



Finance Act 1950

1950 CHAPTER 15 14 Geo 6

PART III

MISCELLANEOUS PROVISIONS AS TO INCOME TAX AND OTHER TAXES

36 F1

Textual Amendments

F1 S. 36 repealed with savings by [Income Tax Act 1952 \(c. 10\)](#), s. 527, [Sch. 25](#)

37 F2

Textual Amendments

F2 S. 37 repealed by [Income Tax Act 1952 \(c. 10\)](#), s. 527, [Sch. 25](#) and [Finance Act 1963 \(c. 25\)](#), s. [73\(8\)\(b\)](#), Sch. 14 Pt. IV

38 F3

Textual Amendments

F3 S. 38 repealed by [Finance Act 1963 \(c. 25\)](#), s. [73\(8\)\(b\)](#), Sch. 14 Pt. IV

39 Treatment for taxation purposes of enemy debts, etc., written off during the war.

(1) Where—

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for the Finance Act 1950, Part III. (See end of Document for details)*

- (a) the profits or losses arising from a trade or business in an accounting period ending after the end of March, nineteen hundred and thirty-nine, and beginning before the end of the year nineteen hundred and forty-six fell to be computed for excess profits tax or profits tax purposes, or the profits or gains or losses of a year or period ending and beginning as aforesaid fell to be computed in the case of a trade for income tax purposes; and
- (b) in computing those profits, profits or gains or losses a deduction was allowed so as wholly or partly to write off—
 - (i) a debt or claim (whether actual or potential) owed by or on a person resident or carrying on business in territory which was, had been or subsequently became enemy territory, or owed by or on a State or Sovereign of a State which was, had been or subsequently became at war with His Majesty; or
 - (ii) the value of any property in, or believed to be in, any such territory as aforesaid, or under, or believed to be under, the control of any Power which was, had been or subsequently became at war with His Majesty; and
- (c) a recovery is made in respect of that debt, claim or property, whether from the debtor or person liable or otherwise, and whether by the person carrying on the trade or business or trade in the accounting period, or year or period, aforesaid or by some person claiming through or under him; and
- (d) the amount of the recovery, or, if there is more than one, the total amount of the recoveries, is greater or less than such part, if any, of the amount or value of the debt, claim or property as is still not written off after effect has been given to the deduction,

the deduction shall be deemed to have been improper to the extent of the excess or, as the case may be, to have been insufficient to the extent of the deficiency, and, subject to the provisions of the next following section, all such consequences shall ensue, as respects all persons concerned, for the purposes of excess profits tax, the profits tax and income tax (including surtax) for any chargeable accounting period or year of assessment, as would have ensued if no deduction had been made or, as the case may be, if there had been made a deduction smaller by the amount of the said excess or greater by the amount of the said deficiency, and payments of tax (including refunds of excessive repayments of tax) and repayments of tax (including post-war refunds of excess profits tax) shall be made accordingly.

(2) In this section—

- (a) the expression “recovery” means the obtaining of anything of value, whether in cash or not, and references to the amount of a recovery are references to the amount or value, as the case may require, of what is obtained:
- (b) references to a recovery in respect of a debt, claim or property wholly or partly written off in the manner specified in subsection (1) of this section include, in particular, references to—
 - (i) any sum obtained under the ^{M1}Distribution of German Enemy Property Act, 1949, or any other enactment, in virtue of rights in respect of that debt, claim or property; and
 - (ii) anything of value obtained (whether in cash or not) in consideration of an assignment of any rights in respect of the debt, claim or property, and where (whether in consideration of an assignment or otherwise) anything is obtained partly in respect of some debt, claim or property so written off as aforesaid and partly in respect of some other debt, claim or property, the amount or value of

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what is obtained shall be apportioned rateably to the amounts or values of the several debts, claims or properties and there shall be deemed to be a recovery in respect of the first mentioned debt, claim or property of an amount equal to such part of the amount or value of what is obtained as is apportioned thereto:

Provided that where the whole or any part of, or of the value of, something obtained in consideration of an assignment of rights in respect of any debt, claim or property so written off as aforesaid is treated as a recovery in respect of that debt, claim or property, all subsequent recoveries in respect of that debt, claim or property made by virtue of those rights shall be left out of account for the purposes of this section except to the extent that the total amount thereof exceeds or, as the case may be, exceeds that part of, the amount or value of what was obtained in consideration of the assignment.

- (3) In ascertaining, under subsection (2) of this section, the amount of any recovery, there may be deducted from the amount or value of what is obtained any expenses incurred in obtaining it, and references in the said subsection to the amount or value of what is obtained shall be construed accordingly:

Provided that, to the extent that any expenses so deducted go to reduce the sum which is to be treated under that subsection as the amount of a recovery in respect of a debt, claim or property wholly or partly written off in the manner specified in subsection (1) of this section—

- (a) no deduction shall be allowed for the expenses in computing, for excess profits tax or profits tax purposes, the profits or losses arising from any trade or business in any accounting period or in computing, for the purposes of income tax for any year of assessment, the profits or gains or losses of any trade; and

[^{F4}(b) the expenses shall not be allowed—

- (i) as a deduction under [^{F5}section 1219 of the Corporation Tax Act 2009]; or
(ii) in the computation of [^{F6}ordinary BLAGAB management expenses for the purposes of section 76 of the Finance Act 2012].]

