

JOINT/SELECT COMMITTEE  
REPORTS OF LEGISLATIVE  
ASSEMBLY -1947

**The Business Profit Taxes Bill**

I. List of Reports of Select Committees  
presented to the Legislative Assembly  
of the Indian Legislature in 1947.

S.No.	Short title of the Bill.	Date of presen- tation.	Date of publica- tion.
1.	The Indian Navy (Discipline) (Amendment) Bill.	3.2.1947.	15.2.1947
2.	The Motor Vehicles (Amendment) Bill.	3.2.1947.	15.2.1947
3.	The Motor Vehicles (Second Amendment) Bill.	3.2.1947.	15.2.1947
<del>4.</del>	The Foreign Exchange Regulation Bill.	3.2.1947.	15.2.1947
5.	The Industrial Disputes Bill.	3.2.1947.	15.2.1947
6.	The Railways (Transport of Goods) Bill.	17.2.1947.	1.3.1947
7.	The Banking Companies Bill.	17.2.1947.	1.3.1947
8.	The Indian Trade Unions (Amendment) Bill.	26.2.1947.	5.4.1947
9.	The Insurance (Second Amendment) Bill.	5.3.1947.	15.3.1947
10.	The Delhi and Ajmer-Merwara Rent Control Bill.	12.3.1947.	22.3.1947
11.	The Imports and Exports (Control) Bill.	12.3.1947.	22.3.1947
12.	The Income-tax and Excess Profits Tax (Amendment) Bill.	19.3.1947.	29.3.1947
13.	The Business Profits Tax Bill.	19.3.1947.	29.3.1947
14.	The Rubber (Production and Marketing) Bill.	1.4.1947.	12.4.1947
15.	The Control of Shipping Bill.	1.4.1947.	12.4.1947
16.	The Capital Issues (Continuance of Control) Bill.	7.4.1947.	12.4.1947

S.No.	Short title of the Bill.	Date of presentation.	Date of publication.
17.	The Taxation on Income (Investigation Commission) Bill.	7. 4.1947.	19. 4.19

II. List of Reports of Select Committees Presented to the ~~Legis~~ Constituent Assembly of India (Legislative) in 1947.

1. The Delhi and Ajmer-Merwara Rent Control (Amendment) Bill. 1. 12.1947. 13.12.19
2. The Delhi Premises (Requisition and Eviction) Bill. 1.12.1947. 13.12.19
3. The Extra-Provincial Jurisdiction Bill. 6.12.1947. 13.12.19

.....  
.....

## LEGISLATIVE ASSEMBLY

### REPORT OF THE SELECT COMMITTEE ON THE BUSINESS PROFITS TAX BILL, 1947.

---

We, the undersigned, members of the Select Committee to which the Bill to impose a special tax on a certain class of income was referred, have considered the Bill and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

At the outset of our discussions some of us proposed that the Bill should be recast on the lines of the Excess Profits Tax Act, but Government was unable to accept this proposal.

*Clause 2 and Schedule 2.*—We consider that the flat figure of one lakh of rupees by way of abatement contained in the Bill is not suitable for all classes of business ownership, and we accordingly introduce as sub-clause (1) of clause 2 a definition of abatement, fixing differing criteria of abatement in respect of companies, firms, Hindu undivided families and others, together with a second schedule laying down the basis on which the capital of a company will be computed, where the abatement is expressed as a percentage of capital.

The other changes in this clause are all consequential upon the substantial alteration of the abatement figure mentioned above.

*Clause 4* ~~is~~ recast to include therein provision exempting from the tax any bonus or subsidy from the Central Government.

*Clause 7.*—We add a proviso enabling the Central Board of Revenue to use its discretion to grant relief in certain cases, as has been done in practice in relation to excess profits tax.

*Clause 8.*—The amendments to sub-clause (1) are consequential upon the abatement provisions applicable to companies which we propose, and to sub-clause (8) we add provision conferring a right of appeal on the principal company against orders of allocation under this sub-clause.

*Clause 13.*—We think that some interest should be payable on taxation collected in excess under the provisional assessment and make an addition to this clause accordingly.

*Clauses 11, 14 and 16.*—In these clauses we propose small changes in the periods mentioned.

