
3	4	17	1/17
4	5	16	1/16
5	6	15	1/15
6	7	14	1/14
7	8	13	1/13
8	9	12	1/12
9	10	11	1/11
10	11	10	1/10
11	12	9	1/9
12	13	9	1/9
13	14	8	1/8
14	15	8	1/8
15	16	7	1/7
16	17	7	1/7
17	18	7	1/7
18	19	6	1/6
19	20	6	1/6
20	21	5	1/5
21	22	5	1/5
22	23	4	1/4
23	24	4	1/4

The scale given above having been applied to find the normal allowance, the extra allowance for war-time conditions will be given on the lines laid down in paragraph 1 above. As the increased allowance for a new vessel is one-fourth of the normal 5 per cent. of cost, the addition in the case of second-hand steamers or motor vessels is to be taken as 1/4 of the normal allowance computed by application of the scale.

Example

A vessel 12 years old was purchased at the commencement of the 'previous year' to year of assessment 1937-38 for Rs. 5,00,000. According to the scale the 'expectation of life, at the date of its purchase second-hand was 9 years.

For the years of assessment 1941-42 onwards the depreciation allowance would be 1/9 of Rs. 5,00,000—Rs. 55,555.

For years of assessment corresponding to previous years that are chargeable accounting periods for Excess Profits Tax purposes the war-time addition of 1/4 referred to in paragraph 1 will be added.

3- *Depreciation on additions to ocean-going steamers and motor vessels which are treated as of a capital nature for Income-tax purposes.*—Any expenditure which has been treated as capital for Income-tax purposes (*e. g.*, the installation of refrigerating plant or the renewal of engines or boilers) will be added to the prime cost of the steamer or the motor vessel concerned for the purpose of computing depreciation allowance.

The annual allowance in respect of such expenditure will be calculated as follows ;—

(a) if the expenditure is or was made before the expiration of the 20 years estimated life of the steamer or the motor vessel, the normal allowance for it will be increased by such a sum as will exhaust or would have exhausted the expenditure over remaining years of twenty years.

Example.

An addition of Rs. 60,000 was made to a vessel at the expiration of 17 years of its life. The normal allowance for the addition will be 1/3 of Rs. 60,000=Rs. 20,000 for each of the remaining three years of the vessel's 20 years estimated life.

(b) if the expenditure is or was incurred when the vessel is 20 years old or more, the allowance will be such a sum as well exhaust or would have exhausted the expenditure over the further estimated years of life that would be given by applying the table in paragraph 2 above, if for "age at date of purchase" there were substituted "age at date of the capital expenditure";

Example.

An addition of Rs. 60,000 was made to a vessel 22 years old. The further estimated life of the vessel, according to the table in paragraph 2 is 4 years. The normal allowance for the addition will, therefore, be 1/4 of Rs. 60,000=Rs. 15,000 for each year of the further estimated life of the vessel.

(c) in respect of a vessel purchased second-hand, the normal allowance for the expenditure on additions to such a vessel will be increased by such a sum as well exhaust or would have exhausted the expenditure over the remaining years of the estimated life of the vessel given in the Table in paragraph 2 above.

Example.

A vessel was over 8 years and below 9 years old when purchased second-hand so that its expectation of life at the date of purchase second-hand was 12 years. After the lapse of 7 year of this expectation of life an addition of Rs. 60,000 was made to it The normal allowance for the addition will be 1/5 of Rs. 60,000=Rs. 12,000 for each of the remaining five years of the expected life of the vessel.

The increased allowance so calculated will be allowed for the years of assessment 1941-42 onwards The extra allowance for war time conditions will also be given on the lines laid down in paragraph 1 above, but the aggregate allowances on the additions shall not exceed the cost thereof.

23. (1) In the case of income which is partially agricultural income as defined in Section 2 and partially income chargeable to excess profits tax under the head 'business', in determining that part which is chargeable to excess profits tax the market value of any agricultural produce which has been raised by the assessee or by him as rent in kind and which has been utilized as raw material in such business or the sale receipts of which are included in the accounts of the business shall be deducted, and no further deduction shall be made in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent in kind.

(2) For the purposes of Sub-rule (1) "market value" shall be deemed to be:—

(*a*) Where agricultural produce is originally sold in the market in its raw state, or after application to it of any process ordinarily employed by a cultivator or receiver of rent in kind to render it fit to be taken to market, the value calculated according to the average price at which it has been so sold during the year previous that in which the assessment is made.

(*b*) where agricultural produce is not ordinarily sold in the market in its raw state, the aggregate of—

(1) the expenses of cultivation;

(2) the land revenue or rent paid for the area in which it was grown; and

(3) Such amount as the Excess Profits Tax Officer finds, having regard to all the circumstances in each case, to represent a reasonable rate of profit on the sale of the produce in question as agricultural produce.

24. Income derived from the sale of tea down and manufactured by the seller in British India shall be cumputed as if it were income derived from business, 40 per cent, of such income shall be deemed to income, profits and gains liable to tax :

Provided that in computing such income an allowance shall be made in respect of the cost of planting bushes in replacement of bushes that have died or become permanently useless in an area already planted, unless such area has proviouly been abandoned.

33. In any case in which the Excess Profits Tax Officer is of opinion that the actual amount of the income, profits or gains accruing or arising to any person residing out of British India whether directly or indirectly through or from any business connection in British India or through or from any property in British India, or through or from any money lent at interest and brought into British india in cash or in kind cannot be ascertained, the amount of such income, profits or gains for the pusposes of assessment to excess profits tax may be calculated on such percentage of the turnovor so accruing or arising as the Excess Profits Tax Officer may consider to be reasonable, or an amount which bears the same proportion to the total profits of the business of such person (such profits being computed in accordance with the Provision of the Indian Income-tax Act) as the receipt so accruing or arising bear to the total receipts of the business, or in such other manner as the excess Profits Tax Officer may deem suitable.

34. The profits derived from any business carried on in the manner referred to in Section 42 (2) of the Act may be determined for the purposes of assessment to excess proffts tax according to the preceding Rule.

44. The following bodies are recognised by the Central Board of Revenue as Associations of Accountants for the purposes of clause (iii) of Sub-section (2) of Section 61 of the Indian Income-tax Act, 1922.

1. The Institute of Chartered Accountants in England and Wales;
2. The Society of Accountants in Edinburgh;
3. The Insitute of Accountants and Actuaries in Glasgow;
4. The Society of Accountants in Aberdeen;
5. The Institute of Chartered Accountants in Ireland;
6. The Society of Incorporated Accountants and Auditors, London.

45. The following accountancy examinations are recognised by the Central Board of Revenue for the purposes of sub clause (b) of clause (iv) of Sub-section (2) of Section 61 of the Indian Income-tax Act, 1922:—

1. Government Diploma in accountancy examination conducted by the Accountancy Diploma Board, Bombay;
2. Diploma in commerce issued under the authority of the Provincial Governments in Madras, Bengal Punjab and Delhi;
3. The First Examination conducted by the Central Government under the Auditor's Certificates Rules, 1932;
4. Examinations conducted by the Association of Certified and Corporate Accountants, London.

46. The follwing educational qualifications are prescribed by the Central Board of Revenue for the purposes of sub-clause (c) of clause (iv) of Sub-section (2) of Section 61 of the Indian Income-tax Act, 1922:—

A degree in Commerce, Law, Economics or Banking including Higher Auditing conferred by any of the following Universities:—

I. Indian Universities.—Any Indian Universities incorporated by any law for the time being in force.

II. Rangoon University.

III. English Weles and Universities.—The Universities of Birmingham, Bristol, Cambridge, Durham, Leeds, Liverpool, London, Manchester, Oxford, Reading, Sheffield and Wales.

IV. Scotish Universities.—The Universities of Aberdeen, Edinburgh, Glasgow and St. Andrews.

V. Irish Universities.—The Universities of Dublin (Trinity College) and the Queen's University, Balfast

EXCESS PROFITS TAX (BOARDS OF REFEREES) RULES, 1940.

Notification No. 2, dated the 28th September, 1940.

In exercise of powers conferred by Sub-section (6) of Section 3 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Government is pleased to make the following Rules, namely:—

1. These Rules may be called the Excess Profits Tax (Boards of Referees) Rules, 1940.

2. The Central Government shall by notification in the Official Gazette, constitute a panel of persons eligible for appointment to a Board of Referees, and may in like manner, from time to time, nominate to, or remove from, the panel such persons as it thinks fit.

3. On receipt of an application under Sub-section (3) of Section 6, or an appeal under Sub-section (5) (1) [or the proviso to Sub-section (8), of Section 8, or under rule 11 of Schedule I,] of the Excess Profits Tax Act, 1940, the Commissioner shall appoint, subject to the provision of Sub-section (5) of Section 3 of that Act, a Board of Referees from the panel constituted under Rule 2, and refer the application or the appeal, as the case may be, for the decision of the Board.

4. (1) If the applicant, or in the case of an appeal, any of the parties to the appeal, object to the appointment of any particular member or members of the Board of Referees, and the Commissioner is satisfied that there are reasonable grounds for such objection, he may in his discretion cancel the appointment of such member or members to the Board and appoint an eligible person or persons instead.

Provided that no objection is taken after the date of the first meeting of the Board fixed for hearing, the application or the appeal shall be considered by the Commissioner.

(2) The decision of the Commissioner under Sub-rule (1) shall be final.

5. The members of a Board of Referees shall elect their own Chairman.

6. (1) The decision of the Board of Referees on any matter shall be according to the view of the majority of members present and shall be embodied in a report which shall be signed by all the members present :

Provided that any dissenting member may record a minute of dissent.

(2) Where the Board of Referees is equally divided, the Chairman shall have a casting vote.

(3) No decision of the Board of Referees which is signed by less than half the members constituting the Board shall be valid.

7. The proceedings of a Board of Referees shall not be invalid merely by reason of the absence of a member.

EXCESS PROFITS DOUBLE TAXATION (INDIA AND THE UNITED KINGDOM) RULES.

Notification No. 18, dated the 21st June, 1941.

In exercise of the powers conferred by Sub-section (1) of Section 11 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Goverenment is pleased to make the following Rules for the granting of relief in cases where, in respect of any profits of any business. Excess Profits Tax has been paid under that Act and Excess Profits Tax has been paid or, if there were no National Defence Contribution, would have been paid under the law in force in the United Kingdom.

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(1) These words were substituted for the words " of Section 8" by Notification No, 8 dated 21st December 1940.

1. These Rules may be cited as the Excess Profits Double Taxation (India and the United Kingdom) Rules.

2. In these Rules—

(i) the expression "Indian Excess Profits Tax" means any excess profits tax payable in accordance with the provisions of the Excess Profits tax Act, 1940;

(ii) "United Kingdom excess profits tax" means any excess profits tax payable under the law in force in the United Kingdom, or, where National Defence Contribution and not excess Profits Tax is payable, the amount of excess Profits Tax that would be payable if there were no National Defence Contribution;

(iii) the expression "chargeable accounting period" has in British India the meaning assigned to it in Sub-section (6) of Section 2 of the Excess Profits Tax Act, 1940, and in the United Kingdom the meaning assigned to it in Section 22 of the Finance (No. 2) Act, 1939.

3. Any reference in these Rules to the lower of the two rates shall, where the rates are equal, be construed as a reference to either of those rates.

4. These Rules shall have effect in respect of Indian excess profits tax charged for any chargeable accounting period in respect of which, under the Law in force in the United Kingdom, relief is to be given in respect of the payment of Indian Excess Profits Tax.

5. If the person carrying on a business in any chargeable accounting period proves to the satisfaction of the Excess Profits Tax Officer that he has paid, in respect of any profits of the business in that period, Indian excess profits tax and that he has also paid, in respect of those profits, United Kingdom excess profits tax—

(i) there shall be computed the amounts of excess profits tax which would be payable in British India and United Kingdom respectively, if excess profits tax in the other country and National Defence Contribution in the United Kingdom were disregarded except in computing capital;

(ii) the amount of relief to be given in British India shall be the same proportion of the lesser of the amounts so computed as the amount so computed for British India bears to the sum of the two amounts so computed;

(iii) if the amount so computed either for British India or for the United Kingdom is found to have been incorrect (whether by reason of a subsequent deficiency profits or for any other reason), the amonnt so computed shall be recalculated and the relief in British India revised accordingly.

6. Where the chargeable accounting periods differ in British India and the United Kingdom, the tax chargeable for such periods shall be apportioned on a time basis to co-terminus periods as hereinafter defined, and relief shall be allowed under these Rules for those periods.

For this purpose, except so far the Central Board of Revenue and the Board of Inland Revenue otherwise agree,—

(a) the first of the co-terminus periods shall commence on the first day on which double taxation commenced, and each succeeding co-terminus period shall commence at the expiration of the period immediately preceding; and

(b) each of such co-terminus periods shall end at the end of the chargeable accounting period within which it commences, and, if the chargeable accounting periods differ for the purposes of the excess profits tax of the two countries, then at the end of that one of the chargeable accounting periods that ends first.

7. For the purpose of these Rules the liability to excess profits tax of a principal company of a group of inter-connected companies shall be taken to be the liability of that company in respect of its own business only.

Where, however, excess profits tax payable in respect of the business carried by a subsidiary company is assessed on the principal company, relief shall be allowed to the subsidiary company as if the excess profits tax liability attributable to the business of the subsidiary company were separately passed upon that company.

8. Every application for a refund of excess profits tax under this Notification shall be made to the Excess Profits Tax Officer of the District or Circle in which the applicant is chargeable to excess profits tax. Such application may be presented by the applicant in person or by a duly authorised agent or may be sent by post, and shall be in the form prescribed in Rule 15 of the Excess Profits Tax Rules, 1940.

United Kingdom and British India*.—As set out in the Excess Profits Double Taxation (India and the United Kingdom) Rules, relief in respect of profits chargeable to Excess Profits Tax in both British India and the United Kingdom is to be granted in accordance with the following provisions:—

(*i*) a computation is to be made of the tax which would be payable in each country if excess profits tax in the other country and National Defence Contribution in the United Kingdom were disregarded except in computing capital.

(*ii*) the relief to be given in British India is to be the same proportion of the lower of the two amounts so computed as the amount so computed for British India bears to the sum of the two amounts so computed.

It is provided that where the chargeable accounting periods in the two countries do not coincide, relief shall be given in respect of coterminous periods. As Excess Profits Tax was imposed in the United Kingdom as from 1st April 1939 while in British India it was imposed only as from 1st September 1939 these periods connot commence defore 1st September 1939. Thus, in a case where accounts are made up to the same date in both countries, *e.g.*, to 31st December, the first coterminous period will be that commencing 1st September 1939 and ending 31st December, while the second and third coterminous periods will be the calendar years 1940 and 1941. Where, however, the accounting dates are different, there will be generally two coterminous periods for each complete year.

The position may be best illustrated by an example:—

In India there is a United Kingdom Company which makes up its accounts yearly to 31st December, the United Kingdom accounts for the whole business being made up yearly to 31st March.

The chargeable accounting periods in the United Kingdom are the 12 months periods ending 31st March 1940, 1941, and 1942, while those in British India are the 4 months period to 31st December 1939, the years ending 31st December 1940 and 1941, and the 3 months period ending 31st March 1942.

The coterminous periods are—

the 4 months to 31st Decembor 1939;
„ 3 „ 31st March 1940;
„ 9 „ 31st December 1940;
„ 3 „ 31st March 1941;

and it will be seen that the relief due in India for the 4 months to 31st December 1939 cannot be agreed until the United Kingdom liablity for the year to 31st march 1940 has baen settled, that the relief for the 3 months to 31st March 1940 has been settled, and so on.

In view of the possibility of the modification of the Excess Profits Tax liability in either country by reason of adjustment under sections 15, 17, etc., or set-off of deficiencies which may be subsequently amended, provision is made in the Rules for recalculation of the relief in both countries in such circumtances.

As the reliefs in the two countries are reciprocal, it is clear that is of primary importance that the liability in the two countries should be agreed on both sides, and, to facilitate such agreement, a representative of the Central Board of Revenue has been appointed in the United Kingdom whose duty it is to agree with the representative of the Board of Inland Revenue and, where possible, with the assessee the relief to be given by each country.

* Para 94-B Notes and Instructions.

The following instructions should be followed in connection with claim under section 11 (1).

In view of the delay that must occur before final agreement is reached, the Excers Profits Tax Officer, on receipt of a claim, should agree with the assessee a sum estimated reasonably to represent the relief ultimately due. This amount of tax should stand over until intimation is received of the amount of relief actually due.

The calculation of this reasonable amount can only be made approximately, for the computations of the excess profits assessable in the two countries will hardly ever coincide. The only practical method of making the approximate calculation is, therefore, to ignore the variations that may arise between the excess profits assessable for a given peried will be the same in the two countries. Regard should be paid, however to the different rates at which the tax is imposed. These are in the United Kingdom 60% up to 31st March 1940 and 100% thereafter, and in British India 50% up to 31st March 1941 and 66 2/3% thereafter.

The calculation of a reasonable amount to be allowed to stand over until the double taxation claim has been settled might be made as in the following example:—

Chargeable Accounting Period 12 months ending 31st December 1940—

	Rs.
Excess profits for the period in British India	1,00,000
Excess Profits Tax payable at 50%	50,000

On the assumption that the excess profits assessable in the United Kingdom for this period would also be Rs. 1.00,000, the excess profits tax payable in that country would be·—

	Rs.
3 months to 31st march 1940 Rs. 25,000 at 60%	15,000
9 months to 31st Deceember 1941 Rs. 75,000 at 100% ..	75,000
Total	90,000

and the relief due in British India would be—

$$\frac{50{,}000}{50{,}000+90{,}000}+50{,}000=\frac{5}{14}\text{ of }50{,}000$$

=Rs. 17,857, or say Rs. 17,500.

EXCESS PROFITS DOUBLE TAXATION (INDIA AND CEYLON) RULES.

Notification No. 6 dated the 5th September, 1942.

In exercise of the powers conferred by Sub-section (1) of Section 11 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Government is pleased to make the following Rules for the granting of relief in cases where, in respect of any profits of any business, excess profits tax has been paid under that Act and excess profits duty has been paid in Ceylon:—

1. These Rules may be cited as the Excess Profits Double Taxation (India and Ceylon) Rules.

2. In these rules the expression:—

(i) "excess profits tax",

(a) so far as British India is concerned means any excess profits tax payable in accordance with the provisions of Excess Profits Tax Act, 1940.

(b) so far as Ceylon is concerned means any excess profits duty payable in accordance with the law in force in Ceylon;

(ii) "Chargeable Accounting Period" has in British India the meaning assigned to it in Sub-section (6) of Section 2 of the Excess Profits Tax Act, 1940, and in Ceylon the meaning assigned to the expression "accounting period" in section 2 of the Excess Profits Duty Ordinance, 1941).

3. Any reference in these Rules to the lower of the two rates, shall, where the rates are equal, be construed as a reference to either of those rates.

4. These Rules shall have effect in respect of Indian excess profits tax charged for any chargeable accounting period in respect of which under the law in force in Ceylon relief is to be given in respect of the payment of Indian excess profits tax.

5. If the person carrying on a business in any chargeable accounting period proves to the satisfaction of the Excess Profit Tax Officer that he has paid in respect of any profits of the businesss in that period, Indian excess profits tax and that he has also paid, in respect of those profits, Ceylon excess profits tax:—

(i) there shall be computed the amount of excess profits tax which would be payable in British India and Ceylon respectively, if excess profits tax in the other country were disregarded except in computing capital;

(ii) the amount of relief to be given in British India shall be the same proportion of the lesser of the amounts so computed as the amount so computed for British India bears to the sum of the two amount so computed ;

(iii) if the amount so computed either for British India or for Ceylon is found to have been incorrect (whether by reason of a subsequent deficiency of profits or for any other reason), the amount so computed shall be re-calculated and the relief in British India revised accordingly.

6. Where the chargeable accounting periods differ in British India and Ceylon the tax chargeable for such periods shall be apportioned on a time basis to co-terminus periods as hereinafter defined, and relief shall be allowed under these Rules for those periods.

For this purpose, except so far the Government of India and the Government of Ceylon otherwise agree:—

(a) the first of the co-terminus periods shall commence on the first day on which double taxation commenced, and, each succeeding co-terminus period shall commence at the expiration of the period immediately preceding ; and

(b) each of such co-terminus periods shall end at the end of the chargeable accounting period within which it commences, and, if the chargeable accounting periods differ for the purposes of the excess profits tax of the two countries, then at the end of that one of the chargeable accounting periods that ends first.

7. For the purposes of these Rules the liability to excess profits tax of a principal company of a group of inter-connected companies shall be taken to be the liability of that company in respect of its own business only.

Where, however, excess profits tax payable in respect of the business carried on by a subsidiary company is assessed on the principal company, relief shall be allowed to the subsidiary company as if the excess profits tax liability attributable to the business of the subsidiary company were separately assessed upon that company.

8. Every application for a refund of excess profits tax under these Rules shall be made to the Excess Profits Tax Officer of the district or circle in which the applicant is chargeable to excess profits tax. Such application may be presented by the applicant in person or by a duly authorised agent or may be sent by post, and shall be in the form prescribed in Rule 15 of the Excess Profits Tax Rules, 1940.

EXCESS PROFITS DOUBLE TAXATION (INDIA AND ADEN) RULES.

Notification No. 4 dated the 25th April 1942.

In exercise of the powers conferred by Sub-section (1) of Section 11 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Government is pleased to make the following Rules for the granting of relief in case where, in respect of any profits of any business, excess profits tax has been paid under that Act and excess profits tax has been paid in Aden :—

1. These Rules may be cited as the Excess Profits Double Taxation (India and Aden) Rules.

2. In these Rules, the expression—

(i) "Indian excess profits tax" means any excess profits tax payable in accordance with the Provisions of the Excess Profits Tax Act, 1940.

(ii) "Aden excess profits tax" means any excess profits tax payable under the law in force in Aden ;

(iii) "chargeable accounting period" has in British India the meaning assigned to it in Sub-section (6) of Section 2 of the Excess Profits Tax Act, 1940, and in Aden the meaning assigned to it in Section 18 of the Excess Profits Tax Ordinance, 1941 (Aden Ordinance No. 8 of 1941.)

3. Any reference in these Rules to the lower of the two rates shall, where the rates are equal, be construed as a reference to either of those rates.

4. These Rules shall have effect in respect of the Indian excess profits tax charged for any chargeable accounting period in respect of which under the law in force in Aden relief is to be given in respect of the payment of India excess profits tax.

5. If the person carrying on a business in any chargeable accounting period proves to the satisfaction of the Excess Profits Tax Officer that he has paid in respect of any profits of the business in that period, Indian excess profits tax and that he has also paid, in respect of those profits, Aden excess profits tax.—

(i) there shall be computed the amounts of excess profits tax which would be payable in British India and Aden respectively, if excess profits tax in the other country were disregarded except in computing capital ;

(ii) the amount of relief to be given in British India shall be the same proportion of the lesser of the amounts so computed as the amount so computed for British India bears to the sum of the two amounts so computed ;

(iii) if the amount so computed either for British India or for Aden is found to have been incorrect (whether by reason of a subsequent deficiency of profits or for any other reason), the amount so computed shall be recalculated and the relief in British Indian revised accordingly.

6. Where the chargeable accounting periods differ in British India and Aden the tax chargeable for such periods shall be apportioned on a time basis to co-terminus periods as hereinafter defined, and relief shall be allowed under these Rules for these periods.

For this purpose, except so far as the Government of India and the Government of Aden otherwise agree—

(a) the first of the co-terminus periods shall commence on the first day on which double taxation commenced, and, each succeeding co-terminus period shall commence at the expiration of the period immediately preceding ; and

(b) each of such co-terminus periods shall end at the end of the chargeable accounting period within which it commences, and, if the chargeable accounting periods differ for the purposes of the excess profits tax of the two countries, then at the end of that one of the chargeable accounting periods that ends first.

7. For the purposes of these Rules the liability to excess profits tax of a principal company of a group of inter-connected companies shall be taken to be the liability of that company in respect of its own business only.

Where, however, excess profits tax payable in respect of the business carried on by a subsidiary company is assessed on the principal company, relief shall be allowed to the subsidiary company as if the excess profits tax liability attributable to the business of the subsidiary company were separately assessed upon that company.

8. Every application for a refund of excess profits tax under these Rules shall be made to the Excess Profits Tax Officer of the district or circle in which the applicant is chargeable to excess profits tax. Such application may be presented by the applicant in person or by a duly authorised agent or may be sent by post, and shall be in the form prescribed in Rule 15 of the Excess Profits Tax Rule, 1940.

EXCESS PROFITS TAX (POST-WAR-REFUNDS) RULES 1942.

Notification No. 3, dated the 11th April 1942.

In exercise of the powers conferred by Section 10 of the Indian Finance Act, 1942 (XII of 1942,) the Central Government is pleased to make the following Rules, namely :—

1. (*i*) These Rules may be called the Excess Profits Tax (Post-war-Refunds Rules 1942.

[1](*ii*) They apply to the whole of British India Included those excluded and partially excluded areas to which the Indian Finance Act, 1942, has been or may hereafter be applied by notification under sub-section (1) of Section 92 of the Government of India Act, 1935.

2. In these Rules—

(i) "Excess Profits Tax Officer" means the Excess Profits Tax Officer having for the time being jurisdiction in regard to the person charged to excess profits tax ;

(ii) "the Finance Act" means the Indian Finance Act, 1942 (XII of 1942) ;

(iii) "the Act" means the Excess Profits Tax Act, 1940 (XV of 1940) ;

(iv) "excess profits tax" means any excess profits tax charged under the Act at the rate of 66 2/3 per cent.

[2](v) 'Chargeable accounting period' means chargeable accounting period as defined in sub-section (6(of Section 2 of the Act.

[3](vi) "the Ordinance" means the Excess Profits Tax Ordinance" 1943 (No XVI of 1943),

[4]3. (1) The Excess Profits Tax Officer shall give notice of the provisions of Section 10 of the Finance Act to each person who has been or may hereafter be assessed to excess profits tax at 66 2/3 per cent. for any chargeable accounting period ending not later than the 31st day of December, 1942. Such notice shall be in form E. P. 4-1 but in any case in which, when the Finance Act came into operation, excess profits tax notices of demand had already been issued, the notice shall be in Form E. P. 4-2.

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(1) Sub-section (ii) was added by Notification No. 13-D, dated the 17th July 1943.

(2) Inserted by Notification No. 4, dated the 5th June 1943.

(3) Inserted by Notification No. 1-C., dated the 7th August 1943.

(4) Rule 3 was inserted ibid and sub-rule (2) was modified by Notification No. 1, dated the 15th April 1944.

(2) The notice required to be given under Section 2 of the Ordinance shall be—

(*a*) in respect of chargeable accounting periods ending before the 1st day of January 1944, in Form E P. 4-1A ;

(*b*) in respect of chargeable accounting periods ending after the 31st day of December 1943 ;

(i) where assessment is made under Section 14 of the Act, in Form E. P. 4-1B ;

(ii) where assement is made under Section 14-A of the Act, in Form E. P. 4-7A.

(3) Notices in Form E. P. 4-1 shall be given at the time of issue of any notice of demand in respect of excess profits tax under Section 14 of the Act but notices in Form 4-2 shall be given forthwith.

4. When any excess profits tax charged is reduced, whether by appellate order of the Appellate Assistant Commissioner of Excess Profits Tax, the Appellate Tribunal, the High Court or His Majesty in Council or by a rectification order of the Commissioner of Excess Profits Tax under Section 20 of the Act, or by relief granted under Section 7 or 11 of the Act, and whether by refund or otherwise, and the deposit made under Section 10 of the Finance Act in relation thereto exceeds the maximum sum permitted thereby or the deposit made under section 2 of the ordinance exceeds the amount required thereby, the amount the excess shall be refunded with interest at 2% per annum from the date of deposit to the date repayment.

5. The Excess Profits Tax Officer shall record for each person who has been assessed to excess profits tax particulars of the amount charged for each chargeable accounting period, of any reduction thereof any deposits made under Section 10 of the Finance Act [or under section 2 of the ordinance][6] and of any refunds thereof.

6. In calculating the maximum amount that may be [7][or is required to be] deposited under Section 10 of the Finance Act, fractions of a rupee are to be ignored.

[8]7. So much of any excess profits tax as may be repayable under the Provisions of Sub-section (1) of Section 10 of the Finance Act shall be repaid within three years of the date of termination of the present hostilities ;

Provided that, if the Central Government is satisfied that the whole or any part of the amount so repayable is required for an approved purpose, the Central Government shall, after taking such guarantee as it thinks fit for the proper utilisation thereof, repay the whole, or, as the case may be, part, of the amount within twelve months of the date of termination of the present hostilities.

Explanation.—In this Rule, 'approved purpose' means any purpose which the Central Government may by general or special order declare to be an approved purpose.

Section 10, Finance Act, 1942. Deposits and post-war refunds.*—Section 10 of the Finance Act, 1942, provides that, as regards any excess profits tax charged at the rate of 66 2/3 per cent., if the assessee deposits with the Central Government a further sum not exceeding one-fifth of the amount of such excess profits tax, he is to be repaid at such date and subject to such conditions as may be hereafter determined, so much of the said excess profits tax as shall be equal to one-tenth of the amount thereof or to one-half of such further sum deposited, whichever is the less.

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(5) Inserted by Notification No, 1-C, dated the 7th August 1943.

(6) Ibid.

(7) Ibid.

(8) This Rule was inserted by No. 5, dated the 30th May, 1942.

* Para 97-A Notes and Instructions,

Ordinance No. XVI of 1943 makes compulsory the deposit of one-fifth of the amount of E. P. T. charged at 66 2/3 per cent. in respect of any chargeable accounting period ending after 31st December 1942.

Date by which deposit to be made.—A deposit under the section is to be made before the 1st July 1942 or within thirty days of the date upon which any excess profits tax (charged at the rate of 66 2/3 per cent.) becomes payable, whichever of those dates is the later. The 1st July 1942 has no relevance to any case other than those in which the excess profits tax became payable earlier than the 1st June 1942.

If the thirtieth day after the date on which excess profits tax charged at 66 2/3 per cent, becomes payable is a day upon which the Treasury or Bank will remain closed, the date by which a deposit under section 10 of the Finance Act, 1942, may be made is the first day on which the Treasury or Bank will re open thereafter.

That is to say if excess profits tax charged at 66 2/3 per cent. was payable on 24th November 1942, and on the thirtieth day thereafter—24th December 1942—the Treasury or the Bank remained closed and re-opened on 2nd January 1943 then the date by which a deposit under section 10 could be made was 2nd January 1943.

Notice to assessee.—The Excess Profits Tax (Post-war Refunds) Rules, 1942, provide that notice of the provisions of the section is to be given to each person assessed to excess profits tax charged at the rate of 66 2/3 per cent.

Deposits against provisional assessments.—When issuing on assessment order on form E. P. 4-7, in respect of a provisional assessment of Excess Profits Tax made under the provision of Ordinance No XVI of 1943, the Excess Profits Tax Officer should send to the assessee an intimation that the Government is prepared to accept further sum not exceeding one-fifth of the Excess Profits Tax demanded, on account of the Deposit that will ultimately be payable under section 10 of the Finance Act, 1942, or under section 2 of the Excess Profits Tax Ordinance, 1943, and that such sum, paid to the credit of the Government of India, will carry simple interest at the rate of 2 per cent. per annum from the date of payment.

Maximum amount of deposit.—As stated above, the maximum amount of deposit permitted or required by the section is one-fifth of the amount of the excess profits tax charged at 66 2/3 per cent. In calculating that amount, however, fractions of a rupee are to be ignored [see Rule 6 of Excess Profits Tax (Post-war Refunds) Rules, 1942], but the amount ultimately refundable will not be affected thereby.

Reduction in amount of E. P. T. charged at 66 2/3% for any C. A. P.—The second proviso to sub-section (1) of the section provides that, where the amount of the E. P. T. charged at 66 2/3 per cent. is reduced, the maximum sum that may be deposited is to be correspondingly reduced. This applies to a reduction—

(a) made by the appellate decision of—

(i) the Appellate Assistant Commissioner;

(ii) the Appellate Tribunal;

(iii) the High Court;

(iv) His Majesty in Council;

(b) resulting from a rectification order of the Commissioner of Excess Profits Tax, under section 20 of the Excess Profits Tax Act;

(c) due to the set-off of a subsequent deficiency under section 7 of the Act; or

(d) by allowance of double excess profits taxation relief under section 11; and whether by repayment or otherwise.

Deposit still not greater than maximum amount permitted.—As the amount deposited by an assessee may be less than the maximum permitted by the Finance Act in relation to the Excess Profits Tax charged at 66 2/3 per cent. for a chargeable accounting period ending not later than 31st December 1942 it is possible that a particular deposit may not exceed the reduced permitted maximum amount after the Excess Profits Tax charged has been so reduced. In such a case on action by the Excess Profits Tax Officer is necessary.

Deposit in excess of maximum.—The Excess Profits Tax (Post-war Refunds) Rules provide that, if, owing to a reduction in the amount of Excess Profits Tax charged at 66 2/3 per cent., *a deposit made in relation to a particular chargeable accounting period exceeds the permitted maximum*, the excess amount deposited is to be repaid.

Assessees assessable to Excess Profits Tax both British India and the United Kingdom.—The last proviso to sub-section (1) of section 10 provides that the relief provided for by the section shall be allowable in the case of any profits which are also *liable* to assessment to excess profits tax under the law in force in the United Kingdom without requiring that any "further sum" shall be deposited under the section, and that the sum repayable by the Central Government shall be one-tenth of the amount of Excess Profits Tax payable at 66 2/3 per cent. as reduced by the relief, if any, given under the various provitions of the Excess Profits Tax Act. This provision is to be regarded as remaining in force inspite of the Ordinance having made deposits compulsory in other case. It is, however, for the assessee to decide whether his profits are liable to assessment to Excess Profits Tax in the United Kingdom and whether, consequently, he is entitled to the relief provided by the section without making any deposit thereunder.

It is to be noted that the words of the proviso are "profits which are *laible* to assessment to excess profits tax under the law in force in the United Kingdom". The proviso applies therefore to any profits which are 'within the charge" to excess profits tax in the United Kingdom, irrespective of which whether any E. P. T. is actually payable in that country or, if not, what its actual amount may be.

FORM E. P. 4-1.

Excess Profits Tax.

NOTICE UNDER SECTION 10 OF THE FINANCE ACT, 1942,

TO

.....

.....

.....

The amount of excess profits tax payable by you at the rate of 66 2/3 per cent, in respect of the chargeable accounting period commencing 194 and ending 194 having been determined to be the sum of Rs. as specified in the accompanying Notice of Demand given under Rule 5 of the Excess Profits Tax Rules and the date upon which such amount of excess profits tax is made payable being the of 194 ;

TAKE NOTICE that of you desire to avial yourself of the Provisions of Section 10 of the Finance Act, 1942, it is necessary that you deposit with

the *Treasury Officer / Sub-Treasury Officer / Agent, Imperial Bank of India / Governer, Reserve Bank of India at on or before

* Delete words that are inappropriate.

the date of 194 , a sum not exceeding Rs. when you will be granted a receipt. A chalan is enclosed for the purpose.

Excess Profits Tax Officer.

Address.

Dated 194 .

Notice.—A copy of Section 10 of the Finance Act, 1942, is printed at Page 52

Form E. P. 4-1A.

EXCESS PROFITS TAX.

Notice under Section 2 of the Excess Profits Tax Ordinance, 1943, read with Section 10 of the Finance Act, 1942.

To

.....

.....

.....

The amount of Excess Profits Tax payable by you at the rate of 66 2/3 per cent. in respect of the chargeable accounting period commencing.....194 and ending... ....194 having been determined to be the sum of Rs. as specified in the accompanying Notice of Demand given under Rule 5 of the Excess Profits Tax Rules and the date upon which such amount of Excess Profits Tax is made payable being the day of 194 ;

Take notice that you are required under the provisions of Section 2 of the Excess Profits Tax Ordinance, 1943, the read with Section 10 of the Finance Act, 1942, to deposit with the

*Treasury Officer
Sub-Treasury Officer
Agent, Imperial Bank of India
Governor, Reserve Bank of India

at

on or before the day of 194 , the sum of Rs. when you will be granted a receipt. A Chalan is enclosed for the purpose.

Excess Profits Tax Officer,
Address.

Dated 194 .

Form E. P. 4-1 B.

EXCESS PROFITS TAX

Notice under Section 2 of the Excess Profits Tax Ordances, 1943, read with Section 10 of the Finance Act, 1942, at Page 52

To

.....

.....—..

.....

The amount of the Excess Profits Tax payable by you at the rate of 66 2/3 per cent. in respect of the chargeable accounting period commencing..... ... .194 . ahd ending .....194 . having been determined to be the sum of Rs.....as specified in the accompanying

* Delete words that are inappropriate.

Notice of Demand given under Rule 5 of the Excess Profits Tax Rules, and the date upon which that sum, less any payments made under the provision of Section 14A of the Excess Profits Tax Act, 1940 being the day of 194

Take notice that you are required, under the provisions of Section 2 of the Excess Profits Tax Ordinance, 1943, to

deposit with the *Treasure officer / Sub-treasury officer / Agent, Imperial Bank of India / Governor, Reserve Bank of India

at on or before the day of 194 .
the sum of Rs....., arrived at as follows:—

	Rs.
†/64 of Rs..... (the Excess Profits Tax payable) ..	=
Deduct amount provisionally deposited under Section 2 (1A) of the Excess Profits Tax Ordinance, 1943, *viz.*, ..	=
Sum now payable ..	=

A chalan is enclosed for the purpose.

Excess Profits Tax Officer

Dated 194 . } Address.

FORM E. P. 4-2.

Excess Profits Tax.

Notice under Section 10 of the Finance Act, 1242.

To

.....
....
....

TAKE NOTICE that if you desire to avail yourself of the Provisions of Section 10 of the Finance Act, 1942, in relation to the sum of Rs. Excess Profits Tax charged at the rate of 66 2/3 per cent. in respect of the chargeable accounting period commencing 194 and ending 194 , which as stated in the notice given under Rule 5 of the Excess Profits Tax Rules issued to you on the day of 19 , you were required to pay to the †Treasury officer / Sub-Treasury Officer / Branch of Imperial Bank of India / Reserve Bank

at on or before 194 , you must deposit with the said *Treasury Officer / Sub-Treasury Officer / Branch of Imperial Bank of India / Reserve Bank not later than 1942 a further sum not exceeding Rs.

Excess Profits Tax Officer.

Dated 194 , Address

Note.—A copy of the relevant Section of the Finance Act, 1942, is printed at Page 52.

† Superfluous wards should be del. eted

+ Insert "19" or "14" as the case require.

ABSTRACT OF THE INDIAN FINANCE ACT, 1940.

(ACT No XVI OF 1940).

(Received the assent of the Governor-General on the 6th April 1940).

Income-tax and super-tax.

7. (1) Subject to the provisions of Sub-section (2)—

(*a*) income-tax for the year beginning on the 1st day of April 1940, shall be charged at the rates specified in Part I of Schedule II to the Indian Finance Act, 1939.

(*b*) rates of super-tax for the year beginning on the 1st day of April 1940, shall, for the purposes of Section 55 of the Indian Income-tax Act, 1922, be the rates specified in Part II of Schedule II to the Indian Finance Act, 1939 :*

Provided that in the case of an association of persons being a Co-operative Society, other than the Sanikatta Saltowners Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under an Act of the Provincial Legislature governing the registration of Co-operative Societies, the rates of super-tax for the year beginning on the 1st day of April, 1940, shall be:—

(1) On the first Rs. 25,000 of total income..... Nil.

(2) On the balance of total income..... .....one anna in the rupee.

(2) In cases to which Section 17 of the Indian Income-tax Act, 1922, applies, the tax chargeable shall be determined in accordance with the provisions of that Sections with reference to the rates imposed by Sub-section (1).

(3) For the purpose of this section and of the rates of tax imposed by Sub-section (1), the expression "total income" mean total income as determined for the purposes of income tax or super tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922. * * *

**Part I and II of Schedule II to the Indian Finance Act, 1939,* referred to above *are printed below* :—

SCHEDULE II.

[*See* section 6].

PART I.

RATES OF INCOME-TAX.

A. In the case of every individual, Hindu undivided family, unregistered firm and other association of persons not being a case to which paragraph B of this Part applies—

1.	On the first Rs. 1,500 of total income	.. Nil.
2.	On the next Rs. 3,500 of total income	.. Nine pies in the rupee.
3	On the next Rs. 5,000 of total income	.. One anna and three pies in the rupee.
4.	On the next Rs. 5,000 of total income	.. Two annas in the rupee.
5.	On the balance of total income	.. Two annas and six pies in the rupee.

Provided that—

(*i*) not 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 the Indian Income-tax Act, 1922, income-tax is to be charged at the maximum rate—

	Rate.
One the whole of total income	..Two annas and six pies in the rupee.

PART II,

RATES OF SUPER-TAX.

A. In the case of every individual, Hindu undivided family, un-registered firm and other association of persons, not being a case to which paragraph B of this Part applies—

		Rate.
1.	On the first Rs. 25,000 of total income	.. Nil.
2.	On the next Rs. 10,000 of total income	. One anna in the rupee.
3.	On the next Rs. 20,000 of total income	.. Two annas in the rupee.
4.	On the next Rs 7,0000 of total income	Three annas in the rupee.
5.	On the next Rs. 75,000 of total income	. Four annas in the rupee.
6.	On the next Rs 150,000 of total income	.. Five annas in the rupee.
7.	On the next Rs. 1,50000 of total income	. Six annas in the rupee.
8.	On the balance of total income	.. Seven annas in the rupee.

B. In the case of every company and local authority—

	Rate.
One the whole of total income	.. One anna in the rupee.

THE INDIAN FINANCE (No2) ACT, 1940.

(Received the assent of the Governor-General on the 29th November, 1940)

* * * *

Income tax and super-tax

3. (1) Subject to the Provisions of this section, the rates of income-tax, and the rates of super-tax other than super-tax payable by a company, imposed by Sub section (1) of Section 7 of the Indian Finance Act, 1940, shall in respect of the year beginning on the 1st day of April, 1940, be increased by a surcharge for the purposes of the Central Government amounting to one-twelfth of each such rate, and the rate of super tax payable by a company imposed by the said Sub section shall in respect of the same year be increased by one-twelith.

(2) In making any assessment for the year ending on the 31st day of March, 1941,—

(*a*) where the total income of an assessee, not being a company, includes any income chargeable under the head 'Salaries" or under the head 'Interest on Securities," or any income from dividends in respect of which he is deemed, under Section 49 B of the Indian Income-tax Act 1922, to have paid income-tax imposed in British India, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates in force before the commencement of this Act on his total income the same proportion as the amount of such inclusions bears to his total income ;

(*b*) Where the total income of an asessee, not being a company, includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the Provisions of Sub-section (2) of Section 18 of the Indian Income-tax Act, 1922, the super-tax payable by the assessee on that portion of his total income which consists of such inclusion shall be an amount bearing to the total amount of super-tax payable according to the rate, in force before the commencement of this Act on his total income the same proportion as the amount of such inclusions bears to his total income.

(3) For the purposes of the Proviso to Sub-section (2) of Section 18 of the Indian Income tax Act, 1922, the amount by which any deduction made under that Sub-section by a person responsible for paying any income chargeable under the head "Salaries" falls short of the deduction which could have been made had the rates im-

posed by this Act then been in force shall be deemed to be a deficiency arising out of a previous deduction or failure to deduct.

(4) Notwithstanding that the Income-tax Officer has assessed the total income of an assessee and has determined the sum payable thereon under Section 23 of the Indian Income-tax Act, 1922, he may proceed to determine the further sum payable by such assessee by virtue of Sub-section (1) of this Section and such further sum shall for the purposes of the Indian Income-tax Act, 1922, be deemed to be a sum determined under Section 23 of that Act.

ABSTRACT OF THE INDIAN FINANCE ACT, 1941.

(ACT No. VII OF 1941.)

(Received the assent of the Governor General on the 31st March 1941)

* * * * *

Income-tax and super tax.

7. (1) Subject to the Provisions of Sub-section (2) and (3) —

(*a*) income-tax for the year beginning on the 1st day of April, 1941, shall be charged at the rates specified in Part I of Schedule II to the Indian Finance Act, 1939, increased in each case by a surcharge for the purposes of the Central Government amounting to one-third of each such rate ;

(*b*) rates of super-tax for the year beginning on the 1st day of April, 1941, shall, for the purposes of Section 55 of the Indian Income-tax Act, 1922, be the rates specified in Part II of Schedule II to the Indian Finance Act, 1939 increased—

(i) in the case of the rate applicable to a company, by a surcharge amounting to one third of that rate, and

(ii) in the case of every other rate, by a surchage for the purposes of the Central Government amounting to one-third of each such rate;

Provided that in the case of an association of persons being a co-operative society, other than the Sanikatta Saltowners' Society in the Bombay Presidency, for time being registered under the Co-operative Societies Act, 1912, or under an Act of the Provincial Legislature governing the registration of Co-operative Societies, the rates of super-tax for the year beginning on the 1st day of April, 1941, shall be the rate of super-tax specified in the Proviso to clause (b) of Sub-section (1) of Section 7 of the Indian Finance Act, 1940 increased in each case by a surcharge for the purpose of the Central Government amounting to one-third of each such rate.

(2) In making any assessment for the year ending on the 31st day of March, 1942,—

(*a*) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" or under the head "Interest on Securities" or any income from dividends in respect of which he is deemed under Section 49B of the Indian Income-tax Act, of 1922, to have paid income-tax imposed in British India, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1940, read with Sub-section (1) of Section 3 of the Indian Finance (No. 2) Act, 1940, on his total income the same proportion as the amount of such inclusions bears to his total income ;

(*b*) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the Provisions of Sub-section (2) of Section 18 of the Indian Income-tax Act, 1922, the super-tax payable by the assessee on that portion of his total income which consists of such inclusions shall be an amount bearing to the total amount of super-tax payable according to the rates applicable under the operation of the indian Finance Act, 1940, read with Sub-sectiou (1) of Section 3

of the Indian Finance (No. 2) Act, 1940, on his total income the same proprtion as the amount of such inclusions bears to his total income.

(3) In cases to which section 17 of the Indian Income-tax Act, 1922, applies, the tax chargeable shall be determined as provided in that Section but with reference to the rates imposed by Sub-section (1) of the Section, and in accordance with this Section where applicable.

(4) For the purposes of this section and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the purposes of income-tax or super tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922.

Continuance of and rate of Excess profits Tax.

8. (1) In Sub-clause (6) of Section 2 of the Excess Profits Tax Act, 1940, for the words and figures "31 st day of March 1941" the words and figures 31st day of March 1942," shall be subsqituted.

(2) The excess profits tax imposed by Section 4 of the Excess Profits Tax Act, 1940, shall, in respect of any chargeable accounting period begfnning after the 31st day of March, 1941, be an amount equal to sixty six and two thirds percent, of the amount by which the profits of the business during that chargeable accounting period exceed the standard profits.

* * *

ABSTRACT OF THE INDIAN FINANCE ACT, 1942.

ACT No. XII OF 1942.

(*Received the assent of the Governor-General on tha 26th March, 1942*).

Short title and extent. 1. (*1*). This Act may be called the Indian Finance Act. 1942.

(2) It extends to the whole of Birtish India [1]

* * *

Income-tax and supper-tax. 8. (1) Subject to the Provisions of Sub-section (2) & (3),-

(*a*) income-tax for the year beginning on the 1st day of April, 1942, shall be charged at the rates specified in Part I of Schedule II increased in this case to which sub-paragraph (*b*) of paragraph A and paragraph B of that Part apply by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of income tax, and

(*b*) races of super-tax for the year begining on the 1st day of April, 1942, shall, for the purposes of Section 55 of the Indian Income-tax Act, 1922, be those specified in Part II of Schedule II increased in the cases to which paragraphs A, B and C of that Part apply by a surcharge for the Central Government at the rate specified therein in respect of each such rate of super-tax.

(2) In making any assessment for the year ending on the 31st day of March, 1943,—

(*a*) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" or under the head "Interest on Securities" or any income from dividends in respect of which he is deemed under Section 49B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in British India, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1941, on his total income the same proportion as the amount of such inclusions bears to his total income ;

(*b*) where the total incom of an assessee, not being a company, includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the Provisions of Sub-section (2) of Section 18 of Section 18 of the Indian Income-tax Act, 1922, the super-tax payable by the assessee on that portion of his total income which consists of such inclusions shall be an amount

(1) Extended to British Baluchistan by Notification No. 51F, dated the 7 April 1942.

bearing to the total amount of super-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1941, on his total income the same proportion as the amount of such inclusions bears to his total income.

(3) In cases to which Section 17 of the Indian Income-tax Act, 1922, applies the tax chargeable shall be determined as provided in that Section but with reference to the rates imposed by Sub-section (1) of this Section, and in accordance with the provisions of Sub-section (2) of this Sections were applicable.

(4) For the purposes of this Section and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922.

(5) Notwithstanding anything contained in Sub-section (1) or Sub-section (2) no tax shall be payable in cases to which sub-paragraph (*a*) of paragraph A of Part I of Schedule II applies where the assessee deposits with the Central Government in such manner and in accordance with such conditions as the Central Government may by rule prescribe for the purposes of this Sub-section an amount representing not less than one rupee for every complete unit of twentyfive rupees by which this total income exceed seven hundred and fifty rupees ;

Provided that where the total income inludes any income chargeable under the head "Interest on Securities" or any income from dividends in respect of which he is deemed under section 49B of the Indian Income-tax Act, 1922, to have paid income-tax imposed in British India, the amount to be deposited by the assessee in order to obtain the exemption conferred by this Sub-section shall be an amount bearing to the minimum required to be deposited under the foregoing provisions of this Sub-section the same proportion as the amount of his total income diminished by the amount of such inclusions bears to the amount of his total income

(6) A deposit made in accordance with the provisions of Sub-section (5) shall not in any way be capable of being charged and shall not be liable to attachment under any decree or order of any Civil, Revenue or Criminal Court in respect of any debt or liability incurred by the depositor and neither the Offical Assignee nor any receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to, or have any claim on any such deposit

(7) Where the total income of an assessee referred to in sub-paragraph (*b*) of paragraph A of Part I of Schedule II does not exceed six thousand rupees, an amount representing one rupee for every complete unit of two hundred rupees of his total income as reduced by the deductions, if any allowed under the second proviso to Sub section (1) of Section 7, Section 15 and Sub-section (1) of Section 58F of the Indian Income-tax Act, 1922, shall be funded for the assessee's benefit and shall be paid to him on such date, not more than twelve months after the termination of the present hostilities, as the Central Government may fix :

Provided that nothing in this Sub-section shall apply to any part of total income to which clause (*a*) of Sub-section (2) applies.

Explanation—In computing the amount to be funded under this Sub-section if there is an incomplete unit amounting to one hundred rupees or more it shall be reckoned as a complete unit of two hundred rupees.

Continuance of and rate of Excess Profits Tax.

9 (1) In sub-clause (*a*) of clause (6) of Section 2 of the Excess Profits Tax Act, 1940 for the words and figures "31st day of March 1942" the words and figures "31st day of March, 1943" shall be substituted.

(2) The excess profits tax imposed by section 4 of the Excess Profits Tax Act, 1940, shall, in respect of any chargeable accounting period beginning after the 31st day of March 1942, be an amount equal to sixty-six and two-thirds per cent, of the amount by which the profits of the business during that chargeable accounting period exceed the standard profits.

Funding of onetenth of Excess Profits tax.

10. (1) If before the 1st day of July, 1942, or within thirty days of the date on which any excess profits tax charged under the provisions of the Excess Profits Tax Act 1940, at the rate of sixty-

six and two-thirds per cent becomes payable, whichever of these dates is later, a further sum not exceeding one-fifth of the amount of the said excess profits tax is deposited with the Central Government, the Central Government shall repay, at such date and subject to such conditions as it may hereafter determine, so much of the said excess profits tax as shall be equal to one-tenth of the amount thereof or to one-half of such futher sum deposited, whichever is the less ;

Provided that, if the said excess profits tax is thereafter reduced, whether by relief given in respect of a deficiency of profits, or by relief given in respect of double excess profits taxation or otherwise, and whether by refund or otherwise, the portion of the tax to be repaid under this Section shall be correspondingly reduced.

Provided further that if the said excess profits tax is so reduced,the maximum sum that may be desposited with the Central Government under this Section shall also be correspondingly reduced :

Provided further that the provisions of this Section shall apply in respect of excess profits tax to which the Section applies which became payable before the commencement of this Act, if the further sum referred to herein is deposited before the 1st day of July, 1942,

Provided further that in relation to excess profits tax payable under the Excess Profits Tax Act, 1940, in respect of any profits which are also liable to assessment of excess profits tax under the law in force in the United Kingdom it shall be unnecssary to deposit the further sum referred to in this Section, and the amount repayable by the Central Government under this Section shall, subject to the first proviso, be one tenth of the amount of the excess profits tax payable at the rate of sixty-six and two-thirds per cent. under the Excess Profits Tax Act, 1940,

* Provided further that in respect of chargeable accounting periods ending after the 31st day of December, 1943 the amount repayable under this sub-section shall, subject to the provisions of the first of the foregoing provisions, be calculated by reference to the amount of the excess profits tax paid, and not by reference to the further amount deposited under this section.

(2) Any sum deposited with the Central Government under Sub-section (1) shall carry simple interest at the rate of two per cent. per annum and shall be repaid within twelve months of the date of termination of the present hostilities.

(3) The Central Government may, by notification in the official Gazette, make Rules for carrying out the the purpose of this Section and for prescribing the manner and conditions referred to in Sub-section (5) of Section 8,

SCHEDULE II.

(*See* Section 8.)

PART I.

Rates of Income-tax

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons not being a case to which paragraph B. of this Part applies:—

(a) Where the total income does not exceed Rs. 2,000—

		Rate.
1.	On the first Rs. 750 of total income ..	*Nil.*
2.	On the next Rs.1,200 of total income Provided that no tax shall be payable on a total income which does not exceed Rs. 1,500	Six pies in the rupee.

* This proviso was added by the Indian Finance Act, 1944.

(*b*) Where the total income exceeds Rs. 2,000—

	Rate.	Surcharge.
1. On the first Rs. 1,500 of total income	*Nil.*	*Nil.*
2. On the next Rs. 3,500 of total income	Nine pies in the rupee.	Six pies in the rupee.
3. On the next Rs. 5,000 of total income	One anna & three pies in the rupee	Nine pies in the rupee.
4. On the next Rs. 5,000 of total income	Two annas in the rupee	One anna & two pies in the rupee.
5. On the balance of total income	Two annas & six pies in the ruqee.	One anna & three pies in the rupee

B.—In the case of every company and local authority, and in every case in which under the provisions of the Indian Income-tax Act; 1922, income-tax is to be charged at the maximum rate—

	Rate.	Surcharge.
On the who of tatal income	Two annas and six pies in the rupee.	One anna and three pies in the rupee.

PART II

Rates of super-tax.

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which paragraphs B & C of this part apply—

	Rate.	Surcharge.
1. On the first Rs.25,000 of total income	Nil.	Nil.
2. On the next Rs. 10,000 of total income.	One anna in the rupee	Six pies in the rupee
3. On the next Rs. 20,000 of total income.	Two annas in the rupee.	One anna in the rupee
4. On the next Rs. 70,000 of total income.	Three annas in the rupee.	One annas and six pies in the rupee.
5. On the next Rs. 75,000 of total income.	Four annas in the rupee.	Two annas in the rupee.
6, On the next Rs. 1,50,000 of total income.	Five annas in the rupee.	Two annas and six pies in the rupee.
7. On the next Rs. 150,000 of total income.	Six annas in the rupee.	Three annas in the rupee.
8. On the balance of total income.	Seven annas in the rupee.	Three annas six pies in the rupee.

B—In the case of every local authority—

	Rate.	Surcharge.
On the whole of total income.	Seven annas in the rupee.	Six pies in the rupee.

C.—In the case of an association of persons being co-operative society, other than the Sanikatta Saltowners' Society in the Bombay Presidency, in the time being

registered under the Co-operative Societies Act, 1912, or under an Act of the Provincial Legislature governing the Registration of Co operative Societies—

	Rate.	Surcharge.
1. On the first Rs. 25,000 of total income.	Nil.	Nil.
2. On the balance of total income	One anna in the rupee.	Six pies in the rupee.

D.—In the case of every company—

	Rate.
On the whole of total income ..	One anna and six pies in the rupee.

ABSTRACT OF THE INDIAN FINANCE ACT 1943.

(ACT VIII OF 1943)

[Received the assent of the Governor-General on 29th March, 1943.]

An Act, to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to fix maximum rates of postage under the Indian Post Office Act, 1898, to continue for a further period of one year the additional duties of customs imposed by Section 6 of the Indian Finance Act, 1942, to fix rate of income-tax and super-tax, to continue the charge and levy of excess profits tax and fix the rate at which excess profits tax shall be charged, to amend the Indian Finance (Supplementary and Extending) Act, 1931.

Whereas it is expedient to fix the duty on salt manufactured in, or imported by land into, certain parts of British India, to fix maximum rates of postage under the Indian Post Office Act, 1898 (VI of 1898), to continue for a further period of one year the additional duties of customs imposed by Section 6 of the Indian Finance Act, 1942 (XII of 1942), to fix rates of income-tax and super-tax, to continue the charge and levy of excess profits tax and fix the rate at which excess profits tax shall be charged, and to amend the Indian Finance (Supplementary and Extending) Act, 1931;

It is hereby enacted as follows:—

1. Short title and extant.—(1) This Act may be called the Indian Finance Act, 1943.

(2) It extends to the whole of Birtish India.

5. Income-tax and super-tax—(1) Subject to the provisions of Sub-sections (2) and (3):—

(*a*) Income-tax for the year beginning on the 1st day of April, 1943, shall be charged at the rates specified in Part I of Schedule II increased in the case to which sub-paragraph (*b*) of paragraph A and paragraph B of that Part apply by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of income-tax, and

(*b*) rates of super-tax for the year beginning on the 1st day of April, 1943 shall for the purposes of Section 55 of the Indian Income-tax Act, 1922 (XI of 1922) be those specified in Part II of Schedule II increased in the case to which paragraphs A, B and C of that Part apply by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of super tax.

(2) In making any assessment for the year ending on the 31st day of March, 1944—

(*a*) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" or under the head "Interest on Securities" or any income from dividends in respect of which he is deemed under Section 49 B of the Indian Income-tax Act, 1922 (XI of 1922), to have paid income-tax imposed in British India, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the op-

eration of the Indian Finance Act, 1942 (XII of 1942), on his total income the same proportion as the amount of such inclusions bears to his total income.

(*b*) where the total income of an assessee, not being a comany, includes any income chargeable under the head 'Salaries" on which super-tax has been or might have been deducted under the Provisons of Sub-section (2) of Section 18 of the Indian income-tax Act, 1922 (XI of 1922), the super-tax payable by the assessee on that portion of his total income which consists of such inclusions shall be an amount bearing to the total amount of super-tax payable according to the rates applicable under the operation of the Indian Finance Act, (1942 XII of 1942) on his total income the same proportion as the amount of such inclusions bears in his total income.

(*3*) In cases to which Section 17 of the Indian Income-Tax Act, 1922 (XI of 1922), applies, the tax chargeable shall be determined as provided in that Section but with reference to the rates imposed by Sub-Section (*1*) of this Section, and in accordance with the Provisions of Sub-section (*2*) of this Section where applicable

(*4*) For the proposes of this Section and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the puposes of income-tax, or super-tax as the case may be, in accordance with the provisions of the Indian Income-tax 1922 (XI of 1922).

(*5*) Notwithstanding anything contained in Sub-section (*1*) or Sub-section (*2*) no tax shall be payable in case to which sub-paragrabh (*a*) of paragraph A of Part I of Schedule II applies where the assessee deposits with the Central Government in such manner and in accordance with such condition as the Central Government may by rule prescribe for the purposes of this Sub-section an amount representing not less than one rupee for every complete unit of twenty-five rupees by which his total income exceeds seven hundred and fifty rupees.

(*6*) A deposit made in accordance with the provisions of Sub-section (5) shall not in any way be capable of being charged and shall not be liable to attachment under any decree or order of any Civil, Revenue or Criminal Court in respect of any debt or liability incurred by the depositor and neither the Official Assignee nor any receiver appointed under the Provincial Insolvency Act, 1920 (V of 1920), shall be entitled to or have any claim on any such deposit.

(*7*) Where the total income of an assessee referred to in sub-paragraph A of Part of Schedule II does not exceed six thousand rupees, an amount representing one rupee for every complete unit of two hundred rupees of his total income as reduced by the income, if any, exempt from tax under any provision of the Indian Income-tax Act, 1922 (XI of 1922), or any notification issued thereunder shall be funded for the assessee's benefit and shall be paid to him such date, not more than twelve months after the termination of the present hostilities, as the Central Government may fix:

Explanation:—In computing the amount to be funded under this Sub-section if there is an incomplete unit amounting to one hundred rupees or more it shall be reckoned as a complete unit of two hundred rupees.

(8) Notwithstanding anything contained in Sub-soction (7) of Section 8 of the Indian Finance Act, 1942 (XII of 1942) the amount to be refund under that Sub-section for the assessee's benefit in respect of any assessment for the year ending on the 31st March, 1943, shall be calculated on his total income as reduced by the income, if any, exempt from tax under any provision of the Indian Income-tax Act, 1922 (XI of 1922), or any notification issued thereunder.

(9) The Central Government may, by notification in the Official Gazette, make rules prescribing the manner and condition referred to in Sub-section (5).

6. *Continuance of and rate of excess profits tax.*—(1) In sub-clause (*a*) of clause (6) of Section 2 of the Excess Profits Tax Act, 1940 (XV of 1940), for the words

and figures "31st day of March, 1943" the words and figures "31st day of March, 1944" shall be substituted.

(2) The excess profits tax imposed by Section 4 of the Excess Profits Tax Act, 1940 (XV of 1940) shall, in respect of any chargeable accounting period beginning after the 31st day of March, 1943, be an amount equal to sixty-six and two-thirds per cent. of the amount by which the profits of the business during that chargeable accounting period exceed the standard profits.

7. *Amendment of Section 5, Indian Finance (Supplementary and Extending) Act, 1931.*—In Section 5 of the Indian Finance (Supplementary and Extending) Act, 1931, the words "motor spirit kerosene" and the words and figures "or under the Motor Spirit (Duties) Act, 1917, or under the Indian Finance Act, 1922" shall be omitted, and for the words "or under any of the said Acts" the words "or under the said Act" shall be substituted.

SCHEDULE II.

(*See* Section 5.)

PART I.

Rates of Income-tax.

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons not being a case to which paragraph B of this part applies:—

(*a*) Where the total income does not exceed Rs. 2,000—

	Rate
1. On the first Rs. 750 of total income	*Nil.*
2. On the next Rs. 1,250 of total income	6 pies in the Rupee.

Provided that no tax shall be paypble on the total income which does not exceed Rs. 1,500.

(*b*) Where the total income exceeds Rs. 2,000—

	Rate	Surcharge
1. On the first Rs. 1,500 of total income	*Nil*	*Nil.*
2. On the next Rs. 3,500 of total income	9 pies in ths rupees	6 pies in the rupee
3. On the next Rs. 5,000 of total income	1 anna and three pies in the rupee.	10 pies in the rupee
4. On the next Rs. 5,000 of total income	2 annas in the rupee	1 anna and 4 pies in the rupee.
5. On the balance of total income ..	2 annas and 6 pies in the rupee.	1 anna and 8 pies in the rupee.

B.—In the case of every company and local authority, and in every case in which under the provisions of the Indian Income-tax Act, 1922, income-tax is to be charged at the maximum rate—

	Rate	Surcharge
On the whole of total income ..	Two annas and six pies in the rupee	One anna and eight pies in the rupee.

PART II

Rates of Super-tax.

A.—In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which paragraphs B and C of of this Part apply—

	Rate	Surcharge
1. On the first Rs. 25,000 of total income.	*Nil.*	*Nil.*
2. On the next Rs. 10,000 of total income.	1 anna in the rupee.	1 anna in the rupee.
3. On the next Rs. 20,000 of total income.	2 annas in the rupee.	1 anna and 6 pies in the rupee.
4. On the next Rs. 70,000 of total income.	3 annas in the rupee.	2 annas in the rupee.
5. On the next Rs. 75,000 of total income.	4 annas in the rupee	2 annas and 6 pies in the rupee.
6. On the next Rs. 1,50,000 of total income.	5 annas in the rupee	3 annas in the rupee.
7. On the next Rs. 1,50,000 of total income.	6 annas in the rupee	3 annas in the rupee.
8. On the balance of total income ..	7 annas in the rupee	3 annas and 6 pies in the rupee.

B.—In the case of every local authority—

	Rate	Surcharge
On the whole of total income ..	1 anna in the rupee.	1 anna in the rupee.

C.—In the the case of an association of persons being a co-operative society, other than the Sanikatta Saltowners' Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912, or under an Act of the Provincial Legislature governing the registration of Co-operative Societies—

	Rete	Surcharge
1. On the first Rs 25,000 of total income.	*Nil.*	*Nil.*
2. On the balance of total income ..	1 anna in the rupee	1 anna in the rupee

D.—In the case of every company—

	Rate.
On the whole of total income	2 annas in the rupee,

ABSTRACT OF THE INDIAN FINANCE ACT, 1944.

The following Act, which has been assented to by the Governor General under the provisions of clause (b) of sub-section 67 B of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, and has been expressed to be made by the Governor-General under the provisions of sub-section (2) of the same section, is hereby published for general information :—

Whereas it is expedient to fix the duty on salt manufactured in, or imported by land into, British India, to fix maximum rates of postage under the Indian Post Office Act, 1898 (VI of 1898), to continue for a further period of one year the additional duties of customs imposed by section 6 of the Indian Finance Act, 1942 (XII of 1942), and to increase certain of those duties, to alter the duty of excise on tobacco and to impose duties of excise on betal nuts, coffee and tea, to fix rates of income tax and super tax, and to continue the charge and levy of excess profits tax and make certain additional provisions relating thereto :

It is hereby enacted as follows :—

1. **Short title and extent**—(1) This Act may be called the Indian Finance Act, 1944.

(2) It extends to the whole of British India.

* * * * *

6. **Income-tax and super-tax.**—(1) Subject to the provisions of sub-sections (2), (3) and (5),—

(a) income tax for the year beginning on the 1st day of April, 1944, shall be charged at the rates specified in Part I of the Second Schedule increased in each case by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of income-tax, and

(b) rates of super-tax for the year beginning on the 1st day of April, 1944, shall for the purposes of section 55 of the Indian Income-tax Act, 1922 (XI of 1922), be those specified in part II of the Second Schedule increased in the cases to which paragraphs A, B and C of that Part apply by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of super-tax.

(2) In making any assessment for the year ending on the 31st day of March, 1945.

(a) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" or under the head "Interest on Securities" or any income from dividends in respect of which he is deemed under section 49B of the Indian Income-tax Act, 1922 (XI of 1922), to have paid income-tax imposed in British India, the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1943 (VIII of 1943), on his total income the same proportion as the amount of such inclusions bears to his total income.

(b) where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" on which super-tax has been or might have been deducted under the provisions of sub-section (2) of section 18 of the Indian Income-tax Act, 1922 (XI of 1922), the super-tax payable by the assessee on that portion of his total income which consists of such inclusions shall be an amount bearing to the total amount of super-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1934 (VIII of 1943), on the total income the same proportion as the amount of such inclusions bears to his total income.

(3) In making any assessment for the year ending on the 31st day of March, 1944, or the year ending on the 31st day of March, 1945.—

(a) where the total income of a company includes any profits and gains from life insurance business the super-tax payable by the company on that part of its total income which consists of such inclusion shall be in the case of an assessment for the first mentioned year at the rate of one anna and one pie in the rupee and in the case of an assessment for the second mentioned year at the rate of nine pies in the rupee.

(b) where the total income of an assessee, not being a company, includes any profits and gains from life insurance business the income-tax and super-tax payable by the assessee on that part of his total income which consists of such inclusion shall be an amount bearing to the total amount of such taxes payable according to the rates applicable under the operation of the Indian Finance Act, 1942 (XII of 1942) on his total income the same proportion as the amount of such inclusion bears to his total income, so, however that if the aggregate of the taxes so computed in respect of such inclusion exceeds the aggregate of the taxes on the same income payable by a company under the operation of the Indian Finance Act, 1942 (XII of 1922), the taxes payable on such inclusion shall be computed at the rates applicable to a company under the operation of the said Act.

(4) Where any assessment for the year ending on the 31st day of March, 1944, to which clause (a) or (b) of sub-section (3) is applicable has been completed at the

rates of tax in operation under the Indian Finance Act, 1943 (VIII of 1943), it shall be revised by the Income-tax Officer in accordance with the provisions of clause (a) or (b), as the case may be, of sub-section (3) and the excess tax paid, if any, shall be refunded.

(5) In cases to which section 17 of the Indian Income-tax Act, 1922 (XI of 1922), applies, the tax chargeable shall be determined as provided in that section but with reference to the rates imposed by sub section (1) of this section, and in accordance with the provisions of sub-sections (2) and (3) of this section where applicable.

(6) For the purposes of this section and of the rates of tax imposed thereby the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income-tax Act, 1922 (XI of 1922).

(7) Where the total income of an assessee referred to in paragraph A of Part I of the Second Schedule does not exceed six thousand rupees, an amount representing one rupee for every complete unit of two hundred rupees of his total income as reduced by the income, if any, exempt from tax under any provision of the Indian Income-tax Act, 1922 (XI of 1922), or any notification issued thereunder shall be funded for the assessee's benefit and shall be paid to him on such date, not more than twelve months after the termination of the present hostilities, as the Central Government may fix.

Explanation.—In computing the amount to be funded under this sub-section if there is an incomplete unit amounting to one hundred rupees or more it shall be reckoned as a complete unit of two hundred rupees.

(8) The provisions of section 23-A of the Indian Income-Tax Act 1922 (XI of 1922), shall not apply in respect of profits and gains of the previous year for the assessment for the year ending on the 31st day of March, 1945.

7. **Continuance of and rate of excess profits tax** —(In sub clause (a) of clause (6) of section 2 of the Excess Profits Tax Act, 1940, (XV of 1940), for the words and figures "31st day of March, 1944," the words and figures "31st day of March, 1945," shall be substituted.

(2) The excess profits tax imposed by section 4 of the Excess Profits Tax Act, 1940 (XV of 1940), shall in respect of any chargeable accounting period beginning after the 31st day of March, 1944, be an amount equal to sixty-six and two-thirds per cent. of the amount by which the profits of the business during that chargeable accounting period exceed the standard profits.

8. **Further provisions respecting excess profits tax.**—(1) In sub-rule (1) of rule 2 of the Second Schedule to the Excess Profits Act, 1940 (XV of 1940).—

(a) for the words "and in particular any debt for income-tax or super-tax or for excess profits tax in respect of the business shall be deducted the following shall be substituted, namely :—

> "and in particular there shall be deducted any debts incurred in respect of the business for income-tax or super-tax or excess profits tax, or for advance payments due under any provision of the Indian Income-tax Act, 1922, (XI of 1922), or for any further sum payable in relation to excess profits tax under section 2 of the Excess Profits Tax Ordinance 1943 (XVI of 1943)";

(b) after clause (b) of the proviso the following clauses shall be inserted namely :—

> "(c) in the case of any advance payment due under provision of the Indian Income-tax Act, 1922 (XI of 1922), on the date on which, under the provisions of that section the payment first became due ;
>
> (d) in the case of any further sum payable in relation to excess profits tax under section 2 of the Excess Profits Tax Ordinance, 1943 (XVI of 1943)

on the date on which, under the provisions of that section, the further sum became payable."

(2) To sub-section (1) of section 10 of the Indian Finance Act, 1945, (XII of 1942), the following proviso shall be added, namely :

"Provided further that in respect of chargeable accounting periods ending after the 31st day of December, 1943, the amount repayable under this sub-section shall, subject to the provisions of the first of the foregoing provisos, be calculated by reference to the amount of the excess profits tax paid, and not by reference to the further amount deposited under this section."

(3) In section 2 of the Excess Profits Tax Ordinance, 1943 (XVI of 1943)—

(a) to sub section (1) the following provisos shall be added, namely :—

"Provided that, in respect of any chargeable accounting period ending after the 31st day of December, 1943, the provisions of this sub-section shall have effect as if, in relation to any person who is a company for the words 'one fifth' the words 'nineteen sixty fourth' were substituted and as if in relation to any other person, for the words 'one fifth' the words 'seventeen sixty-fourths' were subsituted :

Provided further that if, in respect of any chargeable accounting period ending after 31st day of December, 1943, a person who had deposited a further sum equal to seventeen sixty fourths of the excess profits tax payable shows that the amount of the income tax and super tax payable in respect of the excess profits arising in such period exceeds fifteen sixty fourths of the amount of the excess profits tax payable, so much of the deposit shall be refunded as will secure that the total of the deposit made and the income tax and super tax payable in respect of the excess profits arising in such period does not exceed one half of the excess profits tax payable "

(b) after sub section (1) the following sub section shall be inserted namely : —

"(1A) In respect of any chargeable accounting period ending after the 31st day of December, 1943, in respect of which a provisional assessment of excess profits tax is made under section 14A of the Excess Profits Tax Act; 1940 (XV of 1940), the person liable to pay such excess profits tax shall deposit in the manner laid down in sub section (1) a further sum equal to ninteen sixty-fourths of the amount of the said excess profits tax if such person is a company and seventeen sixty-fourths of the said amount if such person is not a company ; and the provisions of sub-sections (6) and (7) of the said section 10A shall apply to any payment made under this sub section as they apply to a payment of excess profits tax".

(c) in sub-section (4) for the words, brackets and figure "sub-section (1) of this section", where they occur for the first time, the words, brackets, figures and letter "sub-section (1) or (1-A) of this section" shall be substituted.

THE SECOND SCHEDULE

(*See* Section 6.)

PART I

Rates of Income-tax

A.—In the case of every individual, Hindu undivided family, unregistered firm and association of persons not being a case to which paragraph B of this Part applies:—

	Rate.	Surcharge.
1. On the first Rs. 1,500 of total income ..	*Nil*	*Nil*
2. On the next Rs. 3,500 of total income ..	Nine pies in the rupee.	Six pies in the rupee.

3.	On the next Rs. 5,000 of total income ..	One anna and three pies in the rupee.	Ten pies in the rupee.
4.	On the next Rs. 5,000 of total income ..	Two annas in the rupee.	One anna and six pies in the rupee.
5.	On the balance of total income ..	Two annas and six pies in the rupee.	Two annas in the rupee.

Provided that—

(i) on 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 the Indian Income-tax Act, 1922, income-tax is to be charged at the maximum rate—

	Rate.	Surcharge.
On the whole of total income ..	Two annas and six pies in the rupee.	Two annas in the rupee.

PART II

Rates of Super tax

A —In the case of every individual, Hindu undivided family, unregistered firm and other association of persons, not being a case to which paragraphs B and C of this Part apply—

		Rate.	Surcharge.
1.	On the first Rs. 25,000 of total income ..	*Nil*	*Nil*
2.	On the next Rs. 10,000 of total income..	One anna in the rupee.	One anna in the rupee.
3.	On the next Rs. 20,000 of total income..	Two annas in the rupee.	One anna in the rupee.
4.	On the next Rs. 70,000 of total income..	Three annas in the rupee.	Two annas and six pies in the rupee.
5.	On the next Rs. 75,000 of total income..	Four annas in the rupee.	Three annas in the rupee.
6.	On the next Rs. 1,50,000 of total income.	Five annas in the rupee.	Three annas in the rupee.
7.	On the next Rs. 1,50,000 of total income.	Six annas in the rupee.	Three annas in the rupee.
8.	On the balance of total income ..	Seven annas in the rupee.	Three annas and six pies in the rupee.

B.—In the case of every local authority—

	On the whole of total income ..	One anna in the rupee.	One anna in the rupee.

C.—In the case of an association of persons being a Co-operative Society, other than the Sanikatta Saltowners' Society in the Bombay Presidency, for the time being registered under the Co-operative Societies Act, 1912 or under an Act, of the Provincial Legislature governing the registration of Co-operative Societies :—

		Rate.	Surcharge.
1.	On the first Rs. 25,000 of total income ..	*Nil.*	*Nil.*
2.	On the balance of total income ..	One anna in the rupee.	One anna in the rupee.

D.—In the case of every company—

	Rate.
On the whole of total income	.. Three annas in the rupee.

Provided that a rebate of one anna in the rupee shall be allowed on the total income as reduced by the amount of any dividend declared in British India in respect of the profits of the previous year for the assessment for the year ending on the 31st day of March, 1945, not being dividend payable at a fixed rate or dividend declared on or before the 29th day of February, 1944, by a company to which put for sub-section (8) of section 6 of this Act, section 23-A of the Indian Income-tax Act, 1922 (XI of 1922) would be applicable

This Bill has been consented to by the Council of States,

ABSSRACT OF THE INDIAN FINANCE ACT, 1945.

An Act to give effect to the financial proposals of the Central Government for the year beginning on the 1st day of April, 1945.

Whereas it is expendient to fix the duty on salt manufactured in, or imported by land into British India, to fix maximum rates of postage under the Indian Post Offiice Act, (VI of 1898), to continue for a further period of one year the additional duties of customs imposed by Section 6 of the Indian Finance Act, 1942 (XII of 1942) and to modify certain of those duties, to alter the duty of customs and the duty of excise on tobacco to fix rates of income-tax and super-tax, and to continue the charge and levy of excess profits tax.

It is hereby enacted as follows :—

1. **Short title and extent.**—(1) This Act, may be called the Indian Finance Act, 1945.

* * * * *

7. **Income-tax and super-tax.**—(1) Subject to the provisions of sub-sections (3), (4) and (5).—

(*a*) income-tax for the year beginning on the 1st day of Aprll, 1945, shall be charged at the rate specified in Part I of the Second Schedule increased in each case by a surcharge for the purposes of the Central Government at the rate specified therein in respect of each such rate of income-tax ; and

(*b*) rate of super tax for the year beginning on the 1st day of April, 1945, shall, for the purposes of section 55 of the Indian Income-tax Act, 1922 (XI of 1922) be those specified in Part II of the Second Schedule increased in the case to which paragraphs A, B and C of that Part apply by a surcharge for the purposes of the Central Government at the rate specified therein in respects of each such rate of super-tax.

(2) If any provision is made in the Indian Income-tax Act, 1929 (XI of 1922), for the exemption from income-tax of a portion of the earned income included in the total income of an assessee, then, in making any assessment for the year ending on the 31st day of March 1946, there shall be deducted from the total income of an assessee in accordance with such provision amount equal to one-tenth of such earned income exclusive of any income chargeable under the head "Salaries" but not exceeding in any case two thousand rupees.

(3) In making any assessment for the year ending on the 31st day of March, 1946, where the total income of an assessee, not being a company, includes any income chargeable under the head "Salaries" or under the head "Interest on Securities" or any income from dividends in respect of which he is deemed under section 49-B of the Indian Income-tax Act, 1922 (XI of 1922) to have paid income-tax imposed in British India the income-tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the total amount of income-tax payable according to the rates applicable under the operation of the Indian Finance Act, 1944, on his total income the same proportion as the amount of such inclusions bears to his total income.

(4) In making any assessment for the year ending on the 31st day of March, 1946.—

(*a*) where the total income of a company includes any profits and gains from life insurance business, the super-tax payable by the company on that part of its total income which consists of such inclusion shall be at the rate of six pies in the rupee ;

(*b*) where the total income of an assessee, not being a company, includes any profits and gains from life insurance business, the income-tax and super tax payable by the assessee on that part of his total income which consists of such inclusions shall be an amount bearing to the amount of such taxes payable according to the rates applicable under the operation of the Indian Finance Act, 1942 (XII of 1942), on his total income the same proportion as the amount of such inclusion bears to his total income, so however, that if the aggregate of the taxes so computed in respect of such inclusion exceeds the aggregate of taxes on the same income payable by a company under the operation of the Indian (Finance Act, 1942 (XII of 1942), the taxes payable on such inclusion shall be computed at the rates applicable to a company under the operation of the said Act.

(5) In the cases to which section 17 of the Indian Income-tax Act, 1922 (XI of 1922), applies, the tax chargeable shall be determined as provided in that section but with reference to the rates imposed by sub-section (1) of the section, and in accordance with the provisions of sub-sections (3) and (4) of this section where applicable.

(6) For the purposes of this section and of the rates of tax imposed thereby, the expression "total income" means total income as determined for the purposes of income-tax or super-tax, as the case may be in accordance with the provisions of the Indian Income-tax Act, 1922 (XI of 1922) ; and the expression "earned income" means earned income as defined for the purposes of the said Act.

(7) Where the total income of an assessee referred to in paragraph A of Part I of the Second Schedule does not exceed six thousand rupees, an amount representing one rupee for every complete unit of two hundred rupee of his total income as reduced by the income, if any, exempt from tax under any provision of the Indian Income-tax Act, 1922 (XI of 1922), or any notification issued thereunder shall be funded for the assessee's benefit and shall be paid to him on such date not more then twelve months after the termination of the present hostilities as the Central Government may fix;

Provided that the amount to be found for the assessee's benefit shall in one case exceed two fifths of the tax payable by him,

Explanation.—In computing the amount to be funded under this sub-section if there is an incomplete unit amounting to one hundred rupees or more it shall be reckoned as a complete unit of two hundred rupees.

(8) Notwithstanding anything contained in sub-section (7) of section 6 of the Indian Finance Act, 1944, the amount to be funded for the assessee's benefit under the provisions of that sub-section shall in no case exceed two fifths of the amount of tax payable him in respect of his assessment for the year ending on 31st day of March, 1945.

(9) The provisions of Section 23A of the Indian Income-tax Act, 1922 (XI of 1922), shall not apply in respect of profits and gains of the previous year for the assessment for the year ending on the 31st day of March, 1946.

8. **Continuance of and rate of excess profits tax.**—(*1*) In sub-clause (*a*) of clause (6) of section 2 of the Excess Profits Tax Act, 1940 (XV of 1940), for the words and figures "31st day of March, 1945," the words and figures "31st day of March, 1946" shall be substituted.

(2) The excess profits tax imposed by section 4 of the Excess Profits Tax Act, (XV of 1940) shall in respect of any chargeable accounting period boginning after the 31st day of March, 1945, be an amount equal to sixty-six and two-thirds per cent, of the amount by which the profits of the business during that chargeable accounting period exceed the standard profits.

THE SECOND SCHEDULE.

(See Section 7).

PART I.

Rates of Incame-tax.

A.—In the case of every individual, Hindu undivided famiiy, unregistered firm and other association of persons not being a case to which paragraph B of this Part applies :—

	Rate.	Surcharge.
1. On the first Rs. 1,500 of total income ..	Nil.	Nil.
2. On the next Rs. 3,500 of total income ..	Nine pies in the rupee.	Six pies in the rupee.
3. On the next Rs. 5,000 of total income ..	One anna and three pies in the rupee,	Ten pies in the rupee.
4. On the next Rs. 5,000 of total income ..	Two annas in the rupee.	One and six pies in the rupee.
5. On the balance of total income ..	Two annas and six pies in the rupee.	Two annas and three pies in the rupee.

Provided that

(*i*) no income tax shall be payable on a total income which, before deduction of the allowance, if any, for earned income, does not exceed Rs. 2,000 ;

(*ii*) the income-tax payable shall in a no case exceed half the amount by which the total income (before deduction of the allowance, if any, for earned income) exceeds Rs. 2,000;

(*iii*) the income-tax payable on the total income as reduced by the allowance for earned income shall not exceed either—

(*a*) a sum bearing to half the amount by which the total income (before deduction of the allowance for earned income) exceeds Rs. 2,000 the same proportion as such reduced total income bears to the unreduced total income, or

(*b*) the income-tax payable on the income so reduced at the rate specified in this Schedule,

whichever is less,

B—In the case of every company and local authority, and in every case in which under the provisions of the Indian income-tax Act, 1922, income tax is to be charged at the maximum rate—

	Rate.	Surcharge.
On the whole of total income ..	Two annas and six pies in the ruppee.	Two annas and three pies in the rupee.

PART II

Rates of Super-tax

A—In the case of every individual family, unregistered firm and other association of persons, not being a case to which paragraphs B and C of this Part apply—

		Rate	Surcharge
1.	On the first Rs. 25,000 of total income.	*Nil*	*Nil*
2.	On the next Rs. 10,000 of total income. ..	One anna in the rupee.	One anna in the rupee.
3.	On the next Rs. 20,000 of total income. ..	Two annas in the rupee.	Two annas in the rupee.
4.	On the next Rs. 70,000 of total income. ..	Three annas in the rupee.	Two annas in six pies in the rupee.
5.	On the next Rs. 74,000 of total income. ..	Four annas in the rupee.	Three anna in the rupee.
6.	On the next Rs. 1,50,000 of total income. ..	Four annas in the rupee.	Three annas in the rupee.
7.	On the next Rs. 1,50,000 of total income ..	Six annas in the ruppee.	Three annas in the rupee.
8.	On the balance of total income ..	Seven annas in the rupee.	Three annas in six pies in the rupee.

B.—In the case of every local authority—

On the whole of total income	One annas in the rupee.	One anna in the rupee.

C.—In the case of an association of person being a co-operative society, other than the Sanikatta Salt-owners Society in the Bombay presipency, for the time being registered under the Co-operative Societies Act, 1912, or under an Act of the Provincial Legislature govering the registration of Co-operative Societies—

		Rate	Surcharge.
1.	On the first Rs. 25,000 of total income	*Nil.*	*Nil.*
2.	One the balance of total income	One anna in the rupee.	One anna in the rupee.

D.—In the case of every company—

	Rate
On the whole of total income	Three annas in the rupee.

NOTIFICATIONS.

EXCESS PROFITS TAX ESTABLISHMENTS.

Notification No. 30-C. A., dated 14th September, 1940.

In exercise of the powers conferred by Sub-section (3) of Section 3 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Board of Revenue hereby appoints the persons specified in the first cloumn of the Schedule hereto annexed to be Inspecting Assistant Commissioners of Excess Profits Tax and assigns to every such officer the cases under the Excess Profits Tax Act, 1940, specified in the corresponding entries in the second column of the said Schedule.

SCHEDULE.

(1)	(2)
[1][1 All persons performing for the time being the functions of Inspecting Assistant Commissioner of Income-tax in the Province of Bengal.	1. All cases in respect of which every such officer is, for the time being, performing the functions of an Inspecting Assistant Commissioner of Income-tax.]
[2][1-A. The person performing, for the time being the functions of the Inspecting Assistant Commissioner of Income-tax in the jurisdiction of the Commissioner of Income-tax (Central), Calcutta.	1A. All cases in respect of which he is, for the time being, performing the functions of an Inspecting Assistant Commissioner of Income-tax].
2. The person performing, for the time being, the functions for the Inspecting Assistant Commissioner of Income-tax, Central range, Madras.	2. All cases in the Province of Madras.
3. The person performing, for the time being the functions of Inspecting Assistant Commissioner of Income-tax, Cawnpore.	3. All cases in the United Provinces.
4. The person performing, for the time being, the functions of Inspecting Assistant Commissioner of Income-tax, Nagpur.	4. All cases in the Central Provinces.
5. The person performing, for the time being, the functions of the Inspecting Assistant Commissioner of Income-tax, Shillong.	5. All cases in t he Province of Assam.
6. Inspecting Assistant Commissoner of Income-tax, Central Bombay.	6. All cases in respect of which he is, for the time being, exercising the functions of an Inspecting Assistant Commissioner of Income-tax.
7. All persons performing, for the time being, the functions of Inspecting Assistant Commissioners of Income-tax in the Provinces of Bombay, Sind, British Baluchistan and Ajmer-Merwara.	7. All cases in respect of which every such officer is, for the time being, performing the functions of an Inspecting Assistant Commissoner of Income-tax.

(1) Item No. 1 was substituted by Notification No. 25, dated 1st May 1941.

(2) Item No. 1-A was inserted by Notification No. 24, dated 18th October 1941.

8. All persons performing for the time being, the functions of Inspecting Assistant Commissioners of Income-tax in the Provinces of Punjab, N. W. F and Delhi.	8. All cases in respect of which every such officer is, for the time being, performing the functions of an Inspecting Assistant Commissoner of Income-tax.
9. All persons performing, for the time being, the functions of Inspecting Assistant Commissioners of Income-tax in the Provinces of Bihar and Orissa.	9. All cases in respect of which every such officer is, for the time being, performing the functions of an Inspecting Assistant Commissoner of Income-tax.

Notification No. 31-C. A., dated 14th September 1940.

In exercise of the powers conferred by Sub-section (3) of Section 3 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Board of Revenue hereby appoints every Commissioner of Income-tax appointed without reference to area under Sub-section (2) of Section 5 of the Indian Income tax Act, 1922 (XI of 1922), to be a Commissioner of Excess Profits Tax and assigns to every such Commissioner of Excess Profits Tax the cases that may, for the time being, be assigned to him under Sub-section (2) of Section 5 of the last mentioned Act.

Notification No. 32-C. A., dated 14th September 1940.

In exercise of the powers conferred by Sub-section (3) of Section 3 of the Excess Profits Tax Act, 1940, the Central Board of Revenue hereby oppoints every Income-tax Officer under the Indian Income-tax Act, 1922, to be an Excess Profits Tax Officer and assigns to every such Excess Profits Tax Officer all cases in respect of which he is, for the time being, exercising the functions of an Income-tax Officer.

Notification No. 33-C. A., dated 14th September, 1940.

In the exercise of the powers conferred by Sub-section (3) of Section 3 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Board of Revenue hereby appoints the persons specified in the first column of the Schedule hereto annexed to be Appellate Assistant Commissioners of Excess Profits tax and assigns to every such officer the cases under the Excess Profits Tax Act, 1940, specified in the corresponding entries in the second column of the said Schedule.

SCHEDULE

(1)	(2)
[1][1. All persons performing for the time being the functions of Appellate Assistant Commissioners of Income-tax in the Province of Bengal.	1. All cases in respect of which every such officer is, for the time being, performing the functions of Appellate Assistant Commissioner of Income-tax.]
[2][2. The pesson performing for the time being, the function of the Appellate Assistant Commissioner of Income-tax within the jurisdiction of the Commissioner of Income-tax (Central), Calcutta.	2. All cases in respect of which he is, for the time being, performing the functions of an Appellate Assistant Commissioner of Income-tax.]
[3][3. The person performing for the time being, the functions of Appellate Assistant Commissioner of Income-tax, Lucknow.	3. All cases in the United Provinces.]

(1) Item No. 1 was substituted for original items 1 and 2 by Notification No. 5, dated 28th December 1940.

(2) Item No. 2 was inserted by Notification No. 25 dated the 18th October, 1941.

(3) Item No. 3 was substituted by Notification No. 11 dated 15th March 1941, and again by Notification No. 38-C, dated the 8th July, 1941 and No. 1, dated 23rd January 1943.

4. The person performing, for the time being, the functions of Appellate Assistant Commissioner of Income-tax, Nagpur.	4. All cases in the Central Provinces
5. The persons performing, for the time being, the functions of the Appellate Assistant Commissioner of Income-tax, Dacca.	5. All cases in the Province of Assam.
6. All persons performing, for the time being, the functions of the Appellate Assistant Commissioners of Income-tax in the Province of Madras.	6. All cases in respect of which every such officer is, for the time being, performing the functions of Appellate Assistant Commissioner of Income-tax.
7. All persons performing, for the time being, the functions of Appellate Assistant Commissioners of Income-tax in the Provinces of Bombay, Sind, British Baluchistan and Ajmer-Merwara.	7. All cases in respect of which every such officer is, for the time being, performing the functions of Appellate Assistant Commissioner of Income-tax.
8. All persons performing, for the time being, the functions of Appellate Assistant Commissioners of Income-tax in the Provinces of Punjab, North-West Frontier and Delhi.	8. All cases in respect of which every such officer is, for the time being, performing the functions of Appellate Assistant Commissioner of Income.
9. All persons performing, for the time being, the functions of Appellate Assistant Commissioners of Income-tax, in the Provinces of Bihar and Orissa.	9. All cases in respect of which every such officer is, for the time being, performing the functions of Appellate Assistant Commissioner of Income-tax.

Notification No. 34-C. A., dated 14th September, 1940.

In exercise of the powers conferred by Sub-section (3) of Section 3 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Board of Revenue hereby appoints every Commissioner of Income-tax appointed with reference to a specified area under Sub-section (2) of Section 5 of the Indian Income-tax Act, 1922 (XI of 1922), to be a Commissioner of Excess Profits Tax and assigns to every such Commissioner of Excess Profits Tax all cases in such area other than the cases assigned to a Commissioner of Excess Profits Tax who is, for the time being, exercising the functions of a Commissioner of Income-tax appointed without reference to area under Sub-section (2) of Section 5 of the Indian Income-tax Act, 1922.

Notification Relating to Commencement of Excess Profits Tax Act, 1940.

Notification No. 8, dated April 13th, 1940.

In pursuance of Sub-Section (3) of Section 1 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Government is pleased to appoint the date on which the said Act shall come into force.

Notification Applying Excess Profits Tax Acts to British Baluchistan.

Notification No. 8, dated April 13th, 1940.

In pursuance of Sub-section (2) of Section 95 of the Government of India Act, 1935, the Governor-General in his discretion is pleased to direct that the Excess

Profits Tax Act, 1940 (XV of 1940), shall apply to British Baluchistan.

Notification No. 224-N, dated the 19th December, 1941.

In pursuance of Sub-section (2) of Section 95 of the Government of India Act, 1935, the Governor-General in his discretion is pleased to direct that the Indian Income-tax (Amendment) Act, 1940 (XL of 1940) and the Excess Profits Tax (Amendment) Act, 1940 (XLII of 1940) shall apply to British Baluchistan.

Notification No. 51-F, dated the 1st April, 1941.

In pursuance of Sub-section (2) of Section 95 of the Government of India Act, 1935, the Governor-General in his discretion is pleased to direct that the Excess Profits Tax (Amendment) Act, 1941 (XI of 1941), shall apply to British Baluchistan.

Notification No. 207-F., dated 29th November, 1941.

In pursuance of Sub-section (2) of Section 95 of the Government of India Act, 1935, the Governor-General, in his discretion, is pleased to direct that the Excess Profits Tax (Second Amendment) Act, 1941, (XXXV of 1941), shall apply to British Baluchistan.

Notification Applying Excess Profits Tax Rules, 1940 to the District of Abu.

Notification No. 11-C., dated the 24th May, 1941.

In exercise of the powers conferred by Section 27 of the Excess Profits Tax Act, 1940 (XV of 1940), as applied to the District of Abu, and of all other powers enabling it in that behalf, the Central Board of Revenue is pleased to apply to the said District the Excess Profits Tax Rules, 1940, for the time being in force in British India, in so far as the said Rules may be applicable, subject to any amendments to which they are for the being subject in British India and subject to the modification that reference to British India shall be construed as references to the District of Abu.

Excess Profits Tax Authorities for Cases Arising in the District of Abu.

Notification No. 3 dated the 25th January, 1941.

In exercise of the powers conferred by Sub-section (3) of Section 3 of the Excess Profits Tax Act, 1940 (XV of 1940), as applied to the District of Abu, the Central Board of Revenue hereby appoints the persons specified in the first column of the Schedule hereto annexed to the Excess Profits Tax authorities specified in the corresponding entries in the second column thereof and assigns to them all cases under the said Act, arising in the said District.

SCHEDULE.

1. Commissioner of Income-tax, Bombay, Sind, British Baluchistan and Ajmer-Merwara.	Commissioner of Excess Profits Tax for Mount Abu.
2. Appellate Assistant Commissioner of Income-tax of the Ahmedabad Range in Bombay, Sind and British Baluchistan.	Appellate Assistant Commissioner of Excess Profits Tax for Mount Abu.
3. Inspecting Assistant Commissioner of Income-tax, Northern Range of the Provinces of Bombay, Sind & British Baluchistan.	Inspecting Assistant Commissioner of Excess Profits Tax for Mount Abu.

4.	Income-tax Officer, Ahmedabad District in Bombay, Sind and British Baluchistan.	Excess Profits Tax Officer for Mount Abu.

Notification Relating to Foreign Associations.

Notification No. 14, dated the 29th March, 1941.

In pursuance of clause (8) of Section 2 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Board of Revenue declares all foreign associations which are, for the time being, declared to be "companies" under clause (6) of Section 2 of the Indian Income-tax Act, 1922 (XI of 1922), to be "company" for the purposes of the first-mentioned Act.

Notification Applying Indian Finance Acts 1941 & 1942, to British Baluchistan.

Notification No. 56-F, dated the 8th April 1941

In pursuance of Sub-section (2) of Section 95 of the Government of India Act 1935, the Governor-General, in his discretion, is pleased to direct that the Indian Finance Act, 1941, (VII of 1941) shall apply to British Baluchistan.

Notification No. 51-F, dated the 7th April 1942.

In pursuance of Sub-section (2) of Section 95 of the Government of India Act, 1935, the Governor-General, in his discretion, is pleased to direct that the Indian Finance Act, 1942, (XII of 1642) shall apply to British Baluchistan.

Notification No. 52-F, dated the 21st April 1942.

In pursuance of sub-section (2) of Section 95 of the Government of India Act, 1935, the Governor-General in his discretion is pleased to direct that the Indian Finance Act, 1943 (VIII of 1943), shall apply to British Baluchistan.

Notification Applying Income-tax and Excess Profits Tax (Emergency) Ordinance, 1942, to British Baluchistan

Notification No. 100-W, dated the 3rd December 1942.

In pursuance of sub-section (2) of Section 95 of the Government of India Act, 1935, the Governer-General in his discretion is pleased to direct that the Income-tax and Excess Profits Tax (Emergency) Ordinance, 1942 (Ordinance No. XL of 1942) shall apply to British Baluchistan.

Notification Applying Excess Profits Tax Ordinance, 1943, to British Baluchistan.

Notification No. 31-W, dated the 17th May 1943.

In pursuance of sub-section (2) of Section 95 of the Government of India Act, 1935, the Governor-General in his discretion is pleased to direct that the Excess Profits Tax Ordinance, 1943 (Ordinance No. XVI of 1943) shall apply to British Baluchistan.

Notification Applying Excess Profits Tax Rules to Central India Administered Areas.

Notification No. 7-D, dated the 6th May 1944.

In exercise of the powers conferred by Section 27 of the Excess Profits Tax Act 1940 (XV of 1940), as applied to the Central India Administered Areas, and of all other powers enabling in this behalf, the Central Board of Revenue is pleased to apply to the said Areas the Excess Profits Tax Rules, 1940, for the time being in force in British India, in so far as the said Rules may be applicable, subject to any Amendments to which they are for the time being subject in British India and subject to the modification that references to British India shall be construed as references to the Central India Administered Areas.

Notification Applying Indian Finance Act, 1944, to British Baluchistan.

Notification No. 71-F, dated the 10th April 1944.

In pursuance of sub-section (2) of Section 95 of the Government of India Act, 1935, the Governor-General in his discretion is pleased to direct that the Indian Finance Act, 1944, shall apply to British Baluchistan.

Excess Profits Tax Rules, 1940—Amendments.

Notification No. 5, dated the 2nd September 1944.

In exercise of the powers conferred by Section 27 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Board of Revenue directs that the following further amendment shall be made in the Excess Profits Tax Rules, 1940, the same having been previously published as required by sub-section (3) of the said section, namely :—

In the Schedule annexed to the said rules from Forms E. P. 9 (T), E. P. 10/13 (T), E. P. 11 (T), E. P. 11 (1) (T), E. P. 11/13 (T), E. P. 12 (T) and E. P. 12 (1) (T), delete the following :—

"3. The appeal must be accompanied by a Treasury receipt for Rs. 100."

Notification No. 7, dated the 25th November 1944.

In exercise of the powers conferred by Section 27 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Board of Revenue directs that the following further amendment shall be made in the Excess Profits Tax Rules, 1940, the same having been previously published as required by sub-section (3) of the said section, namely :—

In the Schedule annexed to the said Rules, in Form E. P. 1 for the words "within Sixty days" the words "within Sixty-five days" shall be substituted.

Excess Profits Tax Establishment.

Notification No. 2-D, dated the 13th January 1945.

In exercise of the powers conferred by sub-section (3) of Section 3 of the Excess Profits Tax Act, 1940 (XV of 1940), as applied to the Central India Administered Areas the Central Board of Revenue hereby appoints the persons specified in the first column of the Schedule hereto annexed to be the Excess Profits Tax Authorities specified in the coppesponding entries in the second column thereof and assigns to them all cases under the said Act arising in the said Areas.

SCHEDULE.

	(1)	(2)
1.	Commissioner of Income-tax, United Provinces and Central Provinces and Berar.	Commissiner of Excess Profits Tax for the Central India Administered Areas.
2.	Appellate Assistant Commissioner of Income tax of the Nagpur Range in the United Provinces and Central Provinces and Berar.	Appellate Assistant Commissioner of Excess Profits Tax for the Central India Administered Areas.
3.	Inspecting Assistant Commissioner of Income-tax, Central Provinces and Berar, Nagpur.	Inspecting Assistant Commissioner of Excess Profits Tax for the Central India Administered Areas.
4.	Income-tax Officer, Central India Administered Areas, Mhow.	Excess Profits Tax Officer for the Central India Administered Areas.

Notification No. 2-D Camp, dated the 10th February 1945.

In exercise of the powers conferred by sub-section (3) of Section 3 of the Excess Profits Tax Act, 1940 (XV of 1940), as applied to the Hyderabad Administered Areas, the Central Board of Revenue hereby appoints the persons specified in

the first column of the Schedule hereto annexed to be the Excess Profits Tax Authorities specified in the corresponding entries in the second column thereof and assigns in the Hyderabad Administered Areas.

SCHEDULE.

(1)	(2)
1. Commissioner of Income-tax, Madras.	Commissioner of Excess Profits Tax for the Hyderabad Administered Areas.
2. Appellate Assistant Commissioner of Income-tax, Bezwada.	Appellate Assistant Commissioner of Excess Profits Tax for the Hyderabad Administered Areas.
3. Inspecting Assistant Commissioner of Income-tax, Central Range, Madras.	Inspecting Assistant Commissioner of Excess Profits Tax for the Hyderabad Administered Areas.
4. Income-tax Officer, Hyderabad Ad ministered Areas.	Excess Profits Tax Officer for the Hyderabad Administered Areas.

EXCESS PROFITS TAX RULES, 1940.

Notification No. 1 dated the 28th September, 1940.

In exercise of the powers conferred by Section 27 of the Excess Profits Tax Act, 1940 (XV of 1940), the Central Board of Revenue makes the following Rules, namely :—

Short title. **1.** These Rules may be called the Excess Profits Tax Rules, 1940.

Definitions. **2.** In these Rules—

(i) "the Act" means the Excess Profits Tax Act, 1940. (XV of 1940);

(ii) "applied section" means a section" of the Indian Income-tax Act, 1922, as applied by section 21 of the Act and Rule 3;

(iii) "Form" means a from as set out in the Schedule to these Rules.

Adaptation of Indian Income-tax Act, 1922. **3.** The Provisions of Sections 4-A, 4-B, 10, 13, 24-B, 29, 36, to 44-C (inclusive), 45 to 38 (inclusive), 49-E, 49-F 50, 54, 61 to 63 (inclusive) and 65 to 67-A (inclusive) of the Indian Income-tax Act, 1922, shall apply with the following modifications, namely:—

General modifications. [1](i) All references to "this Act" except those in the Proviso to clause (iii) of Sub-section (2) of Section 10, the fist Proviso to Sub-section (1) of Section 44, Section 44-A, and in Sub-section (1) of Section 54 where they last occur, shall be construed as references to "the Act".

(i-a) All references to "Income-tax" except those in the expression "Income-tax practitioner" occurring in Sub-section (1) of Section 61, in clause (*iv*) of Sub-section (2) of Section 61 and in Sub-cluse (*a*) of clause (*iv*) of Sub-section (2) of Section 61, shall be construed as references to "excess profits tax".]

Madification of Section 10 (ii) In Section 10:—

(a) clauses (b) and (c) of the Proviso to clause (vi) of Sub-section (3) shall be omitted;

(*b*) for Sub-section (7) the following Sub-section shall bs substituted, namely:-

" (7) Notwithstanding anything to the contrary in this Section or in the Excess Profits Tax Act, 1940, the profits of any business of insurance, other than life insurance, shall be computed in accordance with the Rules contained in the

(1) Clause (i) and (ia) were substituted by Notification No. 15 dated the 12th April 1941.

Schedule to the Indian Income-tax Act, 1922 in so far as they are applicable to such business".

Modification of Section 13. (iii) In Section 13 the word and figures "and 12" shall be omitted.

Modification of Section 24-B. (iv) In Section 24-B:—

(a) in Sub-section (2)—

(1) the words and figures "before the publication of the notice referred to in Sub-section (1) of Section 22 or" shall be omitted, and

(2) for the words and figures "Sub-section (2) of Section 22 or Section 34" wherever they occur, the words and figures "Sub-section (1) Section 13 or Section 15 of the Excess Profits Tax Act, 1940", shall be substituted;

[1][(3) for the words "total income" the words "excess profits" shall be substituted].

(b) in Sub-section (3)—

(1) for the word and figures "Section 22" the words and figures "Sub-section (1) of Section 13 of the Excess Profits Tax Act, 1940" shall be substituted; and

(2) for the words and figures "Sections 22 and 23" the words and figures "Sub-section (2) of Section 13 of the Excess Profits Tax Act, 1940" shall be substituted.

[1][(3) for the words "total income" the words "excess profits" shall be substituted.]

Modification of Section 37. (v) In Section 37, for the words "this Chapter" the words, figures and brackets "Sections 8 to 20 (inclusive) of the Excess Profits Tax Act, 1940" shall be substituted.

Modification of Section 40. (vi) For Section 40 the following Section shall be substituted, namely:—

"40. In the case of any agent of any person residing out of British India, being entitled to receive on behalf of such person any profits chargeable under the Excess Profits Tax, 1940, the tax shall be levied upon and recoverable from such agent in like manner and to the same amount as it would be leviable upon and recoverable from such person if resident in British India and indirect receiptt o such profits, and all the provisions of the said Act shall apply accordingly :

Provided that the tax may be levied upon and recovered from such non-resident person direct".

Modification of Section 41. (vi) The Proviso to Sub-section (1) of Section 41 shall be omitted.

Moditfcation of Section 42. (vii) In the first proviso to Sub-section (1) of Section 42, the words and figures "the Income-tax so chargeable may be recovered by deduction under any of the provisions of Section 18 and that" shall be omitted.

Modification of Section 44. (ix) For Section 44, the following Section shall be substituted, namely:—

"44. Where any business carried on by a firm or association of persons has been discontinued, every person who was at the time of such discontinuance a partner of such firm or a member of such association shall, in respect of the profits of the firm or association, be jointly and severally liable to assessment uuder Section 14 of the Excess Profits Tax Act, 1940, and for the amount of tax payable, and all the provisions of the said Act shall, so far as may be, apply to any such assessment"

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(1) This paragraph was Inserted by Notification No. 15, dated the 12th April 1941,

[1][(ixa) In Section 44-A, for the words "this chapter" the words and figures "the applied Sections 44-B and 44-C" shall be substituted,]

[2][(x) In Section 44B—

(*a*) in Sub-section (1) for the words "this chapter" the words and figures "the applied Section 44-A" shall be substituted.

(*b*) in Sub-section (3), the words "at the rate for the time being applicable to the total income of a company" shall be omitted.

(xi) In Section 44 C—

(*a*) for the words "this chapter" the words and figures "the applied Sections 44-A and 44-B" shall be substituted.

(*b*) for the words "of his total income in the previous year" the words "of his actual excess profits in the chargeable accounting period" shall be substituted.

(*c*) the word "other" shall be omitted."

(xii) In Section 45—

Modification of Section 45. (a) the words brackets, figures and letter "under Sub-section (3) of Section 23-A or" shall be omitted;

(b) for the words and figures "Section 31 or Section 32 or Section 33" the words and figures "Sub-section (4) of Section 17 or Section 18 or Section 19 of the Excess Profits Tax Act, 1940" shall be substituted;

(c) for the words and figures "under Section 30", the words and figures " under Section 17 of the Excess Profits Tax Act, 1940, shall be substituted;

(d) in the proviso, for the words "which is due in respect of the amount of his income which", the words "which relates to excess profits arising from such income as" shall be substituted.

Modification of Section 46. (xiii) Sub-section (5) of Section 46 shall be omitted.

Modificatior of Section 47. (a) the words and figures "Sub-section (2) of Section 25, Section 28, Sub-section (6) of Section 44E, Sub-section 44F or" shall be omitted.

(b) after the figures "46", the words and figures ' or under the provisions of Section 16 of the Excess Profits Tax Act, 1940" shall be inserted;

[3][(c) for the words "this Chapter " the words and figures the " applied Sections 45 ond 46 shall be substituted ;

Modification of Sectian 48 (a) for Sub-section (1), the following 'Sub-section shall be substituted—

"(1) If any person, to whose business the Excess Profits Tax Act, 1940, applies, satisfies the Excess Profits Tax Officer that the amount of tax paid by him for any chargeable accounting period exceeds the amount which he is properly chargeable under the said Act for that period, he shall be entitled to a refund of any such excess".

(b) Sub-section (3) shall be omitted.

(c) In Sub-section (4), the words, brackets and figures "or to entitle any person to claim a refund of tax payable before the commencement of the Indian Income-tax (Amendment) Act, 1939, which he would not be entitled to claim but for the passing of that Act" shall be omitted.

(xvi) In Section 49F for the word and figures "or 49", the following shall

Modification of Section 49 F. be substituted, namely:—or under Section 7 or Section 11 of the Excess Profits Tax Act, 1940."

Modification of Section 50. (xvii) For Section 50, the following shall be substituted, namely:—

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(1) This clause was inserted by Notification No. 15 dated the 12th April 1941.
(2) Clause x) and (xi) were substituted, Ibid,
(3) This sub-clause was inserted, Ibid.

"50 No. claim to any refund of tax under Excess Profits Tax Act, 1940, shall be allowed unless it is made whithin four years from the last day of the financial year commencing next after the expiry of the accounting period which constitutes or includes the chargeable accounting period in respect of which the claim to such refund arises".

