

THE EXCESS PROFITS TAX ACT, 1940**CONTENTS**

SECTIONS

1. Short title, extent and commencement
2. Definitions
3. Excess profits tax authorities
4. Charge of tax
5. Application of Act
6. Standard profits
7. Relief on occurrence of deficiency of profits
- 7A. Special provision for chargeable accounting period failing partly before and partly after the end of March, 1941
8. Successions and amalgamations
9. Inter-connected companies
10. Artificial transactions
- 10A. Transactions designed to avoid or reduce liability to excess profits tax
11. Relief in respect of double excess profits taxation
- 11A. Agreement for avoidance of double taxation in Pakistan and India
12. Allowance of excess profits tax in computing income for income-tax purposes
13. Issue of notice for assessment
14. Assessments
- 14A. Power to make provisional assessments
15. Profits escaping assessments
16. Penalties
17. Appeals
18. Appeal to Commissioner against Appellate Assistant Commissioner's orders imposing penalties or enhancing assessments or penalties
19. Power of revision
20. Rectification of mistakes
21. Application of provisions of Act XI of 1922

SECTIONS

- 21A. Application of Income-tax Act before 15th day of August 1947, with certain modifications
- 22. Income-tax papers to be available for the purposes of this Act
- 23. Failure to deliver returns or statements
- 24. False statement and declaration
- 25. Institution of proceedings and composition of offences
- 26. Power of National Board of Revenue to grant relief in special cases
- 26A. Further powers of National Board of Revenue to grant certain relief
- 27. Power to make rules

SCHEDULE I

SCHEDULE II

SCHEDULE III

THE EXCESS PROFITS TAX ACT, 1940

ACT NO. XV OF 1940

[6th April, 1940]

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

WHEREAS it is expedient to impose a tax on excess profits arising out of certain businesses in the conditions prevailing during the present hostilities;

It is hereby enacted as follows:-

Short title,
extent and
commencement

1. (1) This Act may be called the Excess Profits Tax Act, 1940.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force on such date as the Government may, by notification in the *official Gazette*, appoint.

Definitions

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

(1) “accounting period” in relation to any business means-

- (a) where the accounts of the business are made up for successive periods of twelve months, each of such periods;
- (b) in any other case, such period as the Excess Profits Tax Officer may determine:

* Throughout this Act the words “Bangladesh” and “Government” were substituted for the words “Pakistan” and “Central Government” by the Bangladesh Taxation Laws (Adaptation) Order, 1972 (P. O. No. 62 of 1972).

❖ Throughout this Act the words “National Board of Revenue” were substituted for the words “Central Board of Revenue” by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

◆ Throughout this Act the word “Taka” was substituted for the word “rupees” by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

Provided that in determining any accounting period under sub-clause (b) the Excess Profits Tax Officer shall have regard to the period, if any, which is, or has been, determined as the previous year for that business for the purposes of the Income-tax Act, 1922;

- (2) "Appellate Assistant Commissioner" means a person appointed to be an Appellate Assistant Commissioner of Excess Profits Tax under section 3;
- (3) "average amount of capital" means the average amount of capital employed in any business as computed in accordance with the Second Schedule;
- (4) "Board of Referees" means a Board of Referees appointed under section 3;
- (5) "business" includes any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture or any profession or vocation, but does not include a profession carried on by an individual or by individuals in partnership if the profits of the profession depend wholly or mainly on his or their personal qualifications unless such profession consists wholly or mainly in the making of contracts on behalf of other persons or the giving to other persons of advice of a commercial nature in connection with the making of contracts:

Provided that where the functions of a company or of a society incorporated by or under any enactment consist wholly or mainly in the holding of investments or other property the holding of the investments or property shall be deemed for the purpose of this definition to be a business carried on by such company or society:

Provided further that all businesses to which this Act applies carried on by the same person shall be treated as one business for the purposes of this Act;

- (6) "chargeable accounting period" means-
 - (a) any accounting period falling wholly within the term beginning on the 1st day of September, 1939, and ending on the 31st day of March, 1946; and

- (b) where any accounting period falls partly within and partly without the said term, such part of that accounting period as falls within the said term;
- (7) “Commissioner” means a person appointed to be a Commissioner of Excess Profits Tax under section 3;
- (8) “company” means a company as defined in the Companies Act, 1913, or formed in pursuance of an Act of Parliament of the United Kingdom or of Royal Charter or Letters Patent, or of an Act of the legislature of a British possession ¹[* * *], and includes any foreign association whether incorporated or not which the National Board of Revenue may, by general or special order, declare to be a company for the purposes of this Act;
- (9) “deficiency of profits” means-
 - (i) where profits have been made in any chargeable accounting period, the amount by which such profits fall short of the standard profits;
 - (ii) where a loss has been made in any chargeable accounting period, the amount of the loss added to the amount of the standard profits;
- (10) “director” includes any person occupying the position of a director by whatever name called and also includes any person who-
 - (i) is a manager of the company or concerned in the management of the business; and
 - (ii) is remunerated out of the funds of the business; and
 - (iii) is the beneficial owner of not less than twenty *per cent* of the ordinary share capital of the company;
- (11) “dividend” has the meaning assigned to the expression in section 2 of the Income-tax Act, 1922;
- (12) “Excess Profits Tax Officer” means a person appointed to be an Excess Profits Tax Officer under section 3;

¹ The words “or of a law of an Acceding State or non-Acceding State” were omitted by the Bangladesh Taxation Laws (Adaptation) Order, 1972 (P. O. No. 62 of 1972) .

(13) “Income” has the meaning assigned to the expression in section 2 of the Income-tax Act, 1922;

(14) “fixed rate” in relation to dividends on share capital, other than ordinary share capital, includes a rate fluctuating in accordance with the maximum rate of income-tax;

¹[(14A) “Government” means, except where the context otherwise requires, the Government of the People’s Republic of Bangladesh;]

(15) “Inspecting Assistant Commissioner” means a person appointed to be an Inspecting Assistant Commissioner of Excess Profits Tax under section 3;

(16) “loss” means a loss computed in the same manner as, for the purposes of this Act, profits are to be computed;

(16) “ordinary share capital” has the meaning assigned to that expression in sub-section (8) of section 9;

(17) “person” includes a Hindu undivided family;

(18) “prescribed” means prescribed by rules made under this Act;

(19) “profits” means profits as determined in accordance with the first Schedule;

(20) “standard profits” means standard profits as computed in accordance with the provisions of section 6;

(21) “statutory percentage” means-

(a) in relation to a business carried on by a body corporate (other than a company the directors whereof have a controlling interest therein), eight *per cent per annum*;

(b) in relation to a business carried on by a partnership of which one or more of the partners is a body corporate (other than a company the directors

¹ Clause 14A was inserted by the Bangladesh Taxation Laws (Adaptation) Order, 1972 (P.O. No. 62 of 1972) .

whereof have a controlling interest therein), such a rate *per cent* as is equivalent to-

- (i) eight *per cent per annum* on so much of the average amount of the capital employed in the business during the chargeable accounting period as represents the share of any such body corporate, and
- (ii) ten *per cent per annum* on the remainder of that amount;
- (c) in relation to a business to which neither sub-clause (a) nor sub-clause (b) applies, ten *per cent per annum*:

Provided that in relation to any decrease of capital the statutory percentage shall be in all cases six *per cent*:

Provided further that where the business was commenced on or after the 1st day of July, 1938, the foregoing percentages shall be increased from eight, ten and six *per cent* to ten, twelve and eight *per cent* respectively;

(21A) “taxable territories” has the meaning assigned to that expression by clause ¹[(14AA)] of section 2 of the Income-tax Act, 1922;

(22) “written down value” has the meaning assigned to that expression in sub-section (5) of section 10 of the Income-tax Act, 1922.

