

New Zealand



ANALYSIS

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1940, No. 22

AN ACT to make Provision for the Imposition and Title.
Collection of Excess Profits Tax.

[11th October, 1940

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Excess Profits Tax Act, 1940, and shall be read together with and deemed part of the Land and Income Tax Act, 1923 (hereinafter referred to as the principal Act). Short Title.

2. In this Act, unless the context otherwise requires,— Interpretation.

“Committee” means the Excess Profits Committee established under this Act:

“Excess profits” means excess profits assessed under this Act.

3. (1) There shall be levied and paid in accordance with this Act a special tax by way of income-tax, to be known as excess profits tax. Excess profits tax imposed.

(2) Subject to the provisions of this Act, the provisions of the principal Act or any other Act shall apply with respect to excess profits tax and the assessment, recovery, and payment thereof as if it were income-tax.

(3) Excess profits tax shall be levied and paid in and for the year of assessment commencing on the first day of April, nineteen hundred and forty-one, and in and for each subsequent year of assessment that commences not later than one year after the termination of the present war with Germany.

(4) Excess profits tax shall be payable by every taxpayer at the rate of sixty per centum of the amount by which the excess profits derived by the taxpayer during the income year preceding the year of assessment exceeds the sum of the following amounts:—

(a) The amount of the social security charge and the national security tax payable by the taxpayer in respect of the excess profits:

(b) The amount by which the income-tax payable by the taxpayer for the year of assessment exceeds the income-tax that would have been so payable if he had not derived that portion of his assessable income that constitutes excess profits.

4. (1) The following incomes shall be exempt from excess profits tax:—

(a) Royalties or other profits derived by the grantor from the grant of any right to remove any standing timber or to extract any minerals from any land:

(b) Proprietary income within the meaning of section twenty-three of the Land and Income Tax Amendment Act, 1939:

(c) Salary or wages, except as provided in subsection three of this section:

(d) Income derived by any company that is for the time being assessable for income-tax under section ninety-seven of the principal Act or section three of the Finance Act (No. 2), 1937.

(2) For the purposes of this section the term “salary or wages” includes any bonus, gratuity, extra salary, fee, allowance, or emolument of any kind derived

Incomes
exempted
from excess
profits tax.

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by any person in respect of or in relation to his employment or service otherwise than in the course of a business conducted by him.

(3) Any amount which by virtue of section twenty-four of the Land and Income Tax Amendment Act, 1939, is deemed to be a dividend paid by a proprietary company to any person shall for the purposes of section five of this Act be deemed to be excess profits derived by that person, and shall not be exempted under this section as salary or wages: 1939, No. 34

Provided that the excess profits tax payable by that person in respect of that amount or so much thereof as may be determined by the Committee on objection to be excess profits derived by him shall not exceed the difference between that amount or that portion thereof and the excess of the total of the income-tax, excess profits tax, social security charge, and national security tax payable by the proprietary company for the same year of assessment over the total that would have been so payable if that amount or that portion thereof had not been included in the company's assessable income.

5. (1) Where it appears to the Commissioner that any taxpayer has derived excess profits during the income year preceding any year of assessment for which excess profits tax is payable, the Commissioner shall make an assessment in respect of the taxpayer in accordance with the principal Act, setting forth the total amount of the assessable income of the taxpayer, the amount of his excess profits, and the amount of excess profits tax payable in respect thereof.

Commissioner
of Taxes to
make
assessments.

(2) For the purposes of this section every taxpayer shall be deemed to have derived excess profits during any year to the extent by which the assessable income derived by him during that year (exclusive of any loss deductible under section eighty-one of the principal Act and of any income exempted by section four of this Act) exceeds his standard income for that year.