(xviii) In Section 54—

Modification of Section 54. (a) in Sub-section (1) for the words "this Chapter" the words and figures "Sections 23, 24 and 25 of the Excess Profits Tax, 1940" shall be substituted ;

(b) in Sub-rection (3), clause (e) and (m) shall be omitted; and in clause (i) for the figures and words "49 of this Act", the figures and words "11 of the Excess Profits Tax Act, 1940' shall be subtsituted;

(c) Sub-section (4) shall be omitted.

Modification of Section 66. (xix) In Sub-section (1) of Section 66 for the words and figures "Sub-section (4) of Section 33", the following shall be substituted, namely:—

"[Sub-section (3) of Section 10-A, or Sub-section (2) of Section 19 ef, or sub-rule (2) of Rule 12 of Schedule 1 to,][1] of the Excess Profits Tax Act, 1940, read with Sub-section (4) of Section 33 of the Indian Income-tax Act, 1922".

Adaption of Indian Income-tax Rules, 1922. **4.** Rules 8,23,24,33,34,44,45 and 46 of the Indian Income-tax Rules 1922, shall apply subject to the modification that all reference therein to "income-tax" and "the Income-tax Officer" shall be construed as references to "excess profits tax" and "the Excess Profits Tax Officer" respectively.

Form of Notice of Demand under applied Section 29. **5.** The notice of demand or of determination of a deficiency of profits under applied Section 29 shall be in Form E. P. 4.

Form of notice in default of payment. **6.** The notice in default of payment of excess profits tax shall be in Form E. P. 6.

Forms for Notice under Section 14 A. [2][**6-A** Notice under sub-Section 14 A of the (2) of Section Act shall be in Form E. P. 3-1 and the order of assessment and notice of demand in respect of provisional assessment made under sub-section (3) of the said section:—

(i) in respect of chargeable accounting periods ending befor the 1st day of January 1944 shall be in Form 4-7, and

(ii) in respect of chargeable accounting periods ending after the 31st day of December 1943, shall be in Form E. P. 4-7 A.]

Form of return under Section 13 (1) **7.** The return required under Sub-section (1) of Section 13 of the Act shall be in Form E. P. 1.

Form of application under Section 6 (3). **8.** An application to the Board of Referees under Sub-section (3) of Section 6 of the Act, for a direction that the profits of the standard period shall be computed as if they were such greater amount as it thinks just, shall be made in Form E. P. 14.

Form of application under Section 26 (1). **9.** An application to the Central Board of Revenue under Sub-section (1) of Section 26 of the Act, for a direction that the profits of the standard period shall be computed as if they were such great er amount as it thinks just, shall be made in Form E.P. 15.

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(1) These words were substituted for the words "Sub-section (2) of Section 19 of" by notification No. 2 dated 14th February 1942.

(2) This rule was subsituted by Notification No. 3 dated 3rd June 1944. There Form inserted by this rule Form E. P. 4-7.

Form of application under Section 25 (3)

10. An application to the Central Board of Revenue under Sub-section (3) of Section 25 of the Act, for a direction that such allowance shall be made in computing the profits of a business during a chargeable accounting period as the Central Board of Revenue thinks just, shall be made in Form E. P. 16 [but an application in respect of the earlier exhaustion of mineral sources shall be made in Form E. P. 16 A][3]

Form of application under Rule 7 of Sch II

[4][**10A.** An application to the Central Board of Revenue under Rule 7 of Schedule II to the Act for a direction that, in computing the average capital of a business during the standard period, certain assets shall be excluded for such periods as they were inherently unproductive, shall be made in Form E. P. 30.]

Form of appeal under Section 8 (5)

11. An appeal under the Proviso to Sub-section (5) of Section 8 of the Act shall be made in Form **E. P. 8A.**

Form of appeal under Section 8 (8)

[5] [**11 A.** An appeal under the Proviso to Sub-section (8) of Section 8 of the Act shall be in Form E. P. 28-A.]

Form of appeal under Rule 11 of Sch.

[5] [**11B.** An appeal against a determination by the Excess Profits Tax Officer under Rule 11 of Schedule I to the Act shall be in Form E. P. 29A].

12. An appeal under Section 17 of the Act shall be—

Form of appeal under Section 17.

(*a*) in Form E. P.-9, if against a decision of the Excess Profits Tax Officer under Section 8 of the Act ;

(*b*) in Form E. P.-10, if against the amount of an assessment made or a deficiency of profits under Sub-section (1) of Section 14 of the Act ;

(*c*) in Form E. P.-11, if against an order imposing a penalty under Section 10 or Section 16 of the Act or under Sub-section (1) of applied Section 46 ;

(*d*) in Form E.P.-12, if in respect of an alleged insufficient relief or refund, or a refusal to grant relief or refund, by the Excess Profits Tax Officer.

Form of appeal under Section 18.

13. An appeal under Sub-section (1) of Section 18 of the Act, shall be in Form E. P. 13.

From of application for refund under Section 7.

14. Application for refund of excess profits tax under Section 7 of the Act, in respect of a deficiency of profits shall be in from E. P. 17.

Form of application for relief under Section 11.

15. An application under Section 11 of the Act, for relief in respect of double taxation shall be in Form E. P. 18.

Tprms of appeal to the Appellate Tribcnal.

[1] [**15A.** An appeal under Sub-section (2) of Section 19 of the Act shall, in the case of an appeal against:—

(*a*) an order of the Excess Profits Tax Officer under Section 8, exeept an order making the apportionment under Sub-section (5) or a modification under Sub-section (8), be in Form E. P. 9 (T);

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(3) These words were added by Notification No 2, dated the 14th February, 1942.

(4) This Rule was inserted by Notification No. 5 datod the 1st February, 1941.

(5) This Rule was inserted by Notification No. 5, dated the 14th February 1942.

(6) This Rule was inserted by Notification No, 7, dated the 15th February 1941,

(*b*) an order of the Excess Profits Tax Officer under Sub-section (1) of Section 14 of the Act, be in Form E. P. 10/13 (T);

(*c*) an order of the Excess Profits Tax Officer imposing a penalty under Sub-section (1) of the applied Section 46, be in Form E. P. 11 (1) (T);

(*d*) an order of the Excess Profits Tax Officer imposing a penalty under Sub-section (3) of Section 10 of the Act, be in Form E. P. 11 (T);

(*e*) an order of the Excess Profits Tax Officer, the Appellate Assistant Commissioner or the Commissioner imposing a penalty under Section 16 of the Act, be in Form E. P. 11/13 (T);

(*f*) an order of the Excess Profits Tax Officer, under Section 7 of the Act, granting or refusing to grant relief in respect of a deficiency, be in Form E. P. (12) (T);

(*g*) an order of the Excess Profits Tax Officer granting or refusing to grant relief in respect of double excess profits taxation under Section 11 of the Act, be in Form E. P. 12 (1) (T);

[7](*h*) an order of the Excess Profits Tax Officer in so far as it concerns an adjustment made by him under Section 10A of the Act, be in Form E. P. 14 (T);

(*j*) an order of the Excess Profits Tax Officer, in so far as it concerns a disallowance made by him under Rule 12 of Schedule I to the Act, be in Form E. P. 15 (T);

Time for notice under Section 8 (2).

16. The notice under Sub-section (2) of Section 8 of the Act, shall be given by the persons concerned with in [8][the period specified in the notice issued under Sub section (1) of Section 13 of the Act, or within the extended period allowed by the Excess Profits Tax Officer under the Proviso thereot],

Time and manner of appeal under Section 8 (5).

17. An appeal under the Proviso to Sub-section (5) of Sectioa 8 of the Act shall be presented in the office of the Excess Profits Tax Officer by the person carrying on the business prior to the transfer or by the person to whom part of the business was transferred, as the case may be, within 45 days of the date of receipt of the notice of the Excess Profits Tax Officer's apportionments.

Time for appeal under Section 19 (2).

[9][**17-A.** An appeal to the Appellate Tribunal under Sub-section (2) of Section 19 of the Act, against an order of the Appellate Assistant Commissioner of Excess Profits Tax under Sections 16 or 17 of the Act shall be made at any time before the expiry of sixty days from the date of such order.]

[10][**17-AA.** An appeal to the Appellate Tribunal against any adjustment made by the Excess Profits Tax Officer under Section 10-A, or against any disallowance made by him under Rule 12 of Schedule I to the Act shall be made at any time before the expiry of sixty days from the date of receipt of the order of assessment affected by such adjustment.]

Procedure on appeal uuder Section 19 (2).

[11][**17-B.** The procedure to the followed on an appeal to the Appellate Tribunal under the Act, shall be the same, as nearly as may be as that prescribed in respect of appeals to that Tribunal under the Income-tax Act.]

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(7) These Sub-rules were added by Notification No. 2, dated 14th February 1942.

(8) These words were substituted for the words "60 days of the.....of the Act, by Notification No. 10, dated the 15th March 1941.

(9) This Rule was inserted by Notification No. 7 dated the 15th February 1941.

(10) This Rule was inserted by Notification No, 2 dated the 14th February 1942.

(11) This Rule was inserted by Notification No. 7 dated the 15th February 1941.

Procedure application under Section 6 (3) or appeal under Section 8 (5).

18. (1) The Excess Profits Tax Officer shall within fifteen days of the receipt of an application under Sub-section (3) of Section 6, or of an appeal under Sub-section (5) [1][or the Proviso to Sub-section (8) of Section 8, or under Rule 11 of Schedule I,] of the Act, forward it to the Commissioner for being referred to a Board of Referees for decision.

(2) The Commissioner shall, in consultation with the Board of Referees appointed by him in accordance with the Excess Profits Tax (Boards of Referees) Rules, 1940, fix the time and place of the first meeting of the Board, and give nottice thereof, not being less than one week, together with the names of the members constituting the Boards, to the applicant in the case of an application, [2][to the appellant in the case of an application under the Proviso to Sub-section (8) of Section 8 or under Rule 11 of Schedule I, of the Act, or to the appellant and the opposite-party in the case of an appeal under Sub-section (5) of Section 8 of the Act.]

[3][(3) When the hearing of an application or appeal is adjourned, the Board of Referses shall inform the Cummissioner and also the applicant or appellant as the case may be, or, in the case of an appeal under Sub-section (5) of Section 8 of the Act the appellant and the opposite-party, of the time and place of the next hearing.]

(4) In Sub-rules (2) and (3) the expression "opposite party" means the person by whom, or the person to whom, part of the business was transferred, according as the appeal is preferred by the transferee or the transferor.

Commission to be represented at hearing of appeals and applications.

19. (1) At the hearing of an appeal or application under the Act by a Board of Referees or an Appellate Assistant Commissioner, the Commissioner shall have the right to be represented by the Excess Profits Tax Officer of such other person as may be appointed by the Commissioner in that behalf.

(2) Notice of the date appointed for the hearing of any appeal or application under the Act shall also be given to the Excess Profits Tax Officer concerned.

[4][**20. Investment holding Companies.**—In the case of a business consisting wholly or mainly in the holding of investments—

(a) the income from investments to be included in the profits of the business under the Provisions of Rule 4 of Schedule I to the Act shall be computed exclusive –

(i) of all income received by way of dividends or distribution of profits from a company carrying on a business to the whole of which the Section of the Act imposing excess profits tax applies ; and

(ii) or the due proportion of all income received by way of dividends or distribution of profits from a company carrying on a business to part only of which the Section of the Act imposing excess profits tax applies ;

(b) the investments to be excluded from the capital employed in the business under Rule 3 of Schedule II to the Act shall include.

(i) all shares in a company carrying on a business to the whole of which the Section of the imposing excess profits tax applies ; and

(ii) the due proportion of all shares in a company carrying on a business to part only of which the Section of the Act imposing excess profits tax applies."]

Provided that, if, in relation to any chargeable accounting period, a company to which this rule applies gives notice to the Excess Profits Tax Officer, within the time allowed under Section 13 of the Act, for the furnishing of a return in respect of such chargeable accounting period, that the provision of this Rule shall not be applied to it, its profits and average capital in relation to such chargeable accounting period shall be computed as if this Rule had not been made.]

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(1) These words were substituted for the words "of Section 8" by Notification No, 5, dated the 1st February 1941.

(2) These words were substituted for the words "and to the appellant and the opposite, party in the case of an appeal" by Notification No. 5 dated the 1st February, 1941.

(3) This Sub-rule was substituted by Notification No, 2 dated the 1st February 1941.

(4) This rule was substituted by Notification No. 1 dated 20 February 1943 and the proviso was added by Notification No. 7 dated 24th July 1943.

SCHEDULE.

FORM E. P. I.

Reference to be quoted in all communications

EXCESS PROFITS TAX.

NOTICE OT FURNISH RETURN OF PROFITS AND OTHER PARTICULARS.

To

.....

.....

.....

In pursuance of the Provisions of Section 13 (1) of the Excess Profits Tax Act, 1940, you are hereby required to furnish [1]WITHIN SIXTY FIVE DAYS from the date of the service of this notice, in the form provided overleaf, a Return of the profits arising from the business carried on by / carried on in the name of during the chargeable accounting period commencing 19 and ending 19 . together with such other particnlars relating thereto as are specified therein. The return duly signed by you, and the other particulars required therein, should be delivered to me at the address given below.

Notes for your guidance are contained in the enclosure to this form. If you desire any further information, application should be made to this office.

If you desire to make an application or election :—

(*a*) for increase of standard profits under Section 6 (3) or 26 (1) : [See Notes for Guidance, Notes 4 (v) and (vi)];

(*b*) for modification of computation of profits of chargeable accounting period under Section 26 (3) ; [See Notes for Guidance, Note 8] ;

(*c*) in the case of changes of partnership under Section 8 (2) [See Notes for Guidance, Note 11 (i)];

(*d*) in the case of transfer of business after 1st April 1936 and before 1st September 1939: [See Notes for Guidance, Note 11 (v)];

[2](*e*) for the exclusion from the average capital of the standard period of inherentlу unproductive assets under Rule 7 of Schedule 11 ; [See Notes for Guidance, Note 9];

you are requested to intimate your intention in writing to this office *as early as possible.*—

In the case of a company which is the subsidiary of another company resident in British India only the declaration on page 1388* need be completed.

Excess Profits Tax Officer.

Address

Dated the 194 .

(1) The words "with in sixty days" have been inserted by Notification No, 7 dated the 25th November 1944.

(2) This sub-paragraph was inserted cy Notificatiou No. 9 dated 8th March 1941.

PENALTIES.

1. Failure, without reasonable excuse, to deliver the Return with the other particulars required by the Excess Profits Tax Officer under the provisions of the Excess Profits Tax Act, the concealment of particulars of profits arising from or of capital employed in the business, or the deliberate furnishing of inaccurate particulars of such profits or capital entail penalties under Sections 16, 23 or 24 of the Act.

The penalties are, in the case of failure to deliver the return a sum not exceeding the amount of excess profits tax payable or, in other cases, a sum not exceeding the amount of the excess profits tax that would have been avoided if the return made had been accepted as correct. Alternatively, on conviction before a Magistrate, failure to make the return involves a fine which may extend to Rs. 500, with a further fine which may extend to Rs. 50 for every day during which the default continues and a false return is punishable with simple imprisonment which may extend to Rs. 1,000, or with both.

2. The penalty for entering into any fictitious or artificial transaction, or for carrying out any fictitious or artificial operation for the purpose of reducing any excess profits which are or would be chargeable to excess profits tax is, in addition to such transaction or operation being treated as *null* and *void* for excess profits tax purposes, a sum not exceeding the tax evaded or sought to be evaded.

[Section 10.]

penalties.—Particulars are given on page 1390* of this form.

*The references are to the pages of the Gazette of India.

EXCESS PRO

Return of profits arising from Business in the chargeable ending *19 , and other particulars*

(1) Name and address of the person by whom the business was carried on in the above chargeable accounting period

(2) In the case of a person not resident in British India, carrying on business in British India through an agent resident in British India, the full name and address of the agent through whom the business was carried on in the above chargeable accounting period.

(3) Nature of business carried on.

(4) Amount of profits arising in the above chargeable accounting period, computed in accordance with the Act. [See Notes for Guidance, Note 8.]

(5) Amount of standard profits computed in accordance with the Act. [See Notes for Guidance, Note 4]

(6) Basis of computation of standard profits adopted—

(*a*) the profits of a standard period ; or

(*b*) the application of the statutory percentage to the average amount of capital employed during the chargeable accounting period. [See notes for Guidance, Note 4]

(7) In the case of 6 (a) above, particulars of the standard period chosen, or in the case of 6 (b) above, the date of commencement of the business. [See Notes for Guidance. Note 5.]

(8) Proportionate amount of standard profits in the ratio of the chargeable accounting period to the standard period. [See Notes for Guidance, Note 4 (*i*).]

FURTHER PARTI-

You are required to furnish—

(*i*) copies of the Trading accounts, Profits and Loss Accounts, and Balance been made up, which constitute or include any part of the standard period or of

(*ii*) a copy of your computation of the profits of the chargeable accounting the amount of profits as computed for Income-tax purposes, details of each adjustadjustments due in respect of increase or decrease of the capital employed in the during the standard period ; and of your computation of the average capital em-

(*iii*) the further particulars specified on pages 1388* and and 1389*) hereof.

STATE WHETHER YOU MAKE THE RETURN—

As proprietor of the business ;
As partner in a partnership ;
As Manager or Karta of a Hindu undivided family ;
As principal officer of a company ;
As member of an association ;
As legal representative of a deceased person ;
As liquidator of a company which is being wound up ; or
As agent for a person not resident in British India.

*The reference are to the page of the Gazette of India

FITS TAX.

accounting period commencing 19 , *and*
relating thereto.

(1)

(2)

(3)

(4) Rupees

(5) Rupees

(6)

(7) (*a*)

(*b*)

(8) Rupees.

CULARS REQUIRED

Sheets of the business for all periods, for which the accounts of the business have
the chargeable accounting period ;

period, and of the standard period where a standard period is chosen, showing
ment thereto required by the Provisions of the First Schedule to the Act and of the
business during the chargeable accounting period as compared with that employed
ployed (see items 3 and 4 on page 1389*).

DECLARATION.

I hereby declare that, to the best of my knowledge and belief, the information given in this return is correct and complete, and the particulars transmitted herewith are truly stated.

Dated this day of 194 .

Signature.

Address.

SCHEDULE OF FURTHER PARTICULARS REQUIRED UNDER

1. In the case of a Company	
(*a*) The name and address of any company, whether or not resident in British India or trading in British India, which is a subsidiary of the company. [See Notes for Guidance. Note 12.]	
(*b*) The name and address of the company, resident in British India, if any, of which the company is a subsidiary company [See Notes for Guidance, Note 12.]	
(*c*) In the case of a private limited company, the names of the share-holders in the accounting period which constitutes or includes the chargeable accounting period, with full particulars of the shares held by each. [See Notes for Guidance, Notes 8]	

[If this space is insufficient, please attach a Schedule of the required particulars.]

SECTION 13 (1) OF THE EXCESS PROFITS TAX ACT, 1940.

II. In all cases. (Particulars relating to average capital employed).

Rupees.

Amount of capital, computed in accordance with the Provisions of the Second Schedule to the Act:—

1. Standard period—

(*a*) Where the standard period is a period of one "previous year"—
(*i*) as at the commencement of that "previous year."
(*ii*) as at the end of that "previous year."
or
(*b*) where the standard period consists of two "previous years."
(*i*) as at the commencement of the first of those "previous years."
(*ii*) as at the end of the first of those "previous years."
(*iii*) as at the commencement of the second of those "previous years."
(*iv*) as at the end of the second of those "previous years".

NOTE.—Where the standard period consists of two consective "previous years" lines (*ii*) and (*iii*) should be treated as one.

2. Chargeable accounting period—
(*a*) as at the commencement of that period.
(*b*) as at the end of that period.

3. Average amount of capital employad during the standard period.

4. Average amount of capital employed during the chargeable accounting period.

	Description	Rs.	Date.
5. Additions (+) or decrease (—) in capital employed—			
(*a*) during the standard period;			
(*b*) during the chargeable accounting period (See Note 2 below).			

NOTES:—

1. Where the standard profits are taken to be the statutory percentage of the average capital employed during the chargeable accounting period, only items 2, 4 and 5 (*b*) need to be completed.

2. Particulars are required hereof, ***inter alia*** income from excluded investments paid into and employed in the business; sales of business assets; drawings of proprietor or of partners or, in the case of a company, of dividends paid: income-tax and super-tax liablities with the dates when such were due for payment,

3. See also Note 9 in Notes for Guidance.

FORM E. P. 3-1.

EXCESS PROFITS TAX

Notice under sub-section (2) of Section 144 of the Excess Profits Tax Act 1940 (XV of 1940).

Excess Profits Tax Office.....

Dated the.. ..... 194 .

To

....

.....

.....

Whoras a notice under sub-section (1) of Section 13 of the Excess Profits Tax Act, 1940 (XV of 1940), in respect of the chargeable accounting period commencing .....19..and ending .....19 , has been served on you on.... .... .19.., I hereby give you notice of my intention to make a provisional assessment in accordance with the provisions of sub-section (3) of Section 14 A of the said Act as follows:—

If you object to the amount of such proposed provisional assessment you should within fourteen days of receipt of this notice deliver to me a statement of your objections thereto.

Signed

Excess Profits Officer.

Form E. P. 4.

EXCESS PROFITS TAX.

NOTICE OF DEMAND UNDER RULE 5 OF THE EXCESS PROFITS TAX RULES READ WITH SECTION 29 OF THE INDIAN INCOME-TAX ACT 1922.

To

1. Take notice that for the chargeable accounting period, commencing 91 and ending 19 .

* the sum of Rs. Excess Profits Tax, as specified overleaf, has been determined to be payable by you.

* a deficiency of profits of Rs. has been computed as shown overleaf.

2. * You are required to pay the amount on or before 194 ,

to the *Treasury Officer / Sub-Treasury Officer / Agent Imperial Bank of India / Governor, Reserve Bank of India at when you will be granted a receipt.

3. If you do not pay the amount on or before 194 you will be liable to a penalty, under Section 46 (1) of the Indian Income-tax Act, 1922, as applied to Excess Profits Tax by Section 21 of the Excess Profits Tax Act, 1940, which may be as great as the excess profits tax due from you.

4. If you intend to appeal against the assessment, or the amount of the deficiency, you may present an appeal under Sub-section (1) of Section 17 of the Excess Profits Tax Act, 1940, to the Appellate Assistant Commissioner of Excess Profits Tax at .

within 45 days of the receipt of this notice in the form prescribed under Sub-section (3) of Section 17 duly stamped and verified as laid down in that form. A copy of the form may bo obtained from this office.

---

*Delte inappropriate words.

5. A copy of my assessment order and of my computations of the standard profits and the profits of the chargeable accounting period is enclosed herewith.

Excess Profits Tax Officer.

Dated *194* . } Address.

ASSESSMENT FORM.

ASSESSMENT UNDER SECTION 14 OF THE EXCESS PROFITS TAX ACT, 1940, FOR THE CHARGEABLE ACCOUNTING PERIOD COMMENCING 19 , AND ENDING 29 (MONTHS)

Name of assessee **Circle.**
Status **No. in General Index.**
Address **No in E. P. T. Register.**

			Rupees
1.	Profits of the chargeable accocounting period as computed for Excess Profiis Tax purposes.. ..		.....
2.	Profits of standard period or months *where standard profits available*—		
	(*i*) as computed for excess profits tax purposes *or*	Rs.	
	(*ii*) as determined by the Board of Referees under Section 6 (3) *or*	Rs.....	
	(*iii*) as determined by Central Board of Revenue under Section 26 (1)	Rs.....	
3.	Proportion of (2) appropriate to chargeable accounting period of months	Rs.....	
4.	Average amount of capital employed during chargeable accounting period	Rs.	
5.	Average amount of capital employed during standard period	Rs	
(6)	Increase (+) or decrease (–) in the average capital employed during chargeable accounting period .	Rs.....	
7.	Statutory percentage of %per annum thereon for months	Rs.....	
8.	Adjusted standard profit in relation to chargeable accounting period..		.....
9.	Where percentage chosen under the second proviso to Section 6 (1) % per annum for the chargeable accounting period of....months on the average capital of Rs. employed during the chargeable accounting period *or*		.....
10.	Where minimum standard of 36,000 applicable, due proportion thereof		.....
11.	Excess Profits (+) or Deficieney (—)		. .. .
			at 50% / at 66 %
			Rs. / Rs.
12.	Excess Profits assessable		..... / .....
13.	Deficiency of profits set off		..... / ....
14.	Net excess profits assessed		. .....
15.	Excess Profits Tax		. .....

*Delete in appropriate items

Items 12 to 19 were substituted by Notification No- 17 dated 26th April 1941.

		Rs.
16.	Excess Profits Tax, total	.....
17.	Double Excess Profits Taxation relief .	.....
18.	Net amount of Excess Profits Tax payable ..	.....
19.	*Add* (*i*) Penalty under Section 10 (3)	.....
	(*ii*) Penalty under Section 16	.....

TOTAL SUM PAYABLE (in figures as well as words)

Rs. as. (figures) Rs.

annas (words).

Dated 194

Form E. P. 4-7.

EXCESS PROFITS TAX.

Assessment order and notice of demand in respect of Provisional Assessment made under Sub-section (3) of Section 14 A of the Excess Profits Tax Act, 1940 (XV of 1940).

To

....

.....

....

1. take notice that, following the issue on the 19, of notice under the sub-section (2) of Section 14 A of the Excess Profits Tax Act, 1940 (XV of 1940) of my intention to make a provisional assessment in respect of your estimated liability to Excess Profits Tax for the chargeable accounting period commencing 19 and ending 19, I,* having taken into account your statement of objections thereto dated 19, have determined provisionally the excess profits of such period to be the sum of Rs. and that the Excess Profits Tax payable in respect therof is—

			Rs.
for the period commencing		19	
and ending	19	Rs.	@ 50%=
and for the period commencing		19	
and ending	19	Rs.	@ 662/3%=
	Total		

2 You are required to pay the amount on or before..... .....

.....19..to Treasury Officer / Sub Treasury Officer / Branch of Imderial Bank of India / Reserve Bank of India

at when you will be granted a receipt.

3. If you do not pay the amount on or before 19; you will be liable to a penalty under Section 46 (1) of the Indian Income-tax Act, 1922, as applied to Excess Profits Tax by Section 21 of the Excess Profits Tax Act, 1940 (XV of 1940) which may be as great as the amount of the Excess Profits Tax hereby assessed.

EXCESS PROFITS TAX RULES, 1940.

SCHEDULE

[1]FORM E. P. 4-7 A

Excess Profits Tax.

Assessment Order and Notice of Demand in respect of Provisional Assessment made under sub-section (3) of Section 14 A of the Excess Profits Tax Act, (XV of

1. This form has been added by notification No. 3 dated 3rd June 1944.

*Interest '19' or '17' as the case requires.

1940 (XV of 1940), and sub-section (1A of Section 2 of the Excess Profits Tax Ordinance, 1943 (No, XVI of 1943) read with Section 10 of the Indian Finance Act, 1942 (XII of 1942).

To

.....

.....

1. Take Notice that, following in the issue on.....194 , of notice under sub-section 14A of the Excess Profits Tax Act, 1940 (XV of 1940) of my intention to make a provisional assessment in respect of your liability to excess profits tax for the chargeable accounting period commencing.....194 , and ending..... .194 , which would carry the liability also to deposit a further sum under sub-section (1A) of Section 2 of the Excess Profits Tax Ordinance, 1943 (XVI of 1943), read with Section 10 of the Indian Finace Act, 1942 (XII of 1942), I, having taken into account your statement of objection there to dated ..... .194 , have determined provisionally the excess profits of such period to be the sum of Rs. and that the excess profits tax payable in respect thersof and the further sum to be deposited in relation thereto are:—

Excess Profits Tax	Rs. at 66 2/3%=	Rs.
Further sum to be deposited * 64 of	=	
	Total	

2. You are required to pay the amount on or before.....

.....194 , to †Treasury Officer / Sub-Treasury Officer / Agent, Imperial Bank India / Governor, Reserve Bank of India.

at .....when you will be granted a receipt.

3. If you do not pay the amount on or before ..... .194 , you will be liable to a penalty under Section 46 (1) of the Indian Income-tax Act, 1922 (XI of 1922) as applied to Excess Profits Tax Act, 1940, and as applied to the furtyer sum required to be deposited by sup-section (4) of Section 2 of the Excess Profits Tax Ordinance, 1943, which may be as great as the amount of the Excess Tax hereby assessed and the further sum required hereby to be deposited.

.....

Excess Profits Tax Officer.

Address.

.....

.....

Dated.....194 .

FORM E. P. 6

PENALTY IMPOSED IN DEFAULT OF PAYMENT OF EXCESS PROFITS TAX.

NOTICE OF DEMAND UNDER SECTION 29 OF THE INDIAN INCOME-TAX ACT, 1922, AS APPLIED TO EXCESS PROFITS TAX BY SECTION 21 OF THE EXCESS PROFITS TAX ACT, 1940.

To

Whereas you have not paid the sum of Rs. Excess Profits Tax, assessed for the chargeable accounting period commencing 19 ,

†Delete inappropriate words.

and ending 19 , on the prescribed date viz , in accordance with the Notice of Demand served on 194 , you are hereby informed that a penalty of Rs. has been imposed upon you under Section 46 (1) of the Indian Income-tax Act, 1922, which is applied to Excess Profits Tax, 1940

2. You are further warned that unless the total amount due, including this penalty, is paid on or before 194 , a further penalty will imposed on you (and a warrant of distress will be issued for the recovery of the amount due with costs).

You are required to pay the amount to the

*Treasury Officer
Sub-Treasury Officer
Agent Imperial Bank of India
Governor, Reserve Bank of India

at when you will be granted a receipt.

4. If you intend to appeal against this penalty you may present an appeal under Sub-section (1) of Section 17 of the Excess Profits Tax Act, 1940, to the Appellate Assistant Commissioner of Excess Profits Tax at within 45 days of the receipt of this notice, in the form prescribed under Sub-section (3) of Section 17 duly stamped and verified as laid down in that form. A copy of the form may be obtained from this office.

Excess Profits Tax Officer.

Dated *19* } *Address.*

FORM E. P. 8 A.

FORM OF APPEAL UNLER THE PROVISO TO SECTION 8 (5) OF THE EXCESS PROFITS TAX ACT, 1940

To

THE BOARD OF REFEREES.

The day of 194 .

The petition of of sheweth as follows:—

1. transferred as a going concern on 19 . a part his business to

2. Under the Provisions of Sub-section 5 of Section 8 of the Act the Excess Profits Tax Officer has

*(a) apportioned the profits of the said business for the "previous years" from which, under Section 6 (1), the standard periods of the business retained by and of the business transferred to may be selected as follows:—

		Business retained Rs.	Business transferred Rs,
"Previous year" ended	19		
"Previous year" ended	19		
"Previous year" ended	19		
"Previous year" ended	19		

*(b) apportioned the average capital emyloyed in the said business during those "previous years" as follows:—

		Business retained Rs.	Business transferred. Rs.
"Previous year" ended	19		
"Previous year" ended	19		
"Previous year" ended	19		
"Previous year" ended	19		

*Delate inappropriate words.

*Insert particulars of the periods in respect to which the appeal is made.

3. Your petitioner object to the apportionmment made as set out above, as follow :

*(a) Profits of the "Previous year" ended 19
Profits of the "Previous year" ended 19
Profits of the "Previous year" ended 19
Profits of the "previous year" ended 19

*(b) Average capital employed during the "previous year" ended 19
Average capital employed during the "previous year" ended 19
Average capital employed during the "previous year" ended 19
Average capital employed during the "previous year" ended 19

4. Your petitioner therefore requests that the apportionment so specified may be modified to the extent set out in the grounds of Appeal.

Signed.

GROUNDS OF APPEAL.

Form of Verification.

I, , the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed.

FORM E. P. 9.

Form of Appeal Against a Decision Under Section 8 of the Excess Profits Tax Act other than a Decision Under the Proviso to Sub-Section (5) [or Sub-section (8)][1] of Section 8.

To

The Appellate Assistant Commissioner of Excess Profits Tax,

The day of 194 .

The petition of of sheweth as follows;—

1. Your petitioner is not satisfied with the decision of the Excess Profits Tax Officer made under * Sub-section (2) / Sub-section (3) / Sub-section (4) / Sub-section (6) / Sub-section (7) of Section 8 of the Excess Profits Tax

2. Your petitioner received * a copy of the order / an intimation of the said decision on 194 .

3. For the reasons given in the grounds of appeal, fyeur petitioner prays that the decision of the Excess Profits Tax Officer may be modified so as to grant your petitoner the relief prayed for.

Signed.

GROUNDS OF APPEAL.

Form of Verification.

I, , the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed.

*In approprfate items to be deleted.

(1) These words were inserted by Notification No. 17 dated the 28th April 1941.

FORM E. P. 10

Form of Appeal Against Assessment Under Section 14 (1) of the Excess Profits Tax, Act 1940.

To

The Appellate Assistant Commissioner of Excess Profits Tax,

The day of 19 .

The petition of sheweth as follows:—

1. Under Section 14 (1) of the Excess Profits Tax Act, *the profits liable to Excess Profits Tax / the deficiency of profits of your petitioner's business for the chargeable accounting period commencing 19 , and ending 19, have / has been determined to be Rs.

2. The *notice of demand / intimation of the amount of deficiency of profits / intimation of the order of refunds attached hereto was served upon your petitioner on 194 .

3. Your petitioner *complied with / did not comply with the terms of the notice (s) under Sub-section (1) and/or Sub-section (2) of Section 13 of the Excess Profits Tax Act.

4. Your petitioner's claim that during the said chargeable accounting period *the profits liable to Excess Profits Tax / deficiency of profits of your petitioner's business amounted to Rs.

5. Your petitioner therefore prays that

*the business may be assessed accordingly / the deficiency profits may be determined accordingly / he may be granted a refund of Rs.

Signed.

GROUNDS OF APPEAL

Form of Verification.

I, ,the petitioner named in the above petition do declare that what is stated therein is true to the best of my information and belief.

Signed.

FORM E. P. 11.

Form of Appeal to the Appellate Assistant Commissioner Against Imposition of Penalty under Section 10 or the Excess Profits Tax Act, 1940, or under Section 46 (1) of the Indian Income-tax Act, 1922, as applied to Excess Profits Tax by Section 21 of the Excess Profits Tax Act, 1940.

To

THE APPELLATE ASSISTANT COMMISSIONER OF EXCESS PROFITS TAX.

The day of 195 .

The petition of of sheweth as follows:—

1. A penalty of Rs. for which the notice of demand attached herewith was received on 194 . has been imposed on your petitioner under Section 10 of the Excess Profits Tax Act, 1940. / Section 16 of the Excess Profits Tax Act, 1940. / Section 36 (1) of the Indian Income-tax Act, 1922.

2. *Your petitioner did not enter into any artifical transaction for the purposes of avoiding the excess profits tax.

* Inappropriated items to be deleted.

*Your petitioner had reasonable cause for not furnishing the return under Sub-section (1) of Section 13 or for not complying with the notice under Sub-section (2) of Section 12,

*Your petitioner did not conceal particulars of the profits arising or capital employed in the business or deliberately furnish inaccurate particulars thereof.

*Your petitioner was unable to pay the tax within time for the reasons set forth below.

3. For the reasons given in the Grounds of Appeal, your petitioner therefore prays that the order of the Excess Profits Tax Officer imposing the penalty may be set aside.

Signed

GROUNDS OF APPEAL.

Form of Verification

I, the petitioner named in the above petition, do declare that what is stated therein is true to the best of my informotion and belief.

Signed

FORM F. P. 12.

Form of Appeal Against the Amount of Relief or refund or against Refusal to Grant Relief or Refund Under Section 7 or Section 7 or Section 11 of the Excess Profits Tax Act, 1940.

To

The Appellate Assistant Commissioner of Excess Profits Tax,

The day of 194 .

The petition of of sheweth as follows:—

*1. Your petitioner applied to the Excess Profits Tax Officer for relief under Section 7 of the Excess Profits Tax Act in respect of a deficiency of profits amount to Rs. occurring in the chargeable accounting period commencing , 19 and ending 19 .

*Your petitioner claimed, under Section 11 of the Excess Profits Tax Act, relief amounting to Rs. in respect of excess profits taxation imposed in upon the profits of your petitioner's business.

2. The Excess Profits Tax Officer has by his order, dated the o which a copy is attached *rejected the claim for relief. granted relief of only Rs. Intimation of this order was received by your petitioner: on

Signed·

GROUND OF APPEAL,

Form of Verification.

I, , the peitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed.

FORM E. P. 13.

Form of Appeal to Commissioner of Excess Profits Tax Against Enhancement of Tax or Penalty or Imposition of Penalty by the Appellate Assistant Commissioner,

To

The day of 194 .

The petition of of sheweth as follows :—

* Inappropainte items to be delated.

1. The Appellate Assistant Commissioner of Excess Profits Tax at

*has imposed on your petitioner, under Section 16 of the Excess Profits Tax Act, 1940, a penalty of Rs. *has, under Section 17 (4) of the Excess Profits Tax Act, 1940, increased $\frac{\text{tax}}{\text{penalty}}$ payable by your petitioner from Rs. to Rs.

2. For the reasons stated in the Grounds of Appeal your petitioner prays that *the order imposing the penalty may be set aside / the enhancement may be set aside / the enhancement may be reduced to Rs.

Signed.

GROUNDS OF APPEAL.

Form of Verification.

I, , the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed.

FORM E. P. 14.

EXCESS PROFITS TAX ACT, 1940.

FORM OF APPLICATION UNDER SECTION 6 (3).

To

THE EXCESS PROFITS TAX OFFICER.

The day of 194 .

The application of of sheweth as follows :—

1. That the applicant has been served with a notice under Section 13 (1) of the Act on and that the Return required by the said notice is due on

2. That the standard period elected by the applicant under Section 6 (2) of the Act is the "previous year" as determined under Section 2 (11) of the Indian Income-tax Act, 1922 for the purposes of the income-tax assessment for the year ending 31st March 19 being the period commencing 19 , and ending 19 ,

and the previous year as determined under Section 2 (11) of the Indian Income-tax Act, 1922 for the purposes of the Income-tax assessment for the year ending 31st March 19 , being the period commencing 19 , and ending 19 .

3. That the profits of such "standard period" computed in accordance with the provisions of the First Schedule to the Act are Rs.

4. That such profits were less than might at the commencement of such standard period have been reasonably expected owing to the following cause (s):—

5. That the average amount of capital employed in the business during the said standard period, computed in accordance with the provisions of the Second Schedule to the Act was Rs.

6. The applicant therefore applies that his case be referred to the Board of Referees under Section 6 (3) of the Act for a direction that the standard profits of the business shall be computed as if the profits during the standard period were such greater amount as they may think just.

---

*Inappropriate words to be deleted.

(1) Where a standard period of only one "previous year" is chosen delete this sub-paragraph.

7. The applicant further applies that such direction shall not be limited to the statutory percentage of the average amount of the capital employed in the business because it is just that a greater amount should be allowed in view of the following specific cause (s) peculiar to the business :—

8. Copies of my computations showing how the sums referred in paragraphs 4 and 6 are attached thereto.

Signature of the applicant.

Form of Verificatinn

I, , the applicant in this application, do declare that the particulars above stated are true to the best of my information and belief.

Signature.

FORM E. P. 15.

EXCESS PROFITS TAX ACT, 1940.

FORM OF APPLICATION UNDER SECTION 26 (1).

To

THE CENTRAL BOARD OF REVENUE.

The day of 194 .

The application of of sheweth as follows :—

1. That the applicant has been served with a notice under Section 13 (1) of the Act on 194 , and that the Return required by the said notice *is due on 194
*has been duly furnished to the Excess Profits Tax Officer.

2. That the standard period elected by the applicant under Section 6 (2) of the Act is the "previous year" as determined under Section 2 (11) of the Indian Income-tax Act, 1922 for the purposes of the income-tax assessment for the year ending 31st March 19 , being the period commencing 19 , and ending 19 ,

*and the "pervious year" as determined, under Section 2 (11) of the Indian Income-tax Act, 1922, for the purpose of the income-tax assessment for the year ending 31st March 19 , being the period commencing 19 , and ending 19 .

3. That the profits of such "standard period" computed in accordance with the provisions of the First Schedule to the Act are Rs.

4. That special circumstances, which render it inequitable that the standard profits of the applicant's business shall be computed as set out in paragraph 3, exist, that is to say :—

5. That the average amount of capital employed in the business during the chargeable accounting period commencing 19 , and ending 19 , computed in accordance with the provisions of the Second Schedule of the Act, and

6. *That application has been made to the Board of Referees under Section 6 (3) of the Act, and

*that no relief has been granted by that Board,

*that insufficient relief has been granted by that Board increasing the said standard profits to Rs. only.

7. The applicant, therefore, applies that under Section 26 (1) of the Act the Central Board of Revenue may direct that the standard profits of the business shall be computed as if the profits of the standard period were such greater amount as they think just.

*Delete inappropriate items.

8. The applicant further applies that such direction shall not be limited to the statutory percentage of the average amount of the capital employed in the business because it is just that a greater amount should be allowed in view of the following specific cause (s) peculiar to the business.

9. Copies of my computations showing how the sums referred to in paragraphs 3 and 5 are arrived at are attached thereto.

Signature of the Applicant.

Form of Verification.

I, , the applicant in this application, do declare that the particulars above stated are true to the best of my information and belief.

Signature.

FORM E. P. 16.

EXCESS PROFITS TAX ACT, 1940.

Form of Application for Special Allowance, under the Provisions of Section 26 (3) of the Act, in Computing the Profits of a business during a chargeable accounting period.

Name of applicant
Address of applicant
Business

The day of 194 .

To

THE CENTRAL BOARD OF REVENUE.

The applicant named above submits:—

1. That the profits of his business during the chargeable accounting period commenced 19 , and ended 19 , computed in accordance with the provisions of the First Schedule to the Act are Rs.

2. That such computation is inequitable owing to the following circumstances:

*(*i*) the suspension or postponement, as a consequence of the present hostilities of repairs or renewals;

*(*ii*) 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;

*(*iii*) difficulties in bringing into British India income arising outside British India where the country in which the income accrued prohibits or restricts by its laws the remittance of money to British India, and loss in the remittance to British India of such income because of fluctuations in the rate of exchange between that country and British India;

as shown in the statement of particulars set out on opposite page of this form.

Signature of applicant.

SCHEDULE OF PARTICULARS REQUIRED.

1*. In the case of suspension or postponement of repairs or renewals.

Nature of the repair or renewal.	Date when, but for the present hostilities, the repair or renewal would have been executed.	Estimated cost thereof as at that date.	Actual cost of repairs and renewals executed in the period constituting or including the chargeable accounting period.	Actual average expenditure on repairs and renewals during the five preceding years.
1	2	3	4	5
		Rs.	Rs.	Rs.

*Delete if appropriate items.

2*. In the case of buildings, plant or machinery provided which, after the termination of hostilities, will not be required.

Description of each item.	Date when each item provided.	Cost of each item.	Reasons why each item will not be required after the termination of the present hostilities.
1	2	3	4
		Rs.	

3*. In the case of difficulty in bringing into British India money arising in a country outside British India, by reason of the laws of that country restricting or prohibiting the remittance of money to British India.

Country in which income accrued.	Amount of income accrued and not remitted (in currency of that country).	Amount thereof assessed for income-tax purpose in British India.	Estimated ultimate loss owing to non-remittance.
1	2	3	4
		Rs.	Rs.

4*. In the case of loss on remittance owing to fluctuations in rates of exchange.

Country in which income accrued.	Amount of income accrued (in currency of that country).	Amount realized by remittance thereof.	Amount as assessed to India Income-tax.	Deduction claimed in respect of loss in remittances.
1	2	3	4	5
		Rs.	Rs.	Rs.

I, , the applicant in this application, do declare that the particulars above stated are true to the best of my information and belief.

Signature.

[1]FORM E. P. 16-A.

EXCESS PROFITS TAX ACT 1940.

Form of application for Special Allowance, under the provisions of Section 26 (3) [Head (d)] of the Act, in computing the profits of a business during a chargeable accounting period.

Name of applicant

Address of applicant

The day of 194

To the Central Board of Revenue.

The applicant named above submits :—

*Delete inappropriate items.

(1) This form was inserted by Notification No. 2 dated the 14th February, 1942.

1. That the profits of his business during the chargeable accounting period commenced 19 , and ended 19 , computed in accordance with the provisions of the First Schedule to the Act are Rs. ;

2. That such computation is inequitable owing to the following circumstances, namely :—

that business includes the winning of a mineral or mineral oil, the winning of of which is of exceptional importance for the prosecution of the war and that, during the chargeable accounting period above-mentioned, there was an increase in the output of such mineral or mineral oil which was essential in the national interest and which has had the effect of shortening the period during which, but for such increased output, the source of the mineral oil might have been expected to be exhausted;

As shown in the statement of particulars set out on the back of this form,

Signature of applicant.

Schedule of particulars required

1.	Description of the minerals	
2.	Description, including particulars of the area, of the source of the minerals.	
3.	Output of the minerals :—	
	(*a*) in the standard period being—	
	(*i*) the period commencing	19
	and ending	19
	and	
	*(*ii*) the period commencing	19
	and ending	19
	(*b*) in the chargeable accounting period—	
	(*i*) commencing	19
	and ending	19
	*(*ii*) commencing	19
	and ending	19
	*(*iii*) commencing	19
	and ending	19
4.	The date by which, but for the increased war-time output it is estimated that the source of the minerals would have been exhausted.	
5.	The facts upon which the applicant bases his claim that the winning of the minerals was of exceptional importance for the prosecution of the present war and that the increased output was essential in the national interest,	

I, , the applicant in this application, do declare that the particulars above-stated are true to the best of my information and belief.

Signature.

*Delete if inapplicable.

FORM E. P. 17.

APPLICATION FOR REFUND OF EXCESS PROFITS TAX IN RESPECT OF DEFICIENCY OF PROFITS.

To

The Excess Profits Tax Officer,

I, of do hereby declare that for the chargeable accounting period commencing 19 , and ending 19 . the excess profits arising from the business of were determined at Rs. and charged to tax amounting to Rs. The tax was paid on 194 .

I further declare that during the chargeable accounting period commencing 19 , and ending 19 , there was a deficiency of profits in the same business amounting to Rs.

I therefore pray for a [1][provisional*] refund of Rs.

The Return prescribed under Section 13 (1) of the Act showing the said deficiency of profits is attached hereto.

Dated the 194 . Signature

Form of Verification.

I hereby declare that what is stated herein is true to the best of my information and belief.

Dated the 194 . Signature.

*The word provisional should be deleted except where a deficiency of profits arising after the end of March 1941 is to be set off against excess profits arising before the end of March 1941.

FORM E. P. 18

APPLICATION FOR REFUND IN RESPECT OF DOUBLE EXCESS PROFITS TAXATION.

To

The Excess Profits Tax Officer,

I, of do hereby declare that excess profits arising from the business of for the chargeable accounting period commencing 19 , and ending 19 , have been charged to excess profits tax both in British India and in[2] Official receipts are attached for excess profits tax of Rs. paid on 19 , and for British Indian excess profits tax of Rs. paid on 19 .

I therefore pray for relief amounting Rs. under

(*a*) Sub-section 1 of Section 11 of the Act in accordance with the notification of the Central Government under that Sestion.

(*b*) Sub-section (2) of that Section.

[Delete (a) or (b), whichever is inapplicable.]

Dated the 194 . Signature

Form of Verification.

I hereby declare that what is stated herein is true to the best of my information and belief.

Dated the 194 . Signature.

(1) The word and asterisk "provisional" and the footnotes were inserted by Notification No. 17 dated the 26th April 1941.

(2) Insert name of Country or State in which tax paid.

[1]FORM E. P. 28-A.

EXCESS PROFITS TAX ACT, 1940.

Form of appeal against modifications of the computations of profits and capital made by the Excess Profits Tax Officer under Sub-section (8) of the Excess Profits Tax Act, 1940.

To

THE BOARD OF REFEREES

c/o The Excess Profits Tax Officer,

The day of 194 .

The petition of of
sheweth as follows:—

1. Your petitioner's business carried on by him during the chargeable accounting period commencing 19
and ending 19
*has, by virtue of Sub-section *(2)/* (3) been deemed not to have *been discontinued is treated, by virtue of Sub-section (4), as if it had been in existence throughout the period during which there was in existence another business.

*is treated, by virtue of Sub-section (5) as a continuation of another *business your petitioner who has carried on the business after its transfer to him on the day of 19 , is treated, by virtue of Sub-section (8) as having carried on the business as from a date before such transfer.

2. Your petitoner was served on with a *notice of the modification made by the Excess *Profits Tax Officer of the refusal of the Excess Profits Tax Officer to make modifications under Sub-section (8) of Section 8 of the Excess Profits Tax Act, 1940.

3. For the reasons given in the grounds of appeal your patitioner is not satisfied with *the modifications afore-said
*the refusal afore-said.

4. Your petitioner, therefore, prays that the *modifications / *refusal above mentioned may be *set aside / †amended so as to grant your petitioner the relief.

GROUNDS OF APPEAL.

Signed.

From of Verification.

I. *the petitioner named in the above petition, do declare that what is stated there in is true to the best of my information and belief.

Signed.

FORM E. P. 29-A.

EXCESS PROFITS TAX ACT, 1940.

Form of appeal against the determination of the Excess Profits Tax Officer under Rule 11 of the First Schedule to the Excess Profits Tax Act, 1940.

---

(1) This form was inserted by Notification No. 5 dated the 1st February 1941.

*Inappropriate words to be deleted.

To

THE BOARD OF REFEREES,

C/o THE EXCESS PROFITS TAX OFFICER.

The day of 194

The petition of of

sheweth as follows:—

1. Your petitioner is not satisfied with the determination of the Excess Profits Tax Officer under Rule 11 of the First Schedule to the Act, that the sum of Rs. allowable, apart from the provisions of that Rule as a deduction in computing the profits of the accounting period commencing 19 and ending 19 , does not represent a sum reasonably and properly attributable to the accounting period and that it shall be treated as attributable as to

(i) the sum of Rs. .. 194 to the accounting period commencing and ending 194

*and (ii) the sum of Rs. .. 194 to the accounting period commencing and ending 194

*and (iii) the sum of Rs. .. 194 to the accounting period commencing and ending 194

2. Your petitioner received a copy of the order notifying the said determination on 194

3. For the reasons given in the grounds of appeal, your petitioner prays that the determination of the Excess Profits Tax Officer may be *set aside / *amended as as to grant your petitioner the relief prayed for.

GROUNDS OF APPEAL.

Signed

Form of Verification.

I, the petitioner named in the above petition, do declare that what is stated therein is true to the best of may knowledge and belief.

Signed.

[1]FORM E. P. 30.

EXCESS PROFITS TAX ACT, 1940,

Form of application for allowance in respect of inherently unproductive assets under Rule 7 of the Second Schedule.

To

THE EXCESS PROFITS TAX OFFICER,

The day of 194

The application of of sheweth as follows:—

1. That the applicant has been served with a notice under Section 13 (1) of the Act, on 194 and that the Return required by the said notice

*is due on 194 .

*has been duly furnished to the Excess Profits Tax Officer.

2. That the standard period elected by the applicant under Section 6 (2) of the Act, is the "previous year" as determined under Section 2 (11) of the Indian Income-tax Act, 1922, for the purposes of the income-tax assessment for the year ending 31st March 19 . being the period commencing 19 and ending 19

*and the "previous year" as determined under Section 2 (11) of the Indian Income-

*Inappropriate words to be deleted.

(1) This form was inserted by Notification No. 5 dated the 1st February 1941.

tax Act, 1922, for the purposes of the income-tax assessment for the year ending 31st March 19 , being the period commencing 19 and ending 19 .

3 (*a*) That certain assets, namely were inherently unproductive during the whole or some part of the said standard period;

(*b*) that the cost of those assets was Rs.

(c) that the average capital employed in the business during the standard period in respect of those assets computed in accordance with Rules 1 to 6 of the Second Schedule to the Act, was Rs.

(*d*) that the circumstances, by references to which the applicant claims that the assets were inherently unproductive, are

4. The applicant, therefore, applies that under Rule 7 of the Second Schedule to the Act, the Central Board of Revenue may direct that the average capital employmed in the applicant's business during the standard period shall be computed as if the assests above-mentioned had not been assets of the business 19 to 19.

5. A copy of my computation showing how the sum referred to in paragraph 3 (c) is arrived at is attached hereto.

Signature of applicant.

Form of Verification

I, , the applicant in this application, do declare the particulars above stated are true to the best of my information and belief.

Signature.

[1]FORM E. P. 9(T).

Form of Section 8 Excess Profits Tax Act Appeal.

In

THE (INCOME-TAX) APPELLATE TRIBUNAL, BOMBAY

8 E. P. T. A. A. No. of 19 19 .*

APPELLANT *versus* RESPONDENT.

Province from which the appeal is filed.	
Excess Profits Tax Officer making the original order.	
Sub-section of Section 8 under which the order was made and the substance of the order.	
Date of the original order.	
Appellate Assistant Commissioner determining the appeal	
Whether the original order was confirmed, cancelled etc., on appeal.	

(1) Forms E. P. 9 (T) to E. P. 12 (1) T were inserted by Notification No. 7, dated the 15th February 1941.

*(To be filled in by the office.)

Date of appellate order.	
Date on which the appellate order came to the knowledge of the appellant.	
Postal address on which the appellant undertakes to receive notices.	
Postal address on which notices should be issued to the respondent.	
Relief claimed in appeal.	

Grounds of Appeal.

Signed
(Appellant.)
Signed
(Authorised representative, if any).

Verification.

I, , the appellant do hereby declare that what is stated above is true to the best of my information and belief. Verified to-day the day of at

Signed ( )

N. B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and two copies of the grounds of appeal to the Tribunal.

* * * * *

FORM E. P. 10/13 (T)

Form of Section 14 (1) Excess Profits Tax Act Appeal.

In

THE (INCOME-TAX) APPELLATE TRIBUNAL, BOMBAY.

14 (1) E. P. T. A. A. No. of 19 19 .†

APPELLANT. *versus.* RESPONDENT.

Province from with the appeal is filed.	
Whether the terms of notices under Sub-sections (1) and (2) of Section 13 were complied with.	
Excess Profits Tax Officer making the original order.	
Profits assessed to excess profits tax.	

†To be filled in by the office.

*N. B. 3 was omitted by Notification No. 5, dated 2nd September 1944.

Deficiency determined.	
Amount of net tax determined.	
Date of receipt of notice of demand.	
Date of receipt of the copy of the order determining deficiency of profits.	
Date of intimation of the order refund.	
Appellant Assistant Commissioner determing the Appeal.	
Profits held assessable to excess profits tax by the Appellate Assistant Commissioner.	
Deficiency determined by the Appellate Assistant Commissioner.	
R fund, if any, made by the Appellate Assistant Commissioner.	
Enhancement of profits and tax, if any, made by the Appellate Assistant Commissioner.	
Date of the appellate order.	
Date on which the appellate order came to the knowledge of the appllant.	
Postal address on the appellant undertakes to receive notices.	
Postal address on which notices should be issued to the respondent.	
Relief claimed in appeal.	

Grounds of Appeal.

Signed.

(Appellant.)

Signed.

(Authorised representative, if any)

Verification.

I, the appellant do hereby declare that what I have stated above is true to the best of my information and belief. Verified to-day the day of at

(Signed).

N. B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and two copies of the grounds of appeal to the Tribunal.

* * * * *

FORM E. P. 11 (1) (T).

Form of Section 46 (1) Penalty Appeal.

In

THE (INCOME-TAX) APPELLATE TRIBUNAL, BOMBAY.

46 (1) E. P. T. A. A. No. of 19 19 .†

APPELLANT. *versus* RESPONDENT.

Province from which the appeal is filed.	
Officer making the original ordsr.	
Amount of tax determined.	
Amount of tax in arrears.	
Period during which default continued.	
Amount of the Penalty.	
Date of receipt of notice of demand.	
Appellate Assistant Commissioner determining the appeal.	
Whether the original order was confirmed or cancelled or varied on appeal, and if varied in what respect	

*N. B. 3 was omitted by Notification No. 5, dated 2nd September 1944.

†To be filled in by the office.

Date of the appellate order.	
Date on which the appellate order came to the knowledge of the appellant.	
Postal address on which the appellant undertakes to receive notices.	
Postal address on which notices should be issued to the respondent.	
Relief claimed in appeal.	

Grounds of Appeal.

Signed.
(Appellant.)
Signed.
Authorised representatibe, if any.)

Verification.

I the appellant do hereby declare that what as stated above is true to the best of my information and beiief. Verified to-day the day of at .

Signed ( )

N. B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and two copies of the grounds of appeal to the Tribunal.

* * * * *

FORM E. P. 11 (T).

From of Section 10 Excess Profits Tax Act Appeal.

In

THE (INCOME-TAX) APPELLATE TRIBUNAL, BOMBAY.

10 E. P. T. A. A. No. of 19 19 †

APPELLANT. *versus* RESPONDENT.

Province from wh. h the appeal is filed	
Excess Profits Tax Officer making the original order.	
Date of receipt of notice of demand	
Amount of the penalty.	

*N. B. 3 was omitted by Notification No. 5, dated 2nd September 1944.

†(To be filed in by the office.)

Amount of the tax evaded or sought to be evaded as found by the Excess Profits Tax Officer	
Appellate Assistant Commissioner determining the appeal	
Whether the original order was confirmed, cancelled or varied on appeal, and if varied in what respect.	
Date of the appellate order.	
Date on which the appellant order came to the knowledge of the appellant.	
Postal address on which the appellant undertakes to receive notices.	
Postal address on which notices should be issued to the respondent.	
Relief claimed in appeal.	

Grounds of the Appeal.

Signed.

(Appellant).

Signed.

(Authorised representative, if any).

Verification.

I , the appellant do hereby declare that what I have stated above is true to the best of my information and belief. Verified to-day the day of at .

Signed ( ).

N. B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and two copies of the grounds of appeal to the Tribunal.

* * * * *

*N. B. 3 was omitted by Notification No. 5, dated 2nd September 1944.

FORM E. P. 11/13 (T).

Form of Section 16 Excess Profits Tax Act Appeal.

In

THE (INCOME-TAX) APPELLATE TRIBUNAL, BOMBAY.

16 E. P. T. A. A. No. of 19 -19 .*

APPELLANT. *versus.* RESPONDENT.

Province from which the appeal is filed.	
Officer making the original demand.	
Date of receipt of notice of demand.	
Amount of the penalty.	
Reason for imposing the penalty.	
Appellate Assistant Commissioner determining the appeal	
Whether the original order was confirmed, cancelled, or varied on appeal, and if varied in what respect.	
Date of the appellate order.	
Date on which the appellate order came to the knowledge of the appellant.	
Postal address on which the appellant undertakes to receive notices.	
Postal address on which notices should be issued to the respondent.	
Relief claimed in appeal.	

Grounds of Appeal.]

Signed
(Appellant).
Signed.
(Authorised reptesentative, if any).

*To be filled in by the office.

Verification.

I , the appellant do hereby declare that what is stated above is true to the best of my information and belief. Verified to-day the day of at .

Signed ( ).

N. B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and two copies of the grounds of appeal to the Tribunal.

* * * *

FORM E. P. 12 (T).

Form of Section 7 Excess Profits Tax Act Appeal.

In

THE (INCOME-TAX) APPELLATE TRIBUNAL, BOMBAY.

7 E. P. T. A. A. No. of 19 -19 .†

APPELLANT. *versus.* RESPONDENT.

Province from which the appeal is filed.	
Chargeable accounting period.	
Excess Profits Tax Office who made the original order.	
Deficiency of Profits in respect of which relief was claimed before the Excess Profits tax Officer	
Repayment or refund claimed	
Deficiency determined	
Repayment or refund allowed.	
Date of receipt of the copy of the order determining the deficiency.	
Date of receipt of the intimation of the order granting or refusing to grant relief by repayment or otherwise.	
Appellate Assistant Commissioner determining the appeal	
Deficiency found by the Appellate Assistant Commissioner.	
Repayment or refund ordered by the Appellate Assistant Commissioner.	

*N. B. 3 was omitted by Notification No. 5, dated 2nd September 1944.

†To be filled in by the office.

Date of the appellate order.	
Date on which the appellate order came to the knowledge of the appellant.	
Postal address on which the appellant undertakes to receive notices.	
Postal address on which notices should be issued to the respondent.	
Relief claimed in appeal.	

Grounds of Appeal.

Signed.
(Appellant.)
Signed.
(Authorised representative, if any.)

Verification.

I, , the appellant do hereby declare that what is stated above is true to the best of my information and belief. Verified to-day the day of at .

Signed ( ).

N. B.—1. Strike out unnecessary columns.
2. The appeal must be accompanied by a certified copy of the order appealed from and two copies of the grounds of appeal to the Tribunal.

* * * * *

FORM E. P. 12 (1) (T).

Form of Section 11 Excess Profits Tax Act Appeal.

In

THE (INCOME-TAX) APPELLATE TRIBUNAL, BOMBAY.

11 E. P. T. A. A. No. of 19 19 .†

APPELLANT. *versus* RESPONDENT.

Province from which the appeal filed.	
Chargeable accounting period.	
Excess Profits Tax Officer who made the original order.	
Relef claimed before the Excess Profits Tax Officer.	
Grounds on which relief was claimed before the Excess Profits Tax Officer.	
Relief granted by the Excess Profits Tax Officer.	

*N B. 3 was omitted by Notification No. 5, dated 2nd September 1944.
†(To be filled in by the office.)

Date of receipt of the intimation of the order granting or refusing to grant relief.	
Appellate Assistant Commissioner determining the appeal	
Relief granted by the Appeallate Assistant Commissioner	
Date of the appellate order.	
Date on which the appellate order came to the knowledge of the appellant.	
Postal address on which the appellant undertakes to receive notices.	
Posal address on which notices should be issued to the respondent.	
Relief claimed in ap. eal	

Grounds of the Appeal.

Signed.
(Appellant).
Signed.
(Authorised representative, if any).

Verification.

I , the appellant do hereby declare that what I have stated above is true to the best of my information and belief. Verified to-day the day of at .

Signed ( ).

N, B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and two copies of the grounds of appeal to the Tribunal.

* * * * *

FORM E. P. 14 (T)

Form of Section 10 A Excess Profits Tax Act Appeal.

In

IN THE (INCOME-TAX) APPELLATE TRIBUNAL, BOMBAY.

10-A E P. T. A. A. No. of 19 19 .†

APPELLANT. *versus.* RESPONDENT.

Province from with the appeal is filed.	

*N. B. 3 was omitted by Notification No. 5, dated 2nd September 1944.

†To be filled in by the office.

Excess Profits Tax Officer making the order.	
Substance of the order made under Section 10-A.	
Date of the order.	
Date on which the order of assessment affected by such adjustment was served on the appellant.	
Postal address on which the appellant undertakes to receive notices.	
Postal address on which notices should be issued to the respondent.	
Relief claimed in appeal.	

Grounds of Appeal.

Signed
(Appellant.)
Signed
(Authorised representative, if any).

Verification.

I, , the appellant do hereby declare that what is stated above is true to the best of my information and belief. Verified to-day the day of at

Signed ( )

N. B—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and two copies of the grounds of appeal to the Tribunal.

* * * * *

†FORM E. P. 15 (1).

From of Rule 12 Schedule I Excess Profits Tax Act Appeal.

In

THE (INCOME-TAX) APPELLATE TRIBUNAL, BOMBAY.

12 R. E. P. T. A. A. No. of 19 19 ‡

APPELLANT. *versus* RESPONDENT.

Province from which the appeal is filed	
Excess Profits Tax Officer making the order.	

*N. B. 3 was omitted by Notification No. 5, dated 2nd September 1944.

†This form was added by Notification No. 2 dated the 14th February, 1942.

‡To be filled in by the office.

Substance of the order made under Rule 12	
Date of the order.	
Date on which the order of assessment affected by such adjustment was served on the appellant	
Postal address on which the appellant undertakes to receive notices.	
Postal address on which notices should be issued to the respondent.	
Relief claimed in appeal.	

Grounds of Appeal.

Signed.
(Appellant.)
Signed.
(Authorised representative, if any.)

Verification.

I , the appellant do hereby declare that what as stated above is true to the best of my information and belief. Verified to-day the day of at .

Signed ( )

N. B.—1. Strike out unnecessary columns.

2. The appeal must be accompanied by a certified copy of the order appealed from and two copies of the grounds of appeal to the Tribunal.

* * * * *

INCOME-TAX AND EXCESS PROFITS TAX (EMERGENCY) ORDINANCE, 1942.

ORDINANCE NO. LX OF 1942.

Dated the 14th November, 1942.

An
ORDINANCE.

To remove certain difficulties caused by the destruction of documents and records pertaining to the collection of Income-tax and Excess Profits Tax.

Whereas an emergency has arisen which makes it necessary to remove certain difficulties caused by the destruction of documents and records pertining to the collection of Income-tax and Excess Profits Tax ;

Now, therefore, in exercise of the powers conferred by Section 72 of the Government of India Act, as 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 Income-tax and Excess Profits Tax (Emergency) Ordidance, 1942.

(*2*) It shall come into force at once.

*N. B. 3 was omitted by Notification No. 5, dated 2nd September 1944.

Power to issue notices and to secure returns.

2. (*1*) Where documents or records pertaining to the assessment, collection or payment of income-tax or excess profits tax have been damaged, lost or destroyed as a result of riot or civil commotion, the authority authorised under the Indian Income-tax Act, 1922, or the Excess Profits Tax Act, 1940, as the case may be, to issue any notice for any of the purposes of either, Act, may, notwithstanding anything contained in either of the said Acts, and notwithstanding that such notice has already been issued, or has already been issued or is alleged to have been complied with, or, where such notice has already been issued, that the time within which the notice is to be issued has already expired, may reissue such notice, and any notice so reissued shall in all respects have the same effect as if it were the original notice, and any proceedings that could have been taken in pursuance of or subsequent to the original notice may be taken in like manner in pursuance of or subsequent to the notice so reissued :

Provided that in respect of assessments or reassessments made in the course of any proceedings taken under the powers conferred by this Sub-section, the period of eight and four years mentioned in Sub-section (2) of Section 34 of the Indians Income-tax Act, 1922, shall be deemed to commence on and to run from the date on which the notice under Sub-section (2) of Section 22 or Sub-section (1) of Section 34 of that Act is reissued under the powers conferred by this Sub section.

Provided further that where a person proves to the satisfaction of the Income-tax Officer or the Excess Profits Tax Officer, as the case may be, that he has already been assessed in respect of the income or the excess profits in respect of which notices under Section 22 or Section 34 of the Indian Income-tax Act, 1922, orunder Section 13 or Section 15 of the Excess Profits Tax Act, 1940, have been reissued, and that he has paid the tax, he shall not be subject to fresh assessment.

(2) Any return of information required or which could be required under the provisions of either of the said Acts to be furnised by any person shall, if the Income-tax Officer or the Excess Profits Tax Officer so requires at any time, be again furnished by such person notwithstanding that it may have been or is alleged to have been already furnished, and any failure to comply with any such requirement by an Income-tax Officer or Excess Profits Tax Officer shall involve the same consequences as if the return or information had been altogether withheld.

Settlement of doubts.

3. If any question arises whether a document or record has been damaged, lost or destroyed as a result of riot or civil commotion, the matter shall be referred to the Commissioner of Income-tax or to the Commissioner of Excess Profits Tax, as the case may be, and his decision shall be final.

Power to make rules.

4. The Central Government may make rules providing for any matter necessary to carry into effect the purposes of this Ordinance.

EXCESS PROFITS TAX ORDINANCE, 1943, No. XVI OF 1943,

An Ordinance

to make certain provisions in connection with the tax on excese profits.

Whereas an emergency has arisen which renders it necessary to make certain provisions in connection with the tax on excess profits;

Now, therefore, in exercise of the powers conferred by Section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935 (26 Geo. 5, c. 2), the Governor-General is pleased to make and promulgate the following Ordinance:—

1. Short tittle, extent and commencement.—(1) This Ordinance may be called the Excess Profits Tax Ordinance, 1943.

(2) It extends to the whole of British India.

(3) It shall come into force at once.

2. Deposits in connection with payment of excess profits tax.—(1) When excess profits tax charged under the provisions of the Excess Profits Tax Act, 1940 (XV of 1940), in respect of any chargeable accounting period ending after the 31st day of December, 1942, becomes payable under that Act after that assessment made under Section 14 of that Act, the persons liable to pay such excess profits tax shall deposit with the Central Government, before such date as may be specified in a notice in this behalf in such form as may be prescribed by rules made under sub-section (5) issued to him by the Excess Profits Tax Officer, a further sum equal to one-fifth of the amount of the said excess profits tax; and the provisions of Section 10 of the Indian Finance Act, 1942 (XII of 1942), shall, save in so far as they are inconsistent with this section, apply in respect of such deposits as the apply in respect of the voluntary deposits for which provision is made in the said Section 10 :

[1][Provided that, in respect of any chargeable accounting period ending after the 31st day of December, 1943, the provisions of this sub section shall have effect as if, in relation to any person who a company, for the words 'one-fifth' the words 'nineteen-sixtyfourths' were substituted and as if, in relation to any other person, for the words 'one-fifth' the words 'seventeen-sixtyfourths' were substituted:]

[2][Provided further that, in respect of any chargeable accounting period ending after the 31st day of December 1944, the provisions of this sub-section as modified by the first proviso shall have effect as if for the words 'nineteen-sixtyfourths the figures '37/128ths' were substituted:]

Provided further that if, in respect of any chargeable accounting period ending after the 31st day of December, 1943, a person who has deposited a further sum equal to seventeen sixtyfourths of the excess profits tax payable shows that the amount of the income-tax and super-tax payable in resqect of the excess profits arising in such period exceeds fifteen-sixtyfourths of the amount of the excess profits tax payable, so much of the deposit shall be refunded as will secure that the total of the deposit made and the income-tax and super-tax payable in respect of the excess profits arising in such period does not exceed one-half of the excess profits tax payable]

[3][1-A) In respect of any chargeable accounting period ending after the 31st day of December, 1943, in respect of which a provisional assessment of excess profits tax is made under Section 14-A of the Excess Profits Tax Act, (1940), the person liable to pay such excess profits tax shall deposit in the manner laid down in sub-section (1) a further sum equal to nineteen-sixtyfourths of the amount of the said excess profits tax if such person is a company and seventeen-sixtyfourths of the said amount if such person is not a company; and the provisions of sub-sections (6) and (7) of the said Section 14-A shall apply to ang payment made under this sub-section as they apply to a payment of excess profits tax;]

[4][Provided that, in respect of any chargeable accounting period ending after the 31st day of December, 1944, the provisions of this sub-section shall have effect as if for the words 'nineteen-sixtyfourths' the figures '37/128ths, were substitued.]

(2) The provisions of sub-section (1) of Section 10 of the Indian Finance Act, 1942 (XII of 1942), in so far as they enable the making of voluntary deposits, shall cease to have effect except in relation to excess profits tax charged in respect of a chergeable accounting period ending on the 31st day of December, 1942, or earlier.

---

(1) These provisos words added by the Indian Finance Act, 1944.

(2) This proviso has been added by the Ordinance No. XX of 1945, dated 30th June 1945.

(3) This sub-section was inserted by the Indian Finance Act, 1944.

(4) This proviso has been added by the Ordinance No. XX of 1945, dated 30th June 1945.

(3) Any further sum such as is referred to in sub-section (1) deposited in accordance with that sub-section shall be repaid by the Central Government within twelve months of the date of termination of the present hostilities or within twenty-four months of the date on which the deposit was made, whichever is later.

(4) The provisions of law applicable to the payment and recovery of excess profits tax contained in Sections 45 and 46 [except sub-sections (1) and (1-A) thereof] of the Indian Income-tax Act, 1922 (XI of 1922), as applied by Section 21 of the Excess Profits Tax Act, 1940 (XV of 1940), shall apply to the payment and recovery of the deposits required by [1][sub-section (1) or (1-a) of this section] as if the notice referred to in sub-section (1) of this section were a notice of demand under Section 29 of the Indian Income-tax Act, 1922 (XI of 1922), and as if a default in making payment of such deposit were a default in making payment of excess profits tax.

(5) The power to make rules for carrying out the purposes of Section 10 of the Indian Finance Act, 1942 (XII of 1942), conferred by sub-section (3) of that section shall include a power to make rules for carrying out the purposes of this section.

3 Insertion of new Section 14-A in Act XV of 1940.—After Section 14 of of the Excess Profits Tax Act, 1940 (XV of 1940), the following section shall be inserted, namely :—

"**14-A. Power to make provisional assessments.**—(1) The Excess Profits Tax Officer, before proceeding to make an assessment (in this section referred to as the regular assessment) under Section 14, may, at any time after the expiry of the period specified in the notice issued under sub-section (1) of Section 13 as that within which the return therein referred to is to be furnished and whether the return has or has not been furnished, proceed to make in summary manner a provisional assessment of the amount by which the profits of the chargeable accounting period exceed the standard profits, and the amount of excess profits tax payable thereon.

(2) Before making such provisional assessment the Excess Profits Tax Officer shall give notice in the prescribed form to the person on whom assessment is to be made of his intention to do so, and shall with the notice forward a statement of the amount of the proposed assessment, and the said person shall be entitled to deliver to the Excess Profits Tax Officer at any time within fourteen days of receipt of the said notice a statement of his objections, if any, to the amount of the proposed assessment.

(3) On expiry of one month from the date of service of the notice referred to in sub-section (2), or earlier if the assessee agrees to the proposed assessment, the Excess Profits Tax Officer may, after taking into account the objections, if any, made under sub-section (2), make a provisional assessment, and shall furnish a copy of the order of assessment to the assessee :

Provided that assent to the amount of the assessment, or failure to make objection to it, shall in no way prejudice the assessee in relation to the regular assessment.

(4) In making any such provisional assessment the Excess Profits Tax Officer shall make allowances for any deficiencies of profits for previous chargeable accounting periods which are under the provisions of Section 7 to be set off against the excess profits of the chargeable accounting period in respect of which the assessment is being made.

Provided that where such deficiencies of profits have not been determined under sub-section (1) of Section 14 the Excess Profits Tax Officer shall estimate the amount thereof to the best of his judgmen.

(5) There shall be no right of appeal against a provisional assessment made under this section, and it shall, until a regular assessment made under this section,

(1) These werds were substituted for the words "sub-section (1) of this section" by the Indian Finance Act, 1944.

and it shall, until a regular assessment is made in due course under Section 14, determine the amount of excess profits tax due from the assessee.

(6) If, when a regular assessment is made in due course under Section 14, the amount of excess profits tax payable thereander is found to exceed that determined as payable by the provisional assessment, it shall be reduced by the amount determined as payable by the provisional assessment.

(7) If, when a regular assessment is made in due course under Section 14, the amount of excess profits tax payable thereunner if found to be less than that determined as payable by the provisional assessment, any excess of tax paid as a result of the provisional assessment shall be refunded to the assessee together with interest at *5 per cent. per anaum* calculated from the date of payment of such excess tax to the date of the order of refund, both days inclusive."

4. Amendment of rule 12, Schedule I, Act XV of 1940.—In the First Schedule to the Excess Profits Tax Act, 1940 (XV of 1940), to rule 12 the following sub-rule shall be added, namely :—

"(3) In reltation to chargeable accounting periods ending after the 31st day of December, 1942, the Central Government may make rules for determining the extent th which deductions shall be allowed in respect of bonuses or commissions paid."

5. Amendment of rule 3, Schedule II, Act XV of 1940.—In the Second Schedule to the Excess Profits Tax Act, 1940 (XV of 1940), rule 3 shall be renumbered as sub-rule (1) of rule 3 and—

(*a*) in the rule as so renumbered after the words "any moneys" the words "or as regards any chargeable accounting period ending after the 31st day of December, 1942, any trading stock or stock of raw materials" shall be inserted ;

(*b*) the following shall be added as sub-rule (2), namely :—

"(2) The Central Government may make rules defining for the purposes of this rule the principles to be followed in leaving out of account trading stock and stocks of raw materials."

INCOME-TAX PROCEEDINGS VALIDITY ORDINANCE 1944.*

Ordinance No. XLV of 1944.

AN ORDINANCE.

To remove doubts as to the validity of certain notice under the Indian Income-tax Act, 1922, and the Excess Profits Tax Act, 1940.

Whereas an emergency has arisen which makes it necessary to remove doubts as to the validity of certain notices under the Indian Income-tax Act, 1922 (XI of 1922) and the Excess Profits Tax Act, 1940, (XV of 1940) ;

Now, therefore, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935 (26 Geo 5 c. 2), the Governor General is pleased to make and promulgate the following Ordinance:—

Short title extent and commencement.

1 (1) This Ordinance may be called the Income-tax and Excess Profits Tax (Validity of Notices)[1] Ordinance 1944.

(1) It is extends to the whole of British India and applies also, within the Indian State and the tribal areas, in relation to the persons specified in sub-section (2) of section 1 of the Indian Income-tax Act, 1922 (XI of 1922).

(3) It shall come into forece at once. [1][But not later than the 19th day 3 May 1944.]

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* Legislative Department, New Delhi, dated the 3rd October 1944.

(1) These words have been added by I. T. and E. P. T. amendment Ordinance No. XVI of 1945.

Vaildity of certain notices.

2. For the removal of doubts it is hereby enacted that every notice published or issued, whether before or after the commencement of this Ordinance.

(*a*) under sub-section (1) of section 22 of the Indian Income-tax Act, 1922 (XI of 1922), requiring a return to be furnished within sixty days form the date of the notice, or

(*b*) under sub-section (2) or the said section or under sub-section 34 of the said Act, requiring a return to be furnished within thirty days of the receipt of the notice, or

(*c*) under sub-section (1) of section 13 of the Excess Profits Tax Act, 1940 (XV of 1940), requiring a return to be furnished within sixty days from the date of the service of the notice, or

(*d*) under section 15 of the last-mentioned Act, requiring a return to be furnished within sixty day of the receipt of the notice—

shall, notwithstanding and judgment or order of any Court, Appellate Tribunal or income-tax authority to the contrary and whether or not any specified date on or before which the return is to be furnished is or has been given in the notice as an alternative, be deemed to give or have given a period of notice in full compliance with law, and no such notice shall be called in question or be deemed to be, or at any time to have been, invalid for any purposes whatsover (including any proceedings, criminal or otherwise, instituted whether before or after the commencement of this Ordinance, under, or for a contravention of, any of the provisions of either of the above-mentioned Act) on the ground merely that a period insufficient in law within which to carry out ths requirements of the notice has been specified therein.

RELIEF FROM DOUBLE EXCESS PROFITS TAX (BRITISH INDIA) DECLARATION, 1941

Whereas it is provided by sub-section (1) of section thirty of the Finance Act, 1940, that His Majesty may by Order in Council declare that—

(*a*) under the law in force in any part of His Majesty's dominions outside the United Kingdom excess profits tax is payable in respect of any profits in respect of which excess profits tax is, or, if there were no national defence contribution, would be, payable also under the law in force in the United Kingdom ; and

(*b*) arrangements have been made with the Government of that part of His Majesty's dominions providing for the giving of relief from double taxation in respect of such profits in accordance with the principles in the said sub-section s t out :

And whereas it is provided by section four of the Act of the Indian Legislature known as the Excess Profits Tax Act, 1940, that there shall, in respect of any business therein mentioned, be charged, levied and paid on the amount by which the profits during any chargeable accounting period exceed the standard profits a tax (therein referred to as excess profits tax) which shall in respect of any chargeable accounting period ending on or before the 31st day of March, 1941, be equal to fifty per cent. of that excess and shall, in respect of any chargeable accounting period beginning after that date, be equal to such percentage of that excess as may be fixed by the annual Finance Act :

And whereas it is provided by sub-section (2) of section eight of an Act of the Indian Legislature known as the Indian Finance Act, 1941, that the excess profits tax imposed by section four of the said Excess Profits Tax Act, 1940, shall in respect of any chargeable accounting period beginning after the 31st day of March, 1941, be an amount equal to sixty six and two-thirds per cent. of the amount by which the profits of the business during that chargeable accounting period exceed the standard profits :

And whereas such arrangements as are hereinafter mentioned have been made between His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland and the Government of India :

Now, therefore, His Majesty is pleased, by and with the advice of His Privy Council, to declare, and it is hereby declared, that—

(*a*) under the law in force in British India excess profits tax is payable in respect of certain profits in respect of which excess profits tax is, or, if there were no national defence contribution, would be, payable also under the law in force in the United Kingdom ; and

(*b*) arrangements have been made with the Government of India providing for the giving of relief from double taxation in respect of such profits in accordance with the following principles :—

(i) that there shall be computed the amount of excess profits tax which would be payable in the territory of the United Kingdom and in the territory of British India if excess profits tax in the other territory, and national defence contribution in the United Kingdom, were disregarded except in computing capital ;

(ii) that such amount of relief from tax shall be given in each territory as bears to the lower of the two amounts so computed the same proportion as the amount so computed for that territory bears to the sum of the two amounts so computed ; and

(iii) that where the amount so computed for either territory is found to have been incorrect (whether by reason of a subsequent deficiency of profits or for any other reason) the amount so computed shall be recalculated and the relief in both territories varied accordingly.

And His Majesty is further pleased to order, and it is hereby ordered, that this Declaration may be cited as "The Relief from Double Excess Profits Tax (British India) Declaration, 1941".

INDIAN FINANCE (Amendment) ORDINANCE, 1944.

ORDINANCE No. XXXIII OF 1944.

An Ordinance to amend the Indian Finance Act, 1944.

8th July, 1944.

Whereaas an emergency has arisen which makes it necessary to amend the Indian Finance Act, 1944, for the purposes hereinafter appearing;

Now, Therefore, in exercise of the powers conferred by Section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935 (26 Geo. 5, c. 2) the Governor-General is pleased to make and promulgate the following Ordinance:—

1. Short title and commencement.—(1) This Ordinance may be called the Indian Finance (Amendment) Ordinance, 1944.

(2) It shall come into force at once.

2. Amendment of Second Schedule, Indian Finance Act, 1944.—In paragraph D of Part II of the Second Schedule to the Indian Finance Act, 1944,—

(*a*) in the proviso, for the words "the profits of the previous year" the words the whole or part of the previous year" shall be subsituted, and shall be deemed always to have been substituted;

(*b*) at the end of the proviso, the following *Explanation* shall be inserted and be inserted and shall be deemed always to have been inserted, namely:—

Explanation.– For the purposes of this proviso, the expression "dividend" shall be deemed to include any distribution included in the expression "dividend" as defined in clause (6A) of Section 2 of the Iudian Income-tax Act, 1922, and any such distribution made during the year ending on the 31st day of March, 1945, shall be deemed to have been made in respect of the part of the previous year.

Notification Applying Indian Finance (Amendment) Ordinance, 1944. to British Baluchchistan.

Notification No. 41-W dated the 20th July, 1944.

In pursuance of sub-section (2) of Section 95 of the Government of Inda Act, 1935, the Governor-General in his discretion is pleased to direct that the Indian Finance (Amendment) Ordinance, 1944 (Ordinance No. XXXIII of 1944), shall apply to British Baluchistan.

EXCESS PROFITS TAX ORDINANCE No. XX of 1945.

New Delhi, the 30th June, 1945.

An Ordinance further to amend the Excess Profits Tax Ordinance 1943.

Whereas an emergency has arisen which makes it necessary further to amend the Excess Profits Tax Ordinance, 1943 (XVI of 1943), for the purposes hereinafter appearing;

Now, therefore, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935 (26 Geo. 5 c.2), the Governor General is pleased to make and promulgate the following Ordinance:—

1. Short title and commencement.—(*1*) This Ordinance may be called the Excess the Profits Tax (Amendment) Ordinance, 1945.

(2) It shall come into force at once.

2. Amendment of section 2, Ordinance XVI of 1943.—In section 2 of the Excess Profits Tax Ordinance, 1943,—

(*a*) in sub-section (*1*), after the first proviso the following proviso shall be inserted, namely:—

"Provided further that, in respect of any chargeable accounting period ending after the 31st day of December 1944, the provisions of this sub-section as modified by the first proviso shall have effect as if for the words 'nineteen-sixtyfourths' the figures '37/128ths' were substituted : '

(*b*) to sub-section (*1A*) the following proviso shall be added, namely:—

"Provided that in respect of any chargeable accounting period ending after the 31st day of December, 1944, the provisions of this sub-section shall have effect as if for the words 'nineteen-sixtyfourths' the figures '37/128ths' were substituted."

PART IV

Government of His Highness The Nawab Ruler Bahadur of Bahawalpur.

THE BAHAWALPUR EXCESS PROFIT TAX ACT 1943.

An Act to impose a tax on Excess Profits arising out of certain businesses.

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 COMMENCEMENT.

1. (1) This Act may be called the Excess Profits. Tax Act, 1943.
(2) It extends to the whole of Bahawalpur State.

(3) It shall come into force on the first day of October 1943.

DEFINITIONS

2. In this Act, unless there is any thing 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-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 the Incom-tax Act :

(2) "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 investment 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 shall be treated as one business for the purposes of this Act ;

(3) "chargeable accounting period" means—

(a) any accounting period falling wholly within the term beginning on the 1st day of September, 1941, and ending on the 31st day of March, 1944, and

(*b*) where any accounting period falls partly within and partly without the said term, such part of that accounting period as falls within the said term ;

(4) "Commissioner" means a person appointed to be a Commissioner of Excess Profits Tax under Section 3 ;

(5) "Company" means a company as defined in the Indian Companies Act, 1913, or formed in pursance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession or of a law of an Indian State, and includes any foreign association whether incorporated or not which the Governmay, by general or special order, declare to be a company for the purposes of this Act ;

(6) "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 ;

(7) "director" includes any person occupying the position of a director by whatever name called and also idcludes 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 ;

(8) "dividend" has the meaning assigned to the expression in Section 2 of the Income-tax Act ;

(9) Excess Profits Tax Officer" means person appointed to be an Excess Profits Tax Officer under Section 3 ;

(10) income" has the meaning assigned to the expression in Section 2 of the Income-tax Act ;

(11) "Assistant Commissioner" means a person appointed to be an Assistant Commissioner of Excess Profits Tax under Section 3 ;

(12) "loss" means a loss computed in the same manner as, for the purposes of this Act, profits are to be computed ;

(13) "person" includes a Hindu undivided family ;

(14) "prescribed" means prescrjbed by rules made under this Act ;

(15) "profits" means profits as determined in accordance with the Schedule ;

(16) "standard profits" means standard profits as computed in accordance with the provisions of Section 6 ;

(17) "Government" means the Bahawalpur Government ;

(18) "Income-tax Act" means the Indian Income-tax Act 1922, so long as it was adopted by the Bahawalpur Government or the Bahawlpur Income-tax Act 1943 as the case may be.

EXCESS PROFITS TAX AUTHORITIES.

3. (1) There shall be the following classes of excess profits tax authorities for the purpose of this Act, namely :—

(*a*) Commissioner of Excess Profits Tax ;

(*b*) Assistant Commissioner of Excess Profits Tax ;

(*c*) Excess Profits Tax Officer.

(2) The Minister-in-Charge shall be the Commissioner of Excess Profits Tax for the purposes of this Act.

3. The Assistant Commissioner of Income Tax shall be the Excess Profits Tax Officer for the purposes of this Act.

(4) The Commissioner of Excess Profits Tax shall perform the functions of the Assistant Commissioner of Excess Profits Tax in hearing appeals in respect of assessments made by the Assistant Commissioner of Income Tax while exercising the powers of Excess Profits Tax Officer.

(5) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Government.

CHARGE OF TAX.

4. Subject to the provision 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, in respect of any chargeable accounting period ending on or before the 31st day of March, 1944, be equal to sixty per cent. of that excess and shall, in respect of any chargeable accounting period beginning after that date, be equal to such percentage of that excess as may be fixed by the annual sanction of the Government.

Provided that any profits which are, under the provisions of sub-section (3) of Section 4 of the Income-tax Act, 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. 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 of sub-clause (*i*) or sub-clause (*ii*) of clause (*b*) of sub-section (1) of Section 4 of the Income-tax Act, 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 Bahawalpur State where such business is carried on by

or on behalf of a person who is resident but not ordinarily resident in Bahawalpur State unless the business is controlled in Bahawalpur State :

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

Provided further that this Act shall not apply to any business the whole of the profits of which accrue or arise in British India or in any other Indian State ; and where the profits of a part of a business accrue or arise in British India or in any other Indian State, such part shall, for the purposes of this provision, be deemed to be a separate business the whole of the profits of which accrue or arise in British India or in any other Indian State, and the other part of the business shall, for the purposes of this Act, be deemed to be a separate business.

STANDARD PROFITS.

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-section (3), 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 :

(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 Income-tax Act, for the purpose of the income-tax assessment for the year ending on the 31st day of March, 1937, or the previous year as so determined for the year ending on the 31st day of March, 1938 ; or

(*b*) the "previous year" as so determined for the year ending on the 31st day of March, 1939 ; or

(*c*) the "previous year" as so determined for the year ending on the 31st day of March, 1938, and that for the for year ending on the 31st day of March, 1939 ; or

(*d*) "the previous year" as so determined for the year ending on the 31st day of March, 1939, and that far the year ending in the 31st day of March, 1940 :

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

(3) The standard profits shall be taken to be rupees twenty-five thousand in any case in which the standard profits computed in accordance with sub-section (1) read with second proviso to this sub-section are less than this sum ; or in which no standard period is available :

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

Provided further that if in respect of any business a standard period is available, the profits of that period shall be increased by 10% per annum of the amount by which the

profits of the chargeable accounting period exceed the proportionate profits of the standard period, and such increase shall be deemed to be allowance for increase in the amount of the average capital employed in the business during the chargeable accounting period over the amount of the average capital employed during the standard period :

Provided further that if the Excess Profits Tax Officer is satisfied in the case of any business that special circumstances exist which justify increase of the above percentage, he may, with the previous sanction of the Home Minister, increase it upto 15%.

RELIEF ON OCCURRENCE OF DEFICIENCY OF PROFITS.

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 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 deficency 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, where there is no previous chargeable accounting period, the balance 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 chargeable accounting period and so on.

SUCCESSIONS AND AMALGAMATIONS.

8. (1) As from the date of any charge 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 to have been discontinued, and a new business to have been commenced.

ARTIFICIAL TRANSACTIONS.

9. 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.

(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, with the previous approval of the Commissioner, 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.

10. (1) Where the Excess Profits Tax Officer is of opinion that the main purpose for which any transaction or transactions was or were effected was the avoidance or reduction of liability to excess profits tax, he may, with the previous approval of the Commissioner, 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 power 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 chargeing of a greater amount of tax than would be chargeable but for the adjustments.

(3) Any person aggrieved by the decision of the Excess Profits Tax Officer under this section may appeal in the prescribed time and manner to the Commissioner.

RELIEF IN RESPECT OF DOUBLE EXCESS PROFITS TAXATION.

11. (1) The Government may, by notification in the Official Gazette, make provision for the granting of relief in cases where both excess profits under this Act and excess profits tax under any law in force in British India or in any other Indian State, have been paid upon the profits of any business if it appears to the Government that the laws of British India or of any other Indian State provide for corrsponding relief in respect of excess profits tax charged on profits both in British India or in any other Indian State and in Bahawalpur State.

(2) If any person, who has paid excess profts tax under this Act, for any chargeable accounting period in respect of profits arising outside Bahawalpur State in a country the laws of which do not provide for any relief in respect of excess profits tax charged in Bahawalpur State, 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 Bahawalpur State of a sum equal to one-half or to one-half of the excess profits tax payable in the said country whichever is the less.

ALLOWANCE OF EXCESS PROFITS TAX IN COMPUTING INCOME FOR INCOME-TAX PURPOSES:

12. (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 11. 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.

(2) There shall also be so deducted the amount of any excess profits tax payable under any law in force in a country outside Bahawalpur State 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 amonut whlch 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 Bahawalpur State :

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 Bahawalpur State, 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 accuring in the previous years as determined for that business for the purposes of Income Tax Act in which the deficiency of profits occurs.

ISSUE OF NOTICES FOR ASSESSMENT.

13. (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 provisons of Section 6 or the amount of deficiency available for relief under Section 7 :

Provided that the Excess Profits Tax Officer may, in his direction, extended 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 subsection (1), a notice requiring him on a date to be therein specifed to 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 "previuos year" as determined under Section 2 of the Income-tax Act, for the purpose of the income-tax assessment for the year ending on the 31st day of March, 1937.

ASSESSMENTS.

14. (1) The Excess Profits Tax Officer shall, by an order in writing after considering such evidence, if any, as he has required under Section 13, 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.

(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.

POWER TO MAKE PROVISIONAL ASSESSMENT.

14A (1) The Excess Profits Tax Officer, before proceeding to make an assessment (in this section referred to as the regular assessment) under Section 14, may, at any time after the expiry of the period specified in the notice issued under sub-section (1) of Section 13 as that within which the return therein referred to is to be furnished, and whether the return has or not been furnished, proceed to make in summary manner a provisional assessment of the amount by which the the profits of the chargeable accounting period exceed the standard profits and the amount of excess profits tax payable thereon.

(2) Before making such provisional assessment the Excess Profits Tax Officer shall give notice in the prescribed form to the person on whom assessment is to be made of his intention to do so, and shall with the notice forward a statement of the amount

of the proposed assessment, and the said person shall be entitled to deliver to the Excess Profits Tax Officer at any time within fourteen days of the receipt of the said notice a statement of his objections, if any, to the amount of the proposed assessment.

(3) On expiry of one month from the date of service of the notice referred to in sub-section (2). or earlier if the assessee agrees to the proposed assessment, the Excess Profits Tax Officer may, after taking into account the objections, if any, made under sub-section (2), make a provisional assessment, and shall furnish a copy of the order of assessment to the assessee :

Provided that assent to the amount of the assessment, or failure to make objection to it, shall in no way prejudice the assessee in relation to the regular assessment.

(4) In making any such provisional assessment the Excess Profits Tax Officer shall make allowances for any deficienccies of profits for previous chargeable accounting periods which are under the provisions of Section 7 to be set off against the excess profits of the chargeable accounting period in respect of which the assessment is being made :

Provided that where such deficiencies of profits have not been determined under sub-section (1) of Section 14 the Excess Profits Tax Officer shall estimate the amount thereof to the best of his judgment.

(5) There shall be no right of appeal against a provisional assessment made under this section, and it shall, until a regular assessment is made in due course under Section 14, determine the amount of excess, profits tax due from the assessee.

(6) If, when a regular assessment is made in due course under Section 14, the amount of excess profits tax payable thereunder is found to exceed that determined as payable by the provisional assessment, it shall be reduced by the amount determined as payable by the provisional assessment.

(7) If, when a regular assessment is made in due course under Section 14, the amount of excess profits tax payable thereunder is found to be less than that determined as payable by the provisional assessment, any excess of tax paid as a result of the provisional assessment shall be refunded to the assessee together with interest at 5 per cent per annum calculated from the date of payment of such excess tax to to the date of the order of refund, both days inclusive.

PROFITS ESCAPING ASSESSMENT.

15. 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 under-assessed, 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 13, 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.

16. If the Excess Profits Tax Officer, the Assistant Commissioner 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 13, or to produce or cause to be produced the accounts or

documents or others evidence required by the Excess Profits Tax Officer under sub-section (2) of that Section, or has concealed particulars of the profits made or has deliberately furnished inaccurate particulars of such profits, he may direct that such person shall pay by way of penality, 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 (1) of Section 13, 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.

17. (1) Any person 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 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 may appeal to the Commissioner.

(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 assessment of a deficiency of profits, within forty-five days of 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, 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.

18. (1) 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.

19. The Commissioner may, at any time within four years from the date of any order passed whether by himself or 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.

APPLICATION OF PROVISIONS OF THE INCOME-TAX ACT.

20. The provisions of Sections 4-A, 4-B, 10, 13, 24-B, 29, 36 to 44 (inclusive) 44D, 45 to 48 (inclusive), 65 to 67-A (inclusive) of the Income-tax Act, 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) as he exercises in relation to income-tax under the said Act .

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

INCOME-TAX PAPERS TO BE AVAILABLE FOR THE PURPOSES OF THIS ACT.

21. (1) Notwithstanding anything contained in the Income-tax Act, 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 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 of this Act may be used for the purposes of the Income-Tax Act.

FAILURE TO DELIVER RETURNS OR STATEMENTS,

22. 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 under Section 13, he shall on conviction by a Magistrate be punishable with fine which may extend to five hundred rupees, and with a further fine which may extend to fifty rupees for every day during which the default continues.

FALSE STATEMENT AND DECLARATION.

23. If a person makes in any return required under Section 13 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.

24. (1) A person shall not be proceeded against for an offence under Section 22 or Section 23 except at the instance of the Commissioner.

(2) No prosecution for an offence punishable under Section 22 or Section 23 or under the Indian 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 22 or Section 23.

POWER TO MAKE RULES.

25. (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 rrectification of mistakes, and applications for refunds ;

(*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 the Income-tax Act which are made applicable to excess profits tax by Section 20 or of any rules made under any such provisions ;

(*c*) provide in regard to companies whose business consists wholly or mainly in the dealing or in 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 Bahawalpur State ;

(*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 under Section 59 of the Income-tax Act.

THE SCHEDULE.

[See Section 2 (15)].

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 principles on which the profits of a business are computed for the purposes of Income-tax under Section 10 of the Income-tax Act :

Provided that any sums (other than any interest paid by a firm to a 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 the business for the purposes of excess profits-tax :

Provided that where the profits during any standard period have already been determined for the purpose of an assessment under the Income-tax Act, 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 neceessary to arrive at the profit during the standard period or chargeable accounting period and any such apportionment shall be made in proportiou 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. 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 Income-tax Act, as followed in the accounting period, 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.

(3) Nothing in this Act shall be construed as permitting the application, in computing profits for the purposes of the excess profits tax, of the provisions of sub-section (2) of Section 21 of the Income-tax Act.

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

(2) In the case of the bnsiness of a building society, or of a money-lending 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 under Section 10 of the Income-tax Act, 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.

(2A) 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.

(3) 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 under Section 9 of the Income-tax Act, or or under any other Section of that Act.

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

6. (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' remuneation " does not include—

(*a*) The remunation 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 per cent. 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 purpose 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, no deduction shall be made in respect of directors' remuneration either in computing the profits for the first-mentined 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).

7. 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 enforced in the chargeable accounting period except where such remuneration is subjected to excess profits tax in the hands of the managing agent.

8. When 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.

——:o:——

EXCESS PROFITS TAX RULES, 1943.

In exercise of the powers conferred by Section 25 of the Excess Profits Tax Act, 1943, the Government makes the following rules, namely :—

SHORT TITLE.

1. These rules may be called the Excess Profits Tax Rules, 1943.

DEFINITIONS.

2. In these rules—

(i) "the Act" means the Excess Profits Tax Act, 1943 ;

(ii) "applied section" means a section of the Income Tax Act, applied by Section 20 of the Act and rule 3 ;

(iii) "Form" means a form as set out in the schedule to these rules ;

(iv) "Government" means the Bahawalpur Government.

ADAPTATION OF THE INCOME-TAX ACT,

3. The provisions of Sections 4A, 4B, 10, 13, 24B, 29, 36 to 44 (inclusive), 45 to 48 (inclusive), 49E, 49F, 50, 54, 61 to 63 (inclusive) and 65 to 67A (inclusive) of the Income Tax Act, shall apply with the following modifications, namely :—

(*i*) All references to "this Act" except those in the proviso to clause (*iii*) of sub-section (2) of Section 10, the first proviso to sub-section (1) of Section 54 where they last occur, shall be construed as references to "the Act".

(*ia*) All references to "Income Tax" except those in the expression "Income Tax Practitioner" occurring in sub-section (1) of Section 61, in clause (iv) of sub-section (2) of Section 61, shall be construed as references to "Excess Profits Tax".

MODIFICATION OF SECTION 10.

(*ii*) In Section 10 :—

(*a*) Clauses (b) and (c) of the proviso to clause (*vi*) of sub-section (2) shall be omitted ;

(*b*) For sub-section (7), the following sub-section shall be substituted, namely :—

"(7) Notwithstanding anything to the contrary in this Section or in the Excess Profits Tax Act, 1943, the profits of any business, of insurance, other than life insurance, shall be computed in accordance with the rules contained in the Schedule to the Income Tax Act, in so far as they are applicable to such business".

MODIFICATION OF SECTION 13.

(*iii*) In Section 13 the word and figures "and 12" shall be omitted.

MODIFICATION OF SECTION 24B:

(*iv*) In Section 24B :—

(a) In sub-section (2)—

(1) the words and figures "before the publication of the notice referred to in sub-section (1) of Section 22 or" shall be omitted, and

(2) for the words and figures "sub-section (2) of Section 22 or Section 34", wherever they occur, the words and figures "sub-section (1) of Section 13 or Section 15 of the Excess Profits Tax Act, 1943", shall be substituted ;

(3) for the words "total income" the words "excess profits" shall be substituted.

(*b*) In sub-section (3)—

(1) for the words and figures "Section 22" the words and figures "sub-section (1) of Section 13 of the Excess Profits Tax Act. 1943", shall be substituted ; and

(2) for the words and figures "Sections 22 and 23" the words and figures "sub-section (2) of Section 13 of the Excess Profits Tax Act, 1943" shall be substituted.

(3) For the words "total income" the words excess profits" shall be substituted.

MODIFICATION OF SECTION 37.

(*v*) In Section 37, for the words "this chapter" the words, figures, figures and brackets "Sections 8 to 19 (inclusive of the Excess Profits Tax Act, 1943)" shall be substituted.

MODIFICATION OF SECTION 40.

(*vi*) For Section 40 the following Section shall be substituted, namely :—

"40. In the case of any agent or any person residing out of Bahawalpur State being entitled to receive on behalf of such person any profits chargeable under the Excess Profits Tax Act, 1943, the Tax shall be levied upon and recoverable from such agent in like manner and to the same amount as it would be leviable upon and recoverable from such person if resident in Bahawalpur State and in direct receipt of such profits, and all the provisions of the said Act shall apply accordingly :

Provided that the tax may be levied upon and recovered from such non-resident person direct."

MODIFICATION OF SECTION 41.

(*vii*) The proviso to sub-section (1) of Section 41 shall be omitted.

MODIFICATION OF SECTION 42.

(*viii*) In the first proviso to sub-section (1) of Section 42, the words and figures "the Income Tax so chargeable may be recovered by deduction under any of the provisions of Section 18 and that" shall be omitted.

MODIFICATION OF SECTION 44,

(*ix*) For Section 44, the following Section shall be substituted, namely :—

"44, where any business on by firm or association of persons has been discontinued, every person who was at the time of such discontinuance a partner of such firm or a member of such association shall in respect of the profits of the firm or association, be be jointly and severally liable to assessment ander Section 14 of the Excess

Profits Tax Act, 1913, and for the amount of tax payable, and all the provisions of the said Act shall, so far as may be, apply to any such assessment".

MODIFICATION OF SECTION 45.

(x) In Section 45—

(*a*) The words, brackes, figures and letter "under sub-section (3) of Section 23A or" shall be omitted ;

(*b*) For the words and figures "Section 31 or Section 32 or Section 33", the words and figures "sub-section (4) of Section 17 or Section 18 of the Excess Profits Tax Act, 1913' shall be substituted.

(*c*) For the words and figures "under Section 30", the words and figures "under Section 17 of the Excess Profits Tax Act, 1943" shall be substituted;

(*d*) In the proviso, for the words "which is due in respect of that amount of his income which" the words "which relates to excess profits rrom such income as" shall be substituted.

MODIFICATION OF SECTION 16.

(*xi*) sub-section (5) of Section 46 shall be omitted.

MODIFICATION OF SECTION 47.

(*xii*) In Section 47—

(*a*) the words and figures "sub-section (2) of Section 25, Section 28, or" shall be omitted :

(*b*) after the figures "46" the words and figures or under the provisions of Section 9 or Section 16 of the Excess Profits Tax Act, 1913" shall be inserted ;

(*c*) For the words "this chapter" the words and figures the "applied Sections 45 and 46" shall be substituted.

MODIFICATION OF SECTION 48.

(*xiii*) In Section 48—

(*a*) For sub-section (1) the following sub-section shall be substituted, namely :—

"(1) If any person, to whose business the Excess Profits Tax Act, 1943, applies, satisfies the Excess Profits Tax Officer that the amount of tax paid by him for any chargeable accounting period exceeds the amount with which he is properly chargeable under the said Act for that period he shall be entitled to a refund of any such excess".

(*b*) Sub-section (3) shall be omitted.

(c) In sub-section (4) the words, brackets and figures "or to entitle any person to claim a refund of tax payable before the commencement of the Indian Income Tax claim but for the passing of that Act" shall be omitted.

MODIFICATION OF SECTION 49F.

(*xiv*) In Section 49F, for the word and figures or "49A", the following shall be

substituted, namely :—

"or under Section 7 or Section 11 of the Excess Profits Tax Act, 1943".

MODIFICATION OF SECTION 50.

(*xv*) For Section 50, the following Section shall be substituted, namely :—

"50. No claim to any refund of Tax under the Excess Profits Tax Act, 1943, 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 accounting period which constitutes or includes the chargeable accounting period in respect of which the claim to such refund arises."

MODIFICATION OF SECTION 54.

(*xvi*) In Section 54—

(*a*) In sub-section (1) for the words "this chapter", the words and figures "Sections 22, 23 and 24 of the Excess Profits Tax Act, 1943" shall be substituted ;

(*b*) In sub-section (3), clauses (*e*) and (*m*) shall be omitted : and in clause (*l*) for the figures and words "49 of this Act", the figures and words "11 of the Excess Profits Tax Act, 1943" shall be substituted ;

(*c*) sub-section (4) shall be omitted.

MODIFICATION OF SECTION 66.

(*xvii*) In sub-section (2) of Section 66 for the words and figures "Section 31 or Section 32, or of an order under Section 33 enhancing an assessment or otherwise prejudicial to him", the following shall be substituted, namely :—

"sub-section (3) of Section 10, or sub-section (2) of Section 18 of the Excess Profits Tax Act, 1943, read with sub-section (2) of Section 33 of the Income Tax Act.

ADAPTATION OF INDIAN INCOME-TAX RULES 1922.

(1) Rules 8, 23, 24, 33, 34, 44, 45 and 46 of the Indian Income Tax Rules, 1922, shall, apply subject to the modification that all references therein to "Income Tax" and "the Income Tax Officer" shall be construed as reference to "Excess Profits Tax" and "the Excess Profits Tax Officer" respectively.

FORM OF NOTICE OF DEMAND UNDER APPLIED SECTION 29.

(5) The Notice of Demand or of determination of a deficiency of Profits under applied Section 29 shall be in Forms E. P. 4 and E, P. 4A.

FORM OF NOTICE IN DEFAULT OF PAYMENT.

(6) The Notice in default of payment of Excess Profits Tax shall be in Form E. P. 6.

(6A) Notice under sub-section (2) of Section 14A of the Act shall be in Form E. P. 3 and the order of assessment and Notice of Demand in respect of provisional assessment made under sub-section (3) of the said Section shall be in Form E. P. 8.

FORM OF RETURN UNDER SECTION 13 (1).

(7) The return required under sub-section (1) of Section 13 of the Act shall be in Forms E. P. 1 and E. P. 1A.

FORM OF APPEAL UNDER SECTION 17.

(8) An appeal under Section 17 of the Act shall be—

(a) In Form E. P. 10 if against the amount of assessment made or a deficiency of profits under sub-section (1) of Section 14 of the Act ;

(b) In Form E. P. 11 if against an order imposing a penalty under Section 10 or Section 16 of the Act or under sub-section (1) of applied Section 46 ;

(c) In Form E P. 12 if in respect of an alleged insufficient relief or refund or a refusal to grant relief or refund, by the Excess Profits Tax Officer.

FORM OF APPLICATION FOR REFUND UNDER Sec 7.

(9) An application for refund of Excess Profits Tax under Section 7 of the Act in respect of a deficiency of Profits shall be in Form E. P. 9.

FORM OF APPLICATION FOR RELIEF UNDER SECTION 11.

(10) An application under Section 11 of the Act for relief in respect of double taxation shall be in Form E. P. 13.

COMMISSIONER TO BE REPRESENTED AT HEARING OF APPEALS AND APPLICATIONS.

(1) At the hearing of any appeal or application under the Act by the Special Board of Judicial Committee the Commissioner shall have the right to be represented by the Excess Profits Tax Officer or such other person as may be appointed by the Commissioner in that behalf.

(2) Notice of the date appointed for the hearing of any appeal or application under the Act shall also be given to the Excess Profits Tax Officer.

——:o:——

EXCESS PROFITS TAX RULES, 1943.

SCHEDULE.

Reference to be quoted in all communications.

FORM E. P. I.

EXCESS PROFITS TAX.

To

_____

_____

_____

In pursuance of provisions of Section 13 (1) of Excess Profits Tax Act, 1943, you are hereby required to furnish within sixty days from the date of the service of this notice, in the form provided overleaf, a Return of the profits arising from the business carried on by/carried on in the name of.....
during the chargeable accounting period commencing..... ....
.... 19 and ending.....19 , together with such other particulars relating thereto as are specified therein, The return duly signed by you, and the other particulars required therein, should be delivered to me at address given below.

Notes for your guidance are contained in the enclosure to this form. If you desire any further information, application should be made to this office.

If you desire to apply for increase of percentage in terms of 3rd Proviso to Section 6(3) under special circumstances you are requested to give reasons for it along with detailed calculations in support of the proposed increase of percentage.

Which standard period do you wish to elect under Section 6 (2) ?

Excess Profits Tax Officer.

Address_____

Dated the _____ _____ 194 .

E. P. I.

EXCESS PRO-

Return of profits arising from business in the chargeable accounting period thereto.

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(1) Name and address of the person by whom the business was carried on in the above chargeable accounting period.

(2) In the case of a person not resident in Bahawalpur State, carrying on business in Bahawalpur State through an agent resident in Bahawalpur State, the full name and address of the agent through whom the business was carried on in the above chargeable accounting period.

(3) Nature of business carried on.

