



Finance Act 1944

1944 CHAPTER 23

PART VI

ESTATE DUTY.

Basis of charge in respect of deceased's benefits from certain companies.

35 Amendment of basis of charge on company's assets in respect of deceased's benefits from the company.

In section forty-six of the Finance Act, 1940 (which provides that, where the deceased has made to a company to which that section applies a transfer of any property and any benefits accruing to him from the company accrued to him in the three years ending with his death, the assets of the company shall be deemed for the purposes of estate duty to be included to a certain extent in the property passing on his death), for subsection (2) there shall be substituted the following subsection :—

“(2) The extent to which the assets of the company are to be deemed to be included as aforesaid shall be the proportion ascertained by comparing the aggregate amount of the benefits accruing to the deceased from the company in the last three accounting years with the aggregate amount of the net income of the company for the said years :

Provided that—

- (a) where, in any of the said accounting years, the company sustained a loss, the amount of that loss shall be deducted in ascertaining the said aggregate net income of the company;
- (b) where the company came into existence in the last but one, or in the last, of the said accounting years, the references in this subsection to the said accounting years shall be construed as references to the last two, or, as the case may be, the last, of those years”.

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36 Amendment of s. 59 of Finance Act, 1940.

In section fifty-nine of the Finance Act, 1940, for the definition of " Average rate" there shall be substituted the following definition—

“‘Average rate ’ means, in relation to a company, a rate per cent. per annum, the percentage being ascertained by—

- (a) computing the aggregate amount of the net income of the company for the relevant accounting years (a deduction being made, where the company sustained a loss in any of those years, of the amount of the loss);
- (b) dividing that amount by the number of those years ; and
- (c) comparing the result with the principal value of the assets of the company passing on the death of the deceased by virtue of section forty-six of this Act after making the allowances to be made under section fifty of this Act”.

37 Computation of losses.

Section forty-nine of the Finance Act, 1940, shall, with the necessary adaptations, apply to the determination, for the purposes of Part IV of that Act, of any loss sustained by a company as it applies to the determination for the purposes thereof of the net income of a company.

Amendment as to avoidance of duplication of charge where deceased has received benefits from a company.

38 Amendment of s. 51 of Finance Act, 1940.

For subsection (2) of section fifty-one of the Finance Act, 1940 (which contains provisions for preventing the duplication of charge of estate duty in certain cases) there shall be substituted the following subsections—

“(2) Where the following conditions are satisfied, that is to say, that any benefits accrued to the deceased from the company by virtue of any interest that he at any time had in shares in or debentures of the company, or by virtue of a power's having at any time been exercisable by him or with his consent in relation to shares in or debentures of the company, and apart from this subsection estate duty would be payable on the death both on the value of those shares or debentures by virtue of any of the enactments relating to that duty other than section forty-six of this Act and on the proportion of the value of the company's assets that corresponds to the benefits that so accrued to him by virtue of that section, then—

- (a) if the value of the shares or debentures is equal to, r greater than, the said proportion, or if the Commissioners are satisfied that the said proportion would not, if fully ascertained, be found to be substantially in excess of the value of the shares or debentures, duty on the said proportion shall not be payable ;
- (b) in any other case, the amount on which duly is to be charged in respect of the said proportion shall be reduced by the amount of the value of the shares or debentures.

(2A) Where the conditions set out in the last preceding subsection would be satisfied but for the fact that, by reason of an exemption from estate duty (not being an

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exemption on the ground that the deceased or other person having an interest in the shares or debentures ceasing on the death of the deceased had only an interest as the holder of an office), that duty is not payable on the value of the shares or debentures, paragraphs (a) and (b) of that subsection shall apply as if that exemption did not operate and as if the duty had been payable on the value of the shares and debentures accordingly :

Provided that where—

- (a) the exemption in question depends on a payment of any duty on an earlier death, or does not depend on such a payment but depends wholly or partly on any dispositions having been made ; and
- (b) since the date of that death or disposition, as the case may be, the shares or debentures have been substantially increased in value by reason of a transfer of property to any company by any person or by reason of the extinguishment of, or any alteration of the rights attaching to, shares in or debentures of any company,

then, unless the exemption takes the form of a deduction from the value of the shares or debentures of a fixed amount which is independent of the value of the shares or debentures, the references in paragraphs (a) and (b) of the last preceding subsection to the value of the shares or debentures therein mentioned shall have effect as if they were references to the value thereof reduced to the extent to which, in the opinion of the Commissioners, that value is attributable to that transfer, extinguishment or alteration.