(3) For the purposes of this section the standard income of any taxpayer for any year shall be deemed to be such one of the following sums as the taxpayer selects, namely:—

(a) A sum equal to his normal income within the meaning of this section:

- (b) In the case of a company or a public authority, the sum which, after the deduction therefrom of income-tax thereon at the basic rates, equals six per centum of the amount of the capital employed by the taxpayer in the production during that year of assessable income other than income exempted by section four of this Act:
- (c) In the case of a taxpayer other than a company or a public authority, the sum which, after the deduction therefrom of such amount (not being less than five hundred pounds or more than one thousand pounds) as the Commissioner deems just and reasonable as remuneration for the personal exertion of the taxpayer in the production of his assessable income during that year, equals six per centum of the amount of the capital employed by the taxpayer in the production during that year of assessable income other than income exempted by section four of this Act.

(4) Every taxpayer shall be deemed to have selected the sum referred to in paragraph (a) of the last preceding subsection unless, at the time of making his return of income or within such further time as the Commissioner in any case allows, he notifies the Commissioner that he has selected the sum referred to in paragraph (b) or paragraph (c), as the case may require.

(5) For the purposes of this section the term "normal income", in relation to any taxpayer, means—

(a) A sum equal to the greatest amount of assessable income derived by the taxpayer during any one of the income years included in the period of three years ended on the thirty-first day of March, nineteen hundred and thirty-nine; or

(b) A sum equal to the yearly average of the assessable income derived by the taxpayer during those income years, increased by thirty per centum thereof,—

whichever sum is the less:

Provided that where the taxpayer did not derive assessable income during each of the income years

included in the said period of three years, or where the taxpayer's assessable income for any of those income years was substantially reduced by reason of pestilence, flood, or adverse climatic conditions, or where the taxpayer first commenced to derive assessable income from any particular source or from the employment of any new capital or additional assets at any time during or subsequent to that period, or where the Committee has determined that any amount in excess of the taxpayer's standard income for any year does not constitute excess profits, the Commissioner may from time to time fix the normal income of the taxpayer at such amount as he deems just and reasonable:

Provided also that the normal income of every taxpayer other than a company or a public authority shall be deemed to be not less than five hundred pounds.

(6) For the purpose of calculating the normal income of any taxpayer under this section the assessable income derived by the taxpayer shall be deemed to include all non-assessable income that would have been assessable income if it had been derived by him during the income year ending on the thirty-first day of March, nineteen hundred and forty-one.

(7) For the purpose of calculating the normal income of any taxpayer under this section the assessable income derived by the taxpayer shall be deemed to be calculated as if section thirty-two of the Land and Income Tax Amendment Act, 1939, had applied with respect to every year of assessment commencing after the thirty-first day of March, nineteen hundred and thirty-seven, and without reference to—

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(a) Any deduction or set-off under section eighty-one of the principal Act:

(b) Any income exempted by section four of this Act from excess profits tax:

(c) Any adjustment made by the Commissioner in relation to any income year in respect of any stock reserve created by the taxpayer in any other income year.

(8) For the purposes of this section the amount of the capital employed by any taxpayer in the production of assessable income during any year shall be deemed to be the value at the end of that year as determined by the Commissioner of the taxpayer's assets

employed in the production of that income, reduced by the amount at the end of the year as determined by the Commissioner of the taxpayer's liabilities incurred for the purpose of producing that income:

Provided that the Commissioner may make such adjustment as he deems just and reasonable in any case where the amount of the capital so employed by the taxpayer has been substantially increased or reduced during the year.

(9) Where the assessable income derived by any taxpayer during any income year commencing after the thirty-first day of March, nineteen hundred and thirty-nine, is less than the standard income of the taxpayer for that year, the amount of the deficiency shall for the purposes of this section be carried forward, and, so far as may be, deducted from or set off against his excess profits for the three following income years:

Provided that any relief under this subsection shall be given so far as possible in respect of the first of those years and, so far as it cannot then be given, shall be given in respect of the next year, and so on.

(10) Where a return of income has been made for a period that is less or greater than a year the assessable income shall be determined as for a year both for the purpose of calculating the standard income of the taxpayer and for the purpose of calculating the proportion of the assessable income deemed by virtue of this section to constitute excess profits. For the purposes of this subsection the income of the taxpayer shall be deemed to have been derived at a uniform daily rate throughout the period for which the return is made, and where that period is less than a year that daily rate shall be deemed to have continued for a year.

