

SCHEDULE I

[See section 2 (19)]

RULES FOR THE COMPUTATION OF PROFITS FOR PURPOSES OF EXCESS PROFITS TAX.

1. The profits of a business during the standard period, or during any chargeable accounting period shall be separately computed, and shall, subject to the provisions of this Schedule be computed on the principles on which the profits of a business are computed for the purposes of income-tax under section 10 of the Income-tax Act, 1922:

Provided that any sums (other than any interest paid by a firm to a partner of the firm) excluded under the proviso to clause (iii) of sub-section (2) or clause (a) of sub-section (4) of that section from the allowances made in computing the profits of the business for the purposes of income-tax shall, if paid, be included in those allowances when computing the profits of the business for the purposes of excess profits tax:

Provided further that where the profits during any standard period have already been determined for the purpose of an assessment under the Income-tax Act, 1922, such profits as so determined shall, subject to the adjustments required by this Schedule, be taken as the profits during that period for the purpose of excess profits tax:

Provided further that where a standard period or chargeable accounting period is not an accounting period, the profits or losses of the business during any accounting periods wholly or partly included within the standard period or chargeable accounting period shall be so computed as aforesaid, and such division and apportionment to specific periods of those profits or losses and such aggregation of those profits and losses, or any apportioned part thereof shall be made as appears necessary to arrive at the profit during the standard period or chargeable accounting period: and any such apportionment shall be made in proportion to the number of months or fractions of months in the respective periods unless the Excess Profits Tax Officer, having regard to any special circumstances, otherwise directs.

2. The profits of a business during the standard period shall be computed on the same basis and in the same manner as the profits of that business are under the Income-tax Act, 1922, as amended by the Indian Income-tax (Amendment) Act, 1939, computed for the chargeable accounting period, notwithstanding that the Indian Income-tax (Amendment) Act, 1939 may not have been in force in the standard period.

3. (1) The principle of adding the allowance for depreciation for any one period to the allowance for depreciation for any subsequent period and deeming it to be part of the allowance for such subsequent period shall not be followed.

(2) No allowance shall be made for any loss other than a loss sustained in a business to which this Act applies.

(3) Nothing in this Act shall be construed as permitting the application, in computing profits for the purposes of the excess profits tax, of the provisions of sub-section (2) of section 24 of the Income-tax Act, 1922.

4. (1) Income received from investments shall be included in the profits in the cases and to the extent provided in sub-rules (2), (2A) and (4) of this rule and not otherwise.

(2) In the case of the business of a building society, or

of a money lending business, banking business, insurance business or business consisting wholly or mainly in the dealing in or

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holding of investments, the profits shall include all income received from investments, whether or not such income is included in the profits charged under section 10 of the Income-tax Act, 1922, or is charged under any other section of that Act, or has been subjected to deduction of tax at source or is free of or exempt from income-tax.

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

(3) Notwithstanding anything contained in sub-rule (2) or (2A), where the profits of a subsidiary company are under the provisions of section 9 to be included in the profits of the principal company for the purposes of assessment to excess profits tax, dividends from the subsidiary company out of such profits shall not also be included in the profits of the principal company.

(4) In the case of a business which consists wholly or partly in the letting out of property on hire, the income from the property shall be included in the profits of the business whether or not it has been charged to income-tax under section 9 of the Income-tax Act, 1922, or under any other section of that Act.

(5) Where the person carrying on a business is the beneficial owner of any investments, the income from which is by virtue of the provisions of this rule not to be taken into account in computing the profits of the business, and a deduction would, apart from the provisions of this rule, fall to be made in respect of interest on borrowed money, the deduction (if any) to be made in respect of that interest shall be computed as if the principal of the borrowed money were reduced by the value of those investments:

Provided that where the person carrying on the business is not a company, no such reduction shall be deemed to be made in the principal of any borrowed money in respect of any investments unless the investments are mortgaged, charged or pledged as security for the repayment of that money and interest thereon.

5. If at any time after the close of the standard period any increase in the capital employed in a business has been effected by means of a loan from a bank carrying on a *bona fide* banking business, or by means of a public issue of debentures secured on the property of the company, the interest on so much of the loan or debentures as has been utilised in effecting the increase in the capital shall not be deducted in computing the profits for the purposes of excess profits tax and, notwithstanding the provisions of rule 2 of Schedule II, that amount of such loan or debentures shall not be deducted in arriving at the amount of the capital employed in the business.

