



Finance Act 1939

1939 CHAPTER 41

PART III

ARMAMENT PROFITS DUTY.

20 Charge of armament profits duty.

- (1) Where the profits arising in any chargeable accounting period falling within the three years beginning with the first day of April, nineteen hundred and thirty-nine, from any armament business (as hereinafter defined) exceed the standard profits, there shall be charged on so much of the excess as arises from armament contracts a tax (to be known as the armament profits duty) equal to three-fifths of that part of the excess.
- (2) The proportion of any such excess as is mentioned in subsection (1) of this section which is to be attributed to armament contracts shall be ascertained by reference to the proportion which the turnover under armament contracts bears to the total turnover of the business in the chargeable accounting period in question :

Provided that—

- (a) if the person carrying on the business satisfies the Commissioners that in fact a proportion of the excess less than that ascertained as aforesaid arises from armament contracts, such adjustment shall be made as appears to the Commissioners to be just; and
 - (b) if on the application of the Commissioners the Board of Referees, after giving the person carrying on the business an opportunity of being heard, are satisfied that in fact a proportion of the excess greater than that ascertained as aforesaid arises from armament contracts, such adjustment shall be made as appears to the Board of Referees to be just.
- (3) If the person carrying on a business is dissatisfied with any decision of the Commissioners under proviso (a) to the last preceding subsection, he may appeal to the Board of Referees and the Board may make such order in the matter as they think just.
 - (4) If any dispute arises between the Commissioners and the person carrying on any business whether or not a contract is an armament contract, the matter may, on the

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application of either party, be referred to the Minister and the Minister, after giving each party an opportunity to be heard, shall decide the matter and his decision shall be final.

21 Meaning of " armament business " and " armament contract."

- (1) If the Minister declares to the Commissioners that in any accounting period the total receipts of a business under armament contracts were not less than two hundred thousand pounds or, if the accounting period is less than twelve months, not less, than such sum as bears to two hundred thousand pounds the like proportion that the length of the period bears to twelve months, the business shall, in relation to any chargeable accounting period which consists or forms part of that accounting period, be deemed to be an armament business :

Provided that, before making any such declaration with respect to a business, the Minister shall give to the person carrying on that business at least twenty-eight days' notice that he proposes to do so and shall consider any representations made by that person before the expiration of that period and, if he makes the declaration, shall notify that person accordingly.

- (2) For the purposes of the provisions of this Act relating to armament profits duty the expression " armament contract " means, in relation to any business—
- (a) a contract between the person carrying on the business and His Majesty's Government in the United Kingdom, being—
 - (i) a contract for the supply of anything required for the purposes of the armed forces of the Crown or of any foreign armed forces or for the purposes of any enactment (whether passed before or after the passing of this Act) relating to civil defence, or for the supply of any machines, tools, or materials required for making or repairing anything required for any of those purposes; or
 - (ii) a contract for the execution of any works required for any of those purposes; or
 - (iii) a contract for the supply of anything which is being acquired by the Crown under the Essential Commodities Reserves Act, 1938, if similar supplies are also being acquired by the Crown under contracts which are armament contracts by virtue of sub-paragraph (i) of this paragraph; or
 - (iv) a contract for the supply of anything which is being acquired by the Crown otherwise than under the said Act as being something which would be essential for the needs of the community in the event of war;
 - (b) a contract under which the person carrying on the business supplies anything to, or executes any works for, any other person, being a contract entered into by that other person for the purpose of enabling him to perform an armament contract; or
 - (c) a contract between the person carrying on the business (being a company) and His Majesty's Government in the United Kingdom for the construction, alteration or management by the company as agent for that Government of any factory in the United Kingdom which belongs, or is to belong, to the Crown, but only to the extent of any remuneration payable by His Majesty's Government in respect of such agency:

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Provided that nothing in this subsection shall apply to any contract for the supply of any such articles or materials as may from time to time be specified in an order of the Minister, being articles or materials which in his opinion are commonly required for purposes other than those mentioned in this subsection and for that reason cannot equitably be brought within the scope of the provisions thereof.

22 Computation of standard profits.

- (1) For the purposes of armament profits duty, the standard profits of a business shall be computed in accordance with the following provisions of this section :

Provided that in relation to a chargeable accounting period which is less than twelve months, the standard profits computed as aforesaid shall be proportionately reduced so as to correspond with the length of the period.

