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SCHEDULE 5

PROVISIONS AS TO EXCESS PROFITS TAX AND NATIONAL DEFENCE CONTRIBUTION IN THE CASE OF INTERCONNECTED COMPANIES

Modifications etc. (not altering text)

- C1** The text of Part III (ss. 26–42) and Schs. 5 and 6 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.
- C1** Sch. 5 extended by Finance (No. 2) Act 1940 (c. 48), s. 13(3)
- C1** Sch. 5 amended by Finance Act 1941 (c. 30), s. 42, Sch. 4 paras. 6(1)(2)
- C1** Sch. 5 excluded by Finance Act 1941 (c. 30), s. 42, Sch. 4 para. 1 and by Finance Act 1945 (c. 24), s. 5(3)
- C1** Sch. 5 applied by Finance (No. 2) Act 1945 (c. 13), s. 49, Sch. 6 para. 5

PART II

THE GROUP STANDARD PERIOD AND THE GROUP STANDARD PROFITS

- 1 (1) This Part of this Schedule shall have effect with respect to any group of companies existing in any period after the end of March, nineteen hundred and thirty-nine.
- (2) For the purposes of this Part of this Schedule a group of companies shall be deemed to be the same group so long as the same body corporate is the principal company thereof.
- (3) The matters required by the subsequent provisions of this Part of this Schedule to be ascertained in relation to a group of companies, and the powers conferred on the principal company of a group of companies, shall, save as hereinafter provided, be ascertained and exercised once and for all in relation to each period after the end of March, nineteen hundred and thirty-nine, during which the composition of the group remains unchanged, or is changed only by the loss or addition of a new subsidiary, and any such period is in the subsequent provisions of this Part of this Schedule referred to as a “relevant period”.
- 2 (1) If the trade or business of any of the members of the group was being carried on or before the first day of July, nineteen hundred and thirty-six, the principal company shall select a period to be the standard period of the group.
- (2) The said period shall be selected in accordance with the provisions of subsections (4) to (6) of section thirteen of the Finance (No. 2) Act, 1939, subject however, to the following modifications—
- (a) the references to the person carrying on the trade or business shall be construed as references to the principal company ; and
- (b) the trade or business of the principal company shall be deemed to have been commenced at the earliest date on which any of the trades or businesses carried on by any of the members of the group was commenced.
- 3 (1) If the group is one to which the last preceding paragraph applies, there shall be ascertained the standard profits of the group in accordance with the provisions of this paragraph :

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Provided that the standard profits of the group need not be ascertained in relation to any relevant period if an election under the next succeeding paragraph has effect with respect to the whole of that period.

- (2) The standard profits of the group shall, where the standard period of the group is one year, be an amount arrived at by aggregating the profits and losses arising in the standard period of the group in the trades and businesses of all the members of the group, other than new subsidiaries, and shall, where the standard period of the group is two years, be half the amount arrived at as aforesaid.

Provided that the second section of Part III of this Act shall, with the adaptations and modifications specified in the next succeeding sub-paragraph, have effect in relation to the ascertainment of the standard profits of the group as it has effect in relation to the ascertainment of the standard profits of the trade or business of a body corporate which is not a member of any group of companies.

- (3) The said adaptations and modifications are as follows, that is to say—
- (a) references to the person carrying on the trade or business shall be construed as references to the principal company ;
 - (b) references to the paid-up share capital of the person carrying on the trade or business shall be construed as references to the paid-up share capital of the principal company together with so much as the Commissioners or the Board of Referees, as the case may be, think just of such part of the paid-up share capital of the other members of the group, not being new subsidiaries, as appears to them to have been, in the standard period, owned neither directly nor indirectly by the principal company ;
 - (c) other references to the trade or business shall be construed as references to all the trades or businesses of all the members of the group, other than new subsidiaries ;
 - (d) references to the standard period shall be construed as references to the standard period of the group ;
 - (e) references to the standard profits for a full year shall be construed as references to the standard profits of the group ;
 - (f) references to the provisions applicable to the computation of capital for the purposes of excess profits tax shall be construed as references to those provisions as applicable to a member of a group of companies ;
 - (g) in arriving at the sum to be ascertained under paragraph (a) of the proviso to subsection (3) of the said second section, an additional deduction shall be made equal to the aggregate amount of the deductions which would, under sub-paragraph (2) of paragraph 3 of Part IV of this Schedule, fall to be made in computing the amount of the capital employed, immediately before the commencement of the standard period of the group, in the trades or businesses of the subsidiary members thereof, not being new subsidiaries ;
 - (h) references to a chargeable accounting period shall be construed as references to a relevant period ; but
 - [^{F1}(j) notwithstanding anything in subsection (8) of the said section, on the termination of a relevant period the Commissioners may, either on the application of the principal company or of their own motion, vary, as respects subsequent relevant periods, any determination in force under the said section with respect to that period, whether given originally or on appeal, if it appears to them that the circumstances have materially changed, and any decision of the Commissioners so to vary or not so to vary a determination

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shall be subject to an appeal by the principal company to the Board of Referees.]

- (4) The references in this paragraph to the members of a group shall be construed as references to the bodies corporate which are members thereof in the relevant period, not being new subsidiaries, whether or not they were members of the group for the whole or any part of the standard period of the group.

Textual Amendments

F1 Sch. 5 Part II para. 3(3)(j) substituted by Finance Act 1941 (c. 30), Sch. 4 para. 6(2)

- 4 (1) Whether the group is or is not such a group as is mentioned in the last two foregoing paragraphs, the principal company of the group may elect that the standard profits of every member of the group shall be ascertained by reference to the minimum standard, that is to say, by reference to the sum of one thousand pounds, or, if the principal company is a company the directors whereof have a controlling interest therein, by reference to such greater sum as might be allowed in relation to the principal company under the provisions of subsection (2) of section thirteen of the Finance (No. 2) Act, 1939.
- (2) The question what is the amount of the minimum standard in relation to the group shall be decided from time to time for the periods falling within the relevant period which are chargeable accounting periods of the principal company, and shall be so decided by the Commissioners :
- Provided that if the principal company is dissatisfied with any determination by the Commissioners of any such question, it may appeal to the Special Commissioners.
- (3) An election under this paragraph—
- (a) shall have effect as from such date as may be specified by the principal company in making the election ;
 - (b) may be revoked by the principal company as from such date as may be specified by the principal company in making the revocation ; and
 - (c) shall, unless revoked, continue to have effect for the remainder of the relevant period,
- and where an election is revoked a new election may be made as from any date subsequent to the date as from which the revocation has effect.
- (4) In this paragraph the expression “working proprietor” has the same meaning as it has in subsection (2) of section thirteen of the Finance (No. 2) Act, 1939.

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