



# Finance Act 1940

1940 CHAPTER 29 3 and 4 Geo 6

An Act to grant certain duties of Customs and Inland Revenue (including Excise), to alter other duties, and 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]

## Extent Information

**E1** For the extent of this Act see [S. 65\(7\)](#)

## Editorial Information

**X1** General amendments to Tax Acts, Income Tax Acts, and/or Corporation Tax Acts made by legislation after 1.2.1991 are noted against [Income and Corporation Taxes Act 1988 \(c. 1, SIF 63:1\)](#) but not against each Act

## Modifications etc. (not altering text)

**C1** Words of enactment omitted under authority of [Statute Law Revision Act 1948 \(c. 62\), s. 3](#)

## Commencement Information

**I1** Act partly in force at Royal Assent, partly retrospective, see individual sections; all provisions so far as unrepealed wholly in force at 1.2.1991.

## PART I

**1** .....<sup>F1</sup>

## Textual Amendments

**F1** [S. 1](#) repealed by [Customs and Excise Act 1952 \(c. 44\), s. 320, sch. 12 pt 1](#)

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1940. (See end of Document for details)*

2 ..... F2

**Textual Amendments**

**F2** S. 2 repealed by Finance Act 1942 (c. 21), s. 49(8), **sch. 12**

3 ..... F3

**Textual Amendments**

**F3** S. 3 repealed by Customs and Excise Act 1952 (c. 44), s. 320, **sch. 12 pt. I**

4 ..... F4

**Textual Amendments**

**F4** S. 4 repealed by Finance Act 1949 (c. 47), s. 52(9)(10), **sch. 11 pt. III** ; Customs and Excise Act 1952 (c. 44), s. 320, **sch. 12 pt. I**

5 ..... F5

**Textual Amendments**

**F5** S. 5 repealed (with savings) by Finance Act 1949 (c. 47), s. 52(9)(10), **sch. 11 pt. III**

6 ..... F6

**Textual Amendments**

**F6** S. 6 repealed by Statute Law Revision Act 1950

7 ..... F7

**Textual Amendments**

**F7** S. 7 repealed by Import Duties Act 1958 (c. 6), s. 16(4), **sch. 7**

8 ..... F8

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1940. (See end of Document for details)*

**Textual Amendments**

**F8** S. 8 repealed by Statute Law Revision Acts 1950 and 1953

**9** ..... **F9**

**Textual Amendments**

**F9** S. 9 repealed by Vehicles (Excise) Act 1949 (c. 89), s. 30, **sch. 7** ; Finance Act 1950 (c. 15), s. 50(7) (8), **sch. 8 pt I**

**10** ..... **F10**

**Textual Amendments**

**F10** S. 10 repealed by Vehicles (Excise) Act 1949 (c. 89), s. 30, **sch. 7**

**PART II.**

**11—** ..... **F11**  
**25.**

**Textual Amendments**

**F11** Part II (ss. 11–25) repealed with savings by Income Tax Act 1952 (c. 10), s. 527, **Sch. 25**

**PART III.**

EXCESS PROFITS TAX AND NATIONAL DEFENCE CONTRIBUTION.

**Modifications etc. (not altering text)**

**C2** The text of Part III (ss. 26–42) and Schs. 5 and 6 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**26 Raising of rate of excess profits tax**

(1) Section twelve of the Finance (No. 2) Act, 1939, (which charges excess profit tax) shall, in relation to an excess of profits arising in any chargeable accounting period beginning on or after the first day of April, nineteen hundred and forty, have effect as if, in subsection (1) thereof, for the words “equal to three-fifths of the excess” there were substituted the words “equal to the excess”.