- (2) If the business was commenced on or before the first day of July, nineteen hundred and thirty-six, the standard profits shall be ascertained by reference to the profits of the standard period as hereinafter defined and, subject as hereinafter provided, shall be, where the standard period is one year, the amount of those profits and, where the standard period is two years, half the amount of those profits.
- (3) If the business was commenced on or before the first day of January, nineteen hundred and thirty-five, the standard period shall be, at the option of the person carrying on the business, either the year nineteen hundred and thirty-five, the year nineteen hundred and thirty-six, the years nineteen hundred and thirty-five and nineteen hundred and thirty-seven or the years nineteen hundred and thirty-six and nineteen hundred and thirty-seven.
- (4) If the business was commenced after the first day of January, nineteen hundred and thirty-five, and on or before the first day of January, nineteen hundred and thirty-six, the standard period shall, at the option of the person carrying on the business, be the year nineteen hundred and thirty-six or that and the following year.
- (5) If the business was commenced after the first day of January, nineteen hundred and thirty-six, and on or before the first day of July in that year, the standard period shall be such consecutive period of twelve months ending not later than the end of June, nineteen hundred and thirty-seven, as the person carrying on the business may select.
- (6) If, on the application of the person carrying on the business, the Board of Referees are satisfied that, in the standard period, the rate of profit or the volume of business was less than might then have been reasonably expected, they may direct that the standard profits shall be ascertained as if the profits for that period were such greater amount as they think just:

Provided that where the person carrying on the business is a company, the said amount shall not exceed the amount necessary to provide dividends for the standard period—

- (a) as respects the paid-up ordinary share capital of the company, of six per cent. per annum;
- (b) as respects any other paid-up share capital of the company, at the fixed rate per annum payable in respect thereof;

unless the Board are satisfied that owing to some specific cause peculiar to the business it is just that a greater amount should be allowed.

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- (7) If, in the case of any business to which subsection (2) of this section applies, the average amount of the capital employed in the business in any chargeable accounting period is greater or less than the average amount of the capital employed therein in the standard period, there shall, in relation to that chargeable accounting period, be added to or, as the case may be, subtracted from, the standard profits the statutory percentage of the increase or decrease.
- (8) In the case of a business commenced after the first day of July, nineteen hundred and thirty-six, the standard profits shall, in relation to any chargeable accounting period, be the statutory percentage of the average amount of the capital employed in the business in that period.
- (9) In this section the expression " statutory percentage " means—
- (a) in relation to a business carried on by a company (other than a company the directors whereof have a controlling interest therein) eight per cent.;
 - (b) in relation to a business not so carried on, ten per cent.:

Provided that, in relation to any decrease of capital the statutory percentage shall be in all cases six per cent.

23 Provisions as to computation of profits and capital.

- (1) For the purposes of the armament profits duty, the profits arising from a business in any year constituting or comprised in the standard period or arising in any chargeable accounting period shall be separately computed, and shall be so computed on the principles on which the profits arising therefrom are computed for the purposes of income tax under Case I of Schedule D, as adapted in accordance with the provisions of Part I of the Ninth Schedule to this Act, and the average amount of the capital employed in a business in any such year or period shall be computed in accordance with Part II of that Schedule.
- (2) Where a standard period or chargeable accounting period is not a period for which the accounts of a business have been made up, such division and apportionment to specific periods of the profits and losses for any period for which the accounts relating to the business have been made up, and such aggregation of any such profits or losses or any apportioned part thereof, shall be made as appears necessary to arrive at the profits arising in the standard period or chargeable accounting period.
- (3) Any apportionment under the preceding subsection shall be made in proportion to the number of months or portions of months in the respective periods, unless the Commissioners having regard to any special circumstances otherwise direct.

24 Succession and amalgamation.

- (1) As from the date of any change in the persons carrying on a business, the business shall, for the purposes of armament profits duty, be deemed to have been discontinued and a new business shall be deemed to have commenced:

Provided that—

- (a) where the change consists of the death or retirement of a partner, or the taking in of a partner, the persons carrying on the business after the change may, by notice in writing to the Commissioners, elect that the business shall not

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be deemed to have been discontinued and that a new business shall not be deemed to have commenced; and

- (b) a business which at the date of any such change is an armament business shall not be deemed to be discontinued by reason of the change, and the standard profits of the business for any chargeable accounting period shall be computed accordingly, and, in particular, in computing the capital employed in the business after the change, no regard shall be had to any consideration given in respect of the transfer of the business or any of the assets thereof on the occasion of the change.

