

ACT No. XXIV OF 1941.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on the
26th November, 1941.)

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

WHEREAS it is expedient further to amend the
Excess Profits Tax Act, 1940, for the purposes
hereinafter appearing;

It is hereby enacted as follows :—

1. (1) This Act may be called the Excess Profits Tax (Second Amendment) Act, 1941. Short title and commencement.

(2) It shall come into force at once ; but effect shall not be given to the amendment hereby made in the Excess Profits Tax Act, 1940; by section 3 in the making of any assessment under that Act in respect of any chargeable accounting period which is a "previous year" for an assessment under the Indian Income-tax Act, 1922, for any year before the year ending on the 31st day of March, 1943.

2. In sub-section (2) of section 4 of the Excess Profits Tax Act, 1940 (hereinafter referred to as the said Act), for the words beginning with "and as if the excess of profits" and ending with "the whole chargeable accounting period" the following shall be substituted, namely :—

"and as if the excess of profits of that separate chargeable accounting period were an apportioned part of the excess of profits arising in the whole period determined in accordance with the provisions of section 7A".

3. In section 5 of the said Act, after the second proviso the following proviso shall be added, namely :—

"Provided further that this Act shall not apply to any business the whole of the profits of which accrue

or arise

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or arise in an Indian State; and where the profits of a part of a business accrue or arise in an Indian State, such part shall, for the purposes of this provision, be deemed to be a separate business the whole of the profits of which accrue or arise in an Indian State, and the other part of the business shall, for all the purposes of this Act, be deemed to be a separate business."

Insertion of
new section
7A in Act XV
of 1940.

Special
provision for
chargeable
accounting
period falling
partly before
and partly
after the end of
March, 1941.

4. After section 7 of the said Act the following section shall be inserted, namely:—

'7A. (1) In the case of a chargeable accounting period such as is referred to in sub-section (2) of section 4, the excess of profits of each of the separate chargeable accounting periods into which the whole chargeable period is deemed to be divided for the purposes of that sub-section, shall be determined in accordance with the provisions of sub-sections (2), (3) and (4), and in those sub-sections—

(a) references to the whole period, the first part of the period, and the second part of the period shall be construed, respectively, as references to the whole of the chargeable accounting period deemed to be divided, so much thereof as falls before the end of March, 1941, and so much thereof as falls after the said end of March;

(b) "excess profits" means the amount by which the profits for any period exceed the standard profits for that period.

(2) The profits or loss of, and the standard profits for, the whole period shall be computed first on the basis that rule 5A of the First Schedule and rule 2A of the Second Schedule do not apply to the period, and secondly on the basis that the said rules do apply to the period, and it shall then be ascertained, on each basis, whether there are excess profits or a deficiency of profits for the whole period, and, if so, what is the amount thereof.

(3) There shall be deemed to be for the first part of the period excess profits or a deficiency of profits, as the case may be, equal to an apportioned part of the excess profits or deficiency of profits ascertained under sub-section (2) on the first basis mentioned therein, and there shall be deemed to be for the second part of the period excess profits or a deficiency of profits, as the case may be, equal to an apportioned part of the excess profits or deficiency of profits ascertained under sub-section (2) on the second basis mentioned therein; and, for the purpose of giving relief for deficiencies of profits under section 7, the first part of the period and the

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second part of the period shall each be treated as if it were a separate chargeable accounting period.

(4) Any apportionment required to be made by sub-section (3) shall be made by reference to the number of months and fractions of months in each of the parts of the whole period.

5. For section 10 of the said Act the following section shall be substituted, namely :—

Substitution of new section for section 10, Act XV of 1940.

“ 10. (1) In computing profits for the purposes of this Act no deduction shall be made in respect of any transaction or operation of any nature if and so far as it appears that the transaction or operation has artificially reduced or would artificially reduce the profits.

Artificial transactions.

(2) If the Excess Profits Tax Officer is satisfied that any person has entered into or carried out any transaction or operation by which the profits have been or would be artificially reduced, he may, with the previous approval of the Inspecting Assistant Commissioner, direct that such person shall pay, in addition to any excess profits tax for which he is or, but for such transaction or operation, would be liable, a penalty not exceeding the tax evaded or sought to be evaded.”

6. After section 10 of the said Act the following section shall be inserted, namely :—

Insertion of new section 10A in Act XV of 1940.

“ 10A. (1) Where the Excess Profits Tax Officer is of opinion that the main purpose for which any transaction or transactions was or were effected [whether before or after the passing of the Excess Profits Tax (Second Amendment) Act, 1941] was the avoidance or reduction of liability to excess profits tax, he may, with the previous approval of the Inspecting Assistant Commissioner, make such adjustments as respects liability to excess profits tax as he considers appropriate so as to counteract the avoidance or reduction of liability to excess profits tax which would otherwise be effected by the transaction or transactions.

Transactions designed to avoid or reduce liability to excess profits tax.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the powers conferred thereby extend—

- (a) to the charging with excess profits tax of persons who but for the adjustments would not be chargeable with any tax or would not be chargeable to the same extent ;
- (b) to the charging of a greater amount of tax than would be chargeable but for the adjustments.

(3) Any

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(3) Any person aggrieved by a decision of the Excess Profits Tax Officer under this section may appeal in the prescribed time and manner to the Appellate Tribunal."

Amendment of
section 26, Act
XV of 1940.

7. In sub-section (3) of section 26 of the said Act, after clause (c) the following word and clause shall be inserted, namely :—

“ or

(d) in the case of any business which includes the winning of any mineral (including mineral oil) the winning of which is of exceptional importance for the prosecution of the present war, an increase in the output of the mineral which was essential in the national interest and which has had the effect of shortening the period during which but for such increased wartime output the source of the mineral might have been expected to be exhausted ;”.

Amendment of
Schedule I,
Act XV of
1940.

8. In Schedule I to the said Act,—

(a) after rule 5 the following rule shall be inserted, namely :—

‘ 5A. (1) In computing for any chargeable accounting period ending after the end of March, 1941, and in relation thereto for the standard period, if any, the profits of a business other than a business to which sub-rule (2) of rule 4 of this Schedule applies, or the profits of a part of a business other than a part of a business to which sub-rule (2A) of the said rule applies, no deduction shall be made in respect of interest on borrowed money or in respect of any other consideration given for the use of borrowed money :

Provided that, as respects any such chargeable accounting period which commences before the said end of March, the application of this rule shall be subject to the provisions of section 7A of this Act :

Provided further that this rule shall not apply to the computation of profits of any business for any chargeable accounting period the standard profits for which are ascertained by reference to the minimum amount specified in sub-section (4) of section 6 of this Act :

Provided further that where a direction has been given by a Board of Referees under sub-section (3) of section 6, or by the Central Board of Revenue under sub-section (1) of section 26 of this Act, that the standard profits shall be computed as if the profits during the standard period were such greater amount as it thinks just, such amount shall be increased by the amount of the interest on or other consideration for the borrowed money during the standard period.

(2) In this

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(2) In this rule and in rule 2A of the Second Schedule "borrowed money" means borrowed money which, apart from the provisions of the said rule 2A, would have been deductible in computing capital.;

(b) after rule 11 the following rule shall be added, namely :—

" 12. (1) In computing the profits of any chargeable accounting period no deduction shall be allowed in respect of expenses in excess of the amount which the Excess Profits Tax Officer considers reasonable and necessary having regard to the requirements of the business and, in the case of directors' fees or other payments for services, to the actual services rendered by the person concerned :

Provided that no disallowance under this rule shall be made by the Excess Profits Tax Officer unless he has obtained the prior authority of the Commissioner of Excess Profits Tax.

(2) Any person who is dissatisfied with the decision of the Excess Profits Tax Officer under this rule may appeal in the prescribed time and manner to the Appellate Tribunal."

9 In Schedule II to the said Act,—

(a) after rule 2 the following rule shall be inserted, namely :—

Amendment of
Schedule II,
Act XV of
1940.

" 2A. In computing for any chargeable accounting period ending after the end of March, 1941, and in relation thereto for the standard period, if any, the average capital of a business other than a business to which sub-rule (2) of rule 4 of the First Schedule applies, or the average capital of a part of a business other than a part of a business to which sub-rule (2A) of the said rule applies, no deduction shall be made in respect of borrowed money :

Provided that, as respects any such chargeable accounting period which commences before the said end of March, the application of this rule shall be subject to the provisions of section 7A of this Act :

Provided further that the same deduction shall be made in respect of accruing liabilities for interest as would have been made if this rule had not been enacted. " ;

(b) in rule 6, for the words "second proviso" the words "second or third proviso" shall be substituted.