Excess profits
tax authorities

3. (1) There shall be the following classes of excess profits tax authorities for the purposes of this Act, namely:-

- (a) the National Board of Revenue;
- (b) Commissioners of Excess Profits Tax;
- (c) Assistant Commissioners of Excess Profits Tax, who may be either Appellate Assistant Commissioners of Excess Profits Tax or Inspecting Assistant Commissioners of Excess Profits Tax;

¹ The number and letters “14AA” were substituted for the number and letter “14A” by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

(d) Excess Profits Tax Officers;

(e) Boards of Referees.

(2) Every Commissioner of Excess Profits Tax, Appellate Assistant Commissioner of Excess Profits Tax, Inspecting Assistant Commissioner of Excess Profits Tax and Excess Profits Tax Officer shall be a person who is exercising the functions of Commissioner of Income-tax, Appellate Assistant Commissioner of Income-tax, Inspecting Assistant Commissioner of Income-tax and Income-tax Officer, respectively, under the Income-tax Act, 1922.

(3) The National Board of Revenue shall, subject to the provisions of sub-section (2), appoint such persons as Commissioners of Excess Profits Tax, Appellate Assistant Commissioners of Excess Profits Tax, Inspecting Assistant Commissioners of Excess Profits Tax and Excess Profits Tax Officers as it thinks fit and such persons shall perform their functions in respect of such cases as the National Board of Revenue may assign to them:

Provided that such directions shall be made entirely at the discretion of the National Board of Revenue, and, in particular, it shall be competent for that Board to assign a case or class of cases to an officer who is not exercising in respect of that case or class of cases the corresponding functions in relation to the charge of income-tax under the Income-tax Act, 1922.

(4) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the National Board of Revenue:

Provided that nothing in this sub-section applies to a Board of Referees:

Provided further that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions.

(5) A Board of Referees shall consist of not less than three and not more than five persons, of whom not less than one-half shall be non-officials having business experience, and one shall be a judicial officer who has exercised the powers of a District Judge or who possesses such qualifications as are normally required for appointment to the post of District Judge, and who has held judicial office for a period of not less than ten years.

(6) Subject to the provisions of sub-section (5), the Government may make rules regulating the formation, composition and procedure of Boards of Referees.

Charge of tax

4. (1) 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 during any chargeable accounting period exceed the standard profits a tax (in this Act referred to as "excess profits tax") which shall, in respect of any chargeable accounting period ending on or before the 31st day of March, 1941, be equal to fifty *per cent* of that excess and shall, in respect of any chargeable accounting period beginning after that date, be equal to such percentage of that excess as may be fixed by the annual Finance Act:

Provided that any profits which are, under the provisions of sub-section (3) of section 4 of the Income-tax Act, 1922, exempt from income-tax, and all profits from any business of life insurance shall be totally exempt from excess profits tax under this Act:

Provided further that, in the case of any business which includes the mining of any mineral, any bonus paid by or through the Government in respect of increased output of the mineral shall be totally exempt from excess profits tax under this Act.

(2) Where a chargeable accounting period falls partly before and partly after the end of March, 1941, the foregoing provisions of this section shall apply as if so much of that chargeable accounting period as falls before, and so much of that chargeable accounting period as falls after, the said end of March were each a separate chargeable accounting period, and as if the excess of profits of that separate chargeable accounting period were an apportioned part of the excess of profits arising in the whole period determined in accordance with the provisions of section 7A.

5. This Act shall apply to every business of which any part of the profits made during the chargeable accounting period is chargeable to income-tax by virtue of the provisions of sub-clause (i) or sub-clause (ii) of clause (b) of sub-section (1) of section 4 of the Income-tax Act, 1922, or of clause (c) of that sub-section:

Application of Act

Provided that this Act shall not apply to any business the whole of the profits of which accrue or arise without the taxable territories where such business is carried on by or on behalf of a person who is resident but not ordinarily resident in the taxable territories unless the business is controlled in Bangladesh:

Provided further that where the profits of a part only of a business carried on by a person who is not resident in the taxable territories or not ordinarily so resident accrue or arise in the taxable territories or are deemed under the Income-tax Act, 1922, so to accrue or arise, then except where the business being the business of a person who is resident but not ordinarily resident in the taxable territories is controlled in Bangladesh, this Act shall apply only to such part of the business, and such part shall for all the purposes of this Act be deemed to be a separate business.

¹[* * *]

6. (1) For the purposes of this Act, the standard profits of a business in relation to any chargeable accounting period shall, subject to the provisions of sub-sections (3) and (4), be an amount bearing to the profits of the business during the standard period, if in respect of that business a standard period is available, the same proportion as the chargeable accounting period bears to the standard period:

Standard profits

Provided that if the average amount of capital employed in the business during such chargeable accounting period is greater or less than the average amount of capital employed during the standard period, such amount shall be increased or decreased, as the case may be, by an amount calculated by applying the statutory percentage to the amount of such increase or decrease:

¹ The proviso was omitted by the Bangladesh Taxation Laws (Adaptation) Order, 1972 (P.O. No. 62 of 1972).

Provided further that in the case of a business which was commenced on or after the 31st day of March, 1936, the standard profits shall, at the option of the person carrying on the business, be an amount calculated by applying the statutory percentage to the average amount of capital employed in the business during such chargeable accounting period.

(2) For the purposes of this section the standard period shall, at the option of the person carrying on the business, be-

- (a) the "previous year" as determined under section 2 of the Income-tax Act, 1922, for the purpose of the income-tax assessment for the year ending on the 31st day of March, 1937, or the previous year as so determined for the year ending on the 31st day of March, 1938; or
- (b) the "previous year" as so determined for the year ending on the 31st day of March, 1937, and that for the year ending on the 31st day of March, 1939; or
- (c) the "previous year" as so determined for the year ending on the 31st day of March, 1938, and that for the year ending on the 31st day of March, 1939; or
- (d) the "previous year" as so determined for the year ending on the 31st day of March, 1939, and that for the year ending on the 31st day of March, 1940:

Provided that in no case shall any period of less than nine months be taken as a standard period.

