



# Finance (No. 2) Act 1945

## 1945 CHAPTER 13

### PART III

#### EXCESS PROFITS TAX AND THE NATIONAL DEFENCE CONTRIBUTION.

#### **29 Reduction of rate of excess profits tax.**

- (1) Subsection (1) of section twenty-six of the Finance Act, 1940 (which raises the rate of excess profits tax from sixty per cent. to one hundred per cent. as from the beginning of April, nineteen hundred and forty) shall not apply to any chargeable accounting period beginning on or after the first day of January, nineteen hundred and forty-six.
- (2) For subsection (2) of the said section twenty-six (which contains provisions for securing that deficiencies occurring after the end of March, nineteen hundred and forty, shall, so far as possible, be applied to reduce profits arising after the said end of March and that deficiencies occurring before the said end of March shall so far as possible, be applied to reduce profits arising before the said end of March) there shall be substituted the following subsection—

“(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 said 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

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- (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”;

and, in paragraph 1 of the Fourth Schedule to the Finance Act, 1941, the words ' (which contains provisions for securing that deficiencies occurring after the end of March, nineteen hundred and forty, shall, so far as possible, be applied to reduce profits arising after the said end of March and deficiencies occurring before the said end of March shall, so far as possible, be applied to reduce profits arising before the said end of March) ' shall be omitted.

- (3) Any excess profits or deficiency of profits occurring for a chargeable accounting period falling partly before and partly after the end of the year nineteen hundred and forty-five shall be apportioned between the part of the period before and the part of the period after the end of the said year, and for the purpose of determining the rate at which excess profits tax is to be charged on any excess profits and of giving relief for deficiencies of profits under the enactments relating to excess profits tax, and for the purposes of section twenty-eight of the Finance Act, 1941, each of the two parts of the period shall be treated as if it were a separate chargeable accounting period.

In this subsection, the expression " excess profits " means the amount by which the profits for any period exceed the standard profits therefor, and any apportionment required to be made by this subsection shall be made by reference to the number of months or fractions of months in each of the parts of the whole period.

- (4) In subsection (4) of section thirty-four of the Finance Act, 1941 (which section relates to the recovery from directors and other persons of expenses for fees or other payments for services disallowed for excess profits tax purposes) for the words " shall be treated as reduced by the sum recovered " there shall be substituted the words " shall be treated as reduced, in the case of the profits, by an amount excess profits tax on which is equal to the sum recovered and, in the case of the liability to excess profits tax, by the sum recovered. "
- (5) The enactments relating to excess profits tax shall be deemed always to have had effect as amended by this section.

### **30 Relief not to be given for deficiencies of profits occurring after end of 1946.**

- (1) No relief shall be given in respect of any deficiency of profits occurring in any chargeable accounting period beginning on or after the first day of January, nineteen hundred and forty-seven.
- (2) Any deficiency of profits occurring in a chargeable accounting period falling partly before and partly after the end of the year nineteen hundred and forty-six shall be apportioned between the part of the period before and the part of the period after the end of the said year, and each of the two parts of the period shall be treated for the purpose of relief for deficiencies of profits as if it were a separate chargeable accounting period.
- (3) Notwithstanding anything, in the preceding provisions of this section, a deficiency of profits occurring in any chargeable accounting period in the case of a trade or business carried on by a member of a group of companies may be applied in reducing either—
- (a) the profits arising to another member of the group in a chargeable accounting period coterminous with, or falling wholly within, that chargeable accounting period; or

- (b) so much of the profits arising to another member of the group in a chargeable accounting period part of which falls in that chargeable accounting period as is apportionable to that part.

Expressions used in this subsection have the same meanings as they have in the Fifth Schedule to the Finance Act, 1940 (which relates to groups of companies).

- (4) Any apportionment required to be made by this section of any profits or deficiency of profits for any period shall be made by reference to the number of months or fractions of months in each of the parts of that period.

### **31 Extension of relief for deficiencies of profits where a trader acquires or commences a new trade or partly discontinues a trade.**

