

## **Finance Act, 1942**

**14 of 1942**

**[07 July 1942]**

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### **Finance Act, 1942**

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**[07 July 1942]**

AN ACT TO CHARGE AND IMPOSE CERTAIN DUTIES~~ES~~ OF INLAND REVENUE, TO AMEND THE LAW RELATING TO CUSTOMS AND INLANDREVENUE (INCLUDING EXCISE), AND TO MAKE FURTHER PROVISIONS IN CONNECTION WITH FINANCE. BE IT ENACTED BY THE OIREACTAS AS FOLLOWS:-

#### **PART 1 Income Tax**

##### **1. Income Tax And Sur-Tax For The Year 1942-43 :-**

(1) Income tax shall be charged for the year beginning on the 6th day of April, 1942, at the rate of seven shillings and sixpence in the pound.

(2) Sur-tax (other than excess sur-tax) for the year beginning on the 6th day of April, 1942, shall be charged in respect of the income of any individual the total of which from all sources exceeds one thousand five hundred pounds and shall be so charged at the same rates as those at which it is charged for the year beginning on the 6th day of April, 1941.

(3) Where the total income, within the meaning of section 5 of the Finance Act, 1941 (No. 14 of 1941), of any individual for the year beginning on the 6th day of April, 1942, exceeds one thousand five hundred pounds and includes any such profits as are mentioned in the said section 5, an additional duty of sur-tax (in this section referred to as excess sur-tax) shall be charged for the said year beginning on the 6th day of April, 1942, at the rate of seven shillings and sixpence in the pound in respect of so much of the said income as is made chargeable therewith by sub-section (1) of the said section 5 as modified and applied by the subsequent provisions of this section.

(4) The several statutory and other provisions which were in force on the 5th day of April, 1942, in relation to income tax and sur-tax (including excess sur-tax) shall, subject to the provisions of this Act, have effect in relation to the income tax and sur-tax (including excess sur-tax) to be charged as aforesaid for the year beginning on the 6th day of April, 1942.

(5) In the application (by virtue of the next preceding sub-section of this section) of Part II of the Finance Act, 1941 (No. 14 of 1941), to the excess sur-tax to be charged as aforesaid for the year beginning on the 6th day of April, 1942, the said Part II shall have effect with and subject to the following modifications, that is to say:-

(a) the expression "the 6th day of April, 1942," shall be substituted for the expression "the 6th day of April, 1941," wherever that expression occurs in the said Part II;

(b) in paragraph (b) of sub-section (3) of section 7 of the said Act, the expression "the 5th day of April, 1943," shall be substituted for the expression "the 5th day of April, 1942," and the word "six" shall be substituted for the word "five" and the expression "the 5th day of April, 1942," shall be substituted for the expression "the 5th day of April, 1941".

## **2. Amendment Of The Rules Applicable To Cases I And Ii Of Schedule D Of The Income Tax Act, 1918 :-**

The following Rule shall be added to the Rules applicable to Cases I and II of Schedule D of the Income Tax Act, 1918, that is to say:-

"19-(1) In computing for any purpose of the Income Tax Acts the profits or gains of a trade which has been discontinued, any trading stock belonging to the trade at the discontinuance thereof shall be valued in accordance with the following provisions, that is to say:-

(a) in the case of any such trading stock-

(i) which is sold, or is transferred for valuable consideration, to a person who carries on or intends to carry on a trade in the State, and

(ii) the cost of which to such person on such sale or transfer may be deducted by, him as an expense in computing for any purpose of the Income Tax Acts the profits or gains of the said trade carried on or intended to be carried on by him, the value of such trading stock shall be taken to be the price paid therefor on such sale or the value of the consideration given therefor on such transfer, as the case may be;

(b) in the case of any other such trading stock, the value thereof shall be taken to be the amount which it would have realised if it had been sold in the open market at the discontinuance of the trade.

(2) In this Rule-

the expression "trading stock" means property of any description, whether real or personal, which is either-

(a) property such as is sold in the ordinary course of the trade in relation to which the expression is used or would be so sold if it were mature or if its manufacture, preparation, or construction were complete, or

(b) materials such as are used in the manufacture, preparation, or construction of property such as is sold in the ordinary course of the said trade,

references to a trade having been discontinued or to the discontinuance of a trade shall be construed as not referring to or including any case where such trade was carried on by a single individual and is discontinued by reason of his death (whether such trade is or is not continued by another person after such death) but shall be construed as referring to and including every other case where a trade has been discontinued or is, by virtue of Rule 11 of these Rules (as amended by section 13 of the Finance Act, 1929 (No. 32 of 1929) ), treated as having been discontinued for the purpose of computing tax."

### **3. Allowance In Respect Of Expenditure On Production Of Certain Commodities :-**

(1) This section relates only to commodities which were not produced commercially in the State in the twelve months ended on the 31st day of August, 1939, and the production of which in the State (whether for home consumption or for export) would not have been commercially profitable at any time during those twelve months, and the expression "commodity to which this section relates" shall in this section be construed accordingly.

(2) In this section references to abnormal economic conditions in respect of a commodity to which this section relates shall be construed as meaning that, owing to circumstances created by or arising from the present national emergency (including circumstances continuing after the termination of that emergency),-

(a) the said commodity is urgently required in the State to meet an essential need of the people and either cannot be imported in

sufficient quantities to meet that need or cannot be imported at all, and

(b) the production of the said commodity in the State for home consumption is, while the said circumstances exist, commercially profitable, but will cease to be commercially profitable after the cesser of those circumstances.

(3) Where-

(a) a person applies, in accordance with this section, to the Revenue Commissioners for a special allowance under this section in respect of any year of assessment, and

(b) shows, to the satisfaction of the Revenue Commissioners, that during that year he used buildings erected or acquired or plant or machinery installed by him after the 31st day of August, 1939, solely for the production by way of trade or business of a commodity to which this section relates, and that such commodity was so produced solely for consumption within the State, and

(c) also shows to the satisfaction aforesaid that during the said year abnormal economic conditions existed in respect of the said commodity,

the Revenue Commissioners may cause such special allowance as they consider just to be made in respect of the said buildings, plant, or machinery from the assessment made on the said person for the said year in respect of the profits of his trade or business of so producing the said commodity.