(4) Amount of profits arising in the above chargeable accounting period, computed in accordance with the Act. (See Notes for Guidance, Note 3.)

(5) Amount of standard profits computed in accordance with the Act. (See Notes for Guidance, Note 4.)

(6) Basis of computation of standard profits adopted :—

(*a*) The profits of a standard period ; and

(*b*) Allowance of 10% per annum of the amount by which the profits of the chargeable accounting period exceed the profits of the standard period.

(7) In the case of 6 (*a*) above particulars of standard period chosen or the date of commencement of business. (See Notes for Guidance, Note 5.)

(8) Proportionate amount of standard profits in the ratio of the chargeable accounting period to the standard period. (See Notes for Guidance, Note 4 (*i*))

FURTHER PARTI-

You are required to furnish—

(*i*) Copies of the Trading Accounts, Profits and Loss Accounts and Balance Sheets made up, which constitute or include any part of the standard period or of the charge-

(*ii*) a copy of your computation of your profits of the chargeable accounting amount of profits as computed for Income-tax purposes with other details.

STATE WHETHER YOU MAKE THE RETURN—

As proprietor of the business :
As partner in a partnership ;
As manager or Karta of a Hindu undivided family :
As principal officer of a company ;
As member of an association .
As legal representative of a deceased person ;
As liquidator of a company which is being wound up ; or
As agent for a person not resident in Bahawalpur State.

....

FITS TAX.

commencing..... ....19 , and ending.....19 , and other particulars relating

---

(1)

(2)

(3)

(4) Rupees

(5) Rupees

(6)

(7)

(8)

CULARS REQUIRED.

of the business for all periods, for which the accounts of the business have been able accounting period ;

period, and of the standard period where a standard period is chosen, showing the

DECLARATION.

I hereby declare that, to the best of my kngwledge and and belief the information given in this return is correct and complete, and the particulars transmitted herewith are truly stated.

Dated this day of 19 .

Signature.

Address.

Schedule of further particulars required under Section 13 (1) of the Excess Profits Tax Act, 1943.

In the case of a Company

(*a*) The name and address of any company, whether or not resident in Bahawalpur State, or trading in Bahawalpur State.

(*b*) In the case of a private limited company, the names of the shareholders in the accounting period which constitutes or includes the chargeable accounting period, with full particulars of the shares held by each, (See Notes for Guidance, Note 8.)

(If this space is insufficient, please attach a schedule of the required particulars.)

PENALTIES.

(1) Failure, without reasonable excuse, to deliver the return with the other particulars required by the Excess Profits Tax Officer under the provisions of the Excess Profits Tax Act, the concealment of particulars of profits arising from, or the deliberate furnishing of inaccurate particulars of such profits entail penalties under Sections 16, 22 for 23 of the Act.

The penalties are, in the case of failure to deliver the return a sum not exceeding the amount of Excess Profits Tax payable, or, in other cases, a sum not exceeding the amount of the excess profits tax that would have been avoided if the return made had been accepted as correct. Alternatively, on conviction before a Magistrate, failure to make the return involves a fine which may extend to Rs. 500, with a further fine which may extend to Rs. 50 for every day during which the default continues, and a false return is punishable with simple imprisonment which may extend to six months, or with a fine which may extend to Rs. 1,000, or with both.

2. The penalty for entering into any fictitious or artificial transaction, or for carrying out any fictitious or artificial operation for the purposes of reducing any excess profits which are or would be chargeable to excess profits tax is, in addition to such transaction or operation being treated as null and void for excess profits tax purposes, a sum not exceeding the tax evaded or sought to be evaded.

(Section 9.)

Excess Profits Tax Act, 1943.

NOTES FOR GUIDANCE OF PERSONS MAKING RETURNS OF PROFITS.

1. Charge to Excess Profits Tax.

Excess Profits Tax is charged on the amount by which the profits of a business arising in a chargeable accounting period exceed the proportionate standard profits. The rate of tax is 60 per cent, in the case of chargeable accounting period ending before 1st April 1944.

2. Business chargeable to the Tax.

Subject to the exceptions referred to in the next paragraph of these notes, the charge applies to all businesses :—

(a) the profits of which accrue or arise to a person resident in Bahawalpur State, whether such profits accrue or arise within or without Bahawalpur State ;

(b) the profits of which accrue or arise in Bahawalpur State, or are deemed by the provisions of the Income-tax Act, so to accure or arise to a person not resident in Bahawalpur State ;

But (*i*) where the profits of a business accrue or arise without Bahawalpur State to a resident in Bahawalpur State who is not ordinarily so resident, such business is not chargeable unless the business is controlled in Bahawalpur State ;

(*ii*) where the profits of part only of a business, carried on by a person not resident in Bahawalpur State, or not ordinarily resident, accrue or arise in Bahawalpur State or are deemed under the provisions of the Income-tax Act, so to accrue or arise, then only the profits of such part of the business are chargeable unless the business of a person resident but not ordinarily resident in Bahawalpur State, and such business is controlled in Bahawalpur State, and

(*iii*) in relation to any chargeable accounting period which is the "previous year" under the Income-tax Act, for any year of assessment after 1941-42—

(*a*) where the profits of a business wholly accrue or arise in British India or any other Indian State, such business is not chargeable ; and

(*b*) where the profits of a part of a business accrue or arise in British India or any other Indian State, such part is not chargeable.

(Section 5.)

"Business" includes any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture or any profession or vocation.

[Section 2 (2).]

All business to which the Act applies carried on the same person are to be treated as one business for the purposes of the Act.

[Section (2), Second Proviso.]

Investment Companies, etc.

Where the functions of a company (see Note 14) or 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 to be a business carried on by such company or society.

[Section 2 (2), First Proviso.]

3. Exceptions from the Charge.

(*i*) Professions.—A profession carried on by an individual or by individuals in partnership is not to be deemed to be a business within the charge if the profits of the profession depend wholly or mainly on his or their personal qualifications.

Where, however, a 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, such profession is within the making of contracts, such profession is with the charge.

[Section 2 (2).]

(*ii*) Life Insurance Business.—All profits from the business of life insurance are exempt from the charge.

(Section 4, Proviso.)

(*iii*) Agriculture, Charities, Local Authorities, etc.—Income which is exempted from Income-tax by virtue of Section 4 (3) of the Income-tax Act, is exempted from the charge.

(Section 4, Proviso)

(*iv*) Profits arising in British India or any other Indian State.—Such profits of a business as accrue or arise in British India or any other Indian State are exempt.

[See note 2 (*iv*),]

4. Computation of Standard Profits.

Normal basis.—In relation to any chargeable accounting period the standard profits of a business for which a standard period is available (see Note 5) are to be an amount bearing to the profits of the standard period the same proportion as the chargeable accounting period bears to the standard period :

(*i*) Minimum standard,—In any case in which the standard profits, computed under Section 6 (1), are less than Rs. 25,000 the standard profits are to be taken as the sum of Rs. 25,000, provided that if the chargeable accounting period is greater or less than one year that sum is to be propotionately increased or decreased.

[Section 6 (3).]

5. Standard Period.

At the option of the person carrying on the business, the standard may be:—

(*a*) The "previous year" for the income-tax assessment year 1936-37 or 1937-38; or

(*b*) The "previous years" for the income-tax assessment years 1936-37 and 1938-39 ; or

(c) The "previous years" for the Income-tax assessment years 1937-38 ; and 1938-39 ; or

(*d*) The "previous years" for the income-tax assessment years 1938-39 and 1939-40 but in no case may any period of less than nine months be taken as a standards period.

6. Definition of "Chargeable Accounting Period."

A chargeable accounting period, in relation to Excess Profits Tax is :—

(*a*) any accounting period (see Note 7) falling wholly within the term beginning on the 1st September 1939 and ending on the 31st March 1944 ; and

(*b*) where any accounting period falls partly within and partly without the said

[Section 2 (3).]

term, such part of that accounting period as falls within the said term. [Section 2 (3).]

7. Definition of "Accounting Period".

"Accounting period" in relation to any business means :—

(*a*) where the accounts of the business are made up for successive periods of 12 months, each of such periods ;

(*b*) in any other case, such period as the Excess Profits Tax Officer, having regard to the period, if any, determined as the " previous year " for the purposes of the Income-tax Act, may determine. [Section 2 (1).]

8. Rules for computing Profits.

The profits arising in a standard period and in any chargeable accounting period are to be computed on the principles on which the profits of a business are computed for income-tax purposes under Section 10 of the Income-tax Act :

Provided that, where the profits during any standard period have already been determined for income-tax purposes, such profits as so determined are, subject to the modifications required by the Excess Profits Tax Act, to be taken as the profits for excess profits tax purposes also.

Where a standard period or a 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, are to be computed on the above principles and the results apportioned so as to arrive at the profits of the standard period or chargeable accounting period in question. Any such apportionment is to be made on a time basis unless the Excess Profits Tax Officer, having regard to any special circumstances, otherwise directs.

(Schedule, Rules 1 and 2.)

Losses are to be computed in the same manner as profits. [Section 2(12).]

The provisions for the computation of profits are set out in the Schedule to the Act. It will be observed that, in computing profits for excess profits tax purposes :—

(*a*) no allowance is to be made in respect of losses carried forward and set off for income-tax purposes under Section 24 (2) of the Income-tax Act ;

(*b*) no allowance is to be made for any loss other than a loss sustained in a business within the charge to excess profits tax ;

(*c*) investment income is only required to be included in certain cases ;

(*d*) no allowance is due is in respect of depreciation carried forward from earlier years.

Rule 1 provides for exclusion of salaries and interest payable abroad which are

included in profits for income-tax purposes :

Rule 4 provides for the inclusion of interest on borrowed money where there are excluded investments ;

Rule 5 prohibits any deductions in respect of Income-tax, Super-tax and Excess Profits Tax ;

Rule 6 restricts the allowance in respect of the remuneration of the directors of director-controlled companies ;

Rule 7 places certain restrictions upon the deductions allowable in respect of the remuneration of managing agents ;

Rule 8 provides for the spreading the profits on long-term contracts.

9. Relief in respect of Deficiency of Profits.

"Deficiency of Profits" means—

(*a*) where profits have been made in any chargeable accounting period the amount by which such profits fall short of the standard profits ;

(*b*) where a loss has been made in any chargeable accounting period, the amount of the loss added to the amount of the standard profits ; standard profits in relation to such chargeable accounting period being computed in accordance with the provisions of Section 6 (1). (See Note 4.) [Section 2 (6)]

Where a deficiency of profits occurs in any chargeable accounting period in any chargeable accounting period in any business, such deficiency is to be set off primarily against the profits chargeable to excess profits tax for the previous chargeable accounting period or periods. Effect is to be given to the reduction in liability by repayment or otherwise.

Where a deficiency exceeds the amount of the profits chargeable with excess profits tax for previous chargeable accounting period or where there is no previous chargeable accounting period, the balance of the deficiency or the whole deficiency, as the case may be, is to be applied in reduction of the pofits, if any, chargeable in any subsequent chargeable accounting period.

10. Allowance for Excess Profits Tax in computing Income-tax liability.

The amount of the excess profits tax payable in respect of a business for any chargeable accounting period, diminished by the amount of any relief allowable in respect of double excess profits taxation, is, in computing the profits and gains of that business for the purposes of income-tax and super-tax, to be deducted as an expense incurred in that period. [Section 12 (1).]

Allowance is similarly due in respect of excess profits tax payable in a country outside Bahawalpur State, on the profits of the business for any chargeable accounting period, to the extent that such profits are liable to Excess Profits Tax in Bahawalpur State. Such allowance is to be diminished by any double excess profits taxation relief allowable under any law of that country by reference to excess profits tax charged in Bahawalpur State. Section 12 (2).]

Where relief in respect of a deficiency of profits is given by way of repayment from excess profits tax chargeable for any accounting period previous to that in which the deficiency occurs, either under the provisions of this Act or under any corresponding law in force in a country outside Bahawalpur State, the amount of the deduction allowed under Section 12 (1) or 12 (2) is not to be altered, but the amount repayable is to be taken into account in computing the profits and gains of the business as if it were a profit of business accruing in the previous year (as determined for that business for the purposes of the Income-tax Act) in which the deficiency occurs. (Section 12 Proviso.)

11. Relief in respect of Double Excess Profits Taxation.

(i) Where excess profits tax has been paid both in Bahawalpur State and in British India or any other Indian State in respect of the same profits, and relief in respect of British India or any other Indian State excess profits tax is allowed under the law of British India or of any other Indian State, the Government may, by notification in the Official Gazette, provide for reciprocal relief. [Section 11 (1).]

(ii) Where, in respect of profits arising without Bahawalpur State during any chargeable accounting period, excess profits tax has been paid both in Bahawalpur State and in a country the laws of which do not provide for relief in respect of Bahawalpur State excess profits tax, relief is allowable equivalent to one-half of the lesser of the two amounts so paid. [Section 11 (2).]

12. Payment of Excess Profits Tax.

Under Section 45 of the Income-tax Act, as applied to excess profits tax by Section 20 of the Excess Profits Tax Act, 1943, excess profits tax is payable within the time, at the place and to the person mentioned in the notice of demand, or, if a time is not so mentioned then on or before the 1st day of the second month following the date of service of the notice.

Where a person dies, his executor, administrator or other legal representative is 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 excess profits tax assessed or payable by such person, or any excess profits tax which would have been payable by him if he had not died.

(Section 24B of the Income-tax Act, Excess Profits Tax Act, 1943, Section 20.)

13. Appeals.

An appeal lies to the Commissioner of Excess Profits Tax—

(*a*) against the amount of excess profits tax for which a person is liable as assessed by the Excess Profits Tax Officer.

(*b*) as to the liability of a person to be assessed to excess profits tax ;

(*c*) against any penalty imposed by the Excess Profits Tax Officer ;

(*d*) against the amount of any deficiency of profits as assessed by the Excess

Profits Tax Officer ; and

(*e*) against the amount of relief allowed by, or against the refusal of, the Excess Profits Tax Officer, to grant relief.

No appeal lies, however, against a determination of the amount of the profits of the standard period where the profits have already been determined for the purpose on an assessment under the Income-tax Act, except in respect of adjustment made under the provisions of the Schedule to the Excess Profits Tax Act, 1943.

The Commissioner has general powers to rectify within 4 years mistakes in any evidence recorded in proceedings taken by himself, the Assistant Commissioner or the Excess Profits Tax Officer and any mistakes apparent from the record. (Section 19.)

14. Definitions.

For the purposes of the excess profits tax :—

(*a*) the expression "Company" means a company as defined in the Indian Companies Act, or formed in pursuance of an Act of Parliament, or of Royal Charter, or Letters Patent, or of an Act of the Legislature of a British Possession, or of a Law of an Indian State, and includes any foreign association, whether incorporated or not, which the Government, by general or special order, declare to be a company for the purposes of this Act ; [Section 2 (5).]

(*b*) "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 concern in the management of the business ; and

(*ii*) is remunerated out of the profits of the business ; and

(*iii*) is the beneficial owner of not less than twenty per cent. of ordinary share capital of the business [Section 2 (7).]

Reference to be quoted in all communications.

NOTICE UNDER SECTION 13 (2) OF THE EXCESS PROFITS TAX ACT.

Excess Profits Tax Office

Dated the 19 .

To

_____

_____

_____

WHEREAS a notice under Section 13 (1) the Excess Profits Tax Act, 1943, in respect of the chargeable accounting period commencing 19 . and ending 19 , has been served on you on , I hereby require you under Section 13 (2) of the said Act to produce or cause to be produced at my office at on at A. M. / P. M. the accounts and/or documents and/or evidence specified

Note:—Failure to comply with any of the terms of this notice will render you liable to a penalty under Section 16 or to prosecution under Section 22 of the said Act.

Excess Profits Tax Officer.

E. P. 2.

Particulars of accounts and/or documents and/or evidence.

NOTICE UNDER SUB-SECTION (2) OF SECTION 14A OF THE EXCESS PROFITS TAX ACT, 1943.

Excess Profits Tax Office..... . ...

Dated the..... . .....194 .

To

Whereas a notice under sub-section (1) of Section 13 of the Excess Profits Tax Act, 1943, in respect of the chargeable accounting period commencing 19 , and ending 19 , has been served on you on 19 , I hereby give you notice of my intention to make a provisional assessment in accordance with the provision of sub-section (3) of Section 14A of the said Act as follows :—

If you object to the amount of such proposed provisional assessment you should, within fourteen days of receipt of this notice, deliver to me a statement of your objections thereto.

Signed

Excess Profits Tax Officer.

E. P. 3.

EXCESS PROFITS TAX

NOTICE OF DEMAND UNDER RULE 5 OF THE EXCESS PROFITS TAX RULES READ WITH SECTION 29 OF THE INCOME-TAX ACT.

To

1. Take notice that for the chargeable accounting period commencing..''and ending.....194,

*the sum of Rs .....Excess Profits Tax, as specified overleaf, has been determined to be payable by you,

* deficiency of profits of Rs.....has been computed as shown overleaf.

2. You are required to pay the amount on or before.....194.., to the Sub-Treasury Officer / Agent, Imperial Bank of India when you will be granted a receipt.

3. If you do not pay the amount on or before.....191 , you will be liable to a penalty, under Section 46 (1) of the Income-tax Act, as applied to Excess Profits Tax by Section 20 of the Excess Profits Tax Act, 1943, which may be as great as the excess profits tax due from you.

4. If you intend to appeal against the assessment, or the amount of the deficiency, you may present an appeal under sub-section (1) of Section 17 of the Excess Profits Tax Act. 1943, to the Commissioner of Excess Profits Tax at .....within 45 days of the receipt of this notice in the form prescribed under sub-section (3) of Section 17 duly stamped and verified as laid down in that form. A copy of the form may be obtained from this office.

5. A copy of my assessment order and of the profits of the chargeable accounting period is enclosed herewith.

Excess Profits Tax Officer

} [Address.

Dated 194 .

*Delete inappropriate words.

ASSESSMENT FORM.

Assessment under Section 14 of the Excess Profits Tax Act, 1943, for the Chargeble Accounting Period.

COMMENCING 19

AND ENDING 19 (MONTHS).

Name of assessee

Status Circle

Address No. in General Index.

No. in E. P. T. Register.

1. Profits of the chargeable accounting period as computed for Excess Profits Tax purposes..... Rupees.
2. Profits of standard period of .. .... months where standard profits available—
   (1) as computed for excess profits tax purposes.....
   Rs.....
3. Proportion of (2) appropriate to chargeable accounting period of....months.... Rs.....
4. Where minimum standard of Rs. 25,000 applicable, due proportion thereof.....
5. Excess Profits (+) or Deficiency (—) ... .

	Rs.	at 60 Rs.
6. Excess Profits assessable		
7. Deficiency of profits set off		
8. Net excess profits assessed		
9. Excess Profits Tax...		Rs.

10. Excess Profits Tax, total
11. Double Excess Profits Taxation relief
12. Net amount of E.P.T. payable
13. Add—
    (i) penalty under section 10 (3)
    (ii) penalty under section 16

TOTAL SUM PAYABLE (in figures as well as words).

Rs. As. (figures) Rs.

Annas (words).

Dated 194 .

E. P. 4.

ASSESSMENT ORDER.

Name of assessee

Status Circle

Address No. in General Index.

No. in E. P. T. Register.

Copy of Assessment Order under Section 14 (1) for the chargeable accounting period commencing 19 . and ending 19 .

Signature.

E. P. 5. .....194 .

Computation of Profits of Chargeable Accounting Period.

Accounting period months from 19 to 19 . Chargeable accounting period months from 19 to 19 .

Nature of item.	Plus.	Minus.
1. Profit or Loss of the business as computed for income tax purposes before deduction of excess profits tax ...	Rupees.	Rupees.
2. Depreciation carried forward from earlier year allowed in arriving at (1) ..		
3. Losses carried forward from earlier years allowed in arriving at (1) ...		
4. Allowance made in arriving at (1) in respect of unremitted income (under Section 4, Income tax Act) ..		
5. Sums included in (1) in respect of remittance of earlier years profits ..		
6. Director controlled companies: ..		
(a) Total "director's remuneration" in cases within Rule 7 (1)		
(b) Proportion of " directors' remuneration " disallowed in cases within Rule 7 (3).		
7. Adjustment in respect of managing agents' remuneration ...		
8. Income from property forming part of profits of business but not included in (1).		
9. Adjustment in respect of long term contracts ...		
10. Total ...		
11. Aggregate (+ or —) for Accounting Period ...	Rupees.	
12. Aggregate (+ or —) for chargeable accounting period of months ending 19 (The due proportion of item (11) ...		

COMPUTATION OF PROFITS OF STANDARD PERIOD.

Nature of items.	"Previous year" for year of assessment.			
	194 /194 (. months).		194 /194 (...months).	
	Plus.	Minus	Plus.	Minus.
	Rs.	Rs.	Rs.	Rs.
1. Profit or Loss of the business as computed for income-tax purposes ...				
2. Amount included in (1) in respect of foreign profits ...				
3. Full amount of foreign profits on accrual basis ...				
4. Depreciation allowed in arriving at (1) ...				
5. Actual depreciation for the period (on written-basis) ..				
6. Director controlled companies : ...				
(a) Total "directors' remuneration" in cases within Rule 7 (1)				
(b) Proportion of "directors" remuneration" disallowed in cases within Rule 7 (3)				
7. Income from property forming part of business but not in (1)				
8. Adjustments in respect of long terms contracts ..				
9. Other adjustments ...				
10. Totals ...				
11. Profit (+) or Loss (—) for "Previous Year" ...				
12. Profits of the standard period..... Rs.....				

Penalty Imposed in Default of Payment of Excess Profits Tax.

Notice of Demand under Section 29 of the Income-Tax Act, as Applied to Excess Profits Tax by Sections 20 of the Excess Profits Tax Act, 1943.

To

Whereas you have not paid the sum of Rs.
Excess Profits Tax, assessed for the chargeable accounting period commencing.....
.....194,..... and ending....., on the prescribed date, *viz.* ....., in accordance with the Notice of Demand served on you on.....194....., you are hereby informed that a penalty of Rs..... has been imposed upon you under section 46 (1) of the Income-tax Act, which is applied to Excess Profits Tax by virtue of Section 20 of the Excess Profits Tax Act, 1943.

2. You are further warned that unless the total amount due, including this penalty, is paid on or before..... .....194 ...., a further penalty will be imposed on you (and a certificate will be issued to the Collector under section 46 (2) of the Income-tax Act, which is applied to the Excess Profits Tax Act, 1943, for the recovery of the full amount due.)

3. You are required to pay the amount to the Sub-Treasury Officer
Agent, Imperial Bank of India.
at.....when you will be granted a receipt.

4. If you intend to appeal against the penalty you may present an appeal under sub-section (1) of Section 17 of the Excess Profits Tax at.....within 45 days of the receipt of this notice, in the form prescribed under sub-section (3) of section 17 duly stamped and verified as laid down in that form. A copy of the form may be obtained from this office.

Excess Profits Tax Officer.

Dated 19 :

Address.

E. P. 6.

NOTICE UNDER SECTION 15 OF THE EXCESS PROFITS TAX ACT ; 1943.

To

Whereas in consequence of definite information which has come into my possession I have discovered that profits of the chargeable accounting period commencing..... .....19 , and ending .....19 , chargeable to Excess Profits Tax have—

*(*a*) escaped assessment,
*(*b*) been under-assessed,
*(*c*) been the subject of excessive relief,

I therefore propose to *assess/reassess the said profits that have—

(*a*) escaped assessment,
(*b*) been under-assessed,
(*c*) been the subject of excessive relief.

*Delete inappropriate items.

I hereby require you to deliver to me within 60 days of the receipt of this notice a return in the attached form of the standard profits and of the profits made during the chargeable accounting period commencing 19 , and ending 19 .

Excess Profits Tax Officer.

Address.

Dated 19 .

E. P. 7.

Assessment Order and Notice of Demand in respect of Provisional Assessment made under Sub-Section (3) of Section 14A of the Excess Profits Tax Act, 1943.

To

_____

_____

_____

1. Take notice that, following the issue on the .....19 , of notice under sub-section (2) of Section 14A, of the Excess Profits Tax Act, 1943 of my intention to make a provisional assessment in respect of your estimated liability to Excess Profits Tax for the chargeable accounting period commencing.....19..... ..., and ending... .....19....., I having taken into account your statement of objections thereto dated... ..... 19....., have determined provisionally the Excess Profits Tax of such period to be the sum of Rs..... ...and that the Excess Profits Tax payable in respect thereof is for the period commencing .....19 .. , and ending .....19..., Rs.....at 60 per cent.

2. You are required to pay the amount on or before .....19..., to Sub Treasury Officer / Branch of Imperial Bank of India at..... .....when you will be granted a receipt.

3. If you do not pay the amount on or before..... ..... . 19..., you will be liable to a penalty under Section 46 (1) of the Income Tax Act as applied to Excess Profits Tax by Section 20 of the Excess Profits Tax Act, 1943 which may be as great as the amount of the Excess Profits Tax hereby assessed.

Excess Profits Officer.
Address.
Dated 19 .

E, P. 8.

APPLICATION FOR REFUND OF EXCESS PROFITS TAX IN RESPECT OF DEFICIENCY OF PROFITS.

To

The Excess Profits Tax Officer,

.....

I, ...of ....do hereby declare that for the chargeable accounting period commencing . .....19 , and ending ..... .19 , the excess profits arising from the business of.....were determined at Rs ..... and charged to tax amounting to Rs,.....The tax was paid on .....194.....

I further declare that during the chargeable accounting period commencing ....19 , there was a deficiency of profits in the same business amounting to Rs....

I therefore pray for a refund of Rs .....The Return prescribed under section 13 (1) of the Act showing the said deficiency of profits is attached hereto.

Dated the.....194 . Signature.. ....

FORM OF VERIFICATION.

I hereby declare that what is stated herein is true to the best of my information and belief.

Dated..... . Signature,.....

E. P 9.

FORM OF APPEAL AGAINST ASSESSMENT UNDER SECTION 14 (1) OF THE EXCESS PROFITS TAX ACT, 1943.

To

THE COMMISSIONER OF EXCESS PROFITS TAX,

.....

The.....day of.....194 ,

The petition of..... .....of

sheweth as follows :—

1. Under section 14 (1) of the Excess Profits Tax Act, *the profits liable to Excess Profits Tax / *deficiency of profits of your petitioner's business for the chargeable accounting period commencing.....194...., and ending .....194....have/has been determined to be Rs.....

2. The *notice of demand / *intimation of the amount of deficiency of profits / *intimation of the order of refund attached hereto, was served upon your petitioner on.....194 .....

3. Your petitioner *complied with / *did not comply with the term of the notice (s) under sub-section (1) and/or sub-section (2) of section 13 of the Excess Profits Tax Act.

4. Your petitioner claims that during the said chargeable accounting period *the profits liable to Excesss Profits Tax / *the deficiency of profits of your petitioner's business amounted to Rs

5. Your petitioner therefore prays that—

*the business may be assessed accordingly

*the deficiency of profits may be determined accordingly

*he may be granted a refund of Rs.

Signed.

GROUNDS OF APPEAL,

FORM OF VERIFICATION.

I, , the petitioner named in the above petition do declare that what is stated therein is true to the best of my information and belief.

Signed.

* Inapporpriate items to be deleted.

—

E. P. 10.

Form of Appeal to the Commissioner Against Imposition of Penalty under Section 7 or Section 16 of the Excess Profits Tax Act. 1943 or under Section 46 (1) of the Income-Tax Act, as Applied to Excess Profits Tax by Section 20 of the Excess Profits Tax Act, 1943.

To

THE COMMISSIONER OF EXCESS PROFITS TAX,

.....

The.....day of.....194 .

The petition of.....of.....

sheweth as follows :—

1. A penalty of Rs....., for which the notice of demand attached herewith was received on.....194 , has been imposed on your petitioner

under *section 10 of the Excess Profits Tax Act, 1943.
*section 16 of the Excess Profits Tax Act, 1943.
*section 46 (1) of the Income-tax Act.

2. "Your petitioner did not enter into any artificial transaction for the purposes of avoiding the excess profits tax.

*Your petitioner had reasonable cause for not furnishing the return under sub-section (1) of section 13 or for not complying with the notice under sub-section (2) of section 13.

*Your petitioner did not conceal particulars of the profits arising or deliberately furnish inaccurate particulars thereof.

*Your petitioner was unable to pay the tax within time for the reasons set forth below.

*Delete inappropriate words.

3. For the reasons given in the Gounds of Appeal your petitioner, therefore prays that the order of the Excess Profits Tax Officer imposing the penalty may be, set aside.

Signed.

GROUNDS OF APPEAL.

FORM OF VARIFICATION.

I,... , the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Signed.

E. P. 11.

Form of Appeal Against the Amount of Relief or Refund or Against Refusal to Grant Relief or Refund under Section 7 or Section 11 of of the Excess Profits Tax Act, 1943.

To

THE COMMISSIONER OF EXCESS PROFITS TAX,

The..... day of.....194 .

The petition of..... .....
of..... .....sheweth as follows :—

1. Your petitioner applied to the Excess Profits Tax Officer for relief under section 7 of the Excess Profits Tax Act in respect of a deficiency of profits amounting to Rs..... occurring in the chargeable accounting period commencing.....19 . ...19 , and ending.....19 . ...

*Your petitioner claimed, under section 11 of the Excess Profits Tax Act, relief amounting to Rs..... in respect of excess profits taxation imposed in..... upon the profits of your petitioner's business.

2. The Excess Profits Tax Officer has by his order, dated the of which a copy is attached *rejected the claim for relief. *granted relief of only Rs. Intimation of this order was received by your petitioner on

3. Your petitioner for the reasons stated in the Grounds of Appeal prays that the full relief due to the petitioner may be granted.

Signed.

GROUNDS OF APPEAL.

FORM OF VERIFICATION.

I,..... ..... , the petitioner named in the above petition, do declare that what is stated therein in true to the best of my information and belief.

Signed.

*Inappropriate items to be deleted.

APPLICATION FOR REFUND IN RESPECT OF DOUBLE EXCESS PROFITS TAXATION.

To

THE EXCESS PROFITS TAX OFFICER,

.....

I,... . .....of.....do hereby declare that Excess Profits arising from the business of..... .....for the chargeable accounting period commencing..... . ..... 19 , and ending . ...19.., have been charged to Excess Profits Tax both in Bahawalpur State and in British India. Official receipts are attached for*... .... profits tax of Rs.....paid on .....19...., and for British India Excess Profits Tax of Rs.....paid on.....19....

I, therefore, pray for Relief amounting to Rs. under—

(*a*) Sub-section (1) of Section 11 of the Act.
(*b*) Sub-section (2) of that Section.

(Delete (*a*) or (*b*), whichever is inapplicable).

Dated the 194 . Signature.

FORM OF VERIFICATION.

I hereby declare that what is stated herein is true to the best of my information and belief.

Dated the..... 194 . Signature.

*Insert name of country or state in which tax paid.

Form E. P. 13.

The Excess Profits Tax Act

(II OF 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 COMMENCEMENT.

(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 [1][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 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 shall be treated as one business for the purposes of this Act ;

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

(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 ;

(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 ;

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 first day of Chingam 1111 , whether such accumulated profits have been capitalised or not :

Provided that "divided,' 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 profits".

(10) "Excess Profits Tax Officer" means a person appointed to be an Excess Profits Tax Officer under section 3 ;

(11) [1]["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 Tarawad ;*

(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 director whereof have a 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 amonnt ;

(*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 first day of Chingam 1114, the foregoing percentages shall be in-creased from eight, ten and six per cent to ten, twelve and eight per cent, respectively ;

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

EXCESS PROFITS TAX AUTHORITIES.

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 ;

1 Substituted by Act of 111.

(*b*) Excess Profits Tax Officers.

(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 [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 ss 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 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 [2][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. [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 of sub-clause (*i*) or sub-clause (*ii*) or (*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, 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 of all the purposes of this Act be deemed to be a separate business :]

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[1] Substituted for "the Cochin Income-tax Act, 1108" by Act VII of 1117.

[2] Substituted for "section 4 of the Cochin Income-tax Act, 1108" by Act VII of 1117.

[3] Substituted by *ibid*.

[1][Provided further that this Act shall not apply to any business the whole of the profits of which accrue or arise in British India or an Indian State other than Cochin, and where the profits of a part of a business accrue or arise in British India or an Indian State other than Cochin, such part shall, for the purpose of this provision, be deemed to be a separate business the whole the profits of which accrue or arise in British India or an Indian State other than Cochin, and the other part of the business shall, for all the purposes of this Act, be deemed to be a separate business.]

STANDARD PROFITS.

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-section (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 :

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 1113, 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 4 or within the extended period allowed by the the Excess Profits Tax Officer under the provisio to that sub-section, the person carrying on the business makes

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1 Added by section 2 of Act X of 1118.

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 at 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.

RELIEF ON OCCURENCE OF DEFICIENCY OF PROFITS.

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 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 AMALGAMATIONS.

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 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 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 business 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 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 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 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 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.

INTERCONNECTED COMPANIES.

9. (1) Where any interest, annuity or other annual papment, 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 is—

(*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 these 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 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 (1) 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 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.

ARTIFICIAL TRANSACTIONS.

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 artifically reduce the profits.

(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.

STANSACTION 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 psofits tax of persons who but for the adjustment 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 ajustments.

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, 1931, 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 chageable 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.

ALLOWANCE OF EXCESS PROFITS TAX IN COMPUTING INCOME FOR INCOME-TAX PURPOSES.

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.

(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 [1][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 from 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 :

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

[1] Substituted for "the Cochin Income-tax Act, 1108" by Act VII of 1117.

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.

ASSESSMENTS.

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, in any, repayable and shall furnish a copy of such order to the person on whom the assessment has been made.

(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 ESCAPING ASSEESMENT.

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 under assessed, 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,

APPEALS.

18, (1) Any person aggrieved by a decision made in 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 sub-section (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 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 from 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 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.

APPLICATION OF PROVISIONS OF ACT VI OF 1117.

21. [[1]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), 138 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 :

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

IMCOME-TAX PAPERS TO BE AVAILABLE FOR THE PURPOSES OF THIS ACT.

22. (1) Notwithstanding anything contained in [2][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 this Act may be used 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 [2][of this Act may be used for the purposes of the Cochin Income-tax Act, 1117].

FAILURE TO DELIVER RETURNS OR STATEMENTS.

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

[1] Substituted by Act VII of 1117.

[2] Substituted for "the Cochin Income-tax Act" 1108, by *ibid*

Magistrate, be punishable with fine which may extend to five hundred rupees, and with a 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 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 shall 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 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.

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

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 proceeding of such authority.

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 reserved, the Government may pass such orders, not inconsistent with this Act, as they deem fit:

Provided that they shall not annual, modify or alter in any way an ordar passed by the Commissioner [1][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 [2][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 [3][under section 102 of the Cochin Income-tax Act, 1117].

Power to make exemption, etc,

[4][**29** Government may, by notification in the Cochin Government Gazette, make an exemption, reduction in rate or other modification in respect of excess profits tax in favour of any business or in regard to the whole or any part of the income of any person.

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 purpose of income-tax [5][under section 13 of the Cochin Income-tax Act, 1117]:

[6][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 include in

(1) Substituted by Act VII of 1117.
(2) Substituted by ibid.
(3) Substituted by ibid.
(4) Added by section 3 of Act X of 1118.
(5) Substituted by Act VII of 1117.
(6) Substituted by ibid.

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 purposes 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 periods 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 [7][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.

[8](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 20 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.

(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 [9][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 assesment to excess profits tax, divinends from the subsidiary company out of such profits shall not also be included in the profits of the principal company.

(7) Added by Act T II of 1117.

(8) Substituted by ibid.

(9) Ibid.

(5) In the case of 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 [10][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 ariving at the amount of the capital employed in the business.

6. (1) In computing for any chargeable acounting 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 Schedule applies, or the profits of a part of a business other than 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 appl 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 amounts 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 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 comduting the profits for that accounting period; and

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

(10) Substituted by Act T II of 1117.

no deduction shall be made in respect of director's remuneration.

(2) In sub-rule (1) of this rule the expression "director's 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 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 profit 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 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 equirements 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. (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 carring on the business, he 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 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 [1][under section 61 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.

1 Substituted by Act VII of 1117.

The debts to be deducted under this sub-rule shall include any such sums in respect of accuring 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.

(2) Where any debt for the excess profits tax assessable in 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 occured.

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 accuring 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 to the business, and any moneys not required for the purposes of the business, shall be left out of account, but where any investment 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 investment:

Provided that where the person carrying on the business is not a company, no reduction shall be deemed 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 [1][second or third 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

(1) Substituted by section 4 of Act X of 1118

(*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 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 thit 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 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 reminders 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 'indermediary" or, if more than one, is referrrd 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 twa 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 anothar.

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 is 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 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 members 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.

COCHIN EXCESS PROFITS TAX RULES

EXCESS PROFITS TAX ACT (II of 1117.)

(As Modified up to 30th Makaram 1119.)

(Section 28.)

Finance Department Notification No. 28, dated 4th Makaram 1117 (17th January 1942) published as Supplement to Gazette, dated 4th Makaram 1117.

In exercise of the powers conferred on them by section 28 of the Excess Profits Tax Act, 1117 (II of 1117), the Government are hereby pleased to make the following rules, namely—

1. **Short title.**—These Rules may be called the Excess Profits Tax Rules, 1117.

2. **Definitions** —In these Rules—

(i) "the Act" means the Excess Profits Tax Act, 1117 ;

(ii) "applied section" means a section of [the Cochin Income-tax Act, 1117], as applied by section 21 of the Act and Rule 3 ;

(iii) "Form" means a form as set out in the Schedule to these rules.

[2][3. **Adaptation of Cochin Income-tax Act, 1117** —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 the following modifications, namely—

(i) **General Modifications** —All references to "this Act" except those in the proviso to clause (iii) of sub-section (2) of section 13, the first proviso to sub-section (1) of section 52, section 55, and in sub-section (1) of section 76 where they last occur, shall be construed as references to "the Act".

(ii) All reference to "income tax" shall be construed as references to "excess profits tax".

(iii) **Modification of section 13.**—In section 13—

(*a*) clause (*b*) of the proviso to clause (vi) of sub-section (2) shall be omitted.

(*b*) for sub-section (7) the following sub-section shall be substituted namely—

"(7) Notwithstanding anything to the contrary in this section or in the Excess Profits Tax Act, 1117, the profits of any business of insurance, other than life insurance, shall be computed in accordance with the rules continued in the Schedule to the Cochin Income-tax Act, 1117, in so far as they are applicable to such business".

(iv) **Modification of section 16.**—In section 16 the worn and figures "and 14" shall be omitted.

(v) **Mdifiaction of section 32.**—In section 32,—

(*a*) in sub-section (2)—

(1) the words and figures "before the publication of the notice referred to in sub-section (1) of section (1) of section 27 or" shall be omitted;

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(1) Substituted by Rule 1 of the Excess Profits Tax (Amendment) Rules, dated 25th Medam 1117 (8th May 1942).

(2) Substituted by Rule 2 of the Excess Profits Tax (Amendment) Rules, dated 25th Medam 1117.

(2) for the words and figures sub-section (2) of section or 27 section 44", wherever the occur, they words and figures "subsection (1) of section 14' or 16 of the Excess Profits Tax Act, 1117" shall be substituted; and

(3) for the words "total income" the words "excess profits" shall be substituted.

(*b*) in sub-section (3)—

(1) for the word and figures "section 27" the words and figures "sub-section (1) of section 14 of the Excess Profits Tax Act, 1117" shall be substituted;

(2) for the words and figures "sections 27 & 28" the words and figures "sub-section (2) of section 14 of the Excess Profits Tax Act, 1117" shall be substituted; and

(3) for the words "total income" the words "excess profits" shall be substituted.

(vi) **Modification of section 47.**—In section 47, for the words "this Chapter" the words, figures and brackets 'sections 8 to 20 (inclusive) of the Excess Profits Tax Act, 1117" shall be substituted.

(vii) **Modification of section 50.**—For section 50 the following section shall be substituted namely.—

"50. In the case of any agent of any person residing out of Cochin, being entitled to receive on behalf of such person any profits chargeable under the Excess Profits Tax Act, 1117, the tax shall be levied upon and recoverable from such agent in like manner and to the same amount as it would be leviable upon and recoverable from such person if resident in Cochin and in direct receipt of such profits, and all the provisions of the said Act shall apply accordingly:

Provided that the tax may be levied upon and recovered from such non-resident person direct."

(viii) **Modification of section 51.**—The provisos to sub-section (1) of section 51 shall be omitted.

(ix) **Modification of section 52.**—In the first proviso to sub-section (1) of section 52, the words and figures "the income-tax so chargeable may be recovered by deduction under any of the provisions of section 21 and that" shall be omitted.

(x) **Modification of section 54.**—For section 54 the following section shall be substituted, namely.—

"54. Where any business carried on by a firm or association of person has been discontinued, every person who was at the time of such discontinuance a partner of such firm or a member of such association shall, in respect of the profits of the firm or association, be jointly and severally liable to assessment under section 15 of the Excess Profits Tax Act, 1117, and for the amount of tax payable, and all the provisions of the said Act shall, so far as may be, apply to any such assessment."

(xi) **Modification of section 55.**—In section 55, for the words "this chapter" the words and figures "the applied sections 56 and 57" shall be substituted.

(xii) **Modification of section 56.**—In section 56.—

(*a*) In sub-section (1) for the words "this Chapter" the words and figures "the applied section 55" shall be substituted.

(*b*) in sub-section (3), the words "at the rate for the time being applicable to the total income of a company" shall be omitted.

(xiii) **Modification of section 57.**—In section 57—

(*a*) for the words "this Chapter" the words and figures "the applied sections 55 and 56" shall be substituted.

(*b*) for the words "of his total income in the previous year" the words " of his actual excess profits in the chargeable accounting period " shall be substituted.

(*c*) the word "other" shall be omitted.

(xiv) **Modification of section 61.**—In section 61—

(*a*) the words, brackets, figures and letter "under sub-section (3) of section 29 or" shall be omitted ;

(*b*) for the words and figures "section 41 or section 42 or section 43" the words and figures "sub-section (4) of section 18 or section 19 of the Excess Profits Tax Act, 1117" shall be substituted ;

(*c*) in the first proviso, for the words and figures "under section 40" the words and figures "under section 18 of the Excess Profits Tax Act 1117" shall be substituted ;

(*d*) in the second proviso, for the words "which is due in respect of the amount of his income which", the words "which relates to excess profits arising from such income as" shall be substituted.

(xv) **Modification of section 62**—Sub-section (4) of section 62 shall be omitted.

(xvi) **Modification of section 63.**—In section 63—

(*a*) the words and figures "sub-section (2) of section 33, section 38, sub-section (6) of section 59, sub-section (5) of section 60 or" shall be omitted ;

(*b*) after the figures "62" the words and figures "or under the provisions of section 10 or section 17 of the Excess Profits Tax Act, 1117" shall be inserted ;

(*c*) for the words "this Chapter" the words and figures "the applied sections 61 and 62" shall be substituted.

(xvii) **Modification of section 64.**—In section 64—

(*a*) for sub-section (1), the following sub-section shall be substituted, namely—

"(1) If any person, to whose business the Excess Profits Tax Act 1117, applies, satisfies the Excess Profits Tax Officer that the amount of tax paid by him for any chargeable accounting period exceeds the amount with which he is properly chargeable under the said Act for that period, he shall be entitled to a refund of any such excess".

(*b*) Sub-section (3) shall be omitted.

(*c*) In sub-section (4), the words "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" shall be omitted.

(xviii) **Modification of section 71.**—In section 71, for the word and figures "or 65", the following shall be substituted, namely—

"or under section 7 or section 12 of the Excess Profits Tax Act, 1117"

(xix) **Modification of section 72.**—For section 72, the following section shall be substituted, namely—

"72. No claim to any refund of tax under the Excess Profits Tax Act, 1117, 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 accounting period which constitutes or includes the chargeable accounting period in respect of which the claim to such refund arises".

(xx) **Modification of section 76.**—In section 76—

(*a*) in sub-section (1) for the words "this Chapter", the words and figures "sections 23, 24 and 25 of the Excess Profits Tax Act, 1117" shall be substituted ;

(*b*) in sub-section (3), clause (k) shall be omitted ; and in clause (h) for the figures and words "65 of this Act", the figures and words "12 of the Excess Profits Tax Act, 1117" shall be substituted ;

(*c*) sub-section (4) shall be omitted.

(xxi) **Modification of section 109.**—In section 109—

(*a*) In sub-section (1) for the words and figures "Chapter X" the following shall be substituted, namely—

"Sections 23, 24 and 25 of the Excess Profits Tax Act, 1117".

(*b*) In sub-section (2) for the words and figures "41, or section 42 or of an order under section 43" substitute the following, namely,—

"18 or of an order under section 19 of the Excess Profits Tax Act, 1117".

(*c*) In the provisos to sub-section (2) substitute the words and figures "section 19 of the Excess Profits Tax Act, 1117" for the words and figures "section 43" wherever they occur ; and the words and figures "section 18 of the Excess Profits Tax Act, 1117" for the words and figures "section 41"].

[1][**4. Adaptation of Cochin Income-tax Rules, 1117.**—Rules 10, 31, 32, 33, 34 and 47 of the Cochin Income-tax Rules, 1117, shall apply subject to the modification that all references therein to "income-tax" and "the Income-tax Officer" shall be construed as reference to "excess profits tax" and "the Excess Profits Tax Officer" respectively.]

5 Form of return under section 14 (1).—The return required under sub-section (1) of section 14 of the Act shall be in Form E. P. 1.

6. Form of notice of Demand under applied section 31.—The notice of demand or of determination of a deficiency of profits under applied section 31 shall be in Form E. P. 2.

7. Form of notice in default of payment.—The notice in default of payment of excess profits tax shall be in Form E. P. 3.

8. Form of application under section 6 (3).—An application to the Commissioner under sub-section (3) of section 6 of the Act, for a direction that the profits of the standard period shall be computed as if they were such greater amount as he thinks just, shall be made in Form E. P. 4.

9. Form of application under section 26 (1).—An application to the Government under sub-section (1) of section 26 of the Act for a direction that the profits of the standard period shall be computed as if they were such greater amount as it thinks just, shall be made in Form E. P. 5.

10. Form of application under section 26 (3).—An application to the Government under sub-section (3) of section 26 of the Act, for a direction that such allowance shall be made in computing the profits of a business during a chargeable accounting period as the Government think just, shall be made in Form E. P. 6; [2][but an application in respect of the earlier exhaustion of mineral sources shall be made in Form E. P. 6 A.]

11. Form of section under rule 8 of Schedule II.—An application to the Government under rule 8 of Schedule II of the Act for a direction that, in computing the average capital of a business during the standard period, certain assets shall be excluded for such period as they were inherently unproductive, shall be made in Form E.P. 7.

12. Form of appeal under section.—An appeal under section 18 of the Act

(*a*) in Form E. P. 8, if against a decision of the Excess Profits Tax Officer under sub-section (5) of section 8 of the Act;

(*b*) in Form E. P. 9, if against a decision of the Excess Profits Tax Officer under sub-section (8) of section 8 of the Act:

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(1) Substituted in Rule 3 of the Excess Profits Tax (Amendment) Rules dated 25th Medam 1117.

(2) Added by Notification No. 89, dated 8th Karkadagam 1118.

(*c*) in Form E. P. 10, if against a decision of the Excess Profits Tax Officer under sub-sections (2), (3), (4), (6) or (7) section 8 of the Act:

(*d*) in Form E. P. 11, if against the amount of an assessment made or a deficiency of profits under sub-section (1) of section 15 of the Act:

(*e*) in Form E. P. 12, if against an order imposing a penalty under section 10 or section 17 of the Act or under sub-section (1) of applied section 49:

(*f*) in Form E. P. 13, if in respect of an alleged insufficient relief or refund, or a refusal to grant relief or refund, by the Excess Profits Tax Officer :

(*g*) in Form E. P 14, if against a determination by the Excess Profits Tax Officer under rule 12 of Schedule I to the Act,

13. Form of application for refund under section 7.—An application for refund of excess profits tax under section 7 of the Act, in respect of a deficiency of profits shall be in Form E. P. 15.

14. Form of application for relief under section 12.—An application under section 12 of the Act for relief in respect of double taxation shall be in Form E P, 16.

15. Time for notice under section 8 (2).—The notice under sub-section (2) of section 8 of the Act shall be given by the person concerned within the period specified in the notice issued under sub-section (1) section 14 of the Act or within the extended period allowed by the Excess Profits Tax Officer under the proviso thereto.

16. Time and manner of appeal under section 8 (5).—An appeal against a decision under sub-section (5) of section 8 of the Act shall be presented in the Office of the Commissioner of Excess Profits Tax by the person carrying on the business prior to the transfer or by the person to whom part of the business was transferred, as the case may be, within 45 days of the date of receipt of the notice of the Excess Profits Tax Officer's apportionments.

17. (1) Procedure on application under seccion 6 (3).—The Excess Profits Tax Officer shall within fifteen days of the receipt of an application under sub-section (3) of section 6 of the Act forward it to the Commissioner for decision.

(2) Notice of the date appointed for the hearing of any appeal or application under The Act shall be given to the applicant or the appellant and in the case of an appeal against an order under sub-section (5) of section 8 of the Act, to the opposite party.

Explanation.—The expression "opposite party" means the person by whom, or the person to whom, part of the business was transferred, according as the appeal is preferred by the transferee or the transferror.

[1]["**18. Investments-holding Companies.**—In the case of a business consisting wholly or mainly in the holding of investments.—

(*a*) the income from investments to be included in the profits of the business under the provisions of Rule 4 of Schedule I to the Act shall be computed exclusive.

(*i*) of all income received by way of dividends or distribution of profits from a company carrying on a business to the whole of which the section of the Act imposing excess profits tax applies; and

(*ii*) of the due proportion of all income received by way of dividends or distribution of profits from a company carrying on a business to part only of which the section of the Act imposing excess profits tax applies :

(*b*) the investments to be excluded from the capital employed in the business under Rule 4 of Schedule II to the Act shall include.—

(*i*) all shares in a company carrying on a business to the whole of which the section of the Act imposing excess profits tax applies ; and

(*ii*) the due proportion of all shares in a company carrying on a business to part only of which the section of the Act imposing excess profits tax applies."]

[2]Provided that, if in relation to any chargeable accounting period, a company to which this rule applies gives notice to the Excess Profits Tax Officer, within the time allowed under section 14 of the Act, for the furnishing of a return in respect of such chargeable accounting period, that the provisions of this Rule shall not be applied to it, its profits and average capital in relation to such chargeable accounting period, shall be computed as if this Rule had not been made.]

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(1) Added by Notification No, 89, dated 8th Karkadagam 1118,
(2) Added by Notification No. 143, dated 7th Karkadagam 1119,

THE JAIPUR EXCESS PROFITS TAX ACT, 1944.

ACT No. XX of 1944.

Received the assent of His Highness the Maharaja Sahib Bahadur on the 22nd day of August, 1944.

An Act to provide for the imposition of a tax on excess profits.

Preamble.

Whereas, in the conditions prevailing during the present war, it is expedient to provide for the imposition of a tax on excess profits arising out of certain businesses; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the Jaipur Excess Profits Tax Act, 1944.

(2) It extends to the whole of the Jaipur State except the Sambhar Shamlat Area.

(3) It shall come into force at once,

Definitions.

2. In this Act, unless there is anything repugnant in tne 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 not exceeding twelve months, as the Excess Profits Tax Officer may determine.

(2) "Assessee" means a person to whose business this Act applies and by whom tht excess profits tax is payable;

(3) "Agricultural income" means—

(*a*) any rent or revenue derived from land which is used for agricultural purposes ond is either assessed to land revenue in the Jaipur State or subject to a locol rate assessed and collected by officers of the 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 as a store-house or other outbuilding.

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

(5) "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 shall be treated as one business for the purposes of this Act;

(6) "Chargeable accounting period" means any accounting period falling wholly after the 31st August, 1944. and where any accounting period falls partly after and partly before the said date, such part of that accounting period as falls after the said date;

(7) "Commissioner" means a person appointed to be a Commissioner of Excess Profits Tax under section 3 :

(8) "Company" means a company as defined in the Jaipur Companies Act or formed in pursuance of the law of the country in which it is incorporated 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:

(*g*) "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 :

(10) "dividend" include—

(*a*) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its share-holders 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 share-holders 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 years of the company preceding the date of liquidation shall be so included; and

(*d*) any disribution 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 year ending next befose the 1st day of April, 1938, whether such accumulated profits have been capitalised or not ;

Provided that "dividend" doer 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, wden 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 profits."

(11) "Excess Profits Tax Officer" means a person appointed to be an Excess Profits Tax Officer under section 3 ;

(12) "firm," "partner" and "partnership" have the same meanings respectively as in the Jaipur Partnership Act, 1943 ; provided that the expression "partner" includes any person who being a minor has been admitted to the benefits of partnership :

(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 11 ;

(15) "person" includes a Hindu undivided family ;

(16) "prescribed" means prescribed by rules made under this Act ;

(17) "principal officer" used with reference to a company or any other public body or any association means:—

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

(*b*) any person connected with the company body or association upon whom the Excess Profits Tax Officer has served a notice of his intention of treating him as the principal officer thereof ;

(18)"profits" means profits as determined in accordance with the First Schedule;

(19) "standard profits" means standard profits as computed in accordance with the provisions of section 6 ;

(20) "Statutory percentage" means—

(*a*) in relation to a business carried on by a body corporate, eight per annum;

(*b*) in relation to a business carried on by a person other than a body corporate, 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 September, 1938, the foregoing percentages shall be increased from eight, ten and six per cent to ten, twelve and eight per cent respectively :

(21) "Written down value" mean—

(*a*) in the case of assets acquired in a year previous to the one for which the assessment is to be made, the actual cost to the assessee, and

(*b*) in the case of assets acquired before such year, the actual cost to the assessee less all depreciation actually allowed to him under this Act ;

Provided that where a person carrying on any business, profession or vocation has been succeeded in such capacity by another person and the person succeeding is assessed by reason of the person succeeded being not traceable, the actual cost to the person succeeded.

Excess Profits Tax authorities.

3. (1) There shall be the following classes of excess profits tax authorities for the purposes of this Act, namely :—

(*a*) the Board of Revenue ;

(*b*) Commissioner of Excess Profits Tax ;

(*c*) Excess Profits Tax Officers.

(2) The Government shall appoint such persons to be Commissioner of Excess Profits Tax and Excess Profits Tax Officers as it thinks fit.

(3) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Board of Revenue.

Charge of tax.

4. (1) 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 of such business 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.

(2) This Act shall not apply to—

(*a*) any business of life insurance ;

(*b*) agricultural income ;

(*c*) profits from a business carried on on behalf of a religious or charitable institution when the profits are applied solely to the religious or charitable purpose of the institution ; and

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

(ii) the work in connection with the business is mainly carried on by beneficiaries of the institution ;

(*d*) income, profits and gains of local authorities.

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 (*c*) shall operate to exempt from the provisions of this Act that part of the profits of a private religious trust which does not enure for the benefit of the public.

Application of Act.

5. This Act shall apply to every bnsiness of which the whole or any part of the profits made during the charge accounting period accrues or arises in the Jaipur State:

Provided that where the profits of a part only of a business accrue or arise in the Jaipur State, then this Act shall apply to only such part of the business, and such part shall for all the purposes of this Act be deemed to be a separate business.

Standard profits.

6. (1) For the purpose of this Act the standard profits of a business in relation to any chargeable accounting period shall, subject to the provisions of sub-section (3), 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 :

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 furtker that in the case of a business which was commenced after the 31st August, 1937, 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 the 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 year ending on the 31st day of August, 1938 ; or

(*b*) the years ending on the 31st day of August, 1938, and on the 31st day of August, 1939, or

(*c*) the years ending on the 31st day of August, 1938, and on the 31st day of August, 1940; or

(*d*) the years ending on the 31st day of August, 1939, and on the 31st day of August, 1940 ; or

(c) in the case a business making up its accounts by periods of twelve months ending on a date other than the 31st day of August or a business commenced after the 1st of September, 1937, the first accounting period falling after the 1st of September, 1937, or any two such accounting periods falling between 1st September 1937, and 31st August 1940 ;

(3) 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 account ng peried is less than one year the sum of rupees thirty-six thousand shall for the purposes of this sub-section be decreased proportionately.

Allowance to be made.

7. (1) The profits of a business to which this Act applies 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 Excess Profits 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 pre- and has undertaken to bear the cost of such repairs, the mount 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 ;

Explanation.—Recurring subscriptions paid periodically by share-holders 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 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 to such percentage on the return down value thereof as may in any case or or class of cases be prescribed:

Provided that

(a) the preseribed particulars have been duly furnished; and

(b) the aggregate of all such allowances made under this Act shall, in no case, exceed the original cost to the assessee of the buidings machinery, or plant, or furniture as the case may be ;

(vi) 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 by which the machinery or plant is actually sold or its scrap value:

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

Provided fuather 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 accounting period 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, realized in respect of the carcasses or animals;

(ix) any sums paid on account of *land-revenue*, local rates or municipal taxes 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 beed payable for him as profits or dividend if it had non 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 Excess Profits 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.

(2) Where any building, machinery, plant or furniture in respect of which any allowance is due under clause (iv) clsuse (v) clause ' vi) or clause (vii) of sub-section (1) 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.

(3) Nothing in clause (ix) or clause (xii) of sub-section (1) shall be deemed to authorise the allowance of any sum paid on account of any cess, rate or tax levied on the profits of any business, profession or vocation or assessed at a proportion of or otherwise on the basis of any such profits.

(4) In sub-section (1) "paid" means actually paid or incurred according to the method of accounting upon the basis of which the profits are computed under this section: 'plant' includes vehicles, books seientifio apparatus and surgical equipment purchased for the purposes of the business, profession or vocation.

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

Method of accounting.

8. Profits shall be computed, for the purposes of section **7**, 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 Excess Profits Tax Officer the profits cannot properly be deducted therefrom, then the computation shall be made upon such basis and in such manner as the Excess Profits Tax Officer may determine.

Relief on occurrence of deficiency of profits.

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

10. (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 1st day of September, 1944, and 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 1st day of September, 1944, in the persons carrying it on, and the standard profits of the business in relation to any chargeable accounting period shall 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 1st day of September, 1944, 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 1st day of September, 1944, 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 orignal 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 orignal 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 Board of Revenue to that Board, 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 September, 1938, and that main part of that business, was transferred after the said day and before the 1st day of September, 1944, 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 commencement of that business.

(7) Where, on or after the 1st day of September, 1944, 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 befor the date of his death shall, if it has not been fully applied in reducing the profits of any chargeable accounting period under section 9 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 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 the 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 excess profits Tax Officer may

make such alterations in the periods would otherwise be the chargeable accounting periods of the business as he think proper:

Provided that if the Excess Profits Tax Officer makes any such modifications and the person carrying on the business is dissatisfied with the modifications so made, or if the person carrying on the business is dissatisfied with the refusal of the Excess Profits Tax Officer to make any such modifications, he ma at any time before the expiry of forty-five days from the date on which the order of the Excess Profits Tax Officer is communicated to him, appeal to the Board of Revenue through the Commissioner.

Interconnected companies.

11. (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 the Jaipur State and is not a subsidiary of any other company resident in the Jaipur State; 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 the Jaipur State [hereinafter referred to as the "the subsidiary company") is a subsidiary of the principal company,

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

Explanation.—A company is resident in the Jaipur State in any year if the control and management of its affairs is situated wholly in the Jaipur State in that year.

(4) If the subsidiary company is a subsidiary of the princial company throughout the chargeable accounting period, such capital employed in, and profits or losses arising from, the business of the subsidiary company is employed or arise in—

(i) the chargeable accounting period; or

(ii) any year constituting comprised in the standard period 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 Board of Revenue 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 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.

Artificial transactions.

12. (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 the profits.

(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.

13. (1) Where the Excess Profits Tax Officer is of opinion that the main purposes for which any transaction or transactions was or were effected 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.

(3) Any person aggrieved by a decision of the Excess Profits Tax Officer under this section may appeal in the prescribed time and manner to the Board of Revenue.

Tax of deceased person payable by representative.

14. (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 giving of the notice referred to in section 15 or section 21 or before he is served with such notice, his executor, administrator or other legal representative shall, on the serving of the notice under section 15 or section 21 comply therewith, and the Excess Profits Tax Officer may proceed to assess the excess profits 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 15 or having furnishd a return which the Excess Profits Tax Officer has reason to believe to be incorrect or incomplete, the Excess Profits Tax Officer may make an assessment of the excess profits 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 appropriote notice which would have had to be served upon the deceased person had he survivied 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 section 15 have required from the deceased person.

Issue of notice for assessment.

15. (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 any 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 9:

Provided that the Excess Profits Tax Officer may, in his direction, 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 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 first dav of September, 1937.

Power to take evidence on each etc.

16 The Excess Profits Tax Officer, the Commissioner Excess Profits Tax and the Board of Revenue shall, for the purposes of this Act, have the same powers as are vested in a Court under the Jaipur Code of Civil Procedure, 1943, 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 Excess Profits Tax Officer or the Commissioner of Excess Profits Tax or the Board of Revenue under this Act shall be deemed to be a "judical proceeding" within the meaning of sections 193 & 228 and for the purposes of section 196 of the Jaipur Penal Code, 1943.

Power to call for information.

17. The Excess Profits Tax Officer may, for the purposes of this Act,—

(1) require any firms, or Hindu undivided family to furnish him with a return of the members of the firm or of the manager or adult male members of the family, as the case may be, and of their address;

(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 addresses of all persons to whom he has paid in any year rent, interest, commission, royalty or broker age, or any annuity amounting to more than four hundred rupees, together with particulars of all such payments made.

Power to inspect the register of members of any company.

18. The Excess Profits Tax Officer or any person authorized in writing in this behalf by the Excess Profits Tax Officer, may inspect and, if necessary, take copies, or cause copies to be taken, of any register of the members, debenture holders or mortagees of any company or of any entry in such register.

Assessment.

19. (1) The Excess Profits Tax Officer shall, by an order in writing after considering such evidence, if any, as he has required under section 15, 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.

(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.

Tax to be calculated to nearest anna.

20. 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 anna equal to or exceeding six pies shall be regarded as one anna.

Profits escaping assessment.

21. 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 under-assessed, or have been the subject of excessive relief, he may at any time within two 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 15, 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 this section.

Liability of guardians trustees, and agents.

22. 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 to receive on behalf of such beneficiary, or is in receipt on behalf of such benificiary of any profits 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 profits, and all the provisions of this Act shall apply accordingly.

Liability of Court of Wards etc.

23. (1) In the case of profits 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 duty executed instrument in writing whether estamentary or otherwise (including the trustee or trustees under any Wakf deed which is valid under the Mussalman Waqf Validating Act, 1943), 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 profits are receiveable and all the provisions of this Act shall apply accordingly.

Provided that when part only of the profits of a trust is chargeable under this Act, that proportion only of the profits receivable by a beneficiary from the trust which the part so chargeable bears to the whole profits 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 profits therein referred to are receivable, or the recovery from such person of the tax payable in respect of such profits.

Liability in case of a discontinued firm or association.

24. When 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 suh association shall, in respect of the profits of the firm or association, be jointly and severally liable to assessment under this Act and for the amount of tax payable and all the provisions of this Act shall apply to any such assessment.

Penalties.

25. 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 15, 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 particular 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 15, 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 :

Provided that the Excess Profits Tax Officer shall not impose any penalty under this section without the previous approval of the Commissioner,

Notice of demand.

26. When any tax or penalty is due in consequence of any order passed under or in pursuance of this Act, the Excess Profits 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.

Appeals.

27. (1) Any person aggrieved by a decision made in pursuance of section 10 or objecting to the amount of excess profits tax for which he is liable as assessed by the

Excess Profits Tax Officer 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 may appeal to the Commissioner :

Provided that no appeal shall lie under this section against any apportionment made by the Excess Profits Tax Officer under the proviso to sub-section (5) of section 10, against any refusal to make modifications or against any modifications made by the Excess Profits Tax Officer under sub-section (8) of section 10, or against any decision of the Excess Profits Tax Officer under rule 10 of the First 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 assessment of deficiency of profits, within fortyfive 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 granded 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, 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.

Appeals to Board of Revenue against Commissioner's orders.

28. (1) Any person objecting to an order passed by the Commissioner imposing on him a penalty under section 25 or enhancing his assessment or enhancing a penalty under section 27, may appeal to the Board of Revenue within thirty days of the date on which he was served with notice of such order.

(2) In disposing of the appeal the Board of Revenue may, after giving the appellant an apportunity of being heard, pass such orders thereon as it thinks fit.

Power of revision.

29. The Board of Revenue may of its own motion call for the record of any proceeding under this Act which has been taken by any Excess Profits Tax Officer or Commissioner 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 it thinks fit :

Provided that it 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.

Statement of case to High Court.

30. (1) Any assessee aggrieved by any order made by the Board of Revenue under section 25 or 29 may, within sixty days of the date of the order, require the Board of Revenue by application in the prescribed form, accompanied by a fee of one hundred rupees, to refer to the High Court any question of law arising out of such order and the Board of Revenue shall within ninety days of the receipt of such application draw up a statement of the case and refer it to the High Court.

(2) If on any application being made under sub-section (2) the Board of Revenue 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 may, if it is not satisfied of

the correctness of the decision of the Board of Revenue, require the Board of Revenue to state the case and to refer it, and on receipt of any such requisition the Board of Revenue shall state the case and refer it accordingly.

(3) If on any application being made under sub-section (1) the Board of Revenue rejects it on the ground that its time barred, the assessee may, within two months from the date on which he is served with notice of the rejection, apply to the High Court and the High Court, if it is not satisfied of the correctness of the Board of Revenue's decision, may require the Board of Revenue to treat the application as made within the time allowed under sub-section (1).

(4) 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 Board of Revenue to make such additions thereby or alterations therein as the Court may direct in that behalf.

(5) The High Court, upon the hearing of any such case, shall decide the questions of law raised thereby and shall deliver its judgement thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the Court and the signature of the Registrar to the Board of Revenue which shall pass such orders as are necessary to dispose of the case conformably to such judgement.

(6) Where a reference is made to the High Court the costs shall be in the discretion of the Court.

Reference to be heard by a Bench.

31. When any case has been referred to the High Court under Section 30, 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 98 of the Jaipur Court of Civil Procedure 1943, shall, so far as may be, apply, notwithstanding anything contained in any other law for the time being in force.

Tax when payable.

32. Any amount specified as payable in a notice of demand under Section 26 or in an order under section 27 or section 28 or section 29 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, provided that, when an assessee has presented an appeal under section 27 or section 28 the Excess Profits Tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of.

Mode of recovery.

33. (1) When an assessee is in default in making a payment of tax, the Excess Profits 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) For the purposes of sub-section (1), the Excess Profits 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 Excess Profits Tax Officer may forward to the Nazim a certificate under his signature specifying the amount of arrears due from an assessee, and the Nazim on receipt of such certificate shall proceed so 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 Nazim in this behalf, he shall for the purpose of recovering the said amount have the powers which under the Jaipur Code of Civil Procedure, 1943, a Civil Court has for the purpose of the recovery of an amount due under a decree.

(4) In any area with respect to which the Commissioner 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, the Excess Profits Tax Officer may proceed to recover the amount due by such process.

(5) The Commissioner 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 (4).

Recovery of penalties.

34. Any sum imposed by way of penalty under the provisions of this Act shall be recoverable in the manner provided for the recovery of arrear of tax.

Receipts to be given.

35. A receipt shall be given for any money paid recovered under this Act.

Refunds,

36. (1) If any individual, Hindu undivided family, company, local authority, firm or other association of persons, or any partner of a firm or member of an association individually satisfies the Excess Profits 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 chargeable accounting period exceeds the amount with which he is properly chargeable under this Act for that chargeable accounting period he shall be entitled to a refund of any such excess.

(2) The Commissioner or the Board of Revenue in the exercise of their appellate powers, if satisfied to the like effect, shall cause a refund to be made by the Excess Profits Tax Officer of any amount found to have been wrongly paid in excess.

(3) Where the income of one person is included under any provision of this Act in the excess Profits of any other person, such other person only shall be entitled to a refund under this section in respect of such profits.

(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.

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

37. Where under any of the provisions of this Act, a refund is found to be due to any person, the Excess Profits Tax Officer 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 of representative of deceased person or person disabled to make claim on his behalf.

38. 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 9 or section 36, 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.

Excess Profits fund

39. All amounts recovered under this Act shall be deposited in the State Treasury and a separate account thereof shall be maintained both at the Treasury

and by the Accountant-General under the name of the "Jaipur Excess Profits Fund" in this Act referred to as the "fund". Such account shall show separately the amount recovered from each person.

Control and utilisation of the fund.

40. (1) Subject to the general control of the Government, the fund shall be operated upon by the Accountant-General with the approval of the Finance Minister to Government.

(2) All amounts of the Fund over and above a maximum to be fixed by the Government shall be invested in securities of the Government of India or in War Loans floated by that Government or in such other manner as the Government may approve.

Charge upon the fund.

41 All expenses incurred in the administration of this Act shall be met out of the fund and shall be charged against each person in such proportion and in such manner as the Government may prescribe.

Repayment.

42. Any amount recovered from any person uuder the provisions of this Act, otherwise than as a fine imposed by a Magistrate on conviction thereunder, which has not been refunded under section 36 and is shown in the account kept under section 39, to be still at his credit, after making the necessary charge for expenses under section 41, shall on application be repayable to such person or his legal representative after deducting twenty per cent. of such amount, upon the expiration of twelve months after the date of the termination of the present war or of twenty-four months after the date of recovery whichever is the later date. The twenty per cent. deducted as aforesaid shall upon such repayment be credited to Government.

Time for application for repayment.

43. An application for repayment shall be made by the person entitled to such repayment within six months of the date on which any amount claimed by him becomes due to be repaid.

Lapse to Government.

44. If no application for repayment is made within the time limit fixed under section 43, or

where an application has been made but the amount due is not returned [illegible] to the laches of the applicant within one year of the date of such application,

it shall lapse to Government.

Failure to deliver returns or statements.

45. 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 15 he shall on conviction by a Magistrate be punishable with fine which may extend to five hundred rupees and with a further fine which may extend to fifty rupees for every day during which the default continues.

False statement and declaration.

46. If a person makes in any return required under section 15 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.

47. (1) A person shall not be proceeded against for an offence under section 45 or section 46 except at the instance of the Commissioner.

(2) No prosecution for an offence punishable under section 45, or section 46, or under the Jaipur 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 45 or section 46.

Disclosure of information by a public servant.

48. (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 sections 45, 46 and 47, 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 Jaipur Evidence Act, 1943, no Court shall, save as provided in this Act, be entitled to require and 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 publishable 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 Jaipur 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 this same to him for the purposes of this 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 Government is a party, which relates to any matter arising out of any proceeding under this Act.

(4) No prosecution shall be instituted under this section except with the previous sanction of the Commissioner.

Power of Board of Revenue to grant relief in special cases.

49. (1) If on an application made to it through the Excess Profits Tax Officer the Bord of Revenue is satisfied in the case of any business that special circumstance 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, the Board of Revenue may direct that the standard profits of the business shall be computed to be such greater amount as the Board of Revenue 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 Board of Revenue 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.

(2) Without prejudice to the generality of the provisions of sub-section (1) the Board of Revenue 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 December, 1939, 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 business;

(b) that owing to the nature of the business heavy expenditure by way of preliminary 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 off 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 the Jaipur State before the first day of April, 1934.

(3) If on an application made to it through the Excess Profits Tax Officer, the Board of Revenue 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 consequeuce of the present hostilities, of renewals or repairs, or

(b) the provisions of buildings, plant or machinery which will not be required for the purposes of the business after the termination of the present hostalities,

the Board of Revenue may direct that such allowance shall be made in computing the profits of the business during that chargeable accounting period as the Board of Revenue thinks just :

Provided that in making such direction the Board of Revenue may impose such conditions as it deems appropriate.

(4) An application to the Board of Revenue 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 15, or of the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section.

Power to make exemptions.

50. The Government may, by notification in the Jaipur Gazette, make an exemption, reduction in rate or other modification in respect of excess profits 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.

Appearance by authorised representative.

51. Any assessee, who is entitled or require to attend before any authority in connection with any proceeding under this Act, otherwise than when required to attend personally for examination on oath or affirmation or as an accused before a Magistrate, may attend by a person authorised by him in writing in this behalf.

Service of notices.

52. (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 Jaipur Code of Civil Procedure, 1943.

(2) Any such notice or requisition may in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or to the manager or any adult male member of the family and in the case of any other association of persons, be addressed to the principal officer thereof.

Bar of suits.

53. 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.

Computation of periods of limitation.

54. In computing the period of limitation prescribed for an appeal under this Act or for an application under section 30, the day on which the order complained of

was made and the time requisite for obtaining a copy of such order, shall be excluded.

Power to make rules.

55. (1) The Government may make rules for carrying out make rules the purposes of this Act.

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

Repeal.

56. The Jaipur Excess Profits Tax Act, (IV of 1944) is hereby repealed.

SCHEDULE I.

SEE SECTION 2 [*18*]

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 separtely computed in accordance with the principles laid down in section 7;

Provided 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 compnted 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 period unless the Excess Profits Tax Officer, having regard to any special circumstances otherwise directs.

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

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

(2) In the case of the business of a building society or of a money lending business banking business, insurance basiness 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 under section 7 or is charged under any other section or is free of or exempt from tax.

(*2-a*) In the case of a business part of which consists in banking, insurance or dealing in the 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.

(3) Notwithstanding anything contained in sub-rule (2) or (*2-a*) where the profits of a subsidiary company are under the provisions of section 11 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.

(4) 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.

4. 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 bonafide banking business or by reason 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, the amount of such loan or debenture shall not be deducted in arriving at the amount of the capital employed in the business.

5. (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 3 of this schedule applies, or the profits of a part of a business to which sub-rule (*2-a*) 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.

6. No deduction shall be made on account of liability to pay, or payment of, excess profits tax.

7. 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.

8. 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 profit 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.

9. In respect of any building erected on or after the 1st day of September, 1939, which during any chargeable accounting 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

10. 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 period (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.

Any person who is dissatisfied with a detrmination of the Exces Profits Tax Officer, under this rule may, at any time before the expiry of forty-five days from the date on which such determination is communicated to him, appeal to the Board of Revenue through the Commissioner.

11. (1) 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 other payments for services, to the actual service rendered by the person concerned :

Provided that no disallowance under this rule shall be made by the Excesr Profits Tax Officer unless he has obtained the prior authority of the Commissiones of Excess Profits tax.

(2) Any person who is dissatisfied with the decision of the Excess Profits Tax Officer under this rule may appeal in the prescribed time and manner to the Board of Revenue.

SCHEDULE II.

See Section 2 (4).

Rules for computing the average amount of Capital.

1. (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 in the case of a debt the nominal amount of the debt shall be subject to any deduction which has been allowed for the computation of profits under section 7 of the Act.

(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 excess profits tax in respect of the business shall be deducted :

Provided that any such debt for excess profits tax shall, for the purposes of this schedule, be beemed to have become due 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 purpose 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 sum shall be deducted notwithstanding that they have not become payable.

(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 3 of the First Schedule applies, or the average capital of a part of a business other that a part of a business to which sub-rule (2-A) of the said rule applies, no deduction shall be made in respect of borrowed money.

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. 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.

6. 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.

7. (1) If—

(*a*) the Board of Revenue is 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 Board of Revenue 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 accounting chargeable 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 Board of Revenue, 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 Board of Revenue under sub-section (1) of section 49 of this Act the provision of this rule shall have effect to such extent only as the Board of Revenue thinks proper:

Provided further that an application to the Board of Revenue 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 15 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 11 (7)

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

1. Where, in ihe 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 purpose 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 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 other.

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 chian 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 crpital 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 intermadiary or chain of intermadiaries.

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 multipliction of 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 of the ordinary share capital of the last owned company, either—

(*a*) directly; or

(*b*) through any intermediry or intermediaries which is not a member or are not members of that series; or

(*c*) through a chain or chains of intermediaries of which one or some or all 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.

———

GWALIOR WAR PROFITS TAX ORDINANCE SAMVAT 1002.

Whereas it is expedient to impose a tax on excess profits arising out of certain business, His Highness Maharaja, Mukhtar-ul-Mulk, Azim-ul-Iqtidar, Rafi-us-Shan Wala-Shikoh, Mohatashim-ud-Dauran, Umdat ul-Umra, Maharaja-dhiraj, Hisam-us Saltanat, Lt. Col. Sir Jiwajirao Scindia, Alijah Bahadur, Shrinath, Munsur-i-Zaman Fidwi-Hazrat-Malik-Muazzam, Rafi-ud-Darjat Inglistan, G. C. I. E., is pleased to make and promulgate the following Ordinance:—

Short title, extent and commencement

1. (1) This Ordinance may be called the "Gwalior War Profits tax Ordinance, Samvat 2001".

(2) It extends to the whole of His Highness the Maharaja of Gwalior's territories.

(3) It shall come into force on the 1st July 1944.

Definitions.

2. In this Ordinance, unless there is anything repugnant to the subject or context,—

(1) "Accounting period" in relation to any business means—

(*a*) where the accounts of the business are made up for a successive period of twelve months;

(*b*) in any other case, such period as the War Profits Tax Officer may determine;

(2) "Agricultural income" means—

(*a*) any rent of revenue derived from land which is used for agricultural purposes and is either assessed to land revenue in the Gwalior State or subject to a local rate assessed and collected by officers of the Gwalior State as such;

(*b*) any income derived from such land by:—

(i) agricultural, 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 the market, or

(iii) 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 the process of the nature described in sub-section (*ii*);

(3) "Appellate Authority" means a person appointed to be an Appellate Authority under Section **3**,

(4) "Assessee" means a person to whose business this Ordinance applies or by whom the war profits tax is payable,

(5) "Business" includes any trade, commerce or manufacture or any adventure in the nature of trade, commorce or manufacture or any profession or vacation, 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 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 or both, the holding thereof shall be deemed for the purpose of this definition to be a business carried on by such company or society:

Provided further that all business to which this Ordinance applies carried on by the same person shall be treated as one business for this purposes of this Ordinance;

(6) "Chargeable accounting period" means—

(a) any accounting period falling wholly within .the term commencing on the 1st day of July 1944 and ending on the 30th day of June 1945; and

(b) where an accounting period falls partly within and parrly without the the said term, such part of that accounting period as falls within the said term; and

(c) Government may, by notification in the Official Gazette, extend from time to time the said term to any date subsequent to the 30th day of June 1945 and the above definition shall thereupon be read as if for the date 30th June 1945, such other date was substituted;

(7) "Commissioner" means a person appointed to be a Commissioner of War Profits Tax under Section 3;

(8) "Company" means a company as defined in the Companies Act, for the time being in force in Gwalior State, or formed in pursurance of an Act of the British Parliament or of Royal Charter or Letters Patent, or of an act of the legislature of a British possession or of British India or of a law of an Indian State, and includes any foreign association, whether incorporated or not, which the Minister concerned may, by general or special order, declare to be a company for the purposes of this Ordinance;

(9) "Firm", "partner" and "partnership" have the same meanings respectively as in the Partnership Act, Gwalior State, Samvat 2001, provided that the expression 'partner' includes any person who being a minor has been admitted to the benefits of partnership;

(10) "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 tha beneficial owner of not less than 20 per cent. of the ordinary share capital of the company;

(11) "Magistrate" means a Magistrate of the First Class;

(12) "Loss" means a loss computed in the same manner as, for the purposes of this Ordinance, profits are to be computed;

(13) "Person" includes any campany or association or body of individuals whether incorporated or not and also includes a Hindu undivided family;

(14) "Prescribed" means prescribed by rules made under this Ordinance;

(15) "Principal Officer", used with reference to a company or any other public body or any association, means—

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

(b) any person connected with the company, body or association upon whom the War Profits Tax Officer has served a notice of his intention of treating him as the principal officer thereof:

(16) "Profits" means profits as determined in accordance with the provisions of this Ordinance and its First Schedule ;

(17) "Public servant" has the same meaning as in the Penal Code, Gwalior state, Samvat 1932;

(18) "Standard Profit" with reference to any chargeable accounting period means Rs. 18,000 per annum: Provided that when only a part of the profits of a business are liable to the War Profits Tax, in place of Rs. 18,000 that proportion of this amount which the profits liable bear to the total profits shall be taken and when the chargeable period is not of twelve months, that proportion of the said amount shall be taken which the said period bears to twelve months;

(19) "War Profits Tax Officer" means a person appointed to be a War Profits Tax Officer under Section 3.

War Profits Tax Authorities.

3. (1) There shall be the following classes of War Profits Tax Authorities for the purposes of this Ordinance, namely :—

(*a*) Commissioner of War Profits Tax,

(*b*) Appellate Authority for War Profits Tax,

(*c*) War Profits Tax Officer,

(2) The Commissioner of War Profits Tax, the Appellate Authority for War Tax and the War Profits Tax Officer shall be appointed by the Minister concerned by Notification in the Official Gazette, for such periods as he may determine. They shall perform their functions subject to the control of the Minister concerned and in respect of such cases or persons or classes of persons or in respect of such businesses or in respect of such areas as he may determine. Their number shall be determined by the Minister concerned from time to time.

(3) The Minister concerned may direct that any assessment case may be taken up not by the War Profits Tax Officer but by the Appellate Authority from the commencement or at any stage of the assessment proceedings and thereupon, the Appellate Authority shall perform all or the remaining functions of a War Profits Tax Officer, as the case may be, as regards that case and the Commissioner of War Profits Tax shall perform the functions of an Appellate Authority in addition to his functions as Commissioner in respect of that case.

(4) The War Profits Tax Officer and Appellate Authority shall, for the purposes of this Ordinance, be subordinate to the Commissioner of War Profits Tax and shall observe and follow his orders, instructions and directions, subject to the control of the Minister concerned, provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Authority in the exercise of his appellate functions.

Charge of Tax.

4. (1) Subject to the provisions of this Ordinance, there shall, in respect of any business to which this Ordinance applies, be charged, levied and paid on the amount by which the profits during any chargeable period exceed the standard profits, an excess profit tax (in this Ordinance referred to as the "war profits tax") which shall be equal to 60 per cent. of the aforesaid amount.

(2) Two-thirds of the war profits tax so charged, levied and paid in any year shall be refundable at the end of the war and till then will be frozen by being invested in the War Loans, and shall, subject to such conditions as Government may consider necessary, be repayable to the assessee at a date to be determined by Government such date not being later than 3 years after the termination of the present hostilities :

Provided that if the amount of the tax is cancelled, reduced or enhanced subsequently by a competent authority, the amount of the deposit shall be returned or varied accordingly, as the case may be.

Application of the Ordinance.

5. (1) Save as hereinafter provided, this Ordinance shall apply to every busi-

ness the whole or any part of the profit of which made during the chargeable acounting period—

(a) accrues and arises or is deemed to accrue or arise under the provisions of this Ordinance in the Gwalior State, or

(b) in the case of a person resident in Gwalior State, accrues or arise to him without the Gwalior State :

Provided that this Ordinance shall not apply to any business the whole of the profits of which accrue or arise in British India; and where the profits of a part of a business accrue or arise in British India, such part shall, for the purposes of this provision, be deemed to be a separate business the whole of the profits of which accrue or arise in British India and the other part of the business shall, for all the purposes of this Ordinance, be deemed to be a separate business :

Provided further that this Ordinance shall not apply to—

(a) any business of life insurance ;

(b) profit from a business carried on wholly on behalf of a religious or charitable institution and the profits of which are applied solely to the purposes of the institution and enure for the benefit of the public, and—

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

(ii) the work in connection with the business is carried on by the beneficiaries of the institution :

(c) business carried on by a local authority ;

(d) agricultural income: and

(e) business carried on by a commercial concern owned by the State or the Darbar.

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) For the purposes of this Ordinance—

(a) any individual is resident in the Gwalior State in any year if he,—

(i) is in the Gwalior State in that year for a period amounting in all to 182 days or more ; or

(ii) maintains or has maintained for him a dwelling place in the Gwalior State for a period or periods amounting in all to one hundred and eighty-two days or more in that year, and is in Gwalior State for any time in that year; or

(iii) having within the four years preceding that year been in Gwalior State for a period of or for periods amounting in all to three hundred and sixty-five days or more, is in Gwalior State for any time in that year otherwise than on an occasional or casual visit:

(b) a Hindu undivided family, firm or other association of persons is resident in Gwalior State unless the control and management of its affairs is situated wholly without the Gwalior State territories ; and

(c) a company is resident in Gwalior State in any year—

(i) if the control and management of its affairs is wholly in Gwalior State, or

(ii) if its profits arising in Gwalior State in that year exceed the profits arising without the State in that year, or

(iii) a company which has been registered under the Gwalior Companies Act.

Set off of loss.

6. When a business suffers a loss in any chargeable period, the amount of the loss shall be carried forward to the following year and set-off against the profits of the same business for that year and if the said profits are not sufficient to cover the loss wholly, the portion of the loss not so covered shall be carried forward to the following chargeable period and so on, till it is fully allowed :

Provided that the set-off shall not be allowable to any person other than the person who suffered the loss and that if any part of the said loss accrued and arose at any place outside the Gwalior State, no set-off on its account shall be permissible unless the profits accruing and arising at that place are liable to the war profits tax, and only to the extent of those profit. For the purposes of the above proviso, a change in the constitution of a firm shall be ignored and the legal heir of a deceased person shall not be treated as a person other than the deceased.

Successions and amalgamations.

7. (1) When there has been any change in the persons carrying on a business after the 1st day of July, 1944, no regard shall be had to any consideration given in respect of the transfer of the business or any of the assets thereon on the occasion of the change, in computing the profits of the business, and the deduction to be allowed in respect of depreciation of buildings, plant and machinery, and interest on borrowed money.

(2) Where, on or after the 1st day of July, 1944, two or more businesses are amalgamated, the resulting business shall be treated, for the purposes of the provisions of this Ordinance, 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 these former businesses had been made, incurred or employed in the resulting business; and

(*c*) any assets of any of those former business had become assets of the resulting business when they became assets of the former business;

and in particular, in considering, for the purposes of computing the profits of any chargeable accounting period whether any and if so, what deductions are to be made in respect of depreciation of buildings, plant and machinery, and interest on borrowed money, 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.

(3) Where, on or after the 1st day of July 1944, part of a business is transferred asa 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 Ordinance relating to the computation of chargeable 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 War Profits Tax Profits Tax Officer to be just.

(4) In all the above cases, the War Profits Tax Officer may make such alterations in the periods which would otherwise be chargeable accounting periods of the business, as he thinks proper.

Inter-connected Companies.

8. (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 the companies shall be computed, for the purposes of this Ordinance as if—

(a) the interest, annuity or 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) a company (hereinafter referred to as "the Principal Company") is resident in Gwalior State and is not a subsidiary of any other company resident in Gwalior State; and

(b) during the whole or any part of any chargeable accounting period of the principal company, any company whether or not resident or carrying on business within the Gwalior State (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.

(3) If the subsidiary company is a subsidiary of the principal company throughout the chargeable accounting period, such profits or losses arising from the business of the subsidiary company, as arise in the chargeable accounting period shall be treated, for the purposes of this Ordinance, as if they were the profits or losses arising from the business of the principal company.

(4) If the subsidiary company is a subsidiary of the principal company during part only of the chargeable accounting period, the profit or loss of the subsidiary company for that part of that period shall be treated as that of the principal company and shall not be deemed to be profit or loss of the subsidiary company.

(5) In any case to which sub-section (3) or sub-section (4) 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 War Profits Tax Officer may direct.

(6) 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 that 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.

(7) In this Ordinance, references to ownership shall be constructed 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.

(8) The principal company shall be entitled to allocate to its subsidiary company or companies their respective proportionate share of the war profits tax payable by the whole group.

(9) The war profits tax pabable by virtue of this section by the principal company in respect of the profits of any subsidiary company shall, for the purposes of section 12, be deemed to have been paid by the subsidiary and not by the principal company.

Method of accounting.

9. Profits and gains shall be computed, for the purposes of this Ordinance, in accordance with the method of accounting regularly employed by the assesse :

Provided that, if no method of accounting has been regularly employed or if the method employed is such that, in the epinion of the War Profits Tax Officer, the profits cannot be properly deduced therefrom, then the computation shall be made upon such basis and in such manner as the War Profits Tax Officer may determine.

Artificial transaction.

10. In computing profits for the purposes of this Ordinance, 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 opertion has artificially reduced or would artificially reduce the profits.

Transactions desgined to avoide or reduce liability to War Profits Tax.

11. (1) Where the War Profits Tax Officer is of opinion that the main purpose for which any transaction or transactions was or were effected was the avoidance or reduction of liability to war profits tax, he may make such adjustments as respects liability to war profits tax as he considers proper so as to conteract the avoidance or reduction of Labilty to war 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 war 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 ; and

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

Relief in respect of double War Profits Taxation.

12 (1) The Government may by notification in the Official Gazette make provision for the granting of relief in cases where both war profits tax under this Ordinance and excess profits tax under any law in force in a territory outside the Gwalior State, have been paid upon the profits of any business, if it appears to the Government that the laws of that territory provide for corresponding relief.

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

Explanation.—For the purposes of computing the amount of relief allowable under this section, that part of the war profits tax treated as a deposit under sub-section (2) of section 4 shall not be treated as War Profits Tax and shall be ignored.

Returns of Profit and Notice of assessment.

13. (1) (*a*) On or before 1st day of September 1945, every person whose profits from a business chargeable with war profits tax for the year ended 30th June 1945, or for any accounting period which ended between the 1st day of July 1944 and the 30th day of June 1945 exceeded Rs. 18,000 shall put in a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be prescribed) the total profits earned during that accounting period.

(*b*) On or before the 1st day of September of each year as long as this Ordinance remains in force, every person whose profits from a business chargeable with war profits tax for the year ending on the preceding 30th day of June or for any other accounting period which ended on any day during the said year ending on 30th June, were Rs. 18,000 or more, shall put in a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be prescribed) the total profits earned during the said year or accounting period, as the case may be :

Provided that the War Profits Tax Officer may extend the date for the delivery of the above returns.

(2) The War Profits Tax Officer may, for the purposes of this Ordinance, require any person whom he believes to be engaged in any business to which this Ordinance applies or to have been so engaged during any chargeable accounting period, or to be otherwise liable to pay the war profits tax, to furnish within such period, not being less than 60 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 as computed in accordance with the provisions of this Ordidance :

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

(3) The War Profits Tax Officer may serve on any person upon whom a notice has been served under sub-section (2) or who has to put in a return as required under sub-section (1), or whom he considers liable to the war profits tax, a notice requiring him on a date to be therein specified to produce or cause to be produced such accounts or documents as the War Profits Tax Officer may require and may from time to time serve further notices in like manner requiring production of such further accounts or documents or other evidence as he may require.

Assessments.

14. (1) The War Profits Tax Officer shall, by an order in writing after considering such evidence, if any, as he has required under section 13, assess to the best of his Judgment the profits liable to war profits tax and the amount of the tax payable on the basis of such assessment, or if there has been a loss, the amount of that loss and shall furnish a copy of such order to the person on whom the assessment has been made.

(2) The War Profits Tax payable in respect of any chargeable accounting period shall be payable by the person carrying on business during that period.

(3) Where two or more persons were carrying on the business jointly in the chargeable accounting period, the assessment may 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.

(5) (*a*) 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 Ordinance if he had not died.

(*b*) Where a person dies before he is served with a notice under sub-section (2) of section 13 or section 16 of this Ordinance, 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 13 or section 16 of this Ordinance, as the case may be, comply therewith and the War Profits Tax Officer may proceed to assess the profits of the deceased person as if such executor, administrator or other legal representative were the person by whom the war profits tax was payable.

(*c*) Where a person dies without having furnished a return which he has been required to furnish under the provisions of section 13 or section 16 of this Ordinance or having furnished a return which the War Profits Tax Officer has reason to believe to be incorrect or incomplete, the War Profits Tax Officer may make an assessment of the profits 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 sub-section (3) of section 13 of the Ordinance, have required from the deceased person.

Provisional assessment and payments of tax in advance.

15. (1) The War Profits Tax Officer, before proceeding to make an assessment (in this section referred to as the regular assessment) under section 14, may, at any time after the expiry of the dates specified in sub-section 13 or the period specified in the notice issued under sub section (2) of section 13 as that within which the return therein referred to is to be furnished, as the case may be, and whether the return has or has not been furnished, proceed to make in a summary manner a provisional assessment of the amount of the profits of the chargeable accounting period liable to the war profits tax and the tax payable thereon.

(2) Before making such provisional assessment, the War Profits Tax Officer shall give notice in the prescribed form to the person on whom the assessment is to be made, of his intention to do so and shall with the notice forward a statement of the amount of the proposed assessment and the said person shall be entitled to delivery to the War Profits Tax Officer at any time within fourteen days of receipt of the said notice a statement of his objection, if any, to the amount of the proposed assessment.

(3) On expiry of one month from the date of service of the notice referred to in sub-section (2) or earlier if the assessee agrees to the proposed assessment, the War Profits Tax Officer may after taking into account the objections, if any, made under sub section (2), make a provisional assessment and shall furnish a copy of the order of assessment to the assessee :

Provided that assent to the amount of the assessment or failure to make objection to it shall in no way prejudice the assessee in relation to the regular assessment.

(4) In making any such provisional assessment, the War Profits Tax Officer shall make allowances for any loss of profits for previous chargeable accounting periods, which is under the provisions of section 6 to be set off against the profits of the chargeable accounting period in respect of which the assessment is being made:

Provided that where such loss of profits has not been determined under sub-section (1) of section 14, the War Profits Tax Officer shall estimate the amounting thereof to the best of his judgment.

(5) There shall be no right of appeal against a provisional assessment made under this section and it shall, until a regular assessment is madein due course under section 14, determine the amount of the War Profits tax due from the assessee.

(6) If, when a regular assessment is made in due course under section 14, the amount of war profits tax payable thereunder is found to exceed that determined as payable by the provisional assessment it shall be reduced by the amount determined as payable by the provisional assessment and the balance only shall be payable by the assessee if the provisional assessment has already been paid.

(7) If, when a regular assessment is made in due course under section 14, the amount of war profits tax payable thereunder is found to be less than that determined as payable by the provisional assessment any excess of tax paid as a result of the provisional assessment shall be refunded to the assessee together with interest at 5 % per annum, calculated from the date of payment of suon excess tax to the date of the of the order of refund, both day inclusive.

(8) (*a*) From such date as the Government may notify in this behalf, while submitting the return of total profits under section 13, the assessee shall compute the amount of the war profits tax payable on the basis of such return and shall pay the said assessment to Government within fifteen days of the submission of the return. If he fails to do so, or fails to put in a return, the War Profits Tax Officer shall proceed to make in a summary manner a provisional assessment as laid down

in sub-section (1) and shall pass an order fixing the amount of tax payable on the basis thereof and shall recover the amount as laid down in sections 25, 35 and 36, together with interest at six per cent. from the date the amount was due for payment to Government to the date it is paid.

(*b*) the provisions of sub-section (1) to (7) shall cease to have effect from the above date, except to the extent indicated in clause (*a*).

Profits escaping assessment.

16. If in consequence of definite information which has come into his possession, the War Profits Tax Officer discovers that profits of any chargeable accounting period chargeable to war profits tax have escaped assessment, or have been under-assessed, 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 sub-section (2) of section 13 and may proceed to assess or re-assess the amount of such profits liable to war profits tax and the provisions of this Ordinance shall, so far as may be, apply as if the notice were a notice issued under that section.

Penalties.

17. If the War Profits Tax Officer, the Appellate Authority or the Commissioner, in the course of any proceedings under this Ordinance, is satisfied that any person has, without reasonable cause, failed to furnish the return required under sub-section (1) or (2) of section 13, or to produce or cause to be produced the accounts or documents or other evidence required by the War Profits Tax Officer under sub-section (3) of that section or has concealed particulars of the profits made in the business or has deliberately furnished inaccurate particulars of such profits, he may direct that such person shall pay by way of penalty in addition to the amount of any war profits tax payable a sum not exceeding—

(*a*) where the person has failed to furnish the return required under sub-section (1) or (2) of section 13, two-thirds of the amount of the war profits tax payable, and

(*b*) in any other case, two-third of the amount of the war profits tax which would have been avoided if the return made had been accepted as correct.

Appeals.

18. (1) Any person objecting to the amount of the war profits tax for which he is liable as assessed by the War Profits Tax Officer or denying his liability to be assessed under this Ordinance, or objecting to any penalty imposed by the War Profits Tax Officer or to the amount of any loss or profits as assessed by the War Profits Tax Officer or to the amount allowed by the War Profits Tax Officer by way of relief under any provision of this Ordinance or to any refusal by the War Profits Tax Officer to grant relief or to any other order or decision made by the said Officer except an order under section 15, may appeal to the Appellate Authority.

(2) An appeal under sub-section (1) map be presented within 45 days of the receipt of—

(*a*) the notice of demand relating to the assessment or penalty objected to; or

(*b*) the copy of the order determining loss in the case of an appeal against the assessment of a loss of profits; or

(*c*) the intimation of the order or decision objected to, but the Appellate Authority may admit an appeal after the expiration of that period if he 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 the prescribed manner.

(4) The Appellate Authority shall hear and determine the appeal and subject to the provisions of this Ordinance, shall pass such orders as he thinks fit and such orders may include an order enhancing the assessments or a penalty or imposing a penalty :

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

Provided further that the War Profits Tax Officer shall, at the hearing of any appeal, have the right to be heard.

Appeals to Commissioner against Appellate Authority's orders imposing penalties or enhancing assessments or penalties.

19. (1) Any person objecting to an order passed by the Appellate Authority imposing on him a penalty under section 18 or enhancing his assessment or enhanceing a penalty under section 18 may appeal to the Commissioner within 30 days of the date on which he was served with notice of such order.

(2) 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.

Power of revision.

20. (1) The Commissioner may of his own motion or on application by a person to whose business this Ordinance applies, call for the record of any proceedings under this Ordinance which has been taken by the War Profits Tax Officer or the Appellate Authority and on receipt of the record may make such inquiry, or cause such enquiry to be made, and, subject to the provision of this Ordinance may pass such orders thereon (including an Order enhancing an assessment or penalty) as he thinks fit :

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

Rectification of mistakes.

21. The Commissioner may, at any time within four years from the date of any order passed, whether by himself or by the Appellate Authority or the War Profits Tax Officer under this Ordinance, 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 and mistake apparent from the record which has been brought to his notice by a person to whose business this Ordinance 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.

Failure to deliver returns or statements.

22. If any person fails, without reasonable cause or excuse, to furnish in due time any return or statement required to be furnished by this Ordinance, or to produce, or cause to be produced any accounts or documents required to be produced under section 13, or to grant inspection or allow copies to be taken in accordance with the provision of section 29, he shall on conviction by a Magistrate be punishable with fine which may extend to three hundred rupees, and with a further fine which may extend to thirty rupees for every day during which the default continues.

False statement and declaration.

23. If a person makes, in any return required under section 13 or any other section under this Ordinance, 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.

Institution of proceedings and composition of offences.

24. (1) A person shall not be proceeded against for an offence under section 22 or section 23, except at the instance of the Commissioner.

(2) No prosecution for an offence punishable under section 22 or section 23 or under the Gwalior Penal Code shall be instituted in respect of the same facts as those in respect of which a penalty has been imposed under this Ordinance.

(3) The Commissioner may, either before or after the institution of proceedings, compound any offence punishable under section 22 or section 23.

Notice of demand or of loss of profits.

25. Where in consequence of any order passed under or in pursuance of this Ordinance, any tax or penalty is due, or a loss of profits arises, the War Profits Tax Officer shall serve on the person liable to pay such tax or penalty, a notice of demand specifying the sum so payable or on the person in respect of whose business the loss of profits arises, a notice determining the loss of profits, in the prescribed form, as the case may be.

Tax to be calculated to nearest rupee.

26. In the determination of the amount of tax or of a refund payable under this Ordinance, fractions of an anna and fractions of a rupee less than eight annas shall be disregarded, and fractions of a rupee equal to or exceeding eight annas shall be treated as one rupee.

Power to take evidence on oath, etc.

27. (1) The War Profits Tax Officer, the Appellate Authority and Commissioner shall, for the purposes of this Ordinance, have the same powers as are vested in a Court under the Code of Civil Procedure, Gwalior State, Samvat 1966, 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.

(2) Any proceedings before the War Profits Tax Officer, the Appellate Authority, or Commissioner under this Ordinance shall be deemed to be "judicial proceedings" within the meaning of Sections 181 and 184 and for the purposes of Section 218 of the Penal Code, Gwalior State, Samvat 1982.

Power to call for information.

28. The War Profits Tax Officer or the Appellate Authority may, for the purposes of this Ordinance—

(*a*) require any firm, or Hindu undivided family to furnish him with a return of the members of the firm or of the manager or adult male members of the family, as the case may be, and their addresses ;

(*b*) require any person whom he has reason to belive 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.

Power to inspect the register of members of a company and account books.

29. The War Profits Tax Officer or the Appellate Authority or any person authorised in writing in this behalf by the War Profits Tax Officer or the Appellate Authority, may inspect and, if necessary take copies, to be taken of—

(*a*) any register of the members, debenture holders or mortgages of any company or of any entry in such register ; and

(*b*) any account books kept by any person.

Agents of persons residing out of Gwalior State.

30. In the case of any agent of any person residing out of the Gwalior State being entitled to receive on behalf of such person any profits chargeable under this Ordinance, the tax shall be levied upon and recoverable from such agent in like manner and to the same amount as it would be leviable upon and recoverable from such person if resident in the Gwalior State and in direct receipt of such profits, and all the provisions of the said Ordinance shall apply accordingly to such agent :

Provided that the tax may be levied upon and recovered from such non-resident person direct.

Court of Wards, etc.

31. (1) In the case of profits chargeable under this Ordinance which the Courts of Wards, the Official Trustee or any receiver or managar (including any person whatever his designation who in fact manages business 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 valid *wakf* deed), are entitled to receive on behalf of any person, the tax shall be levied upon and recoverable from such Court of Wards, Official Trustee, receiver or manager or trustee or 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 profits are receivable and all the provisions of this Ordinance shall apply to them accordingly.

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

Non-residents.

32. (1) All income, profits or gains accruing or arising whether directly or indirectly, through Ior from any business connection in the Gwalior state or through or from any money lent at interest and brought into the Gwalior State in cash or in kind shall be deemed to be profits accruing or arising within the Gwalior State and where the person entitled to the income, profits or gains is not resident in the Gwalior State shall be chargeable to War Profits Tax either in his name or in the name of his agent and in the latter case such agent shall be deemed to be, for all the purposes of this Ordinance, the assessee in respect of such war profits tax :

Provided that where the person entitled to the income, profits or gains is not resident in the Gwalior State, 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 the Gwalior State :

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 persons, 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 War Profits Tax Officer a certificate stating the amount to be so retained pending 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 settlement shall not exceed the amount specified in such certificate except to the extend 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 in the Gwalior State carries on business with a person resident in the Gwalior State and it appears to the War Profits 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 that business, the profits derived therefrom or which may reasonably be deemed to have been derived therefrom, shall be charge-

able to war profits tax in the name of the resident person who shall be deemed to be for all the purposes of the Ordinance, the person by whom such war profits tax is payable.

(3) In the case of a business (of a person not resident in the Gwalior State) of which all the operations are not carried out in the Gwalior State the profits and gains of the business deemed under this section to accure or arise in the Gwalior State shall be only such profits and gains as are reasonably attributable to that part of the operations carried out in the Gwalior State.

Agents to include persons treated at such.

33. Any person employed by or on behalf of a person residing out of the Gwalior State 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 War Profits Tax Officer has caused a notice to be served of his intention of treating him as the agent of non-resident person shall, for all the purposes of this Ordinance, be deemed to be such agent:

Provided that where transactions are carried on in the ordinary course of business through a broker in the Gwalior State 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 carr ing 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 nonresident person, unless he has had an opportunity of being heard by the War Profits Tax Officer as to his liability.

Liability in a case of a discontinued firm or association.

34. Where any business carried on by a firm or association of persons has been discontinued, every person who was at the time of such discontinuance a partner of such firm or a member of such association shall, in respect of the profits of the firm or association, be jointly and severally liable to assessment under Sections 14, 15 and 16 of this Ordinance and for the amount of tax payable and all the provisions of this Ordinance shall, so far as may be, apply to any such assessment,

Tax when payable.

35 Any amount specified as payable in a notice of demand under section 25 or an order under any other section of this Ordinance 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 person failing so to pay shall be deemed to be in default, provided that when a person to whose business this Ordinance applies has presented an appeal under section 18 of this Ordinance, the War Profits Tax Officer may in his discretion treat the person as not being in default as long as such appeal is undisposed of.

Mode and time of recovery.

36. (1) When a person by whom war profits tax is payable is in default in making a payment of the war profits tax and interest under section 15 (8), if any, the War Profits Tax Officer may in his discretion direct that, in addition to the amount of the arrears, a sum not exceeding one-half of that amount shall be recovered from the person by way of penalty.

(2) For the purposes of sub-section (1), the War Profits Tax Officer may direct the recovery of any sum less than one half of 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 one-half of the amount of the arrears payable.

(3) The War Profits Tax Officer may forward to the Suba a certificate under his signature specifying the amount of arrears due from a person to whose business

this Ordinance applies, and the Suba on receipt of such certificate, shall proceed to recover from such person the amount specified therein as if it were in arrear of land revenue.

(4) In any area with respect to which the Commissioner has directed that any arrears may be recovered by any process enforceable for the recovery of an arrear of land revenue, the War Profits Tax Officer or any Government servant authorised by him may proceed to recover the amount due by such process.

Recovery of penalties.

37. Any sum imposed by way of penalty under the provisions of sub-section (1) of section 36, or under any of the other provisons of this Ordinance and any interest due under sub-section (8) of section 15 shall be recoverable in the manner provided in sections 14, 35 and 36 for the recovery of arrears of tax.

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

38. Where under any of the provisions of this Ordinance, a refund is found to be due to any person, the War Profits Tax Officer, the Appellate Authority or the 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 or penalty if any, remaining payable by the person to whom the refund is due.

Power of representative of deceased person disobled to make claim on his behalf.

39. 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 Ordinance, or to make a claim under section 12 of this Ordinance, is unable to receive such refund or to make such claim, his executor, administrator, or other representative, or the trustee or receiver, as the case may be shall be entitled to receive such refund or to such claim for the benefit of such person or his estate,

Limitation of claims for refunds.

40. No claim to any refund of tax under this Ordinance 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 accounting period which constitutes or includes the the chargeable accounting period in respect of which the claim to such refun ds arises.

Disclosure of information by public servant.

41. (1) All particulars contained in any statement made, return furnished or account or documents produced under the provisions of this Ordinance, or in any evidence given, or affidavit or deposition made, in the course of any proceedings under this Ordinance other than proceedings under section 22 or 23 of 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, Gwalior State, Samvat 2,000, 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 statements, return, accounts, documents, evidence, affidavit, depositions, or record, he shall be punishable with imprisonment which may extend to six months, and shall also be liable to fine.

(3) Nothing in the section shall apply to the disclosure—

(a) of any such particulars for the purposes of a prosecution under the Gwalior 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 and demand ; or

(*d*) of any such particulars to a civil court in any suit to which Government is a party, which relates to any matter arising out of any proceedings under this Ordinance ; or

(*e*) of any such particulars, relevant to any inquiry into the conduct of an Official of the war Profits Tax Department, to any person appointed to hold such inpuiry ; or

(*f*) of any such particulars occasioned by the lawful exercise by a public servant of his powers under the Gwalior Stamp Act to impound an insufficiently stamped document ; or

(*g*) of facts, to an authorised Officer of British India or of any Indian State or of any part of His Majesty's Dominions which has entered into an agreement with the Gwalior State for the granting of double taxation relief, as may be necessary for the purpose of enabling such relief or a refund under section 12 of this Ordinance to be given; or

(*h*) of such facts, to any authority exercising powers under the Customs Act or any Act, imposing a duty of excise, as may be necessary for enabling it duly to exercise such powers.

(4) No prosecution shall be instituted under this section except with the previous sanction of Government.

Appearance by authorised representatives.

42. Any person to whose business this Ordinance applies who is entitled or required to attend before any war profits tax authority in connection with any proceeding under this Ordinance, otherwise than when required under section 28 to attend personally for examination on oath or affirmation, may attend by a person authorised by him in writing in this behalf.

Receipt to be given.

43 A receipt shall be given for any money paid or recovered under this Ordinance.

Service of Notices.

44. (1) A notice or requisition under this Ordinance 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.

(2) Any such notice or requision may, in the case of a firm or a Hindu undivided family, be addressed to any member of the firm or the manager or any adult male member of the family and in the case of any other association of persons, be addressed to the principal officer thereof.

Indemnity.

45. 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.

Statement of case by Commissioner to High Court.

46. (1) If, in the course of any assessment under this Ordinance or any proceeding in connection therewith, a question of law arises, the Commissioner, may, either on his own motion or on reference from any war profits tax authority subordinate to him, draw up a statement of the case and refer it with his own opinion thereon to the High Court.

(2) Within sixty days of the date upon which he is served with notice of an order under section 18 or section or of an order under section 20 of this Ordinance enhancing an assessment or otherwise prejudicial to him, the person to whose business this Ordinance applies and in respect of whom the order was passed may, by application acompanied by a fee of one hundred rupees, 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 20 on a qnestion of law arising out of that order itself, and not on a question of law arising out of a previous order under section 18 revised by the order under section 20 :

Provided further that, if, in exercise of his power of revision under section 20, 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 person 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 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 person, may, within two months from the date on which he is served with notice of the refusal, apply to the High Court and the High Court may, if it is not satisfied of the correctness of the Commissioner's decision, require the Commissioner to state the case and to refer it, and on receipt of any such requisition, the Commissioner ahall state the case and refer it accordingly.

(4) If, on any application being made under sub-section (2), the Commissoner rejects it on the ground that it is time-barred, the person 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 suffioient to enable it to determine the question raised thereby, the Court may refer the case back to the Commissioner 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 judgement thereon, containing the grounds on which such decision is founded, and shall send a copy to the Commissioner of such judgement under the seal of the Court and the signature of the Registrar, High Court, and the Commissioner shall dispose of the case accordingly, or if the case arose on a reference from any war profits tax authority subordinate to him ahall forward a copy of such judgement 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 the person to whose business this Ordinance applies, the costs shall be in the discretion of Court.