- (1) The provisions of this section shall have effect where either of the following events occurs in relation to a person carrying on a trade or business (hereinafter referred to as " the original trade or business "), that is to say—
  - (a) that, while continuing to carry on the whole or some part of the original trade or business, or upon ceasing to carry on the original trade or business, he acquires or commences another trade or business; or
  - (b) that he ceases to carry on part of the original trade or business.
- (2) If, in the opinion of the Commissioners of Inland Revenue, the trade or business carried on by that person immediately after the event (hereinafter referred to as " the second trade or business ") is not substantially different in its nature from the original trade or business, the second trade or business shall, if he makes application to the Commissioners for that purpose, be deemed for the purposes of subsection (2) of section fifteen of the Finance (No.2 ) Act, 1939 (which provides for granting relief from excess profits tax in respect of deficiencies of profits) to be a continuation of the original trade or business.
- (3) If, in the opinion of the Commissioners, the second trade or business is substantially but not wholly different in its nature from the original trade or business and—
  - (a) a final deficiency of profits occurs in either trade or business; and
  - (b) the said person is chargeable to excess profits tax in respect of any profits of the other trade or business, after account has been taken of all such relief as can, apart from the provisions of this and the two next following sections, be given in respect of deficiencies of profits; and
  - (c) the said person applies to the Commissioners for relief under this subsection, the profits in respect of which he is so chargeable shall, for the purposes of excess profits tax, be deemed to be reduced by so much of the final deficiency as the Commissioners think just, having regard to the extent to which that deficiency and those profits are respectively attributable to so much of one trade or business as is of the same nature as the whole or some part of the other trade or business.
- (4) Where any application is made under this section, the second trade or business shall, for the purposes of subsection (1) of section eighteen of the Finance (No. 2) Act, 1939, and of paragraph 2 of Part II of the Seventh Schedule to that Act (which contain provisions with respect to the effect of the grant of relief in respect of deficiencies of profits), be treated as a continuation of the original trade or business, and any relief given under this section shall be treated as having been given in respect of a deficiency of profits occurring in such chargeable accounting period or periods as the Commissioners may determine.

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- (5) Any relief falling to be given under this section shall be given by repayment or otherwise.
- (6) The enactments relating to excess profits tax shall be deemed always to have had effect as amended by this section.

**32 Extension of relief for deficiencies of profits in the case of certain amalgamations.**

- (1) The provisions of this section shall have effect where either of the following events occurs in relation to two or more trades or businesses (hereinafter referred to as "the constituent concerns"), that is to say—
  - (a) that the constituent concerns are acquired by a partnership which has not previously carried on any trade or business, and the persons by whom the constituent concerns were carried on immediately before the acquisition are, at the time of the acquisition, all members of the partnership; or
  - (b) that the constituent concerns are acquired by a company which has not previously carried on any trade or business, and at the time of the acquisition the said persons together beneficially own more than one half of the ordinary share capital of the company.
- (2) Subject to the provisions of this section, if—
  - (a) throughout any chargeable accounting period of the trade or business carried on by the partnership or the company, any of the said persons is a member of the partnership or the beneficial owner of ordinary share capital of the company; and
  - (b) a final deficiency of profits occurs, in relation to that chargeable accounting period, in the trade or business carried on by the partnership or the company; and
  - (c) that person is chargeable to excess profits tax in respect of the profits of the constituent concern carried on by him, after account has been taken of all such relief as can, apart from the provisions of the last preceding section, this section and the next following section, be given in respect of deficiencies of profits; and
  - (d) that person applies to the Commissioners of Inland Revenue for relief under this section,

the profits in respect of which he is so chargeable shall, for the purposes of excess profits tax, be deemed to be reduced by so much of the final deficiency as the Commissioners think just, having regard to the said person's interest in the partnership or the company.
- (3) Subject to the provisions of this section, if—
  - (a) throughout any chargeable accounting period of the trade or business carried on by the partnership or the company, any of the said persons is a member of the partnership or the beneficial owner of ordinary share capital of the company; and
  - (b) a final deficiency of profits has occurred in the constituent concern carried on by that person; and
  - (c) the profits of the partnership or the company in that chargeable accounting period are, after account has been taken of all such relief as can, apart from the provisions of the last preceding section, this section and the next following

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section, be given in respect of deficiencies of profits, chargeable to excess profits tax; and

- (d) the partnership or the company apply to the Commissioners of Inland Revenue for relief under this section,

the final deficiency shall be applied in reducing, for the purposes of excess profits tax, the profits of the partnership or company in that chargeable accounting period to such extent as the Commissioners think just, having regard to the said person's interest in the partnership or the company.

- (4) Any relief falling to be given under this section shall be given by repayment or otherwise, and where that relief is relief from excess profits tax chargeable in respect of the profits of a constituent concern, and is given by repayment, the Commissioners shall take into account any increased sums which would have fallen to be paid in respect of income tax (including surtax) by the person who carried on that concern if the amount repayable apart from this subsection had been profits or gains of a trade carried on by him and as such had been chargeable to income tax (including surtax) for the year of assessment which includes the last day of the chargeable accounting period in which the deficiency in respect of which relief is to be given occurred, and shall reduce the amount of the relief accordingly.
- (5) Where one of the constituent concerns was, immediately before the acquisition, carried on by a partnership, the preceding provisions of this section shall have effect in relation to that concern subject to the following modifications—
- (a) a member of that partnership shall be entitled to relief under this section in respect of so much only of any excess profits' tax chargeable in respect of the profits of the partnership's trade or business as is appropriate having regard to his interest in the partnership; and
- (b) where a final deficiency of profits has occurred in the trade or- business carried on by that partnership, then, for the purposes of this section, there shall be attributed to each member of the partnership so much only of that final deficiency as is appropriate having regard to his interest in the partnership.
- (6) The question whether any and if so what final deficiency of profits has occurred in relation to any chargeable accounting period shall be determined for the purposes of this section by the Commissioners.
- (7) The enactments relating to excess profits tax shall be deemed always to have had effect as amended by this section.

