

The Business Profits Act, 1947

The Business Profits Act ACT NO. XXI OF 1947 [11th April, 1947] An Act to impose a special tax on a certain class of income WHEREAS it is expedient to imposes a special tax on income arising from business; It is hereby enacted as follows:-

Section - 1. Short title, extent and commencement.-

- (1) This Act may be called the Business Profits Tax Act, 1947 .
- (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.

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

- (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. of the capital of the company on the first day of the said period computed in accordance with Schedule II, 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 the period of one year;

(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 purposes 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;

(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 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; I

(9) " dividend" has the same meaning as in section 2 of the Indian Income- tax Act, 1922 ;

(10) " firm", " partner" and " partnership" have the same meanings respectively as in the

Indian Partnership Act, 1932 ;[B (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 1;

(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.

Section - 3. Tax authorities.-

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

(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 Assistance Commissioner of Income- tax in the exercise of his appellate functions.

Section - 4. Charge of tax.- 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 sixteen and two- thirds per cent. of the taxable profits: Provided that-

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

(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.

Section - 5. Application of Act.- 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

(1) 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.

Section - 6. Relief on occurrence of deficiency of profits.- 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.

Section - 7. Change in persons carrying on business.- 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 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.

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Section - 8. Interconnected companies.-

(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.

(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-terminus, 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.

Section - 9. Aggregation of profits in certain cases.- 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 business 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-terminus, 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: Provided further that any profits or losses so

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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.

Section - 10. Allowances of business profit tax in computing income for income-

tax purposes.- 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, 1922) in which the deficiency of profits occurs.

Section - 11. Issue of notice for assessment.-

(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: 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 ben 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

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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.

Section - 12. Assessments.-

(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 judgement 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.

(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.

13. Power to make provisional assessments.-

(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

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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 judgement.

(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, 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

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from the date of payment of such excess tax to the date of the order of refund, both days inclusive.

14. Profits escaping assessment.- 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.

15. Penalties.- 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-

(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. Appeals to Appellate Assistant Commissioner of Income- tax.-

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(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 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.

17. Appeal to Appellate Tribunal.- 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

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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.

18. Ratification of mistakes.- 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. Application of provisions of Act XI of 1922 .- 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.

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

(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.

(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. Failure to deliver returns or statements.- 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

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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.

22. False statements.- 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.

23. Institution of proceedings and composition of offences.-

(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.

(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.

(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. Power to make rules.-

(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.

(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.

(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 .