(8) Notwithstanding that a reference has been made under this section to the High Court, the war profits 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 rsult of such reference, the amount over-paid shall be refunded with such interest as the Comissioner may allow unless the High Court, on intimation given by the Commissioner within thirty days of the receipt of the result of such reference that he intends to appeal to the Judicial Committee, makes an order authorising the Commissioner to postpone payment of such refund until the disposal of the appeal to the Judicial Committee.

Hearing by High Court and Appeal to Judicial Committee.

47. (1) When any case has been referred to the High Court under section 46, it shall be heard by a Bench of not less than two Judges and in respect of such case, the provisions of the Gwalior High Court Manual, shall, so far as may be, apply.

(2) An appeal shall lie to the Judicial Committee from any judgment of the High Court delivered on a reference made under sub-section (2) of section 46, provided that the High Court certifies that there is a point of law involved in the case,

(3) The procedure laid down to hear Civil appeals from the High Court shall, so far as may be, apply in case of appeals under this section :

Provided that nothing in this sub-section shall be deemed to affect the provisions of sub-section (6) or sub-section (8) of section 46 :

Provided further that the High Court may, on petition made for the execution of the order of the Judicial Committee in respect of any costs awarded thereby, transmit the order for execution to any Court subordinate to the High Court.

(4) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of the Judicial Committee in the maner provided in sub-section (6) and (8) of section 46 in the case of a judgment of the High Court.

(5) Nothing in this section shall be deemed to interfere with any rules made by the Judicial Committee and for the time being in force for the presentation of appeals to it or their conduct before it.

Bar of suits in Civil Courts.

48. 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 in any Court shall lie against any Officer of the Government for anything in good faith done or intended to be done under this Ordinance,

Computation of periods of limitation.

49. In computing the period of limitation prescribed for an appeal under this Ordinance or for an application under section 46, the day on which the order complained of was made, and the time spent for obtaining a copy of such order, shall be excluded.

Power to make rules.

50. (1) Subject to the provisions of this Ordinance, Government may make rules for carrying out the purposes of this Ordinance.

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

Power to make exemptions etc.

51. (1) Government may, by notification in the Official Gazette or otherwise make an exemption, reductions in rate or other modification in respect of the war profits tax or application of any of the provisions of this Ordinance, in favour of any, class of persons or any kind of business or in regard to the whole or any part of the profits of any business or any class of businesses.

SCHEDULE I.

See Section 2 (14).

Rules for the computation of profits for the purposes of War Profits Tax.

1. (1) The profits of a business during any accounting period shall be computed after making the following allowances, namely—

(i) any rent paid for the premises in which such business is carried on, provided that when any substantial part of the premises is used as a dwelling house by the person to whose business this Ordinance applies, the allowance under this clause shall be such sum as the War Profits Tax Officer may determine having regard to the proportional annual value of the part so used ;

(ii) in respect of repairs, where the person to whose business this Ordinance applies 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 person 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, the amount of interest paid :

Provided that no allowance shall be made under this clause:—

(*a*) for any interest which is payable without the Gwalior State, except interest in respect of which the war profits tax is payable by the recipient ; and

(*b*) in the case of a firm, for any interest paid to a partner of the firm;

(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, 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 person to whose business this Ordinance applies, a sum equivalent to such percentage on the written down value thereof as may in any case or class of cases be prescribed :

Provided that the prescribed particulars have been duly furnished :

Provided further that where an assessee's business coosists of letting on hire machinery, plant and/or furniture of a business belonging to him, he shall be entitled to the above allowance and where a building or buildings are also let along with the said machinery, plant or furniture and the letting of the said building or buildings is inseparable from the letting of the said machinery, plant or furniture, he shall also be entitled to a depreciation allowance in respect of the building or buildings ;

(vii) in respect of animals which have been used for the purposes of the business, otherwise than as stock-in-trade and have died or become permanently useless for such purposes, the difference between the original cost to the person to whose business this Ordinance applies of the animals and the amount, if any, realised in respect of the carcasses or animals ;

(viii) any sums paid on account of land revenue, local rates or municipal taxes is respect of such part of the premises as is used for the purposes of the business ;

(ix) 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 for the year in question, and

(*c*) the general practice in ismilar businesses ;

(x) when the accounts of the person to whose business this Ordinance applies, in respect of any part of his business, are not kept on the cash basis, such sum in respect of bad and doubtful debts, due to the person in respect of that part of his business, and in the case of a person carrying on a banking or money-lending business to which this Ordinance applies, such sum in respect of loans made in the ordinary course of such business as the War Profits 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 ;

(xi) any expenditure (not being in the nature of capital expenditure or personal expenses of the person to whose business this Ordinance applies) laid out or expended wholly and exclusively for the purposes of such business.

(2) Where any building, machinery, plant or furniture in respect of which any allowance is due under clause (iv), clause (v) or clause (vi) of sub-rule (1) is not wholly used for the purposes of the business, 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.

(3) Nothing in clause (viii) or clause (xi) of sub-rule (1) 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 or assessed at a proportion of or otherwise on the basis of any such profits or gains ; and nothing in clause (xi) of sub-rule (1) shall be deemed to authorise,—

(*a*) 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

(*b*) any allowance in respect of a payment to a provident or other fund established for the benefit of employees unless the Fund is constituted as an irrevocable trust and no part of the employee's contributions is recoverable by the employer.

(4) In sub-rule (1) "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 purpose of the business, and "written down value" means, in relation to the business of a person to which this Ordinance applies—

(*a*) in the case of assets acquired in any accounting period falling wholly within or falling partly within and partly without a chargeable accounting period, the actual cost to such person ;

(*b*) in the case of assets acquired in any other accounting period, the actual cost to such person less depreciation at the rates applicable to such assets for each accounting period, calculated for the year of acquisition on the actual cost and for the following year on the actual cost diminished by the depreciation for the preceding year and so on

2. (1) Where a 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 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 profits during the chargeable accounting period; and any such apportionment shall be made in proportion to the number of days in the respective periods, unless the War Profits Tax Officer, having regard to any special circumstances, otherwise directs.

3. (1) Income received from investments shall be included in the profits of a business liable to [the war profits tax, unless it is proved to the satisfaction of the Profits Tax Officer that the investments have no connection whatever with the business.

(2) In the case of a business which consists wholly or mainly in the dealing in or holding of investments, income received from investments [shall be deemed to be profits of that business, and in the case of a business, a specific part only of which consists in dealing in investments, the income received from investments held for the purposes of that part of the business shall be deemed to be profits of that part of the business.

(3) 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.

4. In computing the profits of a business carried on by a company, no deduction shall be made in respect of—

(1) remuneration paid to directors if during any part of the accounting period concerned, they had controlling interest in the company :

Provided that this sub-rule shall not apply—

(*a*) to 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 per cent. of the ordinary share capital of the company, or

(*b*) to the remuneration of any managing agent where such remuneration is included in the profits of the managing agents' business for the purposes of the war profits tax;

(2) remuneration paid to a managing agent in excess of that payable under the agreement which was in force on the first day of July 1941, without regard to any amendment made therein subsequently with retrospective effect.

5. Where the performance of a contract extends beyond the accounting period, there shall (unless the War 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 the previous accounting periods exceeds the profits as finally ascertained from the complete performance of the contract, an adjustment shall be made to reduce the amount so attributed to the various chargeable accounting periods to the amount of the profits as finally ascertained.

6. Where in respect of a any accounting period a deduction would, apart from the provisions of this rule, be allowable in computing profits, and, in the opinion of the War 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 War Profits Tax Officers to be resonably 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 any chargeable accounting period) as the War Profits Tax Officer thinks proper.

7. (1) 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 War 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.

(2) Government may make rules for determining the extent to which deduction shall be allowed in respect of bonuses or commission paid.

8. (1) Notwithstanding anything to the contrary in these rules, the profits of any business of insurance other than Life Insurance, snall be determined in accordance with sub-rules (2), (3), (4), (5) and (6) or this rule.

(2) In the case of any class of insurance business of a company incorporated in the Gwalior State other than Life Insurance business, the profits shall be determined in accordance with the provisions of the forgoing rules of this Schedule, subject to the allowance specified in the rules next following.

(3) If in the ordinary accounts of any insurance business (other than Life Assurance, Annuity or Capital Redemption business) carried on by an Insurance Company incorporated in the Gwalior State, any amounts actually charged against the receipts for the sole purpose of forming a reserve to meet outstanding liabilities or unexpired risks in respect of policies which have been issued (including) risks of exceptional losses) and is not used for any other purpose, such amount may be treated as expenditure incurred solely for the purpose of earning the profits of the business.

(4) Any amount either written off in the accounts for through the Actuarial Valuation Balance-Sheet to meet depreciation of, or loss on, securities or other assets or which is carried to a reserve fund formed for that sole purpose and not used for any other purpose, may be treated as expenditure incurred solely for the purpose of earning the profits of the business. Any sums taken credit for in the accounts or actuarial valuation balance-sheet on account of appreciation of or gains on the securities or other assets shall be deemed to be income chargeable to tax, subject always to deduction of such portion thereof as has been otherwise taken into account in calculating the income, profits or gains.

(5) The income, profits, and gains of companies carrying on Dividing Society or Assessment business, shall be taken at 15 per cent. of the premium income in the year and, in the case of non-resident companies at 15 per cent. of the premium incom of the year.

(6) The total income, profits or gains of non-resident Insurance companies (other than Life Insurance) in the absence of more reliable dates may be deemed to be a proportion of the total income, profits or gains of the companies, corresponding to the porportion which their premium income bears to their total income.

9. Where the profits of a subsidiary company are under the provisions of section 8 to be included in the profits of the principal company for the purposes of assessment dividends from the subsidiary company out of such profits shall not also be included in the profits of the principal company.

10. (1) In the case of income which is partially agricultural income and partially business income, in determining that part which is chargeable to war profits tax, the market value of any agricultural produce which has been raised by the assessee or received by him as rent-in-kind and which has been utilised as raw material in such business or the sale receipts of which are included in the accounts of the business shall be deducted, and no further deduction shall be made in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent-in-kind.

(2) For the purposes of sub-rule (1) "market value" shall be deemed to be,—

(*a*) where agricultural produce is originally sold in the market in its raw state, or after application to it of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render it fit to be taken to market, the value calculated according to the average price at which it has been so sold during the year previous to that in which the assessment in made;

(*b*) where agricultural produce is not ordinarily sold in the market in its raw state, the aggregate of—

(1) the expenses of cultivation;

(2) the land revenue or rent paid for the area in which it was grown; and

(3) such amount as the War Profits Tax Officer finds, having regard to al circumstances in each case, to repsent a reasonable rate of profit on the sale of the produce in question as agricultural produce,

MYSORE EXCESS PROFITS TAX 'EMERGENCY' ACT, 1945.

ACT No. XV OF 1945.

(Received the assent of His Highness the Maharaja on the 5th day of May 1945).

An act to impose a tax on excess profits arising out of certain businesses.

Preamble.

Whereas the Government of His Higness the Maharaja is satisfied that circumstances exist whinh render it necessary to take immediate action to impose a tax on excess profits arising out of certain business under the present conditions :

Now therefore in exercise of the powers conferred by sub-section (1) of section 31 of the Government of Mysore Act, 1940 (XVIII of 1940);

It is hereby enacted as follows :

Short title, Extent and duration.

1. (1) This Act may be called the Mysore Excess Profits Tax (Emergency) Act, 1945.

(2) It extends to the whole of Mysore.

(3) It shall remain in force for a period of six months.

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 the Mysore Income-tax Act, 1923 :

(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 ho'ding 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 shall be treated as one business for the purposes of this Act ;

(4) "chargeable accounting period" means—

(*a*) any accounting period, beginning on or after the 1st day of July 1944, and

(*b*) so much of any accounting period beginning before that date as falls on or after that date ;

(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 Mysore Companies Act, 1938 or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession or of a law of an Indian State, and includes any foreign association carrying on business in Mysore whether incorporated or not, and whether its principal place of business is situate in Mysore 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 lon added to the amount of tho 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 then twenty per cent. of the ordinary share capital of the company ;

(9) "Excess Profits Tax Officer" means a person appointed to be an Excess Profits Tax Officer under section 3 ;

(10) "loss" means a loss computed in the same manner as, for the purposes of this Act, profits are to be computed ;

(11) "person" includes a Hindu undivided family ;

(12) "prescribed" means prescribed by rules made under this Act ;

(13) "profits" means profits as determined in accordance with the First Schedule ;

(14) "standard profits" means standard profits as computed in accordance with the provisions of section 6;

(15) "statutory percentage" means—

(*a*) in relation to a business carried on by a body corporate eight per cent. per annum ;

(*b*) in relation to a business carried on by a person other than a body corporate, ten per cent. per annum :

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

Provided further that where the business was commenced on or after the 1st day of July 1939, the foregoing percentages shall be increased from eight, ten and six per cent., to ten, twelve and eight per cent., respectively.

Excess Profits Tax Authorities.

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.

(2) The Commissioner of Excess Profits Tax and Excess Profits Tax Officers shall be persons appointed by the Government by notification in the official Gazette. The Excess Profits Tax Officers shall perform therein functions in respect of such persons or classes of persons or of such businesses and in respect of such areas as the Government may direct.

Charge of tax.

4. (1) 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) except item (ix) thereof of section 4 of the Mysore Income-tax Act, 1923, exempt from income-tax, and all profits from any business of life insurance shall be totally exempt frpm excess profits tax under this Act.

(2) One-third of the excess profits tax so charged, levied and paid for the period the Act is in force subject to modifications or adjustments, if any, necessitated by any proceedings taken or relief given under the provisions of this Act, shall be repaid to the party concerned, or in the case of his death to his legal representative, at a date not later than two years after the termination of the present hostilities, together with simple interest not exceeding 2 per cent. per annum, subject to such conditions as the Government may prescribe.

Application of the act.

5. 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 of sub-section (1) or sub-section (2) without the proviso at the end of that sub-section of section 4 of the Mysore Income-tax Act, 1923.

Standard profits.

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-section (3) be an amount bearing to the profits of the business during the standard period is available the same proportion as the chargeable accounting period bears to the standard period :

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 1st day of July 1936, 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 Mysore Income-tax Act, 1923. for the purpose of the income-tax assessment for the year ending on the 30th day of June, 1937, or the previous year as so determined for the year ending on the 30th day of June 1938 ; or

(*b*) the "previous year" as so determined for the year ending on the 30th day of June 1937, and that for the year ending on the 30th day of June 1939 ; or

(*c*) the "previous year" as so determined for the year ending on the 30th day of June 1938, and that for the year ending on the 30th day of June 1939 : or

(*d*) the "previous year" as so determined for the year ending on the 30th day of June 1939 and that for the year ending on the 30th day of June 1940 ;

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

(3) 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.

Relief on occurrance of deficiency of profits.

7. Where a deficiency of profits occurs in any chargeable accounting period in any bnsiness, the profits of the business chargeable with excess profits tax shall be deemed to be reduced and relief shall be granted in accordance with the following provisions :—

(*a*) the amount or the aggregate amount of the profits so chargeable for the previous chargeable for the previous chargeable accounting period or 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 amount or the aggregate amount of the profits so chargeable for the previous chargeable accounting period or 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 amalgamations.

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 1st day of July, 1944, and consisted in the death or retirement of a partner, or the taking in of a partner, the persons carrying on the bussiness 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 occuring on or after the 1st day of July, 1944, 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 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 1st day of July, 1944, two are 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 purpose 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 1st day of July, 1944, part of a business is transferred as a going concern by the person thertoefore carrying it on to another person, the part transferred and the part not transferred shall 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 amalgamation 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 to be the Government on appeal in the prescribed time and manner, 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 July 1936, and that business, or the main part of that business, was transferred after the said and before the 1st day of July 1944, 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 1st day of July, 1944, 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 that 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 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 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 :

Provided that if the Excess Profits Tax Officer makes any such modifications and the person carrying on the business is dissatisfied with the modifications so made, or if the person carrying on the business is dissatisfied with the refusal of the Excess Profits Tax Officer to make any such modifications, he may, at any time before the expiry of 45 days from the date on which the order of the Excess Profits Tax Officer is communicated to him, appeal to the Government through the Excess Profits Tax Officer.

Artifical transactions.

9. (1) In comyuting profits for the purposes of this Act no deduction shall be made in respact 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 artificilly reduce the profits.

(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 liabie, a penalty not exceeding the tax evadsd or sought to be evaded.

Transactions designed to avoid reduce liability to excess profits tax.

10. (1) Where the Excess Profits Tax Officer is of opinion that the main purpose for which any transaction or transactions was or where 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 tha 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.

11. (1) The Government may by notification in the official Gazette make provision for the granting of relief in eases where both excess profits tax under this Act and excess profits tax under any law in force in a country out side Mysore, have been paid upon the profits of any business if it appears to the Government that the laws of those countries provide for corresponding relief.

(2) If any person, who has paid excess profits tax under this Act, for any chargeable accounting period in respect of profits arising outside Mysore in a country the law of which do not provide for any relief in respe t of excess profits tax charged in Mysore 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 Mysore of a sum equal to one-half thereof or to one-half of the excess profits tax payable in the said country whichever in the less.

Explanation—For the purposes of computing the amount of relief allowable under this section such part of the excess profits tax repayable under sub-section (2) of section 4, shall not be treated as excess profits tax and shall be ignored,

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

12. (1) The amount of the excess profits tax payable in respect of a business for any chargeable accounting period diminished by,

(1) any amount repayable under sub-section (2) of section 4; and

(2) any amount allowable by way of relief under the provisions of section 11, 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.

(2) There shall also be so deducted the amount of any excess profits tax payable under any law in force in a country outside Mysore 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 countary where excess profits tax has also been charged in Mysore :

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 Mysore, 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 profits of the business accruing in the previous year (as determined)for that business for the purposes of the Mysore Income-tax Act, 1923) in which the deficiency of profits occurs.

Issue of notices for assessment.

13. (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 tkan 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 particular 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 :

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 Mysore Income-tax Act, 1923, for the purpose of the income-tax assessment for the year ending on the 30th day of June 1937.

Assessments.

14. (1) The Excess Profits Tax Officer shall, by an order in writing after considering such evidence, if any, as he has required under Section 13, 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 o such order to the person on whom the assessment has been made.

(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 the 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.

Power to make provisional assessments.

15. (1) The Excess Profits Tax Officer, before proceeding to make an assessment (in this section referred to as the regular assessment) under section 14 may, at any time after the expiry of the period specified in the notice issued under sub-section (1) of section 13 as that within which the return has not been furnished, proceed to make in summary manner a provisional assessment of the amount by which the profits of the chargeable accounting period exceed the standard profits, and the amount of excess profits tax payable thereon.

(2) Before making such provisional assessment the Excess Profits Tax Officer shall give notice in the prescribed form to the person on whom assessment is to be made of his intention to do so, and shall with the notice forward a statement of the amount of the proposed assessment, and the said person shall be entitled to deliver to the Excess Profits Tax Officer at any time within forteen days of receipt of the said notice a statement of his objections, if any, to the amount of the proposed assessment.

(3) On expiry of one month from the date of service of the notice referred to in sub-section (2), or earlier if the assessee agrees to the proposed assessment, the Excess Profits Tax Officer, may after taking into account the objections, if any, made under sub-section (2) make a provisional assessment, and shall furnish a copy of the order of assessment to the assessee :

Provided that assent to the amount of the assessment, or failure to make objection to it, shall in no way prejudice the aesessee in relation to the regular assessment.

(4) In making any such provisional assessment the Excess Profits Tax Officer shall make allowances for any deficiencies of profits for previous chargeable accounting periods which are under the provisions of section 7 to be set off against the excess profits of the chargeable accounting period in respect of which the assessment is being made :

Provided that where such deficiancies of profits have not been determined under sub-section (1) of section 14, the Excess Profits Tax Officer shall estimate the amount thereof to the best of his judgment.

(5) There shall be no right of appeal against a provisional assessment made under this section, and it shall, until a regular assessment is made in due course under section 14, determine the amount of excess profits tax from the assessee.

(6) If, when a regular assessment is made in due course under section 14 the amount of excess profits tax payable thereunder is found to exceed that determined as payable by the provisional assessment, it shall be reduced by the amount determined as payable by the provisional assessment.

(7) If, when a regular assessment is made in due course under section 14, the amount of the excess profits tax payable thereunder is found to be less than that determined as payable by the provisional assessment, any excess of tax paid as a result of the provisional assessment shall be refunded to the assessee together with interest at five per cent. per annum calculated from the date of payment of such excess tax to the date of the order of refund, both days inclusive.

Profits escaping 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 under-assessed, or have been the subject of excessive relief, he may at any time within three 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 13, 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 13, 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 13, 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.

Appeals.

18. (1) Any person aggrieved by a decision made in pursuance of section 8 or section 10, 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 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 1 of the First Schedule except in respect of adjustments made under the provisions of that schedule :

Provided further that no appeal shall be under this section against any appointments made by the Excess Profits Tax Officer under the proviso to sub-section (5) of section 8, against any refusal to make modifications or against any modifications made by the Excess Profits Tax Officer under sub-section (8) of section 8, or against any decision of the Excess Profits Tax Officer under rule 10 of the First 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 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 receipt of intimation of the order granting or refusing to grant the relief, but the Commissioner may admit an appeal after the expiration of that period if he is satisfied that the applicant 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 partly :

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.

Power to call for and examine the records of proceedings of Excess Profits Tax Authorities

19. 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 proceeding of such authority. In 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 no order prejudicial to any person to whose business this Act applies shall be passed without hearing him, or giving a reasonable opportunity of being heard.

Rectification of mistakes.

20. The Commissioner may, at any time within three years from the date of any order passed whether by himself or by any Excess Profits Tax Officer under this Act, rectify and mistakes 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.

Application of provisions of Act V of 1923.

21. The provisions of sections 10, 13, 29, 36 to 44 (inclusive), 45 to 48 (inclusive), 50, 54, 61 to 63 (inclusive) and 65 to 67 (inclusive) of the Mysore Income-tax Act, 1923, shall apply with such modification, 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 :

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

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

22. (1) Notwithstanding anything contained in the Mysore Income-tax Act, 1923, all information contained in any statement of 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.

(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 of this Act may be used for the purposes of the Mysore Income-tax Act, 1923.

Failure to deliver returns or statements.

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 13 he shall, on conviction by a Magistrate, be punishable with fine which may extend to five hundred rupees, and with a further fine which may extend fo 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 13 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 punsihable 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 Indian Penal Code as in force in Mysore 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 nnder section 23 or section 24.

Power of Government to grant relief in special cases.

26. (1) If on an application made to them through the Excess Profits Tax Officer the Government are satisfied in the case of any business that special circumstances exists 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, the Government may direct that the standard profits of the business shall be computed to be such greater amount as the Government think 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 are 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.

(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 July, 1938, 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 or preliminary expenses or expenses in connection with experimental of 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 off wholly or partly in the books of the person chargeable to excess profits tax ;

(*c*) that the business is of a pioneer natuse, that is to say, is concerned with an industrial process or a form of manufacture or production not undertaken in Mysore before the 1st day of July , 1932, 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 July, 1937.

(3) If on an application made to them through the Excess Profits Tax Officer the Government are 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 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.

the Government may direct that such allowances shall be made in computing the profits of the business during the 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 13 or of the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section.

Power to make rules.

27. (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 the Mysore Income-tax Act. 1923, 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 Mysore ;

(*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 under section 59 of the Mysore Income-tax Act, 1923.

SCHEDULE I.

See Section 2 (13)

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 principles on which the profits of a business are computed for the purposes of income-tax under section 10 of the Mysore Income-tax Act, 1923 :

Provided that where the profits during any standard period have already been determined for the purpose of an assessment under the Mysore Income-tax Act, 1923, 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 account ing periods wholly or partly included within [the standard period or chargeable accounting period shall be 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 fraction of months in the respective periods unless the Excess Profits Tax Officer, having regard to any special circumstances, otherwise directs.

2. (1) The principle of adding the allowance for depreciation for any 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 lass other than a loss sustained in a business to which this Act applies.

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

(2) In the case of the business of a building society, or of a money lending 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 under section 10 of the Mysore Income-tax Act, 1923, or is charged under any other section of that Act, or has been subjected to reduction 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) 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 under section 9 of the Mysore Income-tax Act, 1923 or under any other section of that Act.

(5) Where the person carrying on a business is the beneficial owner of 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 interst 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 the interest thereon.

4. 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.

5. (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 3 of this 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 Government under sub-section 1 of section 26 of this Act that the standard profits shall be computed as if the profits during 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 2 of the second Schedule "borrowed money" means borrowed money which, apart from the provision of the said rule 3, would have been deductible in computing capital.

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

7. 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 subject to excess profits tax in the hands of the managing agent.

8. Where the performance of a contract extends 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 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 amount so attributed to the various chargeable accounting periods to the amount of the profits as finally ascertained.

9. In repsect of any building erected on or after the commentement of 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 orgical cost of the building as reduced by the depreciation allowance so far given shall be allowed as a deduction in arriving at the profits of that chargeable accounting period.

10. 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 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.

Any person who is dissatisfied with a determination of the Excese Profits Officer under this rule may, at any time before the expiry of thirty days from the date on which such determination is communicated to him, appeal to the Commissioner.

11. 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 directors' fees or other payments for service, to the actual services rendered be the person concerned.

SCHEDULE II.

[*See Section 2 (2)*]

Rule for Computing the Average Amount of Capital.

1. (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 and to such other deductions 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 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 under section 45 of the Mysore Income-tax Act, 1923;

(*b*) in the case of excess profits tax, on the 1st 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 purpose 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.

(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 1st 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 3 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. (1) 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 or any trading stock or stock of raw materials 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 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.

(2) The Government may make rules defining for the purposes of this rule the principles to be followed in leaving out of account trading stock of raw materials.

5. For the purposes 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.

6. Where 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.

7. (1) If—

(*a*) the Government are satisfied, as respect 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 these 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 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 13 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.

TRAVANCORE EXCESS PROFITS TAX ACT, 1120.

ACT I OF 1120.

An Act to impose a tax on Excess Profits arising out of certain businesses.

Passed by His Highness the Maharaja of Travancore under date the 28th Chingam 1120 corresponding to the 12th September 1944.

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

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Whereas it is expedient to impose a tax on excess profits arising out of certain businesses under the present conditions :

It is hereby enacted as follows :—

Short title, extent and commencement.

1. (1) This Act may be called the Travancore Excess Profits Tax Act, 1120.

(2) It extends to the whole of Travancore.

(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 the Travancore Income Tax Act, 1096;

(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 of the making of contracts on behalf of other persons or the giving to other persons in 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 shall be treated as one business for the purposes of this Act:

(4) "chargeable accounting period" means—

(*a*) any accounting period beginning on or after the 1st day of September 1942, and

(*b*) so much of any accounting period beginning before that date as falls on or after that date.

(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 Travancore Companies Act IX of 1114, or in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent or of an Act of the Legislature of a British possession, or of a law of an Indian State, and includes any foreign association whether incorporated or not which Our 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 share holders 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 ;

(*d*) any distribution by a company on the reduction of its capital to the extent to which the company possesses accumulated profits 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) ' income ' includes anything included in 'dividend' as defined in clause 9 ;

(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) 'person' includes a Hindu undivided family and an undivided Marumakkathayam Tharawad ;

(15) 'prescribed' means prescribed by rules made under this Act ;

(16) 'profits' means profits as determined in accordance with first Schedule ;

(17) 'standard profits' means standard profits as computed in accordance with the provisions of Section 6 ;

(18) "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 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 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 statutosy 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 percentage shall be increased from eight, ten and six per cent. to ten, twelve and eight per cent. respectively ;

(19) 'ordinary share capital' has the meaning assigned to that expression in sub-section (9) of Section (9) ;

(20) "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 for each financial year since acquisition the amount of depreciation applicable to the assets at the rates in force for each such year since the first day of Chingom 1101 and at the rates in force on the 1st day of Chinkom 1101 for each such year prior to that date.

All expressions used or embodied by reference in this Act which are not defined shall have the same meaning as is attributed to them by the Travancore Income Tax Act, 1096.

Excess profits tax authorities.

3. (1) There shall be the following classes of excess profits tax authorities for the purposes of this Act, namely :—

(*a*) Chief Revenue Authority.

(*b*) Commissioner of Excess Profits Tax,

(*c*) Excess Profits Tax Officers.

(2) The Chief Revenue Authority, the Commissioner of Excess Profits Tax and Excess Profits Tax Officers shall be the persons who are exercising the functions of Chief Revenue Authority, Commissioner and Collectors respectively under the Travancore Income Tax Act, 1096.

(3) The Chief Revenue Authority shall, subject to the provisions of sub-section (2) appoint such persons as Commissioner of Excess Profits Tax and Excess Profits Tax Officers as it thinks fit and such persons shall perform their functions in respect of such case or such classes of cases as the Chief Revenue Authority may assign to them :

Provided that such directions shall be made entirely at the discretion of the Chief Revenue Authority, and, in particular, it shall be competent for chief Revenue Authority to assign a case or class of cases to an officer who is not exercising in respect of that case or class of cases corresponding functions in relation to the charge of income tax under the Travancore Income Tax Act. 1096.

(4) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Chief Revenue Authority :

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

Charge of Tax.

4. Subject to the provisions of this Act, there shall, in respect of any busines 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 as to excess profits tax') which will be equal to 60 per cent. of that excess:

Provided that any profits which are, under the provisions of sub-section (2) of section 3 of the Travancore Income Tax Act, 1096, 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. 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 of sub-section (1) of section 3 or of sub-section (1) and (2) of section 32 of the Tranvancore Income tax Act, 1096.

Standard profits.

6. (1) For the purposes of this Act, the standard profits of a business in relation to any chargeable accounting period shall, subject to theprovisions 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:

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 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 carring on the business, be—

(*a*) the 'previous year' as determined under section 2 of the Travancore Income Tax Act, 1096 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 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 1113 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 subsection (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 beinning 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 period;

(*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.

Relief on occurrence of deficiency of profits.

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 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 chareable 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 amalgamations.

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 writting 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 occourring 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 givin 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 bnsiness 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 occassion 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 orignal business, and the said 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 loss 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 the business was transferred after the said day and before the commercement 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, 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 provsions 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 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 roalty 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 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 Travancore and is not a subsidiary of any other company resident in Travancore; 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 Travancore (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 Chief Revenue Authority may direct.

(7) For the purposes of this section, a company shall be deemed to be 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 though 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 repect of the profits of any subsidiary company shall, for the purposes of section 13 be deemed to have been paid by the subsidary company and not by the principal company.

Artificial transactions.

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.

(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 transections.

(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 notifica tion in the Travancore 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 Travancore :

Provided that where under Section 19 of the Finance (No. 2) Act of 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.

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

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.

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

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 Travancore, 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 the Travancore Income Tax Act, 1096) 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 then 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 of the amount of deficiency available for relief under Section 7 :

Provided that the Excess Profits Tax Officer may, in his discretion, extend the 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 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 Travancore Income Tax Act, 1096, for the purposes of the income tax assessment for the year ending on the last day of Karkadagom 1112.

Assessments.

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.

(2) Excess profits tax payable on 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, 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.

Power to make provisional assessments.

15A. (1) The Excess Profits Tax Officer before proceeding to make an assessment (in this Section referred to as the regular assessment) under Section 15, may, at any time after the expiry of the period specified in the notice issued under sub-section (1) of Section 14 as that within which the return therein referred to is to be furnished, and whether the return has or has not been furnished, proceed to make in summary manner a provisional assessment of the amount by which the profits of the chargeable accounting period exceed the standard profits, and the amount of excess profits tax payable thereon.

(2) Before making such provisional assessment the Excess Profits Tax Officer shall give notice in the prescribed form to the person on whom assessment is to be made of his intention to do so, and shall with the notice forward a statement of the amount of the proposed assessment, and the said person shall be entitled to deliver to the Excess Profits Tax Officer at any time within fourteen days of receipt of the said notice a statement of his objections, if any, to the amount of the proposed assessment.

(3) On expiry of one month from the date of service of the notice referred to in sub-section (2), or earlier if the assessee agrees to the proposed assessment, the Excess Profits Tax Officer, may, after taking into account the objections, if any, made under sub-section (2) make a provisional assessment, and shall furnish a copy of the order of assessment to the assessee :

Provided that assent to the amount of the assessment, or failure to make objection to it, shall in no way prejudice the assessee in relation to the regular assessment.

(4) In making an such provisional assesement the Excess Profits Tax Officer shall make allowances for any deficiencies of profits for previous chargeable accounting periods which are under the provisions of Section 7 to be set off against the excess profits of the chargeable accounting period in respect of which the assessment is being made :

Provided that where such deficiencies of profits have not been determined under sub-section (1) of Section 15, the Excess Profits Tax Officer shall estimate the amount thereof to the best of his judgment.

(5) There shall be no right of appeal against a provisional assessment made made under this section, and it shall until a regular assessment is made in due course under Section 15, determin[e] the amount of excess profits tax due from the assessee.

(6) If, when a regular assessment is made in due course under section 15 the amount of excess profits tax payable thereunder is found to exceed that determined as payable by the provisional assessment, it shall be reduced by the amount determined as payable by the provisional assessment.

(7) If, when a regular assessment is made in due course under section 15, the amount of excess profits tax payable thereunder is found to be less than that determined as payable by the provisional assessment, any excess of tax paid as a result of the provisional assessment shall be refunded to the assessee together with interest at 5 per cent per annum calculated from the date of payment of such excess tax to the date of the order of refund both days inclusive.

Profits escaping 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 under-assessed, 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, or the Chief Revenue Authority, 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.

Appeals.

18 (1) Any person aggrieved by a decision made in 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 first 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 dem and 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 sub-section (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 of 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 yeriod.

(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 the 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 Chief Revenue Authority may of his own motion call for the record of any proceeding under this Act which has been taken by any Officer subordinate to it, and on receipt of the record may make such enquiry, or cause such enquiry to be made, and may pass such orders thereon (including an order enhancing an assessment) as it thinks fit :

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

Rectifiction of mistakes.

20. The Chief Revenue Authority may, at any time within four years from the date of any order passed whether by itself or by the Commissioner 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 apprent 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.

Applications of provisions of Act VIII of 1096.

21. The provisions of Sections 8, 10-A, 19-BB, 20, 27 to 33-D, (inclusive) 34, 35, 36-A, 37, 41, 44, 45, 47, 50 to 52 (inclusive) of the Travancore Income Tax Act, 1096 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 :

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

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

22. (1) Notwithstanding anything contained in the Travancore Income Tax Act, 1096, 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.

(2) All information contained in any statement or return made or furnished under the provision of this Act or obtained or collected for the purposes of this Act may be used for the purposes of the Travancore Income Tax Act, 1096.

Failure to deliver returns or statement.

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 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 Travancore 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 sections 23 or 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 is 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 Chingom 1114 is so small in relation to the volume of the activities of the business that to compute that 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 experimen-

tal or development work has been incurred in accounting periods closely preceding the chargeable accounting period and that during the chargeaple accounting period such expenditure would normally fall to be written off wholly or partly in the books of the person chargeable to excess profits tax ;

(*c*) That the business is declared by the Government to be of such a character as to entitled fit to the benefits of the provisions of Sub-section (1) of this section either because it is, in the opinion of the Government, of a pioneer nature or is essential for the agricultural or industrial expansion of the State.

(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 ineqitable, 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*) 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 war time 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 tnat 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.

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

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

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 after in any way an order passed by the Chief Revenue Authority under section 50 of the Travancore Income Tax Act, 1096 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 the Travancore Income Tax Act, 1096 which are made applicaple to excess profits tax by Section 2I; or of any rules made under any such provision ;

(*c*) provide in regard to companies whose business consists wholly or mainly in dealing in or holding of investments for the granting or exemption or relief from liability to excess profits tax of profits derived for investments in other companies the profits of which have been subjected to excess profits tax in Travancore:

(*d*) provide for any matter which by, or under, this Act is to be prescirbed.

SCHEDULE 1

[*See Section 2 (16)*]

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 under Section 8 of the Tranvancore Income Tax Act, 1096 :

Provided that where the profits during any standard period have already been determined for the purpose of an assessment under the Tranvancore Income Tax Act, 1096, 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 period 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. 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 Tranvancore Income Tax Act, 1096 computed for the chargeable accounting 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.

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.

(2) In the case of the besiness of a building society, or of a money ending 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 under Section 8 of the Travancore Income Tax Act, 1096, or is charged under any other section of that Act, or has been subject 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 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 under section 7 of the Travancore Income Tax Act, 1096, or under any other section of that Act.

(6) Where the person carrying on a business in 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, fail 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 bonafide 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 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 part 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 interet 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 per cent. 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 agents 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 past 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, of 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 Officers 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 amount so attributed to the various chargeable accounting periods to the amount of the profits as finally ascertained.

11. In respect of any building erected 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 requirments 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. (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 consist of assests 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 the person carrying on the business, the nominal amount of those debts, subject to the said deductions :

(*c*) so far as it consist 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 assest 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 under section 34 of the Travancore Income Tax Act, 1096.

(*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,

(2) Where any debt for the excess profits tax assessable in repect 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 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 :

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

4. (1) 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 or any trading stock or stock of raw materials 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 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.

(2) Our Government may make rules defining for the purposes of this rule the principles to be followed in having out of account trading stock and stock of raw materials.

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 profirs 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 thorought 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, 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 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 Account 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, 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 the whole, of the ordinary share capital of the company to which it is directly ; 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 or are not members of that series ; or

(*c*) though 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.

EXCESS PROFITS TAX RULES.

In exercise of the powers conferred by Section 23 of the Travancore Excess Profits Tax Act, 1120, the Government of His Highness the Maharaja are pleased to make the following rules, namely :—

Short title.

1. These Rules may be called the Excess Profits Tax Rules, 1120.

Definitions.

2. In these Rules—

(i) "the Act" means the Travancore Excess Profits Tax Act, 1120;

(ii) "applied section" means a section of the Travancore Income Tax Act 1096, as applied by Section 21 of the Act and Rule 3 ;

(iii) "Form" means a form as set out in the Schedule to these Rules.

Adaptation of the Travancore Income Tax Act, 1096.

3. The provisions of Sections 8, 10 A, 19BB, 20, 27 to 33 D (inclusive), 34, 35, 36 A, 37, 41, 44, 45, 47, 50 to 52 (inclusive) of the Travancore Income Tax Act, 1096, shall apply with the following modifications, namely:—

General modification.

(i) All references to "this Act" except those in the first proviso to Sub-section (1) of Section 32, Section 33B and in sub-section (1) of Section 41 where they last occur, shall be construed as references to "the Act,"

(ii) All references to "income tax", Collector" and Commissioner" shall be construed as references to "Excess Profits Tax," "Excess Profits Tax Officer" and Commissioner of Excess Profits Tax" respectively.

(iii) In Section 8.—

Modification of Section 8.

(*a*) Clauses (*b*) (*c*) of the proviso to clause (vi) of sub-section (2) shall be omitted;

(*b*) for clause (vii) the following clause shall be substituted namely:—

"(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 scrape value :

Provided that such amount is 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;"

(*c*) After clause (viii), the following, clause shall be inserted, namely:—

"(viii *a*) 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 for the year in question;

(*c*) the general pratice in similar businesses;"

Modifications of Section 10A.

(iv) In Section 10A the words and figures "9 and 10" shall be omitted.

Modification of Section 19BB.

(v) In Section 19BB.—

(*a*) in sub-section (2)—

(1) for the words and figures "sub section (2) of Section 17 or Section 25," wherever they occur, the words and figures "sub-section (1) of Section 14 or Section 16 of the Travancore Excess Profits Tax Act, 1120" shall be substituted;

(2) for the words 'total income' the words ' Excess Profits" shall be substituted;

(*b*) in sub-section (3)

(1) for the words and figures "sub-section (2) of Section 17" the words and figures "sub section (1) of Section 14 of of the Travancore Excess Profits Tax Act, 1120" shall be substituted;

(2) for the words and figures "Section 17 and 18" the words and figures "sub section (2) of Section 14 of the Travancore Excess Profits Tax Act, 1120" shall be substituted; and

(3) for the words 'total income' the words 'Excess Profits' shall be substituted.

Modification of Section 20.

(vi) For Section 20, the following shall be substituted, namely :—

"20. When any tax or penalty is due in consequence of any order passed under or in pursuance of the Act the Excess Profits 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."

Modification of Section 27.

(vii) In Section 27 for the words "this chapter" the words, figures and brackets "Sections 8 to 20 (inclusive) of the Travancore Excess Profits Tax Act, 1120" shall be substituted.

Modification of Section 30.

(viii) For Section 30 the following Section shall be substituted, namely :—

"30. In the case of any agent of any person residing out of Travancore, being entitled to revise on behalf of such person any profits chargeable under the Travancore Excess Profits Tax Act, 1120, the tax shall be levied upon and recoverable from such agent in like manner and to the same amount as it would be leviable upon and recoverable from such person if resident in Travancore and in direct receipt of such profits, and all the provisions of the said Act shall apply accordingly :

Provided that the tax may be levied upon and recovered from such non-resident person direct."

Modification of Section 31.

(1) Section 31 shall be renumbered sub-section (1) of that Section, and in ~~Modification~~, so renumbered.—

(*a*) for the words "is received by" the words "the Court of Wards, the Administrators General, the Official Trustees or" shall be substituted.;

(*b*) after the words "appointed by or under any order of a Court" the words "or any trustee or trustees appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise, are entitled to receive on behalf of any person," shall be inserted ;

(*c*) after the words "the tax shall be levied upon and recoverable from" the words "such Court of Wards, Administrator General, Official Trustee," shall be inserted ;

(*d*) after the words "receiver or manager" where they occur for the second time the words "or trustee or trustees" shall be inserted ; and

(*e*) for the words "in like manner and to the same amount as it would be leviable upon and recoverable from any person on whose behalf such income, profits or gains are received, and all the provisions of this Act shall apply accordingly" the words "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 the Act shall apply accordingly" shall be substituted.

(2) To sub-section (1) of Section 31, as so renumbered, the following sub-section shall be added, namely :—

"(2) Notwithstanding 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."

Modification of Section 32.

(x) In Section 32.—

(1) for the words "In the case of any person residing out of Travancore; all profits or gains accruing or arising to such porson," the words "All income, profits or gains accruing or arising," shall be substituted :

(2) after the word "Travancore" where it occurs for the second time, the words "or through or from any property in Travancore or through or from any asset or source of income in Travancore, or through or from any money lent at interest and brought into Travancore in cash or in kind," shall be inserted ;

(3) for the words "shall be chargeable to income tax in accordance with the provisions of Chapter I of this Act. Such income-tax shall be assessed in the name of the agent of any such person, and" the words "where the person entitled to the income, profits or gains is not resident in Travancore, shall be chargeable to excess profits tax either in his name or in the name of his agent and in the latter case" shall be substituted ;

(4) in the proviso, for the words "Provided that" the following shall be substituted, namely :—

"Provided that where the person entitled to the income, profits or gains is not in Travancore;"

(5) after the proviso the following provisos shall be added namely:—

"Provided furtner that any such agent, or any person who appreheds 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 Excess Profits 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 retainig that amount :

Provided further that the amount recoverable from such agent or perso[illegible] time of final settlement shall not exceed the amount spscified in such cer[illegible] 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."

Modification of Section 33.

(xi) In Section 33, for the words "or having any business connection with such person", the words "or having any business connection with such person, or through whom such person is in receipt of any income, profits or gains" shall be substituted,

Modification of Section 33 A.

(xii) For Section 33A, the following Section shall be substituted, namely:—

"33 A, Where any business carried on by a firm or association of persons has been discontinued, every person who was at the time of such discontinuance a partner of such firm or a member of such association shall, in respect of the profits of the firm or association, be jointly and severally liable to assessment under Section 15 of the Travancore Excess Profits Tax Act, 1120, and for the amount of tax payable, and all the provisions of the said Act shall, so far as may be, apply to any such assessment."

(xiii) In Section 33 B.

Modification of Section 33 B.

(xiii) In Section 33 B.

(*a*) for the words "this chapter" the words and figures "the applied Sections *33* C and *33* D" shall be substituted;

(*b*) for the words "Income Tax Officer" wherever occurring the words "Excess Profits Tax Officer" shall be substituted.

Modification of Section 33 C.

(xiv) In Section 33 C—

(*a*) in sub-section (1) for the words "this chapter" the words and figures "the applied Section 33 B" shall be substituted.

(*b*) in sub-section (*3*), the words "at the rate for the time being applicable to the total income of a company" shall be omitted;

(*c*) for the words "Income Tax Officer" wherever occurring the words "Excess Profits Tax Officer" shall be substituted.

Modification of Section 33 D.

(xv) in Section 33 D—

(*a*) for the words "this chapter" the words and figures "the applied Section 33 B and 33 C" shall be substituted;

(*b*) for the wards "of his total income in the previous year" the words "of his actual excess profits in the chargeable accounting period" shall be substituted;

(*c*) the word "other" shall be omitted.

Modification of Section 34.

(xvi) In Section 34—

(*a*) for the words "The amount of income tax" the words "Any amount" shall be substituted;

(*b*) for the words and figures "Section 20 or an order under Section 22, Section 22-A, Section 23 or Section 24" the words and figures "applied Section 20 or an order under sub-section (4) of Section 18 or Section 19 of the Travancore Excess Profits Tax Act, 1120" shall be substituted;

(*c*) for the words and figures "under Section 21" the words and figures "under Section 18 of the Travancore Excess Profits Tax Act, 1120" shall be substituted;

Modification of Section 35.

(xvii) In Section 35—

(*a*) in sub-section (1)—

(1) for the words "a payment of income tax, the Collector," the words and figures "a payment of excess profits tax of of any penalty imposed under the provisions of Section 10 or Section 17 of the Travancore Excess Profits Tax Act, 1120, the Excess Profits Tax Officer" shall be substituted;

(2) for the words "double the amount of tax" the words "double the amount of the excess profits tax or penalty, as the case may be," shall be substituted.

(*b*) sub-section (2) shall be omitted;

(*c*) In sub-section 5—

(1) for the words "the year" the words "the financial year" shall be substituted;

(2) the following proviso shall be added, namely:

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

Modification of Section 37.

(xviii) For Section 37, the following Section shall be substituted, namely:—

"37. No claim to any refund of tax under the Travancore Excess Profits Tax Act, 1120, 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 accounting period which constitutes or includes the chargeable accounting period in respect of which the claim to such refund arises."

Modification of Section 41.

(xix) In Section 41, sub-section (1), for the words "this chapter" the words and figures "Sections 23, 24 and 25 of the Travancore Excess Profits Tax Act, 1120" shall be substituted.

Modification of Section 50.

(xx) In Section 50—

(*a*) In sub-section (1) for the words "other than a proceeding under chapter VI," the words and figures "other than a proceeding under Sections 23, 24, 25 and applied Section 41 of the Travancore Excess Profits Tax Act, 1120" shall be substituted ;

(*b*) In sub-section (2)—

(1) for the words and figures "Section 22, or Section 22 A, or of an order under Section 23" the words and figures "Section 18 (4) or of an order under Section 19 of the Travancore Excess Profits Tax Act, 1120" shall be substituted ;

(2) In the provisos to sub-section (2) substitute the words and figures "Section 19 of the Travancore Excess Profits Tax Act, 1120," for the words and figures "Section 23" wherever they occur and the words and figures "Section 18 of the Travancore Excess Profits Tax Act, 1120" for the words and figures "Section 22 or Section 22A."

Adaptation of Travancore Income Tax Rules.

4. The provisions of Rules 8, 24, 25, 26, 27, 31, 32, 37, 38, 39, 42, 43, 44, 45, 46 and 57 of the Travancore Income Tax Rules, 1112, shall apply with the following modifications, namely :—

(i) All references therein to "income tax" and "Collector" shall be construed as references to "Excess Profits Tax" and "Excess Profits Tax Officer" respectively :

(ii) In rule 42 after the word 'Travancore,' where it occurs for the second time, the words "or through or from any property in Travancore or through or from any assets or sources of income in Travancore or through or from any money lent at interest and brought into Travancore in cash or in kind" shall be inserted.

Form of Notice of Demand under applied Section 20.

5. The notice of demand or of determination of a defiiciency of profits under applied Section 20 shall be in From E. P.—2.

Form of Notice in default of payment.

6. The notice in default of payment of excess profits tax shall be in Form E. P.—3.

Forms for notice under Section 15 A.

7. The notice under sub-section (2) of Section 15 A of the Act shall be in Form E P.—1A and the order of assessment and notice of demand in respect of a provisional assessment made under sub-section (3) of the said Section shall be in Form E. P.—2 A,

Form of Return under Section 14 (1).

8. The return required under sub-section (1) of Section 14 of the Act shall be be in Form E. P.—1.

Form of application under Section 6 (3) and procedure on receipt thereof.

9. An application to the Commissioner under sub-section (3) of Section 6 of the Act, for a direction that the profits of the standard period shall be computed as if they were such greater amount as he thinks just, shall be made in form E. P.—4.

Form of application under Section 26 (1).

10. An application to Government under sub-section (1) of Section 26 of the Act for a direcion that the profits of the standard period shall be computed as if they were such greater amount as Government think just, shall be made in Form E. P.—5.

Form of application under Section 26 (3).

11. An application to Government under sub-section (3) of Section 26 of the Act for a direction that such allowance shall be made in computing the profits of a business during a chargeable accounting period as Government think just, shall be made in Form E. P —6; but an application in respect of the earlier exhaustion of mineral sources shall be made in form E. P.—6A.

Form of application under Rule 8 of Schedule II.

12. An application to Government under Rule 8 of Schedule II to the Act for a direction that, in computing the average, capital of a business during the standard period, certain assets shall be excluded for such period as they were inherently unproductive, shall be made in Form E. P.—7.

Form of appeal under Section 8 (5).

13. An appeal under the proviso to sub-section (5) of Section 8 of the Act shall be made in Form E. P, 8.

Form of appeal under Section 18.

14. An appeal under Section 18 of the Act shall be—

(*a*) in Form E. P.—9, if against a decision of the Excess Profits Tax Officer under sub-section (8) of Section 8;

(*b*) in Form E. P.—10, if against a decision of the Excess Profits Tax Officer under sub-sections (2), (3), (4), (6) or (7) of Section 8 of the Act.

(*c*) in Form E. P.—11, if against the amount of assessment made or a deficiency of profits under sub-section (1) of Section 15 of the Act;

(*d*) in Form E. P.—12, if against an order imposing a penalty under Section 10 or Section 17 of the Act or under sub-section (1) of applied Section 35;

(*e*) in Form E. P.—13, if in respect of an alleged insufficient relief or refund or a refusal to grant relief or refund, by the Excess Profits Tax Officer :

(*f*) in Form E. P. 14, if against a determination by the Excess Profits Tax Officer under Rule 12 of Schedule I to the Act;

(*g*) in Form E. P.—15, if against an order of disallowance by the Excess Profits Tax Officer under Rule 13 of Schedule I to the Act.

Form of application for refund under Section 7.

15. An application for refund of excess profits tax under Section 7 of the Act, in respect of a deficiency of profits shall be in Form E. P.—16.

Form of application for relief under Section 12.

16. An application under Section 12 of the Act for relief in respect of double taxation shall be in Form E. P.—17.

Time for notice under Section 8 (2).

17. The Notice under sub-section (2) of Section 8 of the Act shall be given by the persons concerned within the period specified in the notice issued under sub-section (1) of Section 14 of the Act or within the extended period allowed by the Excess Profits Tax Officer under the proviso thereto.

Time and manner of appeal under Section 8 (5).

18. An appeal against a decision under sub-section (5) of of Section 8 of the Act shall be presented in the office of the Commissioner of Excess Profits Tax by the person carrying on the business prior to the transfer or by the person to whom part of the business was transferred, as the case may be, within 45 days of the date of receipt of the notice of the Excess Profits Tax Officer's apportionments.

Procedure on application under Section 6 (3).

19. The Excess Profits Tax Officer shall within fifteen days of the receipt of an application under sub-section (3) of Section 6 of the Act forward it to the Commissioner for decision.

Procedure for hearing and determining appeals.

20. (1) Notice of the date appointed for the hearing of any appeal or application under the Act shall be given to the applicant or the appellant, as the case may be, and in the case of an appeal against an order under sub-section (5) of Section 8 of the Act, to the opposite party also

Explanation.—The expression "opposite party" means the person by whom, or the person to whom, part of the business was transferred, according as the appeal is preferred by the transferee or the transferee or the transferor,

(2) The Excess Profits Tax Officer shall have the right to be present at the hearing of any appeal or application under the Act.

(3) Where on the day fixed, or any other day to which the hearing of the appeal may be adjourned, the appellant does not appear when the appeal is called on for hearing the appeal unless adjourned to some other day, shall nevertheless be determined or the merits.

Investments-holding Companies.

21. In the case of a business consisting wholly or mainly in the holding of investments—

(*a*) the income from investments to be included in the profits of the business under the provisions of Rule 4 of Schedule I to the Act shall be computed exclusive—

(i) of fall income receive by way of dividends or distribution of profits from a company carrying on a business to the whole of which the section of the Act imposing excess profits tax applies: and

(ii) of the due proportion of all income received by way of dividends or distribution of profits from a company carrying on a business to part only of which the section of the Act imposing excess profits tax applies;

(*b*) the investments to be excluded from the capital employed in the business under Rule 4 of Schedule II to this Act shall include—

(i) all shares in a company carrying on a business to the whole of which the section of the Act imposing excess profits tax applies; and

(ii) the due proportion of all shares in a company carrying on a business to part only of which the section of the Act imposing excess profits tax applies;

Provided that, if, relation to any chargeable accounting period, a company to which this Rule applies gives notice to the Excess Profits Tax Officer, within the time allowed under Section 14 of the Act, for the furnishing of a return in respect of such chargeable accounting period, that the provisions of this Rule shall not be applied to it, its profits and average capital in relation to such chargeable accounting period shall be computed as if this Rule had not been made.

Refunds.

22. If any person to whose business this Act applies satisfies the Excess Profits Tax Officer, or the Commissioner of Excess Profits Tax that the amount of tax paid by him for any chargeable accounting period exceeds the amount with which he is properly chargeable under the said Act for that period, he shall be entitled to to a refund of any such excess.

COOCH BEHAR EXCESS PROFITS TAX ACT

ACT No. III OF 1943.

(*An Act to impose a tax on excess profits arising out of certain businesses*)

Preamble.

Whereas it is expedient to impose a tax on excess profits arising out of certain businesses in the the conditions prevailing during the present hostilities ;

It is hereby enacted as follows :—

Short title, extent commencement.

1. (1) This Act may be called the Cooch Behar Excess Profits Tax Act, 1943.

(2) It extends to the whole of the Cooch Behar State.

(3) It shall come into force on the 1st day of April, 1943, subject to the assent of His Highness the Maharaja Bhup Bahadur.

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 the Cooch Behar Income-tax Act, 1941 ;

(2) "Deputy Commissioner" means a person appointed to be a Deputy Commissioner of Excess Profits Tax under section 3 ;

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

(4) "business" includes any trade, commerce of 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 shall be treated as one business for the purposes of this Act ;

(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, as introduced into the State and includes any foreign association whether incorporated or not which the Durbar 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 accounting period, the amount by which such profits fall short of the standard profits :

(ii) where a loss has been made in any 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 then twenty per cent. of the ordinary share capital of the company ;

(9) "dividend" has the meaning assigned to the expression in section 2 of the Cooch Behar Income-tax Act, 1941 ;

(10) "Excess Profits Tax Officer" means a person appointed to be an Excess Profits Tax Officer under section 3 ;

(11) "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 ;

(12) "loss" means a loss computed in the same manner as, for the purposes of this Act, profits are to be computed ;

(13) "ordinary share capital" has the meaning assigned to that expression in sub-section (9) of section 9 ;

(14) "person" includes a Hindu undivided family ;

(15) "prescribed" means prescribed by rules made under this Act ;

(16) "profits means profits as determined in accordance with the First Schedule ;

(17) "standard profits" means standard profits as computed in accordance with the provisions of section 6 ;

(18) "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 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 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 business was commenced on or after the 1st day of July, 1938, the foregoing percentages shall be increased from eight, ten and six per cent. to ten twelve and eight per cent. respectively;

(19) "written down value" means—

(*a*) in the case of assets acquired in the previous year, the actual cost of the assessee;

(*b*) in the case of assets acquired before the previous year, the actual cost to the assessee less all depreciation allowable to him under the Cooch Behar Income-tax Act, 1941;

(*c*) in the case of assets acquired before the commencement of the Cooch Behar Income-tax Act, 1941, the actual cost to the assessee less for each financial year since acquistion the amount of depreciation applicable to the assets at the rates allowable under the Cooch Bihar Income-tax Act, 1941 :

Provided that in the case of change of ownership in the business, the actual cost to the assessee referred to in clause (*a*), (*b*) and (*c*) shall be the actual cost to the person succeeded in the business, profession or vocation.

Excess profits tax authorities.

3. There shall be the following classes of profits tax authorities for the purpose of this Act, namely:—

(*a*) Commissioner of Excess profits tax; and

(*b*) Deputy Commissioner of Excess Profits Tax; and

(*c*) Excess Profits Tax Officer.

(2) The Commissioner of Excess Profits Tax, Deputy Commissioner of Excess Profits Tax and Excess Profits Tax Officer shall be the person who is exercising the functions of Commissioner Income-tax, Deputy Commissioner of Income-tax and Income-tax Officer, respectively, under the Cooch Behar Income-tax Act, 1941.

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, for the year beginning with the 1st day of April, 1943 and in respect of each subsequent year on the amount by which the profits during the previous accounting period exceed the standard profits, a tax (in this Act referred to as "excess profits tax" which shall be equal to [twenty five per cent.][1] of that excess :

Provided that any profits which are, under the provisions of sub-section (2) of section 4 of the Cooch Behar Income-tax Act, 1941, 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. This Act shall apply to every business of which any part of the profits made during the accounting period is chargeable to income-tax by virtue of the provisions of sub-clause (*i*) or sub clause (*ii*) or clause (*b*) of sub-section (1) of section 4 of the Cooch Behar Income-tax Act, 1941, 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 accure or arise without the Cooch Behar State where such business is carried on by or on behalf of a person who is resident but not ordinarily resident in the Cooch Behar State 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 the Cooch Behar State or not ordinaily so resident accrue or arise in the Cooch Behar State or are deemed under the Cooch Behar Income-tax Act, 1941, so to accrue or arise, then, except where the business being the business of a person of a person who is resident but not orninarily resident in the Cooch Behar State 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 :

Provided further that this Act shall not apply to any business the whole of the profits of which accrue or arise in British India; and where the profits of a part of a business accure or arise in British India, such part shall, for the purposes of this

(1) Substituted for the words "fifty per cent" by the Amendment Act of 1st April 1945.

provision, be deemed to be a separate business the whole of the profits of which accrue or arise in British India, and the other part of the business shall, for all the purpose of this Act, be deemed to be a separate business.

Standard profits.

6. (1) For the purposes of this Act, the standard profits of a business in relation to any accounting period shall, subject to the provisions of sub-section (3) 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 accounting period bears to the standard period :

Provided that if the average amount of capital employed in the business during such 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 31st day of March, 1936, 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 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" which should have been determined as the previous year under section 2 of the Cooch Bihar Income-tax Act, 1941, for the purpose of the Income-tax assessment for the year ending on the 31st day of March, 1937, if the aforesaid Act were in force at the time or the previous year as so determined for the year ending on the 31st day of March 1938; or

(*b*) the "previous year" as so determined for the year ending on the 31st day of March, 1937, and that for the yaer ending on the 31st day of March, 1939; or

(*c*) the "previous year" as so determined for the year ending on the 31st day of march, 1938, and that for the year ending on the 31st day of March, 1939; or

(*d*) the "previous year" as so determined for the year ending on the 31st day of March, 1939, and that for the year ending on the 31st day of March, 1940 :

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

(3) The standard profits shall be taken to be rupees thirty 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 accounting period is greater or less than one year the sum of rupees thirty thousand shall for the purpose of this sub section be increased or decreased proportionately

Relief on occurrence of deficiency of profits.

7. Where a deficiency of profits occurs in any accounting period in any business, the profits of the business chargeable with excess profits tax shall be 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 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 accounting periods, or where there is no

previous 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 accounting period, and if and so far as it exceeds the amount of those profits, any profits so chargeable for the next subsequent accounting period and so on.

Succession and amalgamations.

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 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 1st day of September, 1939, 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 purpose 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 1st day of September, 1939, in the persons carrying it on, and the standard profits of the business in relation to any 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 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 has to any consideration given in respect of transfer of the business or any of the assets thereof on the occasion of the change.

(4) Where, on or after the 1st day of September, 1939, two or more business 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 business;

(*b*) any profits made or lossess incurred or capital emyloyed 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 become 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 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 assests thereof on the occasion of the amalgamation.

(5) Where, on or after the 1st day of of September, 1939, 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 to be just.

(6) Notwithstanding any thing in the foregoing provisions of this section, where a business was carried on immediately before the 1st day of April, 1936, and that business, or the main part of that business, was transferred after the said day and before the 1st day of September, 1939, by the person carrying it on 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 1st day of September, 1939, 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 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 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 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 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 accounting period, have effect subjects 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 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 purpose 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 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 the Cooch Behar State and is not a subsidiary of any other company resident in the Cooch Behar State ; and

(*b*) during the whole or any part of any accounting period of the principal company, another company, whether or not resident or carrying on business within the Cooch Behar State (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 accounting period.

(4) If the subsidiary company is a subsidiary of the principal company throughout the 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 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 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 expression "excess" and "deficiency" mean, in relation to profits, an excess or deficiency in relation to the standard profits if the subsidiary company or, as the case may be, the principal company.

(6) In any case to which sub-section (3) or sub-section (4) applies, such alteration, if any, the periods which would otherwise be the accounting periods of the subsidiary company shall be made as the Commissioner of Excess Profits Tax may direct.

(7) For the purposes of this section, a company shall be deemed to be 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 ther 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 tate 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 12, be deemed to have been paid by the subsidary company and not by the principal company.

Artificial transactions.

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.

(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, with the previous approval of the Deputy Commissioner, direct that such person shall pay, in addition to any excess profits tax or 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.

10-A. (1) Where the Excess Profits Tax Officer is of opinion that the main purpose for any transaction or transactions was or were effected was the avoidance or reduction of liability to excess profits tax, he may, with the previous approval of the Deputy Commissioner, 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 to the same extent ;

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

(3) Any person aggrieved by a decision of the Excess Profits Tax Officer under this section may appeal in the prescribed time and manner to the Deputy Commissioner.

Relief in respect of double excess profits taxation.

11. The Durbar may by notification in the *Cooch Bihar Gazette* make provision for the granting of relief in cases where both excess profits tax under this Act and excess profits tax under my law in force in British India have been paid upon the profits of any business if it appears to the Darbar that the laws of British India provide for carresponding relief in respect of excess profits tax charged on profits both in British India and in the Cooch Bihar State.

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

12. (1) The amount of the excess profits tax payable in respect of a business for any accounting period diminished by any amount allowable by way of relief under the provisions of section 11, shall, in computing for the purposes of income-tax or super-tax the profiits and gains of that business, be allowed to be deducted as an expense incurred in that period.

(2) There shall also be so deducted the amount of any excess profits tax payable under any law in force in British India on the profits of the business in respect of any 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 British India providing for the granting of relief in British India where excass profits tax has also been charged in the Coooh Bihar State :

Provided that where, under the provisions of this Act relating to deficiencies of profits or under any corresponding law in force in British India, relief is given by way of repayment from excess profits tax chargeable for any 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 profit of the business accruing in the previous year, (as determined for that business for the purposes of the Cooch Bihar Income-tax Act, 1941), in which the deficiency of profits occurs.

Issue of notice for assessment.

13. (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 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 accounting period specified in the notice the profits of the business and the standard profits of the business as computed in accordances with the provisions of section 6 or the amount of deficiency available for relief under Section 7 :

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 document 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" which should have been determined under section 2 of the Cooch Behar Income-tax Act, 1941, for the purpose of the income-tax assessment for the year ending on the 31st day of March, 1937, if that Act were in force at the time.

Assessments

14. (1) The Excess Profits Tax Officer shall, by an order in writing after considering such evidence, if any, as he has required under section 13, 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.

(2) Excess Profits tax payable in respect of any 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 accounting period, the assessment shall be made upon them jointly and, in the case of a partnership, may be made in the partnership made.

(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 person or persons, as the case may be.

Profits escaping assessment.

15. If, in consequence of definite information which has come into his possession, the Excess Profits Tax Officer discovers that profits of any accounting period chargeable to excess profits tax have escaped assessment, or have been under-assessed, or have been the subject of excessive relief, he may at any time within five years of the end of the 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 13, 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.

16. If the Excess Profits Tax Officer, the Deputy Commissioner 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 13, 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 13, 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.

Appeals.

17. (1) Any person objecting to the amount of standard profits determined under section. 6 or aggrieved by a decision made in pursuance of section 8, 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 may appeal to the Deputy Commissioner.

(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 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, but the Deputy Commissioner may admit an appeal after the expiration of that period if he is satisfied that the appellant has sufficient cause for not presenting it within that period.

(3) An appeal shall be in the prescribed form and shall be varified in the prescribed manner.

(4) The Deputy Commissioner shall hear and determine the appeal and, subject to the provisions of this Act, shall pass such order 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.

Appeal to commissioner against Deputy Commissioner's orders imposing penalties or enhancing assessments or penalties.

18. (1) Any person objecting to an order passed by the Deputy Commissioner imposing on him a penalty under section 16 or enhancing his assessment or enhancing his aesessment or enhancing a penalty under section 17 may appeal to the Commissioner within thirty days of the date on which he was served with notice of such order.

(2) 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.

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 the Excess Profits Tax Officer or the Deputy Commissioner, 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 order thereon including an order enhancing an assessment as he thinks fit :

Provided that he shall not pass any order prejudicial to a porson 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 the Deputy Commissioner or 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.

Application of provisions of Act V of 1911.

21. The provisions of sections 2 (19), 2 (20), 10, 12, 22, 26, 33 to 44, (inclusive,) 48, 54 to 59 (inclusive) of the Cooch Behar Income-tax Act, 1941, 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 the income-tax :

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

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

22. (1) Notwithstanding anything contained in the Cooch Behar Income-tax Act, 1941, 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.

(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 of this Act may be used for the purposes of the Cooch Behar Income-tax Act, 1941.

Faiiure to deliver returns or statements.

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 13, he shall on conviction by a Magistrate be punishable with fine which may extend to five hundred rupees, and with a 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 13, 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 punished 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 Deputy Commissioner.

(2) No prosecution for an offence punishable under section 23 or section 24 or under the Cooch Behar 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 Deputy Commissioner may, either before or after the institution of proceedings, compund any offence punishable under section 23 or section 24.

Power of Commissioner to grant relief in special cases.

26. (1) If on an application made to him through the Excess Profits Tax Officer the Commissioner 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 accounting period should be computed in accordance with the provisions of sub-section (1) of section 6, the Commissioner may direct that the standard profits of the business shall be computed to be 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 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 Commissioner 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 July, 1938, is so small in relation of 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 accounting period concerned and that during the later accounting period such expenditure would normally fall to be written off wholly or partly in the books of person chargeable to excess profits tax.

(3) If on an application made to him through the Excess Profits Tax Officer the Commissioner is satisfied that the computation in accordance with the provisions of Schedule I of the profits of a business during any 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 the Cooch Behar State income arising outside the State where the country in which the income accrued prohibits or restricts by its laws the remittance of money to the State, and loss in the remittance to the State of such income because of fluctuations in the rate of exchange between that country and the State ;

the Commissioner may direct that such allowances shall be made in computing the profits of the business during that accounting period as he thinks just :

Provided that in making such direction the Commissioner may impose such conditions as he thinks appropriate.

(4) An application to the Commissioner 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 13 or of the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section.

Power to make rules.

27. (1) The Durbar 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 refund ;

(*b*) provide for the adaptation to excess profits tax of any of the provisions of the Cooch Behar Income tax Act, 1941, 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 for excess profits tax in the Cooch Behar State ;

(*d*) provide for any matter which by or under this Act is to be prescribed.

(3) Rules made under this section be published in the *Cooch Behar Gazette* and may from time to time be added to, cancelled or modified.

SCHEDULE I

See section 2 (16).

Rates for the computation of profits for the purposes of Excess Profits Tax

1. The profits of a business during the standard period, or during any accounting period shall be separately computed and shall, subject to the provisions of this Schedule, be computed on the principles on which the profits of a business are computed for the purposes of income-tax under section 10 of the Cooch Behar Income-tax Act, 1941 :

Provided that any sums (other than any interest paid by a firm to a partner of the firm) excluded under the proviso to clause (*iv*) of sub-section (1) 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 the business for the purposes of excess profits tax.

2. 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 Cooch Behar Income-tax Act, 1941 computed for the accounting period, notwithstanding that the Cooch Behar Income-Tax Act, 1941 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 allawance shall be made for any loss other than a loss substained in a business to which this Act applies.

(3) Nothing in this Act shall be construed as permitting the application, in computing profits for the purposes of the excess profits tax, of the provisions of sub-section (2) of section 21 of the Cooch Behar Income-tax Act, 1941.

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.

(2) In the case of the business of a building society, or of a money-lending 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 under section 10 of the Cooch Behar Income-tax Act, 1941, 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 purpose 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 under section 9 of the Cooch Behar Income-tax Act, 1941, 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 where reduced by the value of those investments :

Provided that were 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 bonafide banking business, or by means of a public issue of debntures 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 purpose 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.

5A. (1) In computing for any 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 Schedule applies, or the profits 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 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 accounting period the standard profits for which are ascertained by reference to the minimum amount specified in sub-section (3) of section 6 of this Act :

Provided further that where a direction has been given by the Commissioner 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 he thinks just, such amounts 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.

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

7. (1) In the case of a business carried on, in any 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 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 "direction" 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 per cent. 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 agant'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 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 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 Commissioner otherwise directs, no deduction shall be made in respect of directors' remuneration in computing the profits for the first-mentioned accounting period or in computing in relation to any previous accounting period, the profits of the standard period (if any).

8. 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 accounting period, except where such remuneration is subjected to excess profits tax in the hands of the managing agent.

9 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 if properly attributable to the accounting period, having regard to the extant 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 accounting periods to the amount of the profits as finally ascertained.

10. In respect of any building erected on or after the 1st day of September, 1939, which during any 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 accounting period.

11 Where in respect of any accounting period period a deduction would, apart from the provisions of this rules, 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,) as the Excess Profits Tax Officer thinks proper.

12. In computing the profits of any 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 directors' fees or other payments for services to the actual services rendered by the person concerned.

SCHEDULE II

See section 2 (3).

Rules for computing the average amount of capital

1. (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 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 assets 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 assets 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 of 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 been 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 under section 40 of the Cooch Behar Income-tax Act, 1941 ;

(*b*) in the case of excess profits tax, on the first day after the end of the 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 the capital is being computed had been an accounting period ; and the said sums shall be deducted notwithstanding that they have not become payable.

(2) Where any debt for the excess profits tax assessable in respect of any period is to be deducted under this rule, amount thereof shall not be reduced as the result of any relief to be given in respect of a deficiency of profits occuring 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 accounting period in which the deficiency occured.

2A. In computing for any 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 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.

3. 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 deduced 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 valve 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.

4. 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.

5. Where, in accordance with the second or third proviso to section 5 of this Act, this Act is applicable to part only of a business, the capital employed in that shal 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.

6. (1) If—

(*a*) the Commissioner is 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 Commissioner 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 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 which, in the opinion of the Commissioner, 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 (1) of section 26 of this Act the provision of this rule shall have effect to such extent only as the Commissioner thinks proper :

Provided further that an application to the Commissioner 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 13 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 purpos s 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 chapital 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 or 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 purposes 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.

THE BHAVNAGAR WAR PROFITS TAX ACT

Act No. I of Samvat 1999

In pursuance of Darbar Notification H. D. R. No. 81 dated 21st August 1943, 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 commencement.

1. (1) This Act may be called the Bhavnagar War Profits Tax Act, Samvat 1999.

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

(3) It shall come into force as from 21 August, 1943.

Definitions.

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

(1) "accounting period" means where the accounts of a business are made up for successive periods of twelve months, each of such periods In any other case the accounting period will be such period as the War Profits Tax Officer may determine ;

(2) "chargeable accounting period" means any accounting period falling wholly within the term beginning on or from the first day of Kartik Samvat 1998 or first day of January, 1942 and such subsequent years and where any accounting period falls partly within and partly without the said term, the period of twelve months preceding the closing date falling within either of these accounting periods ;

(3) "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.

Provided that all businesses to which this Act applies carried on by the same person shall be treated as one business for the purposes of this Act ;

(4) "War Profits Tax Officer" means a person appointed to act as such by the Darbar ;

The Darbar may appoint as many War Profits Tax Officers as may be deemed necessary to discharge the functions as laid down in the Act. The Officer senior in status may in addition to his ordinary duties inspect or revise departmentally the orders of the other Officers as he may be generally or specially directed by the Darbar from time to time.

(4A) There shall be a "War Profits Tax Appeal Court" to exercise, appellate and revisional functions as laid down in the act and also to exercise such other functions not inconsistent with the act, which may be prescribed from time to time by the Darbar

(5) "company" means a company as defined in the Indian Companies Act 1913 or in the said Act as applied to Bhavnagar State, or formed in pursuance of an Act of British Parliament or of Royal Charter or Letters Patent or of an Act of the Legislature of a British Possession or of a Law of an Indian State, and includes any foreign Association whether incorporated or not, which the Darbar may, by general or special order declare to be a company for the purposes of this Act.

(6) "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 is 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 company ;

(7) "dividend" has the meaning assigned to the expression in section 2 of the Indian Income Tax Act, 1922 ;

(8) "income" has the meaning assigned to the expression in section 2 of the Indian Income Tax Act, 1922 ;

(9) "persons" includes a Hindu undivided family ;

(10) "prescribed" means prescribed by rules made under this Act ;

(11) "profits" means profits as determined in accordance with the First Schedule of the Indian Excess Profits Tax Act of 1940 with such modifications as may be prescribed by the Darbar.

(12) "written down value" has the meaning assigned to that expression in subsection (5) of section 10 of the Indian Income Tax Act 1922, provided that the Darbar may by rules lay down different rules for allowing depreciation.

(13) All expressions used or embodied by reference in this Act which are not hereinbefore defined shall have the same meaning as is attributed to them by the Indian Excess Profits Tax Act, 1940 (as amended).

Charge of Tax.

3 Subject to the provisions of this Act, a tax (in this Act referred to as "War Profits Tax Act") shall, in respect to any business to which this Act applies, be charged, levied and paid as per Darbar Notification H. D. R. No. 81 dated 21-8-43.

Application of the Act.

4. This Act shall apply subject to Schedule A annexed hereto, to every business of which any part of the profits made during the chargeable accounting period is chargeable to War Profits Tax.

The income liable to War Profits Tax of any person shall be total income, profits and gains from whether source derived which—

(*a*) if such a person is ordinarily resident in Bhavnagar State during such year

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

(ii) accrue or arise to him outside Bhavnagar State and are brought in Bhavnagar State during such year or thereafter ;

(*b*) if such person is not ordinarily resident in Bhavnagar State during such year, accrue or arise or arise to him in Bhavnagar State during such year.

Standard Profits.

5 (*a*) For the purposes of this Act, the standard profits of a business in relation to any chargeable accounting period shall be as is notified in Darbar Notification H. D. R. No, 81 dated 21-8-43.

(*b*) Such standard profits of a business in relation to any chargeable accounting period shall 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.

Artificial Transactions

6. (1) A person shall not for the purpose of reducing any profits which are or would be chargeable to War Profits Tax enter into a fictious or artificial transaction, or carry out any fictitious or artificial operation.

Explanation: For the purposes of this section, an artificial transaction or operation includes every device of whatever nature adopted for the purpose of presenting the accounts of a business in a misleading form or manner with intent to evade or having the effect of evading any obligation imposed by this Act

(2) Any such transaction or operation shall be treated as null and void for the purpose of computing War Profits Tax payable under this Act.

(3) If the War Profits Tax Officer is satisfied that any person has acted in contravention of the provisions of sub section (1) he may with the previous approval of the Darbar direct that such person shall pay, in addition to any tax for which he is or would be, but for such transaction or operation, liable, a penalty not exceeding the tax evaded or sought to be evaded.

Relief in respect of double excess profits taxation.

7 The Darbar may by notification in the Darbar Gazette make provision for the granting of relief in cases where both War Profits Tax under this Act and Excess Profits Tax or Income Tax under any law in force in British India, or in any other Indian State have been paid upon the profits of any business, provided that such tax paid is not less than the tax payable under this Act.

Issue of notices for assessment

8. (1) The War 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 War 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, 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 may be prescribed.

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

(2) The War Profits Tax Officer may serve on any person, upon whom a notice is served under sub-section (1), a notice requiring him on date to be therein specified to produce, or cause to be produced such accounts or documents as the said 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.

8A Soon after the filing of the return as provided in Section 8 (1), the War Profits Tax Officer may call upon the assessee to pay the amount of War Profits Tax on the amount of income which may appear to be admitted by the assessee in his return, as liable to war profits tax.

If the assessee fails to pay the amount of such war profits tax, within the time mentioned in the notice of demand the War Profits Tax Officer may in his discretion impose penalty for the default as provided in Section 14 (b).

Assessments.

9. (1) The War Profits Tax Officer shall by an order in writing after considering such evidence, if any as he has required under previous section, assess to the best of his judgment the profits liable to War Profits Tax and fix the amount of War Profits Tax payable on the basis of such assessment, and shall furnish a copy of such order to the person on whom the assessment has been made.

(2) War 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 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 daeth, 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.

(5) Any person responsible for paying to a person non resident in the State any chargeable profits under the provisions of this Act, shall, unless he has been already made liable to pay War Profits Tax thereon as an agent, notify the fact to the War Profits Tax Officer and shall not part with the amount unless so allowed to do in writing by the War Profits Tax Officer; in case of any default the tax due shall be recoverable form him.

No person deducting, retaining or paying any amount in pursuance of this Act, in respect of profits belonging to another person, shall be liable to such person for any such deduction retention or payment.

Profits escaping assessment.

10. If in consequence of definite information which has come into his possession the War Profits Tax Officer discovers that profits of any chargeable accounting period to such tax have escaped assessment, or have been under assessed he may at any time within two 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 for assessment, and may proceed to assess or re-assess the amount of such profits liable to War Profits Tax and the provisions of this Act shall, so far as may be, apply as if the notice were a notice for original assessment.

Penalties.

11. If the War Profits Tax Officer or the Darbar, in the course of any proceedings under this Act, are satisfied that any person has, without reasonable cause, failed to furnish the return required under this Act, or to produce or cause to be produced the accounts or documents or other evidence required by such officer 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 tax payable, a sum not exceeding—

(*a*) Where the person has failed to furnish the return under the Act, the Act, the amount of the tax payable; and

(*b*) in any other case, the amount of tax which would have been avoided if the return made had been accepted as correct.

Appeal to War Profits Tax Appeal Court.

12. (1) Any person objecting to the amount of War Profits Tax for which he is liable as assessed by the War Profits Tax Officer or denying his liability to be assessed under this Act, or objecting to any penalty imposed by such officer, or to any refusal by such officer to re-open his case under ex parte assessment or to grant relief may appeal to the War Profits Tax Appeal Court, provided always that the assessee shall pay the amount assessed before filing such appeal.

(2) An appeal shall ordinarily be presented within 60 days of receipt of notice of demand relating to the assessment or penalty objected to but the War Profits Tax Appeal Court may admit an appeal after the expiration of that period, if it is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) The appeal shall be as nearly as may be, in the form prescribed for an appeal in the Hazur Court.

(4) The War Profits Tax Appeal Court shall hear and determine the appeal and subject to the provisions of this act shall pass such orders as it 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.

Powers of Revision of War Profits Tax Commissioner.

12A The War Profits Tax Appeal Court may of its own motion call for the record of any proceeding under this Act, which has been taken by any War Profits Tax Officer and on receipt of the record may make such inquiry and subject to the provisions of this Act, may pass such orders thereon (including an Order enhancing the assessment) as it thinks fit.

Provided that it 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.

Appeal to Hazur Court.

12B (1) The War Profits Tax Officer or any other person objecting to an order passed by War Profits Tax Appeal Court may appeal to the Hazur Court on Judicial side within sixty days of the date on which he was served with notice of such order, but the Hazur Court may admit an appeal after the expiration of that period if that Court 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 varified in the prescribed manner.

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

Applications of the provisions of the Indian Income Tax Act.

13. The provisions of sections 10, 13, 24B, 25 (1&2) 25A, 27, 29, 34 to 44. C (inclusive, 45, 47, 48, 49 E, 49. F, 50, 54, 62, 63, 65, 67, 67 A of the Indian Income Tax Act 1922 as amended by the Indian Income Tax Amendment Act of 1939 as well as section 61 of the Indian Income Tax Act of 1922 shall apply with such modifications, if any, as may be prescribed, as if the said provisions were the provisions of this Act and referred to War Profits Tax instead of to income Tax.

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

Failure to deliver returns statements.

14 (*a*) 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 for assessment under this Act, the War Profits 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.

(*b*) If any person fails to make payment of the War Profits Tax as assessed by the War Profits Tax Officer within the time specified in the notice, the War Profits Tax Officer may in his discretion direct that in addition to the amount of arrears a sum not exceeding that amount shall be recovered from such person by way of penalty

The War Profits Tax Officer may forward to the Vahivatdar details of the arrears to be recovered due from such person and the Vahivatdar on receipt of this shall proceed to recover from such person the amounts specified therein (as if were an arrear of land revenue)

False statement and declaration.

15 If a person makes in any return required for assessment any statement which is false which he 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.

16. (1) A person shall not be proceeded against for an offence under section 15 except at the instance of the Darbar.

(2) No prosecution for an offence punishable under section 15 or under the Indian 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 Darbar may either before or after the institution of proceedings compound any offence punishable under section 15.

Power to make rules

17. (1) The Darbar may make rules for carrying out the purpose of this Act.

(2) Without prejudice to the generality of foregoing power, such rules may —

(*a*) prescribe the procedure to be followed on appeals, and applications for refunds ;

(*b*) provide for the adaption to War Profits Tax of any of the provisions of the Indian Income Tax Act, 1922 which are made applicable to War Profits Tax by section 13 or of any rules made under any such provision ;

(*c*) provide for any matter which by, or under this Act is to be prescribed.

SCHEDULE A

This Act shall not apply to the following : —

(1) Profits of concerns run by the State.

(2) Agricultural income.

(3) Offices or employments.

(4) Any profession the profits of which are mainly dependent on the personal qualifications of the person by whom the profession is carried on and in which no capital expenditure is required.

Provided that the business of any person taking commissions in respect of any transactions or services rendered or any agent of any description (not being a whole time officer or servant of the business or an agent whose remuneration consists wholly of fixed and definite sum not dependent on the amount of business done or any other contingency) shall not be included in this exception.

(5) Any business income earned outside and brought into the State and which has borne the British Indian or Indian States tax subject to the provision of Section 7 of this Act.

(6) Any business of which the total profits in the accounting period is less than rupees ten thousand.

(7) Profits brought in from outside the State for public utility or public charitable purposes

———

INDORE EXCESS PROFITS DUTY ORDER, 1944.

No. 14, Dated, the 17th September, 1944

His Highness the Maharaja under Hazur Shree Shankar Order No. 409, dated 15th day of September 1944 is is pleased to sanction, on the recommendation of the State Cabinet, the adoption of the Indore Excess Profits Duty Order, 1944, as under : -

1. (1) This order may be called the Indore Excess Profits Duty Order, 1944.

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

(3) It shall come into force at once.

2 In this Order unless there is anything repugnant to the subject or context—

"Industrial concern" means an industry specified or which may hereafter be specified, in the schedule attached to this Order.

"Business" includes any trade commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture relating to and forming part of an industrial concern.

"Income" means income computed for assessment in the manner prescribed for purposes of levy of the Industrial Tax under the Indore Industrial Tax Rules notwithstaning that the industrial concern is not liable to Industrial Tax

"Assessing Authority" means the Board of Assessors appointed for making assessment under the Indore Industrial Tax Rules, 1927 as amended in 1943 and 1944.

"Accounting period" means 12 months ending on 31st December next preceding the year in which the assessment is made.

All expressions used or embodied by reference in this Order which are not hereinbefore defined shall have the same meaning as is attributable to them by the Indore Industrial Tax Rules, 1927, as amended in 1943 and 1944.

3 This Order shall apply to all Industrial concerns carrying on business in the year 1943 and subsequent years during the continuance of the present war and one year after the termination thereof.

4. In respect of any business carred on by an Industrial concern to which this Order applies there shall be charged, levied and paid on the amount by which the profit exceed Rs. 75,000 (seventy-five thousand rupees) a Duty (in this Order referred to as Excess Profits Duty) of an amount equal to 60 per cent of that excess to be dealt with as laid down by Huzur Shree Shankar Order No. 297, dated the 30th May, 1944. The levy of this Duty shall be on the profits made in the accounting period and chargeable in 1944 and onwards, e g., the levy of the Duty during 1944 shall be on the income for the year 1943.

Explanation.

The profits of an Industrial concern will be on the basis of the taxable income as finally ascertained in accordance with the provisions of the Indore Industrial Tax Rules, 1927, as amended in 1943 and 1944 notwithstanding that the Industrial concern is not liable to Industrial Tax under the said Rules.

5. (1) The Assessing Authority may for the purposes of this Order require the Principal Officer or General Manager of anIndustrial concern who he believes to be engaged in any business to which this Order applies or to have been so engaged during the year 1943 or subsequent thereto, to furnish within one month from the date of service on notice upon him, return of the income of the concern with such particulars in connection with the business as the Assessing Authority may require.

Provided that the Assessing Authority may in his discretion extend the date for the delivery of the return.

(2) Where any such Principal Officer or General Manager fails, without reasonable cause or excuse to file the return of income or furnish the particulars required within the specified time the Assessing Authority shall proceed to assess the profits for the Accounting Period and make assessment by such methods as such Authority may think fit or on such information as may be in his possession.

(3) The Assessing Authority may, even in a case where the return has been furnished, proceed to make, in a summary manner, a provisional assessment of Excess Profits Duty on the income summarily computed and arrived at the amount of Excess Profits Duty payable thereon and issue a notice on the Industrial concern to pay the amount in the Huzur Khajana within one month from the date of the notice.

6. (1) On the completion of the final assessment of the Excess Profits Duty payable by an Industrial concern, the Assessing Authority shall serve the Industrial concern with a notice to pay the difference between the amount so assessed and the amount already paid in the Huzur Khajana within one month from the date of the notice.

(2) If the amount of the Excess Profits Duty paid in pursuance of the summary assessment made under Sub-section (3) of Section 5 is greater than the amount finally assessed the difference shall be refunded to the Industrial concern ordinarily within one month

7. If the Principal Officer or the General Manager of an Industrial concenr fails, without reasonable cause or excuse, to file return of income and furnish particulars to the Assessing Authority within the specified time he shall, on conviction by a Magistrate, be punished with fine which may extend to five hundred rupees and with a further fine which may extend to fifty rupees for every day during which the default continues

8. Where any person is liable to pay Industrial Tax under the Indore Industrial Tax Rules, 1927, as amended in 1943 and 1944, the amount so payable or paid and also Rs. 75,000 (seventy-five thousand rupees) shall be deducted in the computation of profits for Excess Profits Duty.

9 (1) The Principal Officer or General Manager of on Industrial concern shall not, for the purposes of avoiding payment of Excess Profits Duty enter into fictitious or artificial transactions, or carry out any fictitious or artificial operation ; and if he had entered into any such transaction or carried out any such operation before the commencement of this Order, he shall inform the Assessing Authority of the nature of the transaction or operation

Explanation.

For the purposes of this section, an artificial transaction or operation includes every device of whatever nature adopted for the purpose of presenting the account of a business of the industrial concern in a misleading form or manner with intent to evade or having the effect of evading any obligation imposed by this order.

(2) If the Principal Officer or the General Manager of on Industrial concern acts in contravention of or fails, without reasonable cause or excuse to comply with the provisions of Sub-section (1), he shall, on conviction by a Magistrate be punished with fine which may extend to the thousand rupees.

10. (1) Where the Assessing Authority 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 Order was the avoidance or reduction of liability to Excess Profits Duty, he may, with the previous approval of the Minister in charge Commerce Department, make such adjustments as respects liability to Excess Profits Duty as he considers appropriate so as to counteract the avoidance or reduction of liability to Excess Profits Duty which would otherwise be effected by the transaction or transactions.

(2) Without prejudice to the powers conferred by Sub-section (1) of this section the powers conferred thereby extend—

(*a*) to the charging with Excess Profits Duty of Industrial concern, which but for the adjustments would not be chargeable with any duty or would not be chargeable to the same extent ;

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

11. If a person makes in any return required under Section 5, 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.

12. No prosecution for any offence punishable under this Order shall be instituted except with the previous sanction of the Government or of an Officer empowered to grant such sanction.

13. (1) Complaints for offences under this Order shall be filed in the Court by the Secretary to the Board of Assessors or by any other Officer authorised by the Assessing Authority.

(2) No prosecution for an offence punishable under Sections 7 or 9 (2) or 11 or under the Indore Penal Code shall be instituted in respect of the same facts as those in respect of which a penalty has been imposed under this Order

(3) The Assessing Authority may, either before or after institution of proceedings, with the previous approval of Government, compound any offence punishable under this Order on such terms and conditions as may be considered reasonable.

14. 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 Order.

15. Failure by an Industrial concern to make payment of the amount demanded under the provisions of this Order within the time specified in the notice shall make such concern a defaulter and render the amount of the Excess Profits Duty liable to be recovered as a State Demand under the Rules for the Recovery of State demand, together with interest at the rate of 6 per cent per annum calculated from the date of the default to the date of the recovery and together with all expenses incurred in such recovery proceedings.

16 If the Principal Officer or General Manager of an Industrial concern fails to make a return required under Section 5 or fails to comply with all the terms of a notice issued under the same section or the Assessing Authority has good reasons reasons to doubt the accuracy of the information or documents furnished or for any other reasonable cause considers it necessary, he may enter into the premises of the Industrial concern or such other place where the accounts, etc., are kept or suspected to have been kept and inspect all materials, documents and, if necessary, seize them.

Provided that such power of entry and seizure shall be exercised in the manner provided in the Code of Criminal Procedure in respect of search and seizure

17. The Industrial concern objecting to the order passed regarding final assessment may appeal to the Minister in-charge Commerce Department within 30 days from the date of the receipt of the said order. The appeal application shall state the objections raised against the assessment.

18. A second appeal shall lie to the Government against the order of the Appellate Authority. It shall be filed in the Cabinet Officer within thirty days from the date of the receipt of the Appellate order.

19. The Appellate Authority shall have the power to remand, accept or reject the appeal or to enhance, reduce or modify the assessment appealed against, provided

that no order to the prejudice of the assessee shall be passed without hearing him or giving him a reasonable opportunity to be heard.

20. The Government may, either on its own motion or on the motion of an assessee, call for and examined the records of any proceedings under this Order which has been taken by any authority subordinate to it and revise, alter or otherwise modify it."

NOTIFICATION

No. 2250 *Dated the 19th May, 1945.*

In continuation of Finance Department Notification No 9 dated 3-6-1944, it is notified that by his order dated 6th May 1945, His Highness the Maharaja is pleased to order that Huzur Shree Shankar Order No. 297 dated 30th May 1944, will stand modified as under:—

(1) that in respect of the profits made by the textile mills in Indore during the calendar year 1943, a sum of Rs. 70 (seventy) lacs be recovered from the assessees concerned to be funded by the State for the welfare and development of the State in lieu of the Excess Profits Duty due from them for that year and no other amount shall be recovered from the assessees for that year for freezing purposes as contemplated under the first part of para 1 of the aforesaid Huzur Shree Shankar Order;

(2) that as regards the levy of the Excess Profits Duty subsequent to the calendar year 1943, after deducting Industrial Tax according to Rules from the annual profits, an allowance of Rs. 75,000/- (Seventy-five thousand) from the remainder be made in the case of each assessee as at persent and of the balance of the profits a deduction of 50% (fifty percent) be made on account of the Excess Profits Duty, of which:—

(*a*) 15% be retained by the State for its general development and welfare;

(*b*) 25% be suitably invested in consultation with the assessee concerned, for being returned with interest accrued thereon, to the assessee for the extension, development or improvement of the existing industries and promotion of new industries in the State; and

(*c*) the remaining 10% may remain frozen and invested in the same manner for the period of the War and be returned immediately thereafter with interest accrued thereon to the asse see concerned unconditionally.

(3) that the following words in clause 2 of Huzur Shree Shankar Order No. 297 dated 30th May 1944, be deleted:—

"and that at the termination of this period, the question should be re-examined in the light of the circumstances then existing."

EXCESS PROFITS TAX RULES AS APPLIED TO BARODA STATE

ORDINANCE No VII OF 1943

Where it expedient to frame Rules under Sec. 27 of the Excess Profits Tax Act as applied to Baroda by Ordinance No. VII of 15—7—43, it is hereby enacted under Huzur Orders as follow:—

Short title

1. These Rules may be called, the Excess Profits Rules, 1943.

Definitions.

2 In these rules—

(i) The Act means the Excess Profits Tax Act (No. XV). 1940 and as applied to the Baroda State by Ordinance No. VII of 1943.

(ii) "Applied section" means a section of the Baroda Income-tax Act (No. XXXI of the Samvat year 1986) as applied by Sec, 21 of the Act and Rule 3.

(iii) "Form" means a form as set out in the schedule to these Rules.

Adaptation of Baroda Income-tax Act :

3 The provisions of sections 11, 14, 29, 36 to 46 (inclusive), 47 to 50 (inclusive), 58, 59, 60, 63 and 64 of the Baroda Income-tax Act (No. XXXI of Samvat 1986) shall apply with the following modifications, namely:—

General Modification

(i) All references to "This Act" except those in subsection (2) of section 41, section 42, section 44 and in sub-section (1) of section 55 where they last occur shall be construed as reference to "the Act".

(ii) (*a*) All reference to "Income-tax" shall be construed as reference to "Excess Profits Tax".

(*b*) All reference to "Income-tax Officer" shall be construed as refetence to "Income-tax Officer" shall be construed as references to "the Sar Suba"

(*c*) all reference to Vahivatdar or Naib Suba or to both shall be construed as reference to Sar Suba.

Particular Modification

(iii) In sub-section (2) of section 11, sub clause (a) and (b) to proviso (1) to clause (c) shall be omitted.

(iv) In section 14, the words and figures "12 and 13" in sub section (1) shall be omitted.

(v) For Section 29, the following section shall be substituted, namely:—

"Section 29. (1) Where

(*a*) the Sar Suba has determined a sum to be payable under Section 14 of the Act,

(*b*) an order has been passed for the payment of a penalty under Section 10 or 16 of the Act, or

(*c*) an order has been passed for the enhancement of tax under Section 17 of the Act,

The Sar Suba shall serve on the assessee a notice of demand in the prescribed form specifying the sum so payable.

(2) The amount specified in the notice of demand shall be payable to the Accountant General, Baroda State within thirty days from the day on which the notice is served.

(vi) In section 36,

(*a*) in sub section (1) for the words 'this chapter' the words "the assessment of excess profits" shall be substituted, and

(*b*) in sub section (2) for the words "under this chapter" the words "for the assessment of excess profits" shall be substituted.

(vii) In section 39, the following proviso is added, namely:- "Provided that the tax may be levied upon and recovered from such non-resident person direct."

(viii) In section 43, after the words "jointly and severally liable "the words "to assessment under Section 14 of the Act and for" shall be added.

(ix) In section 44, the words and figures "this section and the applied sections 45 and 46" shall be substituted for the words "this chapter."

(x) In section 45, the words and figures "this section and the applied sections 44 and 46" shall be substituted for the words "this chapter".

(xi) In section 46, the words and figures "this section and the applied sections 44 and 45" shall be substituted for the words "this chapter".

Adaptation of Income-tax Rules.

4. Rules 17, 21, 22, 23 24, 25, 26, 45, 56, 60 and 61 shall apply subject to the modification that all reference therein to "Income-tax" and "Income tax Officer" or "Vahivatdar" if there be any, shall be constructed as references to "excess profits tax" and "the Sar Suba" respectively.

Form of notice of demand under applied Sec. 29.

5 The notice of demand or of determination of a deficiency of profits under applied section 29 shall be in Form No. 1

Forms of notices of assessment under Section 14-A.

6. Notice under sub-section (2) of section 14 A of the Act, shall be in Form No. 2 and the order of assessment made under sub-section (3) of the said section shall be in Form No. 3.

Form of return under Sec 13 (1).

7. The return required under sub section (1) of section 13 of the Act shall be in Form No. 4.

Form of application under Section 6 (3)

8 An application to the Sarsuba under sub-section (3) of the section 6 of the Act, for a direction that the profits of the standard period shall be computed as if they were such greater amount as he thinks just, shall be in Form No 5.

Form of application under Section 26 (1).

9. An application to the Baroda Government, under sub-section (1) of the section 26 of the Act for a direction that the profits of the standard period shall be computed as if they were such greater amount as it thinks just, shall be in Form No. 6.

Form of application under Section 26 (3).

10. An application to the Baroda Government, under sub-section (3) of section 26 of the Act, for a direction that such allowance shall be made in computing the profits of a business during a chargeable accounting period as the Baroda Government thinks just shall be made in Form No. 7.

Form of application under Rule 7 of schedule II.

11. An application to the Baroda Government under Rule 7 of schedule II of the Act for a direction that in computing the average capital of a business during the standard period, certain assets shall be excluded for such period as they were inherently unproductive, shall be made in Form No 8.

Form of appeal under sec. 8 (5).

12. An appeal under the proviso to sub-section (5) of section 8 of the Act shall be made in Form No. 9

Form of appeal under Section 8 (8).

13. An appeal under the proviso to sub-section (8) of section 8 of the Act shall be made in Form No. 10.

Form of appeal under Sec 10 A (3).

14 An appeal under sub-section (3) of section 10 A shall be made in Form No. 11

Time for notice under Section 8 (2).

15. The notice under sub-section (2) of section 8 of the Act shall be given by the persons concerned within the period specified in the notice issued under sub-section (1) of section 13 of the Act or within the extended period allowed by the Sarsuba under the proviso thereto.

Time and manner of appeal under Section 8 (5).

16. An appeal under the proviso to subsection (5) or subsection (8) of section 8 of the Act shall be presented in the office of the Sarsuba by the person carrying on the business prior to the transfer or by a person to whom part of the business was transferred as the case may be, within 45 days of the date of the receipt of the of the Sarsuba's apportionments.

Time for appeal under Section 10A.

17 An appeal to Huzur Sadar Adalat against any adjustments made by the Sarsuba under section 10A shall be made at any time before the expiry of sixty days from the date of receipt of the order of assessment effected by the adjustments.

Procedure of appeal.

18 The procedure to be followed in appeals to the Huzur Sadar Adalat under the Act, shall be the same as that prescribed and followed in respect of other appeals to that Adalat.

Procedure on appeals under Sec. 8 (5) and 8 (8).

19. The Sarsuba shall within fifteen days of the receipt of an appeal under proviso to subsection 5 or subsection 8 of section 8 of the Act forward it to the Huzur Sadar Adalat for decision.

Investment holding companies

20. In the case of a business consisting wholly or mainly in the holding of investments.

(a) the income from investments to be included in the profits of the business under the provisions of Rule 4 of schedule I to the Act shall be computed exclusive.

(i) of all income received by way of dividends or distribution of profits from a company carrying on a business to the whole of which the section of the Act imposing excess profits tax applies ; and

(ii) or the due proportion of all income received by way of dividends or distribution of profits from a company carrying on a business to a part of which the section of the Act imposing excess profits tax applies ;

(b) the investments to be excluded from the capital employed in the business under Rule 3 of schedule II to the Act shall include.

(i) all shares in a company carrying on business to the whole of which the section of the Act imposing the excess profits tax applies ; and

(ii) the due proportion of all shares in a company carrying on business to the part only of which the section of the Act imposing the excess profits tax applies.

Provided that if in relation to any chargeable accounting period, a company to which this rule applies gives notice to the Sar Suba, within the time allowed under Section 13 of the Act, for furnishing of a return in respect of such accounting period that the provisions of this rule shall not be applied to it, its profit and average capital in relation to such chargeable accounting period shall be computed as if this rule has not been made.

Dated 4th August 1943.

PART V

UNITED KINGDOM EXCESS PROFITS TAX.

EXTRACT FROM THE ENGLISH FINANCE ACT No. 2 OF 1939.

(As Amended by the Subsequent Finance Acts upto 1944.)

PART III.

EXCESS PROFITS TAX

Section

12. Charge of excess profits tax.
13. Computation of standard profits.
14. Provisions as to computation of profits and capital.
15. Relief in respect of deficiency of profits.
16. Succession and amalgamation.
17. Provisions as to interconnected companies.
18. Relation of excess profits tax to income-tax.
19. Relation of excess profits tax to national defence contribution.
20. Repeal of armament profits duty.
21. Assessment, Collection, Appeals, etc.
22. Interpretation of Part III.

Schedules

Seventh Schedules—Computation of profits and capital for purposes of Excess Profits Tax.

Part I.—Adaptations of income-tax principles as to computation of profits.

Part II.—Provisions for computing capital.

Charge of Excess Profits Tax.

12.—(1) Where the profits arising in any chargeable accounting period from any trade or business to which this section applies exceed the standard profits, there shall, subject to the provisions of this Part of this Act, be charged on the excess a tax (to be called the excess profits tax) equal to[1] the excess.

(2) Subject as hereafter provided, the trades and businesses to which this section applies are all trades or businesses of any description carried on in the United Kingdom, or carried on, whether personally or through an agent, by persons ordinarily resident in the United Kingdom.

(3) The carrying on of a profession by an individual or by individuals in partnership shall not be deemed to be the carrying on of a trade or business to which this section applies if the profits of the profession are dependent wholly or mainly on his or their personal qualifications :

Provided that for the purpose of this sub-section the expression "profession" does not include any trade or business consisting wholly or mainly in the making

(1) These wards have beed added by the Section 26, Finance Act, 1940.

of contracts on behalf of ther persons or the giving to other persons of advice of a commercial nature in connection with the making of contracts.

(4) Where the functions of a company or 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 section to be a business carried on by the company or society.

(5) All trades or businesses to which this section applies carried on by the same person shall be treated as one trade or business for the purposes of this Part of this Act.

Computation of standard profits.

13.—(1) For the purposes of this Part of this Act, the standard profits of a trade or business shall, in relation to any chargeble accounting period, be taken, if the person carrying on the trade or business so elects, to be the minimum amount specified in sub-section (2) of this section, and, in the obsence of such an election, to be the amount of the standard profits for a full year computed in accordance with the provisions of sub-sections (3) to (9) of this section :

Provided that in relation to a chargeable accounting period which is less than twelv months the standard profits shall be taken to be the amount in question proportionately reduced so as to correspond with the length of the period.

[(1)][(2) The minimum amount referred to in sub-section (1) of this section is one thousand pounds, or, in the case of a trade or business carried on by a partnership or by a company the directors whereof have a controlling interest therein, such greater sum, not exceeding six thousand pounds, as is arrived at by allowing one thousand five hundred pounds for each working proprietor in the trade or business :

Provided that if, in the case of a trade or business carried on by a single individual, a partnership or such a company as aforesaid, the Commissioners, having regard to the nature of the business and the size of the business as shown by the value of the assets employed therein, are satisfied that the said greater sum is in adequate, they may, if they think fit, direct that there shall be allowed in respect of not more than four working proprietors such additional sum, not exceeding one thousand pound for each individual working proprietor or four thousand pounds in the aggregate, as may be specified in the direction.

In this subsection—

(a) the expression "working proprietor" means a proprietor who has, during more than one-half of the chargeable accounting period in question, worked full time in the actual management or conduct of the trade or business;

(b) the expression "proprietor" means, in the case of a trade or business carried on by a partnership, a partner therein, and, in the case of a company, any director thereof owning not less than one-twentieth of the share capital of the company.

(3) If the trade or business was commenced on or before the first day of July, nineteen hundred and thirty-six, the standard profits for a full year shall be ascertained by reference to the profits of the standard period as hereinafter defined and subject as hereinafter provided, shall be, where the standard period is one year, the amount of those profits and, where the standard period is two years, half the amount of those profits:

Provided that if the average amount of the capital employed in the trade or business in any chargeable accounting period is greater or less than the average amount of the capital employed therein in the standard poriod, the standard profits for a full year shall, in relation to that chargeable accounting period, be increased,

(1) This clause has been added by the Section 31, Finance Act, 1940.

or, as the case may be, decreased, by the statutory percentage of the increase or decrease in the average amount of the capital employed in the trade or business.

(4) If the trade or business was commenced on or before the first day of January, nineteen hundred and thirty-five, the standard period shall be, at the option of the person carrying on the trade or business, either the year nineteen hundred and thirty-five, the year nineteen hundred and thirty-six, the years nineteen hundred and thirty-five and nineteen hundred and thirty-seven or the years nineteen hundred and thirty-six and nineteen hundred and thirty-seven.

(5) If the trade or business was commed after the first day of January, nineteen hundred and thirty-five, and on or before the first day of January, nineteen hundred and thirty-six, the standard period shall, at the option of the person carrying on the trade or business, be the year nineteen hundred and thirty-six or that and the following year.

(6) If the trade or business was commenced after the first day of January, nineteen hundred and thirty-six, and on or before the first day of July in that year, the standard period shall be such consecutive period of twelve months ending not later than the end of June, nineteen hundred and thirty-seven, as the person on the trade or business may select.

(7) ....(*)

(8) In the case of a trade or business commenced after the first day of July, nineteen hundred and thirty-six, the standard profits for a full year shall, in relation to any chargeable accounting period, be statutory percentage of the average amount of the capital employed in the trade or business in that chargeable accounting period.

(9) In this section the expression "statutory percentage" mean—

(*a*) in relation to a trade or business carried on by a body corporate (other than a company the directors whereof have a controlling interest (therein, eight per cent.

[1][(*b*) in relation to a trade or business carried on by a partnership of which one or more of the parthers is a body corporate which is not a company the directors whereof have a controlling interest therein, such a rate per cent. as is equivalent to]—

(i) eight per cent. on so much of the average amount of the capital employed in the trade or business in the chargeable accounting period as represents the share of any such body corporate; and

(ii) ten per cent. on the remainder of that amount ;

(*c*) in relation to a trade or business to which neither of the foregoing paragraphs of the sub-section applies, ten per cent.

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

Provisions as to computation of profits and capital.

14.—(1) For the purposes of this Part of this Act, the profits arising from a trade or business in the standard period or in any chargeable accounting period shall be separately computed, and shall be so computed on income-tax principles as adapted in accordance with the provisions of Part I of the Seventh Schedule to this Act;

Provided that where a standard period or chargeable acoounting period is not an accounting period, the profits or losses of the trade or business for any aceounting periods wholly or partly included within the standard period or chargeable accounting

(*) Repealed and replaced by Section 27, Finance Act, 1940.

(1) This clause has been added by the Section 31 (2), Finance Act, 1940.

period shall be so computed as aforesaid, and such division and apportionment of those profits or losses and such aggregation of those profits or losses, or any apportioned part thereof, shall be made as appears necessary to arrive at the profits arising in 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 Commissioners, having regard to any special circumstances, otherwise direct.

For the purposes of this sub-section, the expression "income-tax principles" in relation to a trade or business means the principles on which the profits arising from the trade or business are computed for the purposes of income-tax under Case I of Schedule D, or would be so computed if income-tax were chargeable under that Case in respect of the profits so arising.

(2) The average amount of the capital employed in a trade or business in the standard period or any chargeable accounting period shall be computed in accordance with Part II of the Seventh Schedule to this Act.

[1](3) * * * * *

Relief in respect of deficiency of profits.

15.—(1) For the purposes of this Part of this Act a deficiency of profits shall be deemed to have occurred in a trade or business in any chargeable accounting period if the profits arising from the trade or business in that period are less than the standard profits, or if a loss is sustained in the trade or business in that period; and the amount of the deficiency occurring in any such period shall be taken to be—

(*a*) where profits have been made in the period, the amount by which those profits fall short of the standard profits;

(*b*) where a loss has been sustained in the period, the amount of the loss added to the amount of the standard profits.

(2) Where a deficiency of profits occurs in any chargeable accounting period in any trade or business, the profits chargeable with excess profits tax arising from the trade or business shall be deemed to be reduced, and relief shall be granted in accordwith 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, 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 exceeds the aggregate amount of the profits so chargeable for the previous chargeable accounting periods, the balance of the deficiency 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.[2]

Succession and amalgamation.

16.—(1) as from the date of any change in the persons carrying on a trade or business, the trade or business shall, subject to the provisions of this section, be deemed for the purposes of this Part of this Act to have been discontinued, and a new trade or business to have been commenced.

(2) Where the change took palace before the first day of April, nineteen hundred and thirty-nine, and consisted in the death or retirement of a partner, or the taking in of a partner, the persons carrying on the trade or business after the change

(1) Sub-clause (3) has been repealed by Section 36, Finance Act, 1940.

(2) For reference See Section 26 (2), Finance Act, 1940.

may by notice in writing to the Commissioners, elect that, for the purposes of the provisions of the Part of this Act relating to the computation of standard profits, the trade or business not be deemed to have been discontinued.

(3) A trade or business shall not, for the purposes of the provision of this Part 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 first day of April, ninteen hundred and thirty-nine, in the persons carrying it on, and the standard profits of the trade or business in relation to any chargeable accounting period shall be computed accordingly, and, in particular, in computing the capital employed in the trade or business after the change, no regard shall be had to any consideration given in respect of the transfer of the trade or business or any of the assets thereof on the occasion of the change,[1]

(4) Where, on or after the first days of April, nineteen hundred and thirty-nine, two or more trades or businesses are amalgamated, the resulting trads or business shall be treated for the purposes of the provisions of this Part 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 trades or businesses;

(b) any profits made or losses incurred or capital employed in any of those former trades or businesses had been made, incurrred or employed in the resulting trade or business; and

(c) any assets of any of those former trades or businesses had become assets of the resulting trade or business when they became assets of the former trade or business;

and, in particular, in computing the capital employed in the resulting trade or business, no regard shall be had to any consideration given in respect of the transfer of any of those former trades or businesses or any of the assets thereof on the occasion of the amalgamation[1]

(5) Where, on or after the first day of April, ninetten hundred and thirty-nine, part of a trade or 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 trade or business, and the said provisions, including the provisions of this section relating to amalgamations, shall apply accordingly;[2]

Provided that, for the purpose aforesaid, such apportionments shall be made of the profits made, and losses incurred, and the capital employed, in the original trade or business, and of any assets of the original trade or business; as may appear to the Commissioners, or, on appeal to the Board of Referees, to the Board, to be just.