- (2) Where two or more businesses are amalgamated and immediately before the amalgamation any of those businesses were armament businesses, the resulting business shall be treated for the purposes of the provisions of this Act relating to the computation of standard profits as if—

- (a) it had been in existence throughout the period during which there were in existence any of the former businesses which were armament businesses immediately before the amalgamation;
- (b) any profits made or losses incurred or capital employed in any of those former businesses had been made, incurred or employed in the resulting business; and
- (c) any assets of any of those former businesses had become assets of the resulting business when they became assets of the former business,

and, in particular, in computing the capital employed in the resulting business, no regard shall be had to any consideration given in respect of the transfer of any of those former businesses or any of the assets thereof, on the occasion of the amalgamation :

Provided that nothing in this section shall affect any liability to armament profits duty in respect of any period before the amalgamation.

- (3) Where part of an armament business is transferred (as a going concern) by the person theretofore carrying it on to another person, the part transferred and the part not transferred shall each be deemed for the purposes of the provisions of this Act relating to the computation of standard profits to be a continuation of the original business, and the said provisions, including the provisions of this section relating to amalgamations, shall apply accordingly, subject to any necessary modifications :

Provided that, for the purpose aforesaid, such apportionments shall be made of the profits made, and losses incurred, and the capital employed, in the original business, and of any assets of the original business, as may appear to the Commissioners, or, on appeal to the Board of Referees, to that Board, to be just.

- (4) Notwithstanding anything in the foregoing provisions of this section, where a business was carried on immediately before the first day of July, nineteen hundred and thirty-six, and that business, or the main part of that business, was transferred after the said day and before the first day of April, nineteen hundred and thirty-nine, by the person carrying it on to another person, the Commissioners, if they are satisfied that the business carried on after the transference was not substantially different from the business or part transferred, may, on the application of the person carrying on the business after the transference, treat that person, for the purposes of the provisions of this Act relating to the computation of standard profits, as if he had carried on the transferred business or part of a business as from the date of the commencement of that business, subject, however, to such modifications (including modifications as respects the computation of capital) as may be just:

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Provided that if the Commissioners refuse an application under this subsection or if the applicant is dissatisfied with any modifications made by the Commissioners, the applicant may appeal to the Board of Referees.

25 Duty to give information.

- (1) Where the total receipts of a business under armament contracts in any accounting period falling wholly or partly within the three years beginning with the first day of April, nineteen hundred and thirty-nine amount—
- (a) in a case where the period is twelve months, to two hundred thousand pounds; or
 - (b) in a case where the period is less than twelve months, to such sum as bears to two hundred thousand pounds the like proportion as the length of the period bears to twelve months,

it shall be the duty of the person carrying on the business, as soon as may be after the said receipts amount to the said sum, and in any case not later than twenty-one days after the end of the accounting period, to notify the Minister to that effect.

- (2) It shall be the duty of any person who, for the purpose of enabling himself to perform an armament contract, had, whether before or after the passing of this Act, entered into another contract with any persons carrying on a business in the United Kingdom (being a contract for the supply of anything by them to him, or the execution of any works by them for him, under which payments fall to be made to them during the three years beginning with the first day of April, nineteen hundred and thirty-nine), to send to those persons, as soon as may be after the passing of this Act, or, as the case may be, after entering into the contract, a notice in writing stating that the contract has been entered into for that purpose.
- (3) It shall be the duty of the person carrying on a business—
- (a) if required by the Minister by notice in writing so to do, to furnish within such time, not exceeding twenty-eight days, as may be specified in the notice, such particulars as may be so specified, being particulars reasonably required for the purpose of enabling the Minister to perform his functions under this Act;
 - (b) in such classes of cases as the Minister may by order specify, to furnish to the Minister, without being served with any such notice as aforesaid such particulars as may be specified in the order of any contracts entered into by him for the purpose of enabling him to fulfil any armament contracts.