- (4) Where an amount of tax has been allowed to remain uncollected on the ground that some debt, claim or property might prove to be irrecoverable or lost, without, however, a deduction being actually allowed in the relevant computation of profits, profits or gains or losses, the preceding provisions of this section shall apply, with the necessary adaptations, as if a deduction had been allowed in the said computation so as to write off the debt or claim, or, as the case may be, the value of the property, to an extent corresponding to the amount of tax allowed to remain uncollected.

- (5) In this section, the expression “enemy territory” means any area under the sovereignty of, or in the occupation of, a Power at war with His Majesty and the expression “at war with His Majesty” means at war with His Majesty at some time during the years nineteen hundred and thirty-nine to nineteen hundred and forty-six.

- (6) In any case to which this section applies—

- (a) all such assessments or additional assessments to excess profits tax, the profits tax or income tax (including surtax) shall be made as are necessary to secure that the payments of tax mentioned in subsection (1) of this section are duly recovered; and

- (b) all such assessments as aforesaid, and all repayments of tax mentioned in the said subsection (1), shall be made notwithstanding that the liability of the persons in question to excess profits tax, the profits tax, income tax other than surtax or surtax, as the case may be, has been finally determined (whether before or after the passing of this Act) and notwithstanding that the time

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limited by law for making assessments, additional assessments or claims for repayments has expired; and

- (c) the recovery of all or any of the payments of income tax other than surtax falling to be made by a particular person for any year of assessment (including refunds of excessive repayments of tax) may, if convenient, be secured as aforesaid by a single assessment or additional assessment under Case VI of Schedule D, and may be so secured notwithstanding that all or any of the income in respect of which the tax is payable is income chargeable only by deduction or chargeable only under some other Schedule or Case.

Textual Amendments

- F4** Words in s. 39(3) substituted (28.9.2004) by [Finance Act 2004, Sections 38 to 40 and 45 and Schedule 6 \(Consequential Amendments of Enactments\) Order 2004 \(S.I. 2004/2310\)](#), art. 1(2), **Sch. para. 1(2)**
- F5** Words in s. 39(3) substituted (1.4.2009) by [Corporation Tax Act 2009 \(c. 4\)](#), s. 1329(1), **Sch. 1 para. 294(a)** (with [Sch. 2 Pt. 1, 2](#))
- F6** Words in s. 39(3)(b)(ii) substituted (17.7.2012) by [Finance Act 2012 \(c. 14\)](#), **Sch. 16 para. 65**

Modifications etc. (not altering text)

- C1** S. 39 saved by [Finance Act 1961 \(c. 36\)](#), s. 32(3)

Marginal Citations

- M1** 1949 c. 85.

40 Modification of last preceding section in the case of recoveries by assignees and in certain cases of subsidiary companies.

- (1) The provisions of the last preceding section shall, in the cases specified in the subsequent provisions of this section, have effect subject to the modifications therein specified.
- (2) Where the recovery is made otherwise than by, or by the executors or administrators of, the person carrying on the trade or business or trade in the accounting period, or year or period, mentioned in paragraph (a) of subsection (1) of the last preceding section, the payments and repayments of tax mentioned in the said subsection (1) shall not be made, but the Commissioners of Inland Revenue may serve on, or on the executors or administrators of, the person making the recovery a notice giving particulars, to the best of the judgment of those Commissioners, of the payments and repayments which would have fallen to be made but for the provisions of this subsection, and requiring the person on whom the notice is served to pay such sum as may be specified in the notice, being the sum by which, to the best of the judgment of the Commissioners, the total amount of the said payments exceeds the total amount of the said repayments: Provided that where the person making the recovery is not resident in the United Kingdom or is dead and was not resident in the United Kingdom at the time of his death, the Commissioners may, if they think fit, instead of serving a notice on him or his executors or administrators, serve a notice on, or on the executors or administrators of, any predecessor in title of his in respect of the debt, claim or property in question, being a person who is resident in the United Kingdom or was so resident when he was last entitled to the rights in respect of the debt, claim or property in question to which the person making the recovery has succeeded.

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(3) Where a notice is served under subsection (2) of this section on, or on the executors or administrators of, a person, the same consequences as respects—

- (a) the imposition of liability to pay, and the recovery of, the sum to which the notice relates, with or without interest; and
- (b) priority for the claim of the Crown for that sum in bankruptcy, or in the winding up of a company or in the administration of the estate of a deceased person; and
- (c) appeals to the Special Commissioners and the stating of cases for the opinion of the High Court,

shall follow on the service of the notice as would have followed on the making of an assessment to income tax in that amount on, or, as the case may be, on the executors or administrators of, that person ^{F7}... in respect of income chargeable ^{F8}... for the year of assessment current when the notice was served, and the provisions of the Income Tax Acts relating to those matters shall, with the necessary adaptations, have effect accordingly.

