

## CHAPTER 39.

## PROFITS TAX.

[No. IV of 1921.]

[31st March, 1921.]

1. This Ordinance may be cited as the Profits Tax Ordinance. Short title.

2. "Capital" and "profits" mean capital and profits as set out in the first and second schedules hereto; "business" means anything in the colony which occupies the time, attention, and labour of anyone for the purposes of profit. Interpretation.  
First and second schedules.

3.—(1) There shall be established a board of assessment for the purposes of this Ordinance, consisting in the first instances of— Board of assessment :

The Colonial Treasurer; and

Stanley Heald, Esq., A.C.A.,

and if either of them is from any cause unable or unwilling to act, the Governor in Council may from time to time appoint some other person :

Provided that there shall be one person on the board who is not an official and, in the event of disagreement on any question of assessments, the Registrar shall form a third member of the board for the purpose of deciding the question at issue. Proviso.

(2) