

*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 1940, Part III. (See end of Document for details)*

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- C1 The text of Part III (ss. 26–42) and Schs. 5 and 6 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.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 III

ASCERTAINMENT OF STANDARD PROFITS OF MEMBERS AND ASCERTAINMENT OF EXCESSES AND DEFICIENCIES OF PROFITS

- 1 The standard profits of a body corporate which is a member of a group of companies in a chargeable accounting period shall, in relation to that period, be ascertained in accordance with the provisions of the next three succeeding paragraphs.
- 2 (1) If the group is such a group as is mentioned in paragraph 2 of Part II of this Schedule and the body corporate is not a new subsidiary, the standard profits therefore shall, unless by virtue of an election of the principal company under the said Part II the profits of the body corporate are to be ascertained by reference to the minimum standard, be taken to be an amount ascertained in accordance with the subsequent provisions of this paragraph :
Provided that if the chargeable accounting period is less than twelve months, the standard profits, as ascertained under those provisions, shall be proportionately reduced so as to correspond with the length of the period.
- (2) The standard profits of the body corporate shall—
 - (a) where the standard profits of the group would have been less if the trade or business of the body corporate had been left out of account in the calculation thereof, be taken, subject to the adjustment provided for in sub-paragraph (3) of this paragraph, to be an amount equal to the difference ;
 - (b) where the standard profits of the group would have been greater if the trade or business of the body corporate had been left out of account in the calculation thereof, be taken, subject to the said adjustment, to be a negative amount equal to the difference ;
 - (c) where no difference would have been made to the standard profits of the group if the trade or business of the body corporate had been left out of account (whether because that trade or business was not in existence in the standard period or because no profits and no loss arose therein in that period), be taken, subject to the said adjustment, to be nil :

Provided that where the standard profits of the group are determined in accordance with the second section of Part III of this Act (as applied with adaptations by Part II of this Schedule), the standard profits of the body

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corporate shall, subject to the said adjustment, be such part of the standard profits of the group as may be determined by reference to an apportionment made by the Commissioners or, if any member of the group (other than a new subsidiary) so requires, by the Board of Referees.

- (3) If the average amount of the capital employed in the trade or business of the body corporate is greater or less in the chargeable accounting period than in the standard period of the group, the standard profits as ascertained under sub-paragraph (2) of this paragraph shall be adjusted by being increased or, as the case may be, decreased by the statutory percentage of the increase or decrease in the average amount of the capital employed in the trade or business.
 - (4) In sub-paragraph (3) of this paragraph, the expression “the statutory percentage” has the meaning assigned to it by subsection (9) of section thirteen of the Finance (No. 2) Act 1939 :
Provided that the proviso to the said subsection (9) (which prescribes that six per cent. shall be the statutory percentage in all cases in relation to any decrease of capital) shall have effect only in relation to such part of any decrease as is shown to be the proper proportion of any decrease in the average amount of the capital employed in all the trades or businesses of all the bodies corporate which are members of the group in the chargeable accounting period, other than new subsidiaries, and any question what is the said proper proportion shall be decided by the Commissioners whose decision shall be final.
- 3
- (1) If the group is not such a group as is mentioned in paragraph 2 of Part II of this Schedule or if the body corporate is a new subsidiary the standard profits shall, unless by virtue of an election by the principal company under the said Part II the standard profits of the body corporate are to be ascertained by reference to the minimum standard, be ascertained in accordance with section thirteen of the Finance (No. 2) Act, 1939, and the second section of Part III of this Act, subject to the modifications specified in this paragraph.
 - (2) Subsection (2) of the said section thirteen, and in subsection (1) thereof the words “if the person carrying on the trade or businesses so elects, to be the minimum amount specified in subsection (2) of this section, and, in the absence of such an election” shall be deemed to be omitted.
 - (3) If the standard profits are to be computed by reference to the profits of a standard period, and in that period there is a loss, the profits of that period shall be deemed to be a negative amount equal to the loss.
 - (4) If the standard profits for a full year are by virtue of subsection (8) of the said section thirteen to be taken to be the statutory percentage of the average amount of the capital employed in the trade or business in the chargeable accounting period, and in that period the average amount of capital employed is a negative amount, the standard profits for a full year shall be deemed to be a negative amount equal to the statutory percentage of that negative amount of capital.
 - (5) An application with respect to a new subsidiary under the second section of Part III of this Act, as applied by sub-paragraph (1) of this paragraph shall be made by the principal company and not otherwise and where a new subsidiary became a member of the group after the end of March, nineteen hundred and thirty-nine, and the standard profits thereof for any chargeable accounting period ending before it became a member of the group fall to be computed by reference to a direction given with respect to it under the said second section, that direction shall not have

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effect as respects the period during which it is a member of the group, unless the [^{F1}Commissioners], on the application of the principal company, confirm the direction :

Provided that on any such application for the confirmation of a direction the [^{F1}Commissioners] may, in lieu of refusing to confirm the direction, confirm it subject to such diminution of the amount specified therein as they think fit.

[^{F2}If the principal company is dissatisfied with any determination of the Commissioners under this sub-paragraph, it may appeal to the Board of Referees.]

Textual Amendments

F1 Words substituted by [Finance Act 1941 \(c. 30\)](#), [Sch. 4 para. 6](#)

F2 Words added by [Finance Act 1941 \(c. 30\)](#), [Sch. 4 para. 6](#)

- 4 If by virtue of an election of the principal company under Part II of this Schedule the standard profits of the body corporate are to be ascertained by reference to the minimum standard, the standard profits of the body corporate shall be such apportioned part of the minimum standard as may be determined by reference to an apportionment made by the Commissioners, or, if any member of the group so requires, by the Special Commissioners :

Provided that if the chargeable accounting period is less than twelve months, the standard profits shall be taken to be the said apportioned part proportionately reduced so as to correspond with the length of the period.

- 5 (1) If in the case of the trade or business of a body corporate there is a loss in any chargeable accounting period, and in that period the body corporate is a member of a group of companies, there shall, for the purposes of determining whether there is an excess or deficiency of profits, be deemed to be a profit of a negative amount equal to the loss.
- (2) If in the case of any member of the group of companies the average amount of the gross capital employed in the trade or business of the member in any period is less than the deductions from capital allowable in that period, the average amount of the capital employed in that period shall be taken to be a negative amount equal to the difference.

In this sub-paragraph the expression “gross capital” means the capital computed without making the deductions specified in Part II of the Seventh Schedule to the Finance (No.2) Act, 1939, and the expression “deductions from capital” means the deductions so specified.

- (3) In determining in the case of any member of a group of companies—
- (a) what was the amount of any increase or decrease in capital ; and
 - (b) what adjustment of the standard profits is to be made by reason of any increase or decrease in capital ; and
 - (c) whether there is any and if so what excess or deficiency of profits, the following rules shall be applied—
 - (i) a negative amount shall be deemed to exceed a greater negative amount, and to fall short of a less negative amount, by the amount of the difference ; and
 - (ii) a positive amount shall be deemed to exceed a negative amount to fall short of a positive amount, by the amount which would be the sum of those amounts if they were both positive ; and

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- (iii) so much of subsection (1) of section fifteen of the Finance (No.2) Act, 1939, as relates to the computation of deficiencies where a loss has been made shall not have effect.

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