(4) Application to the Revenue Commissioners for a special allowance under this section in relation to the year of assessment ended on the 5th day of April, 1941, or any prior year of assessment may be made within twelve months after the passing of this Act and similar application in relation to any subsequent year of assessment may be made within twelve months after the end of such year.

(5) Where a special allowance is made under the foregoing provisions of this section, effect shall be given to such allowance by repayment or otherwise.

(6) Where special allowances under this section have been made to a person and the Revenue Commissioners are satisfied that abnormal economic conditions have ceased to exist in respect of the commodity in relation to the production of which the said allowances were made, the Revenue Commissioners may review the said allowances.

(7) The following provisions shall have effect in relation to or in consequence of a review under the next preceding sub-section of

this section of the special allowances under this section made to any person, that is to say:-

(a) for the purpose of such review the Revenue Commissioners may compare the following amounts, that is to say:-

(i) the net cost (as hereinafter defined) to the said person of the buildings, plant, or machinery in respect of which the said special allowances were made, and

(ii) the total allowances as hereinafter defined made to the said person;

(b) for the purposes of the said comparison, the said net cost shall be taken to be the amount by which the actual cost to the said person of the erection or acquisition of the said buildings or the installation of the said plant or machinery exceeds the aggregate of-

(i) the sum or sums (if any) provided by way of subsidy or grant out of public funds towards the said erection, acquisition, or installation, and

(ii) the amount for which, in the opinion of the Revenue Commissioners, the said buildings, plant, or machinery are worth to be sold at or within twelve months after the cesser of abnormal economic conditions in respect of the commodity for the production of which the said buildings, plant, or machinery were or was used;

(c) the said total allowances shall be taken to be the aggregate of all special allowances made to the said person under the foregoing provisions of this section and all allowances made to such person in respect of the said buildings, machinery, or plant under or by reason of the proviso to paragraph (2) of Rule 5 or Rule 6 or Rule 7 of the Rules applicable to Cases I and II of Schedule D of the Income Tax Act, 1918, for the year of assessment in which occurred the cesser of abnormal economic conditions in respect of the commodity for the production of which the said buildings, plant, or machinery was or were used and for any previous year of assessment during which the said buildings, plant, or machinery were or was so used;

(d) if the said net cost exceeds the said total allowances, the Revenue Commissioners may make, by repayment or otherwise, such further special allowance as is in their opinion just;

(e) if the said total allowances exceed the said net cost, the special allowances under this section made to the said person may be revised and such additional assessments as the Revenue Commissioners consider to be necessary may be made on the said person for any year of assessment in respect of which any such

special allowance was granted to him.

#### **4. Provisions In Respect Of Deficiencies Of Profits Occurring In Certain Years Of Assessment :-**

(1) Where, for the year of assessment beginning on the 6th day of April, 1941, or any subsequent year of assessment for which excess sur-tax is chargeable, the profits to be included in the total income (computed as required for the purposes of sub-section (1) of section 5 of the Finance Act, 1941 (No. 14 of 1941), or that sub-section as applied to such year of assessment) of any individual from a trade or business are calculated by reference to a particular period (in this section referred to as the relevant period) of twelve months or of less than twelve months, any loss incurred by such individual in respect of the said trade or business which is required for the purposes of this section to be computed in respect of such year of assessment shall be calculated by reference to the same particular period and in the same manner as the said profits are calculated.

(2) A deficiency of profits in respect of a trade or business shall be deemed to have been incurred by an individual for a year of assessment where, for the relevant period in respect of that year, the profits of such person from the said trade or business are less than the standard profits of such individual from that trade or business or a loss has been incurred by such individual in the said trade or business or no such profits have been made and no such loss has been incurred by such individual.

(3) Where, for any year of assessment, a deficiency of profits has been incurred by an individual in respect of a trade or business, the amount of such deficiency of profits shall, for the purposes of this section, be taken to be-

(a) if for the said year the said individual has made profits from the said trade or business-the amount by which such profits fall short of the standard profits of the said individual from the said trade or business, or

(b) if for the said year the said individual has incurred a loss in the said trade or business-the total of the amount of such loss and of the said standard profits of such individual, or

(c) if for the said year the said individual has neither made profits from nor incurred a loss in the said trade or business-the amount of the said standard profits of the said individual.

(4) The following provisions shall apply and have effect in respect

of every deficiency of profits incurred by an individual in respect of a trade or business, that is to say:-

(a) whenever, in any year of assessment for which excess sur-tax is chargeable, any such deficiency of profits is incurred by such individual, that deficiency of profits shall be applied in reducing, so far as it will extend, the excess of the profits of such individual from the said trade or business over his standard profits from that trade or business in the first year of assessment (whether past or future) for which excess sur-tax was or is chargeable and such excess occurred or occurs or, where the said deficiency of profits is equal to or greater than the said excess, in extinguishing the said excess, and in the later case so much (if any) of the said deficiency of profits as is not required for the purpose of so extinguishing such excess shall, in the next subsequent year of assessment for which excess sur-tax is chargeable and the profits of such individual from the said trade or business exceed his standard profits, be similarly applied in reducing or extinguishing the excess of those profits over the said standard profits, and so on until the said deficiency of profits is thereby exhausted;

(b) whenever, in any year of assessment for which excess sur-tax is chargeable, any such deficiency of profits (in this paragraph referred to as the earlier deficiency) is incurred by such individual and, in a subsequent year of assessment for which excess sur-tax is chargeable, another deficiency of profits (in this paragraph referred to as the later deficiency) is incurred by such individual in respect of the same trade or business and, when the later deficiency is incurred, the earlier deficiency either has not been applied at all under the foregoing paragraph of this sub-section or (having been so applied) has not been exhausted by such application, the later deficiency shall be added (as the case may be) to the earlier deficiency or to so much of the earlier deficiency as remains after such application, and the amount produced by such addition shall be applied in accordance with the said foregoing paragraph as if it were a single deficiency of profits;

(c) the next preceding paragraph of this sub-section shall apply, with the necessary modifications, whenever, in a case to which that paragraph applies, two or more deficiencies of profits are incurred by such individual in respect of the same trade or business before an earlier such deficiency of profits has been applied under paragraph (a) of this sub-section or before such earlier deficiency of profits (having been so applied) has been exhausted by such application;

(d) in the determination, for the purposes of paragraph (a) of this sub-section, of the year of assessment which is the first year of assessment in which an excess of the profits of such individual from the said trade or business over his standard profits from that trade or business occurred or occurs, the following amounts shall be disregarded, that is to say, the amount of all (if any) profits of such individual from the said trade or business which, at any time before the making of such determination, have been extinguished under the foregoing provisions of this sub-section and all (if any) amounts by which profits of such individual from the said trade or business have, at any time before the making of such determination, been reduced under the said foregoing provisions.

(5) Any relief to which an individual becomes entitled by virtue of this section shall be given by repayment or otherwise.

(6) Such of the provisions in force for the purpose of sur-tax as relate to appeals shall apply and have effect, with the necessary modifications, in relation to the application of deficiencies of profits under this section (including the amount of any such deficiency of profits) in the like manner as they apply to assessments to sur-tax.

#### **5. Amendment Of Section 9 Of The Finance Act, 1929 :-**

Notwithstanding anything contained in sub-section (1) of section 9 of the Finance Act, 1929 (No. 32 of 1929), any person chargeable with income tax in respect of the profits or gains of any trade, profession, or vocation which has been set up or commenced within the year next before the year preceding the year of assessment shall be entitled, on giving notice in writing to the inspector of taxes within twelve months after the end of the year of assessment, to have the assessment reduced by the amount (if any) by which the aggregate amount of the respective assessments for the year of assessment and the year preceding that year exceed the total amount of the profits or gains of those two years.

#### **6. Amendment Of section 17 Of The Finance Act, 1929 :-**

Sub-section (5) of section 17 of the Finance Act, 1929 (No. 32 of 1929), shall be construed and have effect as if there were added to paragraph (b) of that sub-section the following proviso in addition to the proviso already contained therein, that is to say:-

"provided also that, where the person first held the office or employment or became entitled to the annuity, pension, or stipend in the year next before the year preceding the year of assessment,

he shall be entitled, on giving notice in writing to the inspector of taxes within twelve months after the end of the year of assessment, to be charged on the amount of the emoluments for the year of assessment"

## **7. Amendment Of Section 10 Of The finance Act, 1941 :-**

Where, under section 10 of the Finance Act, 1941 (No. 14 of 1941), an amount is carried forward in respect of a loss and is deducted from or set-off against the profits in respect of which a person is chargeable with excess sur-tax for the year beginning on the 6th day of April, 1941, but owing to the said amount exceeding such profits part only of the said amount can be so deducted or set-off, so much of the said amount as exceeds such profits shall be further carried forward and shall, so far as it will extend, be deducted from or set-off against the profits in respect of which such person is chargeable with excess sur-tax for the year beginning on the 6th day of April, 1942, and, if the portion of the said amount so further carried forward is not fully met by such last mentioned deduction or set-off, the outstanding balance of the said amount shall be again carried forward and, so far as it will extend, be deducted from or set-off against the profits in respect of which such person is chargeable with excess sur-tax (if any) for the year beginning on the 6th day of April, 1943, and so on until the total of such deductions or set-offs under the said section 10 and this section is equal to the said amount carried forward under the said section 10.

## **PART 2 Customs and Excise**

## **8. Amendment Of Section 21 Of The finance Act, 1935 :-**

(1) In this section-

the expression "the principal section" means section 21 of the Finance Act, 1935 (No. 28 of 1935), the expression "the amending section" means section 18 of the Finance Act, 1940 (No. 14 of 1940). (2) Whenever a sample of the hydrocarbon oil on or in a motor vehicle is taken under sub-section (13) of the principal section, any officer of the Revenue Commissioners or member of the Gárda Síochána (whether he is or is not the person who takes such sample) may, when such sample is being taken or at any time thereafter, interrogate the registered owner or any of the registered owners of the said vehicle or, where such registered owner is not one or more individuals, any director, manager, or

principal officer of such owner in regard to the said hydrocarbon oil and may require of such owner or other person aforesaid information as to when, where, and from whom the said oil was purchased or otherwise obtained and as to whether either of the duties imposed by the principal section had been paid or any rebate under that section had been allowed in respect of the said oil and, if such owner or other person aforesaid states that either of the said duties had been paid in respect of the said oil, such officer or member may require of such owner or other person proof of the payment of such duty and proof that no rebate of duty had been allowed in respect of the said oil.

(3) Whenever any person is interrogated by an officer of the Revenue Commissioners or a member of the *Gárda Síochána* under sub-section (13) of the principal section or under the next preceding sub-section of this section, such person shall give to such officer or member all information and proof required of him by such officer or member under the said sub-section (13) or the said next preceding sub-section (as the case may be) which is in his possession or procurement and, if he fails or refuses so to do or gives any such information which is false or misleading, he shall be guilty of an offence under sub-section (12) of the principal section as amended by the amending section and shall be liable accordingly to the penalty appointed by the said sub-section (12), as so amended.

(4) Where, in any proceedings against the owner of a motor vehicle to recover a penalty under sub-section (12) of the principal section as amended by the amending section, the offence in respect of which such penalty is claimed consists of the user of hydrocarbon oil in the said motor vehicle in contravention of paragraph (a) of sub-section (8) of the principal section and it is proved that hydrocarbon oil was used for combustion in the engine of the said motor vehicle, the hydrocarbon oil so used shall be presumed (unless or until the contrary is proved) to have been so used in contravention of the said paragraph (a) and to have been so used in such contravention by the said owner of the said motor vehicle.

(5) In any proceedings to recover a penalty under sub-section (12) of the principal section as amended by the amending section, the said penalty may be claimed in the alternative as a penalty under the law relating to customs or as a penalty under the law relating to excise and, if the person from whom such penalty is so claimed is convicted of an offence under the said sub-section (12) as so amended, the Court shall impose the penalty appointed by the said

sub-section as so amended as a customs penalty or as an excise penalty according to whether the hydrocarbon oil in respect of which the said offence was committed was chargeable with the duty of customs or the duty of excise imposed by the principal section and, if it is not shown to the satisfaction of the Court with which of those duties the said hydrocarbon oil was chargeable, the Court shall presume that the duty with which the said hydrocarbon oil was chargeable was the said duty of customs and shall impose the penalty appointed by the said sub-section as so amended as a customs penalty.