2. The Bill was printed in the official Gazette on Saturday, March 8th 1947.

• C. We think that the Bill has not been so altered as to require republication, and we recommend that it be passed as now amended.

JOGENDRA NATH MANDAL.

LIAQUAT ALI KHAN.

P. J. GRIFFITHS.

GEOFFREY W. TYSON.

MUHAMMAD YAMIN KHAN.

K. NAZIMUDDIN.

MUHAMMAD NAUMAN.

H. A. S. H. I. SETH.

\*K. C. NEOGY.

\*MANU SUBEDAR.

\*D. CHAMAN LAL.

\*VADILAL LALLUBHAI.

\*MOHAN LAL SAKSENA.

\*N. G. RANGA.

\*SATYA NARAYAN SINHA.

\*M. R. MASANI.

N. M. JOSHI.

SHAVAX A. LAL.

J. SHEEHY.

C. W. AYERS.

\*MANGAL SINGH.

NEW DELHI ;

*The 19th March, 1947.*

---

\*Subject to a minute of dissent.

## MINUTES OF DISSENT

## I

1. We regret we feel obliged to disagree with the recommendations of the majority, which includes departmental officials.

2. This Bill was referred to Select Committee by the Assembly without debate in order to enable the possibilities of taxing surplus business profits (made during the past year) in an equitable manner to be explored. Indeed, in the course of the general budget discussion several members of the Assembly had expressed the view that the proposed Business Profits Tax was objectionable by reason of its being a rough and ready measure of taxation, inequitable in its incidence, and that it was in many respects a more unsatisfactory measure than the Excess Profits Tax. When, therefore, the Finance Member put before the Select Committee a statement (*vide* Annexure) showing that the yield of the E. P. T., even at the lower rate of 33 1/3 per cent. would be substantially higher than the yield of the proposed Business Profits Tax and when a member of the Committee (not being one of the signatories to this minute) suggested that the present measure be remodelled so as to bring it in line with the provisions of the old E. P. T., we readily supported the idea and even agreed to an incidence of 33 1/3 per cent, to dropping all reference to deficiencies and to making other essential adjustments. Three reasons weighed with us in arriving at this view. The first was that a revival of the E. P. T. for one year would eliminate from the present proposal many of its defects and that, since the E. P. T. had been operated for several years and its form was known and understood both by the Department and the bulk of assesseses, who would be more readily reconciled to it, it would not have the same adverse psychological effects as the present measure. The second reason was that the burden would fall on the shoulders of those who could bear it best. The third reason was that in this way the Government revenues would get a higher yield than what was expected by the Finance Member from the Business Profits Tax. These arguments, pressed by us in concert with members of other parties, so impressed the Finance Member that at one stage he offered to examine the proposal and to prepare an alternative scheme based on the old E. P. T. with necessary modifications. We were disappointed when later the Finance Member intimated that he had decided to drop the idea and wanted to proceed with the Business Profits Tax in its present form. We would like to record our regret that this alternative, which was at one stage acceptable to all sections of the Select Committee, was later found unacceptable by the Finance Member and that its consideration by the Select Committee was at that stage ruled out of order by the Chair.

3. So far as the present Bill is concerned, we regret we cannot support it in the form in which it emerges from the Select Committee. In order to minimise, if not to obviate, its deleterious effect on existing enterprises and on the investment of capital in new industries, which are matters of vital concern at a time when increased production is India's prime need, we proposed amendments which, we regret, were not accepted by the majority of the Committee.

4. In clause 2 of the Bill, there are two important changes that we proposed and would like to see effected. Both are with regard to the definition of "abatement" in sub-clause (1). Our first proposal is that, in place of 5 per cent. of capital in respect of the large bulk of companies and 6 per cent. in respect of director-controlled companies suggested by the majority of our colleagues, we would like 7½ per cent. to be substituted. We trust it will be