(4) Where excess profits tax is concerned and—

- (a) a body corporate was carrying on the trade or business in the accounting period mentioned in paragraph (a) of subsection (1) of the last preceding section; and
- (b) that body corporate was in that accounting period a subsidiary member of a group of companies; and
- (c) at some time before the recovery is made, that group ceased to exist or that body corporate ceased to be a member thereof,

subsections (2) and (3) of this section shall apply as they apply where the recovery is made otherwise than by, or by the executors or administrators of, the person who was carrying on the business in the said accounting period.

A group of companies shall be deemed for the purposes of this subsection to continue to exist notwithstanding any changes in the members thereof, so long as, and only so long as, the same body corporate remains the principal company of the group.

In this subsection, the expressions “group of companies”, “the principal company” and “subsidiary member” have the meanings assigned to them by subsection (1) of section twenty-eight of the ^{M2}Finance Act, 1940 (which contains provisions as to the treatment of inter-connected companies for excess profits tax purposes).

(5) Subsections (2) and (3) of this section shall also apply as aforesaid where the profits tax is concerned and—

- (a) a body corporate was carrying on the trade or business in the accounting period mentioned in paragraph (a) of subsection (1) of the last preceding section; and
- (b) a notice given by another body corporate under section twenty-two of the ^{M3}Finance Act, 1937 (which provides for the amalgamation for the purposes of the profits tax of the profits or losses of bodies corporate with those of their subsidiaries) had effect as respects that body corporate in relation to a chargeable accounting period coinciding with, or falling wholly or partly within, that accounting period; and
- (c) that notice had ceased to be in force before the recovery is made:

Provided that this subsection shall not apply by reason of the notice ceasing to be in force if—

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- (i) it ceased to be in force by reason of the giving of a subsequent notice under the said section twenty-two, being a notice given as respects both those bodies corporate; and
- (ii) thereafter, until the recovery is made, there is no period during which either that notice or some other notice under the said section twenty-two, being a notice given as respects both bodies corporate, is not in force.

Textual Amendments

- F7** Words in s. 40(3) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))
- F8** Words in s. 40(3) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 3](#) (with [Sch. 2](#))

Marginal Citations

- M2** 1940 c. 29.
- M3** 1937 c. 54.

[^{F9}41] **Remission in certain cases of interest on tax in arrear by reason of exchange restrictions.**

- (1) The provisions of this section shall have effect where the Commissioners of Inland Revenue are satisfied as respects any tax carrying interest under section eight of the Finance (No. 2) Act, 1947,—
- (a) that the tax is in respect of profits or income arising in a country outside of the United Kingdom ; and
 - (b) that, as the result of action of the government of that country, it is impossible for the profits or income to be remitted to the United Kingdom ; and
 - (c) that having regard to the matters aforesaid and for all the other circumstances of the case it is reasonable that the tax should for the time being remain uncollected,

and the Commissioners allow the tax to remain uncollected accordingly

- (2) Interest on the said tax shall, subject to the provisions of subsection (3) of this section, cease to run under the said section eight as from the date on which the Commissioners of Inland Revenue were first in possession of the information necessary to enable them to be satisfied as aforesaid, and, if the said date is no later than three months from the time when the tax became due and payable, the interest thereon under the said section eight in respect of the period before the said date shall be remitted.
- (3) Where, under subsection (2) of this section, interest has ceased to run on any tax and thereafter demand is made by the collector or other proper officer for payment of all or any of that tax, interest under the said section eight shall again begin to run from the date of the demand in respect of the amount demanded :
 Provided that where all or any part of the amount demanded is paid not later than three months from the date of the demand, the interest under the said section eight on the amount so paid running from the date of the demand shall be remitted.
- (4) This section shall apply in relation to all assessments made whether before or after the passing of this Act, and, in relation to any assessment made before the passing of this Act, shall be deemed always to have had effect :

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Provided that no sum actually paid before the twenty-seventh day of June, nineteen hundred and fifty, in respect of any interest shall be repaid by virtue of the provisions of this section.]

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Textual Amendments

F9 S. 41 repealed so far as relating to income tax carrying interest by [Income Tax Act 1952 \(c. 10\)](#), ss. [527](#), [529\(2\)\(j\)](#), Sch. 25

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Modifications etc. (not altering text)

C2 S. 41 extended by [Finance Act 1952 \(c. 33\)](#), s. [62\(1\)\(a\)](#)

42 **F10**

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Textual Amendments

F10 S. 42 repealed with savings by [Income Tax Act 1952 \(c. 10\)](#), s. [527](#), [Sch. 25](#)

Changes to legislation:

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