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- [<sup>F12</sup>(2) Notwithstanding anything in subsection (2) of section fifteen of the said Act, a deficiency of profits occurring in a chargeable accounting period to which subsection (1) of this section applies shall first be applied so as to reduce profits chargeable to tax arising in another chargeable accounting period to which the subsection (1) applies, and a deficiency of profits occurring in a chargeable accounting period to which the said subsection (1) does not apply shall first be applied so as to reduce profits chargeable to tax arising in another chargeable accounting period to which the said subsection (1) does not apply; and where owing to an insufficiency of profits against which the deficiency can be set off for chargeable accounting periods to which the said subsection (1) applies or, as the case may be, does not apply, 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]

(3) ..... <sup>F13</sup>

#### Textual Amendments

**F12** S. 26(2) substituted by [Finance \(No. 2\) Act 1945 \(c. 13\), s. 29\(2\)](#)

**F13** S. 26(3) repealed by [Finance Act 1941 \(c. 30\), s. 52, Sch. 5](#)

#### Modifications etc. (not altering text)

**C3** S. 26 explained by [Finance Act 1941 \(c. 30\), s. 42, Sch. 4](#)

**C4** S. 26 restricted by [Finance \(No. 2\) Act 1945 \(c. 13\), s. 29\(1\)](#)

**C5** S. 26 extended by [Finance \(No. 2\) Act 1945 \(c. 13\), s. 33\(4\)](#)

## 27 Provisions to replace s. 13(7) of Finance (No. 2) Act, 1939.

- (1) Subsection (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, nineteen hundred and thirty-six.
- (2) If, in the case of a trade or business carried on by a body corporate, the Commissioners 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 profits of that 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 of a company the directors whereof had a controlling interest therein, eight per cent., per annum ; and

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- (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 ; [<sup>F14</sup>and]
- (iii) [<sup>F14</sup>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.]

...  
<sup>F15</sup>

- (3) If on the application of the person carrying on the trade or business the Board of Referees are satisfied that the condition specified in paragraph (a), or the condition specified in paragraph (b), of subsection (2) of this section is fulfilled, and also that the paid-up share capital of the body corporate in the standard period [<sup>F14</sup>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 the full year shall be ascertained as if the profits of the standard period were of such an amount as they think just :  
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 account 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 tax, [<sup>F16</sup>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) If, on an application made under the last preceding subsection, the Board of Referees 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 Board—
  - (a) may give a direction under that subsection notwithstanding that they are not satisfied that the paid-up share capital in the standard period [<sup>F14</sup>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; and
  - (b) shall not, as respects the amount to be specified in the direction, be bound by the limitation imposed by the proviso to that subsection.
- (5) Notwithstanding anything in subsections (2) to (4) of this section, the amount which, by virtue of those subsections, is to be treated, in ascertaining the standard profits for a full year, as being 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 period, 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 Board of Referees, the amount of capital employed in the trade or business immediately before the commencement of the

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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, paragraphs 1 of Part II of the Seventh Schedule to the Finance (No. 2) Act, 1939, shall, for the purposes of this subsection, have effect in relation to those assets as if their price or value as was in the opinion of the Board 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 persons on partnership, or by a single individual, 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
- (b) the net amount 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 those accounts, shall be treated as paid-up ordinary share capital.

[<sup>F17</sup>(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, nineteen hundred and forty-two, unless the Commissioners allow a longer period.]

- (8) A determination on an application under subsection (2) or subsection (3) of this section—

- (a) shall have effect with respect to all chargeable accounting periods;
- (b) shall exclude any further application under the subsection under which the application was made.

[<sup>F18</sup>(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;]

#### Textual Amendments

- F14** Words inserted by [Finance Act 1941 \(c. 30\), s. 29\(3\)](#)
- F15** Words repealed by [Finance Act 1941 \(c. 30\), s. 52, Sch. 5](#)
- F16** Words substituted by [Finance Act 1941 \(c. 30\), s. 29\(3\)](#)
- F17** [S. 27\(7\)](#) substituted by [Finance Act 1941 \(c. 30\), s. 32\(2\)](#)
- F18** [S. 27\(9\)](#) inserted by [Finance Act 1941 \(c. 30\), s. 32\(3\)](#)

