

ACT No. X OF 1919.

[PASSED BY THE INDIAN LEGISLATIVE COUNCIL.]

(Received the assent of the Governor General on the 20th March, 1919.)

An Act to impose a duty on excess profits arising out of certain businesses.

WHEREAS it is expedient to impose a duty on excess profits arising out of certain businesses; It is hereby enacted as follows :—

1. (1) This Act may be called the Excess Profits Duty Act, 1919. Short title and commencement.

(2) It shall come into force on the 1st April, 1919.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

“accounting period” means the twelve months ending on the 31st March, 1919, or if the accounts of the business have been made up within the said twelve months for the purposes of the Indian Income-tax Act, 1918, in respect of a year ending on any date other than the said 31st March, then the year ending on that other date ;

“business” includes any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture ;

“Chief Revenue-authority” means the Board of Revenue or the Financial Commissioner in provinces where those authorities exist, and in any other case such authority as the Local Government may declare to be the Chief Revenue-authority for the purposes of this Act ;

“prescribed” means prescribed by rules made under this Act.

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All expressions used or embodied by reference in this Act which are not hereinbefore defined shall have the same meaning as is attributed to them by the Indian Income-tax Act, 1918.

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Application of Act.

3. This Act shall apply to every business (other than the businesses specified in Schedule I) which is, during any part of the accounting period, either carried on in British India by any person or owned or carried on in any place in India by a person ordinarily resident in British India.

Imposition of excess profits duty.

4. Subject to the provisions of this Act, there shall, in respect of any business to which this Act applies, be charged, levied and paid on the amount by which the profits in the accounting period exceed the standard profits, a duty (in this Act referred to as "excess profits duty") of an amount equal to fifty per cent. of that excess :

Provided that the amount of the said duty shall not exceed such sum as would reduce the profits in the accounting period below thirty thousand rupees.

Ascertainment of profits in the accounting period.

5. The profits of a business in the accounting period shall, at the option of the person by whom the excess profits duty in respect of that business is payable, be or be deemed to be,—

(a) the taxable income as finally ascertained for the purposes of the Indian Income-tax Act, 1918, or

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(b) when the accounting period in respect of the business ends on any date other than the 31st March, 1919, and the accounts of the business are made up for an additional period ending on the said 31st March, a sum which bears the same proportion to the taxable income of the total period (such taxable income being ascertained as nearly as may be in accordance with the provisions of the said Act) as a period of one year bears to the total period.

Explanation.—The profits in the accounting period shall, notwithstanding any

any composition in force for the purposes of the said Act, be actually ascertained in accordance with the provisions of that Act.

6. (1) The standard profits of a business shall be ^dStandard profits, as follows :—

(a) an amount calculated at the rate of 10 per cent., or at such rate not being less than 10 per cent. as may be prescribed, on the capital of the business as existing at the end of the accounting period, in which case the capital of the business shall, for the purposes of this Act, be ascertained in accordance with the provisions of Schedule II; or

(b) at the option of the person by whom excess profits duty in respect of the business is payable—

(i) if the profits of the business have been assessed in the years 1913 and 1914 for the purposes of the income-tax law then in force—the aggregate of half of the profits so assessed and half of the interest, if any, received in those years on securities forming part of the assets of the business; or

(ii) if the profits of the business have been assessed for the said purposes in the years 1913 and 1914, and in two only of the three years 1915, 1916 and 1917—the aggregate of one-fourth of the profits so assessed and one-fourth of the interest, if any, received in the same four years on securities forming part of the assets of the business; or

(iii) if the profits of the business have been assessed for the said purposes in all the five years 1913, 1914, 1915, 1916 and 1917—the aggregate of one-fourth of the profits assessed in the years 1913 and 1914 and in such two of

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the years 1915, 1916 and 1917 as may be selected by the said person and one-fourth of the interest, if any, received in the same four years on securities forming part of the assets of the business :

Provided that if the average capital employed in the business in the years adopted for the purpose of determining the standard profits is less or more than the capital so employed at the end of the accounting period, there shall be made to or from the standard profits an addition or a deduction, as the case may be, which shall bear to the standard profits the same proportion as such increase or decrease of capital bears to the average capital so employed in the years so adopted.