5A. (1) In computing for any chargeable accounting period ending after the end of March, 1941, and in relation thereto for the standard period, if any, the profits of a business other than a business to which sub-rule (2) of rule 4 of this Schedule applies, or the profits of a part of a business other than a part of a business to which sub-rule (2A) of the said rule applies, no deduction shall be made in respect of interest on borrowed money or in respect of any other consideration given for the use of borrowed money:

Provided that, as respects any such chargeable accounting period which commences before the said end of March, the application of this rule shall be subject to the provisions of section 7A of this Act:

Provided further that this rule shall not apply to the computation of profits of any business for any chargeable accounting period the standard profits for which are ascertained by reference to the minimum amount specified in sub-section (4) of section 6 of this Act:

Provided further that where a direction has been given by a Board of Referees under sub-section (3) of section 6, or by the National Board of Revenue under sub-section (1) of section 26 of this Act, that the standard profits shall be computed as if the profits during the standard period were such greater amount as it things just, such amount shall be increased by the amount of the interest on or other consideration for the borrowed money during the standard period.

(2) In this rule and in rule 2A of the Second Schedule “borrowed money” means borrowed money which, apart from the provisions of the said rule 2A, would have been deductible in computing capital.

6. No deduction shall be made on account of liability to pay, or payment of, income-tax, super-tax, or excess profits tax.

7. (1) In the case of a 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
- (b) if the standard profits of the business are computed by reference to the profits of a standard period, also in computing, in relation to any such chargeable accounting period, the profits for the standard period,

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

(2) In sub-rule (1) of this rule the expression “directors’ remuneration” does not include-

- (a) 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 the medium of other companies or by any other indirect means, to control, more than five *per cent* of the ordinary share capital of the company, or
- (b) the remuneration of any managing agent where such remuneration is included in the profits of the managing agent’s business for the purposes of excess profits tax.

(3) If, in the case of a 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 during 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 any 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-rule (1) of this rule applies, then, except in so far as the National Board of Revenue otherwise directs, 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).

8. In the case of a business carried on by a company, if the standard profits of the company are computed by reference to the profits during a standard period, no deduction shall be allowed in respect of remuneration paid to a managing agent in excess of the amount which would have been payable to that managing agent if the agreement in force in the standard period had been in force in the chargeable accounting period except where such remuneration is subjected to excess profits tax in the hands of the managing agent.

9. Where the performance of a contract extends beyond the accounting period, there shall (unless the Excess Profits Tax Officer, owing to any special circumstances, otherwise directs) be attributed to the accounting period such proportion of the entire profits or loss which has resulted, or which it is estimated will result, from the complete performance of the contract as is properly attributable to the accounting period, having regard to the extent to which the contract was performed therein:

Provided that when any such contract has been completed and the profits have been finally ascertained, if the aggregate of the amounts attributed to previous accounting periods exceeds the profit, as finally ascertained, from the complete performance of the contract, an adjustment shall be made to reduce the amounts so attributed to the various chargeable accounting periods to the amount of the profits as finally ascertained.

10. In respect of any building erected on or after the 1st day of September, 1939, which during any chargeable accounting period has ceased to be required for the purposes of the business or has been sold, any amount by which the value of the building at the date when it ceased to be required for the purposes of the business or the price obtained for the building, as the case may be, falls short of the written down value of the building shall be allowed as a deduction in arriving at the profits of that chargeable accounting period.

11. Where in respect of any accounting period a deduction would, apart from the provisions of this rule, be allowable in computing profits, and, in the opinion of the Excess Profits Tax Officer, 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 Excess Profits Tax Officer 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 Excess Profits Tax Officer thinks proper:

Provided that where any loss or expenditure incurred during the period commencing on the 1st day of April 1946 and ending on the 31st day of December 1947 is reasonably and properly attributable, wholly or partly, to any chargeable accounting period or standard period, such deduction as appears to the Excess Profits Tax Officer to be reasonable shall be allowed in computing the profits of such chargeable accounting period or standard period; and any relief accruing from such deduction shall be given by repayment or otherwise, as the case may require.

Any person who is dissatisfied with a determination of the Excess Profits Tax Officer under this rule may, at any time before the expiry of forty-five days from the date on which such determination is communicated to him, appeal to the Board of Referees through the Excess Profits Tax Officer.

12. (1) In computing the profits of any chargeable accounting period no deduction shall be allowed in respect of expenses in excess of the amount which the Excess Profits Tax Officer considers reasonable and necessary having regard to the requirements of the business and, in the case of directors' fees or other payments for services, to the actual services rendered by the person concerned:

Provided that no disallowance under this rule shall be made by the Excess Profits Tax Officer unless he has obtained the prior authority of the Commissioner of Excess Profits Tax.

(2) Any person who is dissatisfied with the decision of the Excess Profits Tax Officer under this rule may appeal in the prescribed time and manner to the Appellate Tribunal.

(3) In relation to chargeable accounting periods ending after the 31st day of December, 1942, the Government may make rules for determining the extent to which deductions shall be allowed in respect of bonuses or commissions paid.