#### Modifications etc. (not altering text)

- C6** [S. 27](#) amended by [Finance \(No. 2\) Act 1940 \(c. 48\), s. 13](#) and by [Finance Act 1941 \(c. 30\), ss. 29\(4\), 30\(2\), 32\(1\)](#)
- C7** [S. 27](#) extended by [Finance Act 1941 \(c. 30\), s. 42, Sch. 4 para. 5](#)
- C8** [S. 27](#) restricted by [Finance Act 1941 \(c. 30\), s. 42, Sch. 4 para. 5](#)
- C9** [S. 27](#) excluded by [Finance Act 1941 \(c. 30\), s. 32\(5\)](#)

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## **28 New provisions as to interconnected companies.**

- (1) Subsections (2) to (5) of section seventeen of the Finance (No. 2) Act, 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 subsections 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 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 subsections by this section, in respect of any chargeable accounting 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 subsection and the said Schedule, the expression “a group of companies” means two or more bodies corporate of which—

- (a) one (in this subsection 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
- (b) 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 subsection shall be inserted after subsection (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 those 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 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 subsection (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 subsection (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 subsection (1) of this section and the said Schedule, be treated as a subsidiary of such one only of those bodies corporate as the Commissioners may direct.

## **29 Investments held by members of groups of bodies corporate.**

- (1) Where a group of bodies corporate consists of or includes—

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- (a) a body corporate resident in the United Kingdom (hereinafter referred to 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”) each 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 purpose of co-ordinating the administration of the group shall not be taken into account; and
  - (ii) that in computing the profits of any 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 and businesses carried on by all the members of the group were regarded as one trade or business, that income 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 subsection (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.

### **30 Relief in respect of excess profits tax in dominions, &c**

- (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, of there were no national defence contribution, would be, payable also under the law in force in the United Kingdom; and
  - (b) arrangement 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 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 contributions 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



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of 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 satisfied that any case is one which falls within the arrangements 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 arrangements, and allow any necessary relief accordingly by repayment or otherwise, [F<sup>19</sup>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].
- (3) Where under the provisions of subsection (2) of this section any adjustment of excess profits tax or national defence contribution is made for any period, a corresponding adjustment shall be made in computing for the purposes of section nineteen of the Finance (No. 2) Act, 1939, (which makes provisions 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 aforesaid relates, any relief provided for by the arrangements falls to be recalculated (whether by reason of a subsequent deficiency of profits or otherwise), the adjustments made under subsection (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 recalculation is to show that too much relief had been given, any necessary additional assessments shall be made.
- (5) The obligation as to secrecy imposed by paragraph 6 of Part II of the Fifth Schedule to the <sup>M1</sup>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 Protectorate or protected state; and
  - (b) any territory in respect of which 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.

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**Textual Amendments**

**F19** Words substituted by [Finance Act 1941 \(c. 30\), s. 41](#)

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**Marginal Citations**

**M1** 1 Edw. 8. & 1 Geo. 6. c. 54.

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### **31 Miscellaneous amendments as to standard profits.**

- (1) For subsection (2) of section thirteen of the Finance (No. 2.) Act, 1939, there shall be substituted the following subsection—

“(2) The minimum amount referred to in subsection (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 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 greater sum is inadequate, 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 pounds for each individual working proprietor or four thousand 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 more than one-twentieth of the share capital of the company.”
- (2) The following paragraphs shall be substituted for paragraph (b) of subsection (9) of the said section thirteen (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 subsection applies, ten per cent.”

### **32 Disallowance, in computing profits, of certain expenses.**

- (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 the 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.

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**Modifications etc. (not altering text)**

**C10** S. 32 amended by [Finance Act 1941 \(c. 30\), s. 34](#)

**33 Miscellaneous amendments as to computation of profits for excess profits tax.**

- (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 the 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 subsection, be allowable in computing profits, and, in the opinion of the Commissioners, 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 Commissioners 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 Commissioners think proper.

Any person who is dissatisfied with a determination of the Commissioners under this subsection may appeal to the Board of Referees.

