



# Finance (No. 2) Act 1945

## 1945 CHAPTER 13

### PART IV

#### EXCESS PROFITS TAX POST-WAR REFUNDS.

##### *Date of payment.*

#### **38 Time for repayment of post-war refunds.**

Subject to the provisions of this Part of this Act, the sums payable under subsection (1) of section twenty-eight of the Finance Act, 1941, as amended by section thirty-seven of the Finance Act, 1942 (hereafter in this Part of this Act referred to as " post-war refunds ") shall be paid as soon as may be after the final ascertainment and satisfaction of the total liability of the person in question to excess profits tax and the national defence contribution for all relevant chargeable accounting periods:

Provided that, if the Commissioners of Inland Revenue think fit and the requirements of the four next following sections are complied with, they may, before the final ascertainment and satisfaction of the said total liability, make payments on account of any post-war refund which, in their opinion, is likely to be found due.

##### *Conditions for payment.*

#### **39 Refunds to be used for purposes of trade or business.**

(1) No post-war refund shall be made to any person unless such undertakings and authorities are given as are specified in the next following section, being undertakings and authorities in connection with the use of the net amount of the refund for the purposes of a specified trade or business, being such-a trade or business as is mentioned in subsection (2) of this section:

Provided that undertakings and authorities may be given as aforesaid in connection with the use of part only of the said amount and shall, if so given, operate to authorise the payment of-a corresponding part of the refund, and references in this and the

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three next folio wing, sections to the refund and the net amount of the refund shall be construed accordingly.

- (2) A trade or business may be specified under subsection (1) of this section if it is either—
- (a) the original trade or business; or
  - (b) a trade or business carried on or to be carried on by the person who carried on the original trade or business in the relevant chargeable accounting periods, or, where that person is an individual, by him or by a relative of his; or
  - (c) a trade or business in which the said person, or, where the said person is an individual, he or a relative of his, has or is to have an interest which is substantial in relation to the size of the trade or business:

Provided that in considering whether the interest of a person in a trade or business is substantial, any interest acquired by or for him in consideration of the making over, to the persons who are carrying on or are to carry on that trade or business, of the whole or any part of the post-war refund in question shall be left out of account.

In this subsection, the expression " a relative " means, in relation to a person, that person's husband or wife, or a son, daughter, brother or sister of that person or of that person's husband or wife or deceased husband or deceased wife, and for the purposes of this definition the expressions " son " and " daughter " include an adopted son or adopted daughter (whether adopted under the Adoption of Children Act, 1926, or under the Adoption of Children (Scotland) Act, 1930, or otherwise) and an illegitimate son or illegitimate daughter, and the expressions " brother " and " sister " include a half-brother or half-sister.

- (3) A trade or business shall be treated for the purposes of this and the three next following sections as continuing to be the same trade or business notwithstanding, any change in the persons carrying it on.

#### **40 Undertakings and authorities which must be given.**

- (1) Where the trade or business specified under subsection (1) of the last preceding section is or is to be carried on by the person to whom the post-war refund is paid, and is not, or, as the case may be, is not to be, carried on by him in partnership with any other person, the undertakings shall comprise an undertaking by him that—
- (a) the net amount of the refund will be used in developing or re-equipping the trade or business and, until so used, will be so dealt with as to remain available, for use, when required, in developing or re-equipping of the trade or business; and
  - (b) without prejudice to the generality of the preceding provision, any part of the said net amount which is not so used shall not be directly or indirectly distributed by way of dividend or cash bonus or capitalized for the purpose of issuing bonus shares or debentures or releasing any liability for uncalled share capital or applied, whether by way of remuneration, drawings, loans or otherwise, for the benefit of partners, shareholders or proprietors.
- (2) In any other case, the undertakings shall comprise—
- (a) an undertaking by the person to whom the post-war refund is paid that the net amount of the refund will be made over to the person carrying on the specified trade or business; and
  - (b) such undertakings as are mentioned in the preceding subsection by the person to whom the said net amount is to be made over.

