



# Finance (No. 2) Act 1945

1945 CHAPTER 13 9 and 10 Geo 6

## PART IV

### EXCESS PROFITS TAX POST-WAR REFUNDS

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

- C1** Pt. IV (ss. 38–50) repealed so far as it relates to income tax by [Income Tax Act 1952 \(c. 10\)](#), s. 527, [Sch. 25](#)

*Date of payment.*

#### **38 Time for repayment of post-war refunds.**

Subject to the provisions of this Part of this Act, the sums payable under subsection (1) of section twenty-eight of the Finance Act, 1941, as amended by section thirty-seven of the Finance Act, 1942 (hereafter in this Part of this Act referred to as “post-war refunds”) shall be paid as soon as may be after the final ascertainment and satisfaction of the total liability of the person in question to excess profits tax and the national defence contribution for all relevant chargeable accounting periods:

Provided that, if the Commissioners of Inland Revenue think fit . . . <sup>F1</sup>, they may, before the final ascertainment and satisfaction of the said total liability, make payments on account of any post-war refund which, in their opinion, is likely to be found due.

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#### Textual Amendments

- F1** Words repealed by [Finance Act 1953 \(c. 34\)](#), ss. 32(5), 35(7), [Sch. 3 Pt. II](#)

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

- C2** The text of ss. 34, 35, 36, 38, 46, 47, 48, 50, 51, 58, 59, Schs. 5, 6, 8 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, save as indicated, does not reflect any amendments or repeals which may have been made prior to 1.2.1991

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39— ..... F2  
 42.

**Textual Amendments**

F2 Ss. 39–42 repealed (with savings) by [Finance Act 1953 \(c. 34\)](#), ss. 32(1)(5)(6), 35(7), [Sch. 3 Pt. II](#)

*Income Tax*

**43 Income tax on post-war refunds.**

Subject to the provisions of the two next following sections, income tax shall be charged for the year 1946–47 on all sums paid as, or on account of, post-war refunds, whenever those sums are paid, and shall be so charged by deduction of tax at the standard rate for that year, and any sums so paid shall be deemed to be income for all the purposes of the Income Tax Acts.

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

- C3 The text of ss. 29, 31, 32, 33, 43–45, 49, is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991
- C4 Ss. 43–45 saved by [Finance Act 1953 \(c. 34\)](#), ss. [32\(4\)](#)

**44 Option to spread refunds backwards for income tax purposes.**

- (1) Where a post-war refund is paid to an individual, and in the relevant chargeable accounting periods that individual carried on the original trade or business either alone or in partnership with any other person, he may claim that the income tax (including surtax) payable by him by reason of the receipt of the refund shall be reduced to such extent as may be just having regard to the total income tax (including surtax) which would have been payable by him if the amounts of refund referable to those periods had been treated for the purposes of income tax as additions to the profits or gains of the trade or business for those periods, or as the case may be, as additions to his share thereof, and charged to income tax (including surtax) accordingly.
- (2) Where the amount of the income tax which would have been payable as aforesaid is affected by any allowance falling to be made under the provisions of the Income Tax Acts relating to wear and tear and the carrying forward of losses (including the provisions of section nineteen of the Finance Act, 1928) such adjustments, if any, shall be made—
- (a) in computing the relief falling to be granted under subsection (1) of this section; and
  - (b) in computing the allowances falling to be granted under any of the said provisions of the Income Tax Acts for the year 1947-48 or any subsequent year of assessment,

as are necessary to secure that the same wear and tear, loss or other amount is not taken into account so as to increase the relief under the said subsection (1) and also allowed under the said provisions of the Income Tax Acts.

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- (3) References in this section to the income tax (including surtax) payable by an individual include, in cases where profits of a wife are deemed to be profits of her husband, references to the income tax (including surtax) payable by his wife or her husband, as the case may be.
- (4) A claim under this section must be made to the Commissioners of Inland Revenue not later than the fifth day of April, nineteen hundred and forty-seven, or within such further period as those Commissioners may allow, and section nineteen of the Finance Act, 1925 (which relates to the making and allowing of claims for certain reliefs and to rights of appeal) shall apply in relation to claims under this section as it applies to the claims mentioned in that section.

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

- C5** The text of ss. 29, 31, 32, 33, 43–45, 49, is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991
- C6** [Ss. 43–45](#) saved by [Finance Act 1953 \(c. 34\)](#), [ss. 32\(4\)](#)

**45 Option to have refunds treated as profits of 1947–48**

- (1) Where the net amount of any post-war refund is to be used for the purpose of a trade the profits or gains of which are assessable to tax for the year 1947-48 under Case I of Schedule D or would be so assessable if there were any profits or gains thereof for that year, then, if all the persons who are or would be assessable to tax as aforesaid in respect of those profits or gains for that year and the person to whom the refund is payable, by notice in writing given to the surveyor not later than the end of the year nineteen hundred and forty-eight, or within such further period as the Commissioners of Inland Revenue may allow, so elect—
  - (a) in lieu of the refund being chargeable to income tax for the year 1946-47, it shall be charged to income tax for the year 1947-48 as if it were profits or gains of the trade, and shall be so charged by means of an assessment for the year 1947-48 on the profits or gains of the trade in addition to any other assessment falling to be made thereon for that year; but
  - (b) tax at the standard rate for the year 1946-47 shall nevertheless be deducted from any sum paid as, or on account of, the refund and the amount deducted shall be treated as if it had been paid by the persons chargeable under paragraph (a) of this subsection, and had been so paid by them on account of income tax in respect of the profits or gains of the trade for the year 1947-48:

Provided that this subsection shall not apply unless the persons or one or more of the persons who carried on the original trade or business in the relevant chargeable accounting periods also carry on the trade in connection with which the refund is to be used, either alone or in partnership with any other person, for the whole or any part of the year 1947-48.
- (2) If during the year 1947-48 there is any change in the persons carrying on the trade for the purposes of which the sum repaid is to be used and, by virtue of the change, the trade is, for the purposes of Rule II of the Rules applicable to Cases I and II of Schedule D, treated as discontinued, the references in subsection (1) of this section to the trade shall be construed as references to the trade carried on up to the date of the

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discontinuance, or, where there is more than one discontinuance in the said year, up to the first of the discontinuances.

- (3) The preceding provisions of this section shall, with the necessary adaptations, apply where the net amount of any post-war refund is to be used for the purposes of more than one trade as it applies where the net amount of a post-war refund is to be used for the purposes of one trade, so, however, that an election can only be made with respect to the whole of the refund and all persons who are or would be assessable to tax under Case I of Schedule D in respect of the profits or gains of any of the trades must be parties to the giving of the notice of the election.
- (4) No election shall be valid under this section in relation to any refund if a claim is made and allowed in relation thereto under the last preceding section.

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

- C7** The text of ss. 29, 31, 32, 33, 43–45, 49, is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991
- C8** Ss. 43–45 saved by [Finance Act 1953 \(c. 34\)](#), ss. 32(4)

*Miscellaneous.*

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

- C9** The text of ss. 34, 35, 36, 38, 46, 47, 48, 50, 51, 58, 59, Schs. 5, 6, 8 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, save as indicated, does not reflect any amendments or repeals which may have been made prior to 1.2.1991

**46 Reliefs given and repayments made after payments have been made by way of post-war refund.**

- (1) Where any sum has been paid as, or on account of, a post-war refund, any relief from, or repayment of, the excess profits tax in respect of which the sum was paid, being a relief or repayment which falls to be given or made after the payment of that sum, shall be computed as if the rate of excess profits tax had, as respects all relevant chargeable accounting periods, been eighty per cent.:  
 Provided that, in computing the amount of capital employed in the trade or business, the said tax shall be treated as chargeable at one hundred per cent. for all those periods.
- (2) .....<sup>F3</sup>
- (3) References in this section to a repayment of tax do not include references to any payment of, or on account of, a post-war refund.

**Textual Amendments**

- F3** S. 46(2) repealed by [Finance Act 1953 \(c. 34\)](#), ss. 32(5), 35(7), [Sch. 3 Pt. II](#)

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#### 47 Set-off of refunds against excess profits tax.

Where after the end of the year nineteen hundred and forty-five, excess profits tax is due and payable in respect of any relevant chargeable accounting period and, if that tax were paid, a sum would ( . . . <sup>F4</sup>) be payable for or on account of a post-war refund, the Commissioners may, if they think fit, . . . <sup>F4</sup>, give credit for the amount of the sum payable as aforesaid, after deduction of tax at the standard rate for the year 1946-47, against the same amount of the excess profits tax which is due and payable as aforesaid, and, where credit is so given, the amount for which credit is given shall be deemed to have been paid to the Commissioners and repaid by them . . . <sup>F4</sup>.  
Provided that the amount deemed to have been repaid by the Commissioners shall for the purposes of income tax be treated as a payment made after deduction of income tax at the standard rate for the year 1946-47.

##### Textual Amendments

**F4** Words repealed by [Finance Act 1953 \(c. 34\)](#), ss. 32(1)(5), 35(7), [Sch. 3 Pt. II](#)

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

**C10** The text of ss. 34, 35, 36, 38, 46, 47, 48, 50, 51, 58, 59, Schs. 5, 6, 8 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, save as indicated, does not reflect any amendments or repeals which may have been made prior to 1.2.1991

#### 48 Payment of refunds out of Consolidated Fund.

- (1) Such sums as are required by the Commissioners of Inland Revenue for the purpose of making payments of, or on account of, post-war refunds shall be issued to the Commissioners out of the Consolidated Fund of the United Kingdom . . . <sup>F5</sup>.
- (2) . . . . . <sup>F6</sup>
- (3) Notwithstanding anything in sub-paragraph (2) of paragraph 1 of Part II of the Seventh Schedule to the Finance (No. 2) Act, 1939, in computing the amount of the capital employed in a trade or business for the purposes of excess profits tax no deduction shall be made from the price of any asset on the ground that it was acquired wholly or partly out of a sum paid for or on account of a post-war refund and that that sum was, by virtue of this section, contributed out of the Consolidated Fund.