- (3) In paragraph 6 of Part I 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 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,”

and in sub-paragraph (1) of the said paragraph 6 for the words “to the extent provided in sub-paragraph (2) of this paragraph” there shall be substituted the words “to the extent provided in sub-paragraphs (2) and (2A) of this paragraph.”

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(4) At the end of the said paragraph 6 the following words shall be inserted :—

“(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 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 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 a medium of other companies or by any other indirect means, to control, more than five per cent. of the ordinary share 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

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- (b) had during the whole or any part of any previous accounting period which includes the whole or 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 subparagraph (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).”
- (6) Paragraph 13 of Part I of the said Seventh Schedule (which allows for 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 fulfilled—
- (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 to be 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.

**Modifications etc. (not altering text)**

- C11** S. 33 saved by [Finance Act 1943 \(c. 28\)](#), s. 23(6)(7), [Sch. 7 para. 4](#)
- C12** S. 33 restricted by [Finance Act 1946 \(c. 64\)](#), [ss. 37\(6\)\(7\)](#), [41\(3\)](#), [43\(1\)\(2\)](#)

**34 Miscellaneous amendments as to computation of capital.**

- (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 subsection 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 of 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 subsection shall have effect to such extent only as the Commissioners think proper.
- (2) Where subsection (1) of this section has effect on the application of the person carrying on the trade or business made before the making of the application, and any assessment affected by that computation, shall be revised accordingly.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1940. (See end of Document for details)*

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- (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 the 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 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 a 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 subsection (1) of 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.”

### **35 Computation of profits and capital in the case of trades and businesses not falling within Case I of Schedule D.**

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 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 under 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.

### **36 Provisions as to computation losses.**

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 subsection (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.

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### **37 Amendments as to deficiencies of profits.**

- (1) Subsection (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 occurs in any chargeable accounting period of a trade or business) shall not apply to a deficiency of profits 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, apply 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 deficiency of profits has occurred in any chargeable accounting period as they apply in relation to assessments to excess profits tax.

### **38 Successions and amalgamations.**

- (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 this section.
- (2) Any consideration which, under subsection (3) or subsection (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 replacement of plant and machinery, and whether any and if so what allowance is to be made in respect of depreciation.
- (3) In subsection (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 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 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 on to another person.”
- (4) Where—
  - (a) a trade or business is, by virtue of subsection (2) or subsection (3) of the said section sixteen, deemed not to have been discontinued; or

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- (b) a trade or business is, by virtue of subsection (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 subsection (5) of the said section sixteen, 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 the date before the transfer,

the enactments 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 :

[<sup>F20</sup>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.]

- (5) In subsection (5) of the said section sixteen the words “subject to any necessary modifications,” and in subsection (6) thereof the words “subject, however, to such modifications (including modifications as respects the computation of capital) as may bejust” and the words “or if the applicant is dissatisfied with any modifications made by the Commissioners” are hereby repealed.

**Textual Amendments**

**F20** Proviso substituted by [Finance Act 1942 \(c. 21\), s. 39](#)

**39 Amendments as to relation of excess profits tax to national defence contribution.**

- (1) In subsection (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 disregarded”.
- (2) In subsection (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”.
- (3) ..... <sup>F21</sup>
- (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



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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1940. (See end of Document for details)*

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(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 subsection (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, nineteen hundred and thirty-nine, the amount of national defence contribution which would have been attributed thereto under the said subsection (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.

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**Textual Amendments**

**F21** S. 39(3) repealed by [Finance Act 1942 \(c. 21\)](#), s. 36, **Sch. 9**

**40** ..... **F22**

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**Textual Amendments**

**F22** S. 40 repealed by [Finance Act 1947 \(c. 35\)](#), s. 74, **sch. 11 pt II** ; with saving, [Finance Act 1965 \(c. 25\)](#), 97(5), sch. 22 pt. V

**41**     **Definition of ordinary share capital.**

In this Part of this Act and in any other enactment relating to excess profits tax the expression “ordinary share capital” has the same meaning assigned to it by subsection (3) of section forty-two of the Finance Act, 1938; and in paragraph (c) of section twenty-two of the Finance (No. 2) Act, 1939, the words “and, except in the provisions of this Part of this Act relating to subsidiary companies, the expression “ordinary share capital”” are hereby repealed.