Explanation.—For the purpose of ascertaining the average capital employed, the capital employed in the business in any year shall be deemed to be the capital so employed at the end of that year :

Provided further that if the assessment in any of the said years was made in respect of a period of less than twelve months, that assessment shall, for the purpose of determining the standard profits, be proportionately increased.

(2) If a composition for income-tax was in force in any of the years 1913, 1914, 1915, 1916 and 1917, such composition shall be deemed for the purposes of clause (b) of sub-section (1) to have been the assessment, and the profits shall be determined in accordance therewith :

Provided that the person by whom excess profits duty in respect of the business is payable shall, notwithstanding any such composition, be entitled to have an assessment of the profits of the business

made

made for the purpose of determining the standard profits, in the same way as the assessment would have been made if no such composition had been agreed upon.

(3) Each of the years referred to in sub-sections (1) and (2) shall be deemed to be the twelve months commencing with the 1st of April in the year mentioned.

(4) Notwithstanding anything contained in this section no increase of capital made after the 31st December, 1918, shall be taken into account in any case, and no such increase before that date shall be taken into account when it appears or to the extent to which it appears that the increase was made with intent to evade or has the effect of evading the payment of the excess profits duty.

7. On the application (made in accordance with the provisions of clause (b) of sub-section (2) of section 11) of any person chargeable with excess profits duty alleging that, owing to any of the following circumstances, namely :—

Power to
Collector to
make allow-
ances for
special cir-
cumstances.

- (a) any change in the constitution of a partnership of which he is or was a member,
- (b) any postponement or suspension, as a consequence of the present war, of renewals or repairs,
- (c) any exceptional depreciation or obsolescence (including the cost of replacement during the accounting period), due to the present war, of assets employed in the business,
- (d) the provision, in connection with the requirements of the present war, of plant or machinery which will not be required for the purposes of the business after the termination of the war,
- (e) the fact that the assets of the business consist to any material extent of shares in a company the business of which is itself chargeable to excess profits duty,

(f) the

- (f) the liability of any part of the profits of the business to excess profits duty in the United Kingdom, or
- (g) any special circumstances connected with the nature of the business or the period for which any profits are ascertained or determined,

the provisions of this Act for the calculation of excess profits duty operate unfairly in his case, the Collector may make such allowances in calculating the amount of the duty as seem to him to be necessary to meet the special circumstances, provided that any such allowance shall not reduce the amount of duty payable under the provisions of the Act by more than twenty-five per cent. without the previous sanction of the Commissioner.

Appeal to
Chief
Revenue-
authority.

8. (1) If any person who has applied under section 7 is dissatisfied with the decision of the Collector on his application, he may appeal to the Chief Revenue-authority which shall, at the option of such person, either itself decide such appeal or refer it to a Board of Referees to be appointed by the Local Government. The Board shall hear and consider any appeal so referred and shall communicate its decision to the Chief Revenue-authority.

(2) The Chief Revenue-authority and the Board shall be entitled to take into account any of the circumstances specified in section 7, and to modify the decision of the Collector with reference thereto in such way and to such extent as they may consider just and equitable.

(3) Every Board of Referees appointed under this section shall consist of three or, in cases which the Local Government considers to be of difficulty or importance, of four persons. When the Board consists of four persons, the Local Government shall appoint one of the members to be Chairman. In any case at least two members of the Board shall be persons not in the service of Government and having in the opinion of the Local Government adequate business experience.

(4) In

(4) In case of a difference of opinion between the members of the Board, the opinion of the majority shall prevail. When the Board consists of four members and the members are equally divided in opinion, the Chairman shall have a second or casting vote.

(5) The decision of the Chief Revenue-authority on any appeal under this section or of the Board where an appeal is referred to it shall, notwithstanding any other provision of this Act be final, and shall be deemed to be the basis of assessment in the particular case.

*9. (1) The Governor General in Council may, on the application made before the 30th June, 1919, of any person alleging that owing to special circumstances to be stated in the application the provisions of this Act for the calculation of excess profits duty would operate unfairly in the case of any class of business in which such person is engaged, refer such application for the report of a Board of special Referees to be appointed in this behalf by the Governor General in Council.