appreciated that the sums involved in such abatement of  $7\frac{1}{2}$  per cent., as well as the balance of the profits left after the imposition of this tax over the limit of the abatement, would still be liable under the present taxation proposals to the somewhat heavy rate of seven annas in the rupee before any amounts could either be taken to reserve or paid out in dividends. The second change is in regard to the computation of capital which is prescribed in Schedule 2 to this Bill. We regret we cannot agree to the terms of Schedule 2 as proposed by the majority of our colleagues. We would, in its place, substitute the method of computation of capital employed laid down in Schedule 2 of the Excess Profits Tax Act. We regret that, although on this proposal of ours the Committee was evenly divided, we were unsuccessful in getting the amendment accepted. We strongly urge that this very necessary change should be made in Schedule 2 to this Bill which would not only make the calculation of capital sounder in principle and fairer to the assessee but also bring it in line with principles which have been hitherto followed by Government themselves for several years. We cannot appreciate the policy which has prompted a departure from these sound principles. We apprehend *inter alia* that if such a departure is made, the incidence of tax will, in the case of numerous private firms, have little relation to the turnover of the business or the profits usually made, since borrowings form a very important element in the carrying on of business by private firms in this country, and if borrowings are altogether excluded from the computation of capital, the minimum of rupees one lakh would be the only exemption applicable to such firms.

5. In clause 4 of the Bill, our proposal was that the incidence of the tax should be  $12\frac{1}{2}$  per cent. of the taxable profits in place of 25 per cent. In making this proposal we have been guided by the consideration that when a new form of taxation is established for the first time in our fiscal history, sound policy dictates that its incidence should not be anything as severe as that proposed by the majority of our colleagues. We would also urge that the effect of the new and uncertain burden of taxation on industry should be estimated not with regard to this proposal alone but in the light of the cumulative effect of this tax along with other taxation measures, such as the Capital Gains Tax the increase in the Corporation Tax and the alteration in the incidence of the Super-tax. Another proposal of ours in connection with this clause of the Bill is that, along with the business of life insurance, general insurance, banking, investment and public utility concerns should be totally exempt from Business Profits Tax under this Bill. Special consideration might also be given to the Indian shipping industry, whose growth is so strongly desired by Indian public opinion.

6. We drew attention to the omission from this Bill of a clause on the lines of Section 26 of the Excess Profits Tax Act which gave power to the Central Board of Revenue to give relief if it was satisfied that, in the case of any particular business, special circumstances existed which rendered it inequitable that the abatement should be computed in accordance with the provisions of that measure. Such special circumstances, which might also arise in the operation of this Bill, would include in particular cases where the capital employed in a business is disproportionately small in relation to the volume of the activities of the business and the risks involved, where heavy expenses have been incurred in connection with experimental or development work, or where the business is of a pioneer nature. We fail to understand how the addition of *such a clause* enabling the grant of relief by the Central Board of Revenue at its discretion can possibly be objected to.

7. We know that the modifications suggested by us in Clauses (2) and (4) of the Bill would reduce the yield of this tax, but in our opinion the yield originally estimated by the Finance Member was a gross underestimate. We would also point out that not only was the suggestion for a revival of the E. P. T. at 33 1/3 per cent. which would have yielded more than the sum desired by the Finance Member, turned down by him but that an offer made by one of us to suggest alternative measures by which such shortfall of revenue might be made good was met with a marked disinclination on his part to consider such suggestions. On the issue of arrears of collection of income-tax and super-tax, it was not denied that there were heavy arrears. It was claimed that some of these arrears were included in the estimates. We feel, however, that additional arrears would accrue to Government Revenues in the current budgetary year if efficient and energetic collection were effected.

8. In conclusion, we would like to record our opinion that, even in the modified form in which we are recommending it, the proposed Business Profits Tax tends to conceal the increased incidence of taxation on investors and on businesses in this country and that in the case of every business concern such incidence would, at the lowest, be 7 annas in the rupee and might go up to 8, 9 or 10 annas, or even more, dependent on its capital structure and profits. In no case can there be any justification for the operation of this tax being extended beyond the period of one year for which this measure is devised.

MOHAN LAL SAKSENA.

K. C. NEOGY.

SATYA NARAIN SINHA. *ya*

N. G. RANGA.

M. R. MASANI.

VADILAL LALLUBHAI.

MANU SUBEDAR.

D. CHAMAN LALL.

MANGAL SINGH.