SCHEDULE II

[See section 2 (3)]

RULES FOR COMPUTING THE AVERAGE AMOUNT OF CAPITAL

1. (1) Subject to the provisions of this Schedule the average amount of the capital employed in a business (so far as it does not consist of money) shall be taken to be-

- (a) so far as it consists of assets acquired by purchase on or after the commencement of the business, the price at which those assets were acquired, subject to the deductions hereafter specified;
- (b) so far as it consists of assets being debts due to the person carrying on the business, the nominal amount of those debts, subject to the said deductions;
- (c) so far as it consists of any other assets which have been acquired otherwise than by purchase as aforesaid, the value of the assets when they became assets of the business, subject to the said deductions.

(2) The price or value of any assets other than a debt shall be subject to such deductions for depreciation as are necessary to reduce the asset to its written down value and to such other deductions in respect of reduced values of assets as are allowable in computing profits for the purposes of income-tax, and in the case of a debt, the nominal amount of the debt shall be subject to any deduction which has been allowed in respect thereof for income-tax purposes.

(3) Where the price of any asset has been satisfied otherwise than in cash, the then value of the consideration actually given for the asset shall be treated as the price at which the asset was acquired.

2. (1) Any borrowed money and debts shall be deducted, and in particular there shall be deducted any debts incurred in respect of the business for income-tax or super-tax or excess profits tax, or for advance payments due under any provision of the income-tax Act, 1922, or for any further sum payable in relation to excess profits tax under section 2 of the Excess Profits Tax Ordinance, 1943:

Provided that any such debt for income-tax or super-tax or excess profits tax shall, for the purposes of this Schedule, be deemed to have become due-

- (a) in the case of income-tax and super-tax, on the last day of the period of time within which the tax is payable under section 45 of the Income-tax Act, 1922;
- (b) in the case of excess profits tax, on the first day after the end of the chargeable accounting period in respect of which the tax is assessable notwithstanding that the excess profits tax may not have been assessed until after that date;
- (c) in the case of any advance payment due under any provision of the Income-tax Act, 1922, on the date on which, under the provisions of that section, the payment first became due;

- (d) in the case of any further sum payable in relation to excess profits tax under section 2 of the Excess Profits Tax Ordinance, 1943, on the date on which, under the provisions of that section, the further sum became payable.

The debts to be deducted under this sub-rule shall include any such sums in respect of accruing liabilities as are allowable as a deduction in computing profits for the purposes of excess profits tax or would have been so allowable if the period for which the amount of capital is being computed had been a chargeable accounting period; and the said sums shall be deducted notwithstanding that they have not become payable.

(2) Where any debt for the excess profits tax assessable in respect of any period is to be deducted under this rule, the amount thereof shall not be reduced as the result of any relief to be given in respect of a deficiency of profits occurring in any subsequent period, and the amount of any such relief shall be treated as having become an asset of the business on the first day after the end of the chargeable accounting period in which the deficiency occurred.

2A. In computing for any chargeable accounting period ending after the end of March, 1941, and in relation thereto for the standard period, if any, the average capital of a business other than a business to which sub-rule (2) of rule 4 of the First Schedule applies, or the average capital of a part of a business other than a part of a business to which sub-rule (2A) of the said rule applies, no deduction shall be made in respect of borrowed money:

Provided that, as respects any such chargeable accounting period which commences before the said end of March, the application of this rule shall be subject to the provisions of section 7A of this Act.

Provided further that the same deduction shall be made in respect of accruing liabilities for interest as would have been made if this rule had not been enacted.

3. (1) Any investments the income from which is by virtue of the provisions of the First Schedule not to be taken into account in computing the profits of the business, and any moneys or as regards any chargeable accounting period ending after the 31st day of December, 1942, any trading stock or stock of raw materials not required for the purposes of the business, shall be left out of account, but where any investments in the beneficial ownership of the person carrying on the business are so left out of account, the sum (if any) to be deducted under rule 2 of this Schedule in respect of borrowed money shall be computed as if the principal of the borrowed money were reduced by the value of those investments:

Provided that where the person carrying on the business is not a company, no reduction shall be deemed to be made in the principal of any borrowed money in respect of any investments unless the investments are mortgaged, charged or pledged as security for the repayment of that money and the interest thereon.

(2) The Government may make rules defining for the purposes of this rule the principles to be followed in leaving out of account trading stock and stocks of raw materials.

4. Notwithstanding anything contained in rule 3, in the case of the business of shipping, to which this Act applies, the sale proceeds of any tonnage sold or the amount of compensation in respect of loss of ships or the amount of accumulation of reserves, whether invested or not, shall be taken into account in computing the average amount of capital employed in such business:

Provided that any income received from investment of such funds shall be included in computing profits for purposes of the excess profits tax.