(3) If, within the period specified in the notice issued under sub-section (1) of section 13, or within the extended period allowed by the Excess Profits Tax Officer under the proviso to that sub-section the person carrying on the business makes an application to the Excess Profits Tax Officer in this behalf, the Excess Profits Tax Officer shall refer the application to the Board of Referees, and if the Board is satisfied that during the standard period the profits of the business were less than might at the beginning of that period have been reasonably expected, it may direct that the standard profits shall be computed as if the profits during the standard period were such greater amount as it thinks just:

Provided that such amount shall not exceed the statutory percentage of the average amount of the capital employed in the business unless the Board is satisfied that owing to some specific cause peculiar to the business it is just that a greater amount should be allowed:

Provided further that a determination on an application under this sub-section-

(a) shall have effect with respect to all subsequent chargeable accounting periods;

(b) shall exclude any further application under this sub-section.

(4) The standard profits shall be taken to be Taka thirty-six thousand in any case in which the standard profits computed in accordance with sub-section (1) are less than this sum:

Provided that if the chargeable accounting period is greater or less than one year the sum of Taka thirty-six thousand shall for the purpose of this sub-section be increased or decreased proportionately.

(5) *[Omitted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).]*

7. Where a deficiency of profits occurs in any chargeable accounting period in any business, the profits of the business chargeable with excess profits tax shall be deemed to be reduced and relief shall be granted in accordance with the following provisions:-

Relief on occurrence of deficiency of profits

(a) the aggregate amount of the profits so chargeable for the previous chargeable accounting periods shall be deemed to be reduced by the amount of the deficiency of profits and the amount of excess profits tax payable in respect thereof shall be deemed to be reduced accordingly and the relief necessary to give effect to the reduction shall be given by repayment or otherwise;

- (b) where the amount of the deficiency of profits exceeds the aggregate amount of the profits so chargeable for the previous chargeable accounting periods, or where there is no previous chargeable accounting period, the balance of the deficiency of profits or the whole of the deficiency, as the case may be, shall be applied in reducing any profits so chargeable for the next subsequent chargeable accounting period, and if and so far as it exceeds the amount of those profits, any profits so chargeable for the next subsequent chargeable accounting period and so on:

Provided that a deficiency of profits occurring in a chargeable accounting period beginning on or after the 1st day of April, 1941, shall first be applied so as to reduce profits chargeable to tax arising in another chargeable accounting period beginning on or after the said 1st day of April, and a deficiency of profits occurring in a chargeable accounting period ending on or before the 31st day of March, 1941, shall first be applied so as to reduce profits chargeable to tax arising in another chargeable accounting period ending on or before the said 31st day of March; and where owing to an insufficiency of profits for chargeable accounting periods ending on or before the said 31st day of March, or, as the case may be, beginning on or after the said 1st day of April, the whole or any part of the deficiency is applied otherwise than as aforesaid-

- (a) the application shall be treated as provisional only; and
- (b) if it thereafter appears that there is no longer such an insufficiency as aforesaid, such adjustment shall be made as the National Board of Revenue may by written order direct:

Provided further that where a chargeable accounting period falls partly before and partly after the end of March, 1941, the provisions of the preceding proviso shall apply as if so much of the chargeable accounting period as falls before, and so much of the chargeable accounting period as falls after, the said end of March, were each a separate chargeable accounting period, and as if the deficiency of profits of that separate chargeable accounting period were an apportioned part of the deficiency of profits occurring in the whole period; and any apportionment required to be made by this proviso shall be made by reference to the number of months or fractions of months in each of the parts of the whole chargeable accounting period.

¹[7A. (1) In the case of a chargeable accounting period such as is referred to in sub-section (2) of section 4, the excess of profits of each of the separate chargeable accounting periods into which the whole chargeable period is deemed to be divided for the purposes of that sub-section, shall be determined in accordance with the provisions of sub-sections (2), (3) and (4), and in those sections-

Special provision for chargeable accounting period falling partly before and partly after the end of March, 1941

- (a) references to the whole period, the first part of the period, and the second part of the period shall be construed, respectively, as references to the whole of the chargeable accounting period deemed to be divided, so much thereof as falls before the end of March, 1941, and so much thereof as falls after the said end of March;
- (b) "excess profits" means the amount by which the profits for any period exceed the standard profits for that period.

(2) The profits or loss of, and the standard profits for, the whole period shall be computed first on the basis that rule 5A of the First Schedule and rule 2A of the Second Schedule do not apply to the period, and secondly on the basis that the said rules do apply to the period, and it shall then be ascertained, on each basis, whether there are excess profits or a deficiency of profits for the whole period, and, if so, what is the amount thereof.

(3) There shall be deemed to be for the first part of the period excess profits or a deficiency of profits, as the case may be, equal to an apportioned part of the excess profits or deficiency of profits ascertained under sub-section (2) on the first basis mentioned therein, and there shall be deemed to be for the second part of the period excess profits or a deficiency of profits, as the case may be, equal to an apportioned part of the excess profits or deficiency of profits ascertained under sub-section (2) on the second basis mentioned therein; and, for the purpose of giving relief for deficiencies of profits under section 7, the first part of the period and the second part of the period shall each be treated as if it were a separate chargeable accounting period.

(4) Any apportionment required to be made by sub-section (3) shall be made by reference to the number of months and fractions of months in each of the parts of the whole period.]

¹ Section 7A was inserted by section 4 of the Excess Profits, Tax (Second Amendment) Act, 1941 (Act No. XXIV of 1941).

Successions and
amalgamations

8. (1) As from the date of any change in the persons carrying on a business, the business shall, subject to the provisions of this section, be deemed for all the purposes of this Act except for the purposes of determining the amount of the statutory percentage to have been discontinued, and a new business to have been commenced.

(2) Where the change took place before the 1st day of September, 1939, and consisted in the death or retirement of a partner, or the taking in of a partner, the persons carrying on the business after the change may, by notice given in writing before the prescribed date to the Excess Profits Tax Officer, elect that, for the purposes of the provisions of this Act relating to the computation of standard profits, the business shall not be deemed to have been discontinued.

(3) A business shall not, for the purposes of the provisions of this Act relating to the computation of standard profits, be deemed to be discontinued by reason of any change occurring on or after the 1st day of September, 1939, in the persons carrying it on, and the standard profits of the business in relation to any chargeable accounting period shall be computed accordingly, and, in particular, in computing the capital employed in the business after the change and in considering, for the purposes of computing the profits of, and the capital employed during, any chargeable accounting period, whether any and, if so, what deductions are to be made in respect of depreciation of buildings, plant and machinery, no regard shall be had to any consideration given in respect of the transfer of the business or any of the assets thereof on the occasion of the change.