- (2B) Where, by reason of an exemption from estate duty, that duty is payable on part only of the value of the shares or debentures, subsection (2) of this section shall, with the necessary adaptations, be applied to the part of the value of the shares or debentures on which duty is payable and subsection (2A) of this section shall be applied to the part of the value of the shares or debentures affected by the exemption ; and, where there are two or more exemptions from estate duty each of which operates on part only of the value of the shares or debentures and the exemptions are such that the said subsection (2A) would operate differently in relation to them, then, whether or not there is any part of the value of the shares or debentures on which estate duty is payable, the said subsection (2A) shall, with the necessary adaptations, be applied separately in relation to the parts of the value of the shares or debentures affected by each exemption.
- (2C) In this section the expression " exemption from estate duty " includes any exemption conferred by any provision of the enactments relating to estate duty which has the effect of exempting property, in whole or in part, from the duty, whether that provision takes the form that the property is not to be deemed to pass, or the form that the duty is not to be payable, or the form that a deduction is to be made from the value of the property, or any other form ; and the reference in paragraph (b) of the proviso to subsection (2A) of this section to an increase in the value of shares or debentures includes, where those shares or debentures have been acquired in substitution for any other property, any increase in the value of any property which those shares or debentures directly or indirectly represent”.

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Computation of net income of company.

39 Computation of net income of company.

In determining under section forty-nine of the Finance Act, 1940, the net income of a company for any accounting year, no deduction from the income of the company shall be made in respect of—

- (a) the amount of any liability, deduction or set-off for which allowance has already been made in computing the amount of the income of the company; or
- (b) the amount of any loss sustained before the beginning of that year, or of any payment which, under section nineteen of the Finance Act, 1928, would be treated as a loss sustained before the beginning of that year ; or
- (c) the amount of any deduction representing the diminished value by reason of wear and tear during any previous year of any machinery or plant.

Relaxation of provisions as to purchases of annuities from relatives.

40 Relaxation of provisions of Finance Act, 1940, as to purchases of annuities, &c., from relatives.

- (1) Subject to the provisions of this section, the relief specified therein shall be granted where, on the death of a person who has made a disposition of property in favour of a relative of his or a company (hereafter in this section referred to as "the disposition"), any estate duty becomes, or would but for this section become, payable by virtue of section forty-four of the Finance Act, 1940 (which relates to purchases of annuities or other interests from relatives).
- (2) The sum on which estate duty would be payable apart from this section on the death in respect of the property which was the subject matter of the disposition or in respect of the property liable to a debt or incumbrance created by the deceased which was the subject matter of the disposition, as the case may be, shall first be computed and, subject to the limitations provided for by subsection (3) of this section, there shall then be allowed as a deduction from that sum—
 - (a) the amount, if any, by which the aggregate of the payments which have been made on account of the annuity or other interest for the period from the date when the annuity or other interest began to accrue in favour of the deceased until his death, exceeds the aggregate of the income derived from the deceased by virtue of the disposition for the period from the date of the disposition until his death ; and
 - (b) simple interest on so much, if any, of the amount aforesaid, and for such period, as, in the opinion of the Commissioners, is in all the circumstances just, at the rates from time to time payable during that period on death duties in arrear.

In this subsection, the expression " the aggregate of the income derived from the deceased by virtue of the disposition " means—

- (i) in relation to so much of the property which was the subject matter of the disposition as did not consist of a debt or incumbrance created by the deceased, such amount as, in the opinion of the Commissioners, is in all the circumstances equal to a reasonable return from the property ; and

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- (ii) in relation to so much of the property which was the subject matter of the disposition as did consist of a debt or incumbrance created by the deceased, the aggregate amount of the interest paid or payable by the deceased in respect of that debt or incumbrance.
- (3) The amount to be allowed as a deduction under subsection (2) of this section shall, in the circumstances specified in the provisions of the Third Schedule to this Act, be limited to the extent specified in those provisions respectively.

In the said Schedule, the expression " the disposition " has the same meaning as in this section, the expression " the annuity payments " means the payments specified in paragraph (a) of subsection (2) of this section, and the expression " the amount allowed " means the amount to be allowed as a deduction under this section.

- (4) In this section, the expressions " relative " and " annuity " have the meanings assigned to them by section forty-four of the Finance Act, 1940, and sections fifty-eight and fifty-nine of that Act shall apply for the interpretation of this section and the said Third Schedule as they apply for the interpretation of Part IV of that Act.

Application of Part VI.

41 Application of Part VI

The last preceding section shall have effect in the case of all persons dying after the twenty-seventh day of June, nineteen hundred and forty, but save as aforesaid the provisions of this Part of this Act shall have effect in the case only of persons dying after the passing of this Act.