(6) Notwithstanding anything in the foregoing provisions of the section,[3]

[4]Where—

(a) a trade or business which was commenced before the first day of January nineteen hundred and thirty-five, or the main part of such a trade or business, was transferred on or after that and before the first day of April, nineteen hundred and thirty-nine, by the person carrying it on another person; or

(b) a trade or business which was commenced on or after the said first day of January but before the second day of July, nineteen hundred and

(1) For reference See Section 38 (2) and (4), Finance Act, 1940.

(2) The words "subjct to any necessary modification" have been deleted by Section 38 (5), Finance Act, 1940.

(3) For reference See Section 38 (2) and (4), Finance Act, 1940.

(4) This clause has been amended by Section 38 (3), Finance Act, 1940.

thirty-six or the main part of such a trade or business, was transferred before the said first day of April by the person carrying it on to another person.

the Commissioners if they are satisfied that the trade or business carried on after the transference was not substantially different from the trade or business or part transferred, may, on the application of the person carrying on the trade or 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 transfered trade or business or part of a trade or business as from the dute of the commencement of that trade or business* * [1]

Provided that if the Commissioners refuse an application under this subsection * *[1] the applicant any appeal to the Board of Referees.

Provisions as to interconnected companies.

17.—(1) Where any interest, annuity or other annual payment, or any royalty or rent, is paid by one body corporate to another body corporate, and one of those bodies corporate is a subsidiary of the other, or both are subsidiaries of a third body corporate, the capital, profits and losses of both bodies corporate shall be computed for the purposes of this Part 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 body corporate paying the royalty or the rent.

(1-A) Where—

(*a*) any debt is owing to any body corporate by another body corporate; and

(*b*) one of those bodies corporate is a subsidiary of the other, or both are subsidiaries of a third body corporate; and

(*c*) on 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 trade or business of the debtor body corporate,

the capital of both bodies corporate shall be computed as if the debs did not exist.[2]

(2) ..
(3) .. [3]
(4) ..
(5) ..

(6) For the purposes of this section, a body corporate shall be deemed to be a subsidiary of another body corporate if and so long as not less than nine-tenths of its ordinary share capital is owned by that other body corporate, whether directly or through another body corporate or other bodies corporate, or partly directly and partly through another body corporate or other bodies corporate; and the provisions of sub-sections (2) and (3) of section 42 of, and Part I of the Fourth Schedule to the Finance Act, 1938, shall have effect for the purposes of this subsection as they have effect for the purposes of the said section 42.

Relation of excess profits tax to income tax.

18.—(1) The amount of the excess profits tax payable in respect of a trade or business for any chargeable accounting period shall, in computing for the purposes of income-tax the profits and gains arising from that trade or business, be allowed to be deducted as an expense incurred in that period:

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(1) Amended by Section 28 (5), Finance Act, 1940.

(2) Added by Section 28 (2), Finance Act, 1940.

(3) Omitted by Section 28 (1), Finance Act, 1940 and fifth Schedule, of Finance Act, 1940 have been provided.

Provided that where, under the provisions of this Act relating to deficiencies of profits, 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 this section shall not be altered but the amount repayable shall be taken into account in computing the profits and gains of the trade or business for the purposes of income-tax as if it were a profit of the trade or business accruing in the chargeable accounting period in which the deficiency occurs.

(2) The provisions of this section do not apply to the computation of the profits of a trade or business for the purposes of the national defence contribution.

Relation of excess profits tax to national defence contribution.

19.—(1) In the case of each chargeable accounting period to which this section applies, there shall be computed the total excess profits tax chargeable for that period and all previous chargeable accounting periods to which this section applies, and the total national defence contribution chargeable for all those periods.

[1][In computing the said total excess profits tax the national defence contribution shall be disregarded except in computing capital, and in computing the said total national defence contribution excess profits tax shall be altogether disregarded.]

(2) If, in the case of any chargeable accounting period to which this section applies, the total national defence contribution computed under sub-section (1) of this section is the higher, the national defence contribution and not excess profits tax shall be charged in respect of that period, but in any other event excess profits tax, and not the national defence contribution, shall be charged in respect of that period ;

Provided that the amount charged shall not in any event exceed the difference between the higher of the said totals and the total of the amounts, whether of national defence contribution or excess profits tax, charged (and not repaid) in respect of the previous chargeable accounting periods, if any, to which this section applies.

(3) Where the profits chargeable with excess profits tax arising in any chargeable accounting period to which this section applies are deemed to be reduced by reason of a deficiency occurring in any subsequent chargeable accounting period, the amount of excess profits tax repaid or otherwise allowed shall, notwithstanding the reduction, not exceed such an amount as will reduce the total excess profits tax chargeable for all the chargeable accounting periods (up to and including that in which the deficiency occurs) to the total national defence contribution which would have been chargeable in respect of all those periods [2][if the provisions of this Part of this Act, except the provisions of section 20 thereof (which abolishes armaments profits duty) had not been passed.]

[3][(4) The chargeable accounting periods to which this section applies are the chargeable accounting periods (as defined by this Part of this Act in relation to excess profits tax) which fall within the years of charge to the national defence contribution ;

Provided that where part only of a chargeable accounting period as so defined falls within those years, this section shall have effect as if that part were a separate chargeable accounting period as so defined, and as if the profits or losses of that separate chargeable accounting period were an apportioned part of the profits or losses arising in the whole period.]

(5) Where a chargeable accounting period to which this section applies is not also a chargeable accounting period for the purposes of national defence contribution—

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(1) Amended by Section 39 (1), Finance Act, 1940.

(2) This clause has been amended by Section 39 (2), Finance Act, 1940.

(3) This clause has been replaced by the Ninth Schedule, Finance Act, 1942.

(a) references to the national defence contribution for that chargeable accounting period shall be taken to be references to a sum arrived at by apportioning and aggregating the amounts of national defence contribution payable in respect of any chargeable accounting period (as defined for the purposes of the national defence contribution) which falls wholly or partly within the first mentioned chargeable accounting period ;

(b) effect shall be given to any provision of this section requiring relief to be given from the national defence contribution payable in respect of a chargeable accounting period to which this section applies by apportioning the amount of that relief among the chargeable accounting periods (as defined for the purposes of the national defence contribution) which fall wholly or partly within the first mentioned chargeable accounting period, and making reductions accordingly in the amounts payable by way of national defence contribution in respect of those periods.

(6) Any apportionment required to be made by this section shall be made by reference to the number of months or fractions of months in the period to which the apportionment relates.

Repeal of armament profits duty.

20.—Armament profits duty shall not be charged and accordingly Part III of the Finance Act, 1939, and the Ninth Schedule to that Act are hereby repealed.

Assessment, Collection, Appeals, etc.

21.—(1) Excess profits tax shall be assessed and collected by the Commissioners, and shall be due and payable at the expiration of one month from the date of assessment, and shall be recoverable as a debt due to His Majesty from the person on whom it is assessed.

(2) The provisions of the Fifth Schedule to the Finance Act, 1937 (which relate to the assessment and the collection of the national defence contribution, appeals and supplementary provisions), including the provisions therein enabling the Commissioners to make regulations, shall have effect with respect to excess profits tax as they have effect with respect to the national defence contribution :

Provided that

(a) no appeal shall lie to the General or Special Commissioners in respect of any matter with respect to which an appeal lies to the Board of Referees, or which is by this Part of this Act to be decided by that Board, or is left to the discretion of the Commissioners ;

(b) the Commissioners shall have the like power of making regulations with respect to the hearing of appeals and the deciding of any matters by the Board of Referees under this Part of this Act as they have of making regulations with respect to the hearing of appeals under Part II of the said Schedule.

Interpretation of Part III.

22. For the purposes of this Part of this Act—

(a) the expression "the Commissioners" means the Commission of Inland Revenue;

(b) the expression "the Board of Referees" means the Board of Referees for the purpose of Rule 6 of the Rules applicable to Cases I and II of Schedule D of the Income Tax Act, 1918;

(c) the expression "company" and "director" * * * have the same meanings as they have for the purposes of the Fourth Schedule to the Finance Act, 1937;

*Certain words I have been omitted by Section 41, Finance Act, 1940.

(*d*) the expression "the fixed rate," in relation to share capital other than ordinary share capital, includes a rate fluctuating in accordance with the standard rate of income-tax;

(*e*) the expression "chargeable accounting period" means, in relation to excess profits tax—

(*a*) any accounting period beginning on or after the first day of April, 1939; and

(*b*) so much of any accounting period beginning before that date as falls on or after that date.

(*f*) the accounting periods of a trade or business shall be determined in the same manner as the accounting periods of a trade or business are directed by sub-section (2) of section twenty of the Finance Act, 1937, to be determined for the purposes of the natinal defence contributlon.

SEVENTH SCHEDULE

Section 14.

COMPUTATION OF PROFITS AND CAPITAL FOR PURPOSES OF EXCESS PROFITS TAX.

PART I

Adaptations of Income Tax Principles as to Computations of Profits

1. The profits shall be taken to be the actual profits arising in the accounting period,and the principles of computing profits by reference to any other period and of allowing losses sustained in any other period to be carried forward shall not be followed.

2. There may de deducted in respect of any accounting period a sum (ascertained on the like basis as the amount of a deduction for wear and tear is ascertained under rule 6 of the Rules applicable to Cases I and II of Schedule D) which represents the diminution in value by reason of wear and tear during that period of any plant or machinery in respect of which a deduction can be made under the said Rule 6, plus, in the case of an accounting period which constitutes or includes the whole or any part of the standard period, ten per cent., and in the case of any other accounting period, twenty per cent. of that sum.

3.— [1][(1) where any buildings, plant or machinery have, after the beginning of the yea nineteen hundred and thirty-seven, been provided for the purposes of the trade or business by the person carrying on the trade or business, then, if either—

(*a*) on such date as Parliament may hereafter determine, the buildings, plant or machinery have, wholly or partially, become obsolete or ceased to be reqiured and the valve thereof is less than the net cost thereof; or

(*b*) the buildings, plant or machinery are sold before the said date at a price which is less than the net cost thereof,

and, in either case, the defiiciency is wholly or mainly ascribable to conditoins prevailing as a consequence of the present war, and exceeds.

(i) the, aggregate amount of any deductions for wear and tear or depreciation already allowed in respect of the buildings, plant or machinery otherwise than under this paragraph (together with the appropriate proportion of any deductions for wear and tear or depreciation given for income-tax purposes for the year 1938-39 or any previous year of assessment) ; plus

(1) New paragraph has been substituted for the old by paragraph (1), Third Schedule, Finance Act, 1941.

(ii) any payments made to or to be made under Part I or Part II of the War damage Act, 1941, in respect of damage to the buildings, plant or machinery, other than payments in respect of damage made good before the said date or before the previous sale of the buildings, plant or machinery, as the case may be,

there shall be allowed in respect of each accounting period which constitutes or includes a chargeable accounting period such proportion of the excess as is properly attributable to that accounting period; and if any plant or machinery in respect of which an allowance has been made under this paragraph is replaced, no allowance other than that made under this paragraph shall be made in respect of the amount expended in replacement thereof.

The reference in this sub-paragraph to deductions for wear and tear shall be construed as including a reference to the additional percentage for which provisions is made by paragraph 2 of this Part of this Schedule, and, in the case of a deduction for income-tax purposes, to the additional deduction under Section eighteen of the Finance Act, 1932, or under that section as amended by Section twenty-two of the Finance Act, 1938.]

(2) Pending an ascertainment whether any allowance falls to be made under sub-paragraph (1) of this paragraph in respect of buildings, plant or machinery, the Commissioners, if they are satisfied that any buildings, plant or machinery provided as aforesaid are of such a character that it is likely that the conditions specified in the said sub-paragraph will be fulfilled in the case thereof, may allow in any accounting period which constitues or includes a chargeable accounting period such sums as they think fit, not exceeding ten per cent. (or, if the accounting period is less than a year, a proportionately reduced amount) of the net cost of the buildings, plant or machinery, but any such allowance shall be provisional only, and on the coming of the said date, or as the case may be, on the previous sale of the buildings, plant or machinery, the amount thereof shall be adjusted so as to accord with the provisions of the said sub-paragraph.

[1][(3) In this paragraph, the expression "net cost" means, in relation to any buildings, plant or machinery, the cost of the provision thereof (being cost of a capital nature), less any sum provided, or to be provided, directly or indirectly by the Crown or by any government or public or local authority, whether in the United Kingdom or elsewhere, or by any other person other than the person or persons carrying on the trade or business, towards the cost of the provision of the buildings, plant or machinery, or towards any wear and tear or depreciation thereof, not being a sum provided, or to be provided, either by way of loan or under Part I or Part II of the War Damage Act, 1941 ; and references to Part I of the War Damage Act, 1941, shall be construed as including references to any similar Act relating to war damage to which the said Part I does not apply]

4. The principles of the Income Tax Acts under which deductions are not allowed for interest, annuities or other annual payments payable out of the profits, or for royalties,[2] or (in certain cases) for rent, and under which the annual value of lands, tenements, hereditaments or heritages occupied for the purposes of a business is excluded, and under which a deduction may be allowed in respect of such annual value, shall not be followed:

Provided that—

(*a*) nothing in this paragraph shall authorise any deduction in respect of any payment of dividend or distribution of profits ;

(*b*) for the purposes of this paragraph, any additional deduction allowable for income-tax purposes by virtue of the proviso to paragraph (2) of Rule 5 of the Rules applicable to Cases I and II of Schedule D, and any

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(1) Substituted for old by paragraph (2), Third Schedule, Finance Act, 1941.

(2) For reference See Section 14, Finance (No. 2) Act, 1940.

deduction allowable for those purposes under section eighteen of the Finance Act, 1919, shall not be treated as a deduction in respect of annual value.

5.—The provisions of sub-section (4) of section twenty-seven of the Finance Act, 1920 (which disallows deductions on account of the payment of Dominion income-tax shall not apply.

6.—(1) Income received from investments shall be included in the profits in the profits in the cases and [1][to the extent provided in sub-paragraphs (2) and (2A) of this paragraph] and not otherwise.

(2) In the case of business of a building society, or of a banking business, assurance business or bnsiness consisting wholly or mainly in the dealing in or holding of investments, the profits shall include all income received from investments, being income to which the persons carrying on the business are beneficially entitled.

[2][(2A) In the case of a trade or business part of which consists in banking, assurance or dealing in investments not being a business to which sub-paragraph (2) of this paragraph applies, the profits shall include all income received from investments held for the purposes of that part of the trade or business, being income to which the persons carrying on the trade or business are beneficially entitled.]

(3) Where the person carrying on a trade or business is the beneficial owner of any investments, the income from which is by virtue of the provisions of this paragraph not to be taken into account in computing the profits of the trade or business, and a deduction would apart from the provisions of this paragraph fall to de 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 trade or business is not a body corporate no such reduction shall be treated as 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.

[3][(4) The reference in sub-paragraphs (2) and (2A) of this paragraph to income received from investments shall not, in cases where the persons carrying on the trade or business are neither domiciled nor ordinarily resident in the United Kingdom, include any interest received from tax-free Treasury securities unless the conditions of the issue of the securities so provide; and where any interest on tax-free Treasury securities is, in accordance with the provisions of this sub-paragraph, left out of account in computing the profits of the trade or business, any expenses attributable to the acquisition or holding of, or to any transaction in, the securities and any profits or losses so attributable (but not, save as provided by sub-paragraph (3) of this paragraph, the interest on any money borrowed for the purposes of acquiring the securities) shall also be left out of account in computing the profits of the trade or business.

In this sub-paragraph the expression "tax-free Treasury securities" means any securities issued by the Treasury under the power conferred by Section forty-seven of the Finance (No. 2) Act, 1915, or under the power conferred by Section twenty-two of the Finance (No. 2) Act, 1931.

Any reference in this Schedule to income which is by virtue of the provisions of this paragraph not to be taken into accounts in computing the profits of a trade or business shall be construed as including a reference to interest left out of account in accordance with this sub-paragraph]

7.—Subject to the provisions of the last foregoing paragraph, the profits shall include all such income arising from the trade or business as is chargeable to income-

(1) Amended by S. 33 (3) of Finance Act, 1940.

(2) Added by S. 33 (3) of Finance Act, 1940.

(3) Added by S. 33 (4) of Finance Act 1940.

tax under Case I of Schedule D, or would be so chargeable if the profits of the trade or business were chargeable under that Case, except income which is, or would be, exempted from income-tax by virtue of section thirty-nine of the Income Tax Act, 1918, or section thirty of the Finance Act, 1921.

8.—No deduction shall be made on account of liability to pay, or payment of, United Kingdom income-tax the national defence contribution, or excess profits tax.

9.—No deduction shall be made in respect of any transaction or operation of any nature if and so far as appears that the transaction or operation has artificially reduced or would artificially reduce the profits.

10.—[(1) In the case of a trade or 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 trade or 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.

In this sub-paragraph the expression "directors, remuneration" does not include 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 per cent. of the ordinary share capital of the company.

(2) If, in the case of a trade or 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, in 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-paragraph (1) of this paragraph applies, then, except in so far as the Commissioners 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).][1]

11.—Where the performance of a contract extends beyond the accounting period, there shall (unless the Commissioners, owing to any special circumstances, otherwise direct) 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.

12.—Where, in respect of any profits arising from a trade or business, relief from income-tax chargeable in the United Kingdom is granted by virtue of arrangements with the Government of any other country, being arrangements which for the time being have effect either—

(*a*) under section eighteen of the Finance Act, 1923 (which as amended by section thirty-one of the Finance Act, 1924, and section nine of the

(1) This has been replaced by S. 33 (5) Finance Act 1940.

Finance Act, 1931, provides for the relief of shipping and air transport from double taxation); or

(*b*) under section seventeen of the Finance Act, 1930 (which provides for the relief of certain agencies from double taxation),

those profits shall not be included in the profits arising from that trade or business, if and so long as the profits of trades or businesses which, by virtue of those arrangements, are relieved from income-tax chargeable in that other country, are relieved from all taxes chargeable in that other country on the profits of trades or businesses.

13.—In computing the profits of a local authority from any trade or business carried on by that authority, a deduction shall be made equal to the total amount which is required to be raised by them for sinking fund purposes in connection with that trade or business in respect of the accounting period.

PART II

PROVISIONS FOR COMPUTING CAPITAL

1.—(1) Subject to the provisions of this Part of this Schedule, the amount of the capital employed in a trade or business (so far as it does not consist of money) shall be taken to be—

(*a*) so far it consists of assets acquired by purchase on or after the commencement of the trade or 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 trade or 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 trade or business, subject to the said deductions.

(2) The price or value of any assets other than a debt shall be subject to the following deductions—

(*a*) a deduction of any sum contributed, directly or in directly, out of the Consolidated Fund of the United Kingdom or Northern Ireland, or out of moneys provided by the Parliament of the United Kingdom or the Parliament of Northern Ireland, towards the acquisition of the asset;

(*b*) any such deductions for wear and tear or for depreciation as are authorised by the Income Tax Acts or Part I of this Schedule.

[1][(*c*) any othe such deductions in respect of reduced value 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.

(4) For the purposes of the provisions of sub-paragraph (2) of this paragraph relating to deductions for wear and tear or depreciation—

(*a*) and additional percentage allowed under section eighteen of the Finance Act, 1932, or under that section as amended by section twenty two of the Finance Act, 1938, or under paragraph 2 of Part I of this Schedule shall be treated as part of a deduction for wear and tear;

(*b*) any additional deduction allowable for income-tax purposes by virtue of the proviso to paragraph (2) of Rule 5 of the Rules applicable to

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(1) Added by S. 34 (3), Finance Act, 1940.

Cases I and II of Schedule D, and any deduction allowable for those purposes under section eighteen of the Finance Act, 1919, and any allowance made under paragraph 3 of Part I of this Schedule shall be treated as a deduction for depreciation.

2.—(1) any borrowed money and debts shall be deducted, and in particular any debt for income-tax computed by reference to the standard rate or for the national defence contribution or excess profits tax in respect of the trade or business shall be deducted

Provided that any such debt for income-tax or the national defence contribution or excess profits tax shall, for the purposes of this Part of this Schedule, be deemed to have become due—

(*a*) in the case of income-tax, on the first day of January in the year of assessment for which the tax is assessable;

(*b*) in the case of the national defence contribution or excess profits tax, on the first day after the end of the chargeable accounting period in respect of which the contribution or tax is assessable;

notwithstanding that the income-tax, national defence contribution or excess profits tax may not have been assessed until after those dates respectively.

[1][The debts to be deducted under this sub-paragraph shall include—

(*a*) any such sums in respect of accruing liablities 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

(*b*) in the case of the business of an assurance company, also any sums representing profits of its life assurance business belonging or allocated to, or reserved for, or expended on behalf of, policy holders or annuitants (being sums which would be excluded, under sub-section (1) of Section sixteen of the Finance Act, 1923, in computing the profits of the company for the purposes of the Income Tax Act),

and all the said sums shall be deducted notwithstanding that they have not become payable.]

(2) Where any debt for the excess profits tax assessable in respect of any period is to be deducted under the paragraph, 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 trade or business on the first day after the end of chargeable accounting period in which the deficiency occurred.

3.—Any investments the income from which is by virtue of the provisions of Part I of this Schedule not to be taken into account in computing the profits of the trade or business, and any moneys not required for the purposes of the trade or business, shall be left out of account, but where any investments in the beneficial ownership of the person carrying on the trade or business are so left out of account, the sum (if any) to be deducted under the last preceding paragraph 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 trade or business is not a body corporate, no reduction shall be treated as 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.

4.—For the purpose of ascertaining the average amount of capital employed in a trade or 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 trade or business.

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(1) Added by S. 34 (4), Finance Act, 1940.

UNITED KINGDOM EXCESS PROFITS TAX

EXTRACT FROM THE ENGLISH FINANCE ACT, 1940.

PART III

EXCESS PROFITS TAX AND NATIONAL DEFENCE CONTRIBUTION

Section

26. Raising of rate of excess profits tax.
27. Provisions to replace section 13 (7) of Finance Act (No. 2), 1939.
28. New provisions as to interconnected companies.
29. Investments held by members of groups of bodies corporate.
30. Relief in respect of excess profits tax in dominions, etc.
31. Miscellaneous amendments as to standard profits.
32. Disallowance, in computing profits, of certain expenses.
33. Miscellaneous amendments as to computation of profits for excess profits tax.
34. Miscellaneous amendments as to computation of capital.
35. Computation of profits and capital in the case of trades and businesses not falling within Case I of Schedule D.
36. Provisions as to computation of losses.
37. Amendments as to deficiencies of profits.
38. Successions and amalgamations.
39. Amendments as to relation to excess profits tax to national defence contribution.
40. Amendments as to national defence contribution.
41. Definition of ordinary share capital.
42. Date from which amendments are to operate.

Schedules :

Fifth Schedule.—Provisions as to Excess Profits Tax and National Defence Contribution in the case of interconnected companies.

Sixth Schedule.—Additional provisions as to assessment and collection of Excess Profits Tax and the National Defence Contribution.

CHAPTER 29.

An Act....to amend the law relating to Customs and Inland Revenue (including Excise) and the National Debt, and to make further provision in connection with Finance.—(27th June, 1940.)

Raising of rate of excess profits tax.

26.—(1) Section 12 of the Finance Act (No. 2), 1939 (which charges excess profits tax), shall, in relation to an excess of profits arising in any chargeable accounting period beginning on or after the first day of April, 1940, have effect as if, in sub-section (1) thereof, for the words "equal to three-fifths of the excess" there were substituted the words "equal to the excess."

(2) Notwithstanding anything in sub-section (2) of section 15 of the said Act, a deficiency of profits occurring in a chargeable accounting period beginning on or after the first day of April, 1940, shall first be applied so as to reduce profits chargeable to tax arising in another chargeable accounting period beginning on or after the said first day of April, and a deficiency of profits occurring in a chargeable accounting period ending on or before the last day of March, 1940, shall first be

applied so as to reduce profits chargeable to tax arising in another chargeable accounting period ending on or before the said last day of March; and where owing to an insufficiency of profits for chargeable accounting periods ending on or before the said last day of March, or, as the case may be, beginning on or after the said first day of April, the whole or any part of a deficiency is applied otherwise than as aforesaid—

(*a*) the application shall, either wholly or to such extent as the Commissioners think appropriate, be treated as provisional only ; and

(*b*) if it thereafter appears that there is no longer such an insufficiency as aforesaid, such adjustments shall be made as the Commissioners may direct.

[1][(3) * * * * *]

Provisions to replace Section 13 (7) of the Finance Act (No. 2), 1939.

27.—(1) Sub-section (7) of section thirteen of the Finance (No. 2) Act, 1939, is hereby repealed, and in lieu thereof the following provisions of this section shall have effect in the case of a trade or business commenced on or before the first day of July, nineteeen hundred and thirty-six.

(2) If, in the case of a trade or business carried on by a body corporate, the Commissioner are satisfied, on the application of the person carrying on the trade or business—

(*a*) that there were no profits in the standard period, or

(*b*) that the period were so low that it would not be just to ascertain the standard profits of the trade or business by reference to the actual profits of the standard period.

they may direct that the standard profits for a full year shall be ascertained as if the profits of the standard period were of such amount or greater amount as they think just.

Provided that the said amount shall not exceed an amount equal to interest for the standard period—

(i) on the amount of the paid-up ordinary share capital, if any, of the body corporate, at six per cent , or, in the case of a company the directors whereof had a controlling interest therein, eight per cent., per annum, and

(ii) on the amount of any other paid-up share capital of the body corporate, at the fixed rate per annum payable in the case of dividends thereon ;

(iii) [on the average amount of the borrowed money, if any, employed in the trade or business in the standard period, at six per cent , or, in the case of a company the directors whereof had a controlling interest therein, eight per cent., per annum][2]

If the person carrying on the trade or business is dissatisfied with any determination of the [Commissioners][3] under this subsection he may appeal to the Board of Referees.

(3) If the application of the person carrying on the trade or business the [3][Commissioners] are satisfied that the condition specified in paragraph (*a*) or the condition specifiad in paragraph (*b*), of sub-section (2) of this section is fulfilled, and also that the paid up share capital of the body corporate in the standard period [4][together with any borrowed money employed in the trade or business in that period] did not fully represent the net value of the assets employed in the trade or business in that period, they may direct that the standard profits for a full year shall be ascertained as if the profits of the standard period were of such amount as they think just :

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(1) Omitted by Section 33 (4), Finance Act, 1941.

(2) Added by Section 29 (3), Finance Act, 1941, with effect from 1st April, 1940.

(3) Amended by Section 32 (1), Finance Act, 1941.

(4) These words has been inserted by Section 29 (3) (b), Finance Act, 1941.

Provided that the said amount shall not exceed an amount equal to interest for the standard period at six per cent., or, in the case of a company the directors whereof had a controlling interest therein, eight per cent. per annum on an amount ascertained as follows, that is to say—

(*a*) by computing the value of the assets employed in the trade or business immediately before the commencement of the standard period (valued as assets of a going concern), excluding any investments which would not be included in computing capital under the provisions applicable to the computation thereof for the purposes of excess profits tax [1][and deducting debts other than debts for borrowed money ;]

(*b*) by adding thereto or subtracting therefrom, as the case may be, the amount by which the average amount of the capital employed in the trade or business in the standard period exceeds or falls short of the amount of the capital employed therein immediately before the commencement of that period.

(4) I, on an application made under the last preceding sub-section, the [Commissioners][2] are satisfied that the trade or business belongs to a class of industry which, during the years by reference to which the standard period could have been selected was a depressed industry, the [Commissioners.[2]]

(*a*) may give a direction under that sub-section notwithstanding that they are not satisfied that the paid up share capital in the standard period [together with any borrowed money employed in the trade or business in that period,][3] did not fully represent the net value of the assets employed in the trade or business in that period ; and.

(*b*) shall not, as respect the amount to be specified in the direction, be bound by the limitation imposed by the proviso to that sub-section.

(5) Notwithstanding anything in sub-sections (2) to (4) of this section, the amount which, by virtue of those sub-sections, is to be treated, in ascertaining the standard profits for a full year, as being the profits of the standard period shall not exceed an amount equal to interest for the standard period at the rate of six per cent., or, in the case of a company the directors whereof had a controlling interest therein, eight per cent., per annum on the average amount of the capital employed in the trade or business in the standard perid, computed in accordance with the provisions applicable to the computation of capital for the purposes of excess profits tax :

Provided that if, in the opinion of the (*Commissioners*)[2] the amount of capital employed in the trade or business immediately before the commencement of the standard period, computed as aforesaid, was wholly or partly represented by assets the whole or any part of the value of which for the purposes of the trade or business had at that date been permanently lost, paragraph I of Part II of the Seventh Schedule to the Finance (No. 2) Act, 1939 shall, for the purposes of this sub section, have effect in relation to those assets as if their price or value as from that date were deemed to be reduced by so much of the value as was in the opinion of the (*Commissioner*)[2] so lost.

(6) The foregoing provisions of this section shall, with any necessary modifications, apply in relation to a trade or business carried on by any persons in partnership, or by a single individul, as they apply in relation to a trade or business carried on by a body corporate.

Provided that—

(*a*) for any reference to six per cent., or in the case of a company the directors whereof had a controlling interest therein, eight per cent., there shall be substituted a reference to eight per cent., and

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(1) These words have been inserted by Section 29 (3), Finance Act, 1941.
(2) Substituted by Section 32 (1) Finance Act, 1941
(3) Substituted by Section 32 (1), Finance Act, 1941,

(*b*) the net amounts standing to the credit of the capital accounts of the partners or, as the case may be, of the individual, during the standard period, after setting off any amounts standing to the debit of any of those accounts, shall be treated as paid-up ordinary share capital.

(7) [An application under this section shall not be entertained unless notice thereof is given in writing to the inspector of taxes before the end of March, 1942, unless the Commissioners allow a longer period.] [1]

(8) A determination on an application under sub-section (2) or sub-section (3) of this section—

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

(*b*) shall exclude any further application und er the sub-section under which the application was made.

(9) [If the person carrying on the trade or busines is dissatisfied with any determination of the Commissioners under section, he may appeal to the Board of Refarees] [2]

New Provisions as to interconnected companies.

28—(1) Sub-sections (2) to (5) of section seventeen of the Finance (No. 2) Act, 1939, are hereby repealed and in lieu thereof the provisions of the Fifth Schedule to this Act, shall have effect:

Provided that where, before the passing of this Act, any tax has been paid by any body corporate under any assessment made by virtue of the sub-sections repealed by this section in respect of any chargeable accounting period, the amount paid shall be deemed to have been paid on account of such tax as the Commissioners may [2][direct, being tax] charged or chargeable under any assessments made or to be made on that body corporate; by virtue of the provisions substituted for those sub-sections by by this section, in respect of any chargeable accountiug periods ending not later than the end of the said period, and no repayment thereof shall be made except in so far as the Commissioners are satisfied that the amount paid exceeds the amount payable in respect of those periods.

In this sub-section and the said Schedule, the expression "a group of companies" means two or more bodies corporate, of which—

(*a*) one (in this sub-section and in that Schedule referred to as "the principal company") is resident in the United Kingdom and is not a subsidiary of any other body corporate resident in the United Kingdom; and

(*a*) the remainder (whether or not resident or carrying on, business in the United Kingdom) are subsidiaries of the principal company,

and the expression "a subsidiary member" means any member of a group of companies other than the principal company.

(2) The following sub-section shall be inserted after sub-section (1) of the said section seventeen:—

"(1A) where—

(*a*) any debt is owing to any body corporate by another body corporate, and

(*b*) one of the bodies corporate is a subsidiary of the other, or both are subsidiaries of a third body corporate; 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

(1) Substituted by Section 32, (2) Finance Act, 1941.
(2) Substituted by Section 32, (3) Finance Act, 1941.

are such that the debt represents in substance capital employed in the trade or business of the debtor body corporate.

the capital of both bodies corporate shall be computed as if the debt did not exist."

(3) The provisions of sub-section (6) of the said section seventeen (which defines the expression "subsidiary") shall have effect for the purposes of this section and the said Schedule as they have effect for the purposes of the said section seventeen. Provided that a body corporate which, under the said sub-section (6) is a subsidiary of two or more bodies corporate, each of which is resident in the United Kingdom and none of which is a subsidiary of any other body corporate resident in the United Kingdom, shall, for the purposes of sub-section (1) of this section and of the said Schedule, be treated as a subsidiary of such one only of those bodies corporate as the Commissioners may direct.

Investments held by members of groups of bodies corporate.

29.--(1) Where a group of bodies corporate consists of or includes—

(*a*) a body corborate resident in the Uuited Kingdom (hereinafter referred as "the co-ordinating body corporate") which exists wholly or mainly for the purposes of co-ordinating the administration of the group; and

(*b*) one or more bodies corporate resident in the United Kingdom (hereinafter referred to as "the controlled bodies corporate") eaeh of which is under the control of the co-ordinating body corporate.

paragraph 6 of Part I of the Seventh Schedule to the Finance (No. 2) Act, 1939 shall be taken to require, in all cases,—

(i) that in computing profits of the co-ordinating body corporate, income arising from investments held by that body corporate in share capital of the controlled bodies corporate in order to carry out, or facilitate the carrying out of, the purposes of co-ordinating the administration of the group shall not be taken into account; and

(ii) that in computing profits of and controlled body corporate, income arising from investments in the share capital of any of the other controlled bodies corporate or of the co-ordinating body corporate shall not be taken into account; and

(iii) that any income from any other investments of the co-ordinating body corporate or any of the controlled bodies corporate shall not be taken into account in computing the profits of that body corporate, except in so far, as, if the trades or businesses carried on by all the members of the group were regarded as one trade or business, that inoome would be included in computing the profits of that one trade or business by virtue of any of the provisions of the said paragraph 6.

(2) This section applies in relation to any group of bodies corporate whether or not it is or includes such a group of companies as is mentioned in sub-section (1) of the last preceding section, but shall, in relation to the members of such a group, have effect subject to the provisions of paragraph 1 of Part IV of the Fifth Schedule to this Act.

Relief in respect of excess profits tax in dominions, & c.

30.—(1) His Majesty may by Order in Council declare that—

(*a*) under the law in force in any part of His Majesty's dominions outside the United Kingdom excess profits tax is payable in respect of any profits in respect of which excess profits tax is, or, if there were no national defence contribution, would be, payable also under the law in force in ths United Kingdom and;

(*b*) arrangments have been made with the Government of that part of His Majesty's dominions providing for the giving of relief from double taxati-

on in respect of such profits in accordance with the following principles—

(i) that there shall be computed the amount of excess profits tax which would be payable in each territory if excess profits tax in the other territory, and national defence contribution in the United Kingdom, were disregarded except in computing capital;
were disregarded except in computing capital;

(ii) that such amount of relief from tax shall be given in each territory as bears to the lower of the two amount so computed the same proportion as the amount so computed for that territory bears to the sum of the two amounts so computed;

(iii) that where the amount so computed for either territory is found to have been incorrect (whether by reason of a subsequent deficiency or profits or for any other reason) the amount so computed shall be recalculated and the relief in both territories varied accordingly

(2) Where any such Order in Council is made, then, if the Commissioners are are satisfied that any case is one which falls within the arrangments to which the Order relates, they shall, in lieu of allowing, in computing profits for the purpose of excess profits tax or the national defence contribution, any deduction in respect of excess profits tax charged in the part of His Majesty's dominions outside the United Kingdom to which the order relates, make such adjustment of the excess profits tax payable in the United Kingdom or the national defence contribution as may be necessary to give effect to the the arrangements, and allow any necessary relief accordingly by repayment or otherwise, (so, however, that the effect of the adjustment taken in conjunction with any adjustment in the said part of His Majesty's dominions outside the United Kingdom shall not be less favourable to the tax-payer than the effect of allowing the deduction.)[1]

(3) Where under the provisions of sub-section (2) of this section any adjustments of excess profit tax or national defence contribution is made for any period, a a corresponding adjustment shall be made in computing for the purposes of section nineteen of the Finance (No. 2) Act, 1939 (which makes provision as to the relation between excess profits tax and the national defence contribution) both the excess profits tax chargeable for that period and the national defence contribution for that period.

(4) Where it appears to the Commissioners that under the arrangements to which any such Order as foresaid relates, any relief provided for by the arrangemens falls to be recalculated (whether by reason of a subsequent deficiency of profits or otherwise) the adjustments made under sub-sections (2) and (3) of this section shall be varied accordingly and any necessary further relief given by repayment or otherwise and, where the effect of the recalculation is to show that much relief has been given, any necessary additional assessments shall be made.

(5) The obligation as to secrecy imposed by paragraph 6 of Part III of the Fifth Schedule to the Finance Act, 1937 and subsection (2) of section twenty-one of the Finance (No. 2) Act, 1939, shall not prevent any authorised officer of the Commissioners from disclosing, to any authorised officer of the Government with which arrangements are declared by an Order in Council under this section to have been made, such facts as may be necessary to enable effect to be given to the arrangements.

(6) This section shall apply in relation to—

(*a*) any British Protactorate or protected state ; and

(*b*) any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty, and is being exercised by His Majesty's Government in the United Kingdom or the Government of any Dominion.

as it applies to a part of His Majesty's dominions outside the United Kingdom.

(1) Amended by Section 41, Finance Act, 1941.

Miscellaneous amendments as to standard profits.

31.—(1) For sub-section (2) of section 13 of the Finance Act, (No. 2), 1939, there shall be substituted the followlng sub-section—

"(2) The minimum amount referred to in sub-section (1) of this section is one thousand pounds, or, in the case of a trade or business carried on by a single individual, or by a partnership, or by a company the directors whereof have a controlling interest therein, such greater sum, not exceeding six thousand pounds, as is arrived at by allowing one thousand five hundred pounds for each working proprietor in the trade or business :

Provided that if, in the case of a trade or business carried on by a single individual, a partnership or such a company as aforesaid, the Commissioners, having regard to the nature of the business and the size of the business as shown by the value of the assets employed therein, are satisfied that the said greater sum is inadequate, they may, if they think fit, direct that there shall be allowed in respect of not more then four working proprietors such additional sum, not exceeding one thousand pounds for each individual working proprietor or four thousand pounds in the aggregate, as may be specified in the direction.

In this sub-section—

(*a*) the expression 'working proprietor' means a proprietor who has, during more than one-half of the chargeable accounting period in question, worked full time in the actual management or conduct of the trade or business ;

(*b*) the expression 'proprietor' means, in the case of a trade or business carried on by a partnership, a partner therein, and, in the case of a company, any director thereof owning more than one-twentieth of the share capital of the company."

(2) The following paragraphs shall be substituted for paragraph (*b*) of sub-section (9) of the said section 13 (which defines the statutory-percentage):—

"(*b*) in relation to a trade or business carried on by a partnership of which one or more of the partners is a body corporate which is not a company the directors whereof have a controlling interest therein, such a rate per cent. as is equivalent to—

(i) eight per cent. on so much of the average amount of the capital employed in the trade or business in the chargeable accounting period as represents the share of any such body corporate ; and

(ii) ten per cent. on the remainder of that amount ;

(*c*) in relation to a trade or business to which neither of the foregoing paragraphs of this sub-section applies, ten per cent."

Disallowance, in computing profits, of certain expenses.

32.—(1) In computing the profits of any trade or business for any accounting period, no deduction shall be allowed in respect of expenses in excess of the amount which the Commissioners consider reasonable and necessary, having regard to the requirements of the trade or business, and, in the case of directors' fees or other payments for services, to the actual services rendered by the person concerned.

(2) Any person who is dissatisfied with a decision of the Commissioners under this section may appeal to the Board of Referees.

Miscellaneous amendments as to computation of profits for excess profits tax.

33.—(1) Where a trade or business has been transferred by one person to another person, any buildings, plant or machinery provided for the purposes of the trade or business by the person transferring it which were transferred with the trade or business and continue to be used for those purposes after the transfer shall, for

the purposes of paragraph 3 of Part I of the Seventh Schedule to the Finance (No. 2) Act, 1939 (which provides for an allowance for exceptional depreciation of certain assets) be deemed to have been provided for the purposes of the trade or business not only by the person transferring trade or business but also by the person to whom the trade or business is transferred :

Provided that the amount of any allowance granted under the said paragraph 3 to the person to whom the trade or business is transferred shall, if necessary, be so reduced as to secure that the total allowances granted to the said persons in respect of any buildings, plant or machinery affected by the transfer are not greater than the total allowances which would have been granted to the person making the transfer if the transfer had not taken place.

The provisions of this subsection shall apply in relation to the transfer of part of a trade or business as they apply in relation to the transfer of the whole of a trade or business.

(2) Where, in respect of any accounting period, a deduction would, apart from the provisions of this sub-section, be allowable in computing profits, and in, the opinion of the Commissioners, the deduction dves 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 Commissioners to be reasonably an 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 Commissioners think proper.

Any person who is dissatisfied with a determination of the Commissioners under this sub-section may appeal to the Board of Referees.

(3) In paragraph 6 of Part 1 of the said Seventh Schedule (which specifies the cases in which, and the extent to which income from investments is to be included in computing profits) the following sub-paragraph shall be inserted after sub-paragraph (2)—

"(2A) In the case of a trade or business part of which consists in banking assurance or dealing in investments not being a bussiness to which sub-paragraph (2) of this paragraph applies, the profits shall include all income received from investments held for the purposes of that part of the trade or business, being income to which the persons carrying on the trade or business are beneficially entitled."

and in sub-paragraph (1) of the said paragraph 6 for the words "to the extent provided in sub-paragrah (2) of this paragraphs "shall be substituted the words "to the extent provided in sub-paragraph (2) and (2A) of this paragraph".

(4) At the end of the said paragraph 6 the following words shall be inserted—

"(4) The reference on sub-paragraphs (2) and (2A) of this paragraph to income receivd from investments shall not in case where the persons carrying on the trade or business are neither domiciled nor ordinarily resident in the United Kingdom include any interest received from tax-free Treasury securities unless the conditions of the issue of the securities so provide; and where any interest on tax-free Treasury securities is, in accordance with the provisions of this sub-paragraph, left out of account in computing the profits of the trade or business, any expenses attributable to the acquisition or holding of, or to any transaction in, the securities and any profits or losses so attributable (but not save as provided by sub-paragraph (3) of this paragraph, the interest on any money borrowed for the purposes of acquiring the securities) shall also be left out of account in computing the profits of the trade or business.

In this sub-paragraph the expression 'tax-free Treasury securities' means any securities issued by the Treasury under the power conferred by section forty-seven of

the Finance (No. 2) Act, 1915, or under the power conferred by section twenty-two of the Finance (No. 2)Act, 1931.

Any reference in this Schedule to income which is by virtue of the provisions of this paragraph not to be taken into account in computing the profits of a trade or business shall be construed as including a reference to interest left out of account in accordance with this sub-paragraph."

(5) The following paragraph shall be substituted for paragraph 10 of Part I of the said Seventh Schedule (which relates to deductions for directors' remuneration in the case of companies controlled by the directors):—

"**10**.—(1) In the case of a trade or 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 trade or 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.

In this sub-paragraph the expression 'directors' remuneration' does not include 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 per cent, of the ordinary share capital of the company.

(2) If, in the case of a trade or 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, in 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-paragraph (1) of this paragraph applies, then, except in so far as the Commissioners otherwise direct, no deduction shall be mode 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)."

(6) Paragraph 13 of Part I of the said Seventh Schedule (which allows a deduction for sinking fund purposes in the case of a trade or business carried on by a local authority) shall apply in relation to any trade or business carried on by a public authority in the case of which the following conditions are fullfilled—

(*a*) that it has no share capital ; and

(*b*) that the interest on all its stock and other loan capital is interest at a fixed rate,

as it applies in relation to a local authority :

Provided that nothing in this subsection shall be construed as authorising any deduction for an amount required to be raised for sinking fund purposes unless the requirement is imposed on the authority by or by virtue of an Act of Parliament.

Miscellaneous amendments of computation of capital.

34.—(1) If—

(*a*) the Commissioners are satisfied, as respects any assets of any trade or 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 sub-section shall have effect is made by the person carrying on the trade or business,

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

Provided that in the case of a trade or business the standard profits of which depend, directly or indirectly, upon a direction of the Commissioners or the Board Referees under the second section of this Part of this Act, or under that section as applied by the Fifth Schedule to this Act, in relation to groups of companies, the provisions of this sub-section shall have effect to such extent only as the Comissioners think proper.

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

(3) After sub-paragraph (2) (*b*) of paragraph 1 of Part II of the Seventh Schedule to the Finance (No. 2) Act, 1939 (which specifies the deductions to be made in computing the capital value of assets) the following words shall be inserted—

"(*c*) any other such deductions in respect of reduced values of assets as are allowable in computing profits for the purposes of income-tax."

(4) At the end of sub paragraph (1) of paragraph 2 of Part II of the said Seventh Schedule (which directs that certain deductions shall be made in respect of borrowed money and debts) the following words shall be inserted—

"The debts to be deducted under this sub-paragraph shall include—

(*a*) 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

(*b*) in the case of the business of an assurance company, also any sums representing profits of its life assurance business belonging or allocated to, or reserved for, or expended on behalf of, policy holders or annuitants being sums which would be excluded, under sub-section sixteen of the Finance Act, 1923, in computing the profits of the company for the purposes of the Income Tax Acts),

and all the said sums shall be deducted notwithstanding that they have not become payable."

Computation of profits and capital in the case of trades and businesses not falling within Case I of Schedule D.

35.—Any reference in the Seventh Schedule to the Finance (No. 2) Act, 1939 or in the provisions of this or any other Act which relate to the computation of capital or profits for the purposes of excess profits tax, to a deduction which has been allowed, is allowable or authorised, or can be made, under any provision of the Income Tax Acts or in computing profits for the purposes of income-tax, or to any additional

percentage allowable under any provision of the Income Tax Acts, shall be construed, in relation to profits arising from a trade or business which are not chargeable to income-tax from Case I of Schedule D, as a reference to a deduction which would have been so allowed, allowable or authorised, or could have been so made, or to an additional percentage which would have been so allowable, if those profits had been chargeable to income-tax under the said Case I.

Provisions as to computation of losses.

36.—All the provisions of the Finance (No. 2) Act 1939, and of this or any other Act which relate to the computation of profits for the purposes of excess profits tax shall apply also to the computation of losses for those purposes, and references in any such provisions to the computation of profits shall be construed accordingly; and sub-section (3) of section fourteen of the Finance (No. 2) Act, 1939 which provides that losses shall be computed for the purposes of Part III of that Act in the same manner as under that section profits are to be computed for those purposes) is hereby repealed.

Amendments as to deficiencies of profits.

37.—(1) Sub-section (2) of section fifteen of the Finance (No. 2) Act, 1939 which provides that the profits chargeable with excess profits tax arising from a trade or business shall be deemed to be reduced where a deficiency of profits occures in any chargeable accounting period of a trade or business) shall not apply to a deficiency of profits in so far as it occurs while the trade or business was being carried on neither in the United Kingdom nor by a person ordinarily resident in the United Kingdom.

(2) The provisions of Part II of the Fifth Schedule to the Finance Act, 1937 (which as applied by the Finance (No. 2) Act, 1939, relate to appeals against assessments to excess profits tax) including the provisions thereof enabling the Commissioners to make regulations, shall, with the necessary modifications, applp in relation to any determination by the Commissioners as to the giving of relief from excess profits tax for any chargeable accounting period on the ground that a deficieny of profits has occurred in any chargeable accounting period as they apply in relation to assessments to excess profits tax.

Successions and amalgamation.

38.—(1) The provisions of section sixteen of the Finance (No. 2) Act, 1939 (which relate to successions and amalgamations) shall have effect subject to the following provisions of the section.

(2) Any consideration which, under sub-section (3) or sub-section (4) of the said section sixteen, has to be disregarded in computing capital shall also be disregarded in considering, for the purposes of computing the profits of, and the capital employed in, any chargeable accounting period, whether any and if so what deductions are to be made in respect of wear and tear and replacment of plant and machinery, and whether and if so what allowance is to be made in respect of depreciation.

(3) In sub-section (6) of the said section sixteen for the words where a trade or business was carried on immediately before the first day of July, nineteen hundred and thirty-six, and that trade or business, or the main part of that trade or business, was transferred after the said day and before the first day of April, nineteen hundred and thirty-nine, by the person carrying it on to another person" there shall be substituted the following words—

"where—

(a) a trade or business which was commenced before the first day of January, nineteen hundred and thirty-five, or the main part of such a trade or business, was transferred on or after that date and before the first

day of April, nineteen hundred and thirty-nine, by the person carrying it on to another person; or

(*b*) a trade or business which was commenced on or after the said first day of January but before the second day of July, nineteen hundred and thirty-six, or the main part of such a trade or business, was transferred before the said first day of April by the person carrying it on to another person."

(4) Where—

(*a*) a trade or business is, by virtue of sub-section (2) or sub-section (3) of the said section sixteen deemed not to have been discontinued; or

(*b*) a trade or business is, by virtue of sub-section (4) of the said section sixteen, to be treated as if it had been in existence throughout the period during which there was in existence any other trade or business; or

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

(*d*) any person who is carrying on a trade or business after a transfer is treated by virtue of subsection (6) of the said section sixteen as having carried on the trade or business as from a date before the transfer,

the enactment 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 Commissioners may think just, and the Commissioners may make such alterations in the periods which would otherwise be the chargeable accounting periods of the trade or business as they think proper;

[Provided that if the Commissioners make any such modifications and the person carrying on the trade or business is dissatisfied with the modifications so made, or if the Commissioners refuse to make any modification requested by the person carrying on the trade or business and he is dissatisfied with the refusal, he may appeal to the Board of Referees] [1]

(5) In sub-section (5) of the said section sixteen the words "subject to any necessary modifications," and in sub-section (6) thereof the words "subject, however, to such modifications (including modifications as respects the computation of capital) as may be just" and the words "or if the applicant is dissatisfied with any modifications made by the Commissioners," are hereby repealed.

Amendments as to relation of excess profits tax to national defence contribution.

39.—(1) In sub-section (1) of section nineteen of the Finance (No. 2) Act 1939 (which contains provisions as to the relation of excess profits tax to the national defence contribution) for the words "The said total excess profits tax shall be computed as if there were no national defence contribution and the said total national defence contribution shall be computed as if there were no excess profits tax" there shall be substituted the words "In computing the said total excess profits tax the national defence contribution shall be disregarded except in computing capital, and in computing the said total national defence contribution excess profits tax shall be altogether discharged."

(2) In sub-section (3) of the said section nineteen for the words "If this Part of this Act had not been passed" there shall be substituted the words "if the provisions of this Part of this Act, except the provisions of section twenty thereof (which abolishes armament profits duty), had not been passed."

(1) This proviso has been substituted by Section 39, Finance Act, 1942.

(3) . . . [2]

(4) Where—

(a) part only of a chargeable accounting period (as defined for the purposes of the national defence contribution) falls after the end of March, nineteen hundred and thirty-nine; and

(b) the amount of the national defence contribution for the period, computed without regard to excess profits tax, is increased or reduced by the operation of any of the provisions of this Act.

then, in determining for the purposes of the said section nineteen what proportion of the said amount is to be included in the total national defence contribution for any chargeable accounting periods to which that section applies,—

(i) the amount of the increase or reduction shall not be apportioned under sub-section (5) of the said section nineteen ; but

(ii) there shall be attributed to that part of the said period which falls after the end of March, ninteen hundred and thirty-nine, the amount of national defence contribution which would have been attributed thereto under the said sub-section (5) if the increase or reduction had not occurred, together with the whole amount of the increase or reduction.

(5) The provisions of the Sixth Schedule to this Act, shall have effect for the purpose of facilitating the assessment and collection of the amounts due to the Crown for excess profits tax or the national defence contribution in respect of any period with respect to which both excess profits tax and the national defence contribution are in operation.

40.—(is concerned with N. D. C.).

Definition of ordinary share capital.

41.—In this Part of this Act, and in any other enactmect relating to excess profits tax the expression "ordinary share capital" has the meaning assigned to it by sub-section (3) of section forty-two of the Finance Act, 1938, and in paragraph of section twenty-two of the Finance (No. 2) Act. 1939, the words "and, except in the the provisions of this Part of this Act, relating to subsidiary companies, the expression 'ordinary share capital' " are hereby repealed.

Date from which amendments are to operate.

42.—The amendments effected by the provisions of this Part of this Act, shall as respects excess profits tax, have effect with respect to tax for all chargeable accounting periods, whether before or after the passing of this Act, and as respects the national defence contribution, have effect with respect to all accounting periods beginning on or are after the first day of April, ninteen hundred and thirt-nine, and so much of any accounting period beginning before that date as falls on or after that date.

FIFTH SCHEDULE.

Section 28, 29, & 34.

PROVISIONS AS TO EXCESS PROFITS TAX AND NATIONAL DETENCE CONTRIBUTION IN THE CASE OF INTERCONNECTED COMPANIES.

PART I

Assessment of excess profits tax.

1.—(1) If, for any period after the end of March, ninteen hundred and thirty-nine, a body corporate is a member of a group of a companies, assessments shall be

(2) Omited by Ninth Schedule, Finance Act, 1942.

made in respect of its excess profits tax for all chargeable accounting periods during that periods in accordance with the provisions of this Schedule.

(2) Such assessments shall be made in respect of any trade or business carried on by a subsidiary member of a group of companies whether or not the trade or business is carried on in the United Kingdom and whether or not the subsidiary member is ordinarily resident in the United Kingdom.

2.—Every assessment to excess profits tax in respect of the trade or business of a body corporate which, in the chargeable accounting period for which the assessment is made, is a member of a group of companies, shall be made on the then principal of the group, but the tax shall, in the case of an assessment in respect of the trade or business of a subsidiary member, be recoverable from the principal company and the subsidiary member jointly and severally:

Provided that if the Commissioners think fit and the principal company does not object, one assessment for any particular period may be made on the principal company in respect of the trades or businesses of all of any of the members of the group, but the amount of tax, and the incidence of the burden of tax, shall not be affected, and the Commissioners may, if they think fit, discharge any such assessment, and make separate assessment in lieu thereof.

3.—Paragraph 1 of Part III of the Fifth Schedule to the Finance Act, 1937 (which, as applied to excess profits tax by sub-section (2) of section twenty-one of the Finance (No. 2) Act, 1939 provides for the making, by the person who carries on or has carried on any trade or business, of returns for the purposes of excess profits tax of profits and other particulars of the trade or business), shall as so applied, have effect in relation to any trade or business carried on by a subsidiary member of a group of companies as if the references in that paragraph to the person who carries on or has carried on the trade or business included references to the principal company, and shall so have effect whether or not the subsidiary member carries on business in the United Kingdom or is ordinarily resident therein.

PART II

The group standard period and the group standard profits

1.—(1) This Part of this Schedule shall have effect with respect to any group of companies existing in any period after the end or March, nineteen hundred and thirty-nine.

(2) For the purposes of this Part of this Schedule a group of companies shall be deemed to be the same group so long as the same body corporate is the principal company thereof.

(3) The matters required by the subsequent provisions of this Part of this Schedule to be ascertained in relation to a group of companies, and the powers conferred on the principal company of a group of companies, shall save as hereinafter provided, be ascertained and exercised once and for all in relation to each period after the end of March, nineteen hundred and thirty-nine, during which the composition of the group remains unchanged, or is changed only by the loss or addition of a new subsidiary, and any such, period is in the subsequent provisions of this Part of this Schedule referred to as a "relevant period."

2. (1) If the trade or businsss of any of the members of the group was being carried on or before the first day of July, nineteen hundred and thirty-six, the principal company shall select a period to be the standard period of the group.

(2) The said period shall be selected in accordance with the provisions of of subsections (4) to (6) of section thirteen of the Finance (No. 2) Act, 1939, subject, however, to the following modifications—

(*a*) the references to the person carrying on the trade or business shall be construed as references to the principal company; and

(*b*) the trade or business of the principal company shall be deemed to have been commenced at the earliest date on which any of the trades or businesses carried on by any of the members of the group was commenced.

3.—(1) If the group is one to which the last preceding paragraph applies, there shall be ascertained the standard profits of the group in accordance with the provision of this paragraph;

Provided that the standard profits of the group need not be ascertained in relation to any relevant period if an election under the next succeeding paragraph has effect with respect to the whole of that period.

(2) The standard profits of the group shall, where the standard period of the group is one year, be an amount arrived at by aggregating the profits and losses arsing in the standard period of the group in the trades and businesses of all the members of the group, other than new subsidiaries, and shall, where the standard period of the group is two years, be half the amount arrived at as aforesaid;

Provided that the second section of Part III of this Act Act shall, which the adaptations and modification specified in the next succeding sub-paragraph, have effect in the relation to the ascertainment of the standard profits of the group as it has effect in relation to the ascertainment of the standard profits of the trade or business of a body corparate which is not a member of any group of companies.

(3) The said adaptations and modifications are as follows, that is to say—

(*a*) references to the person carrying on the trade or business shall be construed as references to the principal company;

(*b*) references to the paid-up share capital of the person carrying on the trade or business shall be construed as references to the paid-up share capital of the principal company together with so much as the Commissioners or the Board of Referees, as the case may be think just of such part of the paid-up share capital of the other members of the group, not being new subsidiaries, as appears to them to have been, in the standard period, owned neither directly nor indirectly by the principal company ;

(*c*) other references to the trade or business shall be conrtrued as references to the all trades or business of all the members to the group, other than new subsidiaries;

(*d*) feferences to the standard period shall be construed as references to the standard period of the group;

(*e*) references to the standard profits for a full year shall be construed as references to the standard profits of the group;

(*f*) references to the provisions applicable to the computation of capital for the purrposes of excess profits tax shall be construed as references to those provisions as applicable to a member of a group of companies;

(*g*) in arriving at the sum to be arcertained undet paragraph (*a*) of the proviso to sub-section (3) of the said second section, an additional deduction shall be made equal to the aggrgate amount of the deductions which would, under sub-paragraph (2) of paragraph 3 of Part IV of this Schedule, fall to be made in computing the amount of the capital employed, immediately before the commencement of the standard period of the group, in the trades or business of the subsidiary members thereof, not being new subsidiaries ;

(h) references to a chargeable accounting period shall be construed as references to a relevant period ; but

(i) * * * * [1]

(j) [1][notwithstanding anything in subsection (8) of the said section, on the termination of a relevant period the Commissioners may either on the application of the principal company or of their own motion, vary, as respects subsequent relevant periods any determination in force under the said section with respect to that period, whether given originally or on appeal, if it appears to them that the circumstances have materially changed, and any decision of the Commissioners so to vary or not so to vary a determination shall be subject to an appeal by the principal company to the Board of Referees].

(4) The references in this paragraph to the members of a group shall be construed as references to the bodies corporate which are members thereof in the relevant period, not being new subsidiaries, whether or not they were members of the group for the whole or any part of the standard period of the group.

4.—(1) Whether the group is or is not such a group as is mentioned inthe last two foregoing paragraphs, the principal company of the group may elect that the standard profits ofevery members of the group shall be ascertained by reference to the minimum standard, that is to say, by reference to the sum of one thousand pounds, or, if the principal company is a company the directors whereof have controlling interest therein, by reference to such greater sum as might be allowed in relation to the principal company under the provisions of subsection (2) of section thirteen of the Finance (No. 2) Act 1939.

(2) The question what is the amount of the minimum standard in relation to the group shall be decided from time to time for the periods falling within the relevant period which are chargeable accounting periods of the principal company, and shall be so decided by the Commissioners :

Provided that if the principal company is dissatisfied with any determination by the Commissioners of any such question, it may appeal to the Special Commissioners.

(3) An election under this paragraph—

(a) shall have effect as from such date as may be specified by the principal company in making the election;

(b) may be revoked by the principal company as from such date as may be specified by the principal company in making the revocation ; and

(c) shall, unless revoked, continue to have effect for the remainder of the relevant period.

and where an election is revoked a new election may be made as from any date subsequent to the date as from which the revocation has effect.

(4) In this paragraph the expression "working proprietor" have the same meaning as it has in subsection (2) of section thirteen of the Finance (No. 2) Act, 1939.

PART III

Ascertainment of standard profits of members and ascertainment of excess and deficiencies of profits

1. The standard profits of a body corporate which is a member of a group of companies in a chargeable accounting period shall, in relation to that period, be ascertained in accordance with the provisions of the next three succeeding paragraphs.

(1) Omitted by paragraph 6 (2), Fourth Schedule, Finance Act 1941.

(2) Substituted by paragraph 6 (2), Fourth Schedule, Finance Act, 1941.

2.—(1) If the group is such a group as is mentioned in paragraph 2 of Part II of this Schedule and the body corporate is not a new subsidiary, the standard profits thereof shall, unless by virtue of an election of the principal company under the said Part II the profits of the body corporate are to be ascertained by reference to the minmum standard, be taken to be an amount ascertained in accordance with the subsequent provisions of the paragraph:

Provided that if the chargeable accounting period is less than twelve months, the standard profits, as ascertained under those provisions, shall be proportionately reduced so as to correspond with the length of the period,

(2) The standard profits of the body corporate shall—

(*a*) where the standard profits of the group would have been less if the trade or business of the body corporate had been left out of account in the calculation thereof, be taken, subject to the adjustment provided for in sub-paragraph (3) of this paragraph, to be an amount equal to the difference;

(*b*) where the standard profits of the group would have been greater if the trade or business of the body corporate had been left out of account in the calculation thereof, be taken, subject to the said adjustment, to be a negative amount equal to the difference; and

(*c*) where no difference would have been made to standard profits of the group if the trade or business of the body corporate had been left out of account (whether because that trade or business was not in existence in the standard period or because no profits and no loss arose therein in that period), be taken, subject to the said adjustment, to the nil;)

Provided that where the standard profits of the group are determined in accordance with the second section of Part III of this Act (as applied with adaptions by Part II of this Schedule), the standard profits of the body corporate shall, subject to the said adjustment, be such part of the standard profits of the group as may be determined by reference to an apportionment made by the Commissioners or, if any member of the group (other than a new subsidiary) so requires, by the Board of Referees.

(3) If the average amount of the capital employed in the trade or business of the body corporate is greater or less in the chargeable accounting period th the standard period of the group, the standard profits as ascertained under sub-paragraph (2) of this paragraph shall be adjusted by being increased or, as the case may be, decrease by the statutory percentage of the increase or decrease in the average amount of the capital employed in the trade or business.

(4) In sub-paragraph (3) of this paragraph, the expression "the statutory percentage" has the meaning assigned to it by sub-section (9) of sectionthirteen of the Finance (No. 2) Act, 1939:

Provided that the proviso to the said sub-section (9) (which prescribes that six six per cent shall be the statutory percentage in all cases in relation to any decrease of capital) shall have effect only in relation to such part of any decrease as is shown to be the proper proportion of any decrease in the average amount of the capital employed in all the trades or businesses of all the bodies corporate which are members of the group in the chargeable accounting period, other than new subsidiaries, and any question what is the said proper proportion shall be decided by the Commissioners whose decision shall be final.

3.—(1) If the group is not such a group as is mentioned in paragraph 2 of Part II of this Schedule or if the body corporate is a new subsidiary, the standard profits shall, unless by virtue of an election by the principal company under the said Part II the standard profits of the body corporate are to be ascertained by reference to the minimum standard, be ascertained in accordance with section thirteen of the

Finance (No. 2) Act, 1939, and the second section of Part III of this Act, subject to the modifications specified in this paragraph.

(2) Subsection (2) of the said section thirteen, and in subsection (1) thereof the words "if the person carrying on the trade or business so elects, to be the minimum amount specified in subsection (2) of this section, and, in the absence of such an election" shall be deemed to be omitted.

(3) If the standard profits are to be computed by reference to the profits of a standard period, and in that period there is a loss, the profits of that period shall be deemed to be a negative amount equal to the loss.

(4) If the standard profits for a full year are by virtue of subsection (8) of the said section thirteen to be taken to be the statutory percentage of the average amount of the capital employed in the trade or business in the chargeable accounting period, and in that period the average amount of capital employed is a negative amount, the standard profits for a full year shall be deemed to be a negative amount equal to the statutory percentage of that negative amount of capital.

(5) An application with respect to a new subsidiary under the second section of Part III of this Act, as applied by sub-paragraph (1) of this paragraph shall be made by the principal company and not otherwise and where a new subsidiary became a member of the group after the end of March, nineteen hundred and thirty-nine, and the standard profits thereof for any chargeable accounting period ending before it became a member of the group fall to be computed by reference to a direction given with respect to it under the said second section, that direction shall not have effect as respects the period during which it is a member of the group, unless the *Commissioners* [1], on the application of the principal company, confirm the direction:

Provided that on any such application for the confirmation of a direction the *Commissioners* [2], may, in lieu of refusing to confirm the direction, confirm it subject to such diminution of the amount specified therein as they think fit.

If the principal company is dissatisfied with any determination of the Commissioners under this sub-paragraph, it may appeal to the Board of Referees

4.—If by virtue of an election of the principal company under Part II of this Schedule the standard profits of the body corporate are to be ascertained by reference to the minimum standard, the standard profits of the body corporate shall be such apportioned part of the minimum standard as may be determined by reference to an apportionment made by the Commissioners, or, if any member of the group so requires, by the Special Commissioners:

Provided that if the chargeable accounting period is less than twelve months, the standard profits shall be taken to be the said apportioned part proportionately reduced so as to correspond with the length of the period.

5.—(1) If in the case of the trade or business of a body corporate there is a loss in any chargeable accounting period, and in that period the body corporate is a member of a group of companies, there shall, for the purposes of determining whether there is an excess or deficiency of profits, be deemed to be a profit of a negative amount equal to the loss.

(2) If in the case of any member of a group of companies the average amount of the gross capital employed in the trade or business of the member in any period is less than the deductions from capital allowable in that period, the average amount of the capital employed in that period shall be taken to be a nagative amount equal to the difference.

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(1) Substituted by paragraph 6 (1) Fourth Schedule, Finance Act, 1941.]

(2) do. do. do. do. do.

In this sub-paragraph the expression "gross capital" means the capital computed without making the deductions specified in Part II of the Seventh Schedule to the Finance (No. 2) Act, 1939, and the expression "deductions from capital" means the deductions so specified.

(3) In determining in the case of any member of a group of companies—

(*a*) what was the amount of any increase or decrease in capital; and

(*b*) what adjustment of the standard profits is to be made by reason of any increase or decrease in capital; and

(*c*) whether there is any and if so what excess or deficiency of profits, the following rules shall be applied—

(i) a negative amount shall be deemed to exceed a greater negative amount, and to fall short of a negative amount, by the amount of the difference; and

(ii) a positive amount shall be deemed to exceed a negative amount, and a negative amount to fall short of a positive amount, by the amount which would be the sum of those amounts if they were both positive; and

(iii) so much of subsection (1) of section fifteen of the Finance (No. 2) Act, 1939, as relates to the computation of deficiencies where a loss has been made shall not have effect,

PART IV

Miscellaneous Provisions.

1.—(1) Subsection (1) of section seventeen of the Finance (No. 2) Act, 1939 (which directs that certain payments passing between interconnected companies shall be disregarded) shall, in relation to any payment passing between members of a group of companies, only apply if the Commissioners so direct; and any payment with respect to which no such direction is given, being a payment to which subsection (1) of the said section seventeen would apply but for the provisions of this paragraph, shall be included in the profits of the body corporate to which it is payable, notwithstanding that it has arisen from an investment, and the investment shall be taken into account accordingly in computing capital.

(2) Subsection (1A) of the said section seventeen (which directs that certain debts not bearing interest which are due between interconnected companies shall be left out of account in computing capital) shall, if the bodies corporate concerned are members of a group of companies, apply in computing the capital of either of those bodies corporate only in relation to such debts, if any, as may be specified in a direction of the Commissioners.

(3) Where, in the case of any debt to which subsection (1) or subsection (1A) of the said section seventeen would otherwise apply, no direction under this paragraph is given by the Commissioners, the debt shall not be treated, for the purposes of the borrowed money rules, or, as the case may be, of the second of the borrowed money rules, as borrowed money the principal of which is liable to be reduced by the value of any investments.

In this sub-paragraph, the expression "the borrowed money rules" means sub-paragraph (3) of paragraph 6 of Part I of the Seventh Schedule to the Finance (No. 2) Act, 1939, and paragraph 3 of Part II of that Schedule, and the expression "the second of the borrowed money rules" means the said paragraph 3,

(4) Dividends received by a member of a group of companies from holdings of share capital of other members of the group shall, in all cases, be left out of account in computing profits, and holdings of such capital shall, in all cases, be left out of

account in computiug capital, but no reduction shall, in any case, be treated as made in the principal of any borrowed money by virtue of any such holding, either in computing profits or in computing capital.

2.—(1) In this paragraph, the expression "the borrowed money rules" means sub-paragraph (3) of paragiaph 6 of Part I of Seventh Schedule to the Finance (No. 2) Act, 1939, and paragraph 3 of Part II of the said Schedule, and for the purposes of this paragraph a member of a group of companies shall be deemed to have an excess of excluded investments or an excess of borrowed money if and to the extent that the value of any investments which it has, being investments the income from which is not to be taken into account in computing the profits of its trade or business, exceeds or falls short of the principal of its borrowed money.

In this sub-paragraph, references to income from investments do not include, in relation to any member, income to which that member is not beneficially entitled.

(2) If any members of a group of companies have at any time an excess of excluded investments and at the same time any other member of that group has an excess of borrowed money, the borrowed money rules shall, in relation to that other member, have effect as if the reduction in the principal of [the borrowed money of that member required by those rules were increased by the amount of the aggregate of the said excess of excluded investments:

Provided that

(*a*) if there is more than one member with an excess of borrowed money, the said aggregate excess of excluded investment shall be applied first in relation to one of those members, and if and to the extent that it is greater, than to the excess of borrowed money of that member, then in relation to another of these members, and so on, and

(*b*) the order in which those members are to be selected shall be, first, the principal company (if it is one of those members) but, subject to the principal company being the first of the members as aforesaid, shall be such as the principal company may require, or as the Commissioners may, in the absence of such a requirement, direct.

3. (1) This paragraph applies to a subsidiary member of a group of companies which neither is resident in the United Kingdom, nor carries on any trade or business therein, and in this paragraph, the expression "the subsidiary member" shall be construed accordingly.

(2) Where part of the share capital of the subsidiary member (not being ordinary share capital) is owned neither directly nor indirectly by the principal company, then—

(*a*) in computing the capital of the subsidiary member, a deduction shall be made equal to the paid-up amount of the part of its share capital; and

(*b*) in computing the profits of the subsidiary member, a deduction shall be made equal to interest on the said amount at the fixed rate per annum payable in the case of dividends on that part of that share capital.

(3) Where in any chargeable accounting period any part of the ordinary share capital of the subsidiary member is owned neither directly nor indirectly by the principal company, any excess profits or deficiency of profits occuring in the trade or business of the subsidiary member for that period shall be reduced by an amount bearing to the full amount thereof the same proportion that the paid-up amount of that part of the subsidiary member's ordinary share capital bears to the whole paid-up amount of its ordinary share capital.

(4) The provisions of Part I of the Fourth Schedule to the Finance Act, 1938, shall apply for determining, for the purposes of this paragraph, how much of any share

capital of a subsidiary member is owned directly or indirectly by the principal company, and shall so apply in relation to share capital of the subsidiary member which is not ordinary share capital as if it were ordinary share capital.

4.—(1) In this paragraph—

(*a*) the expression "period of charge" means, in relation to the trade or business of a body corporate, a chargeable accounting period the excess or deficiency of profits for which is to be ascertained for the purposes of excess profits tax;

(*b*) the expression "period of computation" means, in relation to a period of charge, any period the profits or the capital of which are relevant for the purposes of ascertaining the excess or deficiency of profits for that period of charge.

(2) The foregoing provisions of this Part of this Schedule shall have effect for the purposes of computing the excess or deficiency of profits of the trade or business of any body corporate in any period of charge if and only if in that period the body corporate was a member of a group of companies, but shall, for that purpose, apply to the computation of profits and capital during all periods of computation, notwithstanding that body corporate was not a member of the group in or throught any of those periods.

(3) References in the said provisions to a group of companies, or to a member, a subsidiary member, or the principal company, of a group of companies, shall be construed by reference to the facts of the period of computation, or, where there is more than one such period to the facts of each of those periods respectively.

5.—If any time after the thirty-first day of March, nineteen hundred and thirty-nine, a body corporate is a member of a group of companies, there shall be made such alteration, if any, of the period which would otherwise be chargeable accounting periods thereof (whether for the purposes of excess profits tax or those of the national defence contribution) as the Commissioners may direct.

6.—(1) Subject to the provisions of sub-paragraph (2) of this paragraph, if a body corporate becomes or ceases to be a subsidiary member of a particular group of companies—

(*a*) no relief shall be given in respect of deficiencies of profits occurring before that event by any reduction of any profits arising after that event; and

(*b*) no relief shall be given in respect of deficiencies of profits occuring after that event by reduction of any profits arising before that event.

(2) If it is established in the case of a body corporate that it has a deficiency of profits for any chargeable accounting period during which it was a member of a group of compaines, the principal company of the group may require that the deficiency, so far as it is not absorbed in reducing the aggregate amount of the profits chargeable to excess profits tax of that member for previous chargeable accounting periods; shall be applied in whole or in part in reducing any other profits on which the principal company is assessable to excess profits tax, and relief from excess profits tax shall be given accordingly; and to the extent that any deficiency is so applied, it shall not be available for reducing any profits chargeable to excess profits tax of the said member for any period.

The reference in this sub-paragraph to profits on which the principal company is assessable includes profits on which it is assessable for any chargeable accounting period, whether, or not in that chargeable accounting period the principal company is the principal company of the group.

(3) So much of any provision of Part III of this Act as prevents a deficiency of profits being taken into account in so far as it occurs while the trade or business was being carried on neither in the United Kingdom nor by a person ordinarily resident in the United Kingdom shall not apply if the trade or business was being carried on by a body corporate which was then a member of a group of companies.

(4) For the purposes of this paragraph a group of companies shall be deemed to be the same group notwishstanding any changes in the members thereof so long as, and only so long as, the same body corporate remains the principal company of the group.

7.—(1) Neither section nineteen of the Finance (No. 2) Act, 1939 (which contains provisions as to the relation of excess profits tax and the national defence contribution) nor the Sixth Schedule to this Act shall apply in the case of any body corporate as respects any period during which it is a member of a group of companies, and the national defence contribution shall be charged in respect of any profits of the trade or business of the body corporate arising during that period as if there were no excess profits tax.

(2) The Commissioner shall from time to time make—

(*a*) such reductions, if any, af excesss profits tax cnargeable in respect of the trades or businesses of the members of a group of companies; and

(*b*) such repayments, if any, of the excess profits tax paid in respect of those trades or business,

as appear to the Commissioners to be such as will secure that over the whole period during which both excess profits tax and the national defence contribution are in operation the total sum payable by the way of excess profits tax in respect of the trades or businesses of all the members of the group does not exceed the excess, if any, of—

(i) the total amount of excess profits tax which would be chargeable in respect of those trades or businesses over the period if the national defence contribution were disregarded except in computing capital,

over—

(ii) the total amount of the national defence contribution chargeable in respect of those trades or businesses over the said period.

In this sub-paragraph, the references to amounts payable in respect of the trades or business of members of a group of companies shall be construed as references to the sums payable in respect of the trades or business of all bodies corporate who were members of the group at any time during the period or part of the period in question, being sums payable in respect of profits arising while they were members of that group, and for the purposes of this sub-paragraph a group of companies shall be deemed to be the same group notwithstanding any changes in the members thereof so long as, and only so long as, the same body corporate remains the principal company of the group.

8.—(1) For each subsidiary member of a group of companies, there shall, in the case of each chargeable accounting period, be computed the total excess profits tax which would have been chargeable for that period and for any previous chargeable accounting periods during which it was a member of the group if—

(*a*) all deficiencies of profits occuring in its own trade or business in those periods, and no deficiencies occuring otherwise, had been applied in reducing its profits chargeable with excess profits tax; and

(*b*) any credit to be given under the last preceding paragraph in respect of the payment of the national defence contribution had been given in respect of all the national defence contribution chargeable for those periods in respect of its own trade or business, and no credit had been given for any national defence contribution chargeable otherwise.

(2) The principal company may demand that the subsidiary member shall pay to it the whole or any part—

(*a*) in the case of the first chargeable accounting period in which the subsidiary member is a member of the group, of the amount calculated for that period under sub-paragraph (1) of this paragraph;

(*b*) in the case of any subsequent accounting period, of the excess, if any, of the amount so computed for that period over the amount computed for the last preceding chargeable accounting period in which it was a member of the group;

and the subsidiary member shall company with the demand:

Provided that if any excess profits tax charged on the principal company in respect of the trade or business of the subsidiary member has not been paid, that member may, to the extent that the tax remains unpaid, make payment in respect of the sum demanded to the Commissioners instead of to the principal company.

(3) If, in the case of any chargeable accounting period, the total amount of excess profits tax computed therefor falls short of the amount computed for the last preceding chargeable accounting period in which the subsidiary member was a member of the group, the amount of the difference shall, in so far as it exceeds any amount which could have been, but was not, demanded by the principal company under the last preceding sub-paragraph from that member, be paid by the principal company to that member.

(4) For the purposes of this paragraph a group of companies shall be deemed to be the same group notwithstanding any changes in the members thereof so long as, and only so long as, the same body corporate remains the principal company of the group.

9.—(1) Section eighteen of the Finance (No. 2) Act, 1939, (which contains provisions as to the relation of excess profits tax to income-tax) shall, in relation to the trade or business of any member of a group of companies, have effet subject to the provisions of this paragraph.

(2) The excess profits tax payable in respect of the trade or business of a subsidiary member for any chargeable accounting period shall, in lieu of being deducted as an expense in computing the profits and gains arising from that trade or business, be deducted in computing the profits and gains arising from the trade or business of the principal company as an expense incurred on the last day of the said chargeable accounting period.

(3) The proviso to subsection (1) of the said section eighteen shall not have effect, but where relief from excess profits tax in respect of the trade or business of any member of a group of companies for any chargeable accounting period is given as the result of any deficiency of profits or any liability to the national defence contribution of any member of the group occurring in any chargeable accounting period,

(*a*) the amount of the deduction provided for by subsection (1) of the said section eighteen or by the last preceding sub-paragraph shall not altered; but

(*b*) the amount of the relief shall be taken into account in computing for the purposes of income-tax the profits and gains arising from the trade or business of the principal company as if it were a profit of that trade or business arising—

(i) on the last day of the chargeable accounting period from excess profits tax for which relief is given, or

(ii) on the last day of chargeable accounting period in which the deficiency of profits occurred or for which the liability to the national defence contribution arose,

whichever day is the later.

(4) Where in the case of any chargeable accounting period of a subsidiary member an amount falls to be paid by the subsidiary member to the principal company or the Commissioners under sub-paragraph (2) of the last preceding paragraph, that amount—

(*a*) shall be deducted in computing for the purposes of income-tax the profits and gains arising from the trade or business of the subsidiary member as an expense incurred in that chargeable accounting period; and

(*b*) shall be taken into account in computing for those purposes the the profits and gains arising from the trade or business of the principal company as if it were a profit of that trade or business arising on the last day of the said chargeable accounting period.

(5) Where, in the case of a chargeable accounting period of a subsidiary member, an amount falls to be paid by the principal company to the subsidiary member under sub-paragraph (3) of the last preceding paragraph, that amount—

(*a*) shall be deducted in computing for the purposes of income-tax the profits and gains arising from the trade or business of the principal company as an expense incurred on the last day of the said chargeable accounting period ; and

(*b*) shall be taken into account in computing for the said purposes the profits and gains arising from the trade or business of the subsidiary member as if it were a profit of the trade or business arising in the said chargeable accounting period.

(6) If—

(*a*) in any such case as in mentioned in sub-paragraph (3) or paragraph (*b*) of sub-paragraph (4) of this paragraph, the trade or business of the principal company ; or

(*b*) in any such case as is mentioned in paragraph (*b*) of sub-paragraph (5) of this paragraph, the trade or business of the subsidiary member,

is a business of life assurance or a business consisting wholly or mainly in the holding of investments or other property, the amount which would under those provisions respectively be taken into account in computing for the purposes of income-tax the profits and gains arising from the trade or business of the principal company or, as case may be, the subsidiary member, shall be assessable to income-tax under Case VI of Schedule D.

(7) The provisions of this paragraph shall, in relation to any body corporate, have effect with respect to any year of assessment income-tax for which is, in the case of that body corporate, affected by the profits or gains of any period any part of which falls within any chargeable accounting period to which the provision in question relates.

10.—(1) In the case of a member of a group of companies the following provisions of this paragraph shall have effect, for the purposes of Part II of the Seventh Schedule to the Finance (No. 2) Act, 1939 (which contains provisions for computing capital for the purposes of excess profits tax),—

(*a*) in lieu of the provisions of the proviso to sub-paragraph (1) of paragraph 2 of the said Part II, in so far as those provisions relate to debts for excess profits tax ; and

(*b*) also in lieu of the provisions of sub-paragrph (2) of the said paragraph 2.

(2) A debt for the excess profits tax payable in respect of the trade or business of any member of a group of companies shall be deemed for the purposes of paragraph 2 of the said Part II—

(*a*) to be a debt of the principal company and not of any other company; and

(*b*) to have become due on the first day after the end of the chargeable accounting period in respect of which the tax is assessable, notwithstanding that the tax may not have been assessed until after the said day.

(3) Where any debt for excess profits tax for any chargeable accounting period in respect of the trade or business of a member of a group of companies is to be deducted under paragraph 2 of the said Part II, the amount thereof shall not be reduced by reason of any relief given as the result of any deficiency of profits or any liability to the national defence contribution of any member of the group occurring in any chargeable accounting period, but the amount of the relief shall be treated as having become an asset of the trade or business of the principal company on—

(*a*) the first day after the end of the chargeable accounting period from excess profits tax for which relief is given; or

(*b*) the first day after the end of the chargeable accounting period in which the deficiency of profits occurred or for which liability to the national defence contribution arose.

whichever day is the later.

(4) If, in relation to any chargeable accounting period of a subsidiary member, an amount becomes payable under sub-paragraph (2) or sub-paragraph (3) of the last but one preceding paragraph from the subsidiary member or the principal company, that amount shall, for the purpose of computing the capital of the principal company and the subsidiary member, be deemed—

(*a*) to be debt which became due from the subsidiary member or the principal company, as the case may be, on the first day after the end of that chargeable accounting period; and

(*b*) to have become an asset of the principal company or the subsidiary member, as the case may be, on that day.

11.—An appeal from any assessment to, or determination with respect to excess profits tax in respect of the trade or business of a body corporate for any chargeable accounting period during which it is a member of a group of companies, which would, but for the provisions of this paragraph, have lain either to the General Commissioners or the Special Commissioners shall lie to the Special Commissioners only, and accordingly, in relation to any such assessment or determination, Part II of the Fifth Schedule to the Finance Act, 1937 as applied for the purpose of the excess profits tax, shall have effect as if the reference to the General Commissioners were omitted therefrom.

12.—Any dispute arising between any bodies corporate with respect to the proper allocation, as between those bodies, of the burden of any excess profits tax, or the benefit of any repayment of, or relief from, excess profits tax, shall, if the tax was assessed for a chargeable accounting period when those bodies were members of a group of companies, or the repayment or relief was made or allowed against tax assessed for, or by reason of a deficiency of profits in, such a chargeable accounting period, be decided—

(*a*) if all the bodies corporate concerned so require, by the Commissioners; and

(*b*) in any other case, by the Special Commissioners,

and any decision of the Commissioners or the Special Commissioners under this paragraph shall be final.

13.—(1) In this Schedule, the expression "new subsidiary," in relation to any chargeable accounting period of a body corporate which in that period is a member

of a group of companies to which this sub-paragraph applies, means a body corporate which was a subsidiary member of the group in that period but which was at no time during the standard period of the group a member of that or of any other group of companies :

Provided that any other body corporate which is a subsidiary member of the group in the said chargeable accounting period but, in the standard period of the group, was a member of some other group shall, in relation to the said chargeable accounting period, be deemed to be a new subsidiary if the Commissioners are satisfied that there is no substantial degree of connection or continuity between the two groups.

The group of companies to which this sub-paragraph applies are all groups of companies the trades or businesses of any of the members of which were being carried on the first day of July, 1936.

(2) It is hereby declared that the provisions of section 16 of the Finance (No. 2) Act, 1939 (which relates to successions and amalgamations) which are expressed to have effect for the purposes of the provisions that Act, or of Part III of that Act, relating to the computation of standard profits have effect also for the purposes of Parts II and III of this Schedule.

SIXTH SCHEDULE

Section 39.

Additional Provisions as to Assessment and Collection of Excess Profits Tax and The National Defence Contribution.

1.—On an appeal against an assessment to excess profits tax for any period, the amount of the assessment shall not, except with the concurrence of the Commissioners, be reduced below the excess of—

(*a*) the amount of the national defence contribution which would have been assessable for that period if no excess profits tax had been assessable therefor ;

over—

(*b*) the amount of any subsisting assessment to the national defence contribution for that period.

2.—Where an appeal is pending against an assessment to excess profits tax for any period, the Commissioners may treat as not being in dispute at least so much of the amount of the assessment as is equal to the excess of—

(*a*) the amount of the national defence contribution which, if no excess profits tax were assessable for that period, would, in the opinion of the Commissioners, be payable therefor and would not be in dispute ;

over—

(*b*) the amount of any subsisting assessment to the national defence contribution for that period.

3.—The provisions of paragraphs 1 and 2 of this Schedule shall apply in relation to appeals against assessments to the national defence contribution as they apply in relation to appeals against assessments to excess profits tax, with the substitution—

(*a*) for the references to excess profits tax, of references to the national defence contribution ; and

(*b*) for the references to the national defence contribution, of references to excess profits tax.

4.—Where, for any period, excess profits tax would be assessable if there were no national defence contribution assessable and the national defence contribution would be assessable if there were no excess profits tax assessable, the Commissioners may, notwithstanding anything in section 19 of the Finance (No. 2) Act, 1939, make an assessment either to excess profits tax or to the national defence contribution, or assessments both to excess profits tax and to the national defence contribution ; and where the Commissianers make an assessment by virtue of this paragraph, they may, if they think fit, discharge the whole or any part of any assessment already made for that period (whether or not confirmed ou appeal) and, to the extent that any tax so discharged hae already been paid, shall treat the amount of that tax as paid on the new assessment :

Provided that nothing in this paragraph shall authorise the making of any assessment to excess profits tax or to the national defence contribution so that the amount thereof, together with the amount of any subsisting assessment for the period (whether to excess profits tax or the national defence contribution) exceeds—

(i) the amount of excess profits tax which would be assessable for that period if no national defence contribution were assessable therefor ; or

(ii) the amount of the national defence contribution which would be assessable for that period, if no excess profits tax were assessable therefor,

whichever is the higher.

5.—Any payment made under an assessment to excess profits tax or the national defence contribution for any period shall be treated for all purposes as a payment on account of the total tax or contribution ultimately found to be assessable for that period.

6.—In this Schedule the expression "subsisting assessment" means an assessment which has been made and not discharged, and the expression "the amount of any subsisting assessment" means, in relation to any subsisting assessment which has been reduced, the amount of that assessment as reduced.

7.—Where the chargeable accounting periods for the purposes of excess profits tax do not coincide with those for the purposes of the national defence contribution, the foregoing provisions of this Schedule shall have effect subject to the following adaptations—

(*a*) references to the amount which would have been assessable, the amount of any subsisting assessment or the amount which would be payable, for any period, shall be construed as references to an amount ascertained by apportioning and aggregating the amounts assessable, assessed, or payable, as the case may be, for all periods falling wholly or partly within that period ;

(*b*) in applying the provisions of paragraphs 1 and 2 of this Schedule to the case of an assessment to excess profits tax for a period part of which falls before, and part of which falls after, [the end of the years of charge to the national defence contribution][1] there shall be deemed to be added to the amount of the national defence contribution which would have been assessable or payable, as the case may be, for the part of the period before [the end of the said years][2] an amount equal to so much of the excess profits tax for the whole period as is apportionable to the part thereof falling after [the end of the said years][2]

(*c*) in applying the provisions of paragraphs 1 to 3 of this Schedule to the case of an assessment to the national defence contribution for any period falling partly before and partly after the end of March, 1939, there shall be added to the amount of excess profits tax which would have been

(1) Substituted by Ninth Schedule, Finance Act, 1942,

(2) " " " " "

assessable or payable, as the case may be, for the part of the period after the said end of March an amount equal to so much of the national defence contribution for the whole period as is apportionable to the part thereof falling before the said end of March.

8.—Any apportionment required to be made by the last preceding paragraph shall be made by reference to the number of months or fractions of months in the period to which the apportionment relates:

Provided that, in the case of the national defence contribution, where—

(*a*) part of the period falls before and part falls after the end af March, 1939; and

(*b*) the amount of the national defence contribution for the period, computed as if there were no excess profits tax, is increased or reduced by the operation of any of the provisions of this Act,

the amount of the increase or reduction shall not be so apportioned but there shall be attributed to the part of the said period falling after the said end of March the amount which would have been attributable thereto if the increase or reduction had not occurred, together with the whole amount of the increase or reduction.

UNITED KINGDOM EXCESS PROFITS TAX

EXTRACT FROM THE ENGLISH FINANCE (No. 2) ACT, 1940.

PART II

INCOME TAX

Section.

12. Disallowance of cretain payments in respect of war risks for income-tax purposes.

PART III

EXCESS PROFITS TAX AND NATIONAL DEFENCE CONTIBUTION.

Section.

13. Special provisions as to mines, oil wells, &c.

14. Restriction on deduction of interest, annuities and annual payments in computing profits.

15. Disallowance of certain payments in respect of war risks.

CHAPTER 48

An Act.....to make certain amendments in the enactments relating to..... excess profits tax.....

(22nd August, 1943.)

PART II

INCOME TAX.

Disallowance of oertain paymonts in respect of war risks for income-tax purposes.

12.—(1) In computing the amount of the profits or gains of any person for any purpose of the Income Tax Acts for the year 1940-41 or any subsequent year, no sum shall be deducted in respect of any payment made by him to which this section applies.

(2) No payment to which this section applies shall be included in computing—

(*a*) the expenses of management in respect of which relief may be claimed for any such year under section thirty-three of the Income-Tax Act, 1918, (which relates to life assurance companies and others); or

(*b*) the cost of maintenance, repairs, insurance and management in respect of which relief may be claimed for any such year under Rules 8 of No. V of Schedule A.

(3) This section applies to any payment made by any person under any contract or arrangement under which that person is, in the event of war damage, entitled or eligible' either absolutely or conditionally, to or for any form of indemnification, whether total or partial, and whether by way of a money payments or not, in respect of that war damage.

Provided that—

(*a*) where the payment is made in respect of the right or eligibality aforesaid and also in respect of other matters, the deduction or inclusion of so much of the payment as is properly attributable to the other matters shall not be disallowed by virtue only of sub-section (1) or sub-section (2) of this section, and

(*b*) this section shall not apply to any payment made under—

(i) any policy of insurance issued under Part II of the War Risks Insurance Act, 1939, or any similar enactment in force in any country outside the United Kingdom; or

(ii) any contract of marine insurance, or any contract of insurance of an aircraft, or any contract of insurance of goods in transit.

(4) In this section the expression "war damage" means loss or damage arising from action taken by an enemy of His Majesty, or action taken in combating such an enemy or in repelling an imagined attack by such an enemy, or action taken in anticipation or in consequence of an attack by such in enemy.

PART III

EXCESS PROFITS TAX AND NATIONAL DEFENCE CONTRIBUTION.

Special provision as to mines, oil wells, &c,

13. (1) Upon an application made with respect to any class of trades or businesses consisting in the getting of minerals or oil from any mine, oil well or similar natural source of a wasting nature, the Board of Referees mad by order direct that in relation to trades or businesses of that class the reference in section twenty-seven of the Finance Act, 1940, to six per cent. and eight per cent. and the references in subsection (9) of section thirteen of the Finance (No. 2) Act, 1939, to eight per cent. and ten per cent. shall be construed as if they were references to six, eight, or ten per cent,. as the case may be, increased to such extent as may be specified in the order:

Provided that the Board—

(*a*) shall increase the said percentages only so far as they think necessary to allow for the consideration that, by reason of the wasting nature of the natural source in question, the benefit of capital expenditure incurred by the persons carrying on such trades or businesses may be exhausted at a greater rate than in the case of other classes of trades or businesses;

(*b*) shall not in any case increase the said percentages by more than a further four per cent.

(2) Where any such order has been made with respect to trades or businesses of any class, then, in the case of a trade or business part only of which falls within that

class, the increased percentages shall be applicable to such extent as may be just, having regard to the extent to which the trade or business fall within that class.

(3) The powers of the Commissioners and the Board of Referees under section twenty-seven of the Finance Act, 1940, as applied by the Fifth Schedule to that Act, shall in relation to any trade or business falling wholly or partly within any class with respect to which such an order as aforesaid has been made, include power to proceed as if the provisions of the said Fifth Schedule so applping the said section twenty-seven were adapted and modified to such extent, if any, as they may think necessary in order to enable effect to be given to the provisions of this section.

(4) This section shall apply to any sub-division of a class of trades or businesses based either on any special feature of the trades or businesses within that sub-division or on locality as it applies to a class of trades or businesses, in any case where the Board of Referees are of opinion that the sub-division can properly be dealt with separately.

(5) The provisions of this section shall have effect with respect to all chargeable accounting periods, whether before or after the passing of this Act.

Restriction on deduction of interest, annuities and annual payments in computing profits.

14.—(1) No deduction in respect of any interest, annuity or other annual payment shall, by virtue of paragraph 4 of Part I of the Seventh Schedule to the Finance (No. 2) Act, 1939 or paragraph 4 of the Fourth Schedule to the Finance Act, 1937, be allowed in computing the profits af a trade or business for the purposes of excess profits tax or the national defence contribution unless the interest, annuity or other annual payment would, on income-tax principles, be an allowable deduction in computing profits but for the express provision contained in paragraph of Rule 3 of the Rules applicable to Cases I and II of Schedule D that no deduction is to be made in respect of any annual interest or any annuity or other annual payment payable out of the profits or gains.

In this subsection, the expression "income-tax principles" has the same meaning as it has for the purposes of subsection (1) of section fourteen of the Finance (No. 2) Act, 1939, and subsection (1) of section twenty of the Finance Act, 1937.

(2) The provisions of this section shall, as respects excess profits tax, have effect with respect to tax for all chargeable accounting periods, whether before or after the passing of this Act, and, as respects the national defence contribution have effect with respect to all accounting periods beginning on or after the first day of April, nineteen hundred and thirty-nine and so much of any accounting period beginning before the date as falls on or after the date.

Disallowance of certain payments in respect of war risks.

15.—Section twelve of this Act, (which, in relation to the computation of prfits for income-tax purposes for the year 1940-41 and subsequent years, forbids deductions for payments under certain contracts and arrangements for indemnification in respect of war damage) shall apply also to the compntation of profits—

(*a*) for the purposes of excess profits tax for all chargeable accounting periods (whether before or after the passing of this Act); and

(*b*) for the purposes of the national defence contribution for all accounting periods beginning on or after the first day of April, nineteen hundred and thirty-nine, and so much of any accounting period beginning before that date as falls on or after that date.

UNITED KINGDOM EXCESS PROFITS TAX

EXTRACT FROM THE ENGLISH FINANCE ACT, 1941.

Part II

INCOME TAX

Section.

17. Disallowance for income-tax purposes of certain payments in respect of war injuries to employees.
18. Trades affected by certain arrangements for concentration of industry or business.

PART III

EXCESS PROFITS TAX AND THF NATIONAL DEFENCE CONTRIBUTION

Section.

28. Provision for the repayment after the war of certain excess profits tax.
29. Borrowed money to be treated as capital.
30. Addition to standard profits for reductions of capital caused by losses.
31. Addition to standard profits in the case of concerns producing certain metals and oil.
32. Miscellaneous amendments of Section 27 of Finance Act, 1940.
33. Provisions as to chargeable accounting periods partly before and partly after the end of March, 1940.
34. Power to recover where expenses of payments for services are disallowed in computing profits.
35. Transactions designed to avoid liability to excess profits tax.
36. Disallowance for excess profits tax purposes of certain payments in respect of war injuries to employees.
37. Treatment for purposes of excess profits tax of trades and businesses affected by certain arrangements for concentration of industry or business.
38. Amendments as to exceptional depreciation.
39. General provisions as to computation of profits.
40. Director-controlled companices.

Section.

41. Amendment of provisions relating to relief in respect of excess profits tax in dominions, &c.
42. Provisions as to group of companies.
43. . . .
44. Date from which amendments are to operate.

SCHEDULES:

Second Schedule.—Maximum percentages (metals and oil).

Third Schedule.—Amendments of paragraph 3 of Part I of the Seventh Schedule to the Finance (No. 2) Act, 1939.

Fourth Schedule—Provisions as to groups of companies.

CHAPTER 30

An Act to .....make further provision in connection with Finance.
(22nd July, 1941.)

PART II

INCOME TAX

Disallowance for income-tax purposes of certain Payments in respect of war injuries employees.

17.—(1) In computing the amount of the profits or gains, or total income, of any person for any purpose of the Income Tax Acts, no sum shall be deducted in respect of any payment made by him to which this section applies.

(2) No payment to which this section applies shall be included in computing—

(*a*) the expenses of management in respect of which relief may be claimed under section thirty-three of the Income Tax Act, 1918; or

(*b*) the cost of maintenace, repairs, insurance and mamagement in respect of which relief may be claimed under Rule 8 of No. V of Schedule A; or

(*c*) the expenses of management or supervision in respect of which relief may be claimed under section twenty-six of the Finance Act, 1922.

(3) This section applies—

(*a*) to any payments by way of benefit made by any person to, or to the personal representatives or dependants of, any employees of his on account of their incapacity. retirement or death owing to war injuries, whether sustained in the United Kingdom or elsewhere;

(*b*) to any payments made by any person by way of premium or contribution under any policy, agreement, scheme or arrangement providing for the payment of benefits to, or to the personal representatives or dependants of, any employees of his on account of their incapacity, retirement or death as aforesaid:

Provided that—

(i) this section shall not apply to any payment (whether by way of benefit or by way of premium or contribution) which is payable under any policy, agreement, scheme or arrangement made before the third day of September, nineteen hundred and thirty-nine, except to the extent that the amount of the payment is increased by any variation of the terms of that policy, agreement, scheme or arrangement made on or after that date;

(ii) this section shall not apply to any payment by way of benefit if, in the opinion of the Commissioners of Inland Revenue, that payment was made under an established practice which was such that the same or a greater payment would have been made if the incapacity, retirement or death had not been due to war injuries.

(4) Where a person makes a payment by way of benefit to which this section applies and, in the opinion of the Commissioners of Inland Revenue, there is an established practice under which a smaller payment would have been made if the incapacity, retirement or death had not been due to war injuries, the deduction or inclusion of an amount equal to that smaller payment shall not be disallowed by virtue only of subsection (1) or subsection (2) of this section.

(5) Where a person makes a payment to which this section applies by way of premium or contribution and the policy, agreement, scheme or arrangement provides for the payment of any benefit in the event of incapacity, retirement or death not due to war injuries, the deduction or inclusion of so much of the payment of premium or contribution as, in the opinion of the Commissioners of Inland Revenue, is properly attributable to benefit payable in the event of incapacity, retirement or death not due to war injuries shall not be disallowed by virtue only of subsection (1) or subsection (2) of this section.

(6) In this section the expression "war injuries" has the meaning assigned to it by the Personal Injuries (Emergency Provisions) Act, 1939,

Trades affected by certain arrangements forconcentration of industry or business.

18.—(1) This section applies to any arrangements made with a view to the concentration of industry or business in the hands of fewer persons, being arrangements certified by or on behalf of the Board of Trade to be approved by them and to be in their opinion in the national interest, having regard to the exigencies of the present war.

(2) . . .
(3) . . .
(3) . . .
(4) . . .

} See Section 37 of Finance Act 1941 by which this section shall not effect.

PART III

EXCESS PROFITS TAX AND THE NATIONAL DEFENCE CONTRIBUTION

Provision for the repayment after the war of certain excess profits tax.

28.—(1) After the termination of hostilities in the present war, there shall be ascertained and recorded, as respects every person who has paid any excess profits tax for any of the periods in respect of which the tax is chargeable at the rate of a hundred per cent, the amount (if any) by which the total sum paid by him by way of excess profits tax and the national defence contribution (less any sum repaid or repayable on account of any deficiency of profits or otherwise) would have been decreased if the rate of excess profits tax had been eighty per cent. in respect of all those periods, and the amount so ascertained and recorded as aforesaid shall, if such conditions as Parliament may hereafter determine are satisfied (being conditions relating to the distribution, application or capitalisation of profits for the benefit of shareholders, whether by the payment of dividends, by the issue of bonus shares or debentures, or by any other means whatsoever), be repaid at such date as Parliament may hereafter determine:

Provided that, in ascertaining the said amount, the capital employed in the trade or business shall be computed on the basis that the rate of tax during the said periods was a hundred per cent.

(2) The procedure for the ascertainment and recording of the said amounts shall be such as may be prescribed by regulations made by the Commissioners, and those regulations shall provide for the giving of notice to the persons affected and, without prejudice to the generality of the foregoing words, may apply, with or without modifications, any of the enactments relating to appeals against assessments to excess profits tax.

Borrowed money to be treated as capital.

29.—In computing the amount of the capital emloyed in a trade or business, no deduction shall be made in respect of borrowed money.

(2) In computing the profits of a trade or business, no deduction shall be made in respect of interest on borrowed money or in respect of any other consideration givin for the use of borrowed money:

Provided that—

(a) this subsection shall not prevent the making of any deduction in respect of any such interest or consideration in computing the profits of a trade or business for any chargeable accounting period the standard profits for which are ascertained by reference to the minimum amount specified in subsection (2) of section thirteen of the Finance (No. 2) Act, 1939.

(b) in computing capital, the same deduction shall be made in respect of accruing liabilities for interest as would have had to be made if this subsection had not been passed.

(3) Without prejudice to the generality of the foregoing provisions of this section, section twenty-seven of the Finance Act, 1940, shall have effect subject to the following provisions as respects borrowed money, that is to say—

(*a*) sub-section (2) shall have effect as if, at the end of paragraph (ii) of the proviso, the following words were inserted—
"and

(iii) on the average amount of the borrowed money, if any, employed in the trade or business in the standard period, at six per cent., or, in the case of a company the directors whereof had a controlling interest therein, eight per cent., per annum."

(*b*) sub-section (3) shall have effect as if—

(i) after the words "the paid-up share capital of the body corporate in the standard period" there were inserted the words "together with any borrowed money employed in the trade or business in that period"; and

(ii) in paragraph of the proviso, for the words from "and deducting borrowed money and debts" to the end of that paragraph, there were substituted the words "and deducting debts, othtr than debts for borrowed money";

(*c*) subsection (4) shall have effect as if after the words "the paid-up share capital in the standard period" there were inserted the words "together with any borrowed money employed in the trade or business in that period."

(4) Without prejudice to the generality of any of the foregoing provisions of this section, if the average rate of interest per cens. per anunm actually payable in respect of the borrowed money employed in a trade or business in the standard period, increased by two per cent,, is greater than the rate applicable under section twenty-seven of the Finance Act Act, 1940, the limits under sub-sections (2), (3) and (5) of the said section twenty-seven shall be raised in the case of that trade or business by the difference between—

(*a*) an amount equal to interest for the standard period at the said average rate, as so increased, on the average amount of the borrowed money employed in the trade or business in the standard period; and

(*b*) an amount equal to interest on that average amount for that period at the rate applicable under the said section twenty-seven.

In this sub-section, references to the rate applicable under the said section twenty-seven shall be construed as references to the rate per cent. per annum which, apart from the provisions of this sub-section would be applicable under the proviso to sub-section (2) of that section to the average amount of the borrowed money employed in the trade or business in the standard period; and the reference to the trade or business in the standard period; and the reference to the limits under sub-sections (2) (3) and (5) of that section shall be construed as a reference to the amounts fixed by the proviso to the said subsection (2), by the proviso to the said sub-section (3) and by the said sub-section (5), as the maximum amounts which, in the cases to which those provisions respectively apply, may by virtue of that section, be treated in ascertaining the standard profits for a full year as being the profits of the standard period.

(5) In this section, and in section twenty-seven of the Finance Act, 1940, as amended by this section, the expression "borrowed money" means borrowed money which, apart from the provisions of this section, would have been deductible in computing capital

(9) This section—

(*a*) shall not apply in the case of the business of a building society, or of a banking business, assurance business or business consisting wholly or mainly in the dealing in or holding of investments;

(*b*) shall, in relation to a trade or business part of which consists in banking, assurance or dealing investments, not being such a business as aforesaid, have effect only in relation to borrowed money not ascribable to that part of the trade or business:

Provided that paragraph of this subsection shall not apply to a business carried on ba a body corporate, if—

(i) it is a member of a group of companies to which sub-section (1) or section twenty-nine of the Finance Act, 1940 applies; and

(ii) its circumstances are such that paragraph (iii) of the said sub-section (1) has the effect of requiring all its income from such investments as are mentioned in that paragraph to be left out of account in computing profits; or would have that effect if it had any such income.

(7) This section applies to the computation of the profits or loss, and the standard profits, of a trade or business for any chargeable accounting period ending after the end of March, nineteen hundred and forty, subject, however, as respects any such chargeable accounting period which begins before the said end of March, to the provisions of section thirty-three of this Act.

Addition to standard profits for reductions of capital caused by losses.

30.—(1) In computing under sub-section (8) of section thirteen of the Finance (No. 2) Act, 1939, the standard profits for a full year of a trade or business commenced after the first days of July nineteen hundred and thirty-six, the average amount of the capital employed in the trade or business in the chargeable accounting period in question shall be treated as increased by the amount of any net loss sustained in carrying on the trade or business over the period beginning with the commencement of the trade or business and ending with the end of March, nineteen hundred and thirty-nine.

(2) Section twenty-seven of the Finance Act, 1940, shall have effect subject to the following provisions as respects losses, that is to say—

(*a*) if, in relation to any date in the standard period, a net loss has been sustained in carrying on the trade or business over the period which begins with the first day of January; nineteen hundred and twenty-nine; or with the commencement of the trade or business, whichever is the later, and ends immediately before the said date in the standard period, the limit under sub-section (3) and the limit under sub-section (5) shall be computed as if the capital employed in the trade or business on the said date in the standard period were increased by the amount of that, loss;and

(*b*) if, over the period which begins as aforsaid and ends with the commencement of the standard period, o net loss has been sustained in carrying on the trade or business, the limit under sub-section (3) shall be computed as if the value of the assets employed in the trade or business, and the capital employed in the trade or business, immediately before the commencement of the standard period were increased by the amount of that loss; and

(*c*) in any event, for the references in sub-section (3) and (4) to the net value of the assets employed in the trade or business in the standard period there shall be substituted references to the amount interest on which is the limit under sub-section (3).

In this subsection, the expression "the limit under sub-section (3)" and "the limit under sub-section (5)" mean, respectively, the amount fixed by the proviso to sub-section (3), and by sub-section (5), of the said section twenty-seven as the

maximum amounts which; in the cases to which, those provisions apply, may be treated in scertaining the standard profits for a full year as being the profits of the standard period.

(3) The question whether any, and if so what, net loss has been sustained over any such period as is mentioned in this section shall be determined for the purposes of this section in accordance with the provisions applicable to the computation for the purposes of excess profits tax of the profits of a chargeable accounting period beginning with the first day of April, nineteen hundred and forty, and ending with the thirty-first day of March, nineteen hundred and forty-one:

Provided that—

(*a*) sub-section (2) of the last preceding section (which prevents the deduction of interest on borrowed money shall not apply: and

(*b*) the additional percentage in respect of wear and tear, for which provision is made under paragraph 2 of Part I of the Seventh Schedule to the Finance (No. 2) Act, 1939, shall not be allawed in respect of the period before the end of March, nineteen hundred and thirty-two, shall be at the rate of ten per cent, in respect of the period between the end of March, nineteen hundred and thirty-eight, two, and the end of March, 1938 and shall be at the rate oftwenty per cent. as respects the period after the end of March, nineteen hundred and thirty-eight.

(4) The provisions of sub-section (1) or, as the case may be, sub-section (2) of this section shall not apply in relation to any trade or business unless it is shown to the satisfaction of the Commissioners that—

(*a*) in the case of subsection (1), over the period beginning with the commencement of the trade or business and ending with the end of March, nineteen hundred and thirty-nine; and

(*b*) in the case of sub-section (2), over the period beginning with the first day of January, nineteen hundred and twenty-nine, or with the comencement of the trade or business, whichever is the later, and ending with the end of the standard period.

the character of the trade or business has remained substantially unchanged and that, throughout the said period, the trade or bnsiness has substantially retained and maintained its fixed assets and its productive manufacturing or trading potentialities, as the case may be:

Provided that the Commissioners may, if they think it just so to do, direct that, notwithstanding that the said conditions is not fulfilled, such increase shall be made in the standard profits as may be specified in the direction, being an increase smaller than that which would have fallen to be made if the said condition had been fullfilled.

An appeal shall lie to the Board of Referees from any determination of the Commissioners under this sub-section which would not otherwise be subject to such an appeal.

(5) This section applies to the computation of the standard profits of a trade or business for any chargeable acconnting period encing after the end of March, nineteen hundred and forty, subject, however, as respects any such chargeable accounting period which begins before the said end of March, to the provisions of section thirty-three of this Act.

Addition to standard profits in the case of concerns producing certain metals and oil.