(4) Where, on or after the 1st day of September, 1939, two or more businesses are amalgamated, the resulting business shall be treated for the purposes of the provisions of this Act relating to the computation of standard profits as if-

- (a) it had been in existence throughout the period during which there were in existence any of the former businesses;
- (b) any profits made or losses incurred or capital employed in any of those former businesses had been made, incurred or employed in the resulting business; and

- (c) any assets of any of those former businesses had become assets of the resulting business when they became assets of the former business;

and, in particular, in computing the capital employed in the resulting business, and in considering, for the purposes of computing the profits of, and the capital, employed during, any chargeable accounting period, whether any and, if so, what deductions are to be made in respect of depreciation of buildings, plant and machinery, no regard shall be had to any consideration given in respect of the transfer of any of those former businesses or any of the assets thereof on the occasion of the amalgamation.

(5) Where, on or after the 1st day of September, 1939, part of a business is transferred as a going concern by the person theretofore carrying it on to another person, the part transferred and the part not transferred shall each be deemed for the purposes of the provisions of this Act relating to the computation of standard profits to be a continuation of the original business, and the said provisions, including the provisions of this section relating to amalgamations, shall apply accordingly:

Provided that, for the purposes aforesaid, such apportionments shall be made of the profits made, and losses incurred, and the capital employed, in the original business, and of any assets of the original business as may appear to the Excess Profits Tax Officer, or on appeal in the prescribed time and manner to the Board of Referees, to that Board to be just.

(6) Notwithstanding anything in the foregoing provisions of this section, where a business was carried on immediately before the 1st day of April, 1936, and that business, or the main part of that business, was transferred after the said day and before the 1st day of September, 1939, by the person carrying it on to another person, the Excess Profits Tax Officer, if he is satisfied that the business carried on after the transference was not substantially different from the business or part transferred, shall, on the application of the person carrying on the business after the transference, treat that person, for the purposes of the provisions of this Act relating to the computation of standard profits, as if he had carried on the transferred business or part of the business as from the date of the commencement of that business.

(7) Where, on or after the 1st day of September, 1939, a partner in a firm carrying on a business to which this Act applies dies, then notwithstanding anything contained in sub-section (1) any deficiency of profits in respect of any chargeable accounting period ending on or before the date of his death shall, if it has not been fully applied in reducing the profits of any chargeable accounting period under section 7, be carried forward and applied in reducing any profits from the same business carried on by the surviving partner or partners in the first chargeable accounting period after the death of the partner, and if and so far as it exceeds the amount of those profits, in reducing any profits from such business in the next subsequent chargeable accounting period and so on.

(8) Where-

- (a) a business is, by virtue of sub-section (2) or sub-section (3), deemed not to have been discontinued; or
- (b) a business is, by virtue of sub-section (4), to be treated as if it had been in existence throughout the period during which there was in existence any other business; or
- (c) a business is, by virtue of sub-section (5), to be treated as a continuation of another business; or
- (d) any person who is carrying on a business after a transfer is treated, by virtue of sub-section (6), as having carried on the business as from a date before the transfer,

the provisions of this Act relating to the computation of profits and capital for the purposes of excess profits tax shall, both as respects the standard period and any chargeable accounting period, have effect subject to such modifications, if any, as the Excess Profits Tax Officer may think just, and the Excess Profits Tax Officer may make such alterations in the periods which would otherwise be the chargeable accounting periods of the business as he thinks proper:

Provided that if the Excess Profits Tax Officer makes any such modifications and the person carrying on the business is dissatisfied with the modifications so made, or if the person carrying on the business is dissatisfied with the refusal of the

Excess Profits Tax Officer to make any such modifications, he may, at any time before the expiry of forty-five days from the date on which the order of the Excess Profits Tax Officer is communicated to him, appeal to the Board of Referees through the Excess Profits Tax Officer.

9. (1) Where any interest, annuity or other annual payment, or any royalty or rent, is paid by one company to another company, and one of those companies is a subsidiary of the other, or both are subsidiaries of a third company, the capital, profits and losses of both companies shall be computed for the purposes of this Act as if-

Inter-connected companies

- (a) the interest, annuity, annual payment, royalty or rent were not payable;
- (b) any debt in respect of which any such interest is payable did not exist; and
- (c) any asset in respect of which any such royalty or rent is payable were the property of the company paying the royalty or the rent.

(1A) Where-

- (a) any debt is owing to any company by another company; and
- (b) one of those companies is a subsidiary of the other, or both are subsidiaries of a third company; and
- (c) no interest is payable in respect of the debt, but the circumstances in which the debt came into existence or is allowed to continue to exist are such that the debt represents in substance capital employed in the business of the debtor company,

the capital of both companies shall be computed as if the debt did not exist.

(2) Where-

- (a) a company (hereinafter referred to as "the principal company") is resident in the taxable territories and is not a subsidiary of any other company resident in the taxable territories; and

- (b) during the whole or any part of any chargeable accounting period of the principal company, another company, whether or not resident or carrying on business within the taxable territories (hereinafter referred to as “the subsidiary company”) is a subsidiary of the principal company,

the following provisions of this section shall, subject to the provisions of section 5, have effect in relation to that chargeable accounting period.

(3) If the subsidiary company is a subsidiary of the principal company throughout the chargeable accounting period, such capital employed in, and profits or losses arising from, the business of the subsidiary company as is employed or arise in-

- (i) the chargeable accounting period; or
- (ii) any year constituting or comprised in the standard period of the principal company,

shall be treated for the purposes of this Act as if it or they were capital employed in, or as the case may be, profits or losses arising from, the business of the principal company.

(4) If the subsidiary company is a subsidiary of the principal company during part only of the chargeable accounting period, the excess or deficiency of profits of the subsidiary company for that part of that period shall be treated as increasing or as the case may be, decreasing the excess or deficiency of profits of the principal company for the whole period and shall not be deemed to be an excess or deficiency of profits of the subsidiary company.

In this sub-section, the expressions “excess” and “deficiency” mean, in relation to profits, an excess or deficiency in relation to the standard profits of the subsidiary company or, as the case may be, the principal company.

(5) In any case to which sub-section (3) or sub-section (4) applies, such alteration, if any, of the periods which would otherwise be the chargeable accounting periods of the subsidiary company shall be made as the National Board of Revenue may direct.

(6) For the purposes of this section, a company shall be deemed to be a subsidiary of another company if and so long as not less than nine-tenths of its ordinary share capital is owned by that other company, whether directly or through another company or other companies, or partly directly and partly through another company or other companies.

(7) The amount of ordinary share capital of one company owned by a second company through another company or other companies, or partly directly and partly through another company or other companies shall be determined in accordance with the provisions of the Third Schedule.

(8) In this section and the Third Schedule references to ownership shall be construed as references to beneficial ownership, and the expression "ordinary share capital", in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders whereof have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.

(9) The principal company shall be entitled to allocate to its subsidiary company or companies the respective proportionate shares of the excess profits tax payable by the whole group.

(10) The excess profits tax payable by virtue of this section by the principal company in respect of the profits of any subsidiary company shall, for the purposes of section 12, be deemed to have been paid by the subsidiary company and not by the principal company.