(6) Paragraph (c) of the amending section is hereby repealed and in lieu thereof it is hereby enacted that the principal section shall be and is hereby amended by the deletion from sub-section (15) thereof of the definition of the expression "motor vehicle" contained in that sub-section prior to the enactment of the amending section and by the insertion in the said sub-section of the following definition in lieu of the said definition so deleted, that is to say:-

"the expression motor vehicle means a mechanically propelled vehicle which is designed, constructed, and suitable for use on roads, but does not include, a tractor which is designed and constructed for use for agricultural purposes".

(7) The principal section, the amending section, and this section shall be read and construed together.

### **PART 3 Death Duties**

#### **9. Relief From Certain Death Duties On Deaths Caused By Foreign Armed Forces :-**

(1) This section applies only to injuries to the person (whether occurring before or after the passing of this Act) which are shown, to the satisfaction of the Revenue Commissioners, to comply with all the following conditions, that is to say:-

(a) the injury occurred after the 3rd day of September, 1939, and before the termination of the present emergency, and

(b) the State was not engaged in any war when the injury occurred, and

(c) the injury occurred within the State or the territorial waters thereof, and

(d) the injury was caused, directly or indirectly by an act of the armed forces of another country, whether such act was intentional or accidental and whether such act was itself done within or outside the State or the territorial waters thereof or the superincumbent

atmosphere.

(2) This section applies only to death duties (as defined in section 13 of the Finance Act, 1894, for the purposes of that section) leviable in respect of property passing on a death to any of the following persons, that is to say:-

- (a) the wife or the husband of the deceased,
- (b) lineal ancestors or descendants of the deceased.
- (c) brothers and sisters of the deceased,
- (d) descendants of brothers and sisters of the deceased.

(3) Whenever it is shown to the satisfaction of the Revenue Commissioners that a person has died (whether before or after the passing of this Act) solely from an injury to which this section applies received by him not more than twelve months before his death, the Revenue Commissioners shall remit or, in the case of duty already paid, repay in respect of the death duties to which this section applies leviable on the death of such person the amount specified in whichever of the following paragraphs is applicable, that is to say:-

- (a) where the value for the purposes of estate duty of the property in respect of which the said death duties are leviable does not exceed five thousand pounds, the whole of those death duties, or
- (b) where the value for the purposes of estate duty of the property in respect of which the said death duties are leviable exceeds five thousand pounds-

- (i) the whole of the said death duties in so far as they are leviable in respect of the first five thousand pounds of the said value, and
- (ii) so much of the remainder of the said death duties as exceeds the sum which, if accumulated at compound interest at the rate of three per cent, per annum (with half-yearly rests) from the date of the death of the said deceased person would, at the expiration of the period of the normal expectation of life of a person of the age of the said deceased person at the time of his death (calculated in accordance with the tables of mortality known as "the Tables of Mortality of Government Life Annuitants, 1912") amount to a sum equal to the said remainder of the said death duties.

(4) Where, on any death, the relief given by the next preceding sub-section of this section in respect of death duties to which this section applies is less than the remission or repayment of the whole of those death duties, the said relief shall be apportioned amongst, the several persons liable to bear those death duties rateably in proportion to the sums which, but for the said relief, they would respectively be liable to bear in respect of the said death duties.

(5) Where relief is required by the foregoing provisions of this section to be given in respect of death duties to which this section applies leviable on a death, the following provisions shall apply and have effect, that is to say:-

(a) if that relief, in so far as it relates to estate duty, is less beneficial to the persons entitled thereto under the said foregoing provisions than the relief in respect of estate duty on the said death which would be afforded to those persons by section 15 of the Finance Act, 1914, relief in respect of the said estate duty shall be given to the said persons under the said section 15 and not under this section;

(b) subject to the provisions of the foregoing paragraph of this sub-section, the relief in respect of estate duty afforded by the said section 15 shall not be given in any case in which relief in respect of estate duty is given under the foregoing provisions of this section.

(6) The relief given by sub-section (3) of this section in relation to any particular death shall, in so far as it relates to estate duty, be in substitution for, and not in addition to, any relief afforded in relation to that death by section 26 of the Finance Act, 1940 (No. 14 of 1940), or by any section (other than this section) of this Part of this Act,

(7) Where-

(a) relief has been given under the foregoing provisions of this section in respect of estate duty chargeable in respect of any property passing on a death (in this sub-section referred to as the earlier death), and

(b) estate duty becomes chargeable in respect of the said property or any part thereof passing on a death (in this sub-section referred to as the later death) occurring after the earlier death, and

(c) it is shown to the satisfaction of the Revenue Commissioners that the later death is the death of a person to whom the said property or some part thereof passed on the earlier death, and

(d) it is also shown to the satisfaction aforesaid that the later death occurred solely from an injury to which this section applies received not more than twelve months before such death,

then and in such case, notwithstanding anything contained in the foregoing provisions of this section, the whole of the death duties (as defined in section 13 of the Finance Act, 1894, for the purposes of that section) leviable on the later death in respect of so much (whether the whole or a part) of the said property as passes on that death shall be remitted or, in the case of duty already paid, be

repaid, and so much as aforesaid of the said property shall not be aggregated with any other property passing on the later death for the purpose of determining the rate at which estate duty is chargeable on that death.

#### **10. Deduction From Estate Duty In Certain Cases :-**

(1) Where, in the case of a person dying on or after the 1st day of April, 1939, the Revenue Commissioners, are satisfied that, under the provisions of section 64 of the enactment now in force in Great Britain and there known as the Finance Act, 1940 , or under the provisions of section 46 of the enactment now in force in Great Britain and there known as the Finance Act, 1941 , any relief from estate duty payable in Great Britain by reason of the death of such person is given in respect of property situate in Great Britain and passing on such death, the Revenue Commissioners shall, in lieu of and not in addition to any allowance to be made by virtue of paragraph (b) of Part II of the Schedule to the Double Taxation (Relief) Order (No. 1), 1923, allow to be deducted from the estate duty under their care and management which is payable by reason of the said death and in respect of the said property the like amount as would, if the said relief had not been given and this section had not been enacted, be deductible from that estate duty by virtue of the said paragraph (b).