NEW DELHI ;

*The 19th March 1947.*



## ANNEXURE TO MINUTE OF DISSENT

*Statement supplied by the Finance Department*

Case	E. P. T. at 66 2/3 per cent actual	Tax payable if E. P. T. charged			B. P. T. at 25 per cent. on excess over Rs. one lakh
		at 50 per cent with Standard	at 40 per cent of 8 per cent. capital	at 33 1/3 per cent on Proprietor's	
	Rs. Lakhs	Rs. Lakhs	Rs. Lakhs	Rs. Lakhs	Rs. Lakhs
1 . . . . .	167	134	108	90	67
2 . . . . .	99	90	72	60	48
4 . . . . .	181	145	116	97	72
	131	102	82	68	57
5 . . . . .	9	7	5 1/2	4 1/2	3 1/2
6 . . . . .	51	41	33	28	21 1/2
9 . . . . .	39	30	24	20	15 1/2
10 . . . . .	30 1/2	...	...	...	12 1/2
11 . . . . .	14	...	...	...	5 1/2
12 . . . . .	18 1/2	...	...	...	7 1/2
15 . . . . .	16 1/2	...	...	...	6 1/2
14 . . . . .	6.6	...	...	...	2.7
16 . . . . .	1/2	1 1/2	1	4/5	1/2
17 . . . . .	10	15	12	10	8
18 . . . . .	14	...	...	...	7 1/2
19 . . . . .	59 1/2	51 1/2	41	34	28
20 . . . . .	72 1/2	...	...	...	30 1/2
21 . . . . .	3 1/2	...	...	...	2 1/2

## II

I am generally in agreement with the above joint minute of dissent. But the most important consideration that has weighed with me in dissenting from the majority report is the refusal of the Honourable Finance Member to reinstate the E. P. T. with suitable modifications favouring the Government itself in the place of this proposed B. P. T. although the E. P. T. is shown by the figures supplied to us by the Central Board of Revenue, to be much more productive than the B. P. T. when the business community which has to pay these taxes has itself preferred to accept the E. P. T. to the proposed B. P. T. and when the former can yield even more revenue, I consider the attitude of the Finance Member to be wholly inexplicable and unjustifiable.

Statesmanship and administrative efficiency and facility would seem to indicate that Government ought to agree to go back to E. P. T. instead of forcing the B. P. T. which the business community so much dislikes. Hence my protest against this unreasonable attitude of the Government over this fundamental matter. Hence my unwillingness to go into the details of this B. P. T. Bill.

NEW DELHI;

N. G. RANGA.

*The 19th March 1947.*

(AS AMENDED BY THE SELECT COMMITTEE)

(Words underlined or *sidelined* indicate the amendments suggested by the Committee; asterisks indicate omissions.)

*A Bill to impose a special tax on a certain class of income*

WHEREAS it is expedient to impose a special tax on income arising from business;

It is hereby enacted as follows:—

1. (1) This Act may be called the Business Profits Tax Act, 1947. Short title, extent and commencement.

(2) It extends to the whole of British India.

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

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

(1) "abatement" means, in respect of any chargeable accounting period, a sum which bears to a sum equal to—

(a) in the case of a company, not being a company deemed for the purposes of section 9 to be a firm, six per cent. or five per cent. of the capital of the company on the first day of the said period computed in accordance with Schedule II, according as the directors of the company respectively have or have not control of the company, or one lakh of rupees, whichever is greater, or

(b) in the case of a firm having—

(i) not more than two working partners, one lakh of rupees, or

(ii) three working partners, one and a half lakhs of rupees, or

(iii) four or more working partners, two lakhs of rupees, or

(c) in the case of a Hindu undivided family, two lakhs of rupees, or

(d) in any other case, one lakh of rupees,

the same proportion as the said period bears ~~to~~ <sup>to</sup> period of one year; ↳ The

(2) "accounting period" in relation to any business means any period which is or has been determined as the previous year for that business for the purposes of the Indian Income-tax Act, 1922;

(3) "business" includes any trade, commerce or manufacture, or any adventure in the nature of trade, commerce or manufacture, or any profession or vocation the profits of which are chargeable according to the provisions of section 10 of the Indian Income-tax Act, 1922:

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 ;

(4) "chargeable accounting period" means—

(a) any accounting period falling wholly within the term beginning on the first day of April, 1946, and ending on the thirty-first day of March, 1947 ;

(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 ;

VII of 1913.