31.—(1) If, in the case of any trade or business which includes the mining of any metal or the getting of oil from oil wells; the mining or getting of which is, in the opinion of the Treasury, of exceptional importance for the purposes of the

prosecution of the war, the Treasury certify that an increase in output of the metal or oil over output at the normal rate is essential in the national interest, then unless the certificate is revoked, the following provisions shall have effect.

(2) If the profits in any chargeable accounting period include profits attributable to additional output of the metal or oil due to the war, the standard profits of the trade or business for that chargeable accounting period shall, if the date by which the source of the metal or oil might, but for the war, have been expected to have been exhausted falls within one of the periods specified in the first column of Second Schedule to this Act, be increased by not more than the percentage specified in relation to that period in the second column of that Schedule of an amount representing profit at the normal rate on that additional output.

(3) The Treasury may make regulations for carrying this section into effect, and those regulations may in particular lay down rules to be followed in determining for the purposes of this section the extent of the natural deposits which are to be taken as constituting a source of the metal or oil, the date by which any such source might, but for the war, have been expected to have been exhausted, the question whether there is any, and if so what, additional output due to the war, and the question what amount is to be taken to represent profit at the normal rate on any such additional output.

(4) The question whether, by virtue of this section and the regulations made thereunder, any, and if so what, addition is to be made to the standard profits of any trade or business for any chargeable accounting period shall be determined by the Commissioners, subject, however, to an appeal to the Board of Referees.

(5) This section shall not apply to any chargeable accounting period the standard profits for which are ascertained by reference to the minimum amount specified in sub-section (2) of section 13 of the Finance (No. 2) Act, 1939, and [without prejudice to the generality of the powers conferred by sub-section (3) of this section] the regulations under the said sub-section (3) may make spacial provision for chargeable accounting periods the standard profits for which are ascertained under subsection (8) of section 13 of the Finance (No. 2) Act, 1939 or are affected by a direction under section 27 of the Finance Act, 1940.

(6) This section applies to the computation of the standard profits of a trade or business for any chargeable accounting period ending after the end of March, 1940, subject, however, as respects any such chargeable accounting period which begins before the said end of March, to the provisions of section 33 of this Act.

Miscellaneous amendments of Section 27 of Finance Act, 1940.

32.—(1) In sub-sections (3), (4) and (5) of section 27 of the Finance Act, 1940 for references to the Board of Referees there shall be substituted references to the Commissioners.

(2) For sub-section (7) of the said section 27 there shall be substituted the following sub-section—

"(7) An application under this section shall not be entertained unless notice thereof is given in writing to the inspector of taxes before the end of March, 1942, 1942, unless the Commissioners allow a longer period."

(3) At the end of the said section 27 there shall be inserted the following subsection—

"(9) If the person carrying on the trade or business is dissatisfied with any determination of the Commissioners under this section, he may appeal to the Board of Referees ;"

and in sub-section (2), the words from "If the person" to the end of the subsection shall be omitted.

(4) The amendments effected by the foregoing provisions of this section shall be deemed always to have had effect:

Provided that any determination of the Board of Referees given before the passing of this Act of an application under sub-section (3) of the said section 27 shall be treated as if it had been a determination given on appeal from the Commissioners.

(5) Notwithstanding anything in sub-section (8) of the said section 27—

(*a*) a determination of an application under sub-section (2) or sub-section (3) of that section may fix a different amount as respects the period before, and the period after, the ent of March, 1940;

(*b*) as application may be made under either of these sub-sections to vary a previous determination of an application thereunder so as to give effect to any provision of this Act amending the said section 27.

An application made by virtue of paragraph (*b*) of this sub-section shall be made to the Commissioners notwithstanding that the determination sought to be varied was made, or confirmed on appeal, by the Board of Referees; but the determination of the Commissioners on any such application shall be subject to the same right of appeal as a determination by them of any other application under the said section.

Provisions as to chargeable accounting period partly before and partly after the end of March, 1940.

33.—(1) The provisions of this section apply to any chargeable accounting period falling partly before and partly after the end of March, 1940, and in this section—

(*a*) references to the whole period, the first part of the period, and the second part of the period shall be construed respectively as references to the whole of any such chargeable accounting period, so much thereof as falls before the said end of March, and so much thereof as falls after the said end of March;

(*b*) the expression "excess profits" means the amount by which the profits for any period exceed the standard profits therefor;

(*c*) the expression "the amending provisions" means the provisions of sections 29, 30 and 31 of this Act.

(2) The profits or loss of, and the standard profits for, the whole period shall be computed, first on the basis that the amending provisions do not apply to the period and secondly on the basis that the said provisions do apply to the period, and it shall then be ascertained, on each basis, whether there are excess profits or a deficiency of profits for the whole period, and if so what is the amount thereof.

(3) There shall be deemed to be, for the first part of the period, excess profits or a deficiency of profits, as the case may be, equal to an apportioned part of the excess profits or deficiency of profits ascertained under sub-section (2) of this section on the first basis mentioned therein, and there shall be deemed to be, for the second part of the period, excess profits or a deficiency of profits, as the case may be, equal to an apportioned part of the excess profits or deficiency of profits ascertained under sub-section (2) of this section on the second basis mentioned therein; and for the purpose of determining the rate at which excess profits tax is to be charged on any excess profits and of giving relief for deficiencies of profits under the enactments relating to excess profits tax, and for the purposes of section 28 of this Act, the first part of the period and the second part of the period shall each be treated as if it were a separate chargeable accounting period.

Any apportionment required to be made by this sub-seecion shall be made by

reference to the number of months or fractions of months in eath of parts of the whole period.

(4) Sub-section (3) of section 26 of the Finance Act, 1940, is hereby repealed.

Power to recover where expenses of payments for services are disallowed in computing profits.

34.—(1) If, in computing the profits or loss of a trade or business for any accounting period beginning after the end of March, 1941, any expenses for directors' fees or other payments for services are disallowed under section 32 of the Finance Act, 1940, then subject to the provisions of this section, any person who pay or bears any additional tax as a consequence of that disallowance shall be entitled to recover from the persons to whom the fees or payments were payable the full amount disallowed in relation to them respectively :

Provided that if the total amount so disallowed is greater than the additional tax, the amounts which may be recovered from the said persons shall be reduced proportionately so that in all not more than an amount equal to the additional tax is recoverable.

A person shall be deemed for the purposes of this sub-section to have paid additional tax as a consequence of a disallowance if and to the extent only that the total excess profits tax and national defence contribution paid exceeds the total excess profits tax and national defence contribution which would have been payable but for the disallowance.

(2) No sum shall be recoverable from any person under sub-section (1) of this section unless within thirty days from the date on which a notification of the decision of the Commissioners under the said section 32 is served on the person carrying on the trade or business, or, in the case of a notification served before, or not later than two months after, the date, of the passing of this Act, within three months months from the date of the passing of this Act, within three months from the date of the passing of this Act, the person carrying on the trade or business gives notice in writing to the inspector of taxes named in that behalf in the notification, and to the person to whom the disallowed fees or payments were payable, that the right of recovery conferred by thi section is reserved against that person in relation to that disallowance ; and where notice is so given, the person against whom the right is reserved may appeal to the Board of Referees against the decision of the Commissioners to make the disallowance.

(3) Where any sum is recovered under this section from any person, the income-tax payable by him shall be computed as if the fees or payments in question had been reduced by the sum recovered, and relief shall be given accordingly by repayment or otherwise.

(4) Where a person recovers any sum under this section—

(*a*) for the purposes of the enactments relating to the relief for deficiencies of profits, his profits chargeable with excess profits tax ; and

(*b*) for the purposes of the enactments relating to the relation of excess profits tax to income-tax or the national defence contribution, and to the relation to one another of members of groups of companies, his liability to excess profits tax,

shall be treated as reduced by the sum recovered, and section 28 of this Act shall have effect in relation to him as if the reference therein to the total sum paid by him by way of excess profits tax and the national defence contribution were a reference to the total sum which would have been so paid by him, if his profits chargeable with excess profits tax were reduced as aforesaid.

(5) A person who has paid tax but has a right to recover it—

(*a*) from the Crown under the enactments relating to the relief for deficiencies of profits ; or

(*b*) from another member of the same group of companies under paragraph 8 of Part IV of the Fifth Schedule to the Finance Act, 1940 ;

shall, to the extent that he has exercised that right, and to that extent only, be disentitled to recover under this section by virtue of that payment.

(6) This section applies in relation to accounting periods falling partly before and partly after the end of March, 1941, as it applies in relation to accounting periods falling wholly after the said end of March, except that so much only of any fees or payments disallowed for that period under section 32 of the Finance Act, 1940, shall be taken into account for the purposes of this section as is properly apportionable to the part of the period falling after the said end of March, and any such apportionment shall be made by reference to the number of months or fractions of months in each of the parts of the accounting period.

Transactions designed to avoid liability to excess profis tax.

35.—(1) Where the Commissioners are 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, they may, if they think fit, direct that such adjustments shall be made as respects liability to excess profits tax as they consider 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 subsection (1) of this section, 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 sum extent;

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

(3) Any person aggrieved by a direction of the Commissioners under this section may appeal to the Special Commissioners, whether on the ground that the main purpose of the transaction or transactions was not the avoidance or reduction of liability to tax or on the ground that no direction ought to have been given or that the adjustments directed to be made are inappropriate.

Disallowance for excess profits tax purposes of certain payments in respect of war injuries to employees.

36.—Section 17 of this Act (which provides for income-tax purposes for the disallowance of certain payments in respect of war injuries to employees) shall, with any necessary adaptations, apply to the computation for the purposes of excess profits tax of profits for all chargeable accounting periods ending after the end of March, 1940 ; but no payment made before the said end of March shall be disallowed by virtue of this section.

Treatment for purposes of excess profits tax of trades and business affected by certain arrangements for concentration of industry of business.

37. (1) Section eighteen of this Act, (which relates to the treatment for income-tax purposes of trades affected by certain arrangements for the concentration of industry or business) shall not effect the computation of profits for the purposes of excess profits tax, but the following provisions of this section shall have effect for the purposes excess profits tax in relation to any arrangements to which that section applies.

(2) Where, in pursuance of any such arrangements, a persons to carry on all or any of the activities theretofore carried on by him in connection with his trade or business, or undertakes activities not theretofore carried on by him in connection with his trade or business, the cessation or undertaking of the activities shall not be treated as effecting a discontinuance of that trade or business or the setting up or commencement of a new trade or business.

(3) Any sum becoming payable, in pursuance of any such arrangements, to or to the successor of, any such person as is mentioned in the last preceding sub-section by any other person who was or has become a party to the arrangements, nat being either a sum in the nature of a capital payment or interest on borrowed money, on other consideration given for the use of borrowed money, shall—

(*a*) be allowed as a deduction in computing the profits of the trade or business of the persons by whom the said sum becomes payable ; and

(*b*) be treated as a trading receipt of the person to whom the said sum becomes payable and be taken into account accordingly in computing the profits of the trade or business of that person.

(4) Where a person who, in pursuance of any such arrangements, ceases to carry on all or any of the activities theretofore carried on by him in connection with his trade or business, is a partnership or a company the directors whereof have a controlling interest therein, any sum becoming payable, in pursuance of the arrangements, to a partner in, or director of, that partnership or company by any other person who was or has become a party to the arrangements; net being either a sum in the nature of a capital payment or interest on borrowed money or other consideration given for the use of borrowed money, shall be treated (for all the purposes of the enactments relating to excess profits tax, including the purposes of the last preceding subsection) as if it had become payable to the partnership or company and had then become payable by the partnership or company to the partner or director as a distribution of profits, or as directors remuneration, as the case may be.

(5) Where, in pursuance of any such arrangements, plant or machinery of any such persons as is mentioned in sub-section (2) of this section remains unused during any period, the amount of any deduction allowable under paragraph 2 of Part I of the Seventh Schedule to the Finance (No. 2) Act, 1939, in respect of the wear and tear of that plant or machinery shall be computed as if the plant or machinery were in normal use.

(6) For the purposes of this section, the expression "person" includes a partnership.

Amendments as to exceptional depreciation.

38.—Paragraph 3 of Part I of the Seventh Schedule to the Finance (No. 2) Act, 1939 (which provides for an allowance for exceptional depreciation of certain assets) shall be amended in the manner set out in the Third Schedule to this Act.

General provisions as to computation of profits.

39.—(1) Where for the purposes of excess profits tax the profits arising in any chargeable accounting period fall to be ascertained, then, in applying the definition of the expression "income-tax principles" in sub-section (1) of section 14 of the Finance (No. 2) Act, 1939, regard shall be had to the income-tax law in force with respect to the year of assessment in which that chargeable accounting period ends :

Provided that this sub-section shall have effect subject to any provisions of this or any other Act (whether passed before or after this Act) which—

(*a*) applies to excess profits tax (with or without modifications) a specified provision of the law relating to the computation of profits or gains for the purposes of income-tax ; and

(*b*) directs that that provision shall apply to the computation for the purposes of excess profits tax of profits for specified chargeable accounting periods.

(2) In ascertaining the profits arising in the standard period for the purpose of arriving at the standard profits in relation to any chargeable accounting period, the same principles shall be applied as those which (whether by virtue of sub-section (1) of this section or otherwise) fall to be applied in ascertaining the profits arising in that chargeable accounting period.

Director-controlled companies.

40.—In considering for the purposes of any of the enactments relating to excess profits tax whether the directors of a company have at any date a controlling interest therein, no body corporate shall be treated as a director unless it is at that date itself a company the directors whereof have a controlling interest therein.

Amendment of provisions relating to relief in respect of excess profits tax in dominions, etc.

41.—In sub-section (2) of section 30 of the Finance Act, 1940 (which provides for relief from excess profits tax where excess profits tax is also payable in a part of His Majesty's dominions), for the words "so, however, that the effect of the adjustment shall not be less favourable to the taxpayer than the effect of allowing the deduction" there shall be substituted the words "so, however, that the effect of the adjustment, taken in conjunction with any adjustment in the said part of His Majesty's dominions outside the United Kingdom, shall not be less favourable to the taxpayer than the effect of alowing the deduction."

Provisions as to groups of companies.

42.—The provisions of the Fourth Schedule to this Act shall have effect in relation to bodies corporate which at any time are members of a group of companies within the meaning of the Fifth Schedule to the Finance Act, 1940.

Provisions as to the national defence contribution.

43.—.....

Date from which amendments are to opearate.

44.—Save as otherwise expressly provided, the amendments effected by the provisions of this Part of this Act shall, as respects excess profits tax, have effect with respect to tax for all chargeable accounting periods, whether before or after the passing of this Act, and, as respects the national defence contribution, have effect with respect to all accounting periods beginning on or after the first day of April, 1939, and so much of any accounting period beginning before that date as falls on or after that date.

Section 31.

SECOND SCHEDULE

Maximum Percentages (Metals and Oil)

Period	Percentage.
The years 1946 to 1950 (inclusive)	30
The years 1951 to 1960 (inclusive)	20
The years 1961 to 1970 (inclusive)	10
The years 1971 to 1990 (inclusive)	5

Section 38.

THIRD SCHEDULE

Amendments of Paragraph 3 of Part I of the Seventh Schedule of the Finance (No. 2) Act, 1939.

1.—For sub-paragraph (1), the following sub-paragraph shall be substituted—

"(1) Where any building, plant or machinery have, after the beginning of the year 1937, been provided for the purpose of the trade or business by the person carrying on the trade or business, then if either—

(*a*) on such date as Parliament may hereafter determine, the buildings, plant or machinery have, wholly or partially, become obsolete or ceased to be required and the value thereof is less than the net cost thereof; or

(*b*) the buildings, plant or machinery are sold before the said date at a price which is less than the net cost thereof,

and in either case the deficiency is wholly or mainly ascribable to conditions prevailing as a consequence of the present war and exceeds—

(i) the aggregate amount of any deductions for wear and tear or depreciation already allowed in respect of the buildings, plant or machinery otherwise than under this paragraph (together with the appropriate proportion of any deductions for wear and tear or depreciation given for income-tax purposes for the year 1938-39 or any previous year of assessment); plus

(ii) any payments made or to be made under Part I or Part II of the War Damage Act, 1941, in respect of damage to the buildings, plant or machinery, other than payments in respect of damage made good before the said date or before the previous sale of the buildings, plant or machinery, as the case may be,

there shall be allowed in respect of each accounting period which constitutes or includes a chargeable accounting period such proportion of the excess as is properly attributable to that accounting period; and if any plant or machinery in respect of which an allowance has been made under this paragraph is replaced, no allowance other than that made under this paragraph shall be made in respect of the amount expended in replacement thereof.

The reference in this sub-paragraph to deductions for wear and tear shall be construed as including a reference to the additional percentage for which provisions is made by paragraph 2 of this Part of this Schedule, and, in the case of a deduction for income-tax purposes, to the additional deduction under section eighteen of the Finance Act, 1932, or under that section as amended by section twenty-two of the Finance Act, 1938."

2.—For sub-paragraph (3) there shall be substituted the following sub-paragraph—

"(3) In this paragraph, the expression 'net cost' means, in relation to any buildings, plant or machinery, to cost of the provision thereof (being cost of a capital nature) less any sum provided, or to be provided, directly or indirectly by the Crown or by any government or public or local authority, whether in the United Kingdom or elsewhere, or by any other person other than the person or persons carrying on the trade or business, towards the cost of the provision of the buildings, plant or machinery, or towards any wear and tear or depreciation thereof, not being a sum provided, or to be provided, either by way of loan or under Part I or Part II of the War Damage Act, 1941; and references to Part I of the War Damage Act, 1941, shall be construed as including references to any similar Act relating to war damage to which the said Part I does not apply."

FOURTH SHCEDULE

PROVISIONS AS TO GROUPS OF COMPANIES

1. Subsection (2) of section twenty-six of the Finance Act, 1940, (which contains provisions for securing that deficiencies occurring after the end of March, nineteen hundred any forty, shall, so far as possible, be applied reduce profits arising after the said end of March and deficiencies occurring before the said end of March shall, so far as possible, be applied to reduce profits arising before the said end of March) shall, in its application to a deficiency of profits of a body corporate for any chargeable accounting period during which it is a number of a group of companies, be construed as follows, that is to say—

(*a*) the references to profits (except in the phrase "deficiency of profits") shall be construed as including all profits on which the principal company is assessable to excess profits tax; and

(*b*) the references to profits arising in another chargeable accounting period shall be construed as including references to profits arising in the same period but to another member of the group.

and the said subsection (2), so construed, shall have effect notwithstanding anything in sub-paragraph (2) of paragraph 6 of Part IV of the Fifth Schedule to the Finance Act, 1940 (which relates to deficiencies of members of groups of companies) as well as anything in subsection (2) of section fifteen of the Finance (No. 2) Act, 1939.

The reference in this paragraph to profits on which the principal company is assessable has the same meaning as in the said sub-paragraph (2) of paragraph 6 of Part IV of the Fifth Schedule to the Finance Act, 1940.

2.—Section twenty-eight of this Act (which provides for the repayment after the war of certain excess profits tax) shall, in relation to any body corporate which at any time while the tax is at the rate of a hundred per cent. is a member of a group of companies, have effect subject to such adaptations and modifications as may be prescribed by the Commissioners.

3.—In section twenty-nine of this Act, and in section twenty-seven of the Finance Act, 1940, as amended by the said section twenty, the expression "borrowed money" shall not include any borrowed money the debt in respect whereof is such a debt as is mentioned in subsection (1) or subsection (1A) of section seventeen of the Finance (No. 2) Act, 1939.

4.—Section thirty of this Act (which relates to losses) shall, in relation to a member of a group of companies the trades or businesses of none of the members of which were being carried on on or before the first day of July, nineteen hundred and thirty-six, have effect subject to the following modifications—

(*a*) an increase shall only be allowed under subsection (1) thereof if the aggregation of all the profits and losses of all the trades or business of all the members of the group over the period mentioned in the said subsection (1) shows a net loss, and if such an increase is allowed, it shall in no case exceed such part of that net loss as may be determined by the Commissioners;

(*b*) for the purpose of ascertaining whether the condition specified in subsection (4) thereof is fulfilled, all the trades or businesses of all the members of the group shall be treated as one trade or business;

(*c*) if the pricipal company is dissatisfied with any determination of the Commissioners under sub-paragraph of this paragraph, it may appeal to the Board of Referees.

5.—The powers of the Commissioners and the Board of Referees under section twenty-seven of the Finance Act, 1940, as applied by the Fifth Schedule to that Act, shall, in relation to any trade or business affected by any provision of this Act, amending the said section, include power to proceed as if the provisions of the said Fifth Schedule so applying the said section were adapted and modified to such extent, if any, as they may think necessary in order to enable effect to be given to that amending provision.

6.—(1) In sub-paragraph (5) of paragraph 3 of Part III of the Fifth Schedule to the Finance Act, 1940, for the words "the Board of Referees" (in both place where those words occur) there shall be substituted the words "the Commissioners," and at the end of that sub paragraph the following words shall be inserted—

"If the principal company is dissatisfied with any determination of the Commissioners under this sub-paragraph, it may appeal to the Board of Referees."

(2) For paragraph of sub-paragraph (3) of paragraph 3 of Part II of the said Fifth Schedule there shall be substituted the following paragraph—

"(j) notwithstanding anything in subsection (8) of the said section, on the termination of a relevant period the Commissioners may, either on the application of the principal company or of their own motion, vary, as respects subsequent relevant periods, any determination in force under the said section with respect to that period, whether given originally or on appeal, if it appears to them that the circumstances have materially changed, and any decision of the Commissioners so to vary or not so to vary a determination shall be subject to an appeal by the principal company to the Board of Referees."

7.—The references in subsection (2) of section thirty-four of this Act (which relates to the recovery of disallowed expenses for fees or services) to the person carrying on the trade or business shall, if that person is a body corporate which is a member of a group of companies, be construed as references to the principal company.

8.—Where the standard profits of a group of companies fall to be ascertained under Part II of the Fifth Schedule to the Finance Act, 1940, any principles may be applied which would fall to be applied in ascertaining the profits of any chargeable accounting period falling wholly or partly within the relevant period as defined for the purposes of the said Part II; but in ascertaining, by reference to the standard profits of the group, the standard profits of any member thereof in relation to any chargeable accounting period, such adjustment, if any, shall be made as is necessary to produce the result which would have been produced if, in ascertaining the standard profits of the group, the same principles had been applied as those which fall to be applied in ascertaining the profits of that chargeable accounting period.

9.—Any reference in Part III of this Act to the minimum amount specified in subsection (2) of section thirteen of the Finance (No. 2) Act, 1939 shall be construed as including a refereuce to the minimum standard as defined in paragraph 4 of Part II of the Fifth Schedule to the Finance Act, 1940.

10.—Expressions have the same meanings in this Schedule as they have in the Fifth Schedule to the Finance Act, 1940.

UNITED KINGDOM EXCESS PROFITS TAX

The Abstract of The English Finance Act, 1942.

PART IV

EXCESS PROFITS TAX AND NATIONAL DEFENCE CONTRIBUTION

Section.

36. Continuation of the national defence contribution.
37. Amendment of Section 28 of Finance Act, 1941.
38. Exemption from tax of interest on tax reserve certificates.
39. Successions and amalgamations.
40. Amendments of Section 18 (1) of Finance Act, 1941, to apply to excess profits tax and national defence contribution.
41. Part IV to be retrospective.

SCHEDULE.

Ninth Schedule—Amendments continuing the national defence contribution.

CHAPTER 21

An Act to.. :..make further provision in connection with Finance. (24th June, 1942.)

Continuation of the national defence contribution.

36.—(1) The national defence contribution shall continue to be charged until such date as Parliament may hereafter determine, and accordingly the enactments referred to in the Ninth Schedule to this Act shall be amended in the manner specified in that Schedule.

(2) In this and in any other Act, the expression "the years of charge to the national defence contribution" means the period beginning with the first day of April, nineteen hundred and thirty-seven, and ending with the date determined by Parliament which is referred to in sub-section (1) of this section.

Amendment of Section 28 of Finance Act, 1941.

37.—The following subsection shall be subsititute1 for sub-section (1) of section twenty-eight of the Finance Act, 1941:

"(1) after the termination of hostilities in the present war, there shall be ascertained and recorded, as respects every person who has paid any excess profits tax for any of the periods in respect of which the tax chargeable at the rate of a hundred per cent. the amount (if any) by which the total sum paid by him by way of excess profits tax and the national defence contribution (less any sum repaid or repayable on account of any deficiency of profits or otherwise) would have been decreased if the rate of excess profits tax has been eighty per cent. in respect of all those periods, and the amount so ascertained and recorded as aforsaid shall, if such conditions as Parliament may hereafter determine are sattsfied (being conditions relating to the distribution, application or capitalisation of profits for the benefit of shareholders, whether by the payment of dividends, by the issue of bonus shares or debentures or by any other means whatsoever). be repaid at such date as Parliament may hereafter determine:

Provided that, in ascertaining the said amount, the capital employed in the trade or business shall be computed on the basis that the rate of tax during the said periods was a hundred per cent."

Exemption from tax of interest on tax reserve certificates.

38..—Neither excess profits tax nor the national defence contribution shall be chargeable in respect of the interest on tax reserve certificates issued by the Treasury.

Successions and amalgamations.

39.—The right of appeal to the Board of referees conferred by the proviso to sub-sectione (4) of section thirty-eight of the Finance Act, 1940 (which sub-section

enables the Commissioners to modify the enactments relating to the computation, for the purposes of excess profits tax, of profits and capital in certain cases of succession or amalgamation) shall extend to cases where the Commissioners refuse to make any modification requested by the person carrying on the trade or business, and accordingly for the said proviso the following proviso shall be substituted:—

"Provided that if the Commissioner make any such modifications and the person carrying on the trade business is dissatisfied with the modifications so made, or if the Commissioners refuse to make any modifications requested by the person carrying on the trade or business and he is dissatisfied with the refusal, he may appeal to the Board of Referees."

Amendments of Section 18 (1) of Finance Act, 1941, to apply to a excess profits tax and national defence contribution.

40.—It is hereby declared that the provision of Part III of this Act as to the certification for the purposes of sub-section (1) of section eighteen of the Finance Act, 1941, of arrangements for the concentration of industry or business in the hands of fewer persons have effect also for the purposes of section thirty-seven of that Act (which relates to the treatment for purposes of excess profits tax or trades and business affected by arrangements to which the said section eighteen applies) and for ths purposes of the said section thirty-seven as applied by section forty-three of that Act to the national defence contribution.

Part IV to be retrospective.

41—The enactments relating to excess profits tax and the national defence contribution shall be deemed always to have had effect as amended end extended by this Part of this Act.

Section 36.

NINTH SCHEDULE

AMEMDMENTS CONTINUING THE NATIONAL DEFENCE CONTRIBUTION

In sub-section (1) of section nineteen of the Finance Act, 1937, and sub-section (2) of section twenty of that Act for the words "the five years beginning on the first day of April, nineteen hundred and thirty-seven" there shall be substituted the words "the years of charge to the national defence contribution" and in paragraph (ii) of the said sub-section (2) the word "five" shall be omitted in both places where it occurs.

In sub-paragraph (3) of paragraph 2 of the Forth Schedule to the said Act and in sub-section (2) of section thirty-six of the Finance Act, 1939, for the words "the five years beginning on the sixth day of April, nineteen hundred and thirty-seven" there shall be substituted the words "the period beginning on the sixth day of April, nineteen hundred and thirty-seven, and ending at the end of the years of charge to the national defence contribution"

For sub-section (4) of section nineteen of the Finance (No. 2) Act, 1939 there shall be substituted the following sub-section:—

"(4) The chargeable accounting periods to which this section applies are the chargeable accounting periods (as defined by this Part of this Act in relation to excess profits tax) which fall within the years of charge to the national defence contribution;

Provided that where part only of a chargeable accounting period as so defined falls within those years, this section shall have effect as if that part were a separate chargeable accounting period as so defined, and as if the profits or loss of that separate chargeable accounting period were an apportioned part of the profits or losses arising in the whole period;

Sub-section (3) of section thirty-nine of the Finance Act, 1940, shall be omitted, and in sub-paragraph (b) of paragraph 7 of the Sixth Schedule to that Act for the words "the end of March, nineteen hundred and forty-two" there shall be substituted the words "the end of the years of charge to the national defence contribution"; and and for the words "the said end of March" (in both place were those words occur) there shall be substituted the words "the end of the said years."

UNITED KINGDOM EXCESS PROFITS TAX

THE EXTRACT OF THE ENGLISH FINANCE ACT, 1943.

Part III

EXCESS PROFITS TAX.

Section.

21. Extension of Section 31 of Finance Act, 1941.

22. Cost incurred by concerns producing certain minerals.

23. Payments to superannuation funds, &c., in respect of back service.

24. Disposal of company's stock at under value.

25. Appeals against directions.

Part IV.

MISCELLANEOUS.

28. Application of income-tax provisions to excess profits tax and the national defence contribution.

Schedules :

Seventh Schedule.—Provisions as to back-service payments made before or in pursuance of undertakings given or enactments passed before 2 February 1943.

Eighth Schedule.—Application of income-tax provisions to excess profits tax and national defence contribution.

CHAPTER 28

An Act to.... make further provision in connection with Finance.

(22nd July, 1943.)

Part III

EXCESS PROFITS TAX.

Extension of Section 31 of Finance Act. 1941.

21.—Section thirty-one of the Finance Act, 1941 (which provides for an addition to the standard profits in the case of concerns producing certain metals and oil) shall have effect and be deemed always to have had effect as is references therein to metal and to the mining thereof included respectively references to coall sand, gravel, limestone, sandstone, igneous rock, chalk, asbestos and mica and the extraction thereof from natural deposits.

Cost incurred by concerns producing certain minerals.

22.—(1) The provisions of this section shall have effect in the case of a trade or business which includes the mining of any metal or the getting of oil from oil, wells being a trade or business with respect to which a certificate given by the Treasury under subsection (1) of section thirty-one of the Finance Act, 1941, is in force.

(2) If, in the case of a trade or business which includes the mining of metal in the form of ore, the average metallic content of the ore consumed in a chargeable accounting period is greater than the average metallic content of the ore consumed—

(1) Has been added by Section 34 Finance Act 1944.

(*a*) in the standard period, if any ; or

(*b*) if the person carrying on the trade or business so elects, in such accounting period ending before that chargeable accounting period and ending after the standard period, if any, as that person may select,

being in either case ore mined by the person carrying on the trade or business, then for the purpose of computing the profits of the trade or business for that chargeable accounting period, the cost of obtaining and reducing the ore consumed in that chargeable accounting period shall be taken to be a sum bearing to the actual cost of obtaining and reducing it the same proportion that the first-mentioned average bears to the last-mentioned average.

(3) In the case of a trade or business which includes the mining of metal otherwise than in the form of ore or the getting of oil from oil-wells, if, in any chargeable accounting period, all or any of the metal of oil mined or got was, for the purpose of securing additional output, mined or got otherwise than in accordance with the usual practice, then, if the cost of mining or getting all the metal or oil mined or got in that chargeable accounting period is less than what would have been the cost of mining or getting the like quantity of metal or oil in accordance with the usual practice, the last-mentioned cost shall, for the purpose of computing the the profits of the trade or business for the chargeable accounting period in question, be substituted for the first-mentioned cost.

(4) Any question arising under this section shall be determined by the Commissioners, subject, however, to an appeal to the Board of Referees.

(5) This section applies to the computation of the profits of a trade or business for any chargeable accounting period ending after the end of March, nineteen hundred and forty, and section thirty-three of the Finance Act, 1941 (which relates to the computation of profits and standard profits for chargeable accounting periods falling partly before and partly after the said end of March) shall apply as if, in paragraph (c) of sub-section (1) of that section, the expression " the amending provisions"

(6) In this section, the following expression have the meanings hereby respectively assigned to them, that is to say—

"cost," in relation to the obtaining and reducing of ore mined by the person carrying on a trade or business, means the direct cost incurred by that person on labour, materials and power in mining the ore and reducing it (whether by smelting or otherwise) together with the cost to that person of repairs to buildings, plant and machinery used wholly or mainly for the mining and reduction thereof ;

"metal" means the metal to which the certificate of the Treasury relates, and "metallic" shall be construed accordingly ;

"ore" means ore containing the metal aforesaid ;

"standard period," in relation to a trade or business carried on by a company which is a member of a group of companies, being a trade or business the standard profits of which are ascertained in accordance with sub-paragraph 2 of Part II of the Fifth Schedule to the Finance Act, 1940, means the standard period of the group ;

and references in this section to the ore consumed or the metal mined or the oil got in any period shall be construed as references to the ore, metal or oil the profits attributable to which are included in the profits for that period.

(7) This section shall have effect as if references to metal and the mining thereof included respectively references to limestone, sandstone, igneous rock, chalk, asbestos and mica and to the extraction thereof from natural deposits.

Payments to super-annuation funds, etc., in respect of back service.

23.—(1) Where—

(*a*) arrangements are in force in connection with any trade or business having as their object or one of their objects the provision of benefits to or in respect of all or any of the persons employed or to be employed in the trade or business ; and

(*b*) any payment (whether to a superannuation or other fund or under a policy of insurance or under a contract for a deferred annuity or for a capital sum or otherwise) is made under those arrangements in respect of back service (whether rendered to the person carrying on the trade or business or not),

no deduction shall be made in respect of that payment in computing the profits of the trade or business of any accounting period for the purposes of excess profits tax;

Provided that—

(i) if the person carrying on the trade or business so elects, the payment shall be apportioned among the accounting periods during which the back service was rendered as may be just and the part thereof so apportioned to any of those periods which include, consist of or fall wholly or partly within the standard period (if any) or any chargeable accounting period shall be deducted in computing the profits of the trade or business for those accounting periods respectively for the purposes of excess profits tax; and

(ii) if the person carrying on the trade or business so elects and the payment was made before the second day of February, 1943, or was made in pursuance of an undertaking to make it given or of an enactment passed before that date, the provisions of the Seventh Schedule to this Act shall have effect in relation to the payment, and, where the payment is one of a series of payments, also in relation to the other payments.

(2) For the purposes of this section, service of any person shall, in relation to any arrangements, be deemed to be back service if it was rendered before the arrangements were made or before the arrangements applied to him.

(3) A payment shall be deemed for the purposes of this section to be made in respect of back service if any of the following conditions are fulfilled with respect to it, that is to say—

(*a*) it is expressed under the arrangements in question to be made in respect of service the whole or part of which is back service; or

(*b*) the benefits to or towards the provision of which the payment is made will be computed by reference to the length of service the whole or part of which is back service; or

(*c*) the said benefits are provided or are to be provided in recognition of service the whole or part of which is back service:

Provided that—

(i) where part only of the service mentioned in any of the said conditions is back service, only so much of the payment shall be treated, by virtue of the fulfilment of that condition, as in respect of back service as, on a just apportionment of the payment, is referable to such service;

(ii) in determining for the purposes of this section whether or not benefits are or are to be provided in recognition of any particular service, all relevant facts shall be taken into consideration and the statements of the parties concerned, whether embodied in the arrangements or not, shall not be taken as conclusive.

(4) Where arrangements are modified by subsequent arrangements so as to provided for new or greater benefits, the original arrangements and the modifying arrangements shall be treated for the purposes of this section as separate arrangements and any payments made under the arrangements as modified shall be apportioned accordingly.

(5) In this section "benefit" means, in relation to any person, any periodical or lump sum payment payable at a future date (whether before, at or after the date

of his retirement), and includes any such payment to or for the benefit of his spouse, children (including adopted children and illegitimate children), relations or dependents; and for the purposes of this section any director of a company or person employed in the management of a company shall be deemed to be a person employed and "service" shall be construed accordingly.

(6) Nothing in this section affects, in relation to any such payment or part of a payment as is not in respect of back service, sub-section (2) of section 33 of the Finance Act, 1940 (which relates to the spreading over several accounting periods of deductions not reasonably and properly attributable to one period only) or section 32 of the Finance Act, 1921, as applied to excess profits tax (which relates to the exemption of superannuation funds from tax).

(7) The enactments relating to excess profits tax shall be deemed always to have had effect as amended by this section:

Provided that nothing in this section shall affect, for the chargeable accounting period to which the appeal related, any payment concerning which notice of appeal to the Board of Referees had been given before the second day of February, 1943, against a determination of the Commissioners under sub-section (2) of section 33 of the Finance Act, 1940.

Disposal of company's stock at under value.

24.—(1) Where any of the stock in trade of a company is disposed of otherwise than for at least its full market value and is so disposed of either to, or directly or indirectly for the benefit or by the procurement of, any persons who directly or indirectly hold, or are in a position to obtain, a controlling interest in the company, and any of that stock is disposed of by any person at a profit but in circumstances in which, apart from this section, the full tax (as hereinafter defined) is not payable or, in the opinion of the Commissioners, is unlikely to be recovered, the Commissioners may direct—

(*a*) that such sum as may be specified in the direction, being the sum which, in the opinion of the Commissioners, is equal to the full tax, shall be chargeable by way of excess profits tax; and

(*b*) that that sum shall be a joint and several liability of such persons as may be specified in the direction being the company and the persons who, in the opinion of the Commissioners, obtained (but for this section) financial benefits as a result of the transactions aforesaid and any other transactions which, in the opinion of the Commissioners, were effected in connection with or in association with any of the said transactions:

Provided that—

(i) if the Commissioners think fit, the direction may apportion the said sum among all or any of the persons who would otherwise be jointly and severally liable as aforesaid, and where a part of the said sum is apportioned to more than one of the said persons, that portion of the said sum shall be a joint and several liability of the particular persons to whom it is apportioned and not of any other persons; and

(ii) where any person has (apart from this section) obtained financial benefits as aforesaid but only by reason of the transfer by him of shares which he did not obtain under any such transaction as aforesaid and he has not, apart from that transfer, been concerned in any such transaction as aforesaid, the direction shall apportion the said sum so that there is apportioned to him no greater part thereof then is equal to the amount by which he is, under sub-section (4) of this section, deemed to have (apart from this section) financially benefited.

(2) In this section, the expression "the full tax" means the excess profits tax which, if the stock, instead of being disposed of otherwise than for a least its full market value, had, at the time when it was so disposed of, been sold by the company on its own behalf in the ordinary course of trade for its full market value, would have become payable by or in respect of that company for the chargeable accounting period during which the stock was so disposed of, no account being taken of any relief for deficiencies of profits.

(3) As between the persons who, by virtue of a direction under this section, become jointly and severally liable for any sum, their respective liabilities shall, unless otherwise agreed between them, be proportionate to the extent to which they respectively benefited financially as a result of all the transactions in question, apart from their liability under this section.

(4) Where any such transaction as aforesaid consists of the transfer of any shares, the persons transferring the shares shall be deemed to have (apart from this section) financially benefited—

(*a*) if they obtained the shares under any such transaction as aforesaid, to the extent by which the consideration which they obtained for the shares exceeds in value the consideration which they gave for the shares ;

(*b*) if they did not obtain the shares under any such transaction as aforesaid, to the extent by which the consideration which they obtained for the shares is greater than it might have been expected to be if the stock had been sold by the company immediately before the transfer in such circumstances that the full tax became payable by or in respect of the company.

(5) For the purposes of this section, a barrister, solicitor or accountant shall not be treated as having obtained financial benefits by reason only that he received in the ordinary course of his profession remuneration in respect of ordinary professional services rendered in connection with any such transaction as aforesaid at a rate not greater than that customary in the profession for services of such a character, a person who carries on a banking business shall not be treated as having obtained financial benefits by reason only that he received interest at not more than the normal rate on a loan made by him in connection with any such transaction as aforesaid, and a person who carries on a business which includes dealing in stock of the kind to which a direction under sub-section (1) of this section relates shall not be treated as having obtained financial benefits by reason only that he bought some or all of the stock in question at a price representing the full market value thereof and disposed thereof at a profit.

(6) A direction under this section may be given notwithstanding that a direction in relation to the transactions in question or some of them has been given or might have been given under section thirty-five of the Finance Act, 1941, and any direction given under this section may contain such provisions for granting relief from any liability to excess profits tax existing apart from the direction as appear to the Commissioners to be consequential on the other provisions of the direction.

(7) Any person aggrieved by a direction of the Commissioners under this section may appeal to the Special Commissioners, and on any such appeal any other person specified in the direction shall be entitled to appear and be heard and the Special Commissioners may vary, confirm or cancel the direction.

The decision of the Special Commissioners shall (subject to any appeal therefrom which is competent under the enactments relating to excess profits tax) be binding on the Commissioners and on the appellant and on all persons entitled to appear and be heard as aforesaid.

(8) The enactments relating to excess profits tax shall be deemed always to have had effect as amended and extended by the foregoing provisions of this section.

(9) The Commissioners may by notice in writing require any person to furnish them within such time as they may direct (not being less than thirty days) with such particulars as they think necessary for the purpose of this section, and if that person, without reasonable excuse, fails to comply with the notice he shall be liable to a penalty not exceeding five hundred pounds, and, after judgment has been given for that penalty, to a further penalty not exceeding fifty pounds for every day on which the failure continues.

Where the person on whom any such notice is served is a body corporate, the secretary or other officer performing the duties of the secretary of the body corporate shall be liable to a penalty if there is a failure to comply with the notice, as well as the body corporate.

Appeals against directions.

25.—All the provisions of the enactments relating to appeals against assessments to excess profits tax (including the provisions enabling the Commissioners to make regulation) shall have effect and be deemed always to have had effect with respect to any appeal against directions of the Commissioners which, under any of the enactments relating to excess profits tax, lies to the Special Commissioners.

PART IV

MISCELLANEOUS

Application of income-tax provisions to excess profits tax and the national defence contribution.

28.—(1) The provisions set out in the Eight Schedule to this Act (being certain provisions of the enactments relating to income-tax as to penalties for neglect to deliver lists, declaration and statements and the time for bringing proceedings, set out with certain adaptations) shall have effect in relation to excess profits tax and the national defence contribution.

(2) In section thirty-four of the Finance Act, 1942 (which relates to evidence in cases of fraud or wilful default), there shall be inserted, after the words "income-tax", where those words occur in sub-section (1), the words "excess profits tax and the natianal defence contribution" and in both places where those words occur in sub-section (2), the words "excess profits tax or the national defence contribution".

SEVENTH SCHEDULE

Provisions as to Back-Service Payments made before or in Pursuance of Undertakings given or Enactments passed before 2nd February, 1943.

1.—In the case of a payment which is is not one of a series of payment there shall be deducted in computing the profits of the accounting period in which the payment was made a sum equal to one-twentieth of the amount of the payment of the payment, and the like deduction shall be made in the next succeeding accounting period, and so on, and no other deductions shall be made in respect of the paymens or any part thereof in computing the profits of any accounting period:

Provided that—

(*a*) where any accounting period is less than twelve months, the amount to be deducted in the case thereof shall be proportionately reduced so as to correspond with the length of the period;

(*b*) the total of the sums deducted shall not exceed the amount of the payment.

2. In the case of a series of payments the same deductions shall be made as would have been made under paragraph 1 of this Schedule if a single payment had

been made at the date of the first of the payment of an amount equal to the actuarial value, estimated as at the date of the said first payment, of all the payments, and no other deductions shall be made in respect of any of the payments or any part thereof in computing the profits of any accounting period.

Provided that—

(*a*) the sum to be deducted in the case of any accounting period shall not, together with the sums deducted in the case of previous accounting periods, exceed the total payments actually made up to the end of that accounting period; and

(*b*) where, by virtue of the foregoing proviso the amount of any deduction is reduced, the deduction which falls to be made in the case of the next succeeding accounting period shall be correspondingly increased, subject, however, to the application of that proviso to that succeeding accounting period, and so on.

3.—References in this Schedule to accounting periods include references to accounting periods no part of which fall within the standard period (if any) or any chargeable accounting period, and this Schedule shall have effect as if the profits of all such accounting periods had to be computed for the purposes of excess profits tax and the expressions "the total of the sums deducted" and "the sums deducted in the case of previous accounting periods" shall be construed accordingly.

4.—This Schedule shall not apply to any payment unless it is a payment in respect of which a deduction is admissible on income-tax principles and unless, apart from the provisions of this Act and of sub-section (2) of section thirty-three of the Finance Act, 1940 (which relates to the spreading over several accounting periods of deductions not reasonably and properly attributable to one period only), a deduction in respect of that payment or, where the payment is one of a series of payments, in respect of one or some of those payments, would have fallen to be made in computing the profits of an accounting period consisting of or including the whole or any part of the standard period or a chargeable accounting period.

EIGHTH SCHEDULE

Application of Income Tax Provisions to Excess Profits Tax and the National Defence Contribution.

Income Tax Act, 1918, Section 107

107.—(1) A person who neglects to deliver or furnish within the time limited, or wilfully makes delay in delivering or furnishing, a true and correct particulars which he has been required under the enactments relating to excess profits tax or the national defence contribution to deliver or furnish, shall, if proceeded against by action or information in any court, forfeit the sum of twenty pounds and treble the amount of the tax with which he ought to be charged in respect of the chargeable accountidg period in question.

Finance Act, 1923, Section 23 (1)

23.—(1) Proceedings for the recovery of any penalty incurred under the enactments relating to excess profits tax or the national defence contribution may be commenced at any time within six years next after the date on which it was incurred.

UNITED KINGDOM EXCESS PROFITS TAX

ABSTRACT OF THE ENGLISH FINANCE ACT, 1944.

PART III

INCOME TAX (CHARGE OF TAX AND MISCELLANEOUS).

Section.

19. Income tax for 1944-45.
20. Higher rates of income tax for 1943-44.
21. Extension to 1944-45 of S. 11 of Finance (No. 2) Act, 1939.
22. Increased house allowance to clergymen and ministers.
23. Amendment of S. 24 of Finance Act, 1920.
24. Sale of copyrights for lump sum.
25. Maintenance orders.
26. Simplification of procedure.

Part IV.

INCOME TAX (EXPENDITURE ON SCIENTIFIC RESEARCH).

27. Allowances for expenditure on scientific research not of a capital nature and on payments to research associations, universities, &c.
28. Allowances for capital expenditure on scientific research.
29. Provisions as to assets representing capital expenditure.
30. Carrying forward of allowances.
31. Supplementary provisions.

Part V.

EXCESS PROFITS TAX

32. Increase of standard profits in certain cases.
33. Tax avoidance.
34. Amendment of S. 21 of Finance Act 1943.

Inceme tax for 1944 45

19.—(I) Income tax for the year 1944-45 shall be charged at the standard rate of ten shillings in the pound, and in the case of an individual whose total income exceeds one thousand five hundred pounds, at such higher rates in respect of the excess over one thousand five hundred pounds as Parliament may hereafter determine.

(2) Subject to the provisions of the Income Tax (Employments) Act, 1943, and the Income Tax (Offices and Employments) Act, 1944, all such enactments as had effect with respect to the income tax charged for the year 1943-44, other than such enactments as by their terms relate only to tax for that year, shall have effect with respect to the income tax charged for the year 1944-45.

Higher rates of income-tax for 1943-44.

20.—Income tax for the year 1943-44 shall be charged at rates exceeding the standard rate in the case of induals whose total incomes exceed two thousand pounds and in respect of the excess of their total incomes over that sum; and the said rates shall be rates in the pound which respectively exceed the standard rate for the 1943-44 by the amounts specified in the second column of the Table in subsection (1) of section seven of the Finance (No. 2) Act, 1940.

Extension to 1944-45 of s. 11 of Finance (No. 2) Act, 1939.

21.—Section eleven of the Finance (No. 2) Act, 1939 (which grants relief in respect of diminution of earned income owing to circumstances directly or indirectly connected with the present war) shall apply in relation to tax for the year 1944-45 as it applied in relation to tax for the year 1939-40, with the adaptation that references to the year 1939-40 shall be construed as references to the year 1044-45 and reference to sthe year 1938-39 shall be construed as references to the year 1943-44.

Increased house allowance to clergymen and ministers.

22.—In sub-paragraph of paragraph (i) of Rule 2 of the General Rules (which provides, in the case of a clergyman or minister of aay religieus denomination, for the deduction from any profits fees or emoluments of his profession or vocation of a part, not exceeding one eighth, of the rent or annual value of a dwelling-house any part of which is used mainly and substantially for the purposes of his duty as a clergyman or minister) for the words "one-eighth" there shall be substituted the words "one-quarter."

Amendment of s. 24 of Finance Act, 1920. 10 & 11 Geo. 5 c. 18

23.—(1) For the purposes of the proviso to subsection (1) of section twenty-four of the Finance Act, 1920 (which provides for the granting of reliefs from income tax to certain individuals not resident in the United Kingdom, subject to certain limitations on the amount of the relief) Dominion income tax relief shall be left out of account in computing—

(*a*) the amount of the income tax payable by an individual ; and

(*b*) the amount which would be payable by him by way of income tax if the tax were chargeable on his total income from all sources, including income which is not subject to income tax charged in the United Kingdom.

(2) In this section the expression "Dominion income tax relief" means the relief provided for by section twenty-seven of the Finance Act, 1920.

Sale of copyrights for lump sum.

24.—(1) Where—

(*a*) the author of a literary, dramatic, musical or artistic work assigns the copyright therein wholly or partially or grants any interest in the copyright by licence ; and

(*b*) the consideration for the assignment or grant consists wholly or partially of a lump sum payment the whole amount of which would, but for this section, be included in computing the amount of his profits or gains for a single year of assessment ; and

(*c*) the author was engaged on the making of the work for a period of more then twelve months, he shall be entitled to claim that effect shall be given to the subsequent provisions of this section in connection with that payment.

(2) If the period for which he was engaged on the making of the work does not exceed twenty-four months, then, for all the purposes of the Income Tax Acts, one half only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable, and the remaining half shall be treated as having become receivable twelve months before that date.

(3) If the period for which he was engaged on the marking of the work exceeds twenty-four months, for all the purposes of the Income Tax Acts, one third only of the amount of the payment shall be treated as having become receivable on the date on which it actually became receivable, and one third shall be treated as having become receivable twelve months, and one third twenty-four months, before that date.

(4) A claim under subsection (1) of this section must be made to the Commissioners of Inland Revenue not later than twelve months from the end of the year of assessment mentioned in that subsection, and section nineteen of the Finance Act, 1925 (which relates to the making and allowing of claims for certain reliefs and to rights of appeal), shall apply in relation to claims under the said subsection (1) as it applies in relation to the claims mentioned in that section.

(5) Where, on a claim made under this section, liability to tax falls to be adjusted in accordance with subsection (2) or subsection (3) of this section, such additional assessments, reductions of assessments and repayments shall be made as are necessary to give effect to the provisions of this sections.

(6) In this section, the expression "author" includes a joint author, and the expression "lump sum payment" includes an advance on account of royalties which is not returnable.

Maintenance orders.

25.—(1) In this section, the expression "small maintence payments" means payments under an order made by a court in the United Kingdom—

(*a*) to or for the benefit of a woman for her maintenance ; or

(*b*) to any person for the benefit of, or for the maintenance or education of, a person under sixteen years of age,

being payments which—

(i) are for the time being required by the order (whether as originally made or as varied) to be made weekly at a rate not exceeding two pounds a week in the first-mentioned case and not exceeding one pound a week in the last-mentioned case ; and

(ii) would, apart from this section, fall within Rule 19 or Rule 21 of the General Rules (which provide for the deduction of tax from interest, annuities and other annual payment.

and the expression "small maintenance order" meansnand an order providing for the making of small maintenance payments.

(2) Notwithstanding anything in Rule 19 or Rule 21 of the General Rules, the following payments shall be made without deduction of tax, that is to say—

(*a*) any small maintenance payment under an order made after the passing of this Act ; and

(*b*) any small maintenance payment falling due after the fifth day of April, 1945, under an order made before the passing of this Act.

(3) Any sums paid in or towards the discharge of payments required by this section to be made without deduction of tax shall be chargeable under Case III of Schedule D as if they were mentioned in Rule 1 of the Rules applicable to that Case, but the tax shall be computed in all cases on the payments falling due in the year of assessment, so far as paid in that or in any other year.

(4) A claimant shall be entitled, in computing his total income for any year of assessment for any of the purposes of the Income Tax Acts, to deduct sums paid by him in or towards the discharge of any such small maintenance payments required by this section to be made without deduction of tax as fall due in that year, and effect shall be given to this deduction by reducing any assessment made on him or by repayment, as the case may require ; and for the purposes of section 17 of the Income Tax Act, 1918 (which provides that relief is not to be given in respect of charges on income) any amount which can be deducted under this sub-section in computing the total income of a person shall be treated as if it were income the tax on which that person is entitled to charge against another person.

(5) Where a court—

(*a*) make a small maintenance order ; or

(*b*) vary an order so that it becomes or ceases to be a small maintenance order ; or

(*c*) change the persons who are entitled to small maintenance payments ;

the court shall furnish to the Commissioners of Inland Revenue, in such form as those Commissioners may prescribe, particulars of the order or variation, as the case may be, the names of the persons affected by the order and, so far as known to the court, the addresses of those persons.

(6) In this section, the expression "persons affected", in relation to a small maintenance order, means the person liable to make the payments under the order and any person for the time being entitled to the payments, references to the making of an order include references to the revival of an order, and references to the variation of an order include references to the making of an order changing the persons entitled to the payments thereunder.

Simplification of procedure.

26.—(1) The provisions of this section shall have effect as respects—

(*a*) the year 1945–46 and subsequent years of assessment ; and

(*b*) any additional assessment for the year 1944-45 or any previous year signed or signed and allowed after the fifth day of April, 1945.

(2) Section 118 of the Income Tax Act, 1918 (which relates to the entry books of abstracts of particulars contained in lists and statements) shall not have effect except in relation to assessments under Schedule A.

(3) In sub-section (1) of section 122 of the Income Tax Act, 1918 (which requires the Additional Commissioners to cause certificates of assessments to be made out and entered in books provided for the purpose) for the words "made out and entered" there shall be substituted the word "embodied".

(4) So much of sub-paragraph (2) of paragraph 7 of Part I of the Tenth Schedule to the Finance Act, 1942, as relates to the numbering of pages in each book of assessment and adding up the sums on each page shall not have effect except in relation to assessments under Schedule A.

(5) All notices of assessment under Schedules B and D shall be prepared and issued by the surveyor.

(6) The proviso to sub-paragraph (3) of paragraph 7 of Part I of the Tenth Schedule to the Finanance Act, 1942 (which relates to the preparation in the division of the City of London of particulars of sums to be collected) shall not have effect except in relation to assessments under Schedule A.

PART IV

INCOME TAX (EXPENDITURE ON SCIENTIFC RESEARCH).

Allowances for expenditure on scientific research not of a capital nature and on payments to research associations, universities, etc.

27.—Notwithstanding anything in Rule 3 of the Rules applicable to Cases I and II of Schedule D, where, after the appointed day, a person carrying on a trade—

(*a*) incurs expenditure not of a capital nature on scientific research related to that trade and directly undertaken by him or on his behalf ; or

(*b*) pays any sum to any scientific research association for the time being approved for the purposes of this section by the appropriate Research Council or Committee, being an association which has as its object the undertaking of scientific research related to the class of trade to which the trade he is carrying on belongs ; or

(*c*) pays any sum to be used for such scientific research as is mentioned in the last preceding paragraph to any such university, college, research institute or other similar institution as is for the time being approved for the purposes of this section by the appropriate Research Council or Committee,

the expenditure incurred or sum paid, as the case may be, may be deducted as an

expense in computing the profits or gains of the trade for the purposes of income-tax.

Allowances for capital expenditure on scientific research.

28.—(1) Subject to the provisions of the next succeeding section, where, after the appointed day, a person—

(*a*) while carrying on a trade, incurs expenditure of a capital nature on scientific research related to that trade and directly undertaken by him or an his behalf ; or

(*b*) incurs expenditure of a capital nature on scientific research directly undertaken by him or on his behalf and thereafter sets up and commences a trade connected with that research,

a deduction equal to one fifth of the expenditure shall be allowed in charging the profits or gains of the trade for each of the five years of assessment mentioned in the succeeding provisions of this section.

(2) If the expenditure is incurred before the end of the year of assessment in which the trade was set up and commenced, the five years shall be that and the next four years of assessment.

(3) If the expenditure is incurred after the end of the year of assessment in which the trade was set up and commenced but not later than twelve months from the setting up and commencement of the trade, the five years shall be the year of assessment next following that in which the trade was set up and commenced and the next four years of assessment.

(4) If the expenditure is incurred after twelve months from the setting up and commencement of the trade, and during the basis year for any year of assessment, the five years shall be that and the next four years of assessment :

Provided that—

(*a*) where two basis years overlap, any expenditure incurred in the period common to both shall be deemed for the purposes of this sub-section to have been incurred in the first basis year only ; and

(*b*) where there is an interval between the end of the basis year for one year of assessment and the beginning of the basis year for the next year of assessment, any expenditure incurred during the interval shall be deemed for the purposes of this sub-section to have been incurred in the second basis year : and

(*c*) any expenditure which is incurred before the end of, but after the end of the basis year for, the last complete year of assessment before the permanent discontinuance of the trade shall be deemed for the purposes of this sub-section to have been incurred in the said basis year.

In this sub-section, the expression "basis year" means, in relation to a year of assessment, the period the profits or gains of which are, under section 34 of the Finance Act, 1926, to taken to be the profits or gains of the year preceding that year of assessment.

Provisions as to assets representing capital expenditure.

29.—(1) Where an asset representing scientific research expenditure of a capital nature incurred by the person carrying on a trade ceases to be used by that person for scientific research related to that trade—

(*a*) no allowance shall be made under the last preceding section for any year of assessment after that in which the cessation takes place ; and

(*b*) if the amounts, if any, allowed under the last preceding section in respect of the expenditure, added to the value of the asset immediately before

the cessation, are less than the said expenditure, there shall be allowed in charging the profits and gains of the trade for the year of assessment in which the cessation takes place an additional deduction equal to the difference ; and

(c) if in any subsequent year of assessment a claim is, or would but for this sub-section be, admissible by the person carrying on the trade to a deduction in respect of the asset for wear and tear, obsolescence; depreciation or exceptional depreciation and the amount of that deduction is dependent upon the actual cost to that person of the asset, the cost of the asset, or the net cost of the asset, then the actual cost, cost or net cost, as the case may be, shall, for the purpose of ascertaining whether any and if so what deduction is admissible, be treated as reduced by the amount of any deductions allowed in respect of the asset under this or the last preceding section.

(2) Where an asset representing scientific research expenditure of a capital nature in respect of which an allowance or allowances has or have been made under this or the last preceding section in charging the profits or gains of a trade ceases to be used by the person carrying on the trade for scientific research related to that trade and is then or thereafter sold by him without having been used in the meantime for other purposes, then—

(a) if an additional allowance, or a greater additional allowance, would have been made under the last preceding subsection for the year of assessment in which the cessation occurred if the proceeds of sale of the asset had been taken to be the value of the asset, an amount equal to the additional allowance which would have been made or, as the case may be, to the difference between the additional allowance which would have been made and the additional allowance which was made for that year shall be allowed in charging the profits or gains of the trade for the year of assessment in which the sale occurs or, if the sale occurs on or after the date on which the trade is permanently discontinued, for the last year of assessment in which the trade is carried on before the discontinuance ;

(b) in any other case, if the proceeds of sale plus the total amount of the allowances made under this and the last preceding section in respect of the expenditure exceed the amount of the expenditure, the excess or the amount of the allowances so made, whichever is the less, shall be treated as a trading receipt of the trade accruing at the time of the sale, or, if the sale occurs on or after the date on which the trade is permanently discontinued, accruing immediately before the discontinuance.

(3) Where an asset is destroyed by fire or any similar cause, it shall for the purposes of the last preceding subsection be treated as if it had been sold immediately before the destruction thereof and any insurance moneys or other compensation of any description received by the person carrying on the trade in respect of the destruction and any moneys received by him for the remains of the asset shall be treated as if they were proceeds of that sale.

(4) Where a deduction is allowed for any year under this or the last preceding section in respect of expenditure represented wholly or partly by any assets, no deduction shall be allowed under any provision of the Income Tax Acts other than this Part of this Act in respect of wear and tear, obsolescence, depreciation or exceptional depreciation of those assets for any year of assessment during any part of which they are used by the person carrying on the trade for scientific research related to the trade.

Carrying forward of allowances.

30.—Paragraph (3) of Rule 6 of Rules applicable to Cases I and II of Schedule D (which relates to the carrying forward of deductions allowable in respect of wear and tear) and section nineteen of the Finance Act, 1932 (which provides for the carrying forward of losses for which relief cannot be given owing to the grant of relief given in respect of wear and tear) shall apply in relation to deductions allowable un-

der either of the two last preceding sections as they apply in relation to deductions allowable in respect of wear and tear.

Supplementary provisions.

31.—(1) In this Part of this Act, the following expressions have the meanings hereby respectively assigned to them, that is to say,—

"the appointed day" means such day as Parliament may hereafter determine;

"scientific research" means any activities in the fields of natural or applied science for the extension of knowledge ;

"scientific research expenditure" means expenditure incurred on scientific research ;

references to expenditure incurred on scientific research do not include any expenditure incurred in the acquisition of rights in, or arising out of, scientific research, but, save as aforesaid, include all expenditure incurred for the prosecution of, or the provision of facilities for the prosecution of, scientific research ;

references to scientific research related to a trade or a class of trades include -

(*a*) any scientific research which may lead to or facilitate an extension of that trade or, as the case may be, of trades of that class ;

(*b*) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that trade or, as the case may be, trades of that class ;

"the apporpriate Research Council or Committee" means the Committee of the Privy Council for Scientific and Industrial Research, the Medical Research Council established under the Committee of the Privy Council for Medical Research, or the Agricultural Research Council established under the Committee of the Privy Council for Agricultural Research, according as may be appropriate in relation to the activities in question ;

"asset" includes a part of an asset ;

references to the setting up and commencement of a trade and to the permanent discontinuance of a trade include references to the occuring of any event which, under any of the provisions of the Income Tax Acts, to be treated as equivalent to the setting up and commencement of a trade or, as the case may be, to the permanent discontinuance thereof.

(2) For the purposes of this Part of this Act, expenditure shall not be regarded as incurred by a person in so far as it is, or is to be, met directly or indirectly by the Crown or by any Government or public or local authority, whether in the United Kingdom or elsewhere, or by any person other than the first-mentioned person.

(3) The same expenditure shall not be taken into account for any of the purposes of this Part of this Act in relation to more than one trade.

(4) If any question arises under this Part of this Act as to whether, and if so to what extent, any activities constitute or constituted, or any asset is or was being used for, scientific research, the Commissioners of Inland Revenue shall refer the question to the appropriate Research Council or Committee for decision, and the decision of the Council or Committee shall be final.

PART V.

EXCESS PROFITS TAX

Increase of standard profits in certain cases.

32.—(1) Subject to the provisions of this section, if, in relation to any chargeable accounting period beginning at or after the end of March, nineteen hundred and and forty-four, the standard profits of a trade or business are ascertained otherwise

than by reference to the profits of the standard period, the standard profits shall, in relation to that chargeable accounting period, be increased by one thousand pounds:

Provided that, in relation to a chargeable accounting period which is less than twelve months, the said increase shall be proportionately reduced so as to correspond with the length of the period.

Where—

(*a*) a trade or business is carried on by a partnership or by a company the directors whereof have a controlling interest therein; and

(*b*) the standard profits of the trade or business are ascertained by reference to the minimum amount specified in subsection (2) of section thirteen of the Finance (No. 2) Act, 1939; and

(*c*) there are three or more working proprietors in the trade or business;

subsection (1) of this section shall have effect as if for the reference to one thousand pounds there were substituted a reference to such greater sum, not exceeding two thousand pounds, as is arrived at by allowing five hundred pounds for each working proprietor in the trade or business.

(3) The preceding provisions of this section shall not apply to any member of a group of companies other than the principal company and, in the case of the principal company of a group of companies, the condition set out in subsection (1) of this section that the standard profits of the trade or business must be ascertained otherwise than by reference to the profits of the standard period shall not be deemed to be complied with in relation to a chargeable accounting period if—

(*a*) the standard profits of the group for any relevant period consisting of or comprising the whole or any part of that chargeable accounting period are ascertained by aggregating the profits and losses arising in the standard period of the group in the trades or business of all the members of the group, other than new subsidiaries, or by aggregating those profits and losses and having the amount arrived at; or

(*b*) the standard profits of any new subsidiary for any chargeable accounting period coinciding with or falling wholly or partly within the said chargeable accounting period of the principal company are ascertained by reference to the profits of the standard period of that new subsidiary.

Expressions used in this subsection have the same meanings as they have in the Fifth Schedule to the Finance Act, 1940 (which relates to groups of companies).

(4) Where a deficiency of profits occurring in a chargeable accounting period beginning at or after the end of March, nineteen hundred and forty-four, is greater than it would have been if this section had not been passed, the amount of the increase shall not be available (whether under section fifteen of the Finance (No. 2) Act, 1939, or paragraph 6 of Part IV of the Fifth Schedule to the Finance Act, 1940) to reduce profits for any chargeable accounting period ending at or before that date; but where by virtue of this subsection the whole of a deficiency occurring in a chargeable accounting period cannot be applied in reducing profits for previous chargeable accounting periods, the amount which cannot be applied shall, for the purposes of paragraph (*b*) of subsection (2) of the said section fifteen, be treated as part of the balance which, under that paragraph, is to be applied in reducing profits in subsequent chargeable accounting periods.

(5) The following provisions shall have effect in relation to chargeable accounting periods falling partly before and partly after the end of March, nineteen hundred and forty-four:—

(*a*) the standard profits for the whole period shall be computed, first on the basis that the foregoing provisions of the section do not apply to such

periods as aforesaid and secondly as if the said foregoing provisions applied to such periods as aforesaid as they apply to periods beginning at or after the said end of March, and it shall then be ascertained, on each basis, whether there are excess profits or a deficiency or profits for the whole period, and if so what is the amount thereof,

(*b*) there shall be deemed to be for the first part of the period, excess profits or a deficiency of profits, as the case may be, equal to an apportioned part of the excess profits or deficiency of profits ascertained under paragraph of this subsection on the first basis mentioned therein, and there shall be deemed to be, for the second part of the period, excess profits or a deficiency of profits, as the case may be, equal to an apportioned part of the excess profits or deficiency of profits ascertained under paragraph (a) of this subsection on the second basis mentioned therein ;

(*c*) for the purposes of this section, the first part of the whole period and the second part of the whole period shall each be treated as if it were a separate chargeable accounting period.

Any apportionment required to be made by paragraph of this subsection shall be made by reference to the number of months or fractions of months in each of the parts of the whole period.

In this subsection, references to the whole period, the first part of period and the second part of the period shall be construed respectvely as references to the whole of the chargeable accounting period falling partly before and partly after the said end of March, so much thereof as falls before the said end of March and so much thereof as falls after the said end of March, and the expression "excess profits" means the amount by which the profits for any period exceed the standard profits therefor.

Tax avoidence.

33.—(I) Section thirty-five of the Finance Act, 1941 (which relates to transactions designed to avoid liability to excess profits tax), shall have effect, and shall subject, to the provisions of this section, be deemed always to have had effect, as amended by the subsequent provisions of this section.

(2) In subsection (I) of the said section, for the words "the main purpose for which any transaction or transactions was or were effected" there shall be substituted the words "the main purpose or one of the main purposes for which any transactions or transactions was or were effected", and in subsection (3) of the said section, for the words "on the ground that the main purpose of the transaction or transactions was not the avoidance or reduction of liability to tax" there shall be substituted the words "on the ground that the avoidance or reduction of liability to tax was not the main purpose or one of the main purposes of the transaction or transactions".

(3) If it appears in the case of any transaction or transactions, being a transaction which involves, or transactions one or more of which involve—

(*a*) the transfer or acquisition of shares in a company ; or

(*b*) a change or changes in the person or persons carrying on a trade or business or part of a trade or business,

that, having regard to the provisions of the law relating to excess profits tax, other than the said section thirty-five and this section, which were in force at the time when the transaction or transactions was or were effected, the main benefit which might have been expected to accrue from the transaction or transactions during the currency of excess profits tax was avoidance or reduction of liability to the tax, the avoidance or reduction of liability to excess profits tax shall be deemed for the purposes of the said section thirty-five to have been the main purpose or one of the main purposes of the transaction or transactions.

(4) A direction under the said section thirty-five as amended by this section may be given notwithstanding that a direction has been given under that section

before the passing of this Act in relation to the transaction or transaction or transactions in question or more of them :

Provided that in the any case where a direction so given has, before the twenty-fifth day of April, nineteen hundred and forty-four, been cancelled or varied on appeal by the Special Commissioners, no direction given by virtue of this section in relation to the transaction or transactioons in question shall affect any chargeable accounting periods ending before the first day of April, nineteen hundred and forty-four.

Amendment of s. 21 of Finance Act, 1943.

34.—Section twenty-one of the Finance Act, 1943, shall have effect and be deemed always to have had effect as if the word "coal" were inserted after the second word "to" in the fifth line thereof.

UNITED KINGDOM EXCESS PROFITS TAX

EXTRACT FROM THE ENGLISH FINANCE ACT, No. 2 OF 1915.

* * * * * *

Charge of Excess Profits Duty.

38.—(1) There shall be charged, levied, and paid on the amount by which the profits arising from any trade or business to which this part of this Act applies, in any accounting period which ended after the fourth day of August 1914, and before the first day of July 1915, exceeded, by more than two hundred pounds, the pre-war standard of profits as defined for the purposes of this Part of this Act, a duty (in this Act referred to as "excess profits duty") of an amount equal to fifty per cent. of that excess.

(2) For the purposes of this Part of this Act the accounting period shall be taken to be the period for which the accounts of the trade or business have been made up, and where the accounts of any trade or business have not been made up for any definite period, or for the period for which they have been usually made up, or a year or more has elapsed without accounts being made up, shall be taken to be such period not being less than six months or more than a year ending on such a date as the Commissioners of Inland Revenue may determine.

Where any accounting period is a period of less than a year this Section shall have effect as if there were substituted for two hundred pounds a proportionately reduced amount.

(3) Where a person proves that in any accounting period, which ended after the fourth day of August 1914, his profits have not reached the point which involves liability to excess profits duty, or that he has sustained a loss in his trade or business, he shall be entitled to repayment of such amount paid by him as excess profits duty in respect of any previous accounting period, or to set off against any excess profits duty payable by him in respect of any succeeding accounting period, such an amount as will make the total amount of excess profits duty paid by him during the whole period accord ..ith his profits or losses during that period.

Trades and businesses to which excess profits duty applies.

39.—The trades and businesses to which this Part of this Act applies are all trades or businesses (whether continuously carried on or not) of any description carried on in the United Kingdom, or owned or carried on in any other place by persons ordinarily resident in the United Kingdom, excepting—

(*a*) husbandry in the United Kingdom ; and

(*b*) offices or employments ; and

(*c*) any profession the profits of which are dependent mainly on the personal qualifications of the person by whom the profession is carried on and

in which no capital expenditure is required, or only capital expenditure of a comparatively small amount,

but including the business of any person taking commissions in respect of any transactions or services rendered, and of any agent of any description (not being a commercial traveller, or an agent whose remuneration consists wholly of a fixed and definite sum not depending on the amount of business done or any other contingency).

Determination of profits and pre-war standard.

40.—(1) The profits arising from any trade or business to which this Part of this Act applies shall be separately determined for the purpose of this Part of this Act, but shall be so determined on the same principles as the profits and gains of the trade or business are or would be determined for the purpose of income-tax, subject to the modifications set out in the First Part of the Fourth Schedule to this Act and to any other provisions of this Act.

(2) The pre-war standard of profits for the purposes of this Part of this Act shall, subject to the provisions of this Act, be taken to be the amount of the profits arising from the trade or business on the average of any two of the three last per-war trade years, to be selected by the tax-payer (in this Part of this Act referred to as the profits standard): Provided that if it is shown to the satisfaction of the Commissioners of Inland Revenue that that amount was less than the percentage standard as hereinafter defined, the pre-war standard of profits shall be taken to be the percentage standard

The percentage standard shall, for the purposes of this Act, be taken to be an amount equal to the statutory percentage on the capital of the trade or business as existing at the end of the last pre-war trade year, subject, however, to the provisions of this Act as to any alteration in the manner of calculating the percentage standard in special cases.

The statutory percentage shall be six per cent. in the case of trade or business carried on or owned by a company or other body corporate, and seven per cent. in the case of any other trade or business, subject, however, to the provisions of this Act as to the increase in that percentage in certain cases.

The provisions contained in the Second Part of the Fourth Schedule to this Act shall have effect with respect to the computation of the profits of a pre-war trade year, and the provisions contained in the Third Part of the Fourth Schedule shall have effect with respect to the ascertainment of capital for the purposes of this Part of this Act.

"The last pre-war trade year" means the year ending at the and of the last accounting period before the fifth day of August 1914, and "the three last pre-war trade years" means the three years ending at the three corresponding times.

(3) Where it appears to the Commissioners of Inland Revenue, on the application of a taxpayer in any particular case, that any provisions of the Fourth Schedule to this Act should be modified in his case, owing to a change in the constitution of a partnership, or to the postponement or suspension, as a consequence of the present war, of renewals or repairs or to exceptional depreciation or obsolescence of assets employed in the trade or business due to the present war, or to the necessity in connection with the present war of providing plant which will not be wanted for the purposes of the trade or business after the termination of the war, or to any other special circumstances specified in regulations made by the Treasury, those Commissioners shall have power to allow such modifications of any of the provisions of that Schedule as they think necessary in order to meen the particular case.

If the Commissioners refuse, on any such application, to allow any modification, or if the applicant is dissaisfied with any modification allowed, the applicant may require the Commissioners to refer the case to a Board of Referees, to be appointed for the purposes of this Part of this Act by the Treasury, and that Board shall consider any case so referred and have the same powers with respect thereto as the Commissioners have.

Adjustment for increased or decreased capital.

41—(1) Where capital has been increased during the accounting period, a deduction shall be made from the profits of the accounting period at the statutory percentage per annum on the amount by which the capital has been increased, for the whole accounting period if the increased capital has been employed for the whole accounting period, and if the increased capital has been employed for part only of the accounting period, for that part of the accounting period.

(2) Where capital has been decreased during the accounting period, an addition shall be made to the profits of the accounting period at the statntory percentage per annum on the amount by which the capital has been so decreased, for the whole accounting period, and if the capital has been decreased for the whole accounting period, and if the capital has been decreased for the whole accounting period, and if the capital has been decreased for part only of the accounting period, for that part of the accounting period.

(3) For the purposes of this Section capital shall be taken to be increased or decreased, as the case may be, where the pre-war standard of profits is a profits standard, if the capital employed in the trade or business exceeds or is less than the average amount of capital employed during the pre-war trade years or year by reference to which the profits standard has been arrived at, and, where the pre-war standard of profits is a percentage standard, if the capital exceeds or is less than the capital on which the percentage standard han been calculated.

(4) Where any capital employed in a trade or business which was so employed for the first time within three years before the first day of August, nineteen hundred and fourteen has only commenced to be remunerative of fully remunerative in the accounting period, an amount equal to the statutory percentage, or where interest has been earned on the capital, but at a rate less than the statutory percentage, an amount which would bring the interest earned on the capital, up to the statutory percentage, as the case may be, shall be added to the profits standard.

Reference to the Board of Referees of questions as to increase of percentage, & c,

42.—Where an application is made to the commissioners of Inland Revenue—

(1) For an increase of the statutory percentage as respects any class of trade or business, or for a calculation of the percentage standard in the case of any class of trade or business in which the amount of capital actually employed in the trade or business is owing to the nature of the trade or business, shall compared with the capital necessarily at stake for that trade or business, by reference to some factor other then the capital of the trade or business or to some additional factor ; or

(2) For an alteration of the pre-war standard of profits as respects capital employed for the purpose of the manufacture of war materials or for munitions work and which could not be expected to be remunerative or wholly remunerative, except in time of war, in a business which has been wholly or mainly carried on for those purposes;

the Commissioners, unless they are of opinion that the application is frivolous or vexatious or relates to matters already decided by a Board of Referees, shall refer the case to a Board of Referees to be appointed for the purpose of this Part of this Act by the Treasury, and that Board shall deal with the case, and may, by order, if they think fit, increase the statutory percentage or after the percentage standard for the class of trade or business the subject of the order, or after the pre-war standard of profits, as the ease requires,

On any such order being made, this Part of this Act shall have effect as from the date named in the order as if the percentage or standard named in the order was substituted for the percentage or standard fixed by this Act; and where, in pursuance of any such order, the statutory percentage is increased or the percentage

standard is altered as respects any class of trade or business, the statutory percentage shall be increased and the percentage standard shall be altered respectively for all purposes of this Part of this Act as respects any trade or business belonging to that class.

This Section shall apply to any sub-division of a trade or business based either on any special feature of the trade or business or on locality as it applies to a class of trade or business, in any case where the Board of Referees are of opinion that the sub-division can properly be dealt with separately.

Excess mineral rights duty.

43.—(1) Where the amount payable to any person as rent in respect of the right to work minerals or of any mineral wayleaves (in cases where the right to work the minerals and the mineral wayleaves are not part of the assets of any trade or business) varies according to the price of the minerals, and the amount so payable in respect of any working year ending on any date after the commencement of the present war (in this Section referred to as the accounting year) exceeds the pre-war standard of that rent, there shall be paid as an addition to any mineral rights duty payable or paid, either directly or by deduction, by reference to the amount of the rent paid in that working year, by that person (in this Section referred to as the person liable) an amount equal to fifty per cent of that excess.

(2) The pre war standard of rent shall, for the purposes of this Section, be taken to be the average of any two of the three last pre-war rent values, to be selected by the taxpayer, and in cases where the minerals have not been worked or the wayleaves have not been let throughout the three years by reference to which the three last pre-war rent values are to be calculated, or for any other reason there are no proper data for ascertaining the pre-war rent values, shall be taken to be such amount as may be fixed by the Commissioners of Inland Revenue, having regard to the data afforded by the working and price of minerals in like circumstances, subject nevertheless to the same appeal as that to which the assessment of duty by the Commissioners is subject under Part I of the Finance (1909-10) Act, 1910.

The pre-war rent value shall, as respects each of the three years immediately preceding the first accounting year, be taken to be the sum to which the rent for the accounting year would amount if the rent, so far as variable according to price, were based on the average price governing the payment of the rent in that year.

(3) Any amount payable in any accounting year the lessee of minerals or wayleaves to a superior lessor as rent in respect of the minerals or wayleaves shall be treated as a deduction from the amount payable to the lessee as rent for that year, and computing the pre-war rent values corresponding deduction shall be made on account of any such rent.

(4) Any increment value duty payable annually under Section twenty-two of the Finance (1909-10) Act, 1910, shall, when paid, be treated as a deduction from the rent payable to any person in the year in which duty is paid, and a corresponding deduction shall be made in computing the pre-war standard with which the rent for that year is to be compared.

(5) Any duty payable under this Section shall be assessed by the Commissioners of Inland Revenue on the person liable, subject to the same appeal as that to which anassessment of duty be the Commissioners under Part I of the Finance (1909-10) Act, 1910, is subject, and shall be recoverable as a debt due to His Majesty from that person.

(6) Sub-section (3) of Section twenty of the Finance (1909-10) Act, 1910, shall extend so as to authorise particulars to be required of any lease of minerals or wayleaves and as to the sums paid or payable thereunder, and of such other particulars as to the minerals of wayleaves as the Commissioners may require for the purpose of this section.

(7) Expressions to which a special meaning is attached by Part I of the Finance (1909-10) Act, 1910, shall have the same meaning in the Section.

Returns for purpose of Part III and penalty for fictitious transactions.

44.—(1) The Commissioners of Inland Revenue may, for the purposes of this Part of this Act, require any person engaged in any trade or business to which this Act applies, or who was so engaged during any accounting period or pre-war trade year, to furnish them within two months after the requirement for the return is made, with returns of the profits of the trade or business during the accounting period or pre-war trade years and such other particulars in connection with the trade or business as the Commissioners may require.

(2) It shall be the duty of every person chargeable to excess profits duty under this Part of this Act to give notice that he is chargeable to the Commissioners of Inland Revenue before the thirty-first day of January nineteen hundred and sixteen, and it shall be the duty of the liquidator of every company which is being wound up at the time of the commencement of this Act or is wound up after the commencement of this Act, and is chargeable to excess profits duty, to give notice of the fact to the Commissioners of Inland Revenue.

If any person fails to furnish a proper return in accordance with this Section or to comply with any requirment of the Commissioners under this Section, or to give any notice required by this Section, he shall be liable on summary conviction to a fine not exceeding one hundred pounds and to a further fine not exceeding ten pounds a day for every day during which the offence continues after conviction therefor.

(3) A person shall not, for the purpose of avoding the payment of excess profits duty, enter into any fictitious or artificial transaction or carry out any fictitious or artificial operation, and, if he has entered into any such transaction or carried out any such operaton before the commencement of this Act, shall inform the Commissioners of Inland Revenue of the nature of the transaction or operation.

If any person acts in contravention of, or fails to comply with, this provision, he shall be liable on summary conviction to a fine not exceeding one hundred pounds.

Supplemental provisions as to excess profits duty.

45.—(1) The excess profits duty shall be assessed by the Commissioners of Inland Revenue, and shall be payable at any time, not being less than two months, after it is assessed.

The Commissioners may, in any case where they think fit, allow the duty to be paid in instalments of such amount payable at such times as the Commissioners direct.

(2) The duty may be assessed on any person for the time being owning or carrying on the trade or business or acting as agent for that person in carrying on the trade or business, or, where a trade or business has ceased, on the person who owned or carried on the trade or business or acted as agent in carrying on the trade or business immediately before the time at which the trade or business ceased and where there has been a change of ownership of the trade or business, the Commissioners of Inland Revenue may, if they think fit, take the accounting period as the period ending on the date on which the ownership has so changed and assess the duty on the person who owned or carried on the trade or business or acted as agent for the person carrying on the trade or business at that date.

(3) The amount of duty payable shall be recoverable as a debt due to His Majesty from the person on whom it is assessed.

Any such amount shall if it is less than fifty pounds be recoverable also summarily as a civil dbet.

(4) Where a company is wound up after the commencement of this Act, and before the first day of July, 1916, and the company would be chargeable with excess profits duty if the provisions of this Act were continued and extended to accounting periods ending before the first day of July, 1916, it shall be the duty of the liquidator of the company to give notice to the Commissioners of Inland Revenue, and to set aside such sum out of the assets of the company as appears to the Commissioners of Inland Revenue to be sufficient to provide for any such excess profits dut as may become chargeable.

(5) Any person who is dissatisfied with the amount of any assessment made upon him by the Commissioners of Inland Revenue under this Part of this Act may (except in cases where a special right of appeal is given under this Part of this Act) appeal to the General Commissioners for the division in which he is assessed, or to the special Commissioners, and those Commissioners shall have power on any appeal, if they think fit, to summon witnesses and examine them upon oath.

The power under Sections 21 and 22 of the Income Tax Act, 1853, to require an appeal in Ireland to the special Commissioners to be reheard by the County Court Judge, or Chairman of quarter sessions, or Recorder, shall apply to an appeal in Ireland under this provision.

Section 59 of the Taxes Management Act, 1880 (which relates to the statement of a case on a point of law), shall apply with the necessary modifications in the case of any appeal to the general or special Commissioners under this Section, or of the rehearing of any such appeal in Ireland, and in the case of a reference to the Board of Referees under this Part of this Act, as it applies in the case of appeals to the general or special Commissioners under the Income Tax Acts.

(6) The duty assessed by the Commisaioners of Inland Revenue shall be payable notwithstanding any appeal under this Section except in cases where the Commissioners of Inland Revenue direct to the contrary, but the Commissioners shall make such repayments, if any, as are necessary to give effect to any decision on appeal as soon as possible after such decision has been given.

(7) The Commissioners of Inland Revenue may make regulations with respect to the assessment and collection of the excess profits duty and the hearing of appeals under this Section, and may, by those regulations, apply and adapt any enactments relating to the assessment and collection of income-tax, or the hearing of appeals as to income-tax by the general or special Commissioners, which do not otherwise apply.

(8) All Commissioners and other persons employed for any purpose in connection with the assessment or collection of excess profits duty shall be subject to the same obligations as to secrecy with respect to excess profits duty as those persons are subject to with respect to income-tax, and any oath taken by any such person as to secrecy with respect to income-tax shall be deemed to extend also to secrecy with respect to excess profits duty.

FOURTH SCHEDULE.

PART I

COMPUTATION OF PROFITS

1.—The profits shall be taken to be the actual profits arising in the accounting period; and the principle of computing profits by reference to any other year or an average of years shall not be followed.

2.—The principal of the Income Tax Acts under which deductions are not allowed for interest on money borrowed for the purpose of the trade or business, or for rent, or royalties, or for other payments income tax on which is collected at the source (not being payments of dividends or payments for the distribution of profits),

and under which profits or gains arising from lands, tenements, or hereditaments forming part of the assets of the trade or business are excluded shall not be followed.

3.—Deductions for wear and tear or for any expenditure of a capital nature for renewals, or for the development of the trade or business or otherwise in respect of the trade or business, shall not be allowed except such as may be allowed under the Income Tax Acts, and if allowed shall be only of such amount as appears to the Commissioners of Inland Revenue to be reasonable and properly attributable to the year or accounting period.

4.—Deductions shall not be allowed on account of the liability to pay, or the payment of, income-tax or excess profits duty, but a deduction shall be allowed (if not otherwise allowed by means of the adoption of the principle of the Income Tax Acts) for any sum which has been paid in respect of the profits on account of any excess profits duty or similar duty imposed in any country outside the United Kingdom.

5.—Any deduction allowed for the remuneration of directors, managers, and persons concerned in the management of the trade or business shall not, unless the Commissioners of Inland Revenue, owing to any special circumstances or to the fact that the remuntration of any managers or managing directors depends on the profits of the trade or business, otherwise direct, exceed the sums allowed for those purposes in the last pre-war trade year or a proportionate part thereof as the case requires, and no deduction shall be allowed in respect of any transaction or operation of any nature, where it appears, or to the extent to which it appears, that the transaction or operation has artificially reduced the amount to be taken as the amount of the profits of the trade or business for the purposes of this Act.

6.—Where any company, either in its own name or that of a nominee, owns the whole of the ordinary capital of any other company carrying on the same trade or business or so much of that capital as under the general law a single share-holder can legally own, the provisions of Part III of this Act as to excess profits duty and the pre war standard of profits shall apply as if that other company were a branch of the first named company, and the profits of the two companies shall not be separately assesssd.

7.—Where in the case of any trade or business—

(*a*) the percentage standard is adopted as the pre-war standard of profits; and

(*b*) the net result of the trade or business during the three last pre-war trade years has shown a loss; and

(*c*) any part of the profits has been applied in extinction of that loss;

then in estimating the profits the deduction shall be allowed equal to the amount of profits so applied.

8.—In estimating the profits no account shall be taken of income received from investments except in the case of life assurance businesses and businesses where the principal business consists of the making of investments. Where account is taken of any such income—

(*a*) any variation in the value of any of those investments which appears to the Commissioner of Inland Revenue not to be due a variation in profits shall also be taken into account; and

(*b*) where the income has been derived from profits in respect of which any payment of repayment of excess profits duty has been made under this Act, such deduction or addition shall be made in computing the profits as will make proper allawance for that payment or repayment of duty.

9.—In computing the total profits of a local authority from any trades or businesses carried on by that authority the total amount which is required to be raised by them out of the rates or otherwise, for sinking fund purposes in connection with those trades or businesses shall be allowed as a deduction.

10.—In the case of societies registered under the Industrial and Provident Societies Acts the excess profits duty shall be charged on the sum by which the profits per member for the accounting period (including any surplus arising from transactions with members) exceed the like profits per member in the pre-war trade year or average of years taken as the basis of computation for the purpose of the pre-war standard of profits, multiplied by number of members in the accounting period.

11.—In the case of any contract extending beyond one accounting period from the date of its commencement to the completion thereof and only partially performed in any accounting period there shall (unless the Commissioners of Inland Revenue, owing to any special circumstances, otherwise direct) be attributed to each of the accounting periods in which such contract was partially performed, such proportion of the entire profits or loss or estimated profits or loss in respect of the complete performance of the contract as shall be properly attributable to such accounting periods respectively, having regarded to the extent to which the contract was performed in such periods.

PART II

PRE-WAR STANDARD

1.—The profits of any pre-war trade year shall be computed on the same principles and subject to the same provisions as the profits of the accounting period are computed.

2.—Where the accounting period for which the excess profits duty is to be assessed is less than a year, the amount of the pre-war standard of profits shall be proportionately reduced.

3.—Where it is shown to the satisfaction of the Commissioners of Inland Revenue in the case of any trade or business that the three last pre-war trade years have been years of abnormal depression, any four of the last six pre-war trade years may be substituted for the purposes of the pre-war standard of profits for any two of the three last pre-war trade years.

The three last pre-war trade years shall not be considered as years of abnormal depression unless the average profits of those years have been at least twenty-five per cent. lower than the average profits preceding three years.

4.—Where owing to the recent commencement of a trade or business there have not been three pre-war trade years, but there have been two pre-war trade years, the pre-war standard of profits shall be taken to be the amount of the profits arising from the trade or business on the average of those two years or, at the option of the tax payer, the profits arising from the trade or business during the last of those two years, and where there have not been two pre war trade years, but there has been one pre-war trade year, the pre-war standard of profits shall be taken to be the profits arising from the trade or business during that year; and where there has not been one pre-war trade year, the pre-war standard of profits shall be taken to be the statutory percentage on the average amount of capital employed in the trade or business during the accounting period.

Where the trade or business is an agency or business of a nature involving capital of a comparatively small amount the pre-war standard of profits shall be computed by reference to the profits arising from any trade, business, office, employment or profession of any sort, whether liable to excess profits duty or not, carried on by the agent or other person before his new trade or business commenced as if it was the same trade or business; but only to the extent to which the income from the former trade, business, office, employment or profession has been diminished.

5.—Where since the commencement of the three last pre-war trade years a trade or business has changed ownership, the provisions of this Part of this Schedule shall apply as if a new trade or business had been commenced on the change of ownership, except in case when the taxpayer makes an application that the provisions of Part III of this Act and this Schedule should apply as if the trade or business had not changed ownership, but in that case such modifications (if any) shall be made in the application of this Schedule as may be necessary to make the basis on which the profits standard is computed the same as that on which the profits of the accounting period are computed.

6.—It is hereby declared that, whose any business or trade is confined to the management of any particular assets but power exists to substitute other assets for those particular assets or any of them, such a substitution shall not be deemed, for the purposes of Part III of this Act, to constitute a change of ownership of the business; but, where any such substitution has been carried out by the sale of assets and the purchase of other assets, the capital of the trade or business shall be taken to be increased or decreased, as the case may be, only by the amount of the difference between the price of the assets purchased and the price obtained for the assets sold, and the capital representing the assets purchased shall be estimated on the same basis for all the purposes of Part III of this Act,

PART III.

CAPITAL.

1.—The amount of the capital of a trade or business shall, so far as it does not consist of money, be taken to be—

(*a*) so far as it consists of assets acquired by purchase, the price at which those assets were acquired, subject to any proper deductions for wear and tear or replacement, or for unpaid purchase money; and

(*b*) so far as it consists of assets being debts due to the trade or business, the nominal amount of those debts subject to any reduction which has been allowed in respect of those debts for income tax purposes; and

(*c*) so far as it consists of any other assets which have not been acquired by purchase, the value of the assets at the time when they became assets of the trade or business, subject to any proper deductions for wear and tear or replacement.

Nothing in this Part of this Schedule shall prevent accumulated profits employed in the business being treated as capital.

2.—Any capital the income on which is not taken into account for the purposes of Part I of this Schedule, and any borrowed money or debts, shall be deducted in computing the amount of capital for the purposes of Part III of this Act.

3.—Where any asset has been paid for otherwise than in cash, the cost price of that asset shall be taken to be the value of the consideration at the time the assets was acquired, but where a trade or business has been converted into a company and the shares in the company are wholly or mainly held by the person who was owner of the trade or business, no value shall be attached to those shares so far as they are represented by goodwill or otherwise than by material assets of the company unless the Commissioners of Inland Revenue in special circumstances otherwise direct. Patents and secret processes shall be deemed to be material assets

CANADIAN EXCESS PROFITS TAX ACT, 1940.

An act to authorize the Levying of an Excess Profits Tax upon certain incomes. Consolidated with amendments, Chapter 15 of 1940-41, Chapter 26 of 1942.

SHORT TITLE

1.—This Act may be cited as *The Excess Profits Tax Act, 1940.* (1940, c. 32, s. 1).

INTERPRETATION

Definitions.

2.—(1) In this Act and in any regulations made under this Act, unless the context otherwise requires, the expression,—

"Bord of Referees".

(*a*) "Board of "Referees" means the Board appointed under and by virtue of section thirteen of this Act.

"Capital".

(*b*) "capital" means capital as computed in accordance with the First Schedule to this Act.

"Excess profits".

(c) "excess profits" means that portion of the Profits of the taxpayer in excess of standard profits.

"fiscal period"

(*d*) "fiscal period" means the period for the accounts of the business of the taxpayer have been or are ordinarily made up and accepted for purposes of assessment under the *Income War Tax Act,* and in the absence of such an established practice the fiscal period shall be that which the taxpayer adopts : Provided, however,—

(i) that such fiscal period shall not in any case exceed a period of twelve months; and

(ii) that if a taxpayer purports to change his or its usual and accepted fiscal period the Minister may in his discretion disallow such change if he is satisfied that the said taxpayer is thereby avoiding or minimizing taxation under this Act.

"person"

(*e*) "person" includes any body corporate and political and any partnership, association or other body, and the heirs, executors, administrators and curators or other legal representatives of such person, according to the law of the part of Canada to which the context extends.

"profits," in the case of corporation.

(*f*) "profits in the case of a corporation or joint stock company for any taxation period means the amount of net taxable income of the said corporation or joint stock company as determined under the provisions of the *Income War Tax Act* in respect of the same taxation period, except that if a corporation or joint stock company is subject to the tax imposed by the Second Part of the Second Schedule to this Act, profits shall not include, for the purposes of the said tax, any dividends deemed to have been received by such corporation or joint stock

company by virtue of section nineteen of the *Income War Tax Act* unless.

(i) the capital of the corporation or joint stock company including capital stock, bonds, debentures and any other securities issued by the said corporation or joint stock company is, to the extent of fifty per centum or more, held by or on behalf of individual holders numbering twenty-five or less, or

(ii) the said corporation or joint stock company is controlled directly or indirectly by any such number of individuals by means of the ownership or control of the majority of the voting stock of the said corporation or joint stock company.

and unless the corporation or joint stock company which is being wound up, discontinued or reorganized, within the meaning of section nineteen of the *Income War Tax Act* aforesaid, is likewise controlled in the manner described in sub-paragraph (i) or sub-paragraph (ii) hereof by individuals numbering twenty-five or less.

"profits" in case of other taxpayers.

(*g*) "profits" in the case of a taxpayer other than a corporation or joint stock company, for any taxation period, means the income of the said taxpayer derived from carrying on one or more business, as defined by section three of the *Income War Tax Act*, and before any deductions are made therefrom under any other provisions of the said *Income War Tax Act*.

"standard period"

(*h*) "standard period" means the period comprising the calendar year one thousand nine hundred and thirty-six to one thousand nine hundred and thirty-nine, both inclusive, or such years or parts thereof since the first day of January, one thousand nine hundred and thirty-six, during which the taxpayer was in business;

Proviso.

Provided that where the profits of a taxpayer in any one of such calendar years, after adjustment by the Minister pursuant to section four of this Act, where less than fifty per centum of the average of the profits for the remaining years of the standard period the taxpayer may designate as his standard period the remaining years aforesaid or the standard period, and

Proviso.

Provided further that if the Minister is satisfied that a taxpayer did not actually commence business operations until a date subsequent to the date of the nominal commencement thereof he may fiix the date of the actual commencement of business operations as the date of commencement thereof for all purposes under this Act.

"standard profits"

(*i*) "standurd profits" means the average yearly profits of a taxpayer in the standard period in carrying on what was in the opinion of the Minister the same class of business as the business of the taxpayer in the year of taxation or the standard profits ascertained in accordance with section five of this Act :

Proviso.

Provided that standard profits shall not include for the purposes of this Act property in any form received by a taxpayer deemed to be the payment of a dividend under section nineteen of the *Income War tax Act*; and

Proviso.

Provided further that for the purpose of this second profits shall be deemed to have accrued on an equal daily basis throughout any fiscal period or portion thereof which is in question ; and

Proviso.

Provided further that losses incurred by the tax-payer during the standard period shall not be deducted from the profits in the standard period but the years of losses shall nevetheless be counted in delermining the average yearly profits during the said standard ; period ; and

Proviso.

Provided further that a taxpayer's standard profits shall not be deemed to be less than five thousand dollars before any adjustment is made in accordance with the provisions of this Act.

Applicption of Income War Tax Act.

(2) Unless it is otherwise provided or the context otherwise requires expressions contained in this Act shall have the same meaning as in the *Income War Tax Act*,, and definitions contained in the said *Income War Tax Act*, shall apply in this Act. (1940, c. 32, s. 2 ; 1940-41, c. 15, ss. 1. 2, 3 ; 1942, c. 26, s. 1.)

CHARGING PROVISIONS.

3. (1) In addition to any other tax or duty payable under any other Act and as herein provided, there shall be assessed, levied and paid.

Person liable to tax.

(*a*) a tax in accordance with the rate set out in the Third Part of the Second Schedule to this Act, upon the profits during the taxation period ; and

(*b*) a tax in accordance with the rates set out in the First Part of the Second Schedule or in the Second Part of the Second Schedule to this Act upon the profits or the excess profits respectively during the taxation period, whichever of such taxes is the greater in amount,

of every person residing or ordinarily resident in Canada or who is carrying on business in Canada:

Proviso.

Provided that in the case of all persons other than corporations the tax as provided in the Third Part of the Second Schedule to this Act shall not apply.

Proviso. Oil or Gas Royalty Companies.

Provided further that in the case of persons taxable under subsection three of section three of the *Income War Tax Act* the tax as provided in the Second Part of the Second Schedule to this Act shall not apply.

Tax not to operate to reduce profits.

(2) The tax exigible under this section in accordance with the rates set out in the First Part of the Second Schedule to this Act shall in no case operate to reduce the profits of a taxpayer below the amount of five thousand dollars before providing for any payments to proprietors, partners or shareholders by way of salary, interest or otherwise. (1942, c. 26, s. 2; 1943, c. 13, s. 1.)

STANDARD PROFITS.

Adjustments to standard profits.

4. (1) The Minister may in his discretion make the following adjustments in the standard profits of a taxpayer :

(*a*) adjust the standard profits to the basis of a fiscal period or fraction thereof camparable in length with the fiscal period or fraction thereof of the year of taxation.

(*b*) adjust the standard profits.

Adjustments to standard profits.

(i) in the case where any alteration in the capital employed since the commencement of the last year or fiscal period of the taxpayer in the standard period has occurred, by adding to or deducting from (accordingly as the capital has been increased or reduced) the standard profits an amount equal to seven and one-half per centum per annum of the amount of the alteration in the capital :

Proviso.

Provided that in the case of a corporation or joint stock company such adjustment may only be made if the alteration in capital was accompanied by an equivalent alteration in capital stock ; except that where an adjustment upward has been made in accordance with the provisions of sub-paragraph (ii) thereof for an increase in capital employed during the standard period (not accompanied by an increase in capital stock) an adjustment down-ward may be made for a subsequent decrease in capital employed whether or not such decrease has been accompanied by a reduction in capital stock, but not to an extent greater than the said upward adjustment ; and,

Proviso.

Provided further that if an increase in capital to the extent of thirty-three and one-third per cent. of the capital employed at the commencement of the year of fiscal period of the taxpayer next preceding the taxation year or alternatively to the extent of thirty-three and one-third per cent. of the capital employed at the commencement of the last year or fiscal period of the taxpayer in the standard period has been so made, the taxpayer may apply under section 5 of this Act to have his standard profits ascertained by the Board of Referees as if he had not been carrying on a business during the standard period : Provided that a corporation or joint stock company may apply as therein provided only when such increase in capital employed is accompanied by an equivalent increased in capital stock.

(ii) in the case where any increase in capital employed was made during the standard period, by adding to the profits of the standard period or portions thereof, when such additional capital was not employed, an amount equal to seven and one-half per cent. per annum of the said additional capital and in the case where any decrease in capital employed was made during the standard period by deducting from the profits of the standard period or portions thereof during which the capital withdrawn was employed an amount equal to seve and one-half per cent. of the said capital withdrawn :

Proviso.

Provided that in the case of any such decrease in the capital of a corporation or joint stock company such adjustment may only be made if the said decrease was accompanied by an equivalent reduction of capital stock.

(*c*) adjust the standard profits of taxpayers engaged in the operation of gold mines or oil wells having regard to any substantial increase or decrease in volume of production in the year of taxation as compared with the average volume of production during the stan dard period

Taxpayer acquiring business after 1st January, 1938.

(2) On the application of a taxpayer who acquired his business as a going concern after first January, 1938, if the Minister is satisfied that the business carried

on by the taxpayer is not substantially different from the business of his or its predecessor, he may direct that the standard profits of the said predecessor may be taken into account in ascertaining the standard profits of the said taxpayer. (1940, c. 32, s. 4; 1940-41, c 15, ss. 4, 5; 1943, c. 13, s 2.)

Ascertainment of profits by Board of Referees. Depressed businesses.

5.—(1) If a taxpayer is convinced that his standard profits were so low that it would not be just to determine his liability to tax under this Act by reference thereto because the business is either of a class which during the standard period was depressed or was for some reason peculiar to itself abnormally depressed during the standard period when compared with other businesses of the same class he may, subject as hereinafter provided, compute his standard profits at such greater amount as he thinks just, but not exceeding an amount equal to interest at ten per cent per annum on the amount of capital employed in the business at the commencement of the last year or fiscal period of the taxpayer in the standard period computed in accordance with the First Schedule to this Act;

Proviso.

Provided that if the Minister is not satisfied that the business of the taxpayer was depressed or that the standard profits as computed by the taxpayer are fair and reasonable, he may direct that the standard profits be ascertained by the Board of Referees and the Board shall thereupon, in its sole discretion, ascertain the standard profits at such an amount as the Board thinks just, being however, an amount equal to the average yearly profits of the taxpayer during the standard period or to interest at the rate of not less than five nor more than ten per cent. per annum on the amount of capital employed at the commencement of the last year or fiscal period of the taxpayer in the standard period as computed by the Board in its sole discretion in accordance with the First Schedule to this Act, or the Minister shall assess the taxpayer in accordance with the provisions of this Act other than as provided in this sub-section.

Standard profits for new business.

(2) If on the application of a taxpayer the Minister is satisfied that the taxpayer was not carrying on business during the standard period or that the profits of the standard period were so low that it would not be just to determine the liability of the taxpayer under this Act by reference thereto because the actual date of commencement of business by the taxpayer or the date of commencement fixed by the Minister pursuant to paragraph (*h*) of sub-section 1 of the section 2 of this Act was subsequent to the 31st day of December, 1937, but before the first day of January, 1939, he shall direct that the standard profits be ascertained by the Board, or (whether or not there has been an application by the taxpayer) in the case of any taxpayer who has not commenced business before the second day of January, 1939, the Minister shall direct that the standard profits be ascertained by the Board and the Board in any such case shall in its sole discretion thereupon ascertain the standard profits at such an amount as the Board thinks just, being an amount equal to a return on the capital employed by the taxpayer at the commencement of the first year or fiscal period in respect of which he is subject to taxation under this Act at the rate earned by taxpayers during the standard period in similar circumstances engaged in the same or an analogous class of business, the capital of the taxpayer to be computed by the Board of Referees in its sole discretion in accordance with the First Schedule to this Act.

Standard profits for cases where a capital standard is inapplicable.

(3) If on the application of a taxpayer the Minister is satisfied that the business either was depressed during the standard period or was not in operation prior to the first day of January, 1938, and the Minister on the advice of the Board of Referees is satisfied that because,

(*a*) the business is of such a nature that capital is not an important factor in the earning of profits, or

(*b*) the capital has become abnormally impaired or due to other extraordinary circumstances is abnormally low

standard profits ascertained by reference to capital employed would result in the imposition of excessive taxation amounting to unjustifiable hardship or extreme discrimination or would jeopardize the continuation of the business of the taxpayer, the Minister shall direct that the standard profits be ascertained by the Board of Referees and the Board shall in its sole discretion thereupon ascertain the standard profits on such basis as the Board thinks just having regard to the standard profits of taxpayers in similar circumstances engaged in the same or an analogous class of business.

Decisions of Board not final.

(4) Notwithstanding anything contained in this section the decisions of the Board given under sub-sections 1, 2 and 3 of this section shall not be operative until approved by the Minister whereupon the said decisions shall be final and conclusive:

Proviso.

Provided that if a decision is not approved by the Minister it shall be submitted to the Treasury Board who shall thereupon determine the standard profits and the decision of the Treasury Board shall be final and conclusive. (1942, c. 26, s.3.)

New gold mines and oil wells.

5-A.—In the case of taxpayers engaged in the operation of gold mines or oil wells which have come into production after 1st day of January 1938, the amount of standard profits shall be ascertained on the basis of a presumed volume of production during the standard period equal to the volume of production of the taxpayer in the taxation year and a presumed selling price for the product during the standard period equal to the average selling price of the said product during the standard period. (1942, c. 26, s. 3.)

DEDUCTIONS FROM PROFITS

Deductions from profits allowed to corporations.

6.—(1) A corporation or joint stock company taxable under the Second Part of the Second Schedule to this Act shall be entitled, in respect of any taxation period, to deduct from profits the following:—

Proportion of incom tax and tax under 3rd Part of 2nd Schedule.

(*a*) such proportion of the income tax payable under the *Income War Tax Act* (or payable under the said Act prior to the application of sections eight, eighty-nine or ninety thereof) and such proportion of the tax payable under the Third Part of the Second Schedule to this Act, for the same taxation period as the excess profits taxable under the Second Part of the Second Schedule to this Act bears to the total profits of the taxpayer;

Inventory reserve.

(*b*) such reasonable provision as a reserve against future depreciation in inventory values as the Minister in his discetion may allow having regard to a normal quantity of stock in trade necessary for the business as indicated by the quantities on hand during the standard period:

Proviso.

Provided that no such deduction shall be allowed which provides against a decline in inventory values below the inventory prices of goods on hand either at the

end of the fiscal period of the taxpayer ending in the year one thousand nine hundred and thirty-nine or in case the fiscal period of the taxpayer ends after the thirty-first day of August, during the said month of August one thousand nine hundred and thirty-nine, and,

Proviso.

Provided further that any reduction in such reserve shall for purposes of taxation under this Act be added to the profits of the year in which such reduction takes place and any portion of such reserve remaining at the end of the year or fiscal period when this Act ceases to apply to the taxpayer shall be available to the taxpayer to meet declines in inventory values during the next following year and if not exhausted by the end thereof the remaining portion shall be added to the taxpayer's profits of the last year or fiscal period when this Act applies to the taxpayer.

Taxpayers other than corporations,

(2) A taxpayer other than a corporation or joint stock company shall be entitled to deduct from the profits as defined in this Act, the following:—

Depreciation and depletion—Interest Donations.

(*a*) the amounts allowed as deductions in paragraphs (*a*) (*b*) and (j) of subsection one of section five of the Income War Tax Act, and such amount for depreciation as the Minister in his discretion may allow under paragraph (n) of subsection six of the said Act;

Amount in lieu of salary.

(*b*) such reasonable amount as the Minister in his discretion may allow in lieu of salary to proprietors working full time in the actual management or conduct of the business, not to exceed five thousand dollars per annum for each proprietor and for all his businesses:

Provided that if such an allowance is made, similar deductions shall be made in determining the standard profits of the taxpayer;

Inventory reserve.

(c) if taxable under the Second Part of the Second Schedule of this Act, such reasonable provision as a reserve against future depreciation in inventory values as the Minister in his discretion may allow having regard to a normal quantity of stock in trade necessary for the business as indicated by the quantities on hand during the standard period:

Proviso.

Provided that no such deduction shall be allowed which provides against a decline in inventory values below the inventory prices of goods on hand either at the end of the fiscal period of the taxpayer ending in the year one thousand nine hundred and thirty-nine or in case the fiscal period of the taxpayer ends after the 31st day of August, during the said month of August one thousand nine hundred and thirty-nine, and

Proviso.

Provided further that any reduction in such reserve shall for purposes of taxation under this Act be added to the profits of the year in which such reduction takes place and any portion of such reserve remaining at the end of the year or fiscal period when this Act ceases to apply to the taxpayer shall be available to the taxpayer to meet declines in inventory values during the next following year and if not exhausted by the end thereof the remaining portion shall be added to the taxpayer's profits of the last year or fiscal period when this Act applies to the taxpayer;

Revenue losses.

(*d*) losses of the taxpayer in the preceding year or year as ascertained and allowed under paragraphs (p) or (r) of subsection one of section five of the *Income War Tax Act.*, (1940, c. 32, s. 6; 1940-41, c. 15, ss. 7, 8; 1942, c. 26, ss. 4, 5, 6; 1943, c. 13, s. 3.)

EXEMPTIONS

Profits not liable to tax.

7.—The following profits shall not be liable to taxation under this Act :—

Taxpayers exempt under Income War Tax Act.

(*a*) the profits of taxpayers referred to in paragraphs (*d*), (*e*), (*f*), (*g*), (*h*), (*i*), (*k*), (*m*), (*p*) and (*q*) of section 4 of the *Income War Tax Act.*

Professional activities.

(*b*) the profits of a profession carried on by an individual or by individuals in partnership if the profits of the profession are dependent wholly or mainly upon his or their personal qualifications and if in the opinion of the Minister little or no capital is employed :

Proviso.

Provided that this exemption shall not extend to the profits of a commission agent or person any part of whose business consists in the making of contracts on behalf of others or the giving to other persons of advice of a commercial nature in connection with the making of contracts unless the Minister is satisfied that such agent is virtually in the position of an employee of one employer in which case this exemption shall apply and in any case the decision of the Minister shall be final and conclusive ;

Small businesses.

(*c*) the profits of taxpayers other than corporations or joint stock companies, if such profits do not in the taxation period exceed five thousand dollars before providing for any payment therefrom to proprietors or partners by way of salary, interest or otherwise;

Personal corporation.

