



Finance Act 1940

1940 CHAPTER 29 3 and 4 Geo 6

PART III.

EXCESS PROFITS TAX AND NATIONAL DEFENCE CONTRIBUTION.

33 Miscellaneous amendments as to computation of profits for excess profits tax.

- (1) Where a trade or business has been transferred by one person to another person, any buildings, plant or machinery provided for the purposes of the trade or business by the person transferring it which were transferred with the trade or business and continue to be used for those purposes after the transfer shall, for the purposes of paragraph 3 of Part I of the Seventh Schedule to the Finance (No. 2.) Act, 1939 (which provides for an allowance for exceptional depreciation of certain assets) be deemed to have been provided for the purposes of the trade or business not only by the person transferring the trade or business but also by the person to whom the trade or business is transferred :

Provided that the amount of any allowance granted under the said paragraph 3 to the person to whom the trade or business is transferred shall, if necessary, be so reduced as to secure that the total allowances granted to the said persons in respect of any buildings, plant or machinery affected by the transfer are not greater than the total allowances which would have been granted to the person making the transfer if the transfer had not taken place.

The provisions of this subsection shall apply in relation to the transfer of part of a trade or business as they apply in relation to the transfer of the whole of a trade or business.

- (2) Where, in respect of any accounting period, a deduction would, apart from the provisions of this subsection, be allowable in computing profits, and, in the opinion of the Commissioners, the deduction does not represent a sum reasonably and properly attributable to that accounting period, only such part of the deduction shall be allowable as a deduction for that period as appears to the Commissioners to be reasonably and properly attributable to that period, and any balance of the deduction shall be treated as attributable to such other accounting period or periods (whether or not they include, or fall wholly or partly within, the standard period, if any, or any chargeable accounting period) as the Commissioners think proper.

*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 1940, Section 33. (See end of Document for details)*

Any person who is dissatisfied with a determination of the Commissioners under this subsection may appeal to the Board of Referees.

- (3) In paragraph 6 of Part I of the said Seventh Schedule (which specifies the cases in which, and the extent to which, income from investments is to be included in computing profits) the following sub-paragraph shall be inserted after sub-paragraph (2)—

“(2A) In the case of a trade or business part of which consists in banking, assurance or dealing in investments, not being a business to which sub-paragraph (2) of this paragraph applies, the profits shall include all income received from investments held for the purposes of that part of the trade or business, being income to which the persons carrying on the trade or business are beneficially entitled.”

and in sub-paragraph (1) of the said paragraph 6 for the words “to the extent provided in sub-paragraph (2) of this paragraph” there shall be substituted the words “to the extent provided in sub-paragraphs (2) and (2A) of this paragraph.”

- (4) At the end of the said paragraph 6 the following words shall be inserted :—

“(4) The reference in sub-paragraphs (2) and (2A) of this paragraph to income received from investments shall not, in cases where the persons carrying on the trade or business are neither domiciled nor ordinarily resident in the United Kingdom, include any interest received from tax-free Treasury securities unless the conditions of the issue of the securities so provide; and where any interest on tax-free Treasury securities is, in accordance with the provisions of this sub-paragraph, left out of account in computing the profits of the trade or business, any expenses attributable to the acquisition or holding of, or to any transaction in, the securities and any profits or losses so attributable (but not, save as provided by sub-paragraph (3) of this paragraph, the interest on any money borrowed for the purposes of acquiring the securities) shall also be left out of account in computing the profits of the trade or business.

In this sub-paragraph the expression “tax-free Treasury securities” means any securities issued by the Treasury under the power conferred by section forty-seven of the Finance (No. 2.) Act, 1915, or under the power conferred by section twenty-two of the Finance (No. 2) Act, 1931.

Any reference in this Schedule to income which is by virtue of the provisions of this paragraph not to be taken into account in computing the profits of a trade or business shall be construed as including a reference to interest left out of account in accordance with this sub-paragraph.”

- (5) The following paragraph shall be substituted for paragraph 10 of Part I of the said Seventh Schedule (which relates to deductions for directors’ remuneration in the case of companies controlled by the directors) :—

“¹⁰(1) In the case of a trade or business carried on, in any accounting period which constitutes or includes a chargeable accounting period, by a company the directors whereof have, throughout that accounting period, a controlling interest therein,—

(a) in computing the profits for that accounting period ; and

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- (b) if the standard profits of the trade or business are computed by reference to the profits of a standard period, also in computing, in relation to any chargeable accounting period, the profits for the standard period,

no deduction shall be made in respect of directors' remuneration.

In this sub-paragraph the expression "directors' remuneration" does not include the remuneration of any director who is required to devote substantially the whole of his time to the service of the company in a managerial or technical capacity, and is not the beneficial owner of, or able, either directly or through a medium of other companies or by any other indirect means, to control, more than five per cent. of the ordinary share of the company.

- (2) If, in the case of a trade or business carried on by a company in any accounting period which constitutes or includes a chargeable accounting period, the directors of the company—

- (a) have, in any part of that accounting period; or
 (b) had during the whole or any part of any previous accounting period which includes the whole or part of any chargeable accounting period or the whole or any part of the standard period (if any),

a controlling interest therein, and the case is not one to which sub-paragraph (1) of this paragraph applies, then, except in so far as the Commissioners otherwise direct, no deduction shall be made in respect of directors' remuneration either in computing the profits for the first-mentioned accounting period or in computing, in relation to any chargeable accounting period wholly or partly included in that accounting period, the profits of the standard period (if any)."

- (6) Paragraph 13 of Part I of the said Seventh Schedule (which allows for a deduction for sinking fund purposes in the case of a trade or business carried on by a local authority) shall apply in relation to any trade or business carried on by a public authority in the case of which the following conditions are fulfilled—

- (a) that it has no share capital; and
 (b) that the interest on all its stock and other loan capital is interest at a fixed rate, as it applies in relation to a local authority:

Provided that nothing in this subsection shall be construed as authorising any deduction for an amount to be required to be raised for sinking fund purposes unless the requirement is imposed on the authority by or by virtue of an Act of Parliament.

Modifications etc. (not altering text)

- C1** S. 33 saved by [Finance Act 1943 \(c. 28\)](#), s. 23(6)(7), [Sch. 7 para. 4](#)
C2 S. 33 restricted by [Finance Act 1946 \(c. 64\)](#), [ss. 37\(6\)\(7\)](#), 41(3), 43(1)(2)

Changes to legislation:

There are currently no known outstanding effects for the Finance Act 1940, Section 33.