**42** ..... **F23**

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**Textual Amendments**

**F23** S. 42 repealed by Statute Law Revision Act 1950

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1940. (See end of Document for details)*

**PART IV**

**43**— ..... **F24**  
**59.**

**Textual Amendments**

**F24** Pt. IV (ss. 43–59) repealed by Finance Act 1954 (c. 44), ss. 29(1), 31(7), 35(9), **sch. 6**; Finance Act 1965 (c. 25), ss. 88(1), 97(5), **sch. 22 pt. IV**; Finance Act 1968 (c. 44), s. 61(10), **sch. 20 pt. IV**; Finance Act 1969 (c. 32), s. 61(6), **sch. 21 pt. V**; with savings, Finance Act 1975 (c. 7), ss. 50, 52(2)(3), 59, **sch. 13 pt I**

**PART V**

MISCELLANEOUS

**60**    **Extension of power of Treasury to attach exemptions from taxation to securities.**

(1) The power of the Treasury under section twenty-two of the Finance Act (No. 2) Act, 1931, to issue securities with the condition as to exemption from taxation specified in that section shall extend to the issuing of securities with that condition so modified, whether as to the extent of the exemption or the cases in which the exemption is to operate, as the Treasury may specify in the terms of the issue.

(2) ..... **F25**

**Textual Amendments**

**F25** S. 60(2) repealed by Income Tax Act 1952 (c. 10), s. 527, **Sch. 25**

**Modifications etc. (not altering text)**

**C13** S. 60 extended (29.4.1996 with effect as mentioned in s. 154(9) of the amending Act) by 1996 c. 8, s. 154(1)(5)

**61** ..... **F26**

**Textual Amendments**

**F26** S. 61 repealed by Statute Law Revision Act 1959

**62** ..... **F27**

**Textual Amendments**

**F27** S. 62 repealed by Statute Law Revision Act 1950

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1940. (See end of Document for details)*

63 ..... F28

**Textual Amendments**

**F28** S. 63 repealed by [Post Office Act 1961 \(c. 15\)](#), ss. 20, 28(1), [Sch.](#)

64 ..... F29

**Textual Amendments**

**F29** S. 64 repealed by [Finance Act 1975 \(c. 7\)](#), ss. 50, 52(2)(3), 59, [Sch. 13 Pt. I](#)

**65 Short title, construction, extent and repeal.**

(1) This Act may be cited as the Finance Act 1940.

(2) ..... F30

(3) ..... F31

(4) Part III of this Act shall, so far as it relates to excess profits tax or the relation of excess profits tax to the national defence contribution, be construed as one with Part III of the Finance (No. 2) Act, 1939.

(5) ..... F32

(6) Any reference in this Act to any other enactment shall, unless the contrary is expressly provided or the context otherwise requires, be construed as a reference to that enactment as amended by any subsequent enactment, including this Act.

(7) Such of the provisions of this Act as relate to matters with respect to which the Parliament of Northern Ireland has power to make laws shall not extend to Northern Ireland.

(8) ..... F33

**Textual Amendments**

**F30** S. 65(2) repealed by [Import Duties Act 1958 \(c. 6\)](#), s. 16(4), [Sch. 7](#)

**F31** S. 65(3) repealed by [Statute Law Revision Act 1953 \(c. 5\)](#)

**F32** S. 65(5) repealed by [Finance Act 1975 \(c. 7\)](#), ss. 50, 52(2)(3), 59, [Sch. 13 Pt. I](#)

**F33** S. 65(8) repealed by [Statute Law Revision Act 1950](#)

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1940. (See end of Document for details)*

F34F34 SCHEDULE 1

**Textual Amendments**

F34 Sch. 1 repealed in part by Finance (No. 2) Act 1940 (c. 48), s. 42(8), sch. 10