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- (3) Where any such undertakings are given, every person who gives any of the undertakings shall, in "addition—
- (a) give an undertaking to furnish, on the demand of the Treasury, or the advisory panel or referee hereinafter mentioned, to any person authorised by the Treasury, the said panel or the said referee, as the case may be, such accounts or other information as may be specified in the demand, being accounts or information required for the purpose of establishing how the said net amount has been dealt with;
  - (b) give to the Commissioners of Inland Revenue an authority (which shall be irrevocable) to disclose for the said purpose any documents or other information in their possession to the Treasury or the said panel or the said referee or any person authorised by them as aforesaid respectively.
- (4) Any undertaking or authority given under any of the preceding provisions of this section by the persons carrying on a trade or business shall be in writing, shall be in such form as may be prescribed by the Treasury and shall, by virtue of this section, be binding on all persons who, at any time within the five years next following the date of the giving of the undertaking, carry on that trade or business either alone or in partnership with any other person.

#### **41 Effect of breach of undertakings, etc..**

- (1) Subject to the provisions of the next following section, if—
- (a) the whole or any part of the said net amount, is dealt with by any person in breach of an undertaking given by him or which, by virtue of the last preceding section is binding upon him; or
  - (b) any breach is committed by any person of an under taking given by him, or binding on him as aforesaid, to produce documents or information required to be produced in connection with the whole or any part of the said net amount; or
  - (c) the trade or business specified in any such under taking as aforesaid is permanently discontinued within the five years next following the date of the giving of the undertaking, and, at .the date of the discontinuance, the whole or any part of the said net amount has not been used for developing or re-equipping the trade or business,

the said net amount or that part thereof, as the case may be, shall be recoverable from the person who committed the breach of the undertaking or, as the case may be, the person who was carrying on the trade or business immediately before the discontinuance thereof, as a debt due to the Crown:

Provided that no sum shall be recoverable under this subsection by reason of the permanent discontinuance of the trade or business if the like undertakings and authorities are given and approved in connection with the use of that sum as would be required to be given and approved if that sum were the net amount of a post-war refund in respect of the original trade or business payable to the person who was carrying on the specified trade or business immediately before the discontinuance, and the preceding provisions of this Part of this Act, and of the next following section shall, with the necessary adaptations, have effect accordingly in relation to those undertakings and authorities, so, however, that the references in the said provisions to the five years next following the date of the giving of the undertaking shall be construed as references to the five years next following the date of the giving of the undertaking given in connection with the original refund.

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- (2) Subject to the provisions of this subsection, where any sum becomes recoverable under this section from any body corporate by reason of the breach of any undertaking given by or binding on that body corporate, the body corporate and every person who, when the breach was committed, was, or was purporting to act as, a director of the body corporate, shall be jointly and severally liable to the Crown for that sum:

Provided that no person shall be under any liability under this subsection by reason that he was or purported to act as a director of a body corporate, if he proves that the breach in question was committed without his knowledge or against his will and that, in either case, he exercised all due diligence to prevent the commission of the breach.

#### **42 Establishment and duties of advisory panel and referee.**

- (1) The Treasury may appoint—
- (a) an advisory panel consisting of such persons as the Treasury think fit; and
  - (b) a referee,
- to exercise such functions as are specified in this section in relation to them respectively.
- (2) Where—
- (a) the whole or any part of the net amount of a refund is not to be paid to the person who carried on the original trade or business in the relevant chargeable accounting periods, or is not to be used for the purposes of the original trade or business; or
  - (b) there has, since the end of the relevant chargeable accounting periods, been any change in the persons by whom the original trade or business is carried on,
- no refund shall be paid unless the undertakings and authorities required in relation to the payment thereof under the preceding provisions of this Part of this Act are approved by the advisory panel, and, without prejudice to the generality of the preceding provision, the panel shall not, where the said net amount is, under the undertakings, to be made over to any other person by the person to whom the refund is made, approve the undertakings and authorities unless they are satisfied that the terms on which the amount is to be made over are proper having regard to the provisions of this Part of this Act.
- (3) It shall be the duty of the advisory panel, in such cases and at such times as they think fit, to enquire how the net amount of any post-war refund has been dealt with, and, if, in the opinion of the panel, any part of the said net amount has, under the last preceding section, become due to the Crown, to report to the Treasury accordingly, and no sum shall be so recoverable unless the panel have so reported in respect thereof.
- (4) Any person aggrieved by any refusal of the panel to approve any undertakings and authorities or by any report of the panel under this section may, within such time and in such manner as the Treasury may prescribe, appeal to the referee.
- (5) On any such appeal the referee shall— give to the appellant and to the Treasury an opportunity of being heard, and shall hear such evidence, on oath or otherwise, as the appellant and the Treasury desire to put before him, and shall, after such further inquiry, if any, as he thinks fit, decide the question, and his decision on any matters arising on the appeal shall be final and conclusive for all purposes:

Provided that where proceedings are brought in any court for the recovery of any sum from a person on the ground that, when a breach of an undertaking was committed by a

body corporate, he was or purported to act as a director of that body corporate, nothing in this subsection shall preclude that person from contending in those proceedings that the breach was committed without his knowledge or against his will and that he exercised all due diligence to prevent the commission of the breach.

### *Income Tax.*

#### **43 Income tax on post-war refunds.**

Subject to the provisions of the two next following sections, income tax shall be charged for the year 1946-47 on all sums paid as, or on account of, post-war refunds, whenever those sums are paid, and shall be so charged by deduction of tax at the standard rate for that year, and any sums so paid shall be deemed to be income for all the purposes of the Income Tax Acts.

#### **44 Option to spread refunds backwards for income tax purposes.**

- (1) Where a post-war refund is paid to an individual, and in the relevant chargeable accounting periods that individual carried on the original trade or business either atone or in partnership with any other person, he may claim that the income tax (including surtax) payable by him by reason of the receipt of the refund shall be reduced to such extent as may be just having regard to the total income tax (including surtax) which would have been payable by him if the amounts of refund referable to those periods had been treated for the purposes of income tax as additions to the profits or gains of the trade or business for those periods or, as the case may be, as additions to his share thereof, and charged to income tax (including surtax) accordingly.
- (2) Where the amount of income tax which would have been payable as aforesaid is affected by any allowance falling to be made under the provisions of the Income Tax Acts relating to wear and tear and the carrying forward of losses (including the provisions of section nineteen of the Finance Act, 1928) such adjustments, if any, shall be made—
  - (a) in computing the relief falling to be granted under subsection (1) of this section; and
  - (b) in computing the allowances falling to be granted under any of the said provisions of the Income Tax Acts for the year 1947-48 or any subsequent year of assessment,as are necessary to secure that the same wear and tear, loss or other amount is not taken into account so as to increase the relief under the said subsection (1) and also allowed under the said provisions of the Income Tax Acts.
- (3) References in this section to the income tax (including surtax) payable by an individual include, in cases where profits of a wife are deemed to be profits of her husband, references to the income tax (including surtax) payable by his wife or her husband, as the case may be.
- (4) A claim under this section must be made to the Commissioners of Inland Revenue not later than the fifth day of April, nineteen hundred and forty-seven, or within such further period as those Commissioners may allow, 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 this section as it applies to the claims mentioned in that section.

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**45 Option to have refunds treated as profits of 1947-48.**

- (1) Where the net amount of any post-war refund is to be used for the purpose of a trade the profits or gains of which are assessable to tax for the year 1947-48 under Case I of Schedule D or would be so assessable if there were any profits or gains thereof for that year, then, if all the persons who are or would be assessable to tax as aforesaid in respect of those profits or gains for that year and the person to whom the refund is payable, by notice in writing given to the surveyor not later than the end of the year nineteen hundred and forty-eight, or within such further period as the Commissioners of Inland Revenue may allow, so elect—
- (a) in lieu of the refund being chargeable to income tax for the year 1946-47, it shall be charged to income tax for the year 1947-48 as if it were profits or gains of the trade, and shall be so charged, by means of an assessment for the year 1947-48 on the profits or gains of the trade in addition to any other assessment falling to be made thereon for that year; but
  - (b) tax at the standard rate for the year 1946-47 shall nevertheless be deducted from any sum paid as, or on account of, the refund and the amount deducted shall be treated as if it had been paid by the persons chargeable under paragraph (a) of this subsection, and had been so paid by them on account of income tax in respect of the profits or gains of the trade for the year 1947-48:

Provided that this subsection shall not apply unless the persons or one or more of the persons who carried on the original trade or business in the relevant chargeable accounting periods also carry on the trade in connection with which the refund is to be used, either alone or in partnership with any other person, for the whole or any part of the year 1947-48.

