

*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 1940, Part IV. (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- C1 The text of Part III (ss. 26–42) and Schs. 5 and 6 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.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 IV

MISCELLANEOUS PROVISIONS

- 1 (1) Subsection (1) of section seventeen of the Finance (No.2) Act, 1939 (which directs that certain payments passing between interconnected companies shall be disregarded) shall, in relation to any payment passing between members of a group of companies, only apply if the Commissioners so direct ; and any payment with respect to which no such direction is given, being a payment to which subsection (1) of said section seventeen would apply but for the provisions of this paragraph, shall be included in the profits of the body corporate to which it is payable, notwithstanding that it has arisen from an investment, and the investment shall be taken into account accordingly in computing capital.
- (2) Subsection (1A) of the said section seventeen (which directs that certain debts not bearing interest which are due between interconnected companies shall be left out of account in computing capital) shall, if the bodies corporate concerned are members of a group of companies, apply in computing the capital of either of those bodies corporate only in relation to such debts, if any, as may be specified in a direction of the Commissioners.
- (3) Where, in the case of any debt to which subsection (1) or subsection (1A) of the said section seventeen would otherwise apply, no direction under this paragraph is given by the Commissioners, the debt shall not be treated, for the purposes of the borrowed money rules, or, as the case may be, of the second of the borrowed money rules, as borrowed money the principal of which is liable to be reduced by the value of any investments.

In this sub-paragraph, the expression “the borrowed money rules” means sub-paragraph (3) of paragraph (6) of Part I of the Seventh Schedule to the Finance (No.2) Act, 1939, and paragraph 3 of Part II of that Schedule, and the expression “the second of the borrowed money rules” means the said paragraph 3.
- (4) Dividends received by a member of a group of companies from holdings of share capital of other members of the group shall, in all cases, be left out of account in computing profits, and holdings of such capital shall, in all cases, be left out of account in computing capital, but no reduction shall, in any case, be treated as made

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in the principal of any borrowed money by virtue of any such holding, either in computing profits or in computing capital.

- 2 (1) In this paragraph, the expression “the borrowed money rules” means sub-paragraph (3) of paragraph (6) of Part I of the Seventh Schedule to the Finance (No.2) Act, 1939, and paragraph 3 of Part II of the said Schedule, and for the purposes of this paragraph a member of a group of companies shall be deemed to have an excess of excluded investments or an excess of borrowed money if and to the extent that the value of any investments which it has, being investments the income from which is not to be taken into account in computing the profits of its trade or business, exceeds or falls short of the principal of its borrowed money.

In this sub-paragraph, references to income from investments do not include, in relation to any member, income to which that member is not beneficially entitled.

- (2) If any members of a group of companies have at any time an excess of excluded investments and at the same time any other member of that group has an excess of borrowed money, the borrowed money rules shall, in relation to that other member, have effect as if the reduction in the principal of the borrowed money of that member required by those rules were increased by the amount of the aggregate of the said excess of excluded investments :
- Provided that—
- (a) if there is more than one member with an excess of borrowed money, the said aggregate excess of excluded investments shall be applied first in relation to one of those members, and if and to the extent that it is greater than the excess of borrowed money of that member, then in relation to another of those members, and so on ; and
 - (b) the order in which those members are to be selected shall be, first, the principal company (if it is one of those members) but, subject to the principal company being the first of the members as aforesaid, shall be such as the principal company may require, or as the Commissioners may, in the absence of such a requirement, direct.
- 3 (1) This paragraph applies to a subsidiary member of a group of companies which neither is resident in the United Kingdom, nor carries on any trade or business therein, and in this paragraph, the expression “the subsidiary member” shall be construed accordingly.
- (2) Where part of the share capital of the subsidiary member (not being ordinary share capital) is owned neither directly or indirectly by the principal company, then—
- (a) in computing the capital of the subsidiary member, a deduction shall be made equal to the paid-up amount of that part of its share capital ; and
 - (b) in computing the profits of the subsidiary member, a deduction shall be made equal to interest on the said amount at the fixed rate per annum payable in the case of dividends on that part of that share capital.
- (3) Where in any chargeable accounting period any part of the ordinary share capital of the subsidiary member is owned neither directly nor indirectly by the principal company, any excess profits or deficiency of profits occurring in the trade or business of the subsidiary member for that period shall be reduced by an amount bearing to the full amount thereof the same proportion that the paid-up amount of that part of the subsidiary member’s ordinary share capital bears to the whole paid-up amount of its ordinary share capital.