Power of Governor General in Council to deal with hardship in case of a class of business.

(2) Every Board appointed under this section shall consist of four persons, of whom at least two shall be persons not in the service of Government. The Governor General in Council shall appoint one member to be Chairman.

(3) On receipt of the report of the Board, the Governor General in Council shall consider the same and pass thereon such orders as he thinks fit. Any such order may vary the basis or method of assessment in respect of the class of business so reported on, and any variations so made shall be deemed to be modifications of this Act in respect of the matters to which they relate, and this Act shall apply accordingly.

10. Every liquidator of a company which is being wound up at the commencement of this Act or is wound up after the commencement of this Act and which is chargeable to excess profits duty shall before the 31st May, 1919, or within two months of the commencement

Notice to be given by liquidator that excess profits have been made.

commencement of the winding up, as the case may be, give notice of the fact to the Collector.

Returns for
the purposes
of the Act.

11. (1) The Collector may, for the purposes of this Act, require any person whom he believes to be engaged in any business to which this Act applies, or to have been so engaged during the accounting period or in the year ending on the 31st March, 1912, or on the 31st March in any year thereafter, to furnish him within two months after service upon him of a notice to that effect with such particulars in connection with the business as the Collector may require.

(2) At the time of furnishing such particulars such person shall—

(a) state the method which he desires to be adopted for the purpose of—

(i) ascertaining the profits of the business in the accounting period under section 5, and

(ii) determining the standard profits under section 6, and

(b) make any application which he desires to make under section 7 for an allowance in the calculation of the amount of the excess profits duty.

(3) Where any person fails, without reasonable cause or excuse, to comply with the provisions of clause (a) of sub-section (2), the Collector shall proceed to ascertain the profits of the accounting period and to determine the standard profits by such method provided in this Act as he thinks fit.

Penalty.

12. If a person fails, without reasonable cause or excuse, to give to the Collector in due time any notice required by section 10 or to furnish any particulars referred to in section 11, he shall on conviction by a Magistrate be punishable with fine which may extend to thirty rupees for every day during which the default continues.

Assessment.

13. The amount of excess profits duty to be paid in respect of any business shall be assessed by the Collector,

Collector, who may in any case where he thinks fit allow the duty to be paid in instalments of such amounts payable at such times as he may direct.

14. The duty may be assessed on any person for the time being owning or carrying on the business whether as agent for the owner or otherwise or, where the business has ceased during the accounting period, on the person who owned or so carried on the business immediately before the time at which the business ceased, and where there has been a change of ownership of the business during the accounting period, the Collector shall make the assessment in the prescribed manner. Person liable to be assessed.

15. The provisions of sections 20, 21, 22, 23, 24, 26, 27, and of Chapters IV and V and of sections 42, 45, 46, 47 and 49 to 52 of the Indian Income-tax Act, 1918, shall apply, with such modifications, if any, as may be prescribed, as if the said provisions referred to excess profits duty instead of to income-tax, and every officer or authority exercising powers under the said provisions may exercise the like powers under this Act in regard to excess profits duty as he or it exercises in regard to income-tax under the said Act : Application of provisions of Act VII of 1918.

Provided that references in the said provisions to the assessee shall be construed as references to a person by whom excess profits duty is payable.

16. Notwithstanding anything contained in the Indian Income-tax Act, 1918, or in any Act repealed thereby, all information contained in any statement or return made or furnished under the provisions of any of the said Acts or obtained or collected for the purposes of any such Act may be used for the purposes of this Act. Income-tax papers to be available for the purposes of this Act.

17. (1) A person shall not for the purposes of avoiding payment of excess profits duty enter into a fictitious or artificial transaction or carry out any fictitious or artificial operation, and if he has entered into any such transaction or carried out any such operation before the commencement of this Act, shall inform the Collector of the nature of the transaction or operation. Prohibition of and penalty for fictitious transactions.

Explanation

Explanation.—For the purposes of this section an artificial transaction or operation includes every device of whatever nature adopted for the purposes of presenting the accounts of a business in a misleading form or manner with intent to evade or having the effect of evading any obligation imposed by this Act.