F34

F35F35 SCHEDULE 2

**Textual Amendments**

F35 Sch. 2 repealed by Finance Act 1942 (c. 21), s. 49(8), sch. 12

F35

F36F36 SCHEDULE 3

**Textual Amendments**

F36 Sch. 3 repealed by Customs and Excise Act 1952 (c. 44), s. 320, sch. 12 pt. I

F36

F37F37 SCHEDULE 4

**Textual Amendments**

F37 Sch. 4 repealed with saving Finance Act 1949 (c. 47), s. 52(9)(10), sch. 11 pt III

F37

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1940. (See end of Document for details)*

## SCHEDULE 5

Sections 28, 29 and 34.

### PROVISIONS AS TO EXCESS PROFITS TAX AND NATIONAL DEFENCE CONTRIBUTION IN THE CASE OF INTERCONNECTED COMPANIES

#### Modifications etc. (not altering text)

- C14** The text of Part III (ss. 26–42) and Schs. 5 and 6 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.
- C15** Sch. 5 extended by Finance (No. 2) Act 1940 (c. 48), s. 13(3)
- C16** Sch. 5 amended by Finance Act 1941 (c. 30), s. 42, Sch. 4 paras. 6(1)(2)
- C17** Sch. 5 excluded by Finance Act 1941 (c. 30), s. 42, Sch. 4 para. 1 and by Finance Act 1945 (c. 24), s. 5(3)
- C18** Sch. 5 applied by Finance (No. 2) Act 1945 (c. 13), s. 49, Sch. 6 para. 5

## PART I

### ASSESSMENT OF EXCESS PROFITS TAX

- 1 (1) If, for any period after the end of March, nineteen hundred and thirty-nine, a body corporate is a member of a group of companies, assessments shall be made in respect of its excess profits for all chargeable accounting periods during that period 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 made 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 company 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 or 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 or 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 assessments in lieu thereof.
- 3 Paragraph I of Part III of the Fifth Schedule to the Finance Act, 1937 (which, as applied to excess profits tax by subsection (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.

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## 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 of 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 business 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 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 provisions 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 arising 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 shall, with the adaptations and modifications specified in the next succeeding sub-paragraph, have effect in 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 corporate 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 ;

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- (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 construed as references to all the trades or businesses of all the members of the group, other than new subsidiaries ;
  - (d) references 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 purposes 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 ascertained under paragraph (a) of the proviso to subsection (3) of the said second section, an additional deduction shall be made equal to the aggregate 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 businesses 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
  - [<sup>F38</sup>(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.]
- (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.

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**Textual Amendments**

**F38** Sch. 5 Part II para. 3(3)(j) substituted by Finance Act 1941 (c. 30), Sch. 4 para. 6(2)

- 4 (1) Whether the group is or is not such a group as is mentioned in the last two foregoing paragraphs, the principal company of the group may elect that the standard profits of every member 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 a controlling interest therein, by reference to such greater sum as might be allowed in relation to the

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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” has 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 EXCESSES 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.

- 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 therefore 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 minimum standard, be taken to be an amount ascertained in accordance with the subsequent provisions of this 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 ;
  - (c) where no difference would have been made to the standard profits of the group if the trade or business of the body corporate had been left out of



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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 be 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 adaptations 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 than in 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 acse 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) In sub-paragraph (3) of this paragraph, the expression “the statutory percentage” has the meaning assigned to it by subsection (9) of section thirteen of the Finance (No. 2) Act 1939 :  
Provided that the proviso to the said subsection (9) (which prescribes that 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 businesses 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.

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- (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 [<sup>F39</sup>Commissioners], on the application of the principal company, confirm the direction :

Provided that on any such application for the confirmation of a direction the [<sup>F39</sup>Commissioners] may, in lieu of refusing to confirm the direction, confirm it subject to such diminution of the amount specified therein as they think fit.

[<sup>F40</sup>If the principal company is dissatisfied with any determination of the Commissioners under this sub-paragraph, it may appeal to the Board of Referees.]