##### Textual Amendments

**F5** Words repealed by [Statute Law Revision Act 1963 \(c. 30\)](#) Sch.

**F6** [S.48\(2\)](#) repealed by [National Loans Act 1968 \(c. 13\)](#), s. 24(2), [Sch. 6 Pt. I](#)

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

**C11** The text of ss. 34, 35, 36, 38, 46, 47, 48, 50, 51, 58, 59, Schs. 5, 6, 8 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, save as indicated, does not reflect any amendments or repeals which may have been made prior to 1.2.1991

#### 49 Special cases.

The provisions of this Part of this Act and of section twenty-eight of the Finance Act, 1941 (as amended by any subsequent enactment) shall, in relation to partnerships,

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members of groups of companies and tax paid under section twenty-four of the Finance Act, 1943 (which relates to sales of stock at an under-value), have effect subject to the provisions of the Sixth Schedule to this Act.

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

**C12** The text of ss. 29, 31, 32, 33, 43–45, 49, is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991

**50 Interpretation of Part IV.**

(1) In this Part of this Act and in the Sixth Schedule to this Act, the following expressions have, except so far as the context otherwise requires, the meanings hereby respectively assigned to them, that is to say—

“the original trade or business” means, in relation to a post-war refund, the trade or business, tax on the profits of which is or is to be refunded;

“relevant chargeable accounting period” means any chargeable accounting period (for the purposes of excess profits tax) beginning on or after the first day of April, nineteen hundred and forty and ending on or before the thirty-first day of December, nineteen hundred and forty-five, or any part of a chargeable accounting period, being a part beginning on or after the said first day of April and ending on or before the said thirty-first day of December, which falls to be treated for the purposes of section twenty-eight of the Finance Act, 1941, as a separate chargeable accounting period;

“net amount” means, in relation to a post-war refund, the gross amount thereof less the income tax deducted therefrom, and, where the payment is made otherwise than to a body corporate, less also any surtax ascribable to the payment of the refund, the amount of surtax so ascribable being ascertained on the basis that the refund is to be treated as the highest part of the income of the person to whom the payment is paid;

“group of companies,” “the principal company” and “subsidiary member” have the meanings respectively assigned to them by subsection (1) of section twenty-eight of the Finance Act, 1940.

(2) References in this Part of this Act to the national defence contribution for a relevant chargeable accounting period shall, where the relevant chargeable accounting period is not also a chargeable accounting period for the purposes of the national defence contribution, be taken to be references to a sum made up by apportioning and aggregating the amounts of the national defence contribution paid or payable in respect of any chargeable accounting period (as defined for the purposes of the national defence contribution) which falls wholly or partly within the relevant chargeable accounting period.

Any apportionment required to be made by this subsection shall be made by reference to the number of months or fractions of months in the period to which the apportionment relates.

(3) Any reference in this Part of this Act or in the Sixth Schedule to this Act to the relevant chargeable accounting periods to which a post-war refund is referable shall be construed as a reference to the relevant chargeable accounting periods in which there was extra tax, and any reference in this Part of this Act or in the said Sixth Schedule

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to the amount of refund which is referable to any such period shall be construed as a reference to an amount which bears to the total amount of the refund the same proportion as the extra tax in that period bears to the sum of the amounts of extra tax in all the periods to which the refund is referable.

For the purposes of this subsection, if the excess profits tax for any of the relevant chargeable accounting periods exceeds the national defence contribution for that period, there shall be deemed to have been extra tax for that period equal to whichever of the two following amounts is the smaller, that is to say—

- (a) twenty per cent. of the excess profits tax for the period; and
- (b) the amount by which the excess profits tax for the period exceeds the national defence contribution for the period:

Provided that, if the national defence contribution is equal to or exceeds the excess profits tax in the case of all the relevant chargeable accounting periods, there shall be deemed to have been extra tax for all the chargeable accounting periods for which there was excess profits tax, equal, in the case of each such period, to twenty per cent. of the excess profits tax for that period.

In determining for the purposes of this subsection whether there is any, and, if so, what excess profits tax for any period, any national defence contribution payable for that or any other period shall be disregarded except in computing capital and any relief for any deficiency of profits occurring in any other chargeable accounting period shall be altogether disregarded, and in determining for the said purposes whether there is any, and, if so, what national defence contribution for any period, excess profits tax shall be altogether disregarded.

(4) ..... F7

**Textual Amendments**

**F7** S. 50(4) repealed by [Finance Act 1953 \(c. 34\)](#), ss. 32(5), 35(7), [Sch. 3 Pt. II](#)

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

**C13** The text of ss. 34, 35, 36, 38, 46, 47, 48, 50, 51, 58, 59, Schs. 5, 6, 8 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, save as indicated, does not reflect any amendments or repeals which may have been made prior to 1.2.1991

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