10. (1) In computing profits for the purposes of this Act no deduction shall be made in respect of any transaction or operation of any nature if and so far as it appears that the transaction or operation has artificially reduced or would artificially reduce the profits.

Artificial transactions

(2) If the Excess Profits Tax Officer is satisfied that any person has entered into or carried out any transaction or operation by which the profits have been or would be artificially reduced, he may, with the previous approval of the Inspecting Assistant Commissioner, direct that such person shall pay, in addition to any excess profits tax for which he is or, but for such transaction or operation, would be liable, a penalty not exceeding the tax evaded or sought to be evaded.

Transactions designed to avoid or reduce liability to excess profits tax

¹[10A. (1) Where the Excess Profits Tax Officer is of opinion that the main purpose for which any transaction or transactions was or were effected [whether before or after the passing of the Excess Profits Tax (Second Amendment) Act, 1941] was the avoidance or reduction of liability to excess profits tax, he may, with the previous approval of the Inspecting Assistant Commissioner, make such adjustments as respects liability to excess profits tax as he considers appropriate so as to counteract the avoidance or reduction of liability to excess profits tax which would otherwise be effected by the transaction or transactions.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the powers conferred thereby extend-

- (a) to the charging with excess profits tax of persons who but for the adjustments would not be chargeable with any tax or would not be chargeable to the same extent;
- (b) to the charging of a greater amount of tax than would be chargeable but for the adjustments.

(3) Any person aggrieved by a decision of the Excess Profits Tax Officer under this section may appeal in the prescribed time and manner to the Appellate Tribunal.]

Relief in respect of double excess profits taxation

11. (1) The Government may by notification in the *official Gazette* make provision for the granting of relief in cases where both excess profits tax under this Act and excess profits tax under any law in force in the United Kingdom, ²[* * *] or in any other part of His Majesty's Dominions have been paid upon the profits of any business if it appears to the Government that the laws of the United Kingdom ³[* * *] or of that other part of His Majesty's Dominions provide for corresponding relief in respect of excess profits tax charged on profits both in the United Kingdom ⁴[* * *] or in that part and in the taxable territories:

¹ Section 10A was inserted by section 6 of the Excess Profits, Tax (Second Amendment) Act, 1941 (Act No. XXIV of 1941).

² The words and comma "in any Acceding State or non-Acceding State," were omitted by the Bangladesh Taxation Laws (Adaptation) Order, 1972 (P.O. No. 62 of 1972) .

³ The words "or of that State" were omitted by the Bangladesh Taxation Laws (Adaptation) Order, 1972 (P.O. No. 62 of 1972) .

⁴ The words "or in that State" were omitted by the Bangladesh Taxation Laws (Adaptation) Order, 1972 (P.O. No. 62 of 1972) .

Provided that where under section 19 of the Finance (No. 2) Act, 1939, national defence contribution has been paid in the United Kingdom in lieu of excess profits tax, that portion of the national defence contribution so paid which is equal to the excess profits tax which would otherwise have been payable shall, for the purposes of this sub-section, be deemed to be excess profits tax paid in the United Kingdom.

(2) If any person, who has paid excess profits tax under this Act for any chargeable accounting period in respect of profits arising outside Bangladesh in a ¹[* * *] country the laws of which do not provide for any relief in respect of excess profits tax charged in the taxable territories, proves that he has paid excess profits tax under the laws of the said ²[* * *] country in respect of the same profits, he shall be entitled to the deduction from the excess profits tax payable in the taxable territories of a sum equal to one-half thereof or to one-half of the excess profits tax payable in the said ³[* * *] country, whichever whichever is the less.

11A. The Government may enter into an agreement with ⁴[India and Pakistan] for the avoidance of double taxation of profits under this Act and under the corresponding law in force in ⁵[India and Pakistan], and may, by notification in the *official Gazette*, make such provision as may be necessary for implementing the agreement.

Agreement for avoidance of double taxation in Pakistan and India

12. (1) The amount of the excess profits tax payable in respect of a business for any chargeable accounting period diminished by any amount allowable by way of relief under the provisions of section 11, or section 11A shall, in computing for the purposes of income-tax or super-tax the profits and gains of that business, be allowed to be deducted as an expense incurred in that period.

Allowance of excess profits tax in computing income for income-tax purposes

¹ The words "State or" were omitted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² The words "State or" were omitted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

³ The words "State or" were omitted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

⁴ The words "India and Pakistan" were substituted for the word "India" by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

⁵ The words "India and Pakistan" were substituted for the word "India" by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

(2) There shall also be so deducted the amount of any excess profits tax payable under any law in force in a ¹[* * *] country outside the taxable territories on the profits of the business in respect of any chargeable accounting period to the extent to which such profits are liable to excess profits tax under this Act after diminishing such amount by any amount which is allowable by way of relief by repayment, set off or, otherwise under any law in the ²[* * *] country where the tax is payable providing for the granting of relief in that ³[* * *] country where excess profits tax has also been charged in the taxable territories:

Provided that where, under the provisions of this Act relating to deficiencies of profits or under any corresponding law in force in the said ⁴[* * *] country without the taxable territories, relief is given by way of repayment from excess profits tax chargeable for any chargeable accounting period previous to that in which the deficiency occurs, the amount of the deduction allowed under sub-section (1) or sub-section (2) shall not be altered, but the amount repayable shall be taken into account in computing the profits and gains of the business for the purposes of income-tax as if it were a profit of the business accruing in the previous year (as determined for that business for the purposes of the Income-tax Act, 1922), in which the deficiency of profits occurs.

Issue of notice
for assessment

13. (1) The Excess Profits Tax Officer 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 any chargeable accounting period, or to be otherwise liable to pay excess profits tax, to furnish within such period, not being less than sixty days from the date of the service of the notice, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner

¹ The words "State or" were omitted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² The words "State or" were omitted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

³ The words "State or" were omitted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

⁴ The words "State or" were omitted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

setting forth (along with such other particulars as may be provided for in the notice) with respect to any chargeable accounting period specified in the notice the profits of the business and the standard profits of the business as computed in accordance with the provisions of section 6 or the amount of deficiency available for relief under section 7:

Provided that the Excess Profits Tax Officer may, in his discretion, extend the date for the delivery of the return.

(2) The Excess Profits Tax Officer may serve on any person, upon whom a notice has been served under sub-section (1), a notice requiring him on a date to be therein specified to produce, or cause to be produced, such accounts or documents as the Excess Profits Tax Officer may require and may from time to time serve further notices in like manner requiring the production of such further accounts or documents or other evidence as he may require:

Provided that the Excess Profits Tax Officer shall not require the production of any accounts relating to a period prior to the "previous year" as determined under section 2 of the Income-tax Act, 1922, for the purpose of the income-tax assessment for the year ending on the 31st day of March, 1937.