(2) Where, in the case of a person dying on or after the 1st day of April, 1939, the Revenue Commissioners are satisfied that, under the provisions of section 7 of the enactment now in force in Northern Ireland and there known as the Finance Act (Northern Ireland), 1940, or under the provisions of section 4 of the enactment now in force in Northern Ireland and there known as the Finance Act (Northern Ireland), 1941, any relief from estate duty payable in Northern Ireland by reason of the death of such person is given in respect of property situate in Northern Ireland and passing on such death, the Revenue Commissioners shall, in lieu of and not in addition to any allowance to be made by virtue of paragraph (d) of Part II of the Schedule to the Double Taxation (Relief) Order (No. 1), 1923, allow to be deducted from the estate duty under their care and management which is payable by reason of the said death and in respect of the said property the like amount as would, if the said relief had not been given and this section had not been enacted, be deductible from that estate duty by virtue of the said paragraph (d).

## **11. Amendment Of section 26 Of The Finance Act, 1940 :-**

Sub-section (2) of section 26 of the Finance Act, 1940 (No. 14 of 1940), shall be construed and have effect and be deemed always to have had effect as if the expression "paragraph (d)" were substituted for the expression "paragraph (b)" wherever the latter expression occurs in the said sub-section.

### **PART 4 Corporation Profits Tax**

## **12. Provisions As To Certain Companies Commencing Business Less Than Two Years Before 31st August, 1939 :-**

(1) Any company which commenced to carry on its trade or business more than one year but less than two years before the 31st day of August, 1939, and in respect of which there has not been a trade year ending in the year ended on the 31st day of August, 1939, may by application in writing to the Revenue Commissioners request the Revenue Commissioners to determine the profits of such company for the period of twelve months beginning on the date on which such company commenced to carry on its trade or business.

(2) Whenever a company makes to the Revenue Commissioners such request as is mentioned in the foregoing sub-section of this section, such company shall furnish to the Revenue Commissioners such accounts, particulars, and information as they shall require from it for the purpose of complying with such request, and thereupon, if, but only if, the Revenue Commissioners are satisfied that they can make, from the accounts, particulars, and information so furnished, by such company, a just estimate of the profits of such company for the period of twelve months beginning on the day on which such company commenced to carry on its trade or business, the Revenue Commissioners shall determine the profits of such company for the said period of twelve months and shall inform such company in writing of such determination and of the amount thereof.

(3) Where the Revenue Commissioners have determined, under the foregoing provisions of this section, the profits of a company for the period of twelve months mentioned in those provisions, the following provisions shall, notwithstanding anything contained in sub-section (1) of section 38 of the Finance Act, 1941 (No. 14 of 1941), apply and have effect, that is to say:-

(a) the standard profits of such company for the purposes of Part V

of the said Act shall be the amount of the profits so determined of such company or the sum of two thousand five hundred pounds, whichever is the greater;

(b) paragraph (d) of sub-section (1) of the said section 38 and sub-section (2) of that section shall apply to such company in like manner as if one of the paragraphs (a), (b), and (c) of the said sub-section (1) were applicable to such company and the standard profits of such company had been calculated accordingly.

(4) This section shall apply and have effect in respect of every accounting period beginning on or after the 1st day of January, 1941, and also in respect of the portion subsequent to the 31st day of December, 1940, of an accounting period which began before and ended on or after the 1st day of January, 1941.

### **13. Standard Profits Of A Company Succeeding To The Business Of Another Company :-**

(1) Where-

(a) a company (in this section referred to as the successor company) has succeeded to the whole of the trade or business carried on, immediately before such succession by another company (in this section referred to as the predecessor company), and

(b) the successor company was incorporated for the purpose of so acquiring and taking over the said trade or business so carried on by the predecessor company, and

(c) the successor company carries on, after such succession, the trade or business so carried on by the predecessor company, and

(d) the successor company has not had three consecutive trade years the last of which ended on the 31st day of August, 1939, the following profits may, on the application of the successor company, be treated as profits of the successor company for the purpose of computing the standard profits of that company, that is to say, the profits of any trade year or trade years which might have been brought into account for the purpose of ascertaining the standard profits of the predecessor company if the said succession had not occurred and the predecessor company had continued to carry on the said trade or business and had become chargeable to excess corporation profits tax in respect of the profits of that business.

(2) Where an application under the foregoing sub-section of this section is made and effect is given to that application, the following provisions shall apply and have effect in relation to the

ascertainment, for the purposes of a charge to excess corporation profits tax, of the profits of the successor company arising in any accounting period or part of an accounting period, that is to say:-

(a) section 41 of the Finance Act, 1941 (No. 14 of 1941), as amended by this Act, shall not apply;

(b) if the successor company is a company the directors whereof have a controlling interest therein, the total amount of deductions to be allowed in respect of the remuneration of the directors shall not exceed the total amount of the deductions allowed in respect of the remuneration of directors in the ascertainment of the standard profits of the successor company;

(c) the amount of any deduction on account of wear and tear or renewals or obsolescence of any machinery or plant acquired by the successor company from the predecessor company shall, where necessary, be so reduced as to secure that such deduction is not greater than the deduction which would have been allowed in respect of that machinery or plant in ascertaining, for the purposes of a charge to excess corporation profits tax, the profits of the predecessor company if that company had continued to carry on, during the relevant accounting period or part of an accounting period, the trade or business mentioned in the said foregoing subsection and had retained the said machinery and plant for the purposes of the said trade or business as so carried on.

(3) This section shall apply and have effect in respect of every accounting period beginning on or after the 1st day of January, 1941, and in respect of the part of any accounting period beginning before that date which is subsequent to the 31st day of December, 1940.

#### **14. Provisions In Respect Of Deficiencies Of Profits Occurring In Certain Accounting Periods :-**

(1) For the purposes of this section every accounting period beginning on or after the 1st day of January, 1941, and also the portion subsequent to the 31st day of December, 1940, of an accounting period which began before and ended on or after the 1st day of January, 1941, shall be a chargeable accounting period, and the expression "chargeable accounting period" shall, in this section, be construed accordingly.

(2) For the purposes of this section a deficiency of profits, shall be deemed to have been incurred by a company in a chargeable accounting period where the profits of such company for such

period as computed for the purposes of a charge to excess corporation profits tax are less than the standard profits of such company or such company incurs a loss in such period or such company neither makes any profits nor incurs a loss in such period, and references in this section to a deficiency of profits shall be construed accordingly.

