

No. 33—1941.

*Excess Profits Tax.*

AN ORDINANCE to amend the Excess Profits Tax Ordinance, Ch. 33. No. 10.

Commencement.

[31st December, 1941.]

Short title and construction.

Ch. 33. No. 10.

Raising of rate of excess profits tax.

1. This Ordinance may be cited as the Excess Profits Tax (Amendment) Ordinance, 1941, and shall be read as one with the Excess Profits Tax Ordinance, hereinafter referred to as the Principal Ordinance.

2. (1) Section 5 of the Principal Ordinance shall, in relation to an excess of profits arising in any chargeable accounting period beginning on or after the 1st of January, 1941, have effect as if in subsection (1) thereof, for the words "equal to one-third of the excess" there were substituted the words "equal to eighty per centum of the excess".

(2) Notwithstanding anything in subsection (2) of section 10 of the Principal Ordinance, a deficiency of profits occurring in a chargeable accounting period beginning on or after the 1st of January, 1941, shall first be applied so as to reduce profits chargeable to tax arising in another chargeable accounting period beginning on or after the said 1st of January, and a deficiency of profits occurring in a chargeable accounting period ending on or before the last day of December, 1940, shall first be applied so as to reduce profits chargeable to tax arising in another chargeable accounting period ending on or before the said last day of December; and where owing to an insufficiency of profits for chargeable accounting periods ending on or before the said last day of December, or, as the case may

be, beginning on or after the said 1st of January, 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 Commissioner thinks appropriate, be treated as provisional only; and
- (b) if it thereafter appears that there is no longer such an insufficiency as aforesaid, such adjustments shall be made as the Commissioner may direct.

(3) Where a chargeable accounting period falls partly before and partly after the end of December, 1940, the foregoing provisions of this section shall apply as if so much of that chargeable accounting period as falls before and so much of that chargeable accounting period as falls after, the end of December, 1940, were each a separate chargeable accounting period. The profits or losses to be attributed to each such separate chargeable accounting period shall be computed in such manner as may be prescribed by regulations made under this Ordinance.

3. (1) After the termination of hostilities in the present war, there shall be ascertained and recorded, as respects every person who has paid any excess profits tax for any of the periods in respect of which the tax is chargeable at the rate of eighty per centum, the amount (if any) by which the total sum paid by him by way of excess profits tax (less any sum repaid or repayable on account of any deficiency of profits or otherwise) would have been decreased if the rate of excess profits tax had been sixty-six and two-thirds per centum in respect of all those periods, and the amount so ascertained and recorded as aforesaid shall, if such conditions as the Legislature may hereafter determine are satisfied, be repaid at such date as the Legislature may hereafter determine:

Provision for the repayment after the war of certain excess profits tax.

Provided that, in ascertaining the said amount, the capital employed in the trade or business shall be computed on the basis that the rate of tax during the said periods was eighty per centum,

(2) The procedure for the ascertainment and recording of the said amounts shall be such as may be prescribed by regulations made under the Principal Ordinance, and those regulations shall provide for the giving of notice to the persons affected and, without prejudice to the generality of the foregoing words, may apply, with or without modifications, the provisions of the Principal Ordinance relating to appeals against assessments to excess profits tax.

Repeal.

4. Subsection (3) of section 5 of the Principal Ordinance is hereby repealed.

Section 6 of  
the Principal  
Ordinance  
amended.

5. (1) Section 6 of the Principal Ordinance is hereby amended—

(a) by substituting the following for subsection (1) thereof—

(1) For the purposes of this Ordinance, the standard profits of a trade or business shall, in relation to any chargeable accounting period, be taken, if the person carrying on the trade or business so elects, to be the minimum amount specified in subsection (2) of this section, and, in the absence of such an election, to be the amount of the standard profits for a full year computed in accordance with subsections (3) to (5) of this section: Provided that in relation to a chargeable accounting period which is less than twelve months, the standard profits shall be taken to be the amount in question proportionately reduced so as to correspond with the length of the period.