(2) If any person acts in contravention of, or fails, without reasonable cause or excuse, to comply with, the provisions of sub-section (1), he shall on conviction by a Magistrate be punishable with fine which may extend to one thousand rupees.

Power to
make rules.

18. (1) The Governor General in Council may, by notification in the Gazette of India, make rules for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the rate to be allowed in respect of any business or class of business for the purpose of clause (a) of sub-section (1) of section 6;

(b) the procedure to be followed by Boards of Referees appointed under this Act;

(c) the basis and method of assessment when there has been a change of ownership during any period which can be selected for the purpose of determining standard profits, or during any subsequent period prior to the commencement of this Act; and

(d) the adaptation to excess profits duty of any of the provisions of the Indian Income-tax Act, 1918, which are made applicable to that duty by section 15.

(3) All rules made under this section shall have effect as if enacted in this Act.

Excess profits
duty and
super-tax to
be alternately
chargeable.

19. Where the profits of any business in the accounting period are chargeable to excess profits duty under the provisions of this Act and to super-tax under

VIII of 1917. under the provisions of the Super-tax Act, 1917, then—

- (1) if the amount chargeable as excess profits duty exceeds that chargeable as super-tax, excess profits duty shall alone be charged, and
- (2) if the amount chargeable as super-tax exceeds that chargeable as excess profits duty, super-tax shall alone be charged,

VIII of 1917. and the provisions of this Act and the Super-tax Act, 1917, shall be construed accordingly.

20. The amount of excess profits duty paid in respect of any business shall be allowed as a deduction at the adjustment made in the year ending on the 31st March, 1920, in respect of the profits of that business for the purposes of section 19 of the Indian Income-tax Act, 1918 :

Excess profits duty an allowance for the purposes of Act VII of 1918.

VII of 1918.

Provided that, if the amount of excess profits duty payable has not been ascertained at the time when the said adjustment is made, the amount by which the income-tax would have been reduced if effect had been given to the deduction shall be deducted from the amount payable for excess profits duty.

SCHEDULE I.

EXCEPTED BUSINESSES.

(See section 3.)

1. Any business the income from which is agricultural income.
2. Offices or employments.
3. Any profession the profits of which are dependent mainly on the personal qualifications of the person by whom the profession is carried on, and in which no capital expenditure is required or only capital expenditure of an amount which is small when compared with the profits which the person carrying on the profession makes :

Provided

Provided that the business of any person taking commissions in respect of any transactions or services rendered, or any agent of any description (not being a whole-time officer or servant of the business or a commercial traveller, or an agent whose remuneration consists wholly of a fixed and definite sum not dependent on the amount of business done or any other contingency) shall not be included in this exception.

4. Any business which is liable to pay in respect of the accounting period excess profits duty in the United Kingdom.

5. Any business of which the profits in the accounting period do not exceed thirty thousand rupees.

SCHEDULE II.

ASCERTAINMENT OF CAPITAL.

(See section 6.)

1. The amount of the capital of a business shall, so far as it does not consist of money, be taken to be—

- (a) so far as it consists of assets acquired by purchase, the price at which these assets were acquired, subject to any proper deduction for depreciation or for unpaid purchase money,
- (b) so far as it consists of assets being debts due to the business, the nominal amount of those debts subject to any reduction which has been allowed or is allowable in respect of those debts under the Indian Income-tax Act, 1918, and
- (c) so far as it consists of any other assets which have not been acquired by purchase, the value of the assets at the time when they became assets of the business, subject to any proper deduction for depreciation :

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Provided

Provided that nothing in this provision shall prevent accumulated profits (other than those made in the accounting period) employed in the business being treated as capital.

2. Any borrowed money or trade debts shall be deducted in computing the amount of capital for the purposes of this Act.

3. Where any asset has been paid for otherwise than in cash, the cost price of that asset shall be taken to be the value of the consideration at the time the asset was acquired, but where the business has been converted into a company and more than two-thirds of the shares in the company are held by the person who was the owner of the business no value shall be attached to those shares, so far as they are represented by good-will or otherwise than by material assets of the company, unless the Collector in special circumstances otherwise directs. Patents and secret processes shall be deemed to be material assets.