(3) Where a company incurs a deficiency of profits in a chargeable accounting period, the amount of such deficiency of profits shall, for the purposes of this section, be taken to be-

(a) if such company has made profits in such period-the amount by which such profits fall short of the standard profits of such company, or

(b) if such company has incurred a loss in such period-the total of the amount of such loss and the amount of the standard profits of such company, or

(c) if such company has neither made any profits nor incurred a loss in such period-the amount of the standard profits of such company.

(4) The following provisions shall apply and have effect in respect of every deficiency of profits incurred by a company in a chargeable accounting period, that is to say:-

(a) whenever a company incurs, a deficiency of profits in a chargeable accounting period, that deficiency of profits shall be applied in reducing so far as it will extend the aggregate amount of the profits of such company chargeable with excess corporation profits tax in all (if any) previous chargeable accounting periods of such company or, if the said deficiency of profits is not less than the said aggregate amount, in extinguishing that amount, and where, owing to the said deficiency of profits exceeding the said aggregate amount, the said deficiency of profits is not exhausted by the said application or where, owing to there not having been any previous chargeable accounting period in respect of such company, the said deficiency of profits cannot be so applied at all, the said deficiency of profits or so much thereof as remains after such application (as the case may be) shall be carried forward and shall, in the next subsequent chargeable accounting period of such company in which such company has profits chargeable with excess corporation profits tax, be applied in reducing, so far as it will extend, or (where possible) extinguishing those profits and, if the said deficiency of profits is not thereby exhausted, the said carrying forward and other processes shall be repeated until the said deficiency of profits is thereby exhausted;

(b) whenever such company incurs a deficiency of profits (in this paragraph referred to as the earlier deficiency) in a chargeable accounting period and such company incurs another deficiency of profits (in this paragraph referred to as the later deficiency) in a subsequent chargeable accounting period and, when the later deficiency is incurred the earlier deficiency either has not been applied under the foregoing paragraph of this sub-section or (having been so applied) has not been exhausted by such application, the later deficiency shall be added (as the case may be) to the earlier deficiency or to so much of the earlier deficiency as remains after such application, and the amount produced by such addition shall be applied in accordance with the said foregoing paragraph as if it were a single deficiency of profits;

(c) the next preceding paragraph of this sub-section shall apply, with the necessary modifications, whenever, in a case to which that paragraph applies, two or more deficiencies of profits are incurred by such company before an earlier deficiency of profits of such company has been applied under paragraph (a) of this sub-section or before such earlier deficiency of profits (having been so applied) has been exhausted by such application;

(d) the following amounts shall be excluded from the computation of the aggregate amount mentioned in paragraph (a) of this sub-section, that is to say, the amount of all (if any) profits of such company which, at any time before the making of such computation, have been extinguished under the foregoing provisions of this sub-section and all (if any) amounts by which profits of such company have, at any time before the making of such computation, been reduced under the said foregoing provisions.

(5) For the purpose of calculating whether a company has or has not incurred a deficiency of profits in a chargeable accounting period which is less than twelve months and for the purpose of computing the amount of such deficiency of profits (if incurred), the standard profits of such company shall be taken to be the sum bearing the same proportion to the standard profits of such company as computed under Part V of the Finance Act, 1941 (No, 14 of 1941), and this Part of this Act as the said chargeable accounting period bears to twelve months.

(6) The loss incurred by a company in a chargeable accounting period shall be computed for the purposes of this section in the like manner as profits are required by law to be computed for the purposes of a charge to excess corporation profits tax.

(7) Any relief to which a company becomes entitled by virtue of this section shall be given by repayment or otherwise.

(8) Sub-section (6) of section 56 of the Finance Act, 1920, and also so much of sub-section (7) of that section and the regulations made thereunder as relates to appeals shall apply and have effect, with the necessary modifications, in relation to the giving of relief under this section (including the amount of any such relief) in the like manner as they apply to assessments to excess corporation profits tax.

#### **15. Amendment Of Section 35 Of The finance Act, 1941 :-**

Sub-section (1) of section 35 of the Finance Act, 1941 (No. 14 of 1941), shall be construed and have effect and be deemed always to have had effect as if the following paragraph were inserted therein in lieu of the paragraph (c) now contained therein, that is to say;-

"(c) neither sub-section (2) of section 45 of the Finance Act, 1925 (No. 28 of 1925), nor sub-section (2) of section 30 of the Finance Act, 1926 (No. 35 of 1926), shall apply and in lieu thereof paragraph (a) of the proviso to sub-section (1) of section 52 of the Finance Act, 1920, shall be construed and have effect as if the words two thousand, five hundred pounds were inserted therein in lieu of the words five hundred pounds wherever the last-mentioned words occur in the said paragraph."

#### **16. Amendment Of Section 39 Of The finance Act, 1941 :-**

(1) Section 39 of the Finance Act, 1941 (No. 14 of 1941), shall be construed and have effect and shall be deemed always to have had effect as if the following sub-section were inserted therein in lieu of the sub-section (2) now contained therein, that is to say:-

"(2) The standard payments of a company for dividends and interest in respect of any accounting period or part of an accounting period shall be taken for the purposes of this section to be the amount necessary to provide for whichever of the following amounts is the greater, that is to say:-

(a) the aggregate amount of the following payments in respect of the said accounting period or part of an accounting period, that is to say:-

(i) the dividends on the paid-up preference stock or shares of the company at the fixed rate at which such dividends are payable, and  
(ii) dividends at the rate of six per cent, per annum on the paid-up ordinary stock or shares of the company, and

(iii) interest on the debentures or debenture stock (other than debentures or debenture stock issued by way of security for a bank overdraft) of the company at the fixed rate at which such interest is payable, or

(b) the aggregate amount of the following payments in respect of the said accounting period or part of an accounting period, that is to say:-

(i) dividends on the paid-up preference stock or shares of the company, if the company was incorporated before the 1st day of January, 1934, at the rate of seven and one-half per cent, per annum or, if the company was incorporated on "or after that date, at the rate of nine per cent, per annum, and

(ii) dividends on the paid-up ordinary stock or shares of the company, if the company was incorporated before the 1st day of January, 1934, at the rate of seven and one-half per cent, per annum or, if the company was incorporated on or after that date, at the rate of nine per cent, per annum, and

(iii) interest on the debentures or debenture stock (other than debentures or debenture stock issued by way of security for a bank overdraft) of the company, if the company was incorporated before the 1st day of January, 1934, at the rate of seven and one-half per cent, per annum or, if the company was incorporated on or after that date, at the rate of nine per cent, per annum."