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- (4) The provisions of Part I of the Fourth Schedule to the Finance Act, 1938, shall apply for determining, for the purposes of this paragraph, how much of any share capital of a subsidiary member is owned directly or indirectly by the principal company, and shall so apply in relation to share capital of the subsidiary member which is not ordinary share capital as if it were ordinary share capital.
- 4 In this paragraph—
- (a) the expression “period of charge” means, in relation to the trade or business of a body corporate, a chargeable accounting period the excess or deficiency of profits for which is to be ascertained for the purposes of excess profits tax ;
- (b) the expression “period of computation” means, in relation to a period of charge, any period the profits or the capital of which are relevant for the purposes of ascertaining the excess or deficiency of profits for that period of charge.
- (2) The foregoing provisions of this Part of this Schedule shall have effect for the purposes of computing the excess or deficiency of profits of the trade or business of any body corporate in any period of charge if and only if in that period the body corporate was a member of a group of companies, but shall, for that purpose, apply to the computation of profits and capital during all periods of computation, notwithstanding that that body corporate was not a member of the group in or throughout any of those periods.
- (3) References in the said provisions to a group of companies, or to a member, a subsidiary member, or the principal company, of a group of companies, shall be construed by reference to the facts of the period of computation, or, where there is more than one such period, to the facts of each of those periods respectively.
- 5 If at any time after the thirty-first day of March, nineteen hundred and thirty-nine, a body corporate is a member of a group of companies, there shall be made such alteration, if any, of the periods which would otherwise be chargeable accounting periods thereof (whether for the purposes of excess profits tax or those of the national defence contribution) as the Commissioners may direct.
- 6 (1) Subject to the provisions of sub-paragraph (2) of this paragraph, if a body corporate becomes or ceases to be a subsidiary member of a particular group of companies—
- (a) no relief shall be given in respect of deficiencies of profits occurring before that event by any reduction of any profits arising after that event ; and
- (b) no relief shall be given in respect of deficiencies of profits occurring after that event by any reduction of any profits arising before that event.
- (2) If it is Established in the case of a body corporate that it has a deficiency of profits for any chargeable accounting period during which it was a member of a group of companies, the principal company of the group may require that the deficiency, so far as it is not absorbed in reducing the aggregate amount of the profits chargeable to excess profits tax of that member for previous chargeable accounting periods, shall be applied in whole or in part in reducing any other profits on which the principal company is assessable to excess profits tax, and relief from excess profits tax shall be given accordingly ; and to the extent that any deficiency is so applied, it shall not be available for reducing any profits chargeable to excess profits tax of the said member for any period.

The reference in this sub-paragraph to profits on which the principal company is assessable includes profits on which it is assessable for any chargeable accounting

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period, whether or not in that chargeable accounting period the principal company is the principal company of the group.

- (3) So much of any provision of Part III of this Act as prevents a deficiency of profits being taken into account in so far as it occurs while the trade or business was being carried on neither in the United Kingdom nor by a person ordinarily resident in the United Kingdom shall not apply if the trade or business was being carried on by a body corporate which was then a member of a group of companies.
- (4) For the purposes of this paragraph a group of companies shall be deemed to be the same group 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.

