

# ACT No. XLII of 1940.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the  
3rd December, 1940.)

An Act to amend the Excess Profits Tax Act, 1940.

XV of 1940.

WHEREAS it is expedient to amend the Excess Profits Tax Act, 1940, for the purposes herein-after appearing;

It is hereby enacted as follows:—

1. (1) This Act may be called the Excess Profits Tax Short title, commencement and effect. (Amendment) Act, 1940.

(2) It shall come into force at once; but its provisions shall be deemed to have taken effect on the day on which the Excess Profits Tax Act, 1940, came into force.

XV of 1940.

2. In clause (21) of section 2 of the Excess Profits Tax Act, 1940 (hereinafter referred to as the said Act), for sub-clause (b) the following sub-clauses shall be substituted, namely:— Amendment of section 2, Act XV of 1940.

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

(i) eight per cent. per annum on so much of the average amount of the capital employed in the business during the chargeable accounting period as represents the share of any such body corporate, and

(ii) ten per cent. per annum on the remainder of that amount;

(c) in relation to a business to which neither sub-clause (a) nor sub-clause (b) applies, ten per cent. per annum:”

3. In sub-section (3) of section 6 of the said Act, Amendment of section 6, Act XV of 1940 after the word and figure “section 13” the following words shall be inserted, namely:—

“or within the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section”

and to

1

Price anna 1 or 1½d.

*Excess Profits Tax (Amendment).* [ACT XLII

and to the sub-section the following proviso shall be added, namely :—

“ Provided further that a determination on an application under this sub-section—

- (a) shall have effect with respect to all subsequent chargeable accounting periods ;
- (b) shall exclude any further application under this sub-section.”

Amendment of  
section 8, Act  
XV of 1940.

4. In section 8 of the said Act,—

- (a) in sub-section (3), after the words “ in computing the capital employed in the business after the change ”, and in sub-section (4), after the words “ in computing the capital employed in the resulting business ” the following words shall be inserted, namely :—

“ and in considering, for the purposes of computing the profits of, and the capital employed during, any chargeable accounting period, whether any and, if so, what deductions are to be made in respect of depreciation of buildings, plant and machinery, ” ;

- (b) in sub-section (5), the words “ subject to any necessary modifications ” shall be omitted ;
- (c) in sub-section (6), the words “ subject, however, to such modifications (including modifications as respects the computation of capital) as he may consider just ” shall be omitted ;
- (d) after sub-section (7) the following sub-section shall be added, namely :—

“ (8) Where—

- (a) a business is, by virtue of sub-section (2) or sub-section (3), deemed not to have been discontinued ; or
- (b) a business is, by virtue of sub-section (4), to be treated as if it had been in existence throughout the period during which there was in existence any other business ; or
- (c) a business is, by virtue of sub-section (5), to be treated as a continuation of another business ; or
- (d) any person who is carrying on a business after a transfer is treated, by virtue of sub-section (6), as having carried on the business as from a date before the transfer,

the provisions of this Act relating to the computation of profits and capital for the purposes  
of excess

of excess profits tax shall, both as respects the standard period and any chargeable accounting period, have effect subject to such modifications, if any, as the Excess Profits Tax Officer may think just, and the Excess Profits Tax Officer may make such alterations in the periods which would otherwise be the chargeable accounting periods of the business as he thinks proper:

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

5. After sub-section (1) of section 9 of the said Act the following sub-section shall be inserted, namely:—

Amendment of section 9, Act XV of 1940.

"(1A) Where—

- (a) any debt is owing to any company by another company; and
- (b) one of those companies is a subsidiary of the other, or both are subsidiaries of a third company; and
- (c) no interest is payable in respect of the debt, but the circumstances in which the debt came into existence or is allowed to continue to exist are such that the debt represents in substance capital employed in the business of the debtor company,

the capital of both companies shall be computed as if the debt did not exist."

6. In sub-section (2) of section 12 of the said Act,—

Amendment of section 12, Act XV of 1940.

- (a) for the words "to the extent that such profits arose in the said country" the words "to the extent to which such profits are liable to excess profits tax under this Act" shall be substituted;
- (b) in the proviso, for the words "chargeable accounting period", where those words occur

for the

*Excess Profits Tax (Amendment).* [ACT XLII

for the second time, the following shall be substituted, namely :—

“ previous year (as determined for that business for the purposes of the Indian Income-tax Act, 1922) ”.

Amendment of section 17, Act XV of 1940. 7. For the second proviso to sub-section (1) of section 17 of the said Act the following shall be substituted, namely :—

“ Provided further that no appeal shall lie under this section against any apportionment made by the Excess Profits Tax Officer under the proviso to sub-section (5) of section 8, against any modifications made by the Excess Profits Tax Officer under sub-section (3) of section 8, against any decision of the Excess Profits Tax Officer under rule 11 of the First Schedule, or against any decision of the Board of Referees or the Central Board of Revenue.”

Amendment of section 26, Act XV of 1940.

8. In section 26 of the said Act,—

(a) in sub-section (1) and in sub-section (3), after the word “ If ” the following words shall be inserted, namely :—

“ on an application made to it through the Excess Profits Tax Officer ”;

(b) to sub-section (1) the following proviso shall be added, namely :—

“ Provided further that a determination on an application under this sub-section—

(a) shall have effect with respect to all subsequent chargeable accounting periods;

(b) shall exclude any further application under this sub-section.”;

(c) after sub-section (3) the following sub-section shall be added, namely :—

“ (4) An application to the Central Board of Revenue under this section shall be presented to the Excess Profits Tax Officer before the expiry of the period specified in the notice issued under sub-section (1) of section 13 or of the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section, but in the case of an application under sub-section (1) of this section, if the person carrying on the business has made or is making an application under sub-section (3) of section 6 the application

application shall be presented to the Excess Profits Tax Officer before the expiry of forty-five days from the date on which the order of the Board of Referees disposing of the application under sub-section (3) of section 6 is communicated to the person who has made that application."