14. (1) The Excess Profits Tax Officer shall, by an order in writing after considering such evidence, if any, as he has required under section 13, assess to the best of his judgment the profits liable to excess profits tax and the amount of excess profits tax payable on the basis of such assessment, or if there is a deficiency of profits, the amount of that deficiency and the amount of excess profits tax, if any, repayable and shall furnish a copy of such order to the person on whom the assessment has been made.

Assessments

(2) Excess profits tax payable in respect of any chargeable accounting period shall be payable by the person carrying on the business in that period.

(3) Where two or more persons were carrying on the business jointly in the chargeable accounting period, the assessment shall be made upon them jointly and, in the case of a partnership, may be made in the partnership name.

(4) Where by virtue of the foregoing provisions an assessment could, but for his death, have been made on any person either solely or jointly with any other person or persons, the assessment may be made on his legal representative either solely or jointly with that other person or persons, as the case may be.

Power to make
provisional
assessments

¹[14A. (1) The Excess Profits Tax Officer, before proceeding to make an assessment (in this section referred to as the regular assessment) under section 14, may, at any time after the expiry of the period specified in the notice issued under sub-section (1) of section 13 as that within which the return therein referred to is to be furnished, and whether the return has or has not been furnished, proceed to make in summary manner a provisional assessment of the amount by which the profits of the chargeable accounting period exceed the standard profits, and the amount of excess profits tax payable thereon.

(2) Before making such provisional assessment the Excess Profits Tax Officer shall give notice in the prescribed form to the person on whom assessment is to be made of his intention to do so, and shall with the notice forward a statement of the amount of the proposed assessment, and the said person shall be entitled to deliver to the Excess Profits Tax Officer at any time within fourteen days of receipt of the said notice a statement of his objections, if any, to the amount of the proposed assessment.

(3) On expiry of one month from the date of service of the notice referred to in sub-section (2), or earlier if the assessee agrees to the proposed assessment, the Excess Profits Tax Officer may, after taking into account the objections, if any, made under sub-section (2), make a provisional assessment, and shall furnish a copy of the order of assessment to the assessee:

Provided that assent to the amount of the assessment, or failure to make objection to it, shall in no way prejudice the assessee in relation to the regular assessment.

(4) In making any such provisional assessment the Excess Profits Tax Officer shall make allowances for any deficiencies of profits for previous chargeable accounting periods which are under the provisions of section 7 to be set off against the excess profits of the chargeable accounting period in respect of which the assessment is being made:

¹ Section 14A was inserted by section 3 of the Excess Profits Tax Ordinance, 1943 (Ordinance No. XVI of 1943).

Provided that where such deficiencies of profits have not been determined under sub-section (1) of section 14 the Excess Profits Tax Officer shall estimate the amount thereof to the best of his judgment.

(5) There shall be no right of appeal against a provisional assessment made under this section, and it shall, until a regular assessment is made in due course under section 14, determine the amount of excess profits tax due from the assessee.

(6) If, when a regular assessment is made in due course under section 14, the amount of excess profits tax payable thereunder is found to exceed that determined as payable by the provisional assessment, it shall be reduced by the amount determined as payable by the provisional assessment.

(7) If, when a regular assessment is made in due course under section 14, the amount of excess profits tax payable thereunder is found to be less than that determined as payable by the provisional assessment, any excess of tax paid as a result of the provisional assessment shall be refunded to the assessee together with interest at 5 *per cent per annum* calculated from the date of payment of such excess tax to the date of the order of refund, both days inclusive.]

15. If, for any reason profits of any chargeable accounting period chargeable to excess profits tax have escaped assessment, or have been under assessed, or have been the subject of excessive relief, the Excess Profits Tax Officer may at any time serve on the person liable to such tax a notice containing all or any of the requirements which may be included in a notice under section 13, and may proceed to assess or reassess the amount of such profits liable to excess profits tax and the provisions of this Act shall, so far as may be, apply as if the notice were a notice issued under that section:

Profits escaping assessments

Provided that unless definite information has come into his possession the Excess Profits Tax Officer shall not initiate proceedings under this section without obtaining the previous approval of the Inspecting Assistant Commissioner.

Penalties

16. If the Excess Profits Tax Officer, the Appellate Assistant Commissioner or the Commissioner, in the course of any proceedings under this Act, is satisfied that any person has, without reasonable cause, failed to furnish the return required under sub-section (1) of section 13, or to produce or cause to be produced the accounts or documents or other evidence required by the Excess Profits Tax Officer under sub-section (2) of that section, or has, either in the said proceedings or in any earlier proceedings relating to an assessment in respect of the same chargeable accounting period, concealed particulars of the profits made by or capital employed in the business, or has deliberately furnished inaccurate particulars of such profits or capital, he may direct that such person shall pay by way of penalty, in addition to the amount of any excess profits tax payable, a sum not exceeding-

- (a) where the person has failed to furnish the return required under sub-section (1) of section 13, the amount of the excess profits tax payable; and
- (b) in any other case, the amount of excess profits tax which would have been avoided if the return made had been accepted as correct:

Provided that the Excess Profits Tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner.

Appeals

17. (1) Any person aggrieved by a decision made in pursuance of section 8, or objecting to the amount of excess profits tax for which he is liable as assessed by the Excess Profits Tax Officer or denying his liability to be assessed under this Act, or objecting to any penalty imposed by the Excess Profits Tax Officer, or to the amount of any deficiency of profits as assessed by the Excess Profits Tax Officer, or to the amount allowed by the Excess Profits Tax Officer, by way of relief under any provision of this Act or to any refusal by the Excess Profits Tax Officer to grant relief may appeal to the Appellate Assistant Commissioner:

Provided that no appeal shall lie against a determination of the amount of the profits of any standard period where those profits have been determined in accordance with the second proviso to rule 1 of the First Schedule except in respect of adjustments made under the provisions of that Schedule:

Provided further that no appeal shall lie under this section against any apportionment made by the Excess Profits Tax Officer under the proviso to sub-section (5) of section 8, against any refusal to make modifications or against any modifications made by the Excess Profits Tax Officer under sub-section (8) of section 8, against any decision of the Excess Profits Tax Officer under rule 11 of the First Schedule, or against any decision of the Board of Referees or the National Board of Revenue.

(2) An appeal shall ordinarily be presented within forty-five days of receipt of the notice of demand relating to the assessment or penalty objected to, or in the case of an appeal against the assessment of a deficiency of profits, within forty-five days of the receipt of the copy of the order determining the deficiency, or in the case of an appeal against the amount of a relief granted or a refusal to grant relief, within forty-five days of the receipt of the intimation of the order granting or refusing to grant the relief, but the Appellate Assistant Commissioner may admit an appeal after the expiration of that period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(3) An appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(4) The Appellate Assistant Commissioner shall determine the appeal after giving both parties to the appeal an opportunity of being heard.

If the Appellate Assistant Commissioner is not satisfied that the assessment, decision or order which is the subject of appeal ought to be interfered with, he shall reject the appeal and the assessment, decision or order shall stand good.