5. For the purpose of ascertaining the average amount of capital employed in a business during any period, the profits or losses made in that period shall except so far as the contrary is shown, be deemed-

- (a) to have accrued at an even rate throughout the period; and

- (b) to have resulted, as they accrued, in a corresponding increase or decrease, as the case may be, in the capital employed in the business.

6. Where, in accordance with the second or third proviso to section 5 of this Act, this Act is applicable to part only of a business, the capital employed in that part shall be computed separately from any other capital of the person carrying on the business, and all references to capital employed in a business shall be construed as references to capital employed in that part of the business only-

- (a) the National Board of Revenue is satisfied, as respects any assets of any business the standard profits of which are computed by reference to the profits of a standard period, that during that period or any part thereof those assets were inherently unproductive, and
- (b) an application that this rule shall have effect is made through the Excess Profits Tax Officer to the National Board of Revenue by the person carrying on the business,

then, in computing the average amount of the capital employed in the business in the standard period and in all chargeable accounting periods, those assets, and any other assets of the business, shall be treated as not having been assets thereof during any part of the period during which, in the opinion of the National Board of Revenue, they were inherently unproductive:

Provided that in the case of a business the standard profits of which depend directly or indirectly upon a direction of the Board of Referees under sub-section (3) of section 6, or of the National Board of Revenue under sub-section (1) of section 26 of this Act the provisions of this rule shall have effect to such extent only as the National Board of Revenue thinks proper:

Provided further that an application to the National Board of Revenue under this rule shall be presented to the Excess Profits Tax Officer before the expiry of the period specified in the notice issued under sub-section (1) of section 13 of this Act or of the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section.

(2) Where sub-rule (1) of this rule has effect on the application of the person carrying on any business, any computation of capital of the business made before the making of the application, and any assessment affected by that computation shall be revised accordingly.

SCHEDE III

[*See section 9 (7)*]

RULES FOR DETERMINING THE AMOUNT OF CAPITAL HELD BY A COMPANY THROUGH OTHER COMPANIES.

1. Where, in the case of a number of companies, the first directly owns ordinary share capital of the second and the second directly owns ordinary share capital of the third, then, for the purposes of this Schedule, the first shall be deemed to own ordinary share capital of the third through the second and, if the third directly owns ordinary share capital of a fourth, the first shall be deemed to own ordinary share capital of the fourth through the second and third, and the second shall be deemed to own ordinary share capital of the fourth through the third, and so on.

2. In this Schedule-

- (a) any number of companies of which the first directly owns ordinary share capital of the next and the next directly owns ordinary share capital of the next but one and so on, and, if they are more than three, any three or more of them, are referred to as "a series";
- (b) in any series-
 - (i) that company which owns ordinary share capital of another through the remainder is referred to as "the first owner";
 - (ii) that other company the ordinary share capital of which is so owned is referred to as "the last owned company";
 - (iii) the remainder, if one only, is referred to as an "intermediary" or, if more than one, is referred to as a "chain of intermediaries";

- (c) a company in a series which directly owns ordinary share capital of another company in the series is referred to as an "owner";
- (d) any two companies in a series of which one owns ordinary share capital of the other directly, and not through one or more of the other companies in the series, are referred to as being directly related to one another.

3. Where every owner in a series owns the whole of the ordinary share capital of the company to which it is directly related, the first owner shall be deemed to own through the intermediary or chain of intermediaries the whole of the ordinary share capital of the last owned company.

4. Where one of the owners in a series owns a fraction of the ordinary share capital of the company to which it is directly related, and every other owner in the series owns the whole of the ordinary share capital of the company to which it is directly related the first owner shall be deemed to own that fraction of the ordinary share capital of the last owned company through the intermediary or chain of intermediaries.

5. Where-

- (a) each of two or more of the owners in a series owns a fraction, and every other owner in the series owns the whole, of the ordinary share capital of the company to which it is directly related; or
- (b) every owner in a series owns a fraction of the ordinary share capital of the company to which it is directly related;

the first owner shall be deemed to own through the intermediary or chain of intermediaries such fraction of the ordinary share capital of the last owned company as results from the multiplication of those fractions.

6. Where the first owner in any series owns a fraction of the ordinary share capital of the last owned company in that series through the intermediary or chain of intermediaries in that series, and also owns another fraction or other fractions of the ordinary share capital of the last owned company, either-

- (a) directly; or

- (b) through any intermediary or intermediaries which is not a member or are not members of that series; or
- (c) through a chain or chains of intermediaries of which one or some or all are not members of that series; or
- (d) in a case where the series consists of more than three companies, through an intermediary or intermediaries which is a member or are members of the series, or through a chain or chains of intermediaries consisting of some but not all of the companies of which the chain of intermediaries in the series consists;

then, for the purpose of ascertaining the amount of the ordinary share capital of the last owned company owned by the first owner, all those fractions shall be aggregated and the first owner shall be deemed to own the sum of those fractions.