- (2) If during the year 1947-48 there is any change in the persons carrying on the trade for the purposes of which the sum repaid is to be used and, by virtue of the change, the trade is, for the purposes of Rule n of the Rules applicable to Cases I and II of Schedule D, treated as discontinued, the references in subsection (1) of this section to the trade shall be construed as references to the trade carried on up to the date of the discontinuance, or, where there is more than one discontinuance in the said year, up to the first of the discontinuances.
- (3) The preceding provisions of this section shall, with the necessary adaptations, apply where the net amount of any post-war refund is to be used for the purposes of more than one trade as it applies where the net amount of a post-war refund is to be used for the purposes of one trade, so, however, that an election can only be made with respect to the whole of the refund and all persons who are or would be assessable to tax under Case I of Schedule D in respect of the profits or gains of any of the trades must be parties to the giving of the notice of the election.
- (4) No election shall be valid under this section in relation to any refund if a claim is made and allowed in relation thereto under the last preceding section.

*Miscellaneous.*

**46 Reliefs given and repayments made after payments have been made by way of post-war refund.**

- (1) Where any sum has been paid as, or on account of, a post-war refund, any relief from, or repayment of, the excess profits tax in respect of which the sum was paid, being a

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relief or repayment which falls to be given or made after the payment of that sum, shall be computed as if the rate of excess profits tax had, as respects all relevant chargeable accounting periods, been eighty per cent.:

Provided that, in computing the amount of capital employed in the trade or business, the said tax shall be treated as chargeable at one hundred per cent. for all those periods.

- (2) Where—
- (a) the amount of any relief or repayment is reduced by virtue of subsection (1) of this section; and
  - (b) if the said subsection (1) had not applied and the relief or repayment had been taken into account in computing any sum paid as, or on account of, a postwar refund, that sum would have been reduced,
- any undertakings given under this Part of this Act in connection with the payment of that sum shall have effect with respect only to such reduced amount as may be just having regard to the reduction which would have been made in that sum.
- (3) References in this section to a repayment of tax do not include references to any payment of, or on account of, a post-war refund.

#### **47 Set-off of refunds against excess profits tax.**

Where after the end of the year nineteen hundred and forty-five, excess profits tax is due and payable in respect of any relevant chargeable accounting period and, if that tax were paid, a sum would (on the giving, or giving and approval, of the requisite undertakings and authorities) be payable for or on account of a post-war refund, the Commissioners may, if they think fit and if the requisite undertakings and authorities are given, or given and approved, give credit for the amount of the sum payable as afore--said, after deduction of tax at the standard rate for the year 1946-47, against the same amount of the excess profits tax which is due and payable as aforesaid, and, where credit is so given, the amount for which credit is given shall be deemed to have been paid to the Commissioners and repaid by them and the ' said undertakings and authorities shall, with the necessary modifications, have effect accordingly:

Provided that the amount deemed to have been repaid by the Commissioners shall for the purposes of income tax be treated as a payment made after deduction of tax at the standard rate for the year 1946-47.

#### **48 Payment of refunds out of Consolidated Fund.**

- (1) Such sums as are required by the Commissioners of Inland Revenue for the purpose of making payments of, or on account of, post-war refunds shall be issued to the Commissioners out of the Consolidated Fund of the United Kingdom or the growing produce thereof.
- (2) For the purpose of providing any sums to be issued under subsection (1) of this section, the Treasury may raise money in any manner in which they are authorised to raise money under the National Loans Act, 1939, and any securities created and issued to raise money under this section shall be deemed for all purposes to have been created and issued under that Act.
- (3) Notwithstanding anything in sub-paragraph (2) of paragraph 1 of Part II of the Seventh Schedule to the Finance (No. 2) Act, 1939, in computing the amount of the capital employed in a trade or business for the purposes of excess profits tax no deduction

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shall be made from the price of any asset on the ground that it was acquired wholly or partly out of a sum paid for or on account of a post-war refund and that that sum was, by virtue of this section, contributed but of the Consolidated Fund.