#### Textual Amendments

**F39** Words substituted by [Finance Act 1941 \(c. 30\)](#), [Sch. 4 para. 6](#)

**F40** Words added by [Finance Act 1941 \(c. 30\)](#), [Sch. 4 para. 6](#)

- 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 the 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 negative amount equal to the difference.
- 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

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- (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 less negative amount, by the amount of the difference ; and
  - (ii) a positive amount shall be deemed to exceed 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 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 computing 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.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1940. (See end of Document for details)*

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- 2 (1) In this 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 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 investments shall be applied first in relation to one of those members, and if and to the extent that it is greater than the excess of borrowed money of that member, then in relation to another of those 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 or 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 that 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 occurring 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,

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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 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 that body corporate was not a member of the group in or throughout 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 at 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 periods 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 occurring after that event by any 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 companies, 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

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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 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.

**Modifications etc. (not altering text)**

**C19** Sch. 5 para. 6(2) excluded, 4 & 5 Geo. 6. c. 30. s. 42, sch. 4, para. 1 ; 8 & 9 Geo. 6. c. 24. s. 5(3)

- 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 Commissioners shall from time to time make—
- (a) such reductions, if any, of excess profits tax chargeable 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 businesses,

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 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 that 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 businesses of members of a group of companies shall be construed as references to the sums payable in respect of the trades or businesses 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 For each subsidiary member of a group of companies, there shall, in the case of each chargeable accounting period, be computed the total excess mprofits 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—

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- (a) all deficiencies of profits occurring in its own trade or business in those periods, and no deficiencies occurring 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 comply 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.

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**Modifications etc. (not altering text)**

**C20** [Sch. 5 para. 8](#) applied, 9 & 10 Geo. 6. c. 13. s. 49, sch. 6, para. 5

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F41

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**Textual Amendments**

**F41** [Sch. 5 Part IV, para. 9](#) repealed by [Income Tax Act 1952 \(c. 10\)](#), s. 527, [sch. 25 pt. I](#)

- 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),—

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- (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-paragraph (2) of the said paragraph 2.
- (2) A debt for 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 the liability to the national defence contribution arose,
- whichever day is the latter.
- (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 a 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 Any appeal from any assessment to, or determination with respect to, excess profits tax in respect of 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 Purposes of excess profits tax, shall have effect as if the references 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



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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 groups 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 on the first day of July, nineteen hundred and thirty-six.

- (2) It is hereby declared that the provisions of section sixteen 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 of 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.

#### **Modifications etc. (not altering text)**

- C21** The text of Part III (ss. 26–42) and Schs. 5 and 6 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

- 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.

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- 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 nineteen 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 Commissioners 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 on appeal) and, to the extent that any tax so discharged has 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

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- 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;
- [<sup>F42</sup>(b) in applying the provisions of paragraphs 1 to 3 of this Schedule to the case of an assessment to the national defence contribution for a period part of which falls before, and part of which falls after, the end of the year nineteen hundred and forty-six, there shall be deemed to be added to the amount of excess profits tax which would have been assessable or payable, as the case may be, for the part of the period before the end of that year an amount equal to so much of the national defence contribution for the whole period as is apportionable to the part thereof falling after the end of that year.]
- (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, nineteen hundred and thirty-nine, there shall be added to the amount of excess profits tax which would have been 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.

#### Textual Amendments

**F42** Sch. 6 para. 7(b) substituted by Finance Act 1946 (c. 64), s. 36, Sch. 7 para. 3

- 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 of March, nineteen hundred and thirty-nine; 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.

#### <sup>F43</sup>SCHEDULE 7

#### Textual Amendments

**F43** Sch. 7 repealed with savings by Finance Act 1975 (c. 7), ss. 50, 52(2)(3), 59, Sch. 13 Pt. I

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**F44F44** SCHEDULE 8

**Textual Amendments**

**F44** [Sch. 8](#) repealed by Statute Law Revision Act 1950

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**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 1940.