If he is satisfied that the assessment, decision or order ought to be interfered with, he shall, subject to the provisions of this Act, pass such orders as he thinks fit and such orders may include an order enhancing the assessment or penalty:

Provided that an order enhancing an assessment or penalty shall not be made unless the person affected thereby has been given an opportunity of showing cause against the enhancement.

Appeal to
Commissioner
against
Appellate
Assistant
Commissioner's
orders imposing
penalties or
enhancing
assessments or
penalties

18. (1) Any person objecting to an order passed by an Appellate Assistant Commissioner imposing on him a penalty under section 16 or enhancing his assessment or enhancing a penalty under section 17 may appeal to the Commissioner within thirty days of the date on which he was served with notice of such order.

(2) In disposing of the appeal the Commissioner may, after giving the appellant an opportunity of being heard, pass such orders thereon as he thinks fit.

(3) On the coming into operation of Part II of the Indian Income-tax (Amendment) Act, 1939, this section shall cease to have effect.

Power of
revision

19. (1) The Commissioner may of his own motion call for the record of any proceeding under this Act which has been taken by any Excess Profits Tax Officer or Appellate Assistant Commissioner subordinate to him, and on receipt of the record may make such enquiry, or cause such enquiry to be made, and, subject to the provisions of this Act, may pass such orders thereon (including an order enhancing an assessment) as he thinks fit:

Provided that he shall not pass any order prejudicial to a person to whose business this Act applies without hearing him, or giving him a reasonable opportunity of being heard.

(2) On the coming into operation of Part II of the Indian Income-tax (Amendment) Act, 1939, sub-section (1) shall cease to have effect, but thereafter any Excess Profits Tax Officer or any person in respect of whose business an order under section 14 has been passed who objects to an order passed by an Appellate Assistant Commissioner under section 16 or section 17 may, within the prescribed time and in the prescribed manner, appeal against such order to the Appellate Tribunal constituted under the Income-tax Act, 1922 .

(3) The Appellate Tribunal shall determine the appeal after giving both parties to the appeal an opportunity of being heard.

If the Appellate Tribunal is not satisfied that the assessment, decision or order which is the subject of appeal ought to be interfered with, it shall reject the appeal and the assessment, decision or order shall stand good.

If it is satisfied that the assessment, decision or order ought to be interfered with, it shall, subject to the provisions of this Act, pass such orders as it thinks fit, and such orders may include an order enhancing the assessment or penalty:

Provided that an order enhancing an assessment or penalty shall not be made unless the person affected thereby has been given an opportunity of showing cause against the enhancement.

20. The Commissioner may, at any time within four years from the date of any order passed whether by himself or by any Appellate Assistant Commissioner or Excess Profits Tax Officer under this Act, rectify any mistake in any evidence recorded during assessment or appellate proceedings, or any mistake apparent from the record and shall within the like period rectify any mistake apparent from the record which has been brought to his notice by a person to whose business this Act applies:

Rectification of mistakes

Provided that no such rectification shall be made having the effect of enhancing the liability of any person unless that person has been given a reasonable opportunity of being heard.

21. The provisions of sections 4A, 4B, 10, 13, 24B, 29, 36 to 44C (inclusive), 45 to 48 (inclusive), 49E, 49F, 50, 54, 61 to 63 (inclusive), 65 to 67A (inclusive) of the Income-tax Act, 1922, shall apply with such modifications, if any, as may be prescribed as if the said provisions were provisions of this Act and referred to excess profits tax instead of to income-tax, and every officer exercising powers under the said provisions in regard to income-tax may exercise the like powers under this Act in regard to excess profits tax in respect of cases assigned to him under sub-section (3) of section 3 as he exercises in relation to income-tax under the said Act:

Application of provisions of Act XI of 1922

Provided that references in the said provisions to the assessee shall be construed as references to a person to whose business this Act applies.

21A. Any reference in this Act to the Income-tax Act, 1922, shall, in relation to the profits of any chargeable accounting period and to the state of affairs and all the circumstances necessary to determine the charge to excess profits tax, mean the said Act as in force in the relevant period:

Application of Income-tax Act before 15th day of August 1947, with certain modifications

Provided that whatever be the relevant period, references to section 46 of the said Act shall be deemed to include references to sub-sections (8), (9) and (10) of that section.

Income-tax papers to be available for the purposes of this Act

22. (1) Notwithstanding anything contained in the Income-tax Act, 1922, all information contained in any statement or return made or furnished under the provisions of that Act or obtained or collected for the purposes of that Act, may be used for the purposes of this Act.

(2) All information contained in any statement or return made or furnished under the provisions of this Act or obtained or collected for the purposes of this Act may be used for the purposes of the Income-tax Act, 1922.

Failure to deliver returns or statements

23. If any person fails, without reasonable cause or excuse, to furnish in due time any return or statement, or to produce or cause to be produced, any accounts or documents required to be produced under section 13, he shall on conviction by a Magistrate be punishable with fine which may extend to five hundred Taka, and with a further fine which may extend to fifty Taka for every day during which the default continues.

False statement and declaration

24. If a person makes in any return required under section 13, any statement which is false, and which he either knows or believes to be false or does not believe to be true, he shall be punishable on conviction by a Magistrate with simple imprisonment which may extend to six months, or with fine which may extend to one thousand Taka, or with both.

Institution of proceedings and composition of offences

25. (1) A person shall not be proceeded against for an offence under section 23 or section 24 except at the instance of the Inspecting Assistant Commissioner.

(2) No prosecution for an offence punishable under section 23 or section 24 or under the ¹[Penal Code] shall be instituted in respect of the same facts as those in respect of which a penalty has been imposed under this Act.

¹ The words "Penal Code" were substituted for the words "Pakistan Penal Code" by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

(3) The Inspecting Assistant Commissioner may, either before or after the institution of proceedings, compound any offence punishable under section 23 or section 24.

26. (1) If on an application made to it through the Excess Profits Tax Officer the National Board of Revenue is satisfied in the case of any business that special circumstances exist which render it inequitable that the standard profits of the business in relation to any chargeable accounting period should be computed in accordance with the provisions of sub-section (1) of section 6, and that no relief or insufficient relief has been granted under the provisions of sub-section (3) of that section, the National Board of Revenue may direct that the standard profits of the business shall be computed to be such greater amount as the National Board of Revenue thinks just:

Power of National Board of Revenue to grant relief in special cases

Provided that such amount shall not exceed the statutory percentage of the average amount of the capital employed in the business unless the National Board of Revenue is satisfied that owing to some specific cause peculiar to the business it is just that a greater amount should be allowed and that the relief, if any, afforded by the Board of Referees under sub-section (3) of section 6 is inadequate:

Provided further that a determination on an application under this sub-section-

- (a) shall have effect with respect to all subsequent chargeable accounting periods;
- (b) shall exclude any further application under this sub-section.