#### **49 Special cases.**

The provisions of this Part of this Act and of section twenty-eight of the Finance Act, 1941 (as amended by any subsequent enactment) shall, in relation to partnerships, members of groups of companies and tax paid under section twenty-four of the Finance Act, 1943 (which relates to sales of stock at an under-value), have effect subject to the provisions of the Sixth Schedule to this Act.

#### **50 Interpretation of Part IV.**

- (1) In this Part of this Act and in the Sixth Schedule to this Act, the following expressions have, except so far as the context otherwise requires, the meanings hereby respectively assigned to them, that is to say—

" the original trade or business " means, in relation to a post-war refund, the trade or business, tax on the profits of which is or is to be refunded;

" relevant chargeable accounting period " means any chargeable accounting period (for the purposes of excess profits tax) beginning on or after the first day of April, nineteen hundred and forty and ending on or before the thirty-first day of December, nineteen hundred and forty-five, or any part of a chargeable accounting period, being a part beginning on or after the said first day of April and ending on or before the said thirty-first day of December, which falls to be treated for the purposes of section twenty-eight of the Finance Act, 1941, as a separate chargeable accounting period;

" net amount " means, in relation to a post-war refund, the gross amount thereof less the income tax deducted therefrom, and, where the payment is made otherwise than to a body corporate, less also any surtax ascribable to the payment of the refund, the amount of surtax so ascribable being ascertained on the basis that the refund is to be treated as the highest part of the income of the person to whom the payment is made;

"group of companies, " " the principal company " and " subsidiary member " have the meanings respectively assigned to them by subsection (1) of section twenty-eight of the Finance Act, 1940.

- (2) References in this Part of this Act to the national defence contribution for a relevant chargeable accounting period shall, where the relevant chargeable accounting period is not also a chargeable accounting period for the purposes of the national defence contribution, be taken to be references to a sum made up by apportioning and aggregating the amounts of the national defence contribution paid or 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 relevant chargeable accounting period.

Any apportionment-required to be made by this subsection shall be made by reference to the number of months or fractions of months in the period to which the apportionment relates.

- (3) Any reference in this Part of this Act or in the Sixth Schedule to this Act to the relevant chargeable accounting periods to which a post-war refund is referable shall be construed as a reference to the relevant chargeable accounting periods in which there



was extra tax, and any reference in this Part of this Act or in the said Sixth Schedule to the amount of refund which is referable to any such period shall be construed as a reference to an amount which bears to the total amount of the refund the same proportion as the extra tax in that period bears to the sum of the amounts of extra tax in all the periods to which the refund is referable.

For the purposes of this subsection, if the excess profits tax for any of the relevant chargeable accounting periods exceeds the national defence contribution for that period, there shall be deemed to have been extra tax for that period equal to whichever of the two following amounts is the smaller, that is to say—

- (a) twenty per cent. of the excess profits tax for the period; and
- (b) the amount by which the excess profits tax for the period exceeds the national defence contribution for the period:

Provided that, if the national defence contribution is equal to or exceeds the excess profits tax in the case of all the relevant chargeable accounting periods, there shall be deemed to have been extra tax for all the chargeable accounting periods for which there was excess profits tax, equal, in the case of each such period, to twenty per cent. of the excess profits tax for that period.

In determining for the purposes of this subsection whether there is any, and, if so, what excess profits tax for any period, any national defence contribution payable for that or any other period shall be disregarded except in computing capital and any relief for any deficiency of profits occurring in any other chargeable accounting period shall be altogether disregarded, and in determining for the said purposes whether there is any, and, if so, what national defence contribution for any period, excess profits tax shall be altogether disregarded.

- (4) Where any expenditure has been incurred on or after the first day of April, nineteen hundred and forty-five, in developing or re-equipping a trade or business, any sum used in or towards the recouping of that expenditure shall be deemed for the purposes of this Part of this Act to have been used in developing or re-equipping that trade or business and any undertakings given under this Part of this Act shall have effect accordingly.