(5) "Company" means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or of Royal Charter or Letters Patent, or of an Act of the Legislature of a British possession or of a law of an Indian State, and includes any foreign association, whether incorporated or not, which the Central Board of Revenue may, by general or special order, declare to be a company for the purposes of this Act .

(6) "control of a company" means control direct or indirect of more than one-half of the voting power attached to the total issued paid-up share capital of the company, or control vested by its Memorandum and Articles of Association otherwise than by reference to such voting power :

Provided that the voting power attached to shares held by a nominee or trustee for any person shall be deemed for the purpose of this definition to be held by that person ;

(7) "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 abatement in respect of that period ;

(ii) where a loss has been made in any chargeable accounting period, the amount of the loss added to the abatement in respect of that period ;

(8) "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 ;

(9) "dividend" has the same meaning as in section 2 of the Indian Incometax Act , 1922 :

(10) "firm", "partner" and "partnership" have the same meanings respectively as in the Indian Partnership Act, 1932;

XI of 194

(11) "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;

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

(13) "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;

(14) "person" includes a Hindu undivided family;

(15) "prescribed" means prescribed by rules made under this Act;

(16) "profits" means profits as determined in accordance with \* Schedule I;

(17) "taxable profits" means the amount by which the profits during a chargeable accounting period exceed the abatement in respect of that period;

(18) "working partner" of a firm means a partner thereof who is required by the terms of the contract of partnership to devote substantially the whole of his time to the business of the firm.

3. (1) Every Commissioner of Income-tax, Appellate Assistant Commissioner of Income-tax, Inspecting Assistant Commissioner of Income-tax and Income-tax Officer shall have the like powers under this Act and in relation to the same area and cases as he exercises under the Indian Income-tax Act, 1922.

Tax Authorities.

XI of 1932

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

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

4. Subject to the provisions of this Act, there shall, in respect of any business to which this Act applies, be charged, levied and paid on the amount of the taxable profits during any chargeable accounting period, a tax (in this Act referred to as "business profits tax") which shall be equal to twenty-five per cent. of the taxable profits:

Charge of tax.

Provided that—

(a) any profits which are, under the provisions of sub-section (3) of section 4 of the Indian Income-tax Act, 1922, exempt from income-tax.

XI of 1932

(b) all profits from any business of life insurance,  
 (c) any sum paid to a business by or through the  
 Central Government by way of bonus or subsidy,—  
 shall be totally exempt from business profits tax under this  
 Act.

Application of Act

XI of 1922

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 Indian Income-tax Act, 1922, or of clause (c) of that sub-section :

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

Provided further that this Act shall not apply to any income, profits or gains of business accruing or arising within an Indian State unless such income, profits or gains are received or deemed under the provisions of the aforesaid Act to be received in or are brought into British India in any chargeable accounting period, or are assessable under section 42 of that Act.

Relief on  
 occurrence of  
 deficiency of  
 profits.

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

(a) the aggregate amount of the taxable profits for the previous chargeable accounting periods shall be deemed to be reduced by the amount of the deficiency of profits and the amount of business 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 taxable profits 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 taxable profits for the next subsequent chargeable accounting period, and if and so far as it exceeds the amount of those profits, any taxable profits for the next subsequent chargeable accounting period and so on.

Change in persons  
 carrying on  
 business.

7. As from the date of any change in the persons carrying on a business, the business shall be deemed for all the purposes of this Act to have been discontinued and a new business to have been commenced.

Provided that where a change takes place in the persons<sup>s</sup> carrying on a business and where except for such change relief would be allowable under section 6, the Central Board of Revenue may, if it thinks fit, allow such relief under that section as it considers just, having regard to the extent to which the persons directly or indirectly interested in the business before the change remain interested therein after the change.

8. (1) Where any interest, annuity, or other annual payment, or any royalty or rent, is payable 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, and the recipient company is resident outside British India, no allowance shall be made in respect of such payment in computing the profits or losses of the paying company. Interconnected companies.