(b) By re-numbering the present subsections (2) to (4) as (3) to (5) and by inserting a new subsection (2) as follows—

(2) The minimum amount referred to in subsection (1) of this section is four thousand eight hundred dollars, or, in the case of a trade or business carried on by a single individual, or by a partnership, or by a

company the directors whereof have a controlling interest therein, such greater sum, not exceeding twenty-eight thousand eight hundred dollars, as is arrived at by allowing seven thousand two hundred dollars for each working proprietor in the trade or business: Provided that if, in the case of a trade or business carried on by a single individual, a partnership or such a company as aforesaid, the Commissioner, having regard to the nature of the business and the size of the business as shown by the value of the assets employed therein, is satisfied that the said greater sum is inadequate, he may, if he thinks fit, direct that there shall be allowed in respect of not more than four working proprietors, such additional sum, not exceeding four thousand eight hundred dollars for each individual working proprietor or nineteen thousand two hundred dollars in the aggregate, as may be specified in the direction.

In this subsection—

- (a) the expression "working proprietor" means a proprietor who has, during more than one half of the chargeable accounting period in question, worked full time in the actual management or conduct of the trade or business;
- (b) the expression "proprietor" means, in the case of a trade or business carried on by a partnership, a partner therein, and, in the case of a company, any director thereof owning more than one-twentieth of the share capital of the company.

In considering for the purposes of this subsection whether the directors of a company have at any date a controlling interest therein,

no body corporate shall be treated as a director unless it is at that date itself a company the directors whereof have a controlling interest therein.

(2) This section shall be deemed to have come into force on the 27th of December, 1939. As regards any tax, notice of assessment of which has been served before the commencement of this Ordinance, an election under subsection (1) of section 5 of the Principal Ordinance, as amended by subsection (1) of this section, may be exercised within six months after the commencement of this Ordinance or such further time as the Commissioner may allow, and the Commissioner shall re-assess the tax in accordance with the election and, if necessary, cause any tax overpaid to be refunded.

New section  
11A of the  
Principal  
Ordinance.

6. The Principal Ordinance is hereby further amended by inserting, immediately after section 11 thereof, a new section 11A as follows:—

Transactions  
designed to  
avoid liability  
to excess  
profits tax.

11A. (1) Where the Commissioner is of opinion that the main purpose for which any transaction or transactions was or were effected (whether before or after the passing of this Ordinance) was the avoidance or reduction of liability to excess profits tax, he may, if he thinks fit, direct that such adjustments shall be made 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.

(2) Without prejudice to the generality of the powers conferred by subsection (1) of this section, the powers conferred thereby shall 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 person aggrieved by a decision of the Commissioner under this section may appeal under section 17, whether on the ground that the main purpose of the transaction or transactions was not the avoidance or reduction of liability to tax or on the ground that no direction ought to have been given or that the adjustments directed to be made are inappropriate.

7. (1) The Principal Ordinance is hereby further amended by inserting, immediately after section 12 thereof, a new section 12A as follows:—

New section  
12A of the  
Principal  
Ordinance.

Relief in  
respect of  
double excess  
profits tax.

12A. (1) If any profits in respect of which excess profits tax is payable under the law in force in this Colony are profits in respect of which excess profits tax is payable also under the law in force in any part of His Majesty's dominions outside this Colony, the Governor may make arrangements with the Government of that other part of His Majesty's dominions providing for the giving of relief from double taxation in respect of such profits in accordance with the following principles:—

- (a) that there shall be computed the amount of excess profits tax which would be payable in each territory if excess profits tax in the other territory were disregarded except in computing capital;
- (b) that such amount of relief from tax shall be given in each territory as bears to the lower of the two amounts so computed the same proportion as the amount so computed for that territory bears to the sum of the two amounts so computed; and
- (c) that where the amount so computed for either territory is found to have been incorrect (whether by reason of a subsequent deficiency of profits or for any other reason) the amount so computed shall be recalculated and the relief in both territories varied accordingly.

(2) Where any such arrangements are made and the Commissioner is satisfied that any case is one which falls within the arrangements, he shall make such adjustment of the excess profits tax payable in the Colony as may be necessary to give effect to the arrangements, and allow any necessary relief accordingly by repayment or otherwise.

(3) Where it appears to the Commissioner that any relief provided for by any such arrangements falls to be re-calculated (whether by reason of a subsequent deficiency of profits or otherwise), any adjustment made under subsection (2) of this section shall be varied accordingly and any necessary further relief given by repayment or otherwise and, where the effect of the re-calculation is to show that too much relief has been given, any necessary additional assessment shall be made.

