



# Finance Act 1940

1940 CHAPTER 29 3 and 4 Geo 6

## PART III.

### EXCESS PROFITS TAX AND NATIONAL DEFENCE CONTRIBUTION.

#### 27 Provisions to replace s. 13(7) of Finance (No. 2) Act, 1939.

- (1) Subsection (7) of section thirteen of the Finance (No. 2) Act, 1939, is hereby repealed, and in lieu thereof the following provisions of this section shall have effect in the case of a trade or business commenced on or before the first day of July, nineteen hundred and thirty-six.
- (2) If, in the case of a trade or business carried on by a body corporate, the Commissioners are satisfied, on the application of the person carrying on the trade or business—
  - (a) that there were no profits in the standard period; or
  - (b) that the profits of that period were so low that it would not be just to ascertain the standard profits of the trade or business by reference to the actual profits of the standard period,

they may direct that the standard profits for a full year shall be ascertained as if the profits of the standard period were of such amount or greater amount as they think just: Provided that the said amount shall not exceed an amount equal to interest for the standard period—

- (i) on the amount of the paid-up ordinary share capital, if any, of the body corporate, at six per cent., or, in the case of a company the directors of a company the directors whereof had a controlling interest therein, eight per cent., per annum ; and
- (ii) on the amount of any other paid-up share capital of the body corporate, at the fixed rate per annum payable in the case of dividends thereon ; [<sup>F1</sup>and]
- (iii) [<sup>F1</sup>on the average amount of the borrowed money, if any, employed in the trade or business in the standard period, at six per cent., or, in the case of a company the directors whereof had a controlling interest therein, eight per cent., per annum.]

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*Changes to legislation: There are currently no known outstanding effects  
for the Finance Act 1940, Section 27. (See end of Document for details)*

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- (3) If on the application of the person carrying on the trade or business the Board of Referees are satisfied that the condition specified in paragraph (a), or the condition specified in paragraph (b), of subsection (2) of this section is fulfilled, and also that the paid-up share capital of the body corporate in the standard period [<sup>F1</sup>together with any borrowed money employed in the trade or business in that period] did not fully represent the net value of the assets employed in the trade or business in that period, they may direct that the standard profits for the full year shall be ascertained as if the profits of the standard period were of such an amount as they think just :  
Provided that the said amount shall not exceed an amount equal to interest for the standard period at six per cent., or in the case of a company the directors whereof had a controlling interest therein, eight per cent., per annum on an account ascertained as follows, that is to say—
- (a) by computing the value of the assets employed in the trade or business immediately before the commencement of the standard period (valued as assets of a going concern), excluding any investments which would not be included in computing capital under the provisions applicable to the computation thereof for the purposes of excess tax, [<sup>F3</sup>and deducting debts, other than debts for borrowed money]
  - (b) by adding thereto or subtracting therefrom, as the case may be, the amount by which the average amount of the capital employed in the trade or business in the standard period exceeds or falls short of the amount of the capital employed therein immediately before the commencement of that period.
- (4) If, on an application made under the last preceding subsection, the Board of Referees are satisfied that the trade or business belongs to a class of industry which, during the years by reference to which the standard period could have been selected, was a depressed industry, the Board—
- (a) may give a direction under that subsection notwithstanding that they are not satisfied that the paid-up share capital in the standard period [<sup>F1</sup>together with any borrowed money employed in the trade or business in that period] did not fully represent the net value of the assets employed in the trade or business in that period; and
  - (b) shall not, as respects the amount to be specified in the direction, be bound by the limitation imposed by the proviso to that subsection.
- (5) Notwithstanding anything in subsections (2) to (4) of this section, the amount which, by virtue of those subsections, is to be treated, in ascertaining the standard profits for a full year, as being profits of the standard period shall not exceed an amount equal to interest for the standard period at the rate of six per cent., or, in the case of a company the directors whereof had a controlling interest therein, eight per cent., per annum on the average amount of the capital employed in the trade or business in the standard period, computed in accordance with the provisions applicable to the computation of capital for the purposes of excess profits tax :  
Provided that if, in the opinion of the Board of Referees, the amount of capital employed in the trade or business immediately before the commencement of the standard period, computed as aforesaid, was wholly or partly represented by assets the whole or any part of the value of which for the purposes of the trade or business had at that date been permanently lost, paragraphs 1 of Part II of the Seventh Schedule to the Finance (No. 2) Act, 1939, shall, for the purposes of this subsection, have effect in relation to those assets as if their price or value as was in the opinion of the Board so lost.

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- (6) The foregoing provisions of this section shall, with any necessary modifications, apply in relation to a trade or business carried on by persons on partnership, or by a single individual, as they apply in relation to a trade or business carried on by a body corporate :

Provided that—

- (a) for any reference to six per cent., or, in the case of a company the directors whereof had a controlling interest therein, eight per cent., there shall be substituted a reference to eight per cent.; and
- (b) the net amount standing to the credit of the capital accounts of the partners or, as the case may be, of the individual, during the standard period, after setting off any amounts standing to the debit of any those accounts, shall be treated as paid-up ordinary share capital.

[<sup>F4</sup>(7) An application under this section shall not be entertained unless notice thereof is given in writing to the inspector of taxes before the end of March, nineteen hundred and forty-two, unless the Commissioners allow a longer period.]

- (8) A determination on an application under subsection (2) or subsection (3) of this section—

- (a) shall have effect with respect to all chargeable accounting periods;
- (b) shall exclude any further application under the subsection under which the application was made.

[<sup>F5</sup>(9) If the person carrying on the trade or business is dissatisfied with any determination of the Commissioners under this section, he may appeal to the Board of Referees;]

#### Textual Amendments

- F1** Words inserted by [Finance Act 1941 \(c. 30\), s. 29\(3\)](#)
- F2** Words repealed by [Finance Act 1941 \(c. 30\), s. 52, Sch. 5](#)
- F3** Words substituted by [Finance Act 1941 \(c. 30\), s. 29\(3\)](#)
- F4** [S. 27\(7\)](#) substituted by [Finance Act 1941 \(c. 30\), s. 32\(2\)](#)
- F5** [S. 27\(9\)](#) inserted by [Finance Act 1941 \(c. 30\), s. 32\(3\)](#)

#### Modifications etc. (not altering text)

- C1** [S. 27](#) amended by [Finance \(No. 2\) Act 1940 \(c. 48\), s. 13](#) and by [Finance Act 1941 \(c. 30\), ss. 29\(4\), 30\(2\), 32\(1\)](#)
- C2** [S. 27](#) extended by [Finance Act 1941 \(c. 30\), s. 42, Sch. 4 para. 5](#)
- C3** [S. 27](#) restricted by [Finance Act 1941 \(c. 30\), s. 42, Sch. 4 para. 5](#)
- C4** [S. 27](#) excluded by [Finance Act 1941 \(c. 30\), s. 32\(5\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 1940, Section 27.