(2) Where—

- (a) a company (hereinafter referred to as "the principal") is resident in British India and is not a subsidiary of any other company resident in British India; and
- (b) during the whole or any part of any chargeable accounting period of the principal, another company resident or carrying on business within British India (hereinafter referred to as "the subsidiary") is a subsidiary of the principal,

the capital or profits or losses of the subsidiary for such chargeable accounting period or part thereof shall be treated for the purposes of this Act as if they were the capital of, or as the case may be, profits or losses arising from the business of, the principal :

Provided that the profits of the subsidiary so treated shall not be exempted from business profits tax in the hands of the principal by reason of any exemption applicable to the principal under the proviso to section 4.

(3) Where the chargeable accounting periods of the principal and subsidiary are not co-terminous, such division and apportionment of the profits or losses of the subsidiary for any chargeable accounting period shall be made as will allocate the due proportion thereof to the relative chargeable accounting period or periods of the principal; and such division and apportionment shall be by reference to the proportion that the number of days of the chargeable accounting period of the subsidiary falling within the relative chargeable accounting period or periods of the principal bears to the total number of days in the chargeable accounting period of the subsidiary.

(4) 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 four-fifths of its ordinary share capital is beneficially 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.

(5) The business profits tax payable by virtue of this section by the principal shall, for the purposes of section 10, be allocated by the Income-tax Officer to the respective companies concerned in such proportion as in his opinion is just :

Provided that the principal shall have the same rights of appeal against an order of allocation made under this sub-section as it has under this Act against the amount of its business profits tax assessment.

**Aggregation of profits in certain cases.**

9. Where an individual is entitled to profits arising from more than one business, of which at least one is carried on by a firm in which he is a partner, the Income-tax Officer may, with the prior sanction of the Inspecting Assistant Commissioner of Income-tax, aggregate the shares of such individual in the profits or losses of all of such businesses and treat the sum of such aggregation as the profits of a business carried on by such individual and assess him accordingly :

Provided that if the accounting periods of such businesses are not co-terminous, the Income-tax Officer shall determine in respect of such individual his chargeable accounting period and shall make such divisions, apportionments and aggregation of the shares of such individual in the profits or losses of the several businesses as may be necessary to determine for such chargeable accounting period the total profits and gains of such individual therefrom :

Provided further that for the purposes of this section, a company, which is neither one in which the public are substantially interested, as defined in the *Explanation* to sub-section (1) of section 23A of the Indian Income-tax Act, 1922, nor a subsidiary company as defined in sub-section (4) of section 8 of this Act, shall be deemed to be a firm in which the persons having an interest in the company are partners, or, in the case of a sole-shareholder, a business carried on by that sole-shareholder, and the profits of such company shall be computed accordingly :

**XI of 1922.**

Provided further that any profits or losses so aggregated for assessment upon an individual shall be excluded from the profits or losses of the respective businesses for the purposes of this Act ; and no assessment under this Act shall be made in respect of any such business save in the names of the other partners therein.

**Allowance of business profits tax in computing income for income-tax purposes.**

10. The amount of the business profits tax payable by any person for any chargeable accounting period shall, in computing total income for the purposes of the relevant income-tax or super-tax assessment, be allowed as a deduction :

Provided that where, under the provisions of this Act relating to deficiencies of profits relief is given by way of

repayment from business profits tax chargeable for any chargeable accounting period previous to that in which the deficiency occurs, the amount of the deduction allowed 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 Indian Income-tax Act, XI of 1922) in which the deficiency of profits occurs.

11. (1) The Income-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 business profits tax, to furnish within such period, not being less than forty-five 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 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 or the amount of deficiency, if any, available for relief under section 6: Issue of notice for assessment.

Provided that the Income-tax Officer may, in his discretion, extend the date for the delivery of the return.

(2) The Income-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 Income-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.

12. (1) The Income-tax Officer shall, by an order in writing after considering such evidence, if any, as he has required under section 11, assess to the best of his judgment the profits liable to business profits tax and the amount of business 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 business 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) Business profits tax payable in respect of any chargeable accounting period shall be payable by the person carrying on, or treated as 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.**

13. (1) The Income-tax Officer, before proceeding to make an assessment (in this section referred to as the regular assessment) under section 12, may, at any time after the expiry of the period specified in the notice issued under sub-section (1) of section 11 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 taxable profits and the amount of business profits tax payable thereon.