Modifications etc. (not altering text)

C1 Sch. 5 para. 6(2) excluded, 4 & 5 Geo. 6. c. 30. s. 42, sch. 4, para. 1 ; 8 & 9 Geo. 6. c. 24. s. 5(3)

- 7 (1) Neither section nineteen of the Finance (No.2) Act, 1939 (which contains provisions as to the relation of excess profits tax and the national defence contribution) nor the Sixth Schedule to this Act shall apply in the case of any body corporate as respects any period during which it is a member of a group of companies, and the national defence contribution shall be charged in respect of any profits of the trade or business of the body corporate arising during that period as if there were no excess profits tax.

- (2) The Commissioners shall from time to time make—
- (a) such reductions, if any, of excess profits tax chargeable in respect of the trades or businesses of the members of a group of companies : and
- (b) such repayments, if any, of the excess profits tax paid in respect of those trades or businesses,

as appear to the Commissioners to be such as will secure that over the whole period during which both excess profits tax and the national defence contribution are in operation the total sum payable by way of excess profits tax in respect of the trades or businesses of all the members of the group does not exceed the excess, if any, of—

- (i) the total amount of excess profits tax which would be chargeable in respect of those trades or businesses over that period if the national defence contribution were disregarded except in computing capital,

over—

- (ii) the total amount of the national defence contribution chargeable in respect of those trades or businesses over the said period.

In this sub-paragraph, the references to amounts payable in respect of the trades or businesses of members of a group of companies shall be construed as references to the sums payable in respect of the trades or businesses of all bodies corporate who were members of the group at any time during the period or part of the period in question, being sums payable in respect of profits arising while they were members of that group, and for the purposes of this sub-paragraph a group of companies shall be deemed to be the same group 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.

- 8 For each subsidiary member of a group of companies, there shall, in the case of each chargeable accounting period, be computed the total excess profits tax

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which would have been chargeable for that period and for any previous chargeable accounting periods during which it was a member of the group if—

- (a) all deficiencies of profits occurring in its own trade or business in those periods, and no deficiencies occurring otherwise, had been applied in reducing its profits chargeable with excess profits tax ; and
- (b) any credit to be given under the last preceding paragraph in respect of the payment of the national defence contribution had been given in respect of all the national defence contribution chargeable for those periods in respect of its own trade or business, and no credit had been given for any national defence contribution chargeable otherwise.

(2) The principal company may demand that the subsidiary member shall pay to it the whole or any part—

- (a) in the case of the first chargeable accounting period in which the subsidiary member is a member of the group, of the amount calculated for that period under sub-paragraph (1) of this paragraph ;
- (b) in the case of any subsequent accounting period, of the excess, if any, of the amount so computed for that period over the amount computed for the last preceding chargeable accounting period in which it was a member of the group ;

and the subsidiary member shall comply with the demand :

Provided that if any excess profits tax charged on the principal company in respect of the trade or business of the subsidiary member has not been paid, that member may, to the extent that the tax remains unpaid, make payment in respect of the sum demanded to the Commissioners instead of to the principal company.

(3) If, in the case of any chargeable accounting period, the total amount of excess profits tax computed therefor falls short of the amount computed for the last preceding chargeable accounting period in which the subsidiary member was a member of the group, the amount of the difference shall, in so far as it exceeds any amount which could have been, but was not, demanded by the principal company under the last preceding sub-paragraph from that member, be paid by the principal company to that member.

(4) For the purposes of this paragraph a group of companies shall be deemed to be the same group 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.

Modifications etc. (not altering text)

C2 [Sch. 5 para. 8](#) applied, 9 & 10 Geo. 6. c. 13. s. 49, sch. 6, para. 5

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F1

Textual Amendments

F1 [Sch. 5 Part IV, para. 9](#) repealed by [Income Tax Act 1952 \(c. 10\)](#), s. 527, [sch. 25 pt. I](#)

10 (1) In the case of a member of a group of companies the following provisions of this paragraph shall have effect, for the purposes of Part II of the Seventh Schedule to the Finance (No.2) Act, 1939 (which contains provisions for computing capital for the purposes of excess profits tax),—