(2) Without prejudice to the generality of the provisions of sub-section (1) the National Board of Revenue shall, in considering the making of a direction under that sub-section, have regard to the following circumstances, namely:

- (a) that the capital employed in a business commenced on or after the 1st day of July, 1938, is so small in relation to the volume of the activities of the business that to compute the standard profits in accordance with the provisions of section 6 would be inequitable, taking into account the normal profits made in similar businesses;

- (b) that owing to the nature of the business heavy expenditure by way of preliminary expenses or expenses in connection with experimental or development work has been incurred in accounting periods closely preceding the chargeable accounting period and that during the chargeable accounting period such expenditure would normally fall to be written off wholly or partly in the books of the person chargeable to excess profits tax;
- (c) that the business is of a pioneer nature, that is to say, is concerned with an industrial process or a form of manufacture or production not undertaken in the taxable territories before the 1st day of April, 1932, and has not been in existence long enough to have paid income-tax for the previous year as determined for the purpose of the income-tax assessment for the year beginning on the 1st day of April, 1937.

(3) If on an application made to it through the Excess Profits Tax Officer the National Board of Revenue is satisfied that the computation in accordance with the provisions of Schedule I of the profits of a business during any chargeable accounting period would be inequitable, owing to any of the following circumstances, namely:-

- (a) any postponement or suspension, as a consequence of the present hostilities, of renewals or repairs; or
- (b) the provision of buildings, plant or machinery which will not be required for the purposes of the business after the termination of the present hostilities; or
- (c) difficulties in bringing into the taxable territories income arising outside the taxable territories where the ¹[* * *] country in which the income accrued prohibits or restricts by its laws the remittance of money to the taxable territories, and loss in the remittance to the taxable territories of such income because of fluctuations in the rate of exchange between that ²[* * *] country and the taxable territories; or

¹ The words "State or" were omitted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² The words "State or" were omitted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

- (d) in the case of any business which includes the winning of any mineral (including mineral oil) the winning of which is of exceptional importance for the prosecution of the present war, an increase in the output of the mineral which was essential in the national interest and which has had the effect of shortening the period during which but for such increased wartime output the source of the mineral might have been expected to be exhausted;

the National Board of Revenue may direct that such allowances shall be made in computing the profits of the business during that chargeable accounting period as the National Board of Revenue thinks just:

Provided that in making such direction the National Board of Revenue may impose such conditions as it deems appropriate.

(4) An application to the National Board of Revenue under this section 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 or of the extended period allowed by the Excess Profits Tax Officer under the proviso to that subsection, but in the case of an application under sub-section (1) of this section, if the person carrying on the business has made or is making an application under sub-section (3) of section 6 the application shall be presented to the Excess Profits Tax Officer before the expiry of forty-five days from the date on which the order of the Board of Referees disposing of the application under sub-section (3) of section 6 is communicated to the person who has made that application.

26A. (1) If on an application made to it through the Excess Profits Tax Officer, the National Board of Revenue is satisfied that a person who in a chargeable accounting period ending on the 31st day of March, 1946, carried on a business the profits of which for any chargeable accounting period are charged with excess profits tax-

Further powers of National Board of Revenue to grant certain relief

- (i) incurred during the period commencing on the 1st day of April, 1946 and ending on the 31st day of December, 1947, in connection with that business,

- (a) expenditure on the removal of works constructed for protection against enemy attack;
 - (b) where under the orders of a competent authority the business was wholly or partly removed during the war, expenditure on again removing the business or part thereof;
 - (c) where any physical assets held for the purposes of the business were altered to adapt them to war condition expenditure on re-adapting them to normal requirements;
 - (d) expenditure in consequence of the termination of any contract for the supply of goods, materials or services, or the lease of buildings or machinery to him, where that contract is terminated by reason of the termination of a contract for the provision by him of goods, materials or services for the purposes of the war; or
- (ii) incurred during the period commencing on the 1st day of April, 1946, and ending on the 31st day of December, 1947, a loss on the sale of trading stock held on the 31st day of March, 1946, for the purposes of the business; or
 - (iii) incurred in any accounting period ending on or before the 31st day of March, 1946, in connection with that business any expenditure referred to in the sub-clauses of clause (i) which, except under the provisions of this sub-section, is not allowable, either wholly or partly, in computing the profits of such accounting period,

the National Board of Revenue may direct that such allowance as it thinks just shall be made in computing the profits of the business during the chargeable accounting period ending on the 31st day of March, 1946, and effect shall be given to such direction by repayment or otherwise, as the case may require:

Provided that in giving any such direction, the National Board of Revenue may impose such conditions as it considers appropriate:

Provided further that where the applicant satisfies the National Board of Revenue that it was not possible to complete any work referred to in sub-clauses (a), (b) and (c) of clause (i) within the period specified in that clause, the National Board of Revenue may extend the said period to such date as it considers reasonable:

Provided further that, where any change has taken place in the persons carrying on the business, the persons carrying it on after the change shall have the same right to make an application under this sub-section in respect of any expenditure referred to in sub-clauses (b) and (c) of clause (i) as the persons previously carrying on the business would have had if there had been no such change.

(2) Where an accounting period included, but did not end on the 31st day of March, 1946, all expenditure referred to in the sub-clauses of clause (i) of sub-section (1) which would, apart from the provisions of this sub-section and rule 11 of Schedule 1, be allowable as a deduction in computing the profits of the said accounting period, shall be treated for the purposes of sub-section (1) as if it were incurred after that day, and if an application is made under this section, no deduction from, or in computing, the profits of any accounting period or chargeable accounting period shall be allowed in respect of such expenditure otherwise than under sub-section (1).

(3) Where a change takes place in the persons carrying on a business, or a person carrying on a business, being a body corporate, becomes or ceases to be a subsidiary company or principal company within the meaning of sub-section (6) of section 9, and where except for the happening of that event relief would be allowable under this section, the National Board of Revenue may, if it thinks fit, allow such relief under this section as it considers just, having regard to the extent to which the persons directly or indirectly interested in the business or body corporate, as the case may be, before the change remain interested therein after the change.

27. (1) The National Board of Revenue may, subject to the control of the Government, make rules for carrying out the purposes of this Act.

Power to make rules

(2) Without prejudice to the generality of the foregoing power, such rules may-

- (a) prescribe the procedure to be followed on appeals, applications for rectification of mistakes, and applications for refunds;

- (b) provide for the adaptation to excess profits tax of any of the provisions of the Income-tax Act, 1922, which are made applicable to excess profits tax by section 21; or of any rules made under any such provision;
- (c) provide in regard to companies whose business consists wholly or mainly in the dealing in or holding of investments, for the granting of exemption or relief from liability to excess profits tax of profits derived from investments in other companies the profits of which have been subjected to excess profits tax in the taxable territories;
- (d) provide for any matter which by or under this Act is to be prescribed.

(3) The power to make rules conferred by this section shall be exercised in like manner as the power to make rules under section 59 of the Income-tax Act, 1922.

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

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 thinks 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 become 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.

SCHEDULE 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.