(2) Before making such provisional assessment the Income-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 Income-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 Income-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 Income-tax Officer shall make allowance for any deficiencies of profits for previous chargeable accounting periods which are under the provisions of section 6 to be set off against the taxable profits of the chargeable accounting period in respect of which the assessment is being made :

Provided that, where such deficiencies of profits have not been determined under sub-section (1) of section 12, the Income-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 12, determine the amount of business profits tax due from the assessee.

(6) If, when a regular assessment is made in due course under section 12, the amount of business 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 12, the amount of business 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 two *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.

14. If, in consequence of definite information which has come into his possession, the Income-tax Officer discovers that profits of any chargeable accounting period chargeable to business profits tax have escaped assessment, or have been underassessed, or have been the subject of excessive relief, he may at any time within four years of the end of the chargeable accounting period in question 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 11, and may proceed to assess or reassess the amount of such profits liable to business 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 assessment.

15. If the Income-tax Officer, the Appellate Assistant Commissioner of Income-tax or the Commissioner of Income-tax, 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 11, or to produce or cause to be produced the accounts or documents or other evidence required by the Income-tax Officer under sub-section (2) of that section, or has concealed particulars of the profits of the business, or has deliberately furnished inaccurate particulars of such profits, he may direct that such person shall pay by way of penalty, in addition to the amount of any business profits tax payable, a sum not exceeding— Penalties.

- (a) where the person has failed to furnish the return required under sub-section (1) of section 11, the amount of the business profits tax payable;
- (b) in any other case, the amount of business profits tax which would have been avoided if the return made had been accepted as correct:

Provided that the Income-tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner of Income-tax.

16. (1) Any person objecting to the amount of business profits tax for which he is liable as assessed by the Income-tax Officer or denying his liability to be assessed under this Act, or objecting to any penalty imposed by the Income-tax Officer, or to the amount of any deficiency of profits as assessed by the Income-tax Officer, or to the amount allowed by the Income-tax Officer by way of relief under any provision of this Appeals to Appellate Assistant Commissioner of Income-tax.

Act or to any refusal by the Income-tax Officer to grant relief, may appeal to the Appellate Assistant Commissioner of Income-tax.

(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 thirty 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 of Income-tax 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 of Income-tax shall hear and determine the appeal and, subject to the provisions of this Act, shall pass such orders as he thinks fit, and such orders may include an order enhancing the assessment or a penalty :

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

(5) The procedure to be adopted in the hearing and determination of appeals shall be in accordance with the rules made by the Central Board of Revenue in relation to income-tax.

Appeal to  
Appellate  
Tribunal.

17. Any Income-tax Officer or any person in respect of whose business an order under section 12 has been passed and who objects to an order passed by an Appellate Assistant Commissioner of Income-tax under section 15 or section 16 may, within the prescribed time and in the prescribed manner, appeal against such order to the Appellate Tribunal constituted under the Indian Income-tax Act, 1922, and that Tribunal shall have all such powers in disposing of the appeal as it has in respect of appeals preferred to it under the said Act.

XI of 1922

Rectification of  
mistakes.

18. The Commissioner of Income-tax may, at any time within four years from the date of any order passed by any Appellate Assistant Commissioner of Income-tax or Income-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 :

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.

19. The sections of the Indian Income-tax Act, 1922, as applied to excess profits tax by virtue of section 21 of the Excess Profits Tax Act, 1940, shall, in so far as they are not repugnant to the provisions of this Act, apply to business profits tax as they apply to excess profits tax. Application of provisions of Act XI of 1922. XV of 1940

20. (1) Notwithstanding anything contained in the Indian 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. Income-tax papers to be available for the purposes of this Act. XI of 1922

(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 Indian Income-tax Act, 1922.

21. 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 11, he shall be punishable with fine which may extend to five hundred rupees, and with a further fine which may extend to fifty rupees for every day during which the default continues. Failure to deliver returns or statements.

22. If a person makes in any return required under section 11 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 with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both. False statements.

23. (1) A person shall not be proceeded against for an offence under section 21 or section 22 except at the instance of the Inspecting Assistant Commissioner of Income-tax. Institution of proceedings and composition of offences.