Objections to assessments.

6. (1) Any taxpayer who has been assessed for excess profits tax under section five of this Act may object to the assessment in accordance with the principal Act upon either or both of the following grounds, namely:—

(a) That the assessment is not in accordance with sections three to five of this Act:

(b) That, whether or not the assessment is in accordance with sections three to five of this Act, he has not derived any excess profits, or has not derived any excess profits other than an amount admitted in the notice of objection.

(2) Every objection upon the ground specified in paragraph (a) of the last preceding subsection shall be determined in accordance with the principal Act, and where the objection is also upon any other ground that other ground shall not be considered until the objection has been so determined.

(3) Every objection upon the ground specified in paragraph (b) of subsection one of this section shall be referred by the Commissioner to the Excess Profits Committee for determination in accordance with this Act.

7. (1) For the purposes of this Act there is hereby established a committee, to be called the Excess Profits Committee (hereinafter referred to as the Committee).

Excess Profits
Committee.

(2) The Committee shall consist of three persons to be appointed by the Governor-General and to hold office during his pleasure.

(3) One member of the Committee shall be appointed by the Governor-General as the Chairman thereof.

(4) In the event of the sickness or other incapacity of the Chairman or of any member of the Committee the Governor-General may appoint any person to act in the place of the Chairman or member during his incapacity.

(5) The decision of a majority of the members of the Committee shall be the decision of the Committee.

(6) The Committee shall within the scope of its jurisdiction be deemed to be a Commission under the Commissions of Inquiry Act, 1908, and subject to the provisions of this Act all the provisions of that Act (except sections eleven and twelve thereof) shall apply accordingly.

Sec Reprint
of Statutes,
Vol. I, p. 1036

(7) For the purpose of considering any objection under this Act the Committee shall have free access to all records under the control of the Commissioner relating to the taxpayer.

(8) The procedure of the Committee shall, subject to this Act, be such as the Committee thinks fit.

(9) The Committee may admit and accept such evidence as it thinks fit, whether admissible in a Court of law or not, and, if it thinks fit, may determine any objection upon written representations, without hearing any person.

Determination
of excess profits
by Committee
on objection.

8. (1) On the determination of any objection under this Act the Committee shall not be bound by section five of this Act, but shall fix the excess profits of the taxpayer at an amount equal to such part of the assessable income specified in the assessment (exclusive of any income exempted by section four of this Act) as in the opinion of the Committee exceeds the amount which the taxpayer might reasonably expect to derive under peace-time conditions of trade and industry, having regard to the nature of the taxpayer's business or occupation, to the special circumstances of the case, and to all other relevant considerations:

Provided that the amount of excess profits fixed by the Committee shall not exceed the amount of excess profits specified in the assessment, or be less than the amount of excess profits (if any) admitted in the notice of objection.

(2) The determination of the Committee on any objection shall be final and conclusive and shall be communicated to the Commissioner, and the assessment shall be altered by the Commissioner, if necessary, so as to conform to the determination:

Provided that if the assessment of the taxpayer's assessable income for income-tax purposes is at any time subsequently duly amended the assessment of excess profits shall be amended so as to conform thereto, and the taxpayer shall have the same rights of objection to the amended assessment as if it had been made under section five of this Act.

Provisions as
to assessment
of income-tax.
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9. (1) Except as provided in this section, nothing in this Act shall affect the assessment of income-tax.

(2) For the purposes of section twenty-three of the Land and Income Tax Amendment Act, 1939, the term "total income", in relation to any proprietary company, shall be deemed not to include any excess profits derived by the company, and the deduction from the income-tax payable by any shareholder provided for by paragraph (c) of subsection three of the said section twenty-three shall be calculated as if the proprietary company had not derived that portion of its assessable income that constitutes excess profits.