- (4) Any person who fails to comply with the provisions of this section shall be liable on summary conviction to a fine not exceeding two hundred pounds and, if the default in respect of which he was so convicted continues after the conviction, he shall be liable on summary conviction to a fine not exceeding fifty pounds for each day on which the default so continues:

Provided that it shall be a defence for any person charged with failing to make a report under subsection (1) of this section to prove that, by reason of the failure of any other persons to send him a notice under subsection (2) of this section, he had no means of knowing that his receipts under armament contracts had amounted to the sum mentioned in subsection (1) of this section.

- (5) Any person who, in giving a notice or furnishing particulars under this section, knowingly makes any false statement, shall be liable on summary conviction to a fine

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not exceeding two hundred pounds or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

26 Application to armament profits duty of Fifth Schedule to Finance Act, 1937, and c.

- (1) The provisions of the Fifth Schedule to the Finance Act, 1937 (which relate to the assessment and the collection of the national defence contribution, appeals and supplementary provisions), including the provisions thereof enabling the Commissioners to make regulations, shall have effect with respect to armament profits duty as they have effect with respect to the national defence contribution:

Provided that—

- (a) no appeal shall lie to the General Commissioners from any assessment;
 - (b) no appeal shall lie to the Special Commissioners in respect of any matter with respect to which an appeal lies to the Board of Referees, or which is by this Act to be decided by that Board or by the Minister, or is left to the discretion of the Commissioners;
 - (c) the power of the Commissioners to make regulations with respect to the hearing of appeals under Part II of the said Schedule shall extend to the hearing of appeals and the deciding of any matters by the Board of Referees under this Part of this Act; and
 - (d) the powers conferred by Part III of the said Schedule on a surveyor shall be exercisable also by the Commissioners.
- (2) The obligation as to secrecy imposed by the Income Tax Acts and by the said Schedule (both as originally enacted and as applied by the preceding provisions of this section) shall not prevent disclosure to the Minister or any authorised officer of the Minister of such facts as may be necessary for the purpose of carrying the provisions of this Act relating to armament profits duty into effect.

27 Deduction of armament profits duty in computing liability to income tax and national defence contribution.

The amount of the armament profits duty payable in respect of a business for any chargeable accounting period shall, in computing for the purposes of income tax or the national defence contribution the profits and gains, or the profits, arising from that business, be allowed to be deducted as an expense incurred in that period.

28 Interpretation, and c.

- (1) In the provisions of this Act relating to armament profits duty—
- (a) the expression " the Commissioners " means the Commissioners of Inland Revenue;
 - (b) the expression " the Board of Referees " means the Board of Referees for the purposes of Rule 6 of the Rules applicable to Cases I and II of Schedule D of the Income Tax Act, 1918;
 - (c) the expression " turnover " means the net amounts charged, in the chargeable accounting period in question, by the person carrying on the business to the persons with whom he deals, or, in relation to a contract part of the profits or losses under which are taken into account for the purposes of armament

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- profits duty in that period, so much of the total net amount which has been or will be so charged under that contract as is properly attributable to that period;
- (d) the expressions " company, " " director, " and " ordinary share capital " have the same meanings as they have for the purposes of the Fourth Schedule to the Finance Act, 1937 ;
 - (e) the expression " the fixed rate " in relation to share capital other than ordinary share capital, includes a rate fluctuating in accordance with the standard rate of income tax;
 - (f) the expression " the Minister " means such Minister of the Crown as His Majesty may designate by Order in Council;
 - (g) the expression " accounting period " has the same meaning in relation to a business as it has for the purpose of the national defence contribution;
 - (h) the expression " chargeable accounting period " means—
 - (i) any accounting period which falls wholly within the three years beginning with the first day of April, nineteen hundred and thirty-nine; and
 - (ii) in a case where any accounting period falls partly within and partly without the said three years, such part' of that period as falls within those three years.
 - (i) the expression " articles and materials " includes water, gas, electricity and hydraulic power.
- (2) Any Order in Council or order under the provisions of this Act relating to armament profits duty may be revoked or varied by a subsequent Order in Council or order, as the case may be.
- (3) Any order of the Minister under the said provisions shall, as soon as may be after the making thereof, be laid before the Commons House of Parliament, and if that House of Parliament, within the period of forty days beginning with the day on which any such order is laid before it, resolves that the order be annulled it shall thereupon become void, without prejudice, however, to anything previously done thereunder or to the making of a new order.

In reckoning any such period of forty days as aforesaid, no account shall be taken of any time during which Parliament is dissolved or prorogued, or during which the Commons House of Parliament is adjourned for more than four days.