(*d*) the profits of a corporation or joint stock company which is in the taxation period a personal corporation with the meaning of paragraph (*i*) of section two of the *Income War Tax Act*;

Non-Resident Owned Investment Corporations.

(*e*) the profits of a corporation or joint scock company which is a Non-Resident Owned Investments Corporation within the meaning of paragraph (*p*) of section two of the *Income War Tax Act* and which elects to be assessed as such under the said Act;

Diversified Investment Corporations.

(*f*) the profits of any corporation or joint stock company which throughout the taxation year satisfies the followig conditions :

(i) the corporation or joint stock company shall have no outstanding bonds, debentures or other securities evidencing funded indebtedness;

(ii) the capital thereof shall to the extent of eight per centum or more be invested in stocks, bonds or securities, or held in cash;

(iii) the gross income of the corporation or joint stock company shall to the extent of not less than ninety-five per centum be derived from investments mentioned in sub-paragraph (ii);

Proviso

(iv) the capital of the corporation or joint stock company shall to the extent of not more than ten per centum thereof be invested in the stocks, bonds or securities of any one corporation or debtor : Proded however that this restriction shall not apply in the case of invest-

ments in the securities of the Dominion of Canada or of any province or municipality in Canada, provided that this condition shall be deemed to be met, for purposes of the 1941 taxation period and fiscal periods ending therein, if satisfied by October first, nineteen hundred and forty-one;

(v) the shares of the corporation or joint stock company shall be held by persons numbering fifty or more of whom none holds more than twenty-five per centum of the whole capital stock, provided that this condition shall be deemed to be met, for purposes of the 1941 taxation period and fiscal periods ending therein, if satisfied by October first, nineteen hundred and forty-one.

(vi) the net income of the said corporation or joint stock company excluding therefrom unsold dividends or interest received otherwise than in cash shall have been distributed within one hundred and twenty days after the close of the year or fiscal period to the stareholders to the extent of eighty-five per centum or more in taxation year.

Base metal and strategic mineral mines.

(*g*) The profits of any corporation or joint stock company derived from the operation of any base metal or strategic-mineral mine which comes into production in the three calendar years commencing the first day of Janurary, one thousand nine hundred and forty-three, but this exemption shall extend only to the income of the first three fiscal periods of twelve months each commencing on or after the date of such mine coming into production. The Minister, having regard to the production of ore in reasonable commercial quantities, shall determine which mines, whether new or old, qualify under this paragraph. The Minister shall issue a certificate stating the date upon which any mine is deemed to have come into production and establish such fiscal periods of twelve months each, during which the income derived from any such mine shall be exempt hereunder.

The Minister may make any regulations deemed necessary for carrying this paragraph (*g*) into effect. (1940, c. 32, s. 7; 1940-41, c. 15 ss. 9, 10; 1942 c. 26, ss. 7, 8.)

Small corporation profits.

7—A. The following profits shall not be liable to taxation under section three of this Act in accordance with the rates set out in the First and Second Sechedules to this Act:—

The profits of a corporation or joint stock company which, in the taxation year, do not exceed the sum of five thousand dollars, or where the taxation year of any corporation or joint stock company is less than twelve months, do not exceed the proportion of five thousand dollars which the number of days in the taxation year of such corporation or joint stock company, bears to three hundred and sixty-five days, before providing for any payment to shareholders by way of salary, interest, dividends or otherwise. (1941, c. 26, s. 9.)

DEDUCTIONS NOT ALLOWED

Deductions not allowed.

8. In computing the amount of profits to be assessed, sub-sections one and two of section six of the *Income War Tax Act* shall, *mutatis mutaudis*, apply as if enacted in this Act and no deduction shall be allowed in respect of the following:—

Excess Profits Tax.

(*a*) the tax payable under this Act in respect of any taxation period;

Unreasonable and abnormal expenditures.

(*b*) any expense wich the Minister in his direction may determine to be in excess of what is reasonable and normal for the business carried on by tne taxpayer, or which was incurred in respect of any transaction or hopreation which in his opinion has unduly or artificially reduced the amount of profits. (1940, c. 32, s. 8.)

DEDUCTIONS FROM TAXES ALLOWED

Deduction of excess profits taxes paid abroad.

9—(1) A taxpayer shall be entitled to deduct from the tax that would other wise be payable by him under this Act the amount paid to Great Britain or any of its self-governing dominions or dependencies for excess profits tax in respect of the profits of the taxpayer derived from sources therein, and the amount paid to any foreign country for excess profits tax in respect of the profits of the taxpayer derived from sources therein if such foreign country in imposing such tax allows a similar credit to persons in receipt of profits derived from sources within Canada;

Proviso.

Provided that the Minister may in his discretion allow a taxpayer to deduct from the sum total of his income tax and excess profits tax and excess profits tax paid to Great Britain or to any of its self-governing dominions or dependencies or to any foreign country if such foreign country in imposing such taxes allows a similar credit to persons in receipt of profits derived from sources within Canada.

Limitation.

(2) Such deduction shall not exceed the same proportion of the tax otherwise payable under this Act or the sum total of the income tax and excess profits tax otherwise payable under this Act and the *Income War Tax Act* as provided for in the proviso to subsection one hereof as that which the taxpayer's net profits from sources within such country and taxed therein bears to his entire net profits from all sources.

Evidence of payment.

(3) Any such deduction shall be allowed only if the taxpayer furnishes evidence satisfactory to the Minister showing the amount of tax paid and the particulars of income derived from sources within Great Britain or any self-governing dominion or dependency thereof or foreign country mentioned in sub section one of this section. (1940, c. 32, s. 9; 1940-41, c. 15, ss. 11, 12.)

RETURNS

Returns.

10.—Every person liable to taxation hereunder shall deliver to the Minister in such form as the Minister may prescribe, a statement of his total profits and the same shall be filed in such manner, at such time, and in such place as is provided in the *Income War Tax Act* for the filing of income tax returns and all the provisions of the said Act applicable to the filing of income tax returns including penal provisions shall, *mutatis mutandis*, apply as if enacted in this Act:

Proviso.

Provided that where a taxpayer has elected under subsection three of section thirty-five of the *Income War Tax Act* to file a consolidated return for the taxation year such election shall apply to the returns required under this Act. (1940, c. 32, s. 10)

PAYMENT OF TAX

Instalment payment of tax.

11.—Every person other than a corporation or joint stock company shall pay all taxes which he is liable to pay upon his profits during any taxation year under any of the provisions of this Act by quarterly instalments during the 12 month period ending six months after the close of each calendar year in which the fiscal period of the taxpayer ends as follows:—

(*a*) during the first six months of such period an amount equal to one-quarter of such tax as estimated by him on his income for the year last preceding the taxation year or on his estimated income for the taxation year, at the rate for the taxation year, on or before the last day of September and the last day of December ;

(*b*) during the last six months of such period the balance of the tax payable as estimated by him on his income for the taxation year in an amount equal to one-half of such balance on or before the last day of March and one-half of such balance on or before the last day of June ;

and if after examination of his return as under this Act required, it is established for the purposes of this Act that the instalments paid by him in any period under this section amount in the aggregate to less than the tax payable he shall forthwith after notice of assessment is sent to him as provided in this Act pay the unpaid amount thereof together with interest thereon at five per centum per annum from the day six months after the end of the calendar year in which the fiscal period of the taxpayer ends until one month from the date of mailing of the said notice of assessment and thereafter at eight per centum per annum until the date of payment (1940, c. 32, s. 11 ; 1943. c. 13, s. 4.)

1940 Returns.

11—A. Notwithstanding the provisions of this Act, and the provisions of the *Income War Tax Act* made applicable to the making of returns and the payment of tax under this Act, every person liable to pay excess profits tax in respect of a fiscal period ending in the year one thousand nine nine hundred and forty prior to the 31st day of December of that year may file returns and pay the tax as if such fiscal period ended on the 31st day of December, one thousand nine hundred and forty. (1940-41, c. 15, s. 13.)

ASSESSMENT

Assessment.

12.—After examination of the taxpayer's return the Minister shall send a notice of assessment to the taxpayer verifying or altering the amount of the tax as estimated by him in his return and any additional tax found due shall be paid in the same manner, at the same time and subject to the same interest and penal provisions as if the additional tax were found due under the provisions of the *Income War Tax Act.* (1940, c. 32, s. 12.)

BOARD OF REFEREES

Board of Referees.

13.—The Minister may appoint a Board of Referees to advise and aid him in exercising the powers conferred upon him under this Act, and such Board shall exercise the powers conferred on the Board by this Act and such other powers and duties as are assigned to it by the Governor in Council. (1940, c. 32, s. 13.)

INCOME TAX PROVISIONS TO APPLY

Sections 40 to 87 of Income War Tax Act, excepting S. 76-A, to apply mutatis mutandis.

***14.**—Without limiting any of the provisions contained in this Act, sections 40 to 87, both inclusive, of the *Income War Tax Act,* excepting section 76-A thereof, shall, *mutatis mutandis,* apply to matters arising under the provisions of this Act to the same extent and as fully and effectively as they apply under the provision of the *Income War Tax Act.* (1940, c. 32, s. 14.)

Non-application of certain sections of Income War Tax Act.

*Note.—Section 5 ch. 13, 1943, provides as follows :

5. Subsection three and the first paragraph of subsection five of section forty-eight of the Income War Tax Act shall have no application to the provisions of The Excess Profits Tax Act, 1940.

Reference to Treasury Board.

15.—(1) Notwithstanding any of the provisions of this Act, where the Treasury Board is of the 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 tax under this Act, it may, if it thinks fit, direct that such adjustment shall be made as respects liability to tax under this Act as it considers appropriate, so as to counteract the avoidance or reduction of liability to tax under this Act, which would otherwise be effected by such transaction or transactions, and tax shall be assessed and levied accordingly and shall be payable as in this Act provided.

(2) Notwithstanding anything in this Act contained, if upon examination of any transaction or transactions made directly or through the medium of third parties or by the creation of new or intermediary companies, it appears to the Treasury Board that any payment or benefit in cash or otherwise, received by any person subsequent to the year 1939 as a result of such transaction or transactions has been received directly or indirectly from a company having undistributed income on hand, then the Treasury Board may find that the main purpose of such transaction or transactions was to reduce or avoid taxation, and it shall thereupon be deemed for the purposes of this Act that such person whether he received any such payment or benefit in the form of capital or otherwise has received income subject to tax in such year or years since 1939 and in such amount or amounts as Treasury Board may determine and tax shall be assessed and levied upon such person and shall be payable as in this Act provided.

Any such finding by Treasury Board may be made notwithstanding that such transaction or transactions may have been entered into either within or without Canada or prior or subsequent to the coming into force of this section.

(3) Notwithstanding anything in this Act contained, if substantially all of the shares of a company having undistributed income on hand have been purchased since the coming into force of this Act, by any other company or companies, Treasury Board may find that the main purpose of the sale by the vendor was to reduce or avoid the tax which would have been paid by the shareholders of such company having undistributed income on hand on the distribution to them of the said undistributed income, and in such case, notwithstanding section four (*n*) of the *Income War Tax Act*, the dividends paid by the company having undistributed income on hand and received or deemed to be received by any such other company or companies shall upon being so received or deemed to be received be taxed against such company or companies and the tax shall be assessed, levied and paid as in this Act provided.

(4) In any appeal from an assessment made pursuant to any finding, direction or determination of the Treasury Board under this section, the Exchequer Court of Canada shall have jurisdiction to determine whether the main purpose of the transaction or transactions or sale was the avoidence or reduction of liability to tax or whether any finding, direction, determination or adjustment ought to have been made or given, or was appropriate. (1940, c. 32, s. 15 :1943, c. 13, s. 6.)

Standard profits of certain controlled companies.

15.A.—Notwithstanding anything in this Act contained, in any case where a company has a controlling interest in any other company or companies (hereinafter called controlled company or companies) incorporated in 1940 or thereafter (other than companies incorporated to carry out a contract or arrangement negotiated by the Minister of Munitions and supply and in receipt thereunder of a management fee or other similar compensation), and the sum of capital employed by such company and such controlled company or campanies at the time of incorporation is not in the opinion of the Minister of National Revenue substantially greater than the capital employed by such first-mentioned company prior to the incorporation of such controlled company or companies, the standard profits of all such controlled companies taken together shall not exceed $5,000 in the aggregate, and shall be allocated to each of such controlled companies in such amounts as the Minister of National Ravenue may direct.

No reference to Board of Referees.

In any such case a reference to the Board of Referees shall not be made notwithstanding the provisions of section five of this Act. (1943, c. 13, s. 7.)

Coming into force.—Proviso.

16. The provisions of this Act shall apply to the profits of the year one thousand nine hundred and forty and fiscal periods ending in the year one thousand nine hundred and forty and the profits of all subsequent years and fiscal periods, provided, however, that if any such fiscal period ends prior to December thirty-first, one thousand nine hundred and forty, only that proportion of the profits shall be subject to tax which the number of days of such fiscal period in the calendar year one thousand nine hundred and forty bears to the total number of days of such fiscal period. (1940, c. 32, s. 16.)

REPEAL

Repeal of Cap. 4 of statutes of 1939 (Second Session).

17. *The Excess Profits Tax Act*, chapter four of the statutes of 1939 (second session), is repealed and, notwithstanding anything contained in the *Interpretation Act*, such repeal shall operate as from the thirteen day of September, one thousand nine hundred and thirty-nine. (1940, c. 32, s. 17.)

Refundable portion.

18. (1) There shall be refunded to the taxpayer an amount equal to twenty per centum of the profits above the point at which the tax calculated under the First Part of the Second Schedule is equal to the tax calculated under the Second Part of the Second Schedule if such profits have been paid by way of taxes under the *Income War Tax Act* and this Act to the Receiver General of Canada.

Payments of refundable portion.

(2) The refundable portion shall be repaid to the taxpayer or to his legal representative after the cessation of hostilities between Canada and Germany, Italy and Japan, as follows :—

(*a*) as to any refundable portion referable to the profits of fiscal periods ending in the year one thousand nine hundred and forty-two, during the second fiscal period of the Government of Canada commencing after cessation of the said hostilities ;

(*b*) as to any refundable portion referable to the profits of fiscal periods ending in the year one thousand nine hundred and forty-three, during the third fiscal period of the Government of Canada commencing after cessation of the said hostilities; and so on for successive fiscal period ;

or notwithstanding the provisions of paragraphs (*a*) and (*b*) hereof, at such earlier times and in such instalments as the Governor in Council may determine.

Date of cessation of hostilities.

(3) The date of cessation of hostilities shall be that date proclaimed by the Governor in Council that a state of war no longer exists, or such other date as he may determine for the purposes of refunds hereunder. (1942, c. 26, s. 10.)

FIRST SCHEDULE.

Capital employed at beginning of period.

1. For the purposes of this Act, capital employed in any year or fiscal period means the capital at the beginning of the said period computed in the manner hereinafter specified.

Capital includes.

2. Capital shall be taken to be the following, subject to the deductions hereinafter provided :—

Cost of assets.

(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 and 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 said asset was acquired ;

Accounts receivable less reserve for bad debts.

(b) so far as it consists of assets being debts due to the person carrying on business, the full amount of those debts subject to any deduction which has been allowed under the *Income War Tax Act* in respect thereof on account of bad debts ;

Value of assets acquired otherwise than by purchase.

(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 ;

Amount of money and bank deposits.

(d) the amount of money or bank deposits which are actually used by the taxpayer in the business.

Deductions from capital.

3. Capital as hereinbefore defined shall be subject to the following deductions :—

Amounts of any governmental subsidy,

(a) a deduction of any sum contributed directly or indirectly by the Dominion of Canada or by any Province of Canada towards the acquisition by the taxpayer of any asset included in section two hereof ;

Depreciation and depletion.

(b) a deduction of the total amount of depreciation which since the first day of January, one thousand nine hundred and seventeen, has been or should have been taken into account in accordance with the practice and regulations of the Income Tax Division of the Department of National Revenue, in ascertaining profit or loss for purposes of the *Income War Tax Act*, plus any accumulated depreciation reserves as at the first day of January, one thousand nine hundred and seventeen recognized by the Minister for the purposes of the said *Income War Tax Act* and in addition such amount on account of depletion as the Board of Referees deems fair and reasonable ;

Debts and borrowed money.

(c) a deduction of any borrowed money and debts of the taxpayer other than dividends declared but unpaid at the commencement of the taxation period, except the amount of indebtedness represented by income bonds or income debentures, the interest on which is not allowed as a deduction under paragraph (*k*) of subsection one of section six of the *Income War Tax Act* and except the amount of indebtness represented by a non-interest-bearing advance from a corporation to its subsidiary which the Minister, in his sole discretion, determines to be in the nature of permanently invested capital ;

Investments producing tax-exempt income.

(*d*) a deduction of any investments the income from which is exempt or would be exempt from tax hereunder ;

Unproductive assets not requirad for business.

(*e*) a deduction of any moneys, bank deposit, investments or other assets which are unproductive and are not required for the purposes of the business, or which were not acquired for the purposes of the business ;

Changes in capital during taxation period.

4. Capital as hereinbefore defined shall be increased or decreased by a portion of any bona fide additions to or reductions of the assets of the business made during the taxation period other than additions or reductions resulting from profits or losses of the said period, such increase or decrease to be made pro rata for the time such additions were employed in or decreases withdrawn from the business, provided however, that dividends paid in cash during such period shall constitute a deduction from the capital employed at the commencement of the said period to the extent of one-half the total amount of dividends paid during the said period.

Revision of capital to disregard values resulting from transactions found to be artificial by Treasury Board.

5. Notwithstanding the foregoing, the computation of capital as hereinbefore set out may be revised to disregard the whole or any portion of capital values resulting from a transaction determined to be artificial under and by virtue of section fifteen of this Act. (1940, c. 32; 1940-41, c. 15, ss. 14, 15, 16.)

SECOND SCHEDULE.

Rates of tax on profits.

First Part.

Ten per centum of the profits of corporations and joint stock companies and fifteen per centum of the profits of all persons other than corporations, before deduction therefrom of any tax paid thereon under the *Income aWr Tax Act.*

Rates of tax in excess profits.

Second Part—

One hundred per centum of the excess profits.

Third Part—

Twelve per centum of profits of corporations and joint stock companies, before deduction therefrom of any tax paid thereon under the *Income War Tax Act.* (1942, c. 26, s. 11.)

ABSTRACT OF REGULATION 112

RELATING TO UNITED STATES OF AMERICA

THE EXCESS PROFITS TAX

UNDER

Subchapter E of Chapter 2 of the Internal Revenue Code, as Amended

(Applicable only to taxable years beginning after 31st December 1941)

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Section 710.—IMPOSITION OF TAX.

*(a) **Imposition.**

(1) **General Rule.**—There shall be levied, collected, and paid, for each taxable year, upon the adjusted excess profits net income, as defined in subsection (b), of every corporation (except a corporation exempt under section 727) a tax equal to whichever of the following amounts is the lesser :

(A) 90 per centum of the adjusted excess profits net income, or

(B) an amount which when added to the tax imposed for the taxable year under Chapter 1 (other than section 102) equals 80 per centum of the corporation surtax net income, computed under section 15 or Supplement G, as the case may be, but without regard to the credit provided in section 26 (e) (relating to income subject to the tax imposed by this subchapter).

(2) [Not applicable to taxable years under these regulations (section 229 (a) (2), Rev. Act, 1942).]

(3) [Not applicable to taxable years under these regulations (section 229 (a) (2), Rev. Act 1942).]

(4) **Mutual Insurance companies.**—In the case of a mutual insurance company other than life or marine, if the gross amount received from interest, dividends, rents and premiums (including deposits and assessments) is over $75,000 but less than $125,000, the tax imposed under this section shall be an amount which bears the same proportion to the amount ascertained under this section, computed without reference to this paragraph, as the excess over $75,000 of such gross amount received bears to $50,000.

(5) **Deferment of payment in case of abnormality.**—If the adjusted excess profits net income (computed without reference to section 722) for the taxable year of a tax payer which claims on its return, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, the benefits of section 722, is in excess of 50 per centum of its normal tax income for such year, computed without the credit provided in section 26(e) (relating to adjusted excess profits net income), the amount of tax payable at the time prescribed for payment may be reduced by an amount equal to 33 per centum of the amount of the reduction

*[Added by Sec, 201, Second Rev. Act 1940 ; Amended by Sec. 2, Excess Profits Tax Amendments 1941, by Secs. 201(a) and 202(e), Rev. Act 1941, and by Secs. 202, 203, 204, 205(a) and (g), 222(b), and 229(a), Rev. Act 1942],

in the tax so claimed. For the purposes of section 271, if the tax payable is the tax so reduced, the tax so reduced shall be considered the amount shown on the return.

(b) Definition of Adjusted Excess Profits Net Income.

As used in this section, the term "adjusted excess profits net income" in the case of any taxable year means the excess profits net income (as defined in section 711 minus the sum of:

(1) **Specific Exemption.**—A specific exemption of $5,000, and in the case of a mutual insurance company (other than life or marine) which is an interinsurer or reciprocal underwriter a specific exemption of $40,000;

(2) **Excess Profits Credit** —The amount of excess profits credit allowed under section 712; and

(3) **Unused Excess Profits Credit** —The amount of the unused excess profits credit adjustment for the taxable year, computed in the accordance with subsection (c).

(c) Unused Excess Profits Credit Adjustment.—

(1) **Computation of Unused Excess Profits Credit Adjustment.**—The unused excess profits credit adjustment for any taxable year shall be the aggregate of the unused excess profits credit carry-overs and unused excess profits credit carry-backs to such taxable year.

(2) **Definition of Unused Excess Profits Credit.**—The term "unused excess profits credit" means the excess, if any, of the excess profits credit for any taxable year beginning after December 31, 1939, over the excess profits net income for such taxable year, computed on the basis of the excess profits credit applicable to such taxable year. For such purpose the excess profits credit and excess profits net income for any taxable year beginning in 1940 shall be computed under the law applicable to taxable years beginning in 1941. The unused excess profits credit for a taxable year of less than twelve months shall be an amount which is such part of the unused excess profits credit determined under the first sentence of this paragraph as the number of days in the taxable year is of the number of days in the twelve months ending with the close of the taxable year.

(3) **Amount of Unused Excess Profits Credit Carry-back and Carry-over—**

(A) **Unused Excess Profits Credit Carry Back**—If for any taxable year beginning after December 31, 1941, the tax-payer has an unused excess profits credit, such unused excess profits credit shall be an unused excess profits credit carryback for each of the two preceding taxable years, except that the carry-back in the case of the first preceding taxable year shall be the excess, if any, of the amount of such unused excess profits credit over the adjusted excess profits net income for the second preceding taxable year computed for such taxable year (i) by determining the unused excess profits credit adjustment without regard to such unused excess profits credit, and (ii) without the deduction of the specific exemption provided in subsection (b) (1)

(B) **Unused Excess Profits Credit Carry-Over**—If for any taxable year beginning after December 31, 1939, the taxpayer has an unused excess profits credit, such unused excess profits credit shall be an unused excess profits credit carry-over for each of the two succeeding taxable years, except that the carry-over in the case of the second succeeding taxable year shall be the excess, if any, of the amount of such ugused excess profits credit over the adjusted excess profits net income for the intervening taxable year computed for such intervening taxable year (i) by determining the unused excess profits credit adjustment without regard to such unused excess profits credit or to any unused excess profits credit carry-back and (ii) without the

deduction of the specific exemption provided in subsection (b) (1). For the purposes of the preceding sentence, the unused excess profits credit for any taxable year beginning after December 31, 1941, shall first be reduced by the sum of the adjusted excess profits net income for each of the two preceding taxable years (computed for each such preceding taxable year (i) by determining the unused excess profits credit adjustment without regard to such unused excess profits credit or to the unused excess profits credit for the succeeding taxable year, and (ii) without the deduction of the specific exemption provided in subsection (b) (1)).

(4) **No Carry-Back to Year Prior to 1941.**—As used in this sub-section, the term "preceding taxable year" and the term "preceding taxable years" do not include any taxable year beginning prior to January 1, 1941.

Sec 711.—EXCESS PROFITS NET INCOME.

*(a) **Taxable Years Beginning After December 31, 1939.**—The excess profit net income for any taxable year beginning after December 31, 1939, shall be the normal-tax income, as defined in section 13 (a) (2), for such year except that the following adjustments shall be made :

(1) **Excess Profits Credit Computed Under Income Credit.**—If the excess profits credit is computed under section 713, the adjustments shall be as follows :

(A) **Income Subject to Excess Profits Tax.**—In computing such normal tax net income the credit provided in section 26 (e) (relating to income subject to the tax imposed by this sub-chapter) shall not be allowed ;

(B) **Gains and Losses From Sales or Exchanges of Capital Assets.**—There shall be excluded gains and losses from sales or exchanges of capital assets held for more than 6 months.

(C) **Income From Retirement or Discharge of Bonds, and So Forth.**—There shall be excluded, in the case of any taxpayer, income derived from the retirement or discharge by the taxpayer of any bond, debenture, note, or certificate or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for more than 6 months, including, in case the issuance was at a premium, the amount includible in income for such year solely because of such retirement or discharge ;

(D) **Refunds and Interest on Agricultural Adjustment Act Taxes.**—There shall be excluded income attributable to refund of tax paid under the Agricultural Adjustment Act of 1933, as amended, and interest upon any such refund ;

(E) **Recoveries of Bad Debts.**—There shall be excluded income attributable to the recovery of a bad debt if a deduction with reference to such debt was allowable from gross income for any taxable year beginning prior to January 1, 1940 ;

(F) **Dividends Received.**—The credit for dividends received shall apply, without limitation, to dividends on stock of domestic corporations.

(G) [Not applicable to taxable years under these regulations (section 206(b) (1), Rev. Act 1942).]

(H) **Life Insurance Companies.**—In the case of a life insurance company, there shall be deducted from the normal tax net income, the excess of (1) the product of (i) the figure determined and proclaimed under section 202 (b) and (ii) the excess profits net income computed without regard to this sub paragraph, over (2) the adjustment for certain reserves provided in section 202 (c).

*[Added by sec. 201, Second Rev, Act 1940; Amended by secs, 3 and 12(b), Excess Profits Tax Amendments 1941, by sec. 202 (c) and (d), Rev. Act 1941, and by Secs. 205 (b) and (c), 206, 207, 208, 209 (a) and (b(, 210, 211, and 213, Rev. Act 1942.]

(I) **Not taxable Income of Certain Industries With Depletable Resources.**—In the case of a producer of minerals, or a producer of logs or lumber from a timber block, as defined in section 735, there shall be excluded nontaxable income from exempt excess output of mines and timber blocks and nontaxable bonus income provided in section 735.

(J) **Net Operating Loss Deduction Adjustment.**—The net operating loss deduction shall be adjusted as follows :

(i) In computing the net operating loss for any taxable year under section 122 (b), and the net income for any taxable year section 122 (b), no deduction shall be allowed for any excess profits tax imposed by this sub-chapter, and, if the excess profits credit for such taxable year was computed under section 714, the deduction for interest shall be reduced by the amount of any reduction under paragragph (2) (B) for such taxable year ;

(ii) In lieu of the reduction provided in section 122 (c), such reduction shall be in the amount by which the excess profits net income computed with the exceptions and limitations specified in secsion 122 (b) (1), (2), (3), and (4) and computed without regard to subparagraph (B), without regard to any credit for dividends received, and without regard to any credit for interest received provided in section 26 (a) exceeds the excess profits net income (computed without the net operating loss deduction).

(2) **Excess Profits Credit Computed Under Invested Capital Credit.**—If the excess profits credit is computed under section 714, the adjustments shall be as follows :

(A) **Dividends Received.**—The credit for dividends received shall apply, without limitation, to all dividends on stock of all corporations, except that no credit for dividends received shall be allowed with respect to dividends (actual or constructive) on stock of foreign personal holding companies or dividends on stock which is not a capital asset.

(B) **Interest.**—The deduction for interest shall be reduced by an amount equal to 50 per centum of so much of such interest as represents interest on the indebtedness included in the daily amounts of borrowed capital (determined under section 719 (a)) ;

(C) **Income Subject to Excess Profits Tax.**—In computing such normal-tax net income the credit provided in section 26 (c) (relating to income subject to the tax imposed by this sub-chapter) shall not be allowed ;

(D) **Gains and Losses From Sales or Exchanges of Capital Assets.**—There shall be excluded gains and losses from sales or exchanges of capital assets held for more than 6 months.

(E) **Income From Retiremant or Discharge of Bonds and So Forth.**—There shall be excluded, in the case of any taxpayer, income derived from the retirement or discharge by the taxpayer of any bond, debenture, note, or certificate or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for more than 6 months, including, in case the issuance was at a premium, the amount includible in income for such year solely because of such retirement or discharge ;

(F) **Refunds and Interest on Agricultural Adjustment Act Taxes.**—There shall be excluded income attributable to refund of tax paid under the Agricultural Adjustment Act of 1933, as amended, and interest upon any such refund ;

(G) **Interest on Certain Government Obligations.**—The normal-tax net income shall be increased by an amount equal to the amount of the interest on

obligations held during the taxable year which are described in section 22 (b) (4) any part of the interest from which is excludible from gross income or allowable as a credit against net income, if the taxpayer has so elected under section 720 (d) ; and

(H) **Recoveries of Bad Debts**. —There shall be excluded income attributable to the recovery of a bad debt if a deduction with reference to such debt was allowable from gross income for any taxable year beginning prior to January 1, 1940.

(I) [Not applicable to taxable years under these regulations (section 206 (b) (2), Rev. Act 1942).]

(J) In the case of a life insurance company, there shall be deducted from the normal tax net income, 50 per centum of the excess of (1) the product of (i) the figure determined and proclaimed under section 202 (d) and (ii) the excess profits net income computed without regard to this subparagraph, over (2) the adjustment for certain reserves provided in section 202 (c).

(K) **Nontaxable Income of Certain Industries With Depletable Resources.**— In the case of a producer of minerals, or a producer of logs or lumber from a timber block, as defined in section 735, there shall be excluded nontaxable income from exempt excess output of mines and timber blocks and nontaxable bonus income provided in section 735.

(L) **Net Operating Loss Deduction Adjustment**.—The net operating loss deduction shall be adjusted as follows :

(i) In computing the net operating loss for any taxable year under section 122(a), and the net income for any taxable year under section 122(b), no deduction shall be allowed for any excess profits tax imposed by this sub-chapter and, if the excess profits credit for such taxable year was computed under section 714, the deduction for interest shall be reduced by the amount of any reduction under subparagraph (B) of this paragraph for such taxable year ; and

(ii) In lieu of the reduction provided in section 122 (c), such reduction shall be in the amount by which the excess profits net income computed with the exceptions and limitations provided in section 122 (d) (1), (2), (3), and (4) and computed without regard to subparagraph (D), without regard to any credit for dividends received, and without regard to any credit for interest received provided in section 26 (a) exceed the excess profits net income (computed without the net operating loss deduction).

(3) **Taxable year less than twelve months.**—

(A) **General rule**.— If the taxable year is a period of less than twelve months the excess profits net income for such taxable year (referred to in this paragraph as the "short taxable year") shall be placed on an annual basis by multiplying the amount thereof by the number of days in the twelve months ending with the close of the short taxable year and dividing by the number of days in the short taxable year. The tax shall be such part of the tax computed on such annual basis as the number of days in the short taxable year is of the number of days in the twelve months ending with the close of the short taxable year.

(B) **Exception**.—If the taxpayer sstablishes its adjusted excess profits net income for the period of twelve months beginnig with the first day of the short taxable year, computed as if such twelve months period were a taxable year, under the law applicable to the short taxable year, and using the credits applicable in determining the adjusted excess profits net income for such short taxable year, then the tax for the short taxable year shall be reduced to an amount which is such part of the tax computed on such

adjusted excess profits net income so established as the excess profits net income for the short taxable year is of the excess profits net income for such twelve-month period. The taxpayer (other than a tax-payer to which the next sentence applies) shall compute the tax and file its return without the application of this subparagraph. If, prior to one year from the date of the beginning of the short taxable year, the taxpayer has disposed of substantially all its assets, in lieu of the twelve-month period provided in the preceding provisions of this subparagraph, the twelve-month period ending with the close of the short taxable year shall be used. For the purposes of this subparagraph, the excess profits net income for the short taxable year shall not be place on an annual basis as provided in subparagraph (A), and the exces profits net income for the twelve-month period used shall in no case be considered less than the excess profits net income for the short taxable year. The benefits of this subparagraph shall not be allowed unless the taxpayer, at such time as regulations prescribed hereunder require, makes application therefor in accordance with such regulations, and such application, in case the return was filed without regard to this subparagraph, shall be considered a claim for credit or refund. The Commissioner, with the approval or the Secretary, shall prescribe such regulations as he may deem necessary for the application of this subparagraph.

***(b) Taxable years in base period.—**

(1) Ceneral rule and adjustments —The excess profits net income for any taxable year subject to the Revenue Act of 1936 shall be the normal-tax net income, as defined in section 13 (a) of such Act ; and for any other taxable year beginning after December 31, 1937, and before January 1, 1940, shall be the special-class net income, as defined in section 14 (a) of the applicable revenue law. In either case the following adjustments shall be made (for additional adjustments in case of certain reorganizations, see section 742 (c)) :

(A) [Not applicable to taxable years under these regulations (section 202 (c) (2), Rev. Act 1941).]

(B) **Gains and Losses from Sales or Exchanges of Capital Assets.**—There shall be excluded gains and losses from sales or exchanges of capital assets held for more than 6 months

(C) **Income from Retirement or Discharge of Bonds, and so Forth.**—There shall be excluded in the case of any taxpayer, income derived from retirement or discharge by the taxpayer of any bond, debenture, note, or certificate or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for more than 6 months, including, in case the issuance was at a premium, the amount includible in income for such year solely because of such retirement or discharge ;

(D) **Deduction of Account of Retirement of Discharge of Bonds, and so Forth.** If during the taxable year the taxpayer retires or discharges any bond, debenture, note, or certificate or other evidence of indebtedness, if the obligation of the taxpayer has been outstanding for more than eighteen months, the following deductions for such taxable year shall not be allowed :

(i) The deduction allowable under sectien 23 (a) for expenses paid or incurred in connection with such retirement or discharge ;

(ii) The deduction for losses aliowable by reason of such retirement or discharge; and

(iii) In case the issuance was at a discount. the amount deductible for such year solely because of such retirement or dischare :

*(Added by Sec. 201, Second Rev, Act 1940 ; Amended by Secs, 3 and 12(b), Excess Porfits Tax Amendments 1941, by Sec. 202(c) and (d), Rev. Act 1941, and by Secs. 205 (b) and (c) 206, 207, 208, 209 (a) and (b), 210, 211, and 213, Rev. Act 1942).

(E) **Casualty, Demolition, and Similar Losses.**—Deductions under section 23(f) for losses arising from fires, storms, ship-wreck, or other casualty, or from theft, or arising from the demolition, abandonment, or loss of useful value of property, not compensated for by insurance or otherwise, shall not be allowed ;

(F) **Repayment of Processing Tax to Vendees** —The deduction under section 23(a), for any taxable year, for expenses shall be decreased by an amount which bears the same ratio to the amount deductible on account of any repayment or credit by the corporation to its vendee of any amount attributable to any tax under the Agricultural Adjustment Act of 1933, as amended, as the excess of the aggregate of the amounts so deductible in the base period over the aggregate of the amounts attributable to taxes under such Act collected from its vendees which were includible in the corporation's gross income in the base period and which were not paid, bears to the aggregate of the amounts so deductible in the base period ;

(G) **Dividends Received.**—The credit for dividends received shall apply without limitation, to dividends on stock of domestic corporations ;

(H) **Payment of Judgments and So Forth** – Deductions attributable to any claim, award, judgment, or decree against the taxpayer, or interest on any of the foregoing, if abnormal for the taxpayer, shall not be allowed, and if normal for the taxpayer, but in excess of 125 per centum of the average amount of such deductions in the four previous taxable years, shall be disallowed in an amount equal to such excess ;

(I) **Intangible Drilling and Development Costs.**—Deductions attributable to intangible drilling and development costs paid or incurred in or for the drilling of wells or the prepartion of wells for the production of oil or gas, and for development costs in the case of mines, if abnormal for the taxpayer, shall not be allowed, and if normal for the taxpayer, but in excess of 125 per cent. of the average amount of such deductions in the four previovs taxable years, shall be disallowed in an amount equal to such excess ; and

(J) **Abnormal Deductions.**—Under regulations prescribed by the Commissioner' with the approval of the Secretary, for the determination, for the purposes of this sub-paragraph, of the classification of deductions—

(i) Deductions of any class shall not be allowed if deductions of such class were abnormal for the taxpayer, and

(ii) If the class of deductions was normal for the taxpayer, but the deductions of such class were in excess of 125 per cent. of the average amount of deductions of such class for the four previous taxable years, they shall be disallowed in an amount equal to such excess.

(K) **Rules for Application of Sub-paragraphs (H), (I) and (J)** —For the purposes of sub-paragraphs (H), (I) and (J)—

(i) If the taxpayer was not in existence for four previous taxable years, then such average amount specified in such sub-paragraphs shall be determined for the previous taxable years it was in existence and the succeeding taxable year which begin before the beginning of the taxpayer's second taxable years under this sub-chapter. If the number of such succeeding years is greater than the number necessary to obtain an aggregate of four taxable year there shall be omitted so many of such succeeding years, beginning with the last, as are necessary to reduce the aggregate to four.

(ii) Deductions shall not be disallowed under such sub-paragraphs unless the taxpayer establishes that the abnormality or excess is not a consequence of an increase in the gross income of the taxpayer in

its base period or a decrease in the amount of some other deduction in its base period, and is not a consequence of a chang at any time in the type, manner of operation, size, or condition of the business engaged in by the taxpayer.

(iii) The amount of deductions of any class to be disallowed under such sub-paragraphs with respect to any taxable year shall not exceed the amnunt by which the deductions of such class for such taxable year exceed the deductions of such class for the taxable year for which the tax under this sub-chapter is being computed.

(2) **Capital gains and losses.**—For the purposes of this sub-section the normal-tax net income and the special-class net income referred to in paragraph (1) shall be computed as if section 23 (g) (2), section 23 (k) (2) and section 1 7 were part of the the revenue law applicable to the taxable year the excess profits net income of which is being computed, with the exception that the capital loss carry-over provided in snb-section (e) (1) of section 117 shall be applicable to net capital losses for taxable years beginning after 31st December, 1934. Such exception shall not apply for the purposes of computing the tax under this sub-chapter for any tax able year beginning before 1st January, 1943.

Sec. 712.—EXCESS PROFITS CREDIT ALLOWANCES.

*(a) **Domestic Corprations.**—In the case of a domestic corporation which was in existence before 1st January 1940, the excess profits credit for any taxable year shall be an amount computed under section 713 or section 714, whichever amount results in the lesser tax under this sub chapter for the taxable year for which the tax under this sub-chapter is being computed. In the case of all other domestic corporations the excess profits crhdit for any taxable year shall be an amount ooputed under section 714. (For allowance of excess profits credit in case of certain reorganizations of corporations, see section 741.)

(b) **Foreign Corporations.**—In the case of a foreign corporation engaged in trade or business within the United States, the first taxable year of which under this sub-chspter begins on any date in 1940, which was in existence on the day forty-eight months prior to such date and which at any time during each of the taxable years in such forty eight months was engaged in trade or business within the United States, the excess profits credit for any taxable year shall be an amount computed under section 713 or section 714, whichever amount results in the lesser tax under this sub-chapter for the taxable year for which the tax under this sub-chapter is being computed. In the case of all other foreign corporations the excess profits credit for any taxable year shall be an amonnt oomputed under section 714.

(c) [Not applicable to taxable years under these regulations (section 224 (b), Rev. Act, 1942).]

(d) **Special Rule in Connection with certain Reorganizations.**—For the existence of taxpayer through component corporations, see section 740 (f).

Sec. 713.—EXCESS PROFITS CREDIT—BASED ON INCOME.

†(a) **Amount of Excess Profits credit.**—The excess profits credit for any taxable year, computed under this section, shall be—

(1) **Domestic corporations.**—In the case of a domestic corporation—

(A) 95 per cent. of the average base period net income,

(B) Plus 8 per cent. of the net capital reduction as defined in sub-section (g), or

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*Added by section 201, Second Rev. Act 1940, Amended by section 13, Excess Profits Tax Amendments 1941, and by sections 212 (a), 224 (b) and 228 (e), Rev. Act 1942.

†Added by section 201, Second Rev. Act 1940, Amended by saction 4, Excess .Profits Tax Amendments 1941 and by sections 214 (a), 215, 216 and 228 (e), Rev, Act 1942.

(C) Minus 6 per cent. of the net capital reduction as defined in sub-section (g).

(2) **Foreing corporations.**—In the case of a foreign corporation, 95 per cent. of the average base period net income.

(b) **Base Period.**—

(1) **Definition.**—As used in this section the term "base period"—

(A) If the corporation was in existence during the whole of the forty-eight months preceding the beginning of its first taxable year under this sub-chapter, means the period commencing with the beginning of its first taxable year beginning after 31st December 1935, and ending with the close of its last taxable year beginning before 1st January 1940 ; and

(B) In the case of a corporation which was in existence during only part of the forty-eight months preceding the beginning of its first taxable year under this sub-chapter, means the forty-eight months preceding the beginning of its first taxable year under this sub-chaper.

(2) **Division into halves.**—For the purposes of sub-sections (d) and (f) the base period of the taxpayer shall be divided into halves, the first half to be composed of one-half the entire number of months in the base period and to begin with the beginning of the base period.

(e) **Deficit in Excess Profits Net Income.**—For the purposes of this section the term "deficit in excess profits net income" with respect to any taxable year means the amount by which the deductions plus the credit for dividends received and the credit provided in section 26 (a) (relating to interest on certain obligations of the United States and its instrumentalities) exceeded the gross income. For the purposes of this sub-section in determining whether there was such an excess and in determining the amount thereof, the adjustments provided in section 711 (b) (1) shall be made.

(d) **Average Base Period Net Income..Determination—**

(1) **Definition.** - For the purposes of this section the average base period net income of the taxpayer shall be the amount determined under sub-section (e), subject to the exception that if the aggregate excess profits net income for the last half of its base period, reduced by the aggregate of the deficits in excess profits net income for such half, is greater than such aggregate so reduced for the first half, then the average base period net income shall be the amount determined under sub-section (f), if greater than the amount determined under sub-section (e)

(2) For the purposes of sub-sections (e) and (f), if the taxpayer was in existence during only part of the 48 months preceding the beginning of its first taxable year under this sub-chapter, its excess profits net income—

(A) for each taxable year of twelve months (beginning with the beginning of its base period) during which it was not in existence, shall be an amount equal to per cent. of the excess of—

(i) the daily invested capital for the first day of the taxpayer's first taxable year beginning after 31st December 1939, over

(ii) an amount equal to the same percentage of such daily invested capital as is applicable under section 720 in reduction of the average invested capital of the preceding taxable year ;

(B) for the taxable year of less than twelve months consisting of that part of the remainder of its base period during which it was not in

existence, shall be the amount ascertained for a full year under sub-paragraph (A), multiplied by the number of days in such taxable year of less than twelve months and divided by the number of days in the twelve months ending with the close of such taxable year.

(3) In no case shall the average base period net income be less than zero.

(4) For the computation of average base period net income in the case of certain reorganizations, see section 742.

(e) **Average base period net Income—General average.**—The average base period net income determined under this sub-section shall be determined as follows :

(1) By computing the aggregate of the excess profits net income for each of the taxable years of the taxpayer in the base period, reduced by the sum of the deficits in excess profits net income for each of such years. If the excess profits net income (or deficit in excess profits net income) for one taxable year in the base period divided by the number of months in such taxable year is less than 75 per cent. of the aggregate of the excess profits net income (reduced by deficits in excess profits net income) for the other taxable years in the taxpayer's base period divided by the number of months in such other taxable years (herein called "average monthly amount") the amount used for such one year under this paragraph shall be 75 per cent. of the average monthly amount multiplied by the number of months in such one year, and the year increased under this sentence shall be the year the increase in which will produce the highest average base period net income ;

(2) By dividing the amount ascertained under paragraph (1) by the total number of months in all such taxable years ; and

(3) By multiplying the amount ascertained under paragraph (2) by twelve.

(f) **Average base period net income—Increased earnings in last half of base period.**—The average base period net income determined under this sub-section shall be determined as follows ;

(1) By computing, for each of the taxable years of the taxpayer in its base period, the excess profits net income for such year, or the deficit in excess profits net income for such year ;

(2) By computing for each half of the base period the aggregate of the excess profits net income for each of the taxable years in such half, reduced, if for one or more of such years there was a deficit in excess profits net income, by the sum of such deficits. For the purposes of such computation, if any taxable year is partly within each half of the base period there shall be allocated to the first half an amount of the excess profits net income or deficit in excess profits net income, as the case may be, for such taxable year, which bears the same ratio thereto as the number of months falling within such half bears to the entire number of months in such taxable year ; and the remainder shall be allocated to the second half ;

(3) If the amount ascertained under paragraph (2) for the second half is greater than the amount ascertained for the first half, by dividing the difference by two ;

(4) By adding the amount ascertained under paragraph (3) to the amount ascertained under paragraph (2) for the second half of the base period ;

(5) By dividing the amount found under paragraph (4) by the number of months in the second half of the base period and by multiplying the result by twelve ;

(6) The amount ascertained under paragraph (5) shall be the average base period net income determined under this sub-section, except that the average base period net income determined under this sub-section shall in no case be greater than the highest excess profits net income for any taxable year in the base period. For the purpose of such limitation if any taxable ear is of less than twelve months, the excess profits net income for such taxable year shall be placed on an annual basis by multiplying by twelve and dividing by the number of months included in such taxable year.

(7) For the purposes of this sub-section, the excess profits net income for any taxable year ending after 31st May 1940, shall not be greater than an amount computed as follows :

(A) By reducing the excess profits net income by an amount which bears the same ratio thereto as the number of months after 31st May 1940, bears to the total number of months in such taxable year ; and

(B) By adding to the amount ascertained under sub-paragraph (A) an amount which bears the same ratio to the excess profits net income for the last preceding taxable year as such number of months after 31st May 1940, bears to the number of months in such preceding year. The amount added under this sub-paragraph shall not exceed the amount of the excess profits net income for such last preceding taxable year.

(C) If the number of months in such preceding taxable year is less than such number of months after 31st May 1940, by adding to the amount ascertained under sub-paragraph (B) an amount which bears the same ratio to the excess profits net income for the second preceding taxable year as the excess of such number of months after 31st May 1940, over the number of months in such preceding taxable year bears to the number of months in such second preceding taxable year.

(g) **Adjustments in Excess Profits credit on Acount of Capital Changes.**—For the purposes of this section—

(1) The net capital addition for the taxable year shall be the excess, divided by the number of days in the taxable year, of the aggregate of the daily capital addition for each day of the taxable year over the aggregate of the daily capital reduction for each day of the taxable year.

(2) The net capital reduction for the taxable year shall be the excess, divided by the number of days in the taxable year, of the aggregate of the daily capital reduction for each day of the taxable year over the aggregate of the daily capital addition for each day of the taxable year.

(3) The daily capital addition for any day of the taxable year shall be the aggregate of the amounts of money and property paid in for stock, or as paid in surplus, or as a contribution to capital, after the beginning of the taxpayer's first taxable year under this sub-chapter and prior to such day. In determining the amount of any property paid in, such property shall be included in an amount determined in the manner provided in section 718 (a) (2). A distribution by the taxpayer to its share-holders in its stock or rights to acquire its stock shall not be regarded as money or property paid in for stock, or as paid in surplus, or as a contribution to capital. The amount ascertained under this paragraph shall be reduced by the excess, if any, of the excluded capital for such day over the excluded capital for the first day of the taxpayer's first taxable year under this sub-chapter. For the purposes of this paragraph the excluded capital for any day shall be an amount equal to the sum of the following:

(A) The aggregate of the adjusted basis (for determining loss upon sale or exchange) as of the beginning of such day, of obligations held by the taxpayer at the beginning of such day, which are described in section 22 (b) (4) (A), (B), or (C) any part of the interest from which is excludible from gross income or allowable as a credit against net income; and

(B) The aggregate of the adjusted basis (for determining loss upon sale or exchange) as of the beginning of such day, of stock of domestic corporations held by the taxpayer at the beginning of such day.

The daily capital addition shall in no case be less than zero. (For daily capital additions and reductions in case of certain reorganizations, see section 743.)

(4) The daily capital reduction for any day of the taxable year shall be the aggregate of the amounts of distributions to share-holders, not out of earnings and profits, after the beginning of the taxpayer's first taxable year under this sub-chapter and prior to such day.

(5) If, on any day of the taxable year, the taxpayer and any one or more other corporations are members of the same controlled group, then the daily capital reduction of the taxpayer for such day shall be increased by whichever of the following amounts is the lesser :

(A) The aggregate of the adjusted basis (for determining loss upon sale or exchange) of stock in such other corporation (or if more than one, in such other corporations) acquired by the taxpayer after the beginning of the taxpayer's first taxable year under this subchapter, minus the aggregate of the adjusted basis (for determining loss upon sale or exchange) of stock in such other corporation (or if more than one, in such other corporations) disposed of by the taxpayer prior to such day and after the beginning of the taxpayer's first taxable year under this subchapter ; or

(B) The excess of the aggregate of the adjusted basis (for determining loss upon sale or exchange) of stock in all domestic corporations and of obligations described in section 22(b) (4), held by the taxpayer at the beginning of such day over the aggregate of the adjusted basis (for determining less upon sale or exchange) of stock in all domestic corporations and of obligations described in section 22(b) (4), held by the taxpayer at the beginning of its first taxable year under this subchapter.

If any stock of obligations described in subparagraph (A) or (B) was disposed of prior to such day, its basis shall be determined under the law applicable to the year in which so disposed of. The excluded capital of the taxpayer for such day shall be reduced by the amount by which the taxpayer'r daily capital reduction for such day is increased under this paragraph. As used in this paragraph, a controlled group means one or more chains of corporations connected through stock ownership with a common parent corporation if (i) more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock, of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations and (ii) the common parent corporation own directly more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock, of at least one of the other corporations.

Sec. 714.—EXCESS PROFITS CREDIT—BASED ON INVESTED CAPITAL.

[1]The excess profits credit, for any taxable year, computed under this section, shall be the amount shown in the following table :

If the invested capital for the taxable year, determined under section 715, is :	The credit shall be :
Not over $5,000,000———	8% of the invested capital.
Over $5,000,000, but not over $10,000,000.	$400,000, plus 7% of the excess over $5,000,000,
Over $10,000,000, but not over $200,000,000.	$750,000, plus 6% of the excess over $10,000,000.
Over $200,000,000———	$12,150,000, plus 5% of the excess over $200,000,000.

Sec. 715.—DEFINITION OF INVESTED CAPITAL

[2]For the purposes of this subchapter the invested capital for any taxable year shall be the average invested capital for such year, determined under section 716, reduced by an amount computed under section 720 (relating to inadmissible assets). If the Commissioner finds that in any case the determination of invested capital, on a basis other than a daily basis, will produce an invested capital differing by not more than $,1000 from an invested capital determined on a daily basis, he may, under regulations prescribed by him with the approval of the Secretary, provide for such determination on such other basis. (For computation of invested capital in case of foreign corporations and corporations entitled to the benefits of section 251, see section 724.)

Sec. 716.—AVERAGE INVESTED CAPITAL.

[3] The Average invested capital for any taxable year shall be the aggregate of the daily invested capital for each day of such taxable year, divided by the number of days in such taxable year.

Sec 717.—DAILY INVESTED CAPITAL.

[4]The daily invested capital for any day of the taxable year shall be the sum of the equity invested capital for such day plus the borrowed invested capital for such day determined under section 719.

Sec. 718—EQUITY INVESTED CAPITAL.

[5](a) **Definition.**—The equity invested capital for any day of any taxable year shall be determined as of the beginning of such day and shall be the sum of the following amounts, reduced as provided in subsection (b)—

(1) **Money Paid In.**—Money previously paid in for stock, or as paid-in surplus, or as a contribution to capital ;

(2) **Property Paid In.**—Property (other than money) previously paid in (regardless of the time paid in) for stock, or as paid in surplus, or as a contribution to capital. Such property shall be included in an amount equal to its basis (unadjusted) for determining loss upon sale or exchange. If the property was disposed of before such taxable year, such basis shall be determined under the law applicable to the year of disposition, but without regard to the value of the property as of March 1, 1913. If the property was disposed of before March 1, 1913, its basis shall be considered to be its

(1) [Added By Sec. 201, Second Rev. Act 1940 ; By Sec. 201 (b), Rev,fAct 1941, and By Sec. 217, Rev, Act 1942,]

(2) [Added By Sec. 201, Second Rev. Act 1940]

(3) [Added By Sec, 201, Second Rev. Act 1940,]

(4) [Added By Section 201, Second Rev. Act 1940,]

(5) [Added By Sec. 201, Second Rev. Act 1940 ; Amended By Secs. 202 (f) And 203, Rev. Act 1941, And By Secs. 205 (b), 218, 219, and 230 (b) and (c), Rev. Act 1942.]

fair market value at the time paid in. If the unadjusted basis of the property is a substituted basis, such basis shall be adjusted, with respect to the period before the property was paid in, by an amount equal to the adjustments proper under section 115 (l) for determining earnings and profits;

(3) **Distributions In Stock.**—Distributions in stock—

(A) Made prior to such taxable year to the extent to which they are considered distributions of earnings and profits; and

(B) Previously made during such taxable year to the extent to which they are considered distributions of earnings and profits other than earnings and profits of such taxable year;

(4) **Earnings and Profits at Beginning of Year.**—The accumulated earnings and profits as of the beginning of such taxable year:

(5) [Not applicable to taxable years under these regulations (section 230 (c) and (d), Rev. Act 1942).]

(6) **New Capital.**—An amount equal to 25 per centum of the new capital for such day. The term "new capital" for any day means so much of the amounts of money or property includible for such day under paragraphs (1) and (2) as was previously paid in during a taxable year beginning after December 31, 1940, and so much of the distributions in stock includible for such day under paragraph (3) as was previously made during a taxable year beginning after December 31, 1940, subject to the following limitations:

(A) There shall not be include money or property paid in by a corporation in an exchange to which section 112 (b) (3), (4), or (5), or so much of section 112 (c), (d), or (e) as refers to section 112(b) (3), (4), or (5) is applicable (or would be applicable except for section 371 (g)), or would have been applicable if the term "control" had been defined in section 112 (h) to mean the ownership of stock possessing more than 50 per centum of the total combined voting power of all classes of stock entitled to vote or more than 50 per centum of the total value of shares of all classes of stock.

(B) There shall not be included money or property paid in to the taxpayer by a transferor corporation if immediately after such transaction the transferor and the taxpayer are members of the same controlled group. As used in this subparagraph and subparagraph (C), a controlled group means one or more chains of corporations connected through stock ownership with a common parent corporation if (i) more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock, of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations, and (ii) the common parent corporation owns directly more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of the classes of stock, of at least one of the other corporations.

(C) There shall not be included a distribution in stock described in paragraph (3) made to another corporation, if immediately after the distribution the taxpayer and the distributee are members of the same controlled group.

(D) **Increase in Inadmissible Assets.** The new capital for any day of the taxable year, computed without the application of subparagraph (E), shall be reduced by the excess, if any, of the amount computed under section 720 (b) with respect to inadmissible assets held on such day, over the amount computed under section 720 (b) with respect

to inadmissible assets held on the first day of the taxpayer's first taxable year beginning after December 31, 1940. For the purposes of this subparagraph, in determining whether obligations which are described in section 22(b) (4) any part of the interest from which is excludible from gross income or allowable as a credit against net income are to be treated as admissible or inadmissible assets, such obligations shall be treated in the same manner as they are treated for the taxable year for which tax under this subchapter is being computed.

(E) **Maximum New Capital Allowable** —The new capital for any day of the taxable year shall not be more than the amount, if any, by which—

(i) the sum of the equity invested capital (computed without regard to this paragraph) and the borrowed capital [as defined in section 719 (a)] of the taxpayer as of such day, reduced by the amount of money or property paid in which is excluded by reason of the limitation of subparagraph (A) or (B) of this paragraph, exceeds,

(ii) the sum of such equity invested capital and borrowed capital as of the beginning of the first day of such taxpayer'r first taxable year beginning after December 31, 1940, reduced by the amount, if any, by which the accumulated earnings and profits as of such first day of such first taxable year exceed the accumulated earnings and profits (computed without regard to distributions made in taxable years beginning after December 31, 1940) as of the beginning of the first day of the taxable year for which the tax under this subchapter is being computed.

(F) **Reduction on Acconnt of Distributions Out of Pre-1941 Accumulated Earnings and profits.**—The new capital for any day of the taxable year, computed without the application of subparagraph (E), shall be reduced by the amount which, after the beginning of the first taxable year which begins after December 31, 1940, has been distributed out of earnings and profits accumulated prior to the beginning of such first taxable year.

(7) **Deficit in earnings and profits of another corporation.**—In the case of a transferee, as defined in subsection (c) (5), an amount, determined under such paragraph, equal to the portion of the deficit in earnings and profits of a transferor attributable to property received previously to such day.

(b) **Redncticn in Equity Invested Capital.**—The amount by which the equity invested capital for any day shall be reduced as provided in subsection (a) shall be the sum of the following amounts.—

(1) **Distributions in previous years.**—Distributions made prior to such taxable year which were not out of accumulated earnings and profits;

(2) **Distributions during the year.**—Distributions previously made during such taxable year which are not out of the earnings ond profits of such taxable year;

(3) **Earnings and Profits of another Corporation.**—The earnings and profits of another corporation which previously at any time were included in accumulated earnings and profits by reason of a transaction described in section 112 (b) to (e), both inclusive, or in the corresponding provision of a prior revenue law, or by reason of the transfer by such other corporation to the taxpayer of property the basis of which in the hands of the taxpayer is or was determined with reference to its basis in the hands of such other corporation, or would have been so determined if the property had been other than money; and

(4) [Not applicable to taxable years under these regulations (section 230 (c) and (d), Rev. Act 1942)]

(5) **Deficit in Earnings and Profits Transferred to another Corporation.**—In the case of a transferor, as defined in subsection (c) (5), an amount, determined

under such paragraph, equal to the portion of the deficits of in earnings and profits of the transferor attributable to property transferred previously to such day.

(c) **Rules for Application of Subsections (a) and (b).**—For the purposes of subsections (a) and (b)—

(1) **Distributions and Shareholders.**—The term "distribution" means a distribution by a corporation to its shareholders, and the term "distribution in stock" means a distribution by a corporation in its stock or rights to acquire its stock. To the extent that a distribution in stock is not considered a distribution of earnings and profits it shall not be considered a distribution. A distribution in stock shall not be regarded as money or property paid in for stocks, or as paid-in surplus, or as a contribution to capital

(2) **Distributions in the First Sixty days of Taxable Year.**—In the application of such subsections to any taxable year beginning after December 31, 1940, so much of the distributions (taken in the order of time) made during the first sixty days thereof as does not exceed the accumulated earnings and profits as of the beginning thereof (computed without regard to this paragraph) shall be considered to have been made on the last day of the preceding taxable year.

(3) **Computation of Earnings and Profits of Taxable year.**—For the purposes of subsections (a) (3) (B) and (b) (2) in determining whether a distribution is out of the earnings and profits of any taxable year, such earnings and profits shall be computed as of the close of such taxable year without diminution by reason of any distribution made during such taxable year or by reason of the tax under this subchapter or chapter 1 for such year and the determination shall be made without regard to the amounts of earnings and profits at the time the distribution was made.

(4) [Not applicable to taxable years under these regulations (section 230 (c) and (d), Rev. Act 1942).]

(5) **Deficit in Earnings and Profits—Earnings and Profits of Transferor and Transferee**—If a corporation (hereinafter called "transferor") transfers substantially all its property to another corporation formed to acquire such property (herein after called "transferee"), if—

(A) the sole consideration for the transfer of such property is the transfer to the transferor or its shareholders of all the stock of all classes (except qualifying shares) of the transferee. (In determining whether the transfer is solely for stock, the assumption by the transferee of a liability of the transferor or the fact that the property acquired is subject to a liability shall be disregarded) ;

(B) the basis of the propety, in the hands of the transferee, for the purposes of this subsection, is determined by reference to the basis of the property in the hands of the transferor ;

(C) the transferor is forthwith completely liquidated in pursuance of the plan under which the acquisition of the property is made ; and

(D) immediately after the liquidation the shareholders of the transferor own all such stock ;

for the purposes of this subchapter, in computing the equity invested capital for any day after the date of the acquisition of the property, the earnings and profits or deficit in earnings and profits of the transferee and the transferor shall be computed as if, immediately before the beginning of the taxable year in which such transfer occurs the transferee had been in existence and substained a recognized loss, and the transferor had realized a recognized gain, equal to the portion of the deficit in earnings and profits of the transferor attributable to such property.

(d) For special rules affecting computation of property paid in for stock in connection with certain exchanges and liquidations, see Supplement C.

(e) For determination of equity invested capital in special cases, see section 723.

(f) The reserves of an insurance company shall not be included in computing equity invested capital under this section but shall be treated as borrowed capital as provided in section 719.

Sec. 719.—BORROWED INVESTED CAPITAL.

*(a) **Borrowed Capital.**—The borrowed capital for any day of any taxable year shall be determined as of the beginning of such day and shall be the sum of the following :

(1) The amount of the outstanding indebtedness (not including interest) of the taxpayer which is evidenced by a bond, note, bill of exchange, debenture, certificate of indebtedness, mortage, or deed of trust, plus,

(2) In the case of a taxpayer having a contract (made before the expiration of 30 days after the date of the enactment of the Second Revenue Act of 1940) with a foreign government to furnish articles, materials, or supplies to such foreign government, if such contract provides for advance payment and for repayment by the vendor of any part of such advance payment upon cancellation of the contract by such foreign government, the amount which would be required to be so repaid if cancellation occured at the beginning of such day, but no amount shall be considered as borrowed capital under this paragraph which has been includible in gross income, plus,

(3) In the case of an insurance company, the mean of the amount of the pro rata unearned premiums determined at the beginning and end of the taxable year, plus,

(4) In the case of a life insurance company, the mean of the amount of the adjusted reserves, and the mean of the amount of the reserves on insurance or annuity contracts (or contracts arising out of insurance or annuity contraats) which do not involve, at the time with reference to which the computation was made, life, health, or accident contingencies, determined at the beginning and end of the taxable year.

(b) **Borrowed Invested Capital.**—The borrowed invested capital for any day of any taxable year shall be determined as of the beginning of such day and shall be an amount equal to 50 per centum of the borrowed capital for such day.

Sec. 720.—ADMISSIBLE AND INADMISSIBLE ASSETS.

†(a) **Definitions.**— For the purposes of this subchapter—

(1) The term "inadmissible assets" means—

(A) Stock in corporations except stock in a foreign personal holding company, and except stock which is not a capital asset ; and

(B) Except as provided in subsection (d), obligations described in section 22(b) (4) any part of the interest from which is excludible from gross income or allowable as a credit against net income.

(2) The term "admissible assets" mean all assets other than in admissible assets.

(b) **Ratio of Inadmissibles to Total Assets.**—The amount by which the average invested capital for any taxable year shall be reduced as provided in section 715 shall be an amount which is the same percentage of such average invested capital as the percentage which the total of the inadmissible assets is of the total of admissible and inadmissible assets. For such purposes,

*[Added By Sect. 201, Second Rev. Act 1940; Amended By Secs. 205(e), Rev. Act 1942.]

†[Added By Sec. 201, Second Rev. Act 1940 ; Amended By Sec. 12(a) Excess Profits Tax Amendments 1941 and by Secs. 207(h) and 220 Rev. Act, 1942

the amount attributable to each asset held at any time during such taxable year shall be determined by ascertaining the adjusted basis thereof (or, in the case of money, the amount thereof) for each day of such taxable year so held and adding such daily amounts. The determination of such daily amounts shall be made under regulations prescribed by the Commissioner with the approval of the Secretary. The adjusted basis shall be the adjusted basis for determining loss upon sale or exchange as determining loss upon sale or exchange as determined under section 113.

(c) **Computation if Short-Term Capital Gain.**—If during the taxable year there has been a gain from the sale or exchange of a capital asset held for not more than 6 months with respect to an inadmissible asset, then so much of the amount attributable to such inadmissible asset under subsection (b) as bears the same ratio thereto as such gain bears to the sum of such gain plus the dividends and interest on such asset for such year, shall, for the purpose of determining the ratio of inadmissible assets to the total of admissible and inadmissible assets, be added to the total of admissible assets and subtracted from the total of inadmissible assets.

(d) **Treatment of Government Obligations as Admissible Assets.**—If the excess profits credit for any taxable year is computed under section 714, the taxpayer may in its return for such year elect to increase its normal-tax net income for such taxable year by an amount equal to the amount of the interest on, reduced by the amount of the amortizable bond premium under section 125 attributable to all obligations held during the taxable year which are described in section 22(b) (4) any part of the interest from which is excludible from gross income or allowable as a credit against net income. In such case, for the purposes of this section, the term "admissible assets" includes such obligations, and the term "inadmissible assets" does not include such obligations.

Sec. 721.—ABNORMALITIES IN INCOME IN TAXABLE PERIOD.

*(a) **Definitions.**—For the purposes of this section—

(1) **Abnormal Income.**—The term "abnormal income" means income of any taxpayer for any taxable year under this subchapter if it is abnormal for the taxpayer, to derive income of such class, or, if the taxpayer normally derives income of such class but the amount of such income of such class includible in the gross income of the taxable year is in excess of 125 per centum of the average amount of the gross income of the same class for the four previous taxable years, or, if the taxpayer was not in existence for four previous taxable years, the taxable years during which the taxpayer was in existence.

(2) **Separate classes of income.**—Each of the following sub-paragraphs shall be held to describe a separate class of income :

(A) Income arising out of a claim, award, judgment or decree, or interest on any of the foregoing ; or

(B) [Not applicable to taxable years under these regulations (section 222(f), Rev. Act 1942).]

(C) Income resulting from exploration, discovery, prospecting, research, or development of tangible property, patents, formulae, or process of any combination of the foregoing, extending over a period of more than 12 months : or

(D) Income includible in gross income for the taxable year rather than for a different taxable year by reason of a change in the taxpayer's accounting period or method of accounting ; or

(E) In the case of a lessor of real property, income included in gross income for the taxable year by reason of the termination of the lease ; or

*(Added by Sec, 201, Second Rev. Act. 1940 ; Amended by Sec. 5, Excess Profits Tax Amendments 1941, and by Secs. 221 and 222(f), Rev. Act 1942.)

(F) Income consisting of dividends on stock of foreign corporations, except foreign personal holding companies.

All the income which is classifiable in more than one of such sub-paragraphs shall be classifiable in more than one of such sub-paragraphs shall be classified under the one which the taxpayer irrevocably elects. The classification of income of any class not described in sub-paragraphs (A) to (F), inclusive, shall be subject to regulations prescribed by the Csmmissioner with the approval of the Secretary.

(3) **Net abnormal income**—The term "net abnormal income" means the amount of the abnormal income less, under regulations prescribed by the Commissioner with the approval of the Secretary, (A) 125 per centum of the average amount of the gross income of the same class determined under paragraph (1), and (B) an amount which bears the same ratio to the amount of any direct costs or expenses, deductible in determining the normal-tax net income of the taxable year, through the expenditure of which such abnormal income was in whole or in part derived as the excess of the amount of such abnormal income over 125 per centum of such average amount bears to the amount of such abnormal income.

(b) **Amount Attributable to other years.**—The amount of the net abnormal income that is attributable to any previous or future taxable year or years shall be determined under ragulations prescribed by the Commissioner with the approval of the Secretary. In the case of amounts otherwise attributable to future t able years. if the taxpayer either transfers substantially all its properties or distributes any property in complete liquidation, then there shall be attributable to the first taxable year in which such transfer or distribution occurs (or if such year is previous to the taxable year in which the abnormal income is includible in gross income, to such latter taxable year) all amounts so aitributable to future taxable years not included in the gross income of a previous taxable year.

(c) **Computation of Tax for Current Taxable Year.**—Tbe tax under this subchapter for the taxable year, in which the whole of such abnormal income would without regard to this section be includible, shall not exceed the sum of :

(1) The tax under this subchapter for such taxable year computed without the inclusion in gross income of the portion of the net abnormal income which is attributable to any other taxable year, and

(2) The aggregate of the increase in the tax under this sub-chapter for the taxable year [computed under paragraph (1)] and for each previous taxable year which would have resulted if, for each previous taxable year to which any portion of such net abnormal income is attributable, an amount equal to such portion had been included in the gross income for such previous taxable year.

(d) **Computation of tax for Future Taxable Year**—The amount of the net abnormal income attributable to any future taxable year shall, for the purposes of this sub-chapter, be included in the gross income for such taxable year.

(1) The tax under this sub-chapter for such future taxable year shall not exceed the sum of—

(A) the tax under this sub-chapter for such future taxable year computed without the inclusion in gross income of the portion of such net abnormal income which is attributable to such year, and

(B) the decrease in the tax under this sub-chapter for the previous taxable year in which the whole of such abnormal income would, without regard to this section, be includible which resulted by reason of the computation of such tax for such previous taxable year under the provisions of sub-section (c) ; but the amount of such decrease shall be diminished by the aggregate of the increases

in the tax under this sub-chapter for the future taxable year as computed under sub-paragraph (A) and for the taxable years intervening between such previous taxable year and such future taxable year which have resulted because of the inclusion of the portions of such net abnormal income attributable to such intervening years in the gross income for such intervening years.

(2) If, in the application of sub-section (c), net abnormal income from more than one taxable year is attributable to any future taxable year, paragraph (1) of this sub-section shall be applied with respect to such future taxable year in the order of the taxable years from which the net abnormal income is attributable beginning with the earliest, as if the portion of the net abnormal income from each such year was the only amount so attributable to such future taxable year, and (except in the case of the portion for the earliest previous taxable year) as if the tax under this sub-chapter for the future taxable year was the tax determined under paragraph (1) with respect to the portion for the next earlier previous taxable year.

(3) If in the application of paragraph (1) to any future taxable year it is determined that the decrease in tax computed under paragraph (1) (B) with respect to the net abnormal income, a portion of which is included in the gross income for the future taxable year, does not exceed the aggregate of the increases in tax computed under paragraph (1) (B) with respect to such net abnormal income, then the portions of such net abnormal income attributable to taxable years subsequent to such future taxable year shall not be included in the gross income for such subsequent taxable years. For the purpose of computing the tax under this sub-chapter for a taxable year subsequent to the future taxable year, the portion of net abnormal income attributable to the future taxable year shall not be included in the gross income for such future taxable year to the extent that the inclusion of such portion of net abnormal income in the gross income for such future taxable year did not result in an increase in tax for such future taxable year by reason of the provisions of paragraph (1).

(e) **Application of Section.**—This section shall be applied only for the purpose of computing the tax under this sub-chapter as provided in sub-sections (c) and (d), and shall have no effect upon the computation of base period net income. For the purposes of sub-sections (c) and (d)—

(1) Net abnormal income means the aggregate of the net abnormal income of all classes for one taxable year.

(2) Under regulations prescribed by the Commissioner with the approval of the Secretary, the tax under this sub-chapter for previous taxable years shall be computed as if the portions of net abnormal income for each previous taxable year for which the tax was computed under this section were included in the gross income for the other previous taxable years to which such portions were attributable.

(3) If both sub-sections (c) and (d) are applicable to any current taxable year, sub-section (d) shall be applied without regard to sub-section (c) and sub-section (c) shall be applied as if the tax under this sub-chpater, except for sub-section (c), was the tax computed under sub-section (d) and as if the gross income and the other amounts necessary to determine the adjusted excess profits net income were those amounts which would result in the tax computed under sub-section (d).

(f) **Abnormal Income from Exploration, etc.**—If by reason of taking into account, in determining constructive average base period net income under section 722, exploration, discovery, prospecting, research, or development of tangible property, patents, formulae, or processes, or any combination of the foregoing, extending

over a period of more than 12 months, such constructive average base period net income is higher than it would be without such taking into account, only such portion of the income in the taxable year resulting from such activity which is of a class described in sub-section (a) (2) (C) as is attributable to another taxable year under this sub-chapter shall be deemed attributable to a year other than the taxable year.

Sec. 722.—GENERAL RELIEF—CONSTRUCTIVE AVERAGE BASE PERIOD NET INCOME.

*(a) **General Rule**.—In any case in which the taxpayer establishes that the computed under this subchapter (without the benefit of this section) resuls in an excessive and discriminatory tax and establishes what would be a fair and just amount representing normal earnings to be used as a contructive average base period net income for the purposes of an an excess profits tax based upon a comparison of normal earnings and earings during an excess profits tax period, the tax shall be determined by using such constructive average base period net income in lieu of the average base period net income otherwise determined under this subchapter. In determining such constructive average base period net income, no regard shall be had to events or conditions affecting the taxpayer, the industry of which it it is a member or taxpayers generally occurring or existing after December 31, 1939, except that, in the cases described in the last sentence of section 722 (b) (4) and in section 722(c) regard shall be had to the change in the character of the business under section 722 (b) (4) or the nature of the taxpayer and the character of its business under section 722(c) to the extent necessary to establish the normal earnings to be used as the contructive average base period net income.

(b) **Taxpayers Using Average Earnings Method**.—The tax computed under this subchapter (without the benefit of this section) shall be considered to be excessive and discriminatory in this case of a taxpayer entitled to use the excess profits credit based on income pursuant to section 713, if its average base period net income is an inadequate standard of normal earnings because—

(1) in one or more taxable years in the base period normal production, output or operation was interrupted or diminished because of the occurrence, either immediately prior to, or during the base period, of events unusual and peculiar in the experience of such taxpayer,

(2) the business of taxpayer was depressed in the base period because of temporary economic circumstances unusual in the case of such taxpayer or because of the fact that an industry of which such taxpayer was a member was depressed by reason of temporary economic events unusual in the case of such industry.

(3) the business of taxpayer was depressed in the base period by reason of conditions generally prevailing in an industry of which the taxpayer was a member, subjecting such taxpayer to

(A) a profit cycle differing materially in length and amplitude from the general business cycle, or

(B) sporadic and intermittent periods of high production and profits, and such periods are inadequate represented in the base period,

(4) the taxpayer, either during or immediately prior to the base period, commenced business or changed the character of the business and the average base period net income does not reflect the normal operation for the entire base period of the business. If the business of the taxpayer did not reach, by the end of the base period, the earning level which it would have reached if the taxpayer had commenced business

* Added by Sec. 201, Sceond Rev, Act 1940; Amended by Sec. 6 Exce s Profits Tax Amendments 41, Sec, 202 (g), Rev. Act 1941, Sec. 222 (a), Rev, Act 1942, and by Public Law 21 (Seventy-Eigths Congress),

or made the change in the character of the business two years before is did not so, it shall be deemed to have commenced the business or made the change at such earlier time. For the purposes of this subparagraph, the term "change in the character of the business" includes a change in the operation or management of the business, a difference in the products or service furnished, a difference in the capacity for production or operation, a difference in the ratio of nonborrowed capital to total capital, and the acquisition before January 1, 194, of all or part of the assets of a competitor, with the result that the competition of such competitor, was eliminated or diminished. Any change in the capacity for production or operation of the business consummated during any taxable year ending of December 31, 1939, as a result of a course of action to which the taxpayer was committed prior to January 1, 1940, or any acquisition before May 31, 1941, from a competitor engaged in the dissemination of information through the public press, of substantially all the assets of such competitor employed in such business with the result that competition between the taxpayer and the competitor existing before January 1, 1940, was eliminated, shall be deemed to be a change on December 31, 1939, in the character of the business, or

(5) of any other factor affecting the taxpayer's business which may reasonably be considered as resulting in an inadequate standard of normal earnings, during the dase period and the application of this section to the taxpayer would not be inconsistent with the principles underlying the provisions of this sub section, and with the conditions and limitations enumerated therein.

(c) **Invested Capital Corporations Etc.**—The tax computed under this subchapter (without the benefit of this section) shall be considered to be excessive and discriminatory in the case of a tax-payer, not entitled to use the excess profits credit based on income pursuant to section 713, if the excess profits credit based on invested capital is an inadequate standard for determining excess profits, because—

(1) the business of the taxpayer is of a class in which intangible assets not includible in invested capital under section 718 make important contributions to income,

(2) the business of taxpayer is of a class in which capital is not an important income-producing factor or

(3) the invested capital of the taxpayer is abnormally low.

In such case for the purposes of this subchapter, such taxpayer shall be considered to be entitled to use the excess profits credit based on income using the constructive average based period net income determined under subsection (a). For the purposes of section 713 (g) and section 743, the beginning of the taxpayer's first taxable year under this subchapter shall be considered to be that date after which capital additions and capital reductions were not taken into account for the purposes of this subsection.

(d) **Application for Relief Under this Section.**—The taxpayer shall compute its tax, file its return, and pay its tax under this sub-chapter without the application of this section, except as provided in section 710 (a) (5). The benefits of this section shall not be allowed unless the taxpayer, not later than six months after the date prescribed by law for the filing of its return, or if the application relates to a taxable year beginning after December 31, 1939, but not beginning after December 31, 1941, prior to September 16, 1943, makes application therefor in accordance with regulations to be prescribed by the Commissioner with the approval of the Secretary, except that if the Commissioner in the case of any taxpayer with respect to the tax liability of any taxable year—

(1) issues a preliminary notice proposing a deficiency in the tax imposed by this subchapter such taxpayer may, within ninety days after the date of such notice make such application, or

(2) mails a notice of deficiency (A) without having previously issued a preliminary notice thereof or (B) within ninety days after the date of such preliminary notice, such taxpayer may claim the benefits of this section in its petition to the Board or in an amended petition in accordance with the rules of the board.

If the application is not filed within six months after the date prescribed by law for the filing of the return, or if the application relates to a taxable year beginning after December 31, 1939, but not beginning after December 31, 1941, prior to September 16, 1943, the operation of this section shall not reduce the tax otherwise determined under this sub chapter by an amount in excess of the amount of the deficiency finally determined under this subchapter without the application of this section If a constructive average base period net income has been determined under the provisions of this section for any taxable year, the Commissioner may, by regulations approved by the Secretary, prescribe the extent to which the limitations prescribed by this subsection may be waived purpose of determing the tax under this subchapter for a subsequent taxable year.

(e) **Rules for Application of Section.**—For the purposes of this section—

(1) the tax imposed by this chapter shall be the tax before the allowance of the foreign tax credit pursuant to section 729 (c) and (d);

(2) in the case of a taxpayer, the average base period net income of which is computed under supplement (A), for the period for which the income of any other person is included in the computation of the average base period net income of the taxpayer, the taxpayer shall be treated as if such other person's business were a part of the business of the taxpayer.

(f) **Mining Corporation.**—In the case of a taxpayer to which section 711(a) (1) (I) or section 711 (a) (2) (K) applies, if its constructive average base period net income is established under this section, there shall also be determined a fair and just amount to be used as normal output and normal unit profit for the purposes of section 735.

Sec. 723.—EQUITY INVESTED CAPITAL IN SPECIAL CASES.

*(a) Where the Commissioner determines that the equity invested capital as of the beginning of the taxpayer's first taxable year under this sub-chapter cannot be determined in accordance with section 718, the equity invested capital as of the beginning of such year shall be an amount equal to the sum of (a) the money plus (b) the aggregate of the adjusted basis of the assets of the taxpayer held by the taxpayer at such time, such sum being reduced by the indebtedness outstanding at such time. The amount of the money, assets, and indebtedness at such time shall be determined in accordance with rules and regulations prescribed by the Commissioner with the approval of the Secretary. In such case, the equity invested capital for each day after the beginning of the tax-payer's first taxable year under this sub-chapter shall be determined, in accordance with rules and regulations prescribed by the Commissioner with the approval of the Secretary, using as the basic figure the equity invested capital as so determined.

(b) The equity invested capital of mutual insurance companies other than life, or marine, shall be the mean of the surplus, plus 50 per centum of the mean of all reserves required by law, both surplus and reserves being determined at the beginning and end of the taxable year. The surplus shall include all of the assets of the company other than reserves required by law.

*(Added By Sec 201, Second Rev. Act 1940; Amended By Sec, 205 (f, Rev. Act 1942.)

Sec. 724.—FOREIGN CORPORATIONS AND CORPORATIONS ENTITLED TO BENEFITS OF SECTION 251—INVESTED CAPITAL.

*Notwithstanding section 715, in the case of a foreign corporation engaged in trade or business within the United States, and in the case of a corporation entitled to the benefits of section 251, the invested capital for any taxable year shall be determined in accordance with rules and regulations prescribed by the Commissioner with the approval of the Secretary, under which—

(a) **General Rule.**—The daily invested capital for any day of the taxable year shall be the aggregate of the adjusted basis of each United States asset held by the taxpayer on the beginning of such day. In the application of section 720 in reduction of the average invested capital (determined on the basis of such daily in vested capital), the terms "admissible assets" and inadmissible assets" shall include only United States assets; or

(b) **Exception.**—If the Commissioner determines that the United States assets of the taxpayer cannot satisfactorily be segregated from its other assets, the invested capital for the taxable year shall be an amount which is the same percentage of the aggregate of the adjusted basis of all assets held by the taxpayer as of the end of the last day of the taxable year which the net income for the taxable year from sources within the United States is of the total net income of the taxpayer for such year.

(c) **Defination of United States Asset** —As used in this subsection, the term "United States asset" means an asset held by the taxpayer in the United States, determined in accordance with rules and regulations prescribed by the Commissioner with the approval of the Secretary.

Sec. 725.—PERSONAL SERVICE CORPORATIONS

†**Definition.**—As used in this sub hapter, the term "personal service corporation whose income is to be ascribed primarily to the activities of shareholders who are regularly engaged in the active conduct of the affairs of the corporation and are the owners at all times during the taxable year of at least 70 per centum in value of each class of stock of the corporation, and in which capital is not a material income-producing factor ; but does not include any foreign corporation, nor any corporation 50 per centum or more of whose gross income consists of gains, profits, or income derived from trading as a principal. For the purposes of this sub-section, and individual shall be considered as owing, at any time, the stock owned at such time by his spouse or minor child or by any guardian or trustee representing them.

(b) **Election as to Taxability.**—If a personal service corporation signifies, in its return under Chapter 1 for any taxable year, its desire not to be subject to the tax imposed under this sub chapter for such taxable year, it shall be exempt from such tax for such year, and the provisions of Supplement S of Chapter 1 shall apply to the shareholders in such corporation who were such shareholders on the last day of such taxable year of the corporation. Such corporation shall not be exempt for such year if it is a member of an affiliated group of corporations filing consolidated returns under section 141.

Sec. 726—CORPORATIONS COMPLETING CONTRACTS UNDER MERCHANT MARINE ACT, 1936

‡(a) If the United States Maritime Commission certifies to the Commissioner that the taxpayer has completed within the taxable year any contracts or sub-contracts which are subject to the provisions of section 505 (b) of the Merchant Marine Act of 1936, as amended, then the tax imposed by this sub-chapter for such taxable year shall be, in lieu of a tax computed under section 710, a tax computed under sub-

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*(Added By Sec. 201, Second Rev. Act 1940; Amended By Sec, 212 (a), Rev. Act 1942,)

†(Added By Sec. 201, Second Rev. Act 1940; Amended By Sec. 223(b), Rev. Act 1942.)

‡(Added By Sec. 201, Second Rev. Act, 1940.)

section (b) of this section, if, and only if, the tax computed under sub-section (b) is less than the tax computed under section 710.

(b) The tax computed under this sub-section shall be excess of—

(1) A tentative tax computed under section 710 with the normal-tax net income increased by the amount of any payments made, or to be made, to the United States Maritime Commission with respect to such contracts or sub-contracts ; over

(2) The amount of such payments.

Sec. 727.—EXEMPT CORPORATIONS.

*The following corporations, except a member of an affiliated group of corporations filing consolidate returns under section 141, shall be excempt from the tax imposed by this sub-chapter :

(a) Corporations exempt under section 101 from the tax imposed by Chapter 1

(b) Foreign personal-holding companies, as defined in section 331,

(c) Regulated investment companies as defined in section 361 without the application 361 (b) (4).

(d) * * * * (omitted)

(e) Personal-holding companies, as defined in section 501.

(f) Foreign corporations not engaged in trade or business within the United States.

(g) Domestic corporations satisfying the following conditions :

(1) If 95 per centum or more of the gross income of such domestic corporation for the three-year period immediately preceding the close of the taxable year (or for such part of such period during which the corporation was in existence) was derived from sources other than sources within the United States ; and

(2) If 70 per centum or more of its gross income for such period or such part thereof was derived from the active conduct of a trade or business.

(h) Any corporation subject to the provisions of Title IV of the Civil Aeronautics Act of 1938, in the gross income of which for any taxable year beginning after December 31, 1939, there is includible compensation received from the United States for the transportation of mail by air craft if, after excluding from its gross income such compensation, its adjusted excess profits net income for such year is zero or less.

Sec. 728 —MEANING OF TERMS USED.

†The terms used in this sub-chapter shall have the same meaning as when used in Chapter 1.

Sec. 729 —LAWS APPLICABLE.

‡(a) **General Rule** —All provisions of law (including penalties) applicable in respect of the taxes imposed by Chapter 1, shall, insofar as not inconsistent with this sub-chapter, be applicable in respect of the tax imposed by this sub-chapter.

(b) **Returns.**—

(1) [Not applicable to taxable years under these regulations (section 224(a), Rev. Act 1942]

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*(Added By Sec. 201, Second Rev. Act 1940! Amended By Secs. 212 b) and (c), Rev. Act 1942

†(Added By Sec. 201, Second Rev. Act 190.)

‡(Added By Sec.201, Second Rev. Act 1940; Amended By Sec. 16, Excess Profits Tax Amendments 1941, and By Secs. 205(g), 224(a), and 225(b), Rev Act 1942 ,)

(2) **No Return Required.**—Notwithstanding sub-section (a), no return under section 52 (a) shall be required to be filed by any taxpayer under this sub-chapter for any taxable year for which its excess profits net income, computed with the adjustments provided in section 711(a) (2) and placed on an annual basis as provided in section 711(a) (3), is not greater than $5,000 or, in the case of a mutual insurance company (other than life or marine) which is an inter-insurer or reciprocal underwriter, is not greater than $50,000.

(3) **Consolidated Returns** —For provisions relating to consolidated returns, see section 141.

(c) **Foreign Taxes Paid** —In the application of section 131 for the purposes of this subchapter the tax paid or accrued to any country shall be deemed to be the amount of such tax reduced by the amount of the credit allowed with respect to such tax against the tax imposed by Chapter 1.

(d) **Limitations on Amount of Foreign Tax Credit.**—The amount of the credit taken under this section shall be subject to each of the following limitations:

(1) The amount of the credit in respect of the tax paid or accrued to any country shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's excess profits net income from sources within said bears to its entire excess profits net income for the same taxable year ; and

(2) The total amount of the credit shall not exceed the same proporation of the tax against which such credit is taken, which the taxpayer's excess profits net income from sources without the United States bears to its entire excess profits net income for the same taxable year.

*Sec 730 —CONSOLIDATED RETURNS

Sec. 731.- CORPORATIONS ENGLAND IN MINING OF STRATEGIC MINERALS

†In the case of any domestic corporation engaged in the mining of antimoney, chromite, manganese, nickel, platinum, quicksilver, sheet mica, tatalum, tin, tungsten, or vanadium, the portion of the adjusted excess profits net income attributable to such mining in the United States shall be exempt from the tax imposed by this sub-chapter. The tax on the remaining portion of such adjusted excess profits net income shall be an amount which bears the ratio to the tax computed without regard to this section as such remaining portion bears to the entire adjusted excess profits net income.

Sec 732 – REVIEW OF ABNORMALITIES BY BOARD OF TAX APPEALS

‡ (a) **Petition to the Board.**—If a claim for refund of tax under this sub-chapter for any taxable year is disallowed in whole or in part by the Commissioner, and the disallowance relates to the application of section 711(b) (1) (H), (I), (J), or (K), section 722, relating to abnormalities, the Commissioner shall send notice of such disallowance to the taxpayer by registered mail. Within ninety days after such notice is mailed (not counting Sunday or a legal holiday in the District of Columbia as the the ninetieth day) the taxpayer may file a petition with the Board of Tax Appeals, for a redetermination of the tax under this sub-chapter. If such petition is so filed, such notice of disallowance shall be deemed to be a notice of deficiency for all purposes relating to the assessment and collection of taxes or the refund or credit of overpayments.

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*(Added By Sec, 201, Second Rev. Act. 1940 ; Amended By Sec, 7. Excess Profits Tax Amendments 1941, and By Sec. 225 a , Rev. Act 1942, Not Applicable to Taxable Years Under These Regulations (Sec. 225 a). Rev. Act 1942.)

† Added by Sec 201, Second Rev. Act 1940; Amended by Sec. 204, Rev, Act 1941, and by Sec, 226 Rev. Act 1942.

‡ Added by Sec. 9, Excess Profits Tax Amendments 1941; Amended by 222(c) Rev. Act 1942.

(b) **Deficiency Found by Board in Case of Claim.**—If the Board finds that there is no overpayment of tax in respect of any taxable year in respect of which the Commissioner has disallowed, in whole or in part, a claim for refund described in sub-section (a) and the Board further finds that there is a deficiency for such year, the Board shall have jurisdiction to determine the amount of such deficiency and such amount shall, when the decision of the Board becomes final, be assessed and shall be paid upon notice and demand from the collector.

(c) **Finality of Determination.**—If in the determination of the tax liability under this sub-chapter the determination of any question is necessary solely by reason of section 711 (b) (1) (H) ,(I), (J), or (K), section 721, or section 722, the determination of such question shall not be reviewed or redetermined by any court or agency except the Board.

(d) **Review by Special Division of Board.**—The determinations and redeterminations by any division of the Board involving any question arising under section 721 (a) (2) (C) or section 722 shall be reviewed by a special division of the Board which shall be constituted by the Chairman and consist of not less than three members of the Board. The decisions of such special division shall not be reviewable by the Board, and shall be deemed decisions of the Board.

*Sec. 504.—CHANGE OF NAME OF BOARD OF TAX APPEALS

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(c) **References.**—All references in any statute (except this section), or any rule, regulation, or order, to the "Board of Tax Appeals" or to the "Board" when used in the sence of "Board of Tax Appeals", or to the "member", "members", or "chairman" thereof shall be considered to be made to The Tax Court of the United States, the judge, judges, and presiding judge thereof, respectively.

†Sec. 733.—CAPITALIZATION OF ADVERTISING, ETC., EXPENDITURES

(a) **Election to Charge to Capital Account.**—For the purpose of computing the excess profits credit, a taxpayer may elect, within six months after the date prescribed by law for filing its return for its first taxable year under this sub chapter, to charge to capital account so much of the deductions for taxable years in its applicable base period on account of expenditures for advertising or the promotion of good will, as, under rules and regulations prescribed by the Commissioner with the approval of the Secretary, may be regarded as capital investments. Such election must be the same for all such taxable years, and must be for the total amount of such expenditures which may be so regarded as capital investments. In computing the excess profits credit, no amount on account of such expenditures shall be charged to capital account :

(1) For taxable years in the base period unless the election authorized in sub-section (a) is exercised, or

(2) For any taxable year prior to the beginning of the base period.

(b) **Effect of Election.**—If the taxpayer exercises the election authorized under sub-section (a) —

(1) The net income for each taxable year in the base period shall be considered to be the net income computed with such deductions disallowed, and such deductions shall not be considered as having diminished earnings and profits. This paragrph shall be retroactively applied as if it were a part of the law applicable to each taxable year in the base period ; and

*(Revenue Act of 1942 Title V.]

†Added by Section 10, Excess Profits Tax Amendments 1941.

(2) The treatment of such expenditures as deductions for a taxable year in the base period shall, for the purposes of section 734 (b) (2), be considered treatment which was not correct under the law applicable to such year.

Sec. 734—ADJUSTMENT IN CASE OF POSITION INCONSISTENT WITH PRIOR INCOME TAX LIABILITY.

(a) **Definitions.**—For the purposes of this section—

(1) **Taxpayer.**—The term "taxpayer" means any person subject to a tax under the applicable Revenue Act.

(2) **Income-tax.**—The term "income-tax" means an income-tax imposed by Chapter 1 or Chapter 2-A of this title; Title I and Title I-A of the Revenue Acts of 1938, 1936 and 1934; Title I of the Revenue Acts of 1932 and 1928; Title II of the Revenue Acts of 1926 and 1924; Title II of the Revenue Acts of 1921 and 1918; Title I of the Revenue Act of 1917; Title I of the Revenue Act of 1916; or section 11 of the Act of 3rd October 1913; a war profits or excess profits tax imposed by Title III of the Revenue Acts of 1921 and 1918; or Title II of the Revenue Act of 1917; or an income, war profits, or excess profits tax imposed by any of the foregoing provisions, as amended or supplemented.

(3) **Prior taxable year.**—A taxable year beginning after 31st December 1939, shall not be considered a prior taxable year.

(4) The term "predecessor of the taxpayer" means—

(A) A person which is a component corporation of the taxpayer within the meaning of section 740; and

(B) A person which on 1st April 1941, or at any time thereafter, controlled the taxpayer. The term "controlled" as herein used shall have the same meanning as "control" under section 112 (h), and

(C) Any person in an unbroken series ending with the taxpayer if subparagraph (A) or (B) would apply to the relationship between the parties.

(b) **Circumstances of adjustment.**—

(1) If—

(A) in determining at any time the tax of a taxpayer under this subchapter an item affecting the determination of the excess profits credit is treated in a manner inconsistent with the treatment accorded such item in the determination of the income tax liability of such taxpayer or a predecessor for a prior taxable year or years, and

(B) the treatment of such item in the prior taxable year or years consistently with the determination under this sub-chapter would effect an increase or decrease in the amount or the income taxes previously determined for such taxable year or years, and

(C) on the date of determination of the tax under this sub-chapter correction of the effect of the inconsistent treatment in any one or more of the prior taxable years is prevented (except for the provisions of section 3801) by the operation of any law or rule of law (other than section 3761, relating to compromises),

*Added by Section 11, Excess Profits Tax Amendments 1941: Amended by Section 227. Rev. Act 1942.

then the correction shall be made by an adjustment under this section. If in a subsequent determination of the tax under this sub-chapter for such taxable year such inconsistent treatment is not adopted, then the correction shall not be made in connection with such subequent determinatlon.

(2) Such adjustment shall be made only if there is adopted in the determinatien a position maintained by the Commissioner (in case the net effect of the adjustment would be a decrease in the income taxes previously determined for such year or years) or by the taxpayer with respect to whom the determination is made (in case the net effect of the adjustment would be an increase in the income taxes previously determined for such year or years) which position is inconsistent with the treatment accorded such item in the prior taxable year or years which was not correct under the law applicable to such year.

(3) **Burden of proof** —In any proceeding before the Board or any court the burden of proof in establishing that an inconsistent position has been taken (A) shall be upon the Commissioner, in case the net effect of the adjustment would be an increase in the income taxes previously determined for the prior taxable year or years or (B) shall be upon the taxpayer, in case the net effect of the adjustment would be a decrease in the income taxes previously determined for the prior taxable year or years.

(c) **Method and effect of adjustment.—**

(1) The adjustment authorized by sub-section (b), in the amount ascertained as provided in sub-section (d), if a net increase shall be added to, and if a net decrease shall be subtracted from, the tax otherwise computed under this sub-chapter for the taxable year with respect to which such inconsistent position is adopted.

(2) If more than one anjustment under this section is made because more than one inconsistent position is adopted with respect to one taxable year under this sub-chapter, the separate adjustments, each an amount ascertained as provided in sub-section (d), shall be aggregated, and the aggregate net increase or decrease shall be added to or subtracted from the tax otherwise computed under this sub-chapter for the taxable year with respect to which such inconsistent positions are adopted.

(3) If all the adjustments under this section, made on account of the adoption of an inconsistent position or positions with respect to one taxable year under this sub-chapter, result in an aggregate net increase, the tax imposed by this sub-chapter shall in no case be less than the amount of such aggregate net increase.

(4) If all the adjustments under this section, made on account of the adoption of an inconsistent position or positions with respect to a taxable year under this sub-chapter (hereinafter in this paragraph called the current taxable year), result in an aggregate net decrease, and the amount of such decrease exceeds the tax imposed by this sub-chapter (without regard to the provisions of this section) for the current taxable year, such excess shall be subtracted from the tax imposed by this sub-chapter for each succeeding taxable year, but the amount of the excess to be so subtracted shall be reduced by the reduction in tax for intervening taxable years which has resulted from the subtraction of such excess from the tax imposed for each such year.

(d) **Ascertainment of amount of adjustment**.—In computing the amount of an adjustment under this section there shall first be ascertained the amount of the income taxes previonsly determined for each of the prior taxable years for which

correction is prevented. The amount of each such tax previously determined for each such taxable year shall be (1) the tax shown by the taxpayer, or by the predecessor, upon the return for such prior taxable year, increased by the amounts previously assessed (or collected without assessment) as deficiencies and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or (2) if no amount was shown as the tax by such taxpayer or such predecessor upon the return, or if no return was made by such taxpayer or such predecessor, then the amounts previously assessed (or collected without assessment) as deficiencies, but such amounts previously assessed; or collected without assessment, shall be decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax. There shall then be ascertained the increase or decrease in each such tax previously determined for each such year which results solely from the treatment of the item consistently with the treatment accorded such item in the determination of the tax liability under this sub-chapter. To the increase or decrease so ascertained for each such tax for each such year there shall be added interest thereon computed as if the increase or decrease constitued an deficiency or an overpayment, as the case may be, for such prior taxable year Such interest shall be computed to the fifteenth day of the third month following the close of the excess profits tax taxable year with respect to which the determination is made. There shall be ascertained the difference between the aggregate of such increases, plus the interest attributable to each, and the aggregate of such decreases, plus the interest attributable to each, and the net increase or decrease so ascertained shall be the amount of the adjustment under this section with respect to the inconsistent treatment of such item.

(e) **Interest in Case or net increase or decrease—**

(1) If an adjustment under this section results in a net decrease, or more than one adjustment results in an aggregate net decrease, the portion of such net decrease or aggregate net decrease, as the case may be, subtracted from the tax which represents interest shall be included in gross income of the taxable year in which falls the date prescribed for the payment of the tax under this sub-chapter.

(2) If an adjustment under this section results in a net increase, or more than one adjustment results in an aggregate net increase, the portion of such net increase or aggregate net increase, as the case may be, which represents interest shall be allowed as a deduction in computing net income for the taxable year in which falls the date prescribed for the payment of the tax under this sub-chapter.

***Sec. 735—NON-TAXABLE INCOME FROM CERTAIN MINING AND TIMBER OPERATION.**

(a) **Definitions.**—For the purposes of this section, section 711 (a) (1) (I), and section 711 (a) (2) (K).

(1) **Producer**—The term "producer" means a corporation which extracts minerals from a mineral property, or cuts logs from a timber block, in which an economic interest is owned by such corboration.

(2) **Mineral unit** —The term "mineral unit" means a unit of metal, coal, or nonmetallic substance in the minerals recovered from the operation of a mineral property.

(3) **Timber unit.**—The term "timber unit" means a unit of timber recovered from the operation of a timber block.

(4) **Excess output.**—The term "excess output" means the excess of the mineral or the timber units for the taxable year over the normal output.

* (Added by Sec. 209 (e), Rev. Act 8942)

(5) **Normal output.**—Theterm "normal output" means the average manual mineral units, or the average annual timber units, as the case may be, recovered in the taxable years beginning after December 31, 1935, and not beginning after December 31, 1939 (hereinafter called "base period"), of the persou owning the mineral property or the timber block (whether or not the taxpaper). The average annual mineral units or timber units shall be computed by dividing the aggregate of such mineral units or timber units for the bare period by the number of months for which the mineral property or the timber-block was in operation during the base period and by multiplying the amount so ascertained by twelve. In any case in which the taxpayer establishes, under regulations prescribod by the Commissioner with the approval of the Secretary, that the operation of any mineral property or any timber block is normally prevented for a specified period each year by physical events outside the control of the taxpayer, the number of months during which such mineral property or timber block is regularly in operation during a taxable year shall be used in computing the average annual mineral units, or timber units, instead of twelve. Any mineral property, or any timber block, which was in operation for less than six months during the base period shall, for the purposes of this section, be deemed not to have been in operation during the base period.

(6) **Mineral property.**—The term "mineral property" means a mineral deposit, the development and plant necessary for the extraction of the deposit, and so much of the surface of the land as is necessary for purposes of such extraction.

(7) **Minerals.**—The term "mineral" means ores of the metals coals, and such nonmetallic substances as ebrasives, asbestos, asphaltum, barytes, borax, building stone, cement rock, clay, crushed stone, feldspar, fuller's earth, graphite, gravel, gypsum, limestone, magnesite, marl, mica, mineral pigments, peat, potash, precious stones, refractories, rock phosphate, salt, sand, sillica, slate, soapstone, soda, sulphur, and talc.

(8) **Timber Block** —The term "timber block" means an operation unit existing as of december 31, 1941, which includes all the taxpayer's timber which would logically go to a singgle given point of manufacture but shall not include any operation unit acquired after Decembe 31 1941.

(9) **Normal unit Profit.**—Ehe term "normal unit profit" means the average profit for the base period per mineral unit for such period, determined by dividing the net income with respect to minernl recovered from the mineral property (computed with the allowance for depletion computed in accordance with the basis foe depletion applicable to tho current taxable year) during the base period by the number of mineral units recovered from the mineral property during the base perion.

(10) **Estimated Recoverable Units.**—The term "estimated recoverable units" means the estimated number of units of metal, coal, or nonmetallic substances in the estimated recoverable minerals from the mineral property at the end of the taxable year plus the excess output for such year. All estimates shall be subject to the approval of the Commissioner, the determinations of whom. for the purposes of this section, shall be final and conclusive.

(11) **Exempt Excess Output.**—The term "exempt excess output" for any taxable year means a number of units equal to the following percentages of the excss output for such year :

100 per centum if the excess output exceeds 50 per centum of the estimated recoverable units ;

95 per centum if the excess output exceed 331/3 but not 50 per centum of the estimated recoverable units ;

90 per centum if the excess output exceeds 25 but not 331/3 per centum of the estimated recoverable units ;

85 per centum if the excess output exceeds 20 but not 25 per centum of the estimated recoverable units ;

80 per centum if the excess output exceeds 16 2/3 but not 20 per centum of the estimated recoverable units ;

60 per centum if the excess output exceeds 14 2/7 but not 16 2/3 per centum of the estimated recoverable units ;

40 per centum if the excess output exceeds 12 1/2 but not 14 2/7 per centum of the estimated recoverable units ;

30 per centum if the excess output exceeds 10 but not 12 1/2 per centum of the estimated recoverable units :

20 per centum if the excess output exceeds 5 but not 10 per centum of the estimated recoverable units.

(12) **Unit net income**.—The term "unit net income" means the amount ascertained by dividing the net income (computed with the allowance for depletion) from the coal or iron ore or the timber recovered from the coal mining property, iron mining property, or timber block, as the case may be, during the taxable year by the number of units of coal or iron ore, or timber, recovered from such property in such year

(b) **Nontaxable Income From Exempt Excess Output**.—

(1) **General Rule**.—For any taxable year for which the excess output of mineral property which was in operation during the base period exceeds 5 per centum of the estimated recoverable units from such property, the nontaxable income from exempt excess output for such year shall be an amount equal to the exempt excess output for such year multiplied by the normal unit profit, but such amount shall not exceed the net income (computed with the allowance for depletion) attributable to the excess output for such year.

(2) **Coal and iron mines**.—For any taxable year, the nontaxable income from exempt excess output of a coal mining or iron minig property which was in operation during the base period shall be an amount equal to the excess output of such property for such year multiplied by one-half of the unit net income from such property for such year, on an amount determined under paragraph (1), whichever the taxpayer elects in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

(3) **Timber properties**.—For any taxable year, the nontaxable income from exempt excess output of a timber block which was in operation during the base period shall be an amount equal to the excess output of such property for such year multiplied by one-half of the unit net income from such propertyfor such year.

(c) **Nontaxable Bonus Income**. The term "nontaxable bonus income" means the the amount of the income derived from bonus payments made by any agency of the United States Government on account of the production in excess of a specified quota of a mineral product or of timber the exhaustion of which gives rise to an allowance for depletion under section 23(m), but such amount shall not exceed the net income (computed with the allowanee for depletion) attributable to the output in excess of such quota.

(d) **Rule in Case Income From Excess Output Includes Bonus Payment**.—In any case in which the income attributable to the excess output includes bonus payments (as provided in sub-section (c)), the taxpayer may elect, under regulations prescribed

by the Commissioner with the approval of the Secretary, to receive either the benefits of sub-section (b) or sub-section (c) with respect to such income as is attributable to excess output above the specified quota.

*Sec. 736.—RELIEF FOR INSTALMENT BASIS TAXPAYERS AND TAXPAYERSWITH INCOME FROM LONG-TERM CONTRACTS.

Election to Accrue Income.—In the case of any taxpayer computing income from installment sales under the method provided by section 44(a), if such taxpayer establishes, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that the average volume of cerdit extended to purchaser on the installment plan in the four taxable years preceding the first taxable year beginning after December 31, 1941, was more than 125 per centum of the volume of such credit extended to such purchasers in the taxable year, or the average outstanding installment accounts receivable at the end of each of the four taxable years preceding the first taxable year beginning after December 31, 1941, was more than 125 per centum of the amount of such accounts receivable at the end of the taxable year, or if the taxpayer was not in existence for four previous taxable years, the taxable years during which the taxpayer was in existence, in either case inculding only such years for which the income was computed under the method provided in section 44(a), it may elect, in its return for the taxable year, for the purposes of the tax imposed by this sub-chapter, to compute, in accordance with regulations prescribed by the commissioner with the approval of the Secretary, its income from installment sales on the basis of the taxble period for which such income is accrued, in lieu of the basis, provided by section 44 (a). Except as hereinafter provided, such election shall be irrevocable when once made and shall apply also to all sub-sequent taxable years and the income from installment sales for each taxable year before the first year with respect to which the election is made but beginning after December 31, 1939, shall be adjusted for the purposes of this sub-chapter to conform to such election. In making such adjustments, no amount shall be included in computing excess profits net income for any excess profits tax taxable year on account of installment sales made in taxable years beginning before January 1, 1940. If the taxpayer establihes, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that in a taxable year subsequent to the year with respect to which an election has been made under the preceding provisions of this sub-section it would not be eligible to elect-such accrual method, the taxpayer may in accordance with such regulations elect in its return for such year to abandon such acorual method. Such election shall be irrevocable when once made and shall preclude any further elections under this sub-section. For the taxable year for which the latter election is made and sub-sequent taxable years, income shall be computed in accordance with section 44 (c).

*Sec. 736.—RELIEF FOR INSTALMENT BASIS TAXPAYERS & TAXPAYERS WITH INCOME FROM LONG-TERM CONTRACTS.

(b) **Election on Long-Term Contracts.**—In the case of any tax-payer computing income from contracts the performance of which requires more than 12 months, if it is abnormal for the taxpayer to derive income of such class, or, if the taxpayer normally derives income of such class but the amount of such income of such class includible in the gross income of the taxable year is in excess of 125 per centum of the average amount of the gross income of the same class for the four previous taxable years, or, if the taxpayer was not in existence for four previous taxable years, the taxable years during which the taxpayer was in existence, it may elect, in its return for such taxable year for the purposes of this sub-chapter, or in the case of a taxable year the return for which was filed prior to the date of the enactment of the Revenue Act of 1942, within 6 months after the date of the enactment of such Act, to compute, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, such income upon the percentage of completion meth-

*(Added by Sec. 222 (d) Rev. Act 1942)

od of accounting. Such election shall be made in accordance with such regulations and shall be irrevocable when once made and shall apply to all other contracts, past, present, or future, to performance of which required or requires more than 12 months. The net income of the taxpayer for each year prior to that with respect to which the election is made shall be adjusted for the purposes of this sub-chapter, including the computation of excess profits net income in each taxable year of the base period under section 711 (b), to conform to such election but for purposes of chapter 1, the tax imposed by this sub-chapter for any prior taxable year on account of the adjustment required by this sub-section shall be considered a part of the tax imposed by this subchapter for the taxable year in which such income is without regard to this sub-section, includible in gross income. Income described in this subsection shall not be considered abnormal income under section 721.

*[Sec 736 --RELIEF FOR INSTALMENT BASIS TAXPAYERS AND TAXPAYERS WITH INCOME FROM LONG-TERM CONTRACTS

(c) **Adjustment on Account of Change** --If an adjustment specified in subsection (a) or subsection (b), as the case may be, is, with respect to any taxable year, prevented, on the date of the election by the taxpayer under subsection (a) or subthe case may be, or within two years from such date, by any provision or rule of law (other than this section and other than section 3761, relating to compromises), such adjustment shall nevertheless be made if in respect of the taxable year for which adjustment is sought a notice of deficiency is mailed or a claim for refund is filed, as the case may be, within two years after the date such election is made. If at the time of the mailing of such notice of deficiency or the filing of such claim for refund the adjustment is so prevented, then the amount of the adjustment authorized by this subsection shall be limited to the increase or decrease in the tax imposed by Chapter 1 and this subchapter previously determined for such taxable year which results solely from the effect of subsection (a), or subsection (b), as the case may be, and such amount shall be assessed and collected, or credited or refunded, in the same manner as if it were a deficiency or an overpayment, as the case may be, or such taxable year and as if on the date of such election, two years remain before the expiration of the period of limitation upon assessment or the filing of claim of refund for the taxable year. The tax previously determined shall be ascertained in accordance with section 734(d). The amount to be assessed and collected under this subsection in the same manner as if it were a deficiency or to be refunded or credited in the same manner as if it werean overpayment, shall not be diminished by any credit or set-off based upon any item, inclusion, credit, exemption, gain or loss, other than one resulting from the effect of subsection (a) or subsection (b), as the case may be. Such amount, if paid, shall not be recovered by a claim or suit for refund or suit for erroneous refund based upon any item, inclusion, deduction, credit, exemption, gain orloss, other than one resulting from the effect or subsection (a) or subsection(b), as the case may be.

