

SCHEDULES.

SIXTH SCHEDULE

Sections 49 and 50.

POST-WAR REFUNDS IN THE CASE OF PARTNERSHIPS, GROUPS OF COMPANIES, ETC.

PART I

PARTNERSHIPS.

- 1 Where the original trade or business was carried on in the relevant chargeable accounting periods by persons in partnership, the following provisions shall have effect—
- (a) the relevant chargeable accounting periods to which the refund is referable shall first be ascertained ;
 - (b) the amounts of refund referable to each of those periods shall then be ascertained ;
 - (c) each of those amounts shall then be apportioned among the partners by reference to their respective shares in the profits of the trade or business for the period in question ;
 - (d) instead of one refund being made, a separate refund shall be made in the case of each partner equal to the total of the amounts apportioned under the last preceding sub-paragraph to that partner ;
 - (e) any reference in the provisions of Part IV of this Act relating to income tax to the amount of refund referable to any of the relevant chargeable accounting periods shall be construed, in relation to each of the separate refunds, as a reference to the amount apportioned under sub-paragraph (c) of this paragraph to the partner in question in the case of that period :

Provided that where, in the case of a payment of, or on account of, a post-war refund, all the partners who were carrying on the original trade or business in the relevant chargeable accounting periods are still engaged in carrying it on when the payment falls to be made and are still then carrying it on alone and not in partnership with any other person, one joint payment may be made for all the partners, but the provisions of Part IV of this Act relating to income tax shall nevertheless have effect as though separate payments had been made as aforesaid in the case of each partner.

PART II

GROUPS OF COMPANIES.

- 2 For the purposes of this Part of this Schedule, 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 ; and references in this Part of this Schedule, in relation to a member of a group of companies, to relevant chargeable accounting periods shall be construed

Status: This is the original version (as it was originally enacted).

as not including references to any chargeable accounting period during which it was not a member of the group.

3 All sums paid or payable by way of excess profits tax or the national defence contribution for any relevant chargeable accounting period in respect of any trade or business carried on by any member of a group of companies shall, for the purpose of ascertaining whether any, and if so what, post-war refund is due to any person, be deemed to have been paid or to be payable by the principal company of the group and not by any other member thereof ; and for the purposes of Part IV of this Act, the trade or business of the principal company shall be deemed to be the original trade or business.

4 Where any sum is paid to the principal company for, or on account of, a post-war refund, the undertakings and authorities required by Part IV of this Act in relation to the payment shall not require the approval of the advisory panel by reason of the fact that the trade or business specified in those undertakings and authorities is not the original trade or business if the trade or business so specified is being or is to be carried on by a subsidiary member of the group.

5 Where it is finally determined that any post-war refund is payable in respect of all or any of the trades or businesses carried on by members of a group of companies during any relevant chargeable accounting period, there shall be ascertained, in the case of each subsidiary member of the group—

- (a) the total amount of excess profits tax and the national defence contribution for the relevant chargeable accounting periods which has been borne directly or indirectly by the subsidiary member ;
- (b) the total amount of the national defence contribution paid for the relevant chargeable accounting periods in respect of the trade or business of the subsidiary member ;
- (c) the total sum which could, under sub-paragraph (2) of paragraph 8 of Part IV of the Fifth Schedule to the Finance Act, 1940, have been required to be paid on account of excess profits tax for the relevant chargeable accounting periods by the subsidiary member on the assumption that excess profits tax had been chargeable for all those periods at eighty per cent., less the amount which would, on that assumption, have been payable to the subsidiary member under sub-paragraph (3) of the said paragraph 8,

and, if the amount mentioned in sub-paragraph (a) of this paragraph exceeds the sum of the amounts mentioned in sub-paragraphs (b) and (c) thereof, an amount equal to the difference shall be paid by the principal company to the subsidiary member :

Provided that—

- (i) if the total of the amounts so payable by the principal company to the subsidiary members of the group of companies exceeds the total amount paid in respect of the post-war refund, the sums so payable shall be proportionately reduced so as together to amount to the said total amount so paid ; and
- (ii) on the payment of any sum payable by the principal company to a subsidiary member under this paragraph, the principal company shall be entitled to deduct and retain out of the payment tax at the standard rate for the year 1946-47 as if that payment were an annual payment to which Rule 19 of the General Rules applied paid in that year out of profits and gains brought into charge to tax.

- 6 Where an amount is paid to a subsidiary member under the last preceding paragraph, so much of the provisions of Part IV of this Act relating to income tax as confers a right of election that a post-war refund shall be charged to income tax for the year 1947-48 shall have effect as if the said payment were a payment of refund to the subsidiary member which was to be used for the purposes of its trade or business, as if the tax deducted therefrom under Rule 19 of the General Rules as applied by the last preceding paragraph had been deducted therefrom under the provisions of Part IV of this Act relating to the deduction of tax from payments of refund, and as if the gross amount of the refund paid to the principal company were diminished by the gross amount of the said payment.
- 7 So much of the provisions of Part IV of this Act relating, to income tax on sums paid as or on account of post-war refunds as provides that the right to elect that sums so paid shall be chargeable as profits and gains of a trade for the year 1947-48 in lieu of being chargeable to tax for the year 1946-47 shall be restricted to cases where the person to whom the sum is paid is carrying on the trade during the whole or some part of the year 1947-48 shall not apply where, during the whole or part of the year 1947-48, the trade is being carried on by a subsidiary member of a group of companies of which the person to whom the sum was paid is then the principal, company.

PART III

TAX PAID UNDER FINANCE ACT, 1943, S. 24.

- 8 Where, under section twenty-four of the Finance Act, 1943, a joint and several liability is imposed on any persons, the rights of those persons respectively to a post-war refund shall be based on the amounts of tax ultimately borne by them respectively by reason of the imposition of the liability and not on the amounts of tax paid by them respectively to the Crown, and no sum shall be paid as or on account of a post-war refund in the case of any of those persons unless the Commissioners are satisfied as to the amounts so borne by all those persons and are further satisfied that any liability of any of those persons to make a payment to any other of those persons which arises by virtue of subsection (3) of the said section twenty-four has been extinguished.
- 9 Any reference in Part IV of this Act to the original trade or business shall, in relation to any post-war refund made in respect of tax paid under the said section twenty-four, be construed as a reference, to the trade or business carried on by the company whose stock in trade was disposed of at the time of the disposal thereof, and any reference in section thirty-nine of this Act to the person who carried on the original trade or business shall, in relation to any post-war refund in respect of tax paid under the said section twenty-four, be deemed to include a reference to the person who bore that tax.