(2) No prosecution for an offence punishable under section 21 or section 22 or under the Indian 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. XIV of 1930

(3) The Inspecting Assistant Commissioner of Income-tax may, either before or after the institution of proceedings, compound any offence punishable under section 21 or section 22.

24. (1) The Central Board of Revenue may, subject to the control of the Central 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 any matter which by, or under, this Act is to be prescribed.

XI of 1922.

(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 Indian Income-tax Act, 1922.

\*SCHEDULE I.

[See SECTION 2 (16).]

*Rules for the computation of profits for purposes of Business Profits Tax.*

XI of 1922.

1. The profits of a business during any chargeable accounting period shall be separately computed, and shall, subject to the provisions of this Schedule, be computed in accordance with the provisions of section 10 of the Indian 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 business profits tax:

Provided further—

XV of 1940.

- (a) that any sums received or credited in a chargeable accounting period which by virtue of rule 9 of Schedule I to the Excess Profits Tax Act, 1940, have been treated as business receipts for the purpose of assessment to excess profits tax ; and
- (b) any expenditure or loss incurred in any chargeable accounting period, allowance in respect of which has been made for excess profits tax purposes,—
- shall be disregarded in computing the profits or losses of the chargeable accounting period :

Provided further that where a chargeable accounting period is not an accounting period, the profits or losses of the business during the accounting periods wholly or partly included within the 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 chargeable accounting period ; and any such apportionment shall be made in proportion to the number of days in the respective periods.

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

XI of 1922.

3. Income received from investments or other property shall be included in the profits only as provided in this rule, that is to say,—

- (a) in the case of the business of a building society, or a banking business, insurance business or business consisting wholly or mainly in the dealing in or holding of investments or other property, the profits shall include all income received from investments or other property ; or
- (b) in the case of a business part of which consists in banking, insurance or dealing in investments or other property, not being a business to which clause (a) applies, the profits shall include all income received from investments or other property held for the purposes of that part of that business :

Provided that—

- (i) income received directly or indirectly by way of dividend or distribution of profits from a body corporate carrying on business as defined in this Act, and
- (ii) income to which the persons carrying on the business are not beneficially entitled,—

shall in no case be included.

4. (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, no deduction shall be made in respect of directors' remuneration in computing the profits for that accounting period.

(2) Where, 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 have during any part of that accounting period a controlling interest therein, and the case is not one to which sub-rule (1) applies, the profits of the accounting period shall be computed as if the directors of the company had no controlling interest therein, and to the part thereof appropriate to the chargeable accounting period ascertained in accordance with the third proviso to rule 1 shall be added the directors' remuneration for that part of the chargeable accounting period during which the directors of the company had a controlling interest therein.

(3) In 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 the business profits tax.

5. (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 Income-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 Income-tax Officer unless he has obtained the prior authority of the Inspecting Assistant Commissioner of Income-tax.

(2) Any person who is dissatisfied with the decision of the Income-tax Officer under this rule may appeal in the prescribed time and manner to the Appellate Tribunal referred to in section 17.

## SCHEDULE II.

[See SECTION 2 (1)].

*Rules for computing the capital of a company for purposes of Business Profits Tax.*

1. For the purposes of ascertaining the abatement under this Act in respect of any chargeable accounting period, the capital of a company shall be computed in accordance with the following rules.

2. (1) Where the company is one to which clause (a) of rule 3 of Schedule I applies, its capital shall be the sum of the amounts of its paid-up share capital and of its reserves in so far as they have not been allowed in computing the profits of the company for the purposes of the Indian Income-tax Act, 1922.

(2) Where the company is one to which clause (b) of rule 3 of Schedule I applies, its capital, ascertained in accordance with sub-rule (1) of this rule shall be diminished by the cost to it of its investments or other property, the income from which is not includible in the profits, so far as that cost exceeds any debt for money borrowed by it.

(3) In all other cases, the capital shall be the sum ascertained in accordance with the said sub-rule, diminished by the cost to the company of its investments so far as that cost exceeds any debt for money borrowed by it.

3. Any deposits with the Central Government under section 10 of the Indian Finance Act, 1942, or section 2 of the Excess Profits Tax Ordinance, 1943, shall not be regarded as investment or other property for the purposes of this Schedule.