(2) In computing, under sub-section (2) of section 39 of the Finance Act, 1941 (No. 14 of 1941), (as amended by the foregoing sub-section of this section) the standard payments for dividends and interest in respect of any accounting period or part of an accounting, period, of a company which has issued capital after the 6th day of May, 1942, and before the end of the said accounting period or part of an accounting period, the following provisions shall, apply, and have effect, that is to say:-

(a) the expression "fixed rate" wherever it occurs in the said sub-section (2) (as so amended) shall, in relation to the dividends or interest on the said capital so issued or any part of that capital, be construed and have effect-

(i) if the said company was incorporated before the 1st day of January, 1934, as meaning whichever of the following rates is the lesser, that is to say, the fixed rate at which the said dividends or interest (as the case may be) are or is actually payable or the rate of seven and one-half per cent. per annum, or

(ii) if the said company was incorporated on or after the 1st day of January, 1934, as meaning whichever of the following rates is the

lesser, that is to say, the fixed rate at which the said dividends or interest (as the case may be) are or is actually payable or the rate of nine per cent. per annum;

(b) unless the Revenue Commissioners because of the existence of special circumstances in any particular case otherwise direct, whichever of the following sub-paragraphs is applicable shall apply and have effect, that is to say:-

(i) if the said capital so issued is the first issue of capital made by the said company and it is not shown to the satisfaction of the Revenue Commissioners that the said capital is represented fully by tangible assets owned by the said company at the time of the issue of the said capital, such amount (whether a part or the whole) of the said capital as is, in the opinion of the Revenue Commissioners, not so represented shall be excluded and deducted from the capital of the said company for the purpose of computing the said standard payments for dividends and interest and, if the said capital includes more than one class of capital, the amount of the said capital to be excluded and deducted as aforesaid shall be apportioned rateably amongst the different classes of the said capital, or

(ii) if the capital so issued is not the first issue of capital made by the said company and it is not shown to the satisfaction of the Revenue Commissioners that on the issue of the said capital so issued there had been an increase in the tangible assets of the said company in full proportion to the amount of that capital, such amount (whether a part or the whole) of the said capital so issued as is not fully represented by such increase of the said tangible assets shall be excluded and deducted from the capital of the said company for the purpose of computing the said standard payments for dividends and interest and, if the said capital so issued includes more than one class of capital, the amount of the said capital to be excluded and deducted as aforesaid shall be apportioned rateably amongst the different classes of that capital;

(c) in this sub-section-

(i) preference stock or shares, ordinary stock or shares, and debentures or debenture stock (other than debentures or debenture stock issued by way of security for a bank overdraft) and nothing else shall be regarded as capital, and the word "capital" shall be construed accordingly,

(ii) the amount of any capital shall be taken to be the nominal amount thereof,

(iii) preference stock or shares, ordinary stock or shares, and

debentures or debenture stock (other than as aforesaid) shall each be taken to be a different class of capital.

**17. Amendment Of Section 41 Of The finance Act, 1941 :-**

(1) Section 41 of the Finance Act, 1941 (No. 14 of 1941), shall be construed and have effect and be deemed always to have had effect as if the following sub-section were inserted therein in lieu of the sub-section (3) now contained therein, that is to say:-

"(3) In sub-section (1) of this section, the expression standard payments in respect of the said new issue means the amount necessary to provide for whichever of the following amounts is the greater, that is to say:-

(a) the aggregate amount of the following payments in respect of the said accounting period or part of an accounting period, that is to say:-

(i) the dividends on such (if any) paid-up preference stock or shares as was included in the said new issue-at the fixed rate at which such dividends are payable, and

(ii) dividends at the rate of six per cent. per annum on such (if any) paid-up ordinary stock or shares as was included in the said new issue, and

(iii) interest on such (if any) debentures or debenture stock (other than debentures or debenture stock issued to replace an equal amount of debentures or debenture stock issued before the expiration of the trade year which ended in the year ended on the 31st day of August, 1939) as were included in the said new issue-at the fixed rate at which such interest is payable, or

(b) the aggregate amount of the following payments in respect of the said accounting period or part of an accounting period, that is to say:-

(i) dividends on such (if any) paid-up preference stock or shares as was included in the said new issue, if the company was incorporated before the 1st day of January, 1934, at the rate of seven and one-half per cent. per annum or, if the company was incorporated on or after that date, at the rate of nine per cent per annum, and

(ii) dividends on such (if any) paid-up ordinary stock or shares as was included in the said new issue, if the company was incorporated before the 1st day of January, 1934, at the rate of seven and one-half per cent. per annum or, if the company was incorporated on or after that date, at the rate of nine per cent. per

annum, and

(iii) interest on such (if any) debentures or debenture stock (other than debentures or debenture stock issued to replace an equal amount of debentures or debenture stock issued before the expiration of the trade year which ended in the year ended on the 31st day of August, 1939) as were included in the said new issue, if the company was incorporated before the 1st day of January, 1934, at the rate of seven and one-half per cent. per annum or, if the company was incorporated on or after that date, at the rate of nine per cent. per annum."

(2) In computing under sub-section (3) of section 41 of the Finance Act, 1941 (No. 14 of 1941), (as amended by the foregoing sub-section of this section) the standard payments in respect of the stock or share capital or debentures or debenture stock referred to in that section as the new issue in any accounting period or part of an accounting period, the expression "fixed rate" wherever it occurs in the said sub-section (3) (as so amended) shall, in relation to dividends or interest on so much (whether a part or the whole) of the said new issue as was made after the 6th day of May, 1942, and before the end of the said accounting period or part of an accounting period, be construed and have effect-

(a) if the said company was incorporated before the 1st day of January, 1934, as meaning whichever of the following rates is the lesser, that is to say, the fixed rate at which the dividends or interest (as the case may be) in relation to which the said expression is used are or is actually payable or the rate of seven and one-half per cent. per annum, or

(b) if the said company was incorporated on or after the 1st day of January, 1934, as meaning whichever of the following rates is the lesser, that is to say, the fixed rate at which the dividends or interest (as the case may be) in relation to which the said expression is used are or is actually payable or the rate of nine per cent. per annum.