CHAPTER II--RULES IN CONNECTION WITH CERTAIN EXCHANGES

Supplement A—Excess Profits Credit Based on Income.

Sec. 470.—DEFINITIONS.

For the purposes of this Suppiement—

(a) **Acquiring Corporation.**—The term "acquiring corporation" means—

(1) A corporation which has acquired—

(A) substantially all the properties of another corporation and the whole or a part of the consideration for the transfer of such properties is the transfer to such other corporation of all the stock of all classes (except qualifying shares) of the corporation which has acquired such properties, or

*[Added by Sec 222(d), Rev. Act 1942)

*(Added by Sec. 201, Second Rev, Act 1940 ; Amended by Secs, 8(a), (b) & (c) Excess Porfits Tax Amendments 1941, and by Sec. 228(a) Rev. Act 1942).

(B) substantially all the properties of another corporation and the sole consideration for the transfer of such properties is the transfer to such other corporation of voting stock of the corporation which has acquired such properties, or

(C) before 1st October 1940, properties of another corporation solely as paid-in surplus or a contribution to capital in respect of voting stock owned by such other corporation, or

(D) substantially all the properties of a partnership in an exchange to which section 112(b) (5); or so much of section 112 (c) or (e) as refers to section 112(b) (5), or to which a corrsponding provision of a prior revenue law, is or was applicable.

For the purposes of subparagraphs (B) & (C) in determining whether such voting stock or such paid-in surpuls or contribution to capital is the sole consideration, the assumption by the acquiring corporation of a liabllity of the other, or the fact that property acquired is subject to a liability, shall be disregarded. Subparagraph (B) or (C) shall apply only if the corporation transferring such properties is forthwith completely liquidated in pursuance of the plan under which the acquisition is made, and the transaction of which the acquisition is a part has the effect of a statutory merger or consolidation.

(2) A corporation which has acquired property from another corporation in a transaction with respect to which gain or loss was not recognized under section 112(b) (6) of Chapter 1 or a corresponding provision of a prior revenue law :

(3) A corporation the result of a statutory merger of two or more corporations ; or

(4) A corporation the result of a statutory consolidation of two or more corporations.

(b) Component Corporation.—The term "component corporation" means—

(1) In the case of a transaction described in subsection (a) (1), the corporation which transferred the assets ;

(2) In the case of a transaction described in subsection (a) (2), the corporation the property of which was acquired ;

(3) In the case of a statutory merger, all corporations merged, except the corporation resulting from the merger ; or

(4) In the case of a statutory consolidation, all corporations consolidated, except the corporation resulting from the consolidation ; or

(5) In the case of a trasaction seoified in subsection (a) (1) (D), the partnership whose properties were acquired.

(c) Income of Certain Component Corporations Not Included.—For the purposes of section 712, section 742, and section 743 in the case of a corporation which is a component corporation in a transaction describe in subsection (a)—

(1) Except as provided in paragraph (2), for the pnrpose of computing, for any taxable year beginning after December 31st 1941, the excess profits credit of such component corporation or of an aoquiring corporation in such transaction is not a component, except in the application of sections 713 (f) and 742(h) (other than the limitation on the amount of average base period net income or Supplement A average base period net income, as the case may by, determined there under), no acount shall be taken of the excess profits net income of such component corporatieu for any period before the day after

such transaction, or of the excessprofits net income for any period before the day after such transaction of its component corporations in any transaction before such transaction, and no account shall be taken of the capital addition or capital reduction of such component corporation either immediately before such transation or for any prior period, or of the capital addition or capital reduction either immediately before such transaction or for any prior period of its component corporations in any transaction before such transaction.

(2) In case such transaction occurred in a taxable year of such component corporation beginning after 31st December 1941, for the purpose of computing the excess profits credit of such component corporation for such taxable year, the amount of its average base period net income or Supplement A average base period net income, as the case may be, shall be limited to an amount which bears the same ratio to such average base period net income or or Supplement A average base period net income, as the case may be (computed without regard to this paragraph but with the application of paragraph (1) in case of a prior transaction described in sub-section (a) with respect to such component corporation or a componet corporation thereof), as the number of days in such taxable year before the day after such transaction bears to the total number of days in such taxable year.

For the purposes of section 742, in the case of a corporation which is a component corporation in a transaction described in sub-section (a), in computing for any taxable year the Supplement A average base period net income of the acquiring corporation in such transaction or of a corporation of which such acquiring corporation becomes a component corporation, no account shall be taken of the excess profits net income of such component corporation for any period beginning with the day after such transaction.

(d) In the case of a taxpayer which is an acquiring corporation the base period shall be the four calendar years 1936 to 1939, both inclusive, except that, if the taxpayer become an acquiring corporation prior to 1st September 1940, the base period shall be the same as that applicable to its first taxable year ending in 1941.

(e) **Base period years.**—In the case of a taxpayer which is an acquiring corporation it base period years shall be the four successive twelve months periods beginning on the same date as the beginning of its base period.

(f) **Existence of Acquiring Corporation.**—For the purposes of section 712 (a), if any component cerporation of the taxpayer was in existence before January 1, 1940, the taxpayer shall be considered to have been in existence before such date.

(g) **Component Corporation of Component Corporations.**—If a corporation is a component corporation of an acquiring corporation, under sub-section (b) or under this sub-section, it shall [except for the purposes of section 742 (d) (1) and (2) and section 743 (a) (1), (2) and (3)] also be a component corporation of the corporation of which such acquiring corporation is a component corporation.

(h) **Sole Properietorship.**—For the purposes of sections 740 (a) (1) (D), 740 (b) (5) and 742 (g), a business owned by a sole proprietorship shall be considered a partnership.

*Sec. 741.—ALLOWANCE OF EXCESS PROFITS CREDIT.

*Added by Sec. 201, Second Rev. Act 1940 ; Amanded by Sec. 14, Excess Profits Tax Amendments 1941 ; Not Applicable to Taxable years under these Regulations [Secs. 224 (b) and 228 (b), Rev. Act 1942.]

†Sec. 742—SUPPLEMENT A AVERAGE BASE PERIOD NET INCOME.

In the case of a taxpayer which is an acquiring corporation, its average base period net income (for purpose of the credit computed under section 713) shall be the amount computed under section 713 or the amount of its Supplement A average base period net income, whichever is the greater. The Supplement A average base period net income shall be the amount computed without regard to sub-section (h) of this section or computed under sub-section (b) of this section, whichever is the greater. The Supplement A average base period net income shall be computed as follows :

(a) By ascertaining with respect to each of its base period years—

(1) The amount of its and each of its component corporation's excess profits net income for each of its and such component corporation's taxable years beginning with or within such base period year ; or, in the case of each such taxable year of the taxpayer or of such component corporation, as the case may be, in which the deductions plus the credit for dividends received and the credit poovided in section 26 (a) (relating to interest on certain obligations of the United States and its instrumentalities) exceeded the gross income, the amount of such excess ;

(2) (A) The aggregate of the amaunts of excess profits net income ascertained under paragraph (1); (B) the aggregate of the excesses ascertained under paragraph (1) and (C) the difference betweon the aggregatas found under clause (A) and clouse (B). If the aggregate ascertained under clause (A) is greater than the aggregate ascertained under clause (B), the difference shall for the purposes of sub-section (b) be designated a "plus amount", and if the aggregate ascertained under clause (B) is greater than the aggregate found under clause (A), the difference shall for the purposes of sub-section (b) designated a "minus amount"

If, in the cate of the taxpayer or any component corporation of the taxpayer, one and only one taxable year of the taxpayer or such component corporation, as the case may be, begins with or with or within such base period year and such taxable year is less than twelve months, the amount of the excess profits net income, or the amount of such excess of deductions plus the credit for dividends received and the credit provided in section 26 (a) (relating to interest on certain obligatlons of the United States and its instrumentalities) over gross income, as the case may be, for such taxable year, shall be placed on an annual basis in the same manner as is provided in section 711 (a) (3). If more than one taxable year of the taxpayer or such component corporation, as the case may be, begins with or within such base period year, the aggregate of the amounts of excess profits net income minus the aggregate of the excesses of deductions plus the credit for dividends received and the credit provided in section 26 (a) (relating to interest on certain obligations of the United States and its instrumentalities) over gross income, or the aggregate of such excesses minus the aggregate of the amounts of excess profits net income, as the case may be, for such taxable years shall be adjusted to such extent as the Commissioner, under regulations prescribed by him with the approval of the Secretary, prescribed as necessary in order that such base period year shall reflect income for a period of twelve months. For the purposes of this section, a taxable year of a component corporation beginning within the base period which also begins with or within the taxable year of acquiring corporation in which the acquisition occurred, or which also begins with or within the same base period year with which or within which began such taxable year of the acquiring corporation, shall be considered a taxable

†Added by Sec. 201, Second Rev. Act 1940 ; Amended by Secs. 8 and 15, Excess Profits Tax Amendements 1941, and by Sec. 228 (c), Rev, Act 1942.

year of the acquiring corporation, and such taxable year shall be considered to have begun in the base period year with which or within which such taxable year of the acquiring corporation began.

(b) By adding the plus amounts ascertained under sub-section (a) (2) for each year of the base period : and

(1) If the tax under this sub-chapter is being computed for a taxable year no beginning after December 31, 1941, by subtracting from such sum, if for two or more years of the basis (*sic*) period there was a minus amount the sum of the minus amounts, excluding the greatest ; or

(2) If the tax under this sub-chapter is being computed for a taxable year beginning after December 31, 1941, by subtracting from such sum the sum of the minus amounts. If the amount used under the preceding sentence for the lowest year is less than 75 per centum of the sum of the plus amounts reduced by the sum of the minus amounts for the other years in the base period divided by three, the amount which shall be used for such lowest year shall be 75 per centum of the amount last ascertained.

(c) By dividing the amount ascertained under sub-section (b) by four.

(d) In no case shall the average base period net income be less than zero In the case of a taxpayer which becomes an acquiring corporation in any taxable year beginning after December 31, 1939, if on September 11, 1940, and at all time until the taxpayer became an acquiring corporation—

(1) the taxpayer owned not less than 75 per centum of each class of stock of each of the qualified component corporations involved in the transaction in which the taxpayer became an acquiring corporation ; or

(2) one of the qualified component corporations involved in the transaction owned not less than 75 per cent. of each class of stock of the taxpayer, and of each of the other qualified component corporations involved in the transaction,

the average base perion net income of the taxpayer shall not be less than (A) the average base period net income of that one of its qualified component corporations involved in the transaction the average base period net income of which is greatest, or (B) the average base period net income of the taxpayer computed without regard to the base period net income of any of its qualified component corporations involved in the transaction. As used in this sub-section, the term "qualified component corporation" means a component corporation which was in existence on the date of the beginning of the taxpayer's base period,

(e) For the purposes of sub-section (a) (1) of this section—

(1) If neither the, taxpayer corporation nor any of its component corporations was actually in existence on December 31, 1936, the excess profits net income of each such corporation for each base period year at no time during which any of such corporations was actually in existence shall (except in the case of a corporation which became a component corporation of its acquiring corporation before the beginning of the acquiring corporation's first taxable year which began in 1940) be an amount equal to 8 per centum of the excess of --

(A) in the case of any such corporation to which paragraph (2) is not applicable, the daily invested capital of such corporation for the first day of its first taxable year under this sub-chapter beginning in 1940 over

(B) an amount equal to the same percentage of such daily invested capital as would be applicable under section 720 in reduction of the average invested capital of such corporation for the last tax-

able year beginning in 1939 if such section had been applicable to such year (computed as if the admisible and inadmissible as sets of any other sech corporation with respect to which it became, in such taxable year, an acquiring corporation, had been held by it).

(2) In case the transaction by which a corporation became a component corporation of its acquiring corporation occurred in the last taxable year of such component corporation beginning in 1939 but on a day in a taxable year of such acquiring corporation beginning in 1940, the excess profits net income of such component corporation for each base period year described in paragraph (1) shall be an amount equal to 8 per centum of the excess of—

(A) the daily invested capital of such component corporation for such day, over

(B) an amount equal to the same percentage of such daily invested capital as would be applicable under section 720 in reduction of the average invested capital of such component corporation for the twelve-month period ending with the preceding day if such twelve-month period constituted a taxable year and such section had been applicable to such taxable year.

(3) In case any corporation described in paragraph (1) owned stock in any other such corporation on the first day of such owning corporation's first taxable year under this sub-chapter beginning in 1940, the amount computed under sub-paragraphs (A) and (B) of paragraphs (1) and (2) with respect to such corporations shall be adjusted, under regulations prescribed by the Commissioner with the approval of the Secretary, to such extent as may be necessary to prevent the excess profits net income of such corporations for the base period years described in paragraph (1) from reflecting money or property having been paid in by either of such corporations to the other for stock or as paid-in surplus or as a contribution to capital, or from reflecting stock of either having been paid in for stock of the other or as paid-in surplus or as a contribution to capital. For the purposes of this paragraph, stock in either such corporation which has in the hands of the other corporation a basis determined with reference to the basis of stock previously acquired by the issuance of such other corporation's own stock shall be decmed to have been paid in for the stock of such other corporation.

(4) In determin;ng whether, for any taxable year, the deductions plus the credit for dividends received and the credit provided in section 26(a) relating to interest on certain obligations of the United States and its instrumentalities) exceeded the gross income, and in determining the amount of such excess, the adjustments provided in section 711(b) (1) shall be made.

(f) (1) If after December 1945.

(A) the taxpayer acquired stock in another corporation, and thereafter such other corporation became a component corporation of the taxpayer, or

(B) a corporation (hereinafter called "first corporation" acquirep stock in another corporation (hereinafter called "second corporation"), and thereafter the first and second corporations became component corporations of the taxpayer, then to the extent that the consideration for such aquision was not the issuance of the taxpayer's or first corporation's, as the case may be, own stock, the Supplement. A average base period net income of the tax-payer shall be reduced, and the transferred capital addition and reduction adjusted, inrespect of the income and capital addition and reduction of the corporation whose stock was so acquired and in respect of the income

and capital addition and reduction of any other corporation which at the time of such acquisition was connected directly or indirectly through stock ownership with the corporation whose stock was so acquired and which thereafter became a component corporation of the taxpayer, in such amounts and in such manner as shall be determined in accordance with regulations prescribed by the Commissioner with the approval of the Secretary. For the purposes of this paragraph, stock which has, in the hands of the taxpayer or first corporation, as the case may be, a basis determined with reference to the basis of stock previously acquired by the issuance of the tax-payer's or first corporation's as the case may be, own stock, shall be considered as having been acquired in consideration of the issuance of the tax-payer's or first corporation's, as the case may be, own stock.

(2) If during the taxable year for which tax is computed under this sub-chapter the taxpayer acquires assets in a transaction which constitutes it an acquiring corporation, the amount includible under sub-section (a), attributable to such transaction, shall be limited to an amount which bears the same ratio to the amount computed without regard to this sub-section as the number of days in the taxable year after such transaction bears to the total number of days in such taxable year.

(g) In the case of a partnership which is a component corporation by virtue of section 740(b) (5), the computations required by this Supplement shall be made, under rules and regulations prescribed by the Commissioner with the approval of the Secretary, as if such partnership had been a corporation. For the purpose of such computations, in making the adjustment for income taxes required by section 711(b) (1) (A), the partnership so regarded as a corporation shall be considered as having distributed all its net income as a dividend

(h) **Increased Earnings in Last Half of Base Period.**—

(1) **General Rule**.—The Supplement A average base period net income determined under this sub-section shall be computed by ascertaining for each half of the base period the sum of the plus amounts determined under sub-section (a) reduced if for any year in such half a minus amount was determined by the minus amount for such year. If the amount ascertained for the second half exceeds the amount ascertained for the first half, the Supplement A average base period net income shall be the sum, divided by two, of the amount so ascertained for the second half plus one-half of such excess, except that it shall not exceed the largest plus amount determined under sub-section (a) with respect to any base period year.

(2) **Limitation on amount includible for certain taxable years ending after may 31, 1940.**—For the purposes of this sub-section the excess profits net income of any corporation for any taxable year beginning in 1939 and ending after May 31, 1940, shall in no case exceed an amount computed as follows :

(A) By reducing the excess profits net income by an amount which bears the same ratio thereto as the number of months afier May 31, 1940, bears to the total number of months in such taxable year ; and

(B) By adding to the amount ascertained under sub-paragraph (A) an amount which bears the same ratio to the excess profits net income for the last preceding taxable year as such number of months after May 31, 1940, bears to the number of months in such preceding year. The amount added under this sub-parabraph shall not exceed the amount of the excess profits net income for such last preceding taxable year.

(C) If the number of months in such preceding taxable year is less than such number of months after May 31, 1940, by adding to the

amount ascertained under sub-paragraph (B) an amount which bears the same ratio to the excess profits net income for the second preceding taxable year as the excess of such number of months after May 31, 1940, over the n umber of months in such preceding taxable year bears to the number of months in such second preceding taxable year.

***Sec. 743.—NET CAPITAL CHANGES.**

(a) **Taxpayer using this Supplement.**—For the purposes of section 713 (g), if the transaction with constitutes the taxpayer an acquiring corporation occurs in a taxable year of the taxpayer which begins after 31st December 1939, and the taxpayer's average base period net income is computed under section 742, the following rules shall apply in computing the daily capital addition and reduction of the taxpayer for each day after such transaction :

(1) The transferred capital addition or reduction of the component corporation shall be treated as if it were a capital addition or reduction as the case may be of the taxpayer.

(2) The transferred capital addition of the component corporation shall be its daily capital addition as of the time immediately before the transaction [computed under section 713 (g), but without regard to its reduction under ths fourth sentence of paragraph (3) on account of excluded capital, but with the application of paragraph (6) of this sub-section.]

(3) The transferred capital reduction of the component corporation shall be its daily capital reduction as of the time immediately before the transaction [computed under section 713 (g) but with the application of paragraph (7) of this sub-section.]

(4) In computing the daily capital addition of the taxpayer, money or property paid in to the taxpayer by any of its component corporations, and property consisting of stock in any such component corporation paid in by share-holders of such component corporation, shall be disregarded.

(5) In computing the daily capital reduction of the taxpayer, distributions by the taxpayer to any of its component corporations not out of earnings and profits shall be disregarded.

(6) In computing the transferred capital addition of the component corporation, money or property paid in to such component corporation by the taxpayer or any other component corporation and property consisting of stock in the the taxpayer or any other component corporation paid in by share-holders of the taxpayer or other component corporation, shall be disregarded.

(7) In computing the transferred capital reduction of the component corporation, distributions by such component corporation to the taxpayer or any other component corporation shall be disregarded.

(8) The daily capital addition of the taxpayer to which any amount is added under paragraph (1) shall be the amount thereof computed before its reduction under the fourth sentence of section 713 (g) (3) on account of excluded capital.

(b) **Rule where Acquiring Corporation is Component of Taxpayer.**—In cases where an acquiring corporation is a component of the taxpayer, and the transaction which constitutes such corporation an acquiring corporation occurs in a taxable year of such corporation which begins after 31st December 1939, for the purpose of determining the daily capital addition or reduction of the taxpayer the above rules shall be applied in a similar manner to determine the daily capital addition or reduction of such acquiring corporation for each day after such transaction.

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*Added by Sec. 201, Second Rev. Act 1940 ; Amended by Sec. 4, Excess Profits Tax Amendments 1941, and by Sec, 228 (d), Rev, Act 1942.

*Sec. 744. FOREIGN CORPORATIONS.

The term "corporation" as used in this Supplement does not include a foreign corporation.

Supplement B—Highest Bracket Amount and Invested Capital. (Not applicable to taxable years under these regulations (sec. 229, Rev. Act 1942.)

Supplement C—Invested Capital in Connection with Certain Exchanges and Liquidations

†Sec. 760.—EXCHANGES.

(a) **Definitions, etc.**—For the purposes of this section—

(1) **"Exchange", "transferor" and "transferee".**—The term "exchange" means a transaction by which one corporation (hereinafter called "transferee") receives property of another corporation (hereinafter called "transferor") and the basis of the property received, in the hands of the transferee, for the purposes of section 718 (a) is determined by reference to the basis in the hands of the transferor.

(2) **Determination of basis of property received.**—The basis, in the hands of the transferee, of the property of the transferor received by the transferree upon the exchange shall be determined in accordance with section 718 (a).

(b) **Rule.**—In the application of section 718 (a) to a transferee upon an exchange in determining the amount paid in for stock of the transferee, or as paid in surplus or as a contribution to capital of the transferee, in connection with such exchange, only an amount shall be deemed to have been so paid in equal to the excess of the basis in the hands of the transferee of the property of the transferor received by the transferee upon the exchange over the sum of—

(1) The amount of any liability of the transferor assumed upon the exchange and of any liability subject to which such property was so received, plus

(2) The amount of any liability of the transferee [not arising out of any liability described in paragraph (1)] constituting consideration for the property so received, plus

(3) The aggregate of the amount of any money and the fair market value of any other property [other than such stock and other than property described in paragraphs (1) and (2) transferred to the transferor.

(c) **Reduction in daily invested capital.**—In the application of section 717 to a transferee upon an exchange, the daily invested capital for any day after such exchange shall be reduced by an amount equal to the amount by which the sum of the amounts specified in paragraphs (1), (2) and (3) of sub-section (b) exceeds the basis in the hands of the transferee of the property of the transferor received upon the exchange.

†Sec. 761. INVESTED CAPITAL ADJUSTMENT AT THE TIME OF TAX-FREE INTERCORPORATE LIQUIDATION.

(a) **Definition of Intercorporate Liquidation.**—As used in this section, the term "intercorporate liquidation" means the receipt (whether or not after Dec. 31 1941) by a corporation (hereinafter called the "transferee") of property in complete liquidation of another corporation (hereinafter called the "transferor") to which

(1) the provisions of section 112(b) (6), or the corresponding provision of a prior revenue law, is applicable or

(2) a provision of law is applicable prescribing the nonrecognition of gain or loss in whole or in part upon such receipt (including a provision of the

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* Added by Sec. 201 Second Rev. Act 1940).

†Added by Sec. 230 (a). Rev. Act 1942

regulations applicable to a consolidated income or excess profits tax return but not including section 112(b) (7), (9), or (10) or a corresponding provision of a prior revenue law),

but only if none of such property so received is a stock or a security in a corporation the stock or securities of which are specified in the law applicable to the receipt of such property as stock or securities permitted to be received (or which would be permitted to be received if they were the sole consideration) without the recognition of gain.

(b) **Definition of Plus Adjustment and Minus Adjustment.**—For the purposes of this section—

(1) **Plus adjustment.**—The term "plus adjustment" means the amount, with respect to an intercorporate liquidation, determined to be equal to the amount by which the aggregate of the amount of money received by the transferee in such intercorporate liquidation, and of the adjusted basis at the time of such receipt of all property (other than money) so received, exceeds the sum of—

(A) the aggregate of the adjusted basis of each share of stock with respect to which such property was received; such adjusted basis of each share to be determined immediately prior to be receipt of any property in such liquidation with respect to such share, and

(B) the aggregate of the liabilities of the transferor assumed by the transferee in connection with the receipt of such property, of the liabilities (not assumed by the transferee) to which such property so received was subjected, and of any other consideration (other than the stock with respect to which such property was received) given by the transferee for such property so received.

(2) **Minus Adjustment.**—The term "minus adjustment" means the amount, with respect to an intercorporate liquidation, determined to be equal to the amount by which the sum of—

(A) the aggregate of the adjusted basis of each share of stock with respect to which such property was received; such adjusted basis of each share to be determined immediately prior to the receipt of any property in such liquidation with respect to such share and

(B) the aggregate of the liabilities of the transferor assumed by the transferee in connection with the receipt of such property, of the liabilities (not assumed by the transferee) to which such property so received was subject, and of any other considered (other than the stock was with respect to which such property was received) given by the transferee for such property so received exceeds the aggregate of the amount of the money so received and of the adjusted basis, at the time of receipt, of all property (other than money) so received.

(3) **Rules for Application of paragraph (1) and (2).**—In determining the plus adjustment or minus adjustment with respect to any share, the computation shall be made in the same manner as is prescribed in paragraphs (1) and (2) of this subsection, except that there shall be brought into account only that part of each item which is determined to be attributable to such share.

(c) **Rules the Application of this Sections.—**

(1) **Stock Having Cost Basis.**—The property received by a transferee in an incorporate liquidation attributable to a share of stock having in the hands of the transferee a basis determined to be a cost basis, shall be

considered to have, for the purposes of subsection (b), an adjusted basis at the time so received determined as follows:

(A) The aggregate of the property (other than money) held by the transferor at the time of the acquisition by the transferee of control of the transferor (or, if such share was acquired after the acquisition of such control, at the time of the acquisition of such share, or, if such control was not acquired, at the time immediately prior to the receipt of any property in the intercorporate liquidation in respect of such share) shall be deemed to have an aggregate basis equal to the amount obtained by (I) multiplying the amount of the adjusted basis at such time of such share in the hands of the transferee by the aggregate number of share units in the transferor at such time (the interest represented by such share being taken as the share unit), and (ii) adjusting for the amount for the money on hand and the liabilities of the transferor at such time.

(B) The basis which property of the transferor is deemed to have under subparagraph (A) at the time therein specified shall be used in determining the basis of property subsequently acquired by the transferor the the basis of which is determined with reference to the basis of property specified in subparagraph (A)

(C) The basis which property of the transferor is deemed to have under subparagraph (A) and (B) at the time therein specified shall be used in determining all subsequent adjustment to the basis of such property.

(D) The property so received by the transferee shall be deemed to have, at the time of its receipt, the same basis it is deemed to have under the foregoing provisions of this paragraph in the hands of the transferor, or in the case of property not specified in subparagraph (A) or (B), the same basis it would have had in the hands of the transferor.

(E) Only such part of the aggregate property received by the transferee in the intercorporate liquidation as is attributable to such share shall be considered as having the adjusted basis which property is deemed to have under subparagraphs (A) (B), (C), and (D) of this paragraph.

(2) **Basis of Stock not a cost Basis.**—The property received by a transferee in an intercorporate liquidation attributable to a share of stock having in the hands of the transferee a basis determined to be a basis other than a cost basis shall, for the purposes of sub-section (b), be considered to have, at the time of its receipt, the basis it would have had had the first sentence of section 133 (a) (15) been applicable.

(3) **Definition of control** —As used in sub-section, the term "control" means the ownership of stock possessing at least 80 per centum of the total combined voting power of all classes of stock entitled to vote and the ownership of at least 80 per centum of the total number of shares of all other classes of stock (except non-voting stock which is limited and preferred as to dividends), but only if in both cases such ownership continues untill the completion of the intercorporate liquidation.

(d) **Adjustment of Equity Invested Capital.**—If property is received by the transferee in an intercorporate liquidation, in computing the equity invested capital of the transferee for any day following the completion of such intercorporate liquidation—

(1) with respect to any share of stock in the transferor having in the hands of the transferee, immediately prior to the receipt of any property in such intercorporate liquidation. a basis determined to be a cost basis, the earnings and profits or deficit in earnings and profits of the transferee shall be computed as if on the day following the completion of such intercorporate liquidation the transferee had realized a recognized gain equal to the amount of the plus adjustment in respect of such share, or had sustained a recognized loss equal to the amount of the mines adjustment in respect of such share ;

(2) with respect to any share of stock in the transferor having in the hands of the transferee, immediately prior to the receipt of any property in such intercorporate liquidation, a basis determined to be a basis other than a cost basis, there shall be treated as an amount includible in the sum specified in section 718(a) the amount of the plus adjustment with respect to such share, or as an amount includible in the sum specified in section 718(b) the amount of the minus adjustment with respect to such share.

(e) **Invested Capital Basis** —The adjusted basis which property received by the transferee in an incorporate liquidation is considered to have under the provisions of sub-section (c) at the time of its receipt shall be there after treated as the adjusted basis, in lieu of the adjusted basis otherwise prescribed, in computing any amount, determined by reference to the basis of such property in the hands of the transferee, entering into the computation of the invested capital of the transferee, or of any other corporation the computation of the invested capital of which is determined by reference to the basis of such property in the hands of the transferee.

(f) **Statutory Mergers and Consolidations.**—If a corporation owns stock in another corporation and such corporations are merged or consolidated in a statuary merger or consolidation, then for the purposes of this section and section 718 such stock shall be considered to have been acquired (in such statutory merger or consolidation) by the corporation resulting from the statutory merger or consolidation, and the properties of such other corporation attributable to such stock to have been received by such resulting corporation as a transferee from such other corporation as a transferor in an intercorporate liquidation.

(g) **Determinations.**—

(g) **Regulations** —Any determination which is required to be made under this section (including determination in applying this section in cases where there is a series of transferees of the property and cases where the stock of the transferor is acquired by the transferee from another corporation, and the determinations of the basis and adjusted basis which property or items thereof have or are considered to have) shall be made in accordance with regulations which shall be prescribed by the Commissioner with the approval of the Secretary. If the transferor or the transferee is a foreign corporation, the provisions of this section shall apply to such extent and under such conditions and limitations as may be provided in such regulations.

(2) **Application to liquidation extending over long period.**—The Commissioner is authorised to prescribe rules similar to those provided in this section with respect to the days within the period beginning with the date on which the first property is received in the intercorporate liquidation and ending with the day of its completion, and the extent to which, and the conditions and limitations under which, such rules are to be applicable.

SUB-PART III--POST-WAR REFUND OF EXCESS PROFITS TAX.

Sec. 780—POST-WAR REFUND OF EXCESS PROFITS TAX.

(a) **In General.**—The Secretary of the Treasury is authorized and directed to establish a credit to the account of each taxpayer subject to the tax imposed under this subchapter, for each taxable year ending after December 31, 1941 (except in the case of a taxable year beginning in 1941 and ending before July 1, 1942), and not beginning after the date of cessation of hostilities in the present war, of an amount equal to 10 centum of the tax imposed under this subchapter for each such taxable year. For the purposes of this part, in the case of a taxable whose tax is determined under section 710(a)(3), the term "tax imposed under this subchapter" means the excess of the tax imposed by such section 710(a)(3) over the tax that would be imposed if such section 710 (a) (3) were not applicable.

(b) **Application of Credit to Purchase of Bonds.**—Within three months after the payment of the amount of the excess profits tax shown on the return for a taxable year to which subsection (a) applies (or, if such taxable year begins or ends in 1942, within one year after payment of the excess profits tax shown on the return for such year(, if the payment is made before three months before the date of maturity of bonds for such year under sub-section (c), there shall be issued to and in the name of the taxpayer bonds of the United States in an aggregate amount equal to 10 per centum of the tax paid in respect of which a credit is provided under subsection (a), and the credit established under subsection (a) for such taxable year is hereby made available for the purchase of such bonds.

(c) **term and Maturity of Bonds** —The bonds provided for in sub-section (a) shall be issued under the authority and subject to the provisions of the Second Liberty Bond Act, as amended, and the purposes for which bonds may be issued under such Act are extended to include the purposes for which bands are required to be issued under this section. Such bonds shall bear no interest, shall be nonnegotiable, and shall not be transferable by sale, exchange, assignment: pledge, hypothecation, or otherwise, on or before the date of cessation of hostilities in the present war, but after said date, such bonds shall be negotiable, and may be sold, exchanged, pledged, assigned, hypothecated, or otherwise transferred, with restriction, and shall be redeemable (at the option of the United States) in whole or in part upon three months' notice. Such bonds for any taxable year to which this section applies shall mature on the last day of that calendar year, beginning after the date of cessation of hostilities in the present war, which is shown in the following table to be applicable to such bonds for such year:

Bonds purchased with the credit for any taxable year beginning	Calendar year (beginning after cessation of hostilities) on last day of which bonds mature
Within the calendar year 1941 or 1942	2nd
Within the calendar year 1943	3rd
Within the calendar year 1944	4th
After December 31, 1944	5th

(d) **Exception of Proceeds From Tax.**—The proceeds of any such bond upon redemption shall not be included in gross income.

Date of Cessation of Hostilities in the Present War—As used in this section, the term "date of cessation of hostilities in the present war" mean the dote on which dostilities in the present war between the United States and the governments of Germany, Japan, and Italy cease, as fixed by proclamation of the President or by concurrent resolution of the two Houses of Congress, whichever date is ealier, or in case the hostilities between the United States and such governments do not cease

[Added by Sec. 250, Rev, Act 1942; Amended by Sec, 2, Public Law 21, (Seventy-Eighth Congress).]

at the same time, such date as may be so fixed as an appropriate date for the purposes of this section

Sec. 78.—SPECIAL RULES FOR APPLICATION OF SECTION 80.

(a) **Effect of Deficiencies.**—If a deficiency in respect of the excess profits tax for any taxable year for which a credit is provided in section 780(a) is paid by the taxpayer before three months before the date of maurity of the bonds for such year, an amount of such credit equal to 10 per centum of the excess of the tax imposed by this subchapter on the basis of which the deficiency was determined, over the tax imposed by this subchapter as yreviously computed and paid shall be available, as provided in section 780(b), for the purchase of bonds as pravided under such section, and there shall be issued to the tax-payer bonds under such section in an amount equal to such excess and with the same maturity as in the case of bonds issued with respect to the taxable year with respect to which the defciency is determined.

(b) **Effect or Refunds.**—If an overpayment of the tax imposed by this subchapter for any taxable car for which a credit is provided in section 780(a) is refunded or credited to the tax-payer under the internal revenu laws, the credit, if any, provided in such section then existing in favour of the tax-payer shall be reduced by an amount equal to 10 per centum of the excess of the tax imposed by this subchapter on the basis of which such tax (in respect of which thet internal revenue refund or credit was made) was previously computed and paid, over the tax imposed by this sub-chapter as determined in connection with the determination of the amount of the amount of the overpayment. In such a case, if such credit provided in section 780 (a) is less than the amount by which it is repuired to be reduced, or if there is no such credit then existing in favor of the tax-payer, the excess of such amount over the amount of such credit, if any, shall be carried forward as a charge against the tax-payer to be applied in reduction of a subsequent credit under section 780(a); and if no such eubsequent credit is made in favor of the tax payer, the amount of such cha ge (without interest) shall be paid by the tax-payer to the United States or the amount of bounds previously issued to the tax-payer under section 780(b) shall be adjusted on account of such charge.

(c) **Tax Payments after Cut-off Date.**—In the case of a payment of the tax imposed by this sub-chapter shown on the return for any taxable year for which a credit is provided in section 780(a), or the payment of a deficiency in res ect of such tax for any such taxable year, after the date prescribed in section 780(b) or 781(a) but before the date of maturity of the bonds with respect to such taxable year under sec. 780 (c), the amount of the credit under section 780(a) for such taxable year attributable to such payment shall, so far as practicable, be available, as provided in sec. 780 (b), for the purchase of bonds as provided under such section, and so far as practicable, there shall be issued to the tax-payer bonds under such section with the same maturity as bonds issued with respect to such taxable year. To the extent that it is not practicable to issue bonds against such amount of the credit, the tax-payer shall be paid in cash. In case after the date of maturity of the bonds of any taxable year under section 780(c) there is any credit under section 780 (a) remaining in favor of the tax-payer, attributable to such year, such remainder shall be paid to the tax-payer in cash. No amount of any payment made under this sub-section to a tax-payer shall be included in gross income.

(d) **Limitation.**—The credit under section 780(a) for any taxable year shall not be greater than the excess of the amount of the tax paid under this sub-chapter to the United States (and not credited or refunded under the internal revenue laws) in respect of such year over the amount of tax which would be payable to the United States if the excess profits tax rate were 8I per centum, or if the limitation of section 710 is applicable if the amount determined under such section were reduced by 10 per centum.

[Added by Sec, 250, Rev. Act 1942.]

***Sec. 782.—REGULATIONS.**

The Secretary of the Treasury is authorized to prescribe, from time to time, such rules and regulations as may be necessary to carry out the preceding provisions of this Part.

***Sec. 783.—CREDIT FOR DEBT RETIREMENT.**

General Rule.—An amount equal to 40 per centum of the amounts paid during the taxable year in repayment of the principal of indebtedness shall, at the election of the taxpayer made in its return for such year, be allowed as a credit against the tax for such year imposed by this sub-chapter.

(b) **Limitations.**—The credit under sub-section (a) with respect to any taxable year shall in no event exceed whichever of the following amounts is the lesser –

(1) An amount equal to 10 per centum of the tax imposed under this sub-chapter for the taxable year.

(2) An amount equal to 40 per centum of the amount by which the smallest amount of indebtedness during the period beginning September 1, 1942, and ending with the close of the preceding taxable year exceeds the amount of indabtedness as of the close of the taxable year.

(3) In case such taxable year begins in 1942 prior to September 2, 1942, and ends after September 1, 1942, an amount equal to 40 per centum of the amount by which the amount of indebtedness as of September 1, 1942, exceeds the amount of indebtedness as of the close of the taxable year.

(4) In case such taxable year begins in 1941 or ends before September 1, 1942, zero.

No interest shall be allowed or paid by the United States on account of any overpayment of tax attributable to any credit allowed under this section.

(c) **Reduction of Credit and of Bonds Outstanding Under Section 780** – If a credit is allowed for debt repayment in a taxable year pursuant to this section, the amount of such credit or refund shall be deducted from the credit under section 780(a) and the amount of bonds issued under section 780 shall to the extent necessary, be correspondingly adjusted.

(d) **Definition of Indebtedness.**—For the purposes of this section the term "indebtedness" means any indebtedness of the tax payer or for which the tax-payer is liable evidenced by a bond, note debenture, bill of exchange, certificate or other evidence of indebtedness, mortgage, or deed of trust.

*(Added By Sec. 250, Rev. Act 1942.)

U. S. A. REVENUE ACT OF 1934

(CERTIFIED IN THE SENATE OF UNITED FEBRUARY 7, 1944)

TITLE EXCESS PROFITS TAX AND POST-WAR REFUND OF EXCESS PROFITS TAX.

PART I—EXCESS PROFITS TAX AMENDMENTS

Sec. 201—TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE.

Except as otherwise expressly provided, the amendments made by this title shall be applicable only with respect to taxable years beginning after 31st December 1943.

Sec. 202—INCREASE IN EXCESS PROFITS TAX RATE.

(a) **In General**—Section 710 (a) (1) (A) (relating to the rate of excess profits tax) is amended to read as follows :

"(A) 95 per cent of the adjusted excess profits net income, or"

(b) **Technical Amendment Relating to Public Utilities**—Section 710 (a) (1) (B) (relatiug to the 80 per cent. limitation) is amended by inserting before the period at the end thereof the following : "and without regard to 80 per cent. of the credit provided in section 26 (h) (relating to credit for dividends paid on certain preferred stock)".

(c) **Credit for income subject to Excess Profits Tax**— Section 26 (e) (relating to the credit for income subject to the excess profits tax) is amended by striking out "90 per cent." and inserting in lieu thereof "95 per cent.".

Sec. 203.—CERTAIN FISCAL YEAR TAXPAYERS.

(a) **Computation of tax for taxable years beginning in 1943 and ending in 1944.**—Section 710 (a) (relating to imposition of excess profits tax) is amended by inserting at the end thereof the following new paragraph :

' (6) **Taxable years beginning in 1943 and ending in 1944.**—In the case of a taxable year beginning in 1943 and ending in 1944, the tax shall be an amount equal to the sum of—

"(A) that portion of a tentative tax, computed as if the law applicable to taxable years beginning on 1st Januray 1943, were applicable to such taxable year, which the number of days in such taxable year prior to 1st January 1944, bears to the total number of days in such taxable year, plus

"(B) that portion of a tentative tax, computed as if the law applcable to taxable years beginning on 1st January 1944, were applicable to such taxable year, which the number of days in such taxable year after 31st December 1943, bears to the total number of days in such taxable year."

(b) **Computation of tax for taxable year beginning in 1941 and ending after 30th June 1942.**—Section 710 (a) (3) (relating to certain fiscal year taxpayers) in amended to read as follows :

"(3) **Taxable years beginning in 1941 and ending after 30th June 1942**—In the case of a taxable year begonning in 1941 and ending after 30th June 1942, the taxa shall be an amunt equal to the sum of—

" (A) that portion of a tentative tax under this sub chapter, computed as if the applicable to taxable years beginning on 1st January 1941, were applicable to such taxable year, which the number

of days in such taxable year before 1st July 1942, bears to the total number of days in such taxable year, plus

"(B) that portion of a tentative tax under this sub-chapter, computed as if the law applicable to taxable years beginning on 1st January 1941, were applicable to such taxable year, but as if the amendments made by section 105 (a), (b) (other than those relating to dividends on the proferred stock of public utilities), (c), (d), and (e) (1), 202 and 206 of the Revenue Act of 1942 were applicable to such taxable year, which the number of days in such taxable year after 30th June 1942, bears to the total number of days in such taxeble year."

(c) **Taxable years to which applicable**.—The amendment made by sub-section (a) shall be applicable only to taxable years beginning in 1943 and ending in 1944. The amendments made by sub-section (b) shall be applicable only to taxable years beginning in 1941 and ending after 30th June 1942.

Sec. 204.—INCRESE IN SPECIFIC EXEMPTION.

(a) **In General**.—Section 710 (b) (1) (relating to the specific exemption) is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

(b) **Return Requirement**.—Section 729 (b) (2) (relating to return requirement) is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

(c) **Consolidated Returns**.—Section 141 (c) (relating to computation of tax in case of consolidated return) is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

Sec. 205—REDUCTION OF EXCESS PROFITS CREDIT BASED ON INVESTED CAPITAN IN CERTAIN BRACKETS.

Section 714 (relating to the excess profits credit based on invested capital) is amended to read as follows :

Sec 714.—EXCESS PROFITS CREDIT-BASED ON INVESTED CAPITAL.

"The excess profits credit, for any taxable year, computed under this section, shall be the amount shown in the following table:

"If the invested capital for the taxable year, determined under section 715 is :	The credit shall be :
Not over $5,000,000.....	8% of the invested capital.
Over $5,000,000 but not over $10,000,000	$400,000, plus 6% of the excess over $5,000,000.
Over $10,000,000..... ...	$700,000, plus 5% of the excess over $10,000,000."

Sec. 206.—PUBLICITY OF RELIEF GRANTED UNDER SECTION 722.

(a) **In General**.—Section 722 is amended by inserting at the end thereof the following new sub-section :

"(g) The Commissioner shall compile for each fiscal year beginning after June 30, 1941, by internal revenue districts, and alphabetically arranged, all cases in which relief has been allowed during such year under the provisions of this section by the Commissioner and by The Tax Court of the United States, as the case may be. Such compilation shall contain the name and address of each taxpayer to which relief has been so allowed, the business in which the taxpayer is engaged, the amount of the excess profits credit before such allowance, the increase in such credit claimed, the increase in such credit allowed, and the amount of the gross

reduction in the tax under this sub-chapter and of the gross increase in the tax under Chapter 1, which results from the operation of this section. In the case of relief allowed by the Tax Court of the United States, the Commissioner shall also set forth the data previously reported under this sub-section with respect to relief previously allowed in such case by the Commissioner. Such compilation shall be published in the Federal Register."

(b) **Taxable Year to Which Applicable.**— The compilation of cases required by the amendment made by section (a) shall not be limited to cases relating to taxable years beginning after December 31, 1943.

Sec. 207.—STRATEGIC MINERALS.

(a) **In General.**—Section 731 (relating to corporations engaged in mining certain strategic minerals) is amended by inserting after "tungsten", the following : "fluorspar, flake graphite, vermiculite,".

(b) **TaxableYears to Which Applicable.**—The amendment made by sub-section (a) insofar as it relates to flake graphite shall be applicable with respect taxable years beginning after December 31, 1942.

Sec. 208.—NONTAXABLE INCOME OF CERTAIN INDUSTRIES DEPLETABLE RESOURCES.

(a) **Technical Amendment** —So much of section 735 (relating to nontaxable income from certain mining and timber operations) as precedes sub-section (a) is amended to read as follows :

Sec 735.—NON-TAXABLE INCOME CERTAIN MINING AND TIMBER OPERATIONS AND FROM NATURAL GAS PROPERTIES.

(b) **Definitions** —

(1) "**Lesso**", "**natural gas company**", etc.—Section 735 (a) (1), (2), (3), (4), and (5) (defining terms used) are respectively amended to read as follows :

"(1) **Producer ; lessor : natural gas company.**—The term 'produser' means a corporation which extracts minerals from a mineral property, or which cuts logs from a timber block, in which an economic interest is owned by such corporation. The term 'lessor' means a corporation which owns an economic interest in a mineral property or a timber block, and is paid in accordance with the number of mineral units or timber units recovered therefrom by the person to which such property or block is leased. The term 'natural gas company' means a corporation engaged in the withdrawl, or transportation by pipe line, of natural gas.

"(2) **Mineral unit, natnral gos unit' and timber unit.**—The term 'mineral unit' means a unit of metal, coal, or nonmetallic substance in the minerals recovered from the operation of a mineral property. The term 'natural gas unit' means a unit of natural gas sold by a natural gas company. The term 'timber unit' means a unit of timber recovered from the operation of a timber block.

"(3) **Excess output.**—The term 'excess output' means the excess of the mineral units, natural gas units, or timber units for the taxable year over the normal output.

"(4) **Normal output.**—The term 'normal output' means the average annual mineral units, or the average annual timber units, as the case may be, recovered in the taxable in the taxable years beginnina after December 31, 1935, and not beginning after December 31, 1939 (hereinafter called 'base period'), of the person owing the mineral property or the timber block (whether or not the taxpayer). The 'normal output', in the case of a natural gas

company, means the average annual natural gas unit sold in the taxable years beginning after December 31, 1935, and not beginning after December 31, 1939 (hereinafter called called 'base period'), of the persou owing the natural gas property (whether or not the taxpayer). The average annual mineral units, natural gas units, or timber units shall be computed by dividing the aggregate of such mineral units, natural gas units, or timber units for the base period by number of months for which the miniral property, natural gas praperty, or timber block was in operation during the base period and by multipying the amount so ascertained by twelve. In any case in which the taxpayer establishes, under regulations prescribed by the Commissioner with the approval of the Secretary, that the operation of any mineral property, natural gas property, or timber block is normally prevented for a speeified period each year by physical events outside the control of the taxpayer, the number of months during which such mineral propery, natural gas property, or timber block is regularly in operation during a taxable year shall be used in computing the average annual mineral units, natural gas units, or timber units, instead of twelve. Any mineral property, natural gas property, or timber block, which was in oporation for less than six months during the base period, shall, for the purposes of this section, be deemed not to have been in operation during the base period.

"(5) **Natural gas property.**—The term 'natural gas property' means the property of a natural gas company used for the withdrawal, storage, and transportation by pipe line, of natural gas, excluding any part of such property which is an emergency facility under section 124."

(2) **Timber block.** —Section 735 (a) (8) (defining ' timber block") is amended to read as follows :

"(8) **Timber block**—The term 'timber block' means an operation unit which includes all the taxpayer's timber which would logically go to a single given point of manufacture."

(3) **Unit net income**—Section 735 (a) (12) (defining "unit net income") is amended by inserting after the period at the end thereof the follawing: "In respect of a natural gas property, the term 'unit net income' means the amount ascertained by dividing the net income, computed in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, from such property during the taxable year by the numbe of natural gas units sold in such year."

(c) **Nontaxable income** —Section 735 (b) (relating to nontaxable income from exempt excess output) is amended by inserting at the end thereof the following :

"(4) **Coal and iron mines and timber properties not in operation during base period** —For any taxable year, the nontaxable income from exempt excess output of a coal minning or iron mining property or a timber block, which was not in operetion during the base period, shall be an amount equal to one-sixth of the net income for such taxable year (computed with the allowance for depletion) from the coal mining or iron mining property or from the timber block, as the case may be.

"(5) **Natural gas companis.** In the case of a natural gas company any of the of the natural gas property of which was in operation during the base period, the nontaxable income from exempt excess output for any taxable year shall be an amount equal to the excess output for such year multiplied by one-half of the unit net income for such year."

(d) **Excess profits credit computed under income credit** —Section 711 (a) (1) (I) (relating to nontaxable income of certain industries with depletable resonrces) is amended to read as follows :

"(1) Nontaxable Income of Certain Industries with Depletable Resources.—In the case of a producer of minerals, or a producer of logs or lumber from a timber block, or a lessor of mineral property, or a timber block, as defined in section 735, there shall be excluded nontaxable income from exempt excess output of mines and timber blocks provided in section 735 ; in the case of a natural gas company, as defined in section 735, there shall be excluded nontaxable income from exempt excess output provided in section 735 ; and in the case of a producer of minerals, or a producer of logs or lumber from a timber block, there shall be excluded nontaxable bonus income provided in section 735. In respect of nontaxable bonus income provided in section 735 (c), a corporation described in section 735 (c) (2) shall be deemed a producer of minerals for the purposes of this sub-parapraph."

(e) **Excess profits credit computed under invested capital credit.**—Section 711 (a) (2) (K) (relating to excess profits credit computed under invasted capital credit) is amended to read as follows :

"(K) Nontaxable income of certain industries with Depletable Resources—In the case of a producer of minerals, or a producer of logs or lumber from a timber block, or a lessor of mineral property, or a timber block, block, as defined in section 735, there shall be excluded nontaxable income from exempt excess output of mines and timber blocks provided in section 735 ; in the case of a natural gas company, as defined in section 735, there shall be excluded nontaxable income from exempt excess ouput provided in section 735 ; and in the case of a producer of minerals, or a producer of logs or lumber from a timber block, there shall be excluded nontaxable bonus income provided in scetion 735. In respect of nontaxable bonus income provided in section 735 (c), a corporation described in section 735 (c) (2) shall be deemed a producer of minerals for the purposes of this sub-paragraph."

(f) **Taxable years to which certain Amendments Applicable.**—The amendments made by this section with respect to lessors of mineral properties which were in operation during the base period, and with respect to lessors of timber blocks, as defined without regard to the amendments made by this section, which were in operation during the base period, and with respect to natural gas companies, shall be applicable with respect to taxable years beginning after 31st December 1941.

Sec. 209.—EXEMPT CORPORATIONS.

(a) **Corporations subject to Title IV of the Civil Aeronautics Act of 1938.**—Section 727 (h) (exempting certain corporations subject to Title IV of the Civil Aeronautics Act of 1938) is amended by adding at the end thereof the following new sentence : "Such exclusion from gross income for such year shall also be made in computing the unused excess profits credit adjustment for any other taxable year, but only for the purpose of determining whether the corporation is exempted by this sub-section from the tax imposed by this chapter for such other taxable year."

(b) **Retroactive effect.**—The amendment made by this section shall be effective as if it were a part of the Excess Profits Tax Act of 1940 on the date of the enactment of such Act.

PART II—POST-WAR REFUND OF EXCESS PROFITS TAX

Sec 250.—

(a) **Credit in Case of Fiscal Year Beginning in 1941 and Ending After June 30, 1942.**—The last sentence of section 780 (a) (providing for a post-war refund of excess profits tax) is amended to read as follows: "For the purposes of this part,

in the case of a taxpayer whose tax is determined under section 710 (a) (3), the term tax imposed under this subchapter' means the portion of the tentative tax determined under section 710 (a) (3) (B)."

(b) **Trnsfers to Successors of Taxpayer**.—Section 780 (c) (relating to term and maturity of bonds) is amended by inserting after "pledge, hypothecation, or otherwise" the following: "except to a successor as defined in sub-section (g),"

(c) **Exception of Proceeds From Tax**.—Section 780 (d) (relating to exemption of proceeds of bonds from tax upon redemption) is amended by inserting after "such bond" the following: "paid to the taxpayer".

(d) **Rigdts and Liabilities of Successor**.—Section 780 (relating to post-war refund of excess profits tax) is amended by inserting at the end thereof the following:

"(f) **Rights and Liabilities of Successors of Taxpayer**.—Subject to, and to the extent provided in, regulations prescribed by the Secretary, a successor of the taxpayer shall suceed to all the rights and liabilities of the taxpayer under this part.

"g) **Definition of Successor**'—For the purposes of this part the term 'successor' means such person or persons who succeed, either directly or through one or more other persons, to ownership of property of the taxpayer, as the Secretary may be regulatsons prescribe."

(e) **Effect of refunds**.—Section 781 (b)(relating to effect of refunds) is amended to read as follow:

"(b) **Effect of refunds**.—In the case af an overpayment of the tax imposed by this subchapter for any taxable year for which a credit is provided in section 780 (a), the credit, if any, provided in such section for such taxable year existing in favour of the taxpayer shall be reduced by an amount equal to 10 per centum of the excess of the tax imposed by this subchapter on the bosis of which such tax (in respect of which the internal rovenue refund or oredit is made) was previously computed and paid, over the tax imposed by this subchapter as determined in connection with the determination of the amount of the overpayment. In such a case, if such credit provided in section 780 (a) for such taxable year is less than the amount by which it is required to be reduced, or if there is no such credit then existing in favour of ahe taxpayer, the excess of such amount over the amount of such credit, if any shall constitute a charge against the taxpayer to be applied in reduction of the amount of the bonds previously issued to the taxpayer under section 710 (b) with respect to such taxable year If the bonds issued with respect to such taxable year are not made available for the purpose of such reduction or the amount of such bonds so made available is less than the amount of such charge, such charge or the excess of such charge over the amount of such bonds so made available, as the case may be, shall be applied at the time of the credit or refund (or as of the time of the maturity of bonds issued with respect to such taxable year, if that time ie earlier) in reduction of the amount of the credit or refund of the overpayment of the tax."

(f) **Limitation on post-war Credit**.—Section 781 (d) (relating to the limitation on the post-war credit or refund of excess profits tax) is amended to read as follows:

"(d) **Limitation**,—

"(1) **General rule**.—The credit under section 780 (a) for any taxable year shall not be greater than the excess of the amount of the tax paid under this sub-chapter to the Unised States (and not credited or refunded under the internal revenue laws) in respect of such year over the amount of tax which would be payable to the Unided States if the excess profits tax rate were 85 1/2 per centum, or, if the limitation of section 710 (a) (1) (B) is applicable, if the amount determined under such section were reduced by 10 per centum.

"(2) **Special rule in case of fiscal years beginning in 1941 and ending after 30th June 1942**—In the case of a taxable year beginning in 1941 and ending after 30th June 1942, the credit under section 780 (a) for such taxable year shall not be greater than the excess of the tax paid under this sub-chapter to the United States for such taxable year (and not credited or refunded under the internal revenua laws) over the amount of tax which would be payable to the United States under this sub-chapter if the portion of the tentative tax determined under section 710 (a) (3) (B) were reduced by 10 per centum.

"(3) **Special rule in case of certain fiscal years beginning in 1943**.—In the case of a taxable year beginning in 1943 and ending in 1944, the credit under section 780 (a) for such taxable year shall not be greater than the excess of the tax paid under this sub-chayter to the United States for such taxable year (and not credited or refunded under the internal revenue laws) over the amount which would be payable to the United States if—

"(A) in the computation under section 710 (a) (6) (A) the excess profits tax rate were 81 per cent. or, in case the limitation of section 710 (a) (1) (B) is applicable in such computation, if the amount determined under such section 710 (a, (1) (B) were reduced by 10 per centum, and

"(B) in the computation under section 710 (a) (6) (B) the excess profits tax rate were 85 1/2 per centum, or, in case the limitation of section 710 (a) (1) (B) is applicable in such computation, if the amount determined under such section 710 (a) (1) (B) were reduced by 10 per centum."

(g) **Taxable years to which Applicable**.—The amendments made by sub-sections (b), (c) and (d), and the amendments made by sub section (e) (except with respect to credits or refunds made on or prior to the date of the enactment of this Act) shall be effective as if made by section 250 of the Revenue Act of 1942. The amendment made by sub-section (a), and the amendment made by sub-section (f) inserting a new paragraph (2) of section 781 (d) of the Internal Revenue Code, shall be applicable with respect to taxable years beginning in 1941 and ending after 30th June 1942. The amendment made by sub-section (f) inserting a new paragraph (3) of section 781 (d) of the Internal Revenue Code shall be applicable with respect to taxable years beginning in 1943 and ending in 1944.

Sec. 251.—TECHNICAL AMBNDMENT TO CREDIT FOR DEBT RETIREMENT

(a) **In General**—Section 783 (b) (2) (relating to a limitation on the credit of debt retirement) is amended to read as follow:—

"(2) An amount equal to 40 per centum of the amount by which (A) the amount of indebtedness as of September 1, 1942, or (B) the smallest amount of intebtedness as of the close of any preceding taxable year ending after September 1, 1942, whichever amount is the lesser, exceeds the amount of indebtedness as of the close of the taxable year."

(b) **Taxable Years to which applicable**—The amendment made by subsection (a) shall be applicable with respect to taxable years beginning after September 1, 1942.

(c) **Election with respect to prior Taxable Years**.—If by reason of the amendment made by subsection (a) a taxpayer would be entitled, had the election provided for in section 783 (a) of the Internal Revenue Code been duly made, to take any credit under such section with respect to a taxable year ended prior to the date of the enactment of this Act in any amouni to which such taxpayer would not ba entitled were it not for such amendment, the election of the of the taxpayer to take such credit in such amount may be made within ninety doys after ths date of the enactment of this Act.

CEYLON EXCESS PROFITS DUTY

No. 38 of 1941.

AN ORDINANCE TO MAKE PROVISION FOR THE IMPOSITION AND COLLECTION OF EXCESS PROFITS DUTY.

[*No. 38 of 1941—Date of commencement : 5th October, 1941.*]

[*No. 6 of 1942—Date of commencement : 3rd March, 1942.*]

[*No. 39 of 1942—Date of commencement : 1st October, 1942.*]

[*No. 39 of 1944—Date of commencement : 20th October, 1944.*]

[*Note:*—The amendments and additions indicated asterisks in the Foot note refereneces have retrospective effect from October 4, 1941, by virtue of section 11 of Ordinance No. 39 of 1942, and section 12 of Ordinance No. 39 of 1944.

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Short title.

1. This Ordinance may be cited as the Excess Profits Duty Ordinance, No. 38 of 1941.

Impositien of excess profits duty.

***2.** (1) There shall be changed, levied, and paid on the amount by which the profits arising from any business to which this Ordinance applies (other than the business of an agricultural undertaking or any business of mining plumbago), in any accounting period ending after the first day of January, nineteen hundred and

*(Sec. 2 39 of 1942)

forty-one, exceed, by more than three thousand rupees, the pre-war standard of profits as defined for the purposes of this Ordinance a duty (in the Ordinance referred to as "excess profits duty") of an amount equal to fifty per centum of that excess.

*(1-a) There shall be charged, levied, and paid on the amount by which the profits arising from the business of an agricultural undertaking or any business of mining plumbago, in, any accounting period ending after the first day of January one thousand nine hundred and forty-two, exceed, by more than three thousand rupees, the pre-war standard of profits as defined for the purposes of this ordinance, excess profits duty of an amount equal to fifty per centum of that excess:

†Provided, however, that in the case of any business of mining plumbago, if the taxpayer so elects, the excess profits duty to be charged, levied and paid shall, in lieu of the aforesaid amount, be an amount which—

(*a*) in respect of any accounting period ending on or before the first day of January, one thousand nine hundred and forty-four, is equal to thirty per centum; and

(*b*) in respect of any accounting period ending after the first day of January, one thousand nine hundred and forty-four, is equal to twanty per centum,

of the total profits aring from that business in that accounting period, the amount of such total profits being determined in accordance with section 4 and without regard to provisions of section 11.

(2) For the purposes of this Ordinance, the accounting period shall be taken to be the period for which the accounts of the business have been made up; and where the accounts of the business have not been made up for any definite period to for the period for which they have been usually made up, or where a year or more has elapsed without accounts being made up, the accounting period shall, for the purposes of this Ordinance, be taken to be such period not being more than thirteen months ending on such date as the Commissioner may determine.

(3) Where any accounting perion is a period other than a year, the preceding provisions of this section shall have effect as if there were substitute l for the sum of the three thousand rupees an amount which bears to hat sum the same proportion as the number of days in that period bears to the number of days in the relevant year.

†(4) Where a business was being carried on on the first day of January, 1941, this Ordinance shall apply to the profits therefrom for a period of five years from the date of commencement of the first accounting period Where a business was or is commenced after the first day of January, 1941, this Ordinance shall apply to the profits therefrom for the period from the date of commencement to the 31st day of December, 1945.

*Provided, however, that the preceding provisions of this sub-section shall, in their application in the case of the business of an agricultural undertaking or of any business of mining plumbago, have effect as thaugh—

(*a*) for the references to the first day of January, 1941, there were substituted references to the first day of January, 1942 ; and

(*b*) for the reference to a period of five years there were substituted a reference to a period of four years.

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*(Sec. 2 39 of 1942.)

†(Sec. 2 39 of 1944,)

Businesses to which excess profits duty applies.

3.—(1) The provisions of this Ordinance shall apply to any business of any description (whether continuously carried on or not) which is carried on in Ceylon by any person, whether resident or non-resident, or is owned or carried on in any place other than Ceylon by a person resident in Ceylon, except—

(*a*) any business the profits of which are exempt from income-tax under section 7 of the Income Tax Ordinance ;

*(*b*) any business of life assurance ;

(*c*) any agricultural undertaking for the production of paddy ;

(*d*) any employment by an employer ; and

(*e*) any profession the profits of which are dependent mainly on the personal qualifications of the person by whom the profession is carried on and in which no capital expenditure is required or only capital expenditure of a comparatively small amount.

but including—

(i) the business of any person taking commissions in respect of any transactions or services rendered ; and

(ii) the business of any agent of any description not being a commercial traveller or an agent whose remuneration consists wholly of a fixed and definite sum not depending on the amount of business done or any other contingency ;

*Provided that all businesses of the like nature in one ownership shall be deemed to be one business for the purposes of this Ordinance, so however, that an agricultural undertaking for the production of coconuts shall not be deemed to be of the like nature as an agricultural undertaking for the production of tea, rubber or any other agricultural product.

†(1-A) A business owned by a married woman shall not be deemed to be in the same ownership as a business owned by her husband

(2) Where the functions of a company or body of persons consist wholly or mainly in the holding of investments or immovable property, the holding of the investments or property shall be deemed, for the purposes of this Ordinance, to be a business carried on by the company or body of persons

(3) Where, under the Income Tax Ordinance, the profits of any business or of any part of any business are deemed to arise in or to be derived from Ceylone, that business or part thereof shall, for the purposes of this Ordinance, be deemed to be a separate business carried on in Ceylon.

(4) Where a person resident in Ceylon is a partner in a partnership which carries on a business wholly outside Ceylon, that business shall be deemed to be a business to which this Ordinance applies, but only to the extent of the share or interest therein of the partner who is a person resident in Ceylon.

(5) Where the owner of any agricultural undertaking carries on in connexion with that undertaking any subsidiary undertaking or any manufacturing process such subsidiary undertaking or manufacturing process, as the case may be, shall be deemed to be part of the agricultural undertaking carried on by such owner :

Provided that where such owner purchases more than half the agricultural produce which is dealt with in such undertaking or process, the whole of such undertaking or process shall be deemed to be a business other than an agricultural undertaking.

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*(Sec. 3, 39 of 1942.)
†(Sec. 3, 39 of 1944.)

*(6) In any case where the business of minjng plumbago is carried on on any land, and any person, having any interest in the land whether as owner, lessee, usufructuary mortgagee, trustee, executor or administrator, or being or having been vested with any right to mine plumbagc on that land, receives or is entitled to receive, by way of rent, royalty or otherwise, any payment the amount of which is determined by reference †to the quantity of plumbago won from such land or to the amount of the profits of such business, then notwithstanding that such person may not be a partner in such business, the amount of such payment shall be deemed for the purposes of this Ordinance to be moneys accruing to that person from a business of mining plumbago carried on by him.

*(7) Where any person receives or is entitled to receivo a share in the profits of the business of an agricultural undertaking or any business of mining plumbago, whether as co-owner, joint owner or partner, the Commissioner may in his discretion direct that the share of such person in the profits arising from such business shall be deemed for the purposes of this Ordinance to be the profits of a business separately carried on by that person; and the Proviso to sub-section (1) shall apply accordingly in any such case if any other business of a like nature is carried on by that person.

Determination of profits.

4. (1) The profits arising from any business to which this Ordinance applies shall be separately determined for the purpose of this Ordinance, but shall be so determined in like manner and on the same principles as the profits of the business are or would be determined for the purpose of income tax, subject to the following modifications and general provisions:—

(*a*) Save as is provided in this Ordinance, no deduction or allowance shall made in respect of losses incurred in any other business or in any period other than the accountng period.

(*b*) Sums payable for the accounting period by way of interest on money borrowed for the purposes of the business, or by way of any annuity, ground rent or royalty payable in respect of the business shall be allowed as deduction s in computing the profits:

Provided that no deduction shall be allowed in respect of interest on a loan secured by the hypothecation of assets not forming part of the assets of the business.

(*c*) Deductions for wear and tear, renewals and bad debts, and for other expenses, shall be only of such amount as appears to the Commissioner to be reasonably and properly attributable to the accounting period.

(*d*) Any deduction allowed for the remuneration of directors, managers and and persons concerned in the management of the business shall not, unless the Commissioner otherwise directs, exceed the sums allowed for those purposes in the last pre-war trade year (or a proportionate part thereof as the case may require) where a business has a pre-war trade year; and, where a business has no pre-war trade year, the deduction to be allowed for such remuneration shall be determined by the Commissioner.

(*e*) Where it appears to the Commissioner that any transaction is artificial or fictitious or that any disposition is not in fact given effect to or that any transaction or disposition has been entered into either wholly or partly with a view to the avoidance of excess profits duty, he may direct that such transaction or disposition shall be disregarded for the purposes of the imposition, assessment and recovery of excess profits duty.

*(Sec. 3, 39 of 1942)

†(Sec. 3, 39 of 1944).

(f) Any person dissatisfied with a decision or direction of the Commissioner under paragraph (*d*) or paragraph (*e*) of this section may within fourteen days of the intimation to him of such decision or direction, whether by the issue of a notice of assessment or otherwise appeal by notice in writing to the Financial Secretary against such decision or direction; and the decision of the Financial Secretary upon any such appeal shall be final.

(g) Where in the case of any business:—

*(i.) the pre-war standard of profits is taken to be the percentage standard as hereinafter defined or to be an amount specified in any of the provisions of section 6 (5); and

(ii.) the net result of the business during the three last pre-war trade years has shown a loss; and

(iii.) any part of the profits of that business during an accounting period has been applied in extinction of that loss,

then in determining the profits of that business for such period, a deduction shall be allowed equal to the amount of profits so applied.

*(h) In determining the profits of a business, no account shall be taken of any interest, dividends or rents received from investments or from immovable property except in the case of businesses consisting wholly or mainly of the holding of investments or immovable property.

†For the purposes of this paragraph, "investment" shall be deemed to include moneys which are not required for the purposes of a business, but shall not include any such part of any investments in any loan issued by the Government of Ceylon as may be deemed, under section 10 (5B), to be moneys required for the purposes of a business.

(i) In determining the profits of the first accounting period or of any subsequent accounting period, there shall not be taken into account any sums recovered during any such accounting period in respect of bad or doubtful debts for which deductions were allowed in determining for the purposes of the Income Tax Ordinance the profits of any period prior to the first accounting period; but any sums which may be recovered after the end of any such accounting period in respect of bad or doubtful debts for which deductions were made in determining the profits of that accounting period shall be liable to excess profits duty as if they formed part of the profits of that accounting period.

The preceding provisions of this paragraph shall have no application in the determination of the profits of any pre-war trade year.

(j) In case of any contract extending beyond one accounting period from the date of its commencement to the completion thereof and only partially performed in any accounting period, there shall (if the Commissioner so directs) be attributed to each of the accounting periods in which such contract was partially performed, such proportion of the entire profits or loss or estimated profits or loss in respect of the complete performance of the contract as shall be properly attributable to such accounting periods respectively, having regard to the extent to which the contract was peformed in such periods.

(k) No deduction shall be allowed in respect of amounts paid or payable in Ceylon as excess profits duty, or interest thereon, or as income tax, or in respect of any amounts paid or payable in any other territory by way

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* Sec. 4 39 of 1942).

†(Sec. 2, 6 of 1942).

of any tax or duty (by whatever name called) which in the opinion of the Commissioner, is a tax or duty of the like nature to that imposed under the Income Tax Ordinance or this Ordinance; Provided that in the case of income arising outside Ceylon, any such tax or duty, (other than a tax or duty in respect of which relief is granted under Section 16 or Empire tax a defined for the purposes of section 46 of the income tax Ordinance) shall be allowed as a deduction.

*(*l*) In determining the profits arising in any accounting period or pre-war trade year from any busines of mining plumbago' a deduction shall be made in respect of expenditure incurred during that accounting period or pre-war trade year for the purqose of prospecting for plumbago or of sinking plumbago pits.

*(*m*) In determining the profits arising from the business of an agricultural undertaking for the production of tea or of rubber, there shall be added to the net proceeds of the sale of any tea or rubber which is produced in the course of that business and which is sold on any date in any accounting period, being a date later than the ninth day of July, nineteen hundred and forty-one, a sum determined as hereinafter provided representing the amount levied in respect of the additional export duty which was imposed on tea or on rubber, as the case may be, with effect from the tenth day of July, nineteen hundred and forty-one ; such sum shall be determined at the rate, in the case of tea, one and a half cents per pound so sold, and in the case of rubber, of two and a half cents per pound so sold :

†Provided that where, in the case of any business of an agricultural undertaking for the production of rubber, relief, on account of intensive production is granted under section 4A in respect of any accounting period ending after the first day of January. One thousand Nine hundred and Forty-three, the total sum to be added under the preceding provisions of this paragraph shall be reduced by a sum determined at the rate of one and a quarter cents for each pound of rubber in respect of which such relief is granted under sub-section (1) (*c*) or sub-section (1) (*d*((i) of that section, and at the rate of two and a half cents for each pound of rubber in respect of which such relief is granted under sub-section (1) (*d*) (ii) of that section.

*(*n*) In determing the profits arising from any business of maining plumbago, there shall be added to the nett proceeds of the sale of any plumbago which is obtained in the course of the business (otherwise than by way of purchase or gift) and which is sold or exported by the person carrying on the business on any date in any accounting period, being a date later than the ninth day of July, one thousand nine hundred and forty-one, a sum determined as hereinafter provided representing the amount levied in respect of the export duty imposed on plumbago with effect from the tenth day of July, nineteen hundred and forty-one: such sum shall be determinod at the rate of one rupee per hundred-weight of such plumbago so sold or exported.

(2) For the purposes of this Ordinance, the amount of a loss shall be determined in the manner provided in this Ordinance for the determination of profits.

Relief in respect of ixtensive preduction of rubber.

4A. (1) In determining the profitt fer any accounting period edding after the first day of January, 1942. from the business of an agricultural nndertaking for the

*(Sec. 4, 39 of 1042).

†Sec. 4, 29 of 1944).

production of rubber, a deduction on account of the intensive production of rubber* on any estate shall be made in accordance with the following provisions :—

(*a*) in any case where the accounting period falls wholly within a year of control, the standard production of the estate for the accounting period shall be deemed to be an amount which bears to the standard production for that year of control the same proportion as the number of days in the accounting period bears to the total number of days in that year ;

(*b*) in any case where the accounting period falls within two years of control (hereinafter referred to, respectively, as the "the first year" and "the second year"), the standard production of the estate for the accounting period shall be specially computed for the purposes of this section and shall be deemed to be the total of—

(i) an amount which bears to the standard production for the first year of control the same proportion as the number of days in the accounting period which fall within that year bears to the total number of days in that year ; and

(ii) an amount which bears to the standard production for the second year of control the same proportion as the number of days in the accounting period which fall within the second year bears to the total number of days in that year ;

(*c*) where the number of pounds of rubber produced on the estate during the accounting period exceeds 75 per centum of the standard production for that accounting period, but does not exceed such standard production, a deduction shall be made of an amount equivalent to one-half of the profits arising in respect of such excess production ;

(*d*) where the number of pounds of rubber produced on the estate during the accounting period exceeds the standard production for that accounting period, a deduction shall be made—

(i) of an amount equivalent to one-half of the profits arising in respect of 25 per centum of such standard production ; and

(ii) of an amount equivalent to the whole of the profits arising in respect of the number of pounds produced in excess of such standard production ;

(*e*) for the purposes of the preceding paragraphs, the profits in respect of each pound of any excess production shall be determined by dividing the net profits of the whole estate ascertained in accordance with this Ordinance, (before any adjustment is made under section 11), by the number of pounds of rubber produced during the accounting period.

(2) All deductions authorised under this section shall be separately determined in relation to each estate registered under the Rubber Control Ordinance, No. 63 of 1938.

(3) Notwithstanding anything in section 9, no deduction shall be made under this section in determining the profits of any pre-war trade year.

(4) In this section—

"estate" and "year of control" have, respectively, the same meaning as in the Rubber Control Ordinance, No. 63 of 1938 ;

"standard production", when used with reference to a year of control—

*(Sec. 5, 39 of 1942).

(*a*) means the amount of the standard production of the estate for the year as determined under the aforesaid Ordinance; or

(*b*) in any case where any area or areas on the estate have been replanted, and the quantity of rubber (hereinafter referred to as "the first quantity") produced from such area or areas in that year is less than the quantity of rubber (hereinafter referred to as "the second quantity") which, in the opinion of the Commissioner, fairly represents the amount included in respect of such area or areas in the standard production of that estate for that year as determined under that Ordinance, means the amount of the standard paoduction so determined, reduced by the difference between the second quantity and the first quantity.

†(4-A) The provisions of this section shall apply in the case of small holdings within the meaning of the Rubber Control Ordinance, No. 63 of 1938, in like manner as they apply in the case of estates.

(5) The Governor may, by Order published in the Gazette, make provision prescribing the circumstances in which, and the terms and conditions subject to which relief may be granted in respect of the intensive production of rubber in any place outside Ceylon in cases where excess profits duty is payable under this Ordinance on the profits arising from the production of such rubber.

Apportionment of profits.

‡5. Where for the purposes hf thie Ordinance it is necessary to determine the profit or loss for any period for which accounts have not been made up, it shall be lawful to divide and apportion to specific periods the profits or loss for any period for which accounts have been made up or to aggregate any such profits or losses or any apportioned parts thereof; and any such apportionment shall, unless the Commissioner otherwise directs, be made in proportion to the number of days in the respective periods.

Determination of pre-war standard.

6. (1) For the purposes of this Ordinance, the pre-war standard of profits of any business shall, subject to the provisions of this Ordinance, be taken to be the amounts of the profits arising from that business on the average of any two of the three last pre-war trade pears to be selected by the taxpayer.

Where owing to the recent commencement of a business there have not been three pre-war trade years, but there have been two pre-war trade yaars, the pre-war standard of profits shall, subject to the provisions of this Ordinance, be taken to be the amount of the profits arising from the business on the average of those two years or, at the option of the taxpayer the profits arising from the business during the later of those two years; and where the have not been two pre-war trade years, but there has been one pte-war trade year, the pre-war standard of profits shall, subject to the provisions of the Ordinance, be taken to be the profits arising from the business during that year.

The pre-war standard of profits determined under the preceding provisions of this sub-section is hereafter in this Ordinance referred to as the "profits standard".

1(1-a) For the purposes of computing the excess profits duty payable in respect of any accounting period ending after the first day of January, one thousand nine hundred and forty-four, the pre-war of profits of an agricultural undertaking shall not be taken to be less than an amount determined—

(*a*) in respect of areas which, at the commencement of that accounting period, are mature or are occupied by any building used for the purposes of the undertaking at the rate—

†(Sec, 5, 39 of 1944).
‡(Sec, 3, 6 of 1942).
1(6, 39 of 1944)

(i) of eighty-five rupees for each acre, in the case of tea, or

(ii) of sixty-five rupees for each acre in the case of rubber, or

(iii) of fifty-five ruppeess for each acre, in the case of any other agricultural produet: and

(*b*) in respect of any area which, at the commencement of that accounting period, is interplanted with two or more agricultural products or is not a mature area, at such rate as the Commissioner may deem reasonable in the circumstances of the case, having due regard to the rate prescribed in paragraph (*a*) in respect of the mature area:

Provided that the minimum rate prescribed in paragraph (*a*) (iii) of this sect ion shall not apply or be deemed to apply to any area in respect of which relief has been allowed under the provisions of the Compulsory Food Production (Tax Relief) Ordinance, No. 10 of 1943;

And provided further that where there is outstanding any debt secured by a charge upon the assets of the undertaking, there shall be deducted from the amount determined as hereinbefore provided a sum equal to the interest payable for the accounting period on the amount of the debt so outstanding.

For the purposes of this sub-section, an area shall be deemed to be mature if, but only if, it is fully planted with an agricultural product and such plantation is in full bearing.

(2) Where it is shown to the satisfaction of the Commissioner that the amount of the profits standard is less than the percentage standard as hereinafter defined, the pre-war standard of profits shall be taken to be the percentage standard.

(3) Where there has not been one pre-war trade year, the pre-war standard of profits shall be taken to be the percentage standard:

Provided that where the business is an agency or business of a nature involving capital of a comparatively small amount, the pre-war standard of profits may, if the taxpayer so elects, be computed by reference to the profits arising from any trade, business, office, employment or profession of any sort, whether liable to excess profits duty or not, carried on by him before his new business commenced as if it was the same business; but only to the extent of which the income from the former trade, business, office, employment or profession has been diminished.

†(3-A) For the purpose of computing the excess profits duty payable in respect of any accounting period ending after the first day of January, one thousand nine hundred and forty-four, the pre-war standard of profits of an agricultural undertaking shall not in any case be taken to be the percentage standard.

(4) The percentage standard shall, for the purposes of this Ordinence, be taken to be an amount equal to ten per centum of the capital of the business existing at the end of the last pre-war trade year, or where there has not been one pre-war trade year, at the date of the commencement of the business. Sush capital shall be determined in the manner hereinafter provided.

(5) Notwithstanding anything in the preceding provisons of this section—

(*a*) where the pre-war standard of profits of any business as determined under such preceding provisions is less than four thousand rupees, the pre-war standard of profits of that business shall, save as otherwise provided in paragraph (*b*) or paragraph (*c*), be taken to be four thousand rupees ;

(*b*) where, in the case of the business of a partnership or of a Hindu undivided family comprising two working partners or working members, as the case may be, the pre-war standard of profits as determined under such preceding provisions is less than seven thousand rupees, the pre-war standard of profits of that business shall be taken to be seven thousand rupees ;

†(Sec. 6, 39 of 1944).

(c) where, in the cases of the busines of a partnershsip or of a Hindu undivided family comprising three or more working partners or working members, as the case may be, the pre-war standard of profits as determined under such preceding provisions is less than ten thonsand rupees, the pre-war standard of profits of that business shall be taken to be an thousand rupees.

Where in any case referred to in paragraph (*b*) or paragraph (*c*) there is, in any accounting period, a change in the number of working partners of working members of a partnership or of a Hindu undivided family, as the case may be, the pre-war standard of profits of the business of such partnership or family shall, for the purposes of the application of the provisions of this Ordinance in respect of that accounting period, be determined by reference to the number of working partners or working members at the commencement of that accounting period

(6) For the purposes of this section, a peson shall not be deemed to be a working partner in a partnership or a working member of a Hindu undivided family unless he—

(*a*) has attained majority ; and

(*b*) (i) devotes his full time to the business of such partnership or family, or

(ii) if he is engaged in any other business or in any profession or empioyment, devotes more than half of his working time to the conduct of the business of such parnership or family :

Previded that no person shall, for the purposes of the section, be deemed to be a working partner in a partnership unless he has a share in the capital of that partnership.

Adjnstment where accounting period is other than a year.

7. Where the accountng period for which the excess profits duty is to be assessed is other than a year, the amount of the pre war standard of profits shall be a proportionate amount calculated by reference to the number of days in that accounting period

Profits standard on change of ownership.

8.—(1) Where since the commencement of the three last pre-war trade years a business has changed ownership, the provisions of this Ordinance shall apply as if a new business had been commenced on the change of ownership, except in a case where the taxpayer makes an application that the provisions of this Ordinance should apply as if the business had not changed ownership : but in that case such modifications (if any) shall be made in the application of this Ordinance as may be necessary to make the basis on which the profits standard is computed the same as that on which the profits of the accounting period are computed :

Provided that where on a change of ownership during any accounting period a new business is deemed to have commenced, the pre-war standard of profits of that new business for the purpose of this Ordinance shall be the same as that which applied to the business before the change of ownership, unless the pre-war standard of profits was, prior to such change of ownership, determined in accordance with the provisions of section 6 (5) ; and in computing the capital employed after the change, no regard shall be had to the price paid or other consideration for the transfer of the business or any of the assets thereof on the occasion of the change.

†Provided further that in the case of agricultural undertakings, where, an estates or a part of an estates has changed ownership on or after the first day of April, one thousand nine hundred and forty-one, the pre-war standard of profits applicable to the new owner of the estate or part of the estate—

†(Secs. 7, 39 of 1944).

(i) in respect of any accounting period ending on or before the first day of January, one thousand nine hundred and forty-four, shall not be taken to be more than the pre-war standard of profits applicable to the previous owner; and

(ii) in respect of any accounting period ending after the first day of January, one thousand nine hundred and forty-four, shall be the amount determined under section 6 (1A) or, if the new owner so elects the profits standard applicable to the previous owner;

and in computing the capital employed after the change, no regard shall be had to the price paid or other consideration for the transfer of such estate or part of the estate.

(2) In the case of a partnership, a change of ownership shall be deemed to take place within the meaning of this section were any person cease to be a partner or any new person is taken into partnership.

Determination of profits of pre-war trade year.

9.—Subject to the provisions of section 4 (1) (i), the profits of any pre-war trade year shall be computed on the same principles and subject to the same provisions as the profits of the accounting period are computed.

Determination of capital.

†**10.**—(1) Subject to the provisions of sub-section (2) to (4-A), the amount of the capital of a business shall, so far as it does not consist of money, be taken to be—

(*a*) so far as it consists of assets acquired by purchase, the price at which those assets were acquired, subject to any proper deductions for depreciation, or for unpaid purchase money; and

(*b*) so far as it consists of assets being debts due to the business, the nominal amount of those debts subject to any reduction which has been allowed in respect of those debts for income tax purposes; and

(*c*) so far as it consists of assets acquired by gift or under the last will or on the intestacy of a deceased person, the value of the assets at the date of the gift in the case of a gift or at the date of the death in the case of a devise or inheritance, subject in each case to any proper deduction for depreciation since such date.

(2) Where on the transfer of any property prior to the first day of September, 1939, whether by way of sale, gift, bequest, devise, inheritance or otherwise, the consideration for or value of that property is expressed in any instrument or in any inventory filed for the purposes of administration, the consideration or value so expressed shall, for the purposes of this Ordinance, be deemed to be the value of that property at the date of such transfer.

(3) Where any asset has been paid for otherwise than in cash, the cost price of that asset shall be taken to be the value of the consideration at the time the asset was acquired, but where a business has been converted into a company and the shares in the company are wholly or mainly held by the person who was owner of the business, no value shall be attached to those shares so far as they are represented by goodwill or otherwise than by material assets of the company unless the Commissioner in special circumstances otherwise directs. Patents and secret processes shall be deemed to be material assets.

(4) Any capital which is proved to the satisfaction of the Commissioner to have been introduced into the business after its acquisition, or profits so proved to have been employed to effect permanent additions to or improvements of the assets of the business, shall be treated as capital employed in the business, subject to any necessary deduction for depreciation and for assets disposed of or lost.

†(Sec. * 39 of 1942).

*(4-A) In computing the capital of the business of an agricultural undertaking, the value of any mature area of an estate, inclusive of all buildings on such area which are used or occupied for the purposes of the business, shall not in any case be taken to be less than an amount determined at the rate—

(a) where the area is planted with tea, of eight hundred rupees per acre; or

(b) where the area is planted with rubber, of six hundred rupees per acre; or

(c) where the area is planted with cocoonut, of five hundred rupees per acre,

and the value of any area, other than a mature area, which is planted or interplanted with tea, rubber or coconut, shall not be taken to be less than such an amount as may be reasonable in the circumstances of the case, having regard to the rate per acre prescribed by the preceding provisions of this sub-section in relation to a mature area planted with tea, rubber or cocount, as the case may be.

In this sub-section, "mature area" means an area fully planted with tea or with coconut, the bushes, trees or palms on which are in full bearing.

†(5) Any capital the income from which is not taken into account for the purposes of section 4 (1), and any moneys not required for the purposes of the business, shall be deducted in computing the capital.

(5A) The amount of the moneys which shall at the commencement of any accounting period be deemed, within the meaning of sub-section (5), to be required for the purposes of any business shall be the aggregate of—

(a) the amount of the moneys employed for the purposes of that business at the end of the last pre-war trade year, or where there was no per-war trade year, at the commencement of the first accounting period; and

(b) the amount by which the sums estimated to be payable during that accounting period in respect of income tax, excess profits duty and excess profits tax (whether in Ceylon or in any other part of the British Empire) on the profits of that business, exceed the sums paid in respect *of the last pre-war trade year or during the first accounting period, as the case may be, in respect of such income tax, excess profits duty and excess profits tax; and

(c) the amount by which the sums paid during that accounting period, by way of distribution of profits, exceeds the sums paid, by way of such *distribution, in respect of the last pre-war trade year or during the first accounting period, as the case may be :

Provided, however, that the Commissioner may, in his discretion and having regard to the particular circumstances of any case, direct that any amount of money in excess of such aggregate shall be deemed to be an amount required for the purposes of the business, and, in the exercise of his discretion, shall have regard to the necessity of retaining in the business an adequate amount of liquid capital in view of any special conditions of trade during the accounting period.

In this sub-section, 'British Empire" means Great Britain and Northern Ireland any other part of His Majesty's dominions, and includes any British Protectorate or Protected State and any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty.

(5-B) In any case where, at the commencement of any accounting period—

(a) the amount of the moneys actually held or kept for the purposes of any

*(Sec. 6, 39 of 1942).

†(Sec. 4, 6 39 of 1942).

business is less than the aggregate amount deemed under sub-section (5-A) to be required for the purposes of that business; and

(*b*) any of the assets of that business consist of investments in any loan or loans issued by the Government of Ceylon,

a part of such investments the value of which, at par, is equal to the amount of the difference between the two amounts referred to in sub-paragraph (*a*), shall be deemed to be moneys required for the purposes of the business.

(6) Any money borrowed or bebts incurred in connexion with the business or charged upon the assets thereof shall be deducted in computing the capital—

Provided that—

(*a*) as regards income tax and taxes of a like nature (other than the national defence contribution of the United Kingdom), whether payable in Ceylou or elsewhere, capital shall be deemed to be reduced by the amount of such tax as from the date on which it falls due; and

(*b*) as regards excess profits duty (whether payable in Ceylon or elsewhere) and the national defence contribution of the United Kingdom, capital shall be deemed to be reduced by the amount of such duty or contribution on the first day after the accounting period in respect of which it is payable.

(7) Where a part of a business is, under the provisions of section 3 (3), deemed to be a separate business carried on in Ceylon the capital employed in that part, whether situate in Ceylon or outside Ceylon, shall be computed separately from any other capital of the person carrying on the business; and all reference to capital employed in a business shall be construed as references to capital employed in that part only of that bnsiness:

Provided that the Commissioner may, in his discrition, direct that the capital of that part of any business which is deemed to be a separate business in Ceylon shall be taken to be the amount which bears to the capital of the entire business the same proportion as the grose receipts of that part of the business bear to the gross receipts of the entire business.

†(8) In determining capisal for the purposes of the percentage standard under section 5 (4), the deductions which may be made for depreciation shall include deductions for depreciation due to lapse of time or ther cause, and shall not be limited to the deductions for depreciation authorised by section 9 (1) of the Income Tax Ordinance.

Adjustments for increased or decreased capital.

11. (1) Where capital has been increased during the accounting period, a deduction shall be made from the profits of the accounting period at ten qer centum per annum on the amount by which the capital has been increased, for the whole accounting period if the increased capital has been employed for the whole accounting period if the increased capital has been employed for the whole accounting period, and if the increased capital has been employed forpart only of the accounting period, for thot part of the accounting period.

(2) Where capital has been decreased during the accounting period, an addition shall be made to the profit of the accounting period at ten per centum per annum on ihe amovnt by which the capital has been so decreased, for the whole accounting period, if the capital has been decreased for the whole accounting period, and if the capital has been decreased for part only of the accounting period, for that part of the accounting period.

(3) For the purposes of this section, capital shall be taken to be increased or the case may be—

†(Sec. 4, 6 of 1942).

(*a*) where the pre-war standard of profits is a profits standard, if the capital exceeds or is less than the average amount of capital employed during the pre-war trade years or year by reference to which the profits standard has been arrived at;

(*b*) where the pre-war standard of profits is a percentage standard, if the capital exceeds or is less than the capital on which the percentage standard has been calculated; and

(*c*) where the pre-war standard of profits is determined in accordance with the Proviso to Section 6 (3) or under section 6 (5), if the capital exceeds or is less than the amount on which the percentage standard would have been calculated under section 6 (4), if the percentage standard had been adopted.

†(3A) The preceding provisions of this section shall not apply in any case where the pre-war standard of profits is determined in accordance with section 6 (1A).

(4) Capital shall not be deemed to be increased or reduced during an accounting period or pre-war trade year by reason of any profits made or loss incurred during that period or pre-war trade year.

Essessment of excess profits duty. Cap 188

12. —(1) The provisions of Chapter X. of the Income Tax Ordinance shall apply, as far as may be, to the assessment of excess profits duty under this Ordinance and additional assessment of such duty.

*Provided, however, that for the purpose of such application, section 65 of that Ordinance shall have effect as if—

(i) for the words "Where it appears to an Assessor", there were substituted the words "Where an Assessor discovers", and

(ii) for the words "within the year of assessment or within three years after the expiration thereof", there were substituted the words "at any time before the 31 day of December, one thousand nine hundred and forty-eight,"

(2) The duty may be assessed on any person for the time being owning or carrying on a business, or, where a business has ceased, on the person who owned or carried on the business immediately before the time at which the business ceased; and where there has been a change of ownership of the business, the Commissioner may, if he thinks fit, take the accounting period as the period ending on the date on which the ownership has so changed and assess the duty on the person who owned or carried on the business immediately prior to the change:

Provided that where there has been a change of ownership of a business, nothing in this sub-section or in section 15 shall authorise a repayment of or set-off against duty paid or payable by any person in respect of any business by reference to the profits or losses of that business for a period during which it was owned or carried on by another person.

(3) An Assessor may, for the purposes of this Ordinance, require any person engaged in any business to which this Ordinance applies or who was so engaged during any accounting period or pre-war trade year, to furnish him, within one month after the requirement for the return is made, with returns of the profits of the‡ business during the accounting period or pre-war trade years and such other particulars in connexion with the business as the Assessor may require.

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†(Sec. 8, 39 of 1944.)

*(Sec. 9, 39 of 1944.)

‡(Sec. 5, 6, of 1942.)

(4) It shall be duty of every person assessable to excess profits duty under this Ordinance in respect of any accounting period to give notice to the Commissioner that he is so assessable within six months of the end of such accounting period ; and it shall be the duty of the liquidator of every company which is assessable to excess profits duty and in respect of which winding-up proceedings are pending on the date on which the draft of this Ordinance is first published in the *Gazette* or are commenced after that date to give notice to the Commissioner of the fact that the company is so assessable

(5) Subject to the preceding provisions of this section, the provisions of section 23 (3), 27, 34, 54, 56, 59, 61, 62, and 63 and of Chapter XV of the Income Tax Ordinance shall, as far as may be, be applicable for the purposes of this Ordinance and shall be construed and have effect as if they formed part of the Ordinance.

(6) Any person who fails to give notice or to furnish a true and correct return in accordance with the preceding provisions of this section or to comply with any requirement of on Assessor under such provisions, shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding five hundred rupees and to further fine not exceeding one hundred rupees a day for every day during which the offence continues after conviction.

(7) The Commissioner may compound anp offence under the preceding subseetion either before or after the institution of proceedings against any person for such offence ; and where any such offence is so compounded no further oroceedings shall be instituted or maintained in respect of such offence;

Provided that where proceedings have been instituted in any court in respect of any such offence that offence shall not be compoundable after the judgment of the court has been pronounced.

Appeal against assessment.

13. An appeal shall lie against any assessment of excess profits duty under this Ordinance, and the provisions of Chapter XI of the Income Tax Ordinance shall, as far as may be, be applicable to appeals against the assessment of excess profits duty ; and all the provisions of that Chapter (including section 75) shall have effect as though formed part of this Ordinance :

Provided that nothing in the preceding provisions of this section shall affect or be deemed or construed to affect the finality of any decision of the Financial Secretary under paragraph (*f*) of section 4 (1) of this Ordinance.

Payment and recovery of excess profits duty. Cay, 188

14. (1) The provisions of sub-sections (1), (2), (3), (4), and (5) of section 76 and of Chapter XIII. of the Income Tax Ordinance shall be applicable, as far as may be, to the payment and recovery of excess profits duty, with the exception that the sum or sums which may be added to any duty in default shall not exceed ten per centum of the amount of such duty :

Provided that the Commissioner may in any case, if he thinks fit, allow the duty to be paid in instalments with such addition in respect of interest as he may determine, so, however, that the last of such instalments shall be payable not later than twelve months from the end of the accounting period in respect of which duty is payable.

(2) Where a company which is assessable to excess profits duty is wound up after the date on which the draft of this Ordinance is first published in the *Gazette* it shall be the duty of the liquidator of the company to set aside such sum out of the assets of the company as appears to the Commissioner to be sufficient to provide for any such excess profits duty as may become payable in respect of the business of that company.

(3) Where any liquidator fails to comply with the requirements of the preceding sub-section, the excess profits duty payable in respect of the business of the

company of which he is liquidator shall become a debt due by him personally to the Crown and may be recovered by any means provided by this Ordinance for the recovery of excess profits duty.

(4) The provisions of section 33 of the Income Tax Ordinance shall be applicable and shall have effect as though they formed part of this Ordinance.

*(5) In any case where the Commissioner is satisfied, upon application made to him by any person from whom payment is due of any amount as excess profits duty in respect of the profits arising from any business in the first accounting period for which such duty is payable by that person—

(*a*) that the moneys in the possession of that person are insufficient, having regard to all the circumstances of the case, to enable that person to pay such amount on the date on which payment thereof is due; and

(*b*) that that person has delivered any plumbago or agricultural produce to any officer or person authorised by the Government of the United Kingdom or of Ceylon to purchase plumbago or such agricultural produce for or on behalf of any such Government in accordance with any purchasing scheme approved by such Government for the purpose, or has in his possession any plumbago or agricultural produce which he has offered for immediate delivery to any officer or person so authorised; and

(*c*) that payment has not been made of the purchase price of such plumbage or agricultural produce,

the Commissioner may direct that the amount so payable as excess profits duty, or such part of that amount as in his opinion represents the sums which will be ultimately payable as the purchase price of such plumbago or agricultural produce, as the case may be, shall not be deemed to be in default untill payment is made of the purchase price of such plumbago or agricultural produce :

Provided, however, that the Commissioner may, by notice in writing, revoke, with effect from a date specified in the notice, any directions issued by him under this sub-section in any case where any person has offered any plumbago or agricultural produce for immediate delivery as hereinbefore provided, if the Commissioner is satisfied that that person has disposed of such plumbago or agricultural produce otherwise than in pursuance of such offer or will for any other reason be unable to deliver such plumbago or agricultural produce in pursuance of such offer.

*(6) As a condition precedent to the issue in any case of any directions under sub-section (5), the Commissioner may require the person by whom the excess profits duty is payable to authorise and request the officer or person to whom the plumbago or agricultural produce has been or is to be delivered to pay to the Commissioner the purchase price for such plumbago or agricultural produce, or to pay to the Commissioner out of such purchase price an amount equivalent to the amount due as excess profits duty from the vendor of such plumbago or agricultural produce.

*(7) The provisions of sub-sections (5) and (6) of this section shall have effect notwithstanding anything in section 76 of the Income Tax Ordinance.

Refund and set off of excess profits duty.

15. (1) Where a person proves that in any accounting period ending after the first day of January, nineteen hundred and forty-one, the profits from a business carried on by him have not reached the point which involves liability to excess profits duty, or that a loss has been sustained in such business, he shall be entitled to repayment of such amount paid by him as excess profits duty in respet of that business for any previous accounting period during which that business was carried on by him or to set off against any excess profits duty payable by him in respect of that

*(Sec. 7, 39 of 1942).

business for any succeeding accounting period such an amount as will make the total amount of excess profits duty paid by him in respect of that business during the whole period for which such duty is payable by him accord with the profits or lossess of that business during that whole period.

*Where relief in respect of additional export duties has been granted or is due in any case by reason of the provisions of Section 16-A, account shall be taken of the amount of such relief in the determination, for the purposes of this section, of the total amount of excess profits duty paid in respect of the business during the whole period for which such duty is payable.

†(*2) If in the case of any business of an agricultural undertaking or any business of mining plumbago, no excess profits duty is actually paid or becomes payable in respect of an accounting period, by reason—

(*a*) that the profit from the business have not reached the point which involves liability to excess profits duty, or.

(*b*) that a loss has been sustained in the business, or

(c) that the amount which may be deducted from the excess profits duty under section 16-A exceeds the amount of the excess profits duty chargeable in that case,

then, for the purpose of determining whether any repayment or set-off should be made or allowed under sub-section (1), the owner of the business shall be entitled to elect that the profits or loss for that accounting period shall be computed without making the addition authorised by paragraph (*m*) or paragraph (*n*), as the case may be, of section 4 (1); and where the owner so elects, the profits or loss so computed shall be deemed to be the profits or loss of that business for that accounting period for all the other purposes of this Ordinance.

Relief in respect of Empire Excess Profits Tax.

16. (1) If any profits in respect of which excess profits duty is payable under this Ordinance are profits in respect of which excess profits tax is payable under the law in force in the United Kingdom, or would be so payable if there were no national defence contribution in the United Kingdom, or are profits in respect of which excess profits tax is payable under the law in force in any part of His Majesty's dominions outside the United Kingdom other than Ceylon, the Governor may make arrangements with the Government of the United Kingdom or of that other part of His Majesty's dominions, as the case may be, providing for the giving of relief from double taxation in respect of such profits in accordance with the following principle:—

(i) that there shall be computed the amount of excess profits tax or duty which would be payable in each territory if excess profits tax or duty in the other territory and, where the arrangement is made with the Government of the United Kingdom, national defence contribution in the United Kingdom, were disregarded except in computing capital;

(ii) that such amount of relief from tax or duty shall be given in each territory as bears to the lower of the two amounts so computed the same proportion as the amount so computed for that territory bears to the sum of the two amounts so computed; and

(iii) that where the amount so computed for either territory is found to have been incorrect (whether by reason of a subsequent deficiency of profits or for any other reason(the amount so computed shall be recalculated and the relief in both territories varied accordingly.

*(Sec. 8, 39 of 1942).

†(Sec. 10*. 39 of 1944),

(2) Where any such arrangements are made and the Commissioner is satisfied that any case is one which falls within the arrangements, he shall make such adjustment of the excess profits duty payable in Ceylon as may be necessary to give effect to the arrangements, and allow any necessary relief accordingly by repayment or otherwise.

†(3) Where it appears to the Commissioner that any relief provided for by any such arrangements falls to be recalculated (whether by reason of a subsequent deficiency of profits or otherwise), any adjustment made under sub-section (2) shall be varied accordingly and any necessary further relief given by repapment or otherwise; and, where the effect of the recalculation is to show that too much relief has been given, any necessary additional assessments shall be made.

(4) The obligation as to secrecy imposed by section 4 of the Income Tax Ordinance shall not prevent the Commissioner or any officer authorised by him from disclosing to any authorised officer of a Government with which arrangements have been made under this section such fact as may be necessary to enable effect to given to the arrangements.

(5) This section shall apply in relation to—

(*a*) any British Protectorate or protected state; and

(*b*) any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised by His Majesty's Government in the United Kingdom or the Government of any Dominion

as it is applies to a part of His Majesty's dominions outside the United Kingdom.

Relief in respect of additional export duties on tea, rubber and plumbago.

16 A.—(1) In any case where excess profits duty is payable in respect of the profits arising in any accounting period from the business of an agricultural undertaking for the production of tea or rubber, and the additional export duty on tea or rubber, as the case may be, which is referred to in paragraph (*m*) of section 4 (1) is *in force any time during that accounting period, there shall be deducted, from the amount which has been paid or is payable as excess profits duty in the respect of the profits arising from that buiness, a sum equal to the sum which under the aforesaid paragraph (*m*) is added in respect of that accounting period to the nett proceeds of the sale of the tea or rubber produced in the course of that business, and a repayment or set off shall be made accordingly from or against the amount so paid or payable as excess profits duty.

(2) In any case where excess profits duty is payable in respect of the profits arising in any accounting period from any business of mining plumbago, and the export duty on plumbago which is referred to in paragraph (*n*) of section 4 (1) is in force at and time during that accounting period, there shall be deducted, from the amount which has been paid or is payable as excess profits duty in respect of the profits of that business, a sum equal to the sum which under the aforesaid paragraph (*n*) is added in respect of that accounting period to the nett proceeds of the sale of plumbago obtained in the course of that business, and a repayment or set-off shall be made accordingly from or against the amount so paid or payable as excess profits duty.

(3) For the purposes of section 16. the amount of excess profits duty paid or payable in any case to which sub-section (1) or sub-section (2) applies shall be deemed to be the amount which would have been paid or payable if provision for relief had not been made by sub-section (1) or sub-section (2), as the case may be.

†(Sec. 5, 6 of 1942)

*(Sec. 9, 39 of 1942)

*(4) Where the amount which may be deducted under sub-section (1) or sub-section (2) from the excess profits duty in respect of any accounting period exceeds the amount of the excess profits duty chargeable in respect of that period, the amount of that excess shall not be set off against the excess profits duty payable in respect of any other accounting period.

Deduction of excess profits duty for income tax purposes.

17. (1) Where any person has paid excess profits duty under this Ordinance for any accounting period in respect of a business the profits of which are chareable to Ceylon income tax, the amount as paid shall be allowed as a deduction, for the purposes of income tax, in computing the profits or income of that business for that accounting period.

For the purpose of allowing any such deduction, any assessment made under the Income Tax Ordinance may, notwithstanding the provisions of section 75 of that Ordinance be amended accordingly, and any tax found to have been paid in excess as a result of such amended assessment shall be refunded, notwithstanding that the claim for such refund may be made after the expiry of the period of three years prescribed in section 84 of that Ordinance.

(2) Notwithstanding anything in sub-section (1), where any repayment is made of excess profits duty paid in respect of any business for any accounting period, the amount of such repayment shall, for the purposes of income tax, be treated as profit of that business for that accounting period ; and, in respect of such profit, an assessment or an additional assessment may be made under section 65 of the Income Tax Ordinance notwithstanding the expiration of the period of three years referred to in that section of that Ordinance.

Application of administrative and other provisions of the Income Tax Ordinance.

18. The provisions of sections 3 and 4 of the Income Tax Ordinance (which relate to administration and official secrecy, respectively) shall be applicable, as far as may be, for the purposes of this Ordinance and shall have effect as though they formed part of this Ordinance.

Rule for the purposes of this Ordinance. Cap 188

18A. (1) The Board of Income Tax constituted under the Income Tax Ordinance may make rules, consistent with the Ordinance, for the ascertainment and determination of any class of profits or income and generally for carrying out the provisions of this Ordinance.

(2) The matters in relation to which the Board of Income Tax is authorised to make rules under sub-section (1) shall be deemed to be added to the matters referred to in sub sections (1), (2) and (3) section 90 of the Income Tax Ordinance, and the provisions of sub-sections (4), (5) and (6) of that section shall apply accordingly in the case of any rules made under the powers conferred by sub-section (1) of this section in like manner as they apply in the case of rules made by the Board under the aforesaid section 90.

Interpretation.

19.—(1) Subject as herainafter provided, the provisions of section 2 of the Income-tax Ordinance shall be applicable to the interpretation of this Ordinance and shall have effrct as though they formed part Ordinence :

Provided that—

(*a*) the definition of "body of persons" shall be read as though there were inserted immediately after the word "includes" in that definition, the words "any partnership," and as though the words "or a partnership"

*(Sec 11 39 o; 1944.)
†(8, 10, 39 ; 1942.)

at the end of that definition were omitted;

(*b*) the definition of "business" shall be read as though there were msreted therein immediately after the word "includes" the words "any trade and any".

(2) Subject to the provisions of sub-section (1), in this Ordinance, unless the context otherwise requires—

"excess profits duty" means the excess profits duty imposed and levided under this Ordinance;

"last pre-war trade year", in relation to any business, means the year ending on the date between August 31, 1938, and September 1, 1939, to which the accounts of the business were last made up or, where accounts have not been made up for any period ending on any date between Agust 31, 1938, and September 1, 1939, the year ending on August 31, 1939, and "the three last per-war trade years" shall be construed accordingly,

(3) Where any provision of the Income Tax Ordinance is made applicable for the purposes of this Ordinance, that provision shall be read and construed and shall have effect as though any reference therein to tax or income tax were a reference to excess profits duty and as though any reference therein to the Income Tax Ordinance included a reference to this Ordinance so far as such inclusion is neeessary for the purposes of such application:

Provided that the preceding provisions of this sub-section shall be subject to any special provision or exception contained in this Ordinance in regard to the applicablity of the Income Tax Ordinance.

*THE EXCESS PROFITS DUTY ORDINANCE.

Notification.

It is hereby notified that the Governor has, under section 16 of the Excess Profits Duty Ordinance, 38 of 1941, made with the Central Government of India the arrangements, specified in the form of rules in the Schedule hereto, for the purpose of providing relief from double taxation in respect of profits for which excess profits duty is payable in Ceylon under that Ordinance and excess profits tax is payable in British India under the Excess Profits Tax Act, 1940.

By His Excellency's command,

C. E. JONES,

Financial Secretary's Office,
Colombo, November 27, 1942.

Acting Financial Secretary.

SCHEDULE.

Rules.

1. These rules may be cited as the Excess Profits Double Taxtion (Ceylon and India) Rules.

2. In these rules the expression:—

(i) "excess profits tax",

(*a*) so far as Ceylon is concerned means any excess profits duty payable in accordance with the law in force in Ceylon ;

(*b*) so far as British India is concerned means any excess profits tax payable in accordance with the provisions of the Excess Profits Tax Act, 1940.

(ii) "chargeable accounting period"—

(*a*) with reference to Ceylon, means any accounting period, specified in section 2 of the Excess Profits Duty Ordinance, No. 38 of 1941, in respect of which the excess profits tax is chargeable; and

(*b*) has in British India the same meaning as in section 2 of the Excess Profits Tax Act, 1940.

3. Any reference in these rules to the lower of two amounts shall, where the amounts are equal, be construed as a reference to either of those amounts.

4. These rules shall have effect in respect of Ceylon excess profits tax charged for any chargeable accounting period in respect of which under the law in force in British India relief is to be given in respect of the payment of Ceylon excess profits tax.

5. If the person carrying on a business in any chargeable accounting period proves to the satisfaction of the Assessor that he has paid in respect of any profits of the business in that period, Ceylon excess profits tax and that he has also paid, in respect of those profits, Indian excess profits tax:—

(i) there shall be computed the amount of excess profits tax which would be payable in Ceylon and British India respectively, if excess profits tax in the other country were disregarded except in computing capital;

(ii) the amount of relief to be given in Ceylon shall bear to the lower of the two amounts so computed the same proportion as the amount so computed for Ceylon bears to the sum of the two amounts so computed;

(iii) if the amount so computed either for Ceylon or for British India is found to have been incorrect (whether by reason of a subsequent deficiency of profits or for any other reason), the amount so computed shall be recalculated and the relief in Ceylon revised accordingly.

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*Extract from the "Ceylon Government Gazette Extraordinary" No. 9044 of December 1, 1942.

6. Where the chargeable accounting periods differ in Ceylon and British Indian the tax chargeable for such periods shall be apportioned on a time basis to co-terminous periods as hereinafner defined, and relief shall be allowed under these rules for those periods.

For this purposes, except so far as the Government of Ceylon and the Government of India otherwise agree:—

(*a*) the first of the co-termfnous periods shall commence on the first day on which double taxation commenced, and each sueceeding co-terminous period shall commence at the expiration of the period immediately preceding; and

(*b*) each of such co-terminious periods shall end at the end of the chargeable accounting periods within which it commences, and, if the chargeable accounting periods differ for the purposes of the excess profits tax of the two countries, then at the end of that one of the chargeable accounting periods that ends first.

7. For the purposes of those rules the liability to excess profits tax of a principal company of a group of interconnected companies shall be taken to be the liability of that company in respect of its own business only.

Where, however, excess profits tax payable in respect of the business carried on by a subsidiary company is assessed on the principal company, relief shall be allowed to the subsidiary company as if the excess profits tax liability attributable to the business of the subsidiary company were separately assessed upon that company.

8. Every application for a refund of excess profits tax under these rules shall be made to the Assessor, Income Tax Office, Colombo.

*THE EXCESS PROFITS DUTY ORDINANCE.

ORDER made by the Governor under section 4A (5) of the Excess Profits Duty Ordinance, No. 39 of 1942.

By His Excellency's command,
C. H. COLLINS,
Acting Financial Secretary.

Financial Secretary's Office,
Colombo, April 6, 1943.

Order.

The following shall be the circumstances in which and the terms and conditions subject to which, relief may be granted in respect of the intensive production of rubber in any place outside Ceylon in cases where excess profits duty is payable, under the Excess Profits Duty Ordinance, No. 39 of 1942, on the profits arising from the production of such rubber :—

(1) In each case the Commissioner of Income Tax must be satisfied that the rubber industry in the place where such rubber was produced was subject at the time of the production of that rubber to a law which is substantially the same as the Rubber Control Ordinance, No. 63 of 1938.

(2) The amount to be deducted in each case by way of relief in determining the profits arising from the production of such rubber shall be ascertained, as far as possible, in the manner provided by section 4A of the Excess Profits Duty Ordinance; and in the application of that section to any such case the expressions "estate", "years of control" and "standard production" shall have such meanings as the Commissioner of of Income Tax may determine having due regard to such law, corresponding to the Rubber Control Ordinance aforesaid, as may have been in force at that place at the time of production of such rubber.

*Extract from the "Ceylon Government Gazette" No. 9108 of April 9, 1943.

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