(4) This section shall apply in relation to—

(a) any British Protectorate or protected state;

(b) any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty and is being exercised by His Majesty's Government in the United Kingdom or by the Government of any Dominion,

as it applies to a part of His Majesty's dominions outside the United Kingdom.

(2) Arrangements made by virtue of this section may be made with retrospective effect.

New section  
15A of the  
Principal  
Ordinance.

8. The Principal Ordinance is hereby further amended by inserting immediately after section 15 thereof a new title and section as follows:—

*Assessments*

Commissioner  
to make  
assessments.

15A. (1) The Commissioner shall proceed to assess every person chargeable with tax as soon as may be after the date on which a return should have been rendered.

(2) Where a person has rendered a return, the Commissioner may—

- (a) accept the return and make an assessment accordingly ; or
- (b) refuse to accept the return and, to the best of his judgment, assess the tax payable.

(3) Where a person has not delivered a return and the Commissioner is of opinion that such person is liable to pay tax he may, according to the best of his judgment, assess the tax payable by such person, but such assessment shall not affect any liability otherwise incurred by such person by reason of his refusal, failure or neglect to render a return.

(4) If, at any time within six years from the end of a chargeable accounting period, the Commissioner shall make an assessment which results in the person being charged to tax for that chargeable accounting period in respect of an excess of profits over standard profits which is greater than that disclosed in the return rendered by such person, the Commissioner may (unless the person assessed proves to the Commissioner's satisfaction that the omission or incorrectness of the return did not amount to fraud, covin, art or contrivance, or gross or wilful neglect) charge such person, in addition to the total tax otherwise charged in the assessment, further tax not exceeding the amount of tax charged in respect of the difference between the amount by which the profits exceeded the standard profits as disclosed in the assessment and the amount by which the profits exceeded the standard profits as disclosed in the return.

(5) If any person neglects or refuses to render a return as required by this Ordinance, the Commissioner may (unless such person proves to the Commissioner's satisfaction that the neglect or refusal was for reasonable cause and ought

fairly to be excused) charge such person additional tax not exceeding the amount of tax which would have been payable if this subsection had not been enacted.

(6) Nothing in the preceding subsection shall be construed as derogating from any other provisions of this Ordinance.

(7) The provisions of this Ordinance shall apply to any additional tax charged by virtue of this section as they do to tax ordinarily chargeable under this Ordinance.

(8) Without prejudice to the powers conferred by section 38, the Commissioner may for reasons which may appear to him to be sufficient at any time remit in whole or in part any additional tax charged under this section.

(9) The discretion to charge additional tax vested in the Commissioner by this section may be exercised on appeal under section 17 by the Judge: Provided that if the Judge shall confirm the decision by the Commissioner to charge additional tax and shall find that the additional tax imposed by the Commissioner did not exceed the maximum additional tax which could properly be charged, the appeal as regards additional tax shall be dismissed.

Section 18 of  
the Principal  
Ordinance  
amended.

9. Section 18 of the Principal Ordinance is hereby re-numbered 18 (1) and the following is hereby added as subsection (2) thereof:—

(2) An assessment shall not be impeached or affected—

(a) by reason of a mistake therein as to—

- (i) the name, surname or description of a person liable, or
- (ii) the description of any profits, or
- (iii) the amount of tax charged;

(b) by reason of any variance between the assessment and the notice thereof:

Provided that, in cases of assessment, the notice thereof shall be duly served on the person intended to be charged, and such notice shall contain, in substance and effect, the particulars on which the assessment is made.

10. Section 32 of the Principal Ordinance is hereby amended by substituting the following subsection for subsection (3) thereof:--

Section 32 of  
the Principal  
Ordinance  
amended.

(3) Notice may be served on a person either personally or by being sent by post to his last known business or private address: Provided that service by post in the case of a notice requiring the attendance of any person or witness before the Commissioner shall be by registered post. A notice sent by post shall be deemed to have been served, in the case of persons resident in the Colony, not later than the fifteenth day succeeding the day when posted, and in the case of persons not so resident, not later than the thirtieth day succeeding the day on which the notice would have been received in the ordinary course by post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.