### **18. Amendment Of section 43 Of The Finance Act, 1941 :-**

(1) Section 43 of the Finance Act, 1941 (No. 14 of 1941), is hereby amended by the insertion in paragraph (a) thereof of the following sub-paragraph (ii) in lieu of the sub-paragraph (ii) now contained in that paragraph, that is to say:-

"(ii) the amount of the remuneration which was allowed in determining the standard profits of such company or which would

have been so allowed if in determining the said standard profits all references to the sum of two thousand five hundred pounds had been deleted from the provisions in this Part of this Act relating to the determination of standard profits;".

(2) The amendment of the said section 43 made by the foregoing sub-section of this section shall apply and have effect in relation to every accounting period ending after the 31st day of December, 1941.

### **19. Operation Of Certain Provisions Where Assessment Final :-**

Where a provision contained in this Part of this Act relates to an accounting period or part of an accounting period ended before the date of the passing of this Act (whether it does or does not also relate to an accounting period or part of an accounting period ended on or after that date), effect may be given to that provision in respect of any such accounting period or part of an accounting period ended before the said date notwithstanding that an assessment in respect of that accounting period or part of an accounting period has become final.

### **20. Construction Of This Part Of This Act :-**

This Part of this Act shall be read and construed together with Part V of the Finance Act, 1920, as amended or extended by subsequent enactments, and, in particular, shall be read and construed together with Part V of the Finance Act, 1941 (No. 14 of 1941).

## **PART 5 Miscellaneous and General**

### **21. Stamp Duty On Bankers Licence :-**

(1) A stamp duty of one pound shall be charged and paid on every bankers licence.

(2) In this section the expression "bankers licence" means a licence to carry on banking business issued by the Revenue Commissioners under an Act passed or to be passed by the Oireachtas in the financial year beginning on the 1st day of April, 1942.

### **22. Amendment Of Section 29 Of Thefinance Act, 1940 :-**

(1) In order to remove doubts, it is hereby declared and enacted

that the application by section 29 of the Finance Act, 1940 (No. 14 of 1940) to the Irish Post Office Savings Bank of the statutes and statutory orders and regulations mentioned in that section operated to authorise the investment (whether before or after the passing of this Act) of moneys of the said Bank in any one or more of the stocks, funds, and securities which are, at the passing of this Act, prescribed by law for the investment of balances to the credit of the Savings Certificates (Interest Charge Equalisation) Fund.

(2) In this section the expression "the Irish Post Office Savings Bank" has the same meaning as it has in the said section 29 of the Finance Act, 1940 (No. 14 of 1940).

### **23. Amendment Of Section 31 Of The finance Act, 1940 :-**

(1) Sub-section (3) of section 31 of the Finance Act, 1940 (No. 14 of 1940), is hereby amended and modified as follows, that is to say:-

(a) the cesser of section 3 of the Savings Banks Act, 1880, effected by paragraph (c) of the said sub-section (3) shall apply and be deemed always to have applied to that section in so far as it relates to the investment of deposits and no further;

(b) the powers conferred on the Minister for Finance by paragraphs (e), (f), and (g) of the said sub-section (3) are hereby transferred to and shall henceforth be exercisable (subject to the next following paragraph of this sub-section) by the Minister for Posts and Telegraphs, and the expression "the Minister" wherever it occurs in any of those paragraphs shall be construed and have effect accordingly;

(c) no regulations shall be made by the Minister for Posts and Telegraphs under the said paragraph (f) of the said sub-section (3) without the consent of the Minister for Finance.

(2) In order to remove doubts, it is hereby declared and enacted that the several statutes and statutory orders, rules, and regulations in relation to trustee savings banks which were in force immediately before the establishment of Saorstát Eireann continued to be in force on and after the day appointed under section 31 of the Finance Act, 1940 (No. 14 of 1940), to be the appointed day for the purposes of that section, but subject to the provisions of the said section 31 as amended by this section.

(3) The Minister for Posts and Telegraphs may from time to time, by order made with the consent of the Minister for Finance, make such adaptations and modifications (whether by way of addition,

omission, or variation) of the several statutes and statutory orders, rules, and regulations referred to in the next preceding sub-section of this section as shall appear to him to be necessary or expedient for the convenient and efficient administration of those statutes, orders, rules, and regulations or for giving to them full force and effect having regard to the provisions of the Constitution and of section 31 (as amended by this section) of the Finance Act, 1940 (No. 14 of 1940), but not so as to prejudice or affect any tax or duty payable to or for the benefit of the Central Fund.

(4) The exemption from tax given by paragraph (a) of sub-section (3) of section 39 of the Income Tax Act, 1918, to savings banks certified under the Savings Bank Act, 1863, shall extend and apply to interest and dividends arising from investments of moneys to the credit of the special account opened in pursuance of sub-section (3) of section 31 of the Finance Act, 1940 (No. 14 of 1940), and shall be deemed to have so extended and applied as on and from the day appointed under the said section 31 to be the appointed day for the purposes of that section.

#### **24. Transfer Of Money From The Road Fund To The Exchequer :-**

With a view to providing moneys to meet general charges which will fall upon the Central Fund, the sum or one hundred thousand pounds shall be transferred and paid from the Road Fund to the Exchequer at such time or times in the financial year ending on the 31st day of March, 1943, and in such manner as the Minister for Finance shall direct.

#### **25. Termination Of Assessments To Excess Profits Duty :-**

Notwithstanding anything contained in any enactment now in force, no assessment or additional assessment to excess profits duty shall be made after the date of the passing of this Act.

#### **26. Care And Management Of Taxes And Duties :-**

All taxes and duties imposed by this Act are hereby placed under the care and management of the Revenue Commissioners.

#### **27. Short Title, Construction, And Commencement :-**

(1) This Act may be cited as the Finance Act, 1942.

(2) Part I of this Act shall be construed together with the Income

Tax Acts, and Part II of this Act, so far as it relates to duties of customs, shall be construed together with the Customs Acts and, so far as it relates to duties of excise, shall be construed together with the statutes which relate to the duties of excise and the management of those duties.

(3) Part I of this Act shall be deemed to come into force on and shall take effect as on and from the 6th day of April, 1942.