### **33 Supplementary provisions as to relief for deficiencies of profits.**

- (1) Any person aggrieved by a determination of the Commissioners of Inland Revenue on an application under the provisions of the last two preceding sections may appeal to the Board of Referees.
- (2) Where an application has been made to the commissioners for relief, under the provisions of the last two preceding sections, the Commissioners may, pending an ascertainment whether relief falls to be given on the application, if they are satisfied that the circumstances are such that it is likely that relief will fall to be given thereon, grant such relief as they think fit, but any relief so granted shall be provisional only, and shall be subject to adjustment from time to time as the Commissioners may direct, and shall be finally adjusted when it is ascertained whether any and if so what relief falls to be given upon the application.

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- (3) In the last two preceding sections the expression " final deficiency of profits " means, when used in relation to a particular chargeable accounting period, so much of any deficiency of profits which has occurred in that chargeable accounting period in relation to the trade or business in question as cannot be applied in reducing profits under the provisions of subsection (2) of section, fifteen of the Finance (No. 2) Act, 1939, or of sub-paragraph (2) of paragraph 6 of Part IV of the Fifth Schedule to the Finance Act, 1940, and, save as aforesaid, means the aggregate amount of all deficiencies of profits which have occurred in the trade or business in question in all chargeable accounting periods ending on or before the thirty-first day of December, nineteen hundred and forty-six, minus so much of those deficiencies as, under the said provisions, has been or can be applied in reducing profits.
- (4) Subsection (2) of section twenty-six of the Finance Act, 1940, subsection (4) of section thirty-two of the Finance Act, 1944, and subsection (3) of section five of the Finance Act, 1945 (which relate to the order in which deficiencies of profits are to be applied) and the first two sections of this Part of this Act shall have effect with respect to the grant of relief under the provisions of the last two preceding sections as they have effect with respect to the grant of relief under section fifteen of the Finance (No. 2) Act, 1939.
- (5) Where two or more applications are made under the provisions of the last two preceding sections in respect of the same deficiency of profits, the applications shall be treated as numbered in the order in which the events giving rise to the applications respectively occurred, and so much only of the deficiency as remains after the first application has been disposed of shall be available for the granting of relief on the second application, and so on.
- (6) Where two or more events occur which, under the provisions of the last two preceding sections, entitle a person to relief in respect of the same profits, any applications for relief in respect of those events shall be treated as numbered in the order in which the events giving rise to the applications respectively occurred, and for the purpose of the second application, the profits in respect of which relief is claimed shall be treated as being such only as remain after the first application has been disposed of, and so on.

#### **34 Treatment of certain contributions and other payments made under redundancy schemes.**

- (1) Notwithstanding anything in the enactments relating to the computation of profits for the purposes of excess profits tax and the national defence contribution, where, on or after the first day of January, nineteen hundred and forty-five, the Board of Trade certify a scheme under section twenty-five of the Finance Act, 1935 (which provides for the deduction in computing the profits or gains of a trade of contributions paid under schemes which are certified under that section), then, in computing the profits arising from any trade or business for the purposes of excess profits tax or the national defence contribution—
  - (a) no contribution paid in furtherance of the scheme shall be allowed to be deducted; and
  - (b) no payment made under the scheme shall be taken into account as a trading receipt.
- (2) This section- shall apply in relation to schemes for the elimination or reduction of redundant works, machinery or plant, or for other similar purposes, to which effect is given by or under any Act (whether passed before or after this Act) as it applies in

relation to schemes certified by the Board of Trade under the said section twenty-five on or after the first day of January, nineteen hundred and forty-five.

- (3) The enactments relating to excess profits tax and the national defence contribution shall be deemed always to have had effect as amended by this section.

**35 Extension of time for making assessments to excess profits tax and the national defence contribution, and relief in cases of error or mistake.**

- (1) So much of any provision of the enactments relating to excess profits tax and the national defence contribution as limits the time for the making of assessments to six years from the end of the chargeable accounting period in respect of which the assessment is made shall not have effect, and such assessments may be made at any time, as the case may require, unless and until Parliament otherwise determines.
- (2) The provisions of section twenty-four of the Finance Act, 1923 (which provide for relief from income tax in respect of errors or mistakes in returns or statements made for the purposes of tax under Schedule D) shall, as set out with adaptations in the Fifth Schedule to this Act, apply in relation to assessments to excess profits tax or to the national defence contribution.

**36 Research expenditure.**

The provisions of Part IV of the Finance Act, 1944 (which provide for allowances for income tax purposes in respect of expenditure incurred on scientific research in connection with any trade) shall not apply for the purposes of excess profits tax or the national defence contribution,

**37 Application of certain provisions as to losses to the national defence contribution.**

The provisions of subsection (1) of section twenty-two of this Act extending, in certain cases, the period for the carrying forward of losses shall have effect for the purposes of sub-paragraph (1) of paragraph 2 of the Fourth Schedule to the Finance Act, 1937 (which relates to the carrying forward of losses for the purposes of the national defence contribution) as well as for the purposes of income tax.