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- (a) in lieu of the provisions of the proviso to sub-paragraph (1) of paragraph 2 of the said Part II, in so far as those provisions relate to debts for excess profits tax ; and
 - (b) also in lieu of the provisions of sub-paragraph (2) of the said paragraph 2.
- (2) A debt for excess profits tax payable in respect of the trade or business of any member of a group of companies shall be deemed for the purposes of paragraph 2 of the said Part II—
- (a) to be a debt of the principal company and not of any other company ; and
 - (b) to have become due on the first day after the end of the chargeable accounting period in respect of which the tax is assessable, notwithstanding that the tax may not have been assessed until after the said day.
- (3) Where any debt for excess profits tax for any chargeable accounting period in respect of the trade or business of a member of a group of companies is to be deducted under paragraph 2 of the said Part II, the amount thereof shall not be reduced by reason of any relief given as the result of any deficiency of profits or any liability to the national defence contribution of any member of the group occurring in any chargeable accounting period, but the amount of the relief shall be treated as having become an asset of the trade or business of the principal company on—
- (a) the first day after the end of the chargeable accounting period from excess profits tax for which relief is given; or
 - (b) the first day after the end of the chargeable accounting period in which the deficiency of profits occurred or for which the liability to the national defence contribution arose,
- whichever day is the latter.
- (4) If, in relation to any chargeable accounting period of a subsidiary member, an amount becomes payable under sub-paragraph (2) or sub-paragraph (3) of the last but one preceding paragraph from the subsidiary member or the principal company, that amount shall, for the purpose of computing the capital of the principal company and the subsidiary member, be deemed—
- (a) to be a debt which became due from the subsidiary member or the principal company, as the case may be, on the first day after the end of that chargeable accounting period ; and
 - (b) to have become an asset of the principal company or the subsidiary member, as the case may be, on that day.
- 11 Any appeal from any assessment to, or determination with respect to, excess profits tax in respect of trade or business of a body corporate for any chargeable accounting period during which it is a member of a group of companies, which would, but for the provisions of this paragraph, have lain either to the General Commissioners or the Special Commissioners shall lie to the Special Commissioners only, and accordingly, in relation to any such assessment or determination, Part II of the Fifth Schedule to the Finance Act, 1937, as applied for the Purposes of excess profits tax, shall have effect as if the references to the General Commissioners were omitted therefrom.
- 12 Any dispute arising between any bodies corporate with respect to the proper allocation, as between those bodies, of the burden of any excess profits tax, or the benefit of any repayment of, or relief from, excess profits tax, shall, if the tax was assessed for a chargeable accounting period when those bodies were members of a group of companies, or the repayment or relief was made or allowed against tax

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assessed for, or by reason of a deficiency of profits in, such a chargeable accounting period, be decided—

- (a) if all the bodies corporate concerned so require, by the Commissioners ; and
- (b) in any other case, by the Special Commissioners,

and any decision of the Commissioners or the Special Commissioners under this paragraph shall be final.

- 13 (1) In this Schedule, the expression “new subsidiary,” in relation to any chargeable accounting period of a body corporate which in that period is a member of a group of companies to which this sub-paragraph applies, means a body corporate which was a subsidiary member of the group in that period but which was at no time during the standard period of the group a member of that or of any other group of companies : Provided that any other body corporate which is a subsidiary member of the group in the said chargeable accounting period but, in the standard period of the group, was a member of some other group shall, in relation to the said chargeable accounting period, be deemed to be a new subsidiary if the Commissioners are satisfied that there is no substantial degree of connection or continuity between the two groups.

The groups of companies to which this sub-paragraph applies are all groups of companies the trades or businesses of any of the members of which were being carried on on the first day of July, nineteen hundred and thirty-six.

- (2) It is hereby declared that the provisions of section sixteen of the Finance (No.2) Act, 1939 (which relates to successions and amalgamations) which are expressed to have effect for the purposes of the provisions of that Act, or of Part III of that Act, relating to the computation of standard profits have effect also for the purposes of Parts II and III of this Schedule.

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