9. In Schedule I to the said Act,—

Amendment of  
Schedule I,  
Act XV of 1940.

- (a) in rule 1, in the first proviso, after the word "Provided" the word "further" shall be inserted, and before that proviso, as so amended, the following proviso shall be inserted, namely:—

"Provided that any sums excluded under the proviso to clause (iii) of sub-section (2) or clause (a) of sub-section (4) of that section from the allowances made in computing the profits of the business for the purposes of income-tax shall, if paid, be included in those allowances when computing the profits of the business for the purposes of excess profits tax :";

(b) in rule 4,—

- (i) in sub-rule (1) after the brackets and figure "(2)" the brackets, figure and letter "(2A)" shall be inserted;

- (ii) after sub-rule (2) the following sub-rule shall be inserted, namely:—

"(2A) In the case of a business part of which consists in banking, insurance or dealing in investments, not being a business to which sub-rule (2) of this rule applies, the profits shall include all income received from investments held for the purposes of that part of the business, being income to which the persons carrying on the business are beneficially entitled.";

- (iii) in sub-rule (3), after the brackets and figure "(2)" the word, brackets, figure and letter "or (2A)" shall be inserted;

(c) in rule 7,—

- (i) for sub-rule (1) the following sub-rule shall be substituted, namely:—

"(1) In the case of a business carried on, in any accounting period which constitutes or includes a chargeable accounting period, by a company the directors whereof have throughout that accounting period a controlling interest therein—

- (a) in computing the profits for that accounting period; and

(b) if

(b) if the standard profits of the business are computed by reference to the profits of a standard period, also in computing, in relation to any such chargeable accounting period, the profits for the standard period,

no deduction shall be made in respect of directors' remuneration." ;

(ii) in sub-rule (2), for the words " In this rule " the words, brackets and figure " In sub-rule (1) of this rule " shall be substituted ;

(iii) after sub-rule (2) the following sub-rule shall be added, namely :—

" (3) If, in the case of a business carried on by a company in any accounting period which constitutes or includes a chargeable accounting period, the directors of the company—

(a) have during any part of that accounting period, or

(b) had during the whole or any part of any previous accounting period which includes the whole or any part of any chargeable accounting period or the whole or any part of the standard period (if any),

a controlling interest therein, and the case is not one to which sub-rule (1) of this rule applies, then, except in so far as the Central Board of Revenue otherwise directs, no deduction shall be made in respect of directors' remuneration either in computing the profits for the first-mentioned accounting period or in computing in relation to any chargeable accounting period wholly or partly included in that accounting period, the profits of the standard period (if any). " ;

(d) after rule 10, the following rule shall be added, namely :—

" 11. Where in respect of any accounting period a deduction would, apart from the provisions of this rule, be allowable in computing profits, and, in the opinion of the Excess Profits Tax Officer, the deduction does not represent a sum reasonably and properly attributable to that accounting period, only such part of the deduction shall be allowable as a deduction for that period as appears to the Excess Profits Tax Officer to be reasonably and properly attributable to that

to that period, and any balance of the deduction shall be treated as attributable to such other accounting period or periods (whether or not they include, or fall wholly or partly within, the standard period, if any, or any chargeable accounting period) as the Excess Profits Tax Officer thinks proper.

Any person who is dissatisfied with a determination of the Excess Profits Tax Officer under this rule may, at any time before the expiry of forty-five days from the date on which such determination is communicated to him, appeal to the Board of Referees through the Excess Profits Tax Officer."

10. In Schedule II to the said Act,—

Amendment of  
Schedule II,  
Act XV of 1940.

(a) in sub-rule (2) of rule 1, after the words "written down value" the following words shall be inserted, namely :—

"and to such other deductions in respect of reduced values of assets as are allowable in computing profits for the purposes of income-tax";

(b) at the end of sub-rule (1) of rule 2 the following shall be inserted, namely :—

"The debts to be deducted under this sub-rule shall include any such sums in respect of accruing liabilities as are allowable as a deduction in computing profits for the purposes of excess profits tax or would have been so allowable if the period for which the amount of capital is being computed had been a chargeable accounting period; and the said sums shall be deducted notwithstanding that they have not become payable.";

(c) after rule 6 the following rule shall be added, namely :—

"7. (1) If—

(a) the Central Board of Revenue is satisfied, as respects any assets of any business the standard profits of which are computed by reference to the profits of a standard period, that during that period or any part thereof those assets were inherently unproductive, and

(b) an application that this rule shall have effect is made through the Excess Profits Tax Officer to the Central Board of Revenue by the person carrying on the business,

then,

then, in computing the average amount of the capital employed in the business in the standard period and in all chargeable accounting periods, those assets, and any other assets of the business, shall be treated as not having been assets thereof during any part of the period during which, in the opinion of the Central Board of Revenue, they were inherently unproductive :

Provided that in the case of a business the standard profits of which depend directly or indirectly upon a direction of the Board of Referees under sub-section (3) of section 6, or of the Central Board of Revenue under sub-section (1) of section 26 of this Act the provisions of this rule shall have effect to such extent only as the Central Board of Revenue thinks proper :

Provided further that an application to the Central Board of Revenue under this rule shall be presented to the Excess Profits Tax Officer before the expiry of the period specified in the notice issued under sub-section (1) of section 13 of this Act or of the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section.

(2) "Where sub-rule (1) of this rule has effect on the application of the person carrying on any business, any computation of capital of the business made before the making of the application, and any assessment affected by that computation shall be revised accordingly."