

Changes to legislation: There are currently no known outstanding effects
for the Finance Act 1940, Schedule 5. (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)

- C1 The text of Part III (ss. 26–42) and Schs. 5 and 6 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.
- C2 Sch. 5 extended by Finance (No. 2) Act 1940 (c. 48), s. 13(3)
- C3 Sch. 5 amended by Finance Act 1941 (c. 30), s. 42, Sch. 4 paras. 6(1)(2)
- C4 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)
- C5 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.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1940, Schedule 5. (See end of Document for details)

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 ;

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1940, Schedule 5. (See end of Document for details)

- (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
 - [^{F1}(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.

Textual Amendments

F1 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

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1940, Schedule 5. (See end of Document for details)

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

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1940, Schedule 5. (See end of Document for details)

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 case may be, decreased by the statutory percentage of the increase or decrease in the average amount of the capital employed in the trade or business.
- (4) 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 [^{F2}Commissioners], on the application of the principal company, confirm the direction :
- Provided that on any such application for the confirmation of a direction the [^{F2}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.
- [^{F3}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

- F2** Words substituted by [Finance Act 1941 \(c. 30\)](#), [Sch. 4 para. 6](#)
- F3** 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

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1940, Schedule 5. (See end of Document for details)

- (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.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1940, Schedule 5. (See end of Document for details)

- 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,

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1940, Schedule 5. (See end of Document for details)

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

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1940, Schedule 5. (See end of Document for details)

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)

C6 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—

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1940, Schedule 5. (See end of Document for details)

- (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.

Modifications etc. (not altering text)

C7 [Sch. 5 para. 8](#) applied, 9 & 10 Geo. 6. c. 13. s. 49, sch. 6, para. 5

9

F4

Textual Amendments

F4 [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),—

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1940, Schedule 5. (See end of Document for details)

- (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.

Changes to legislation:

There are currently no known outstanding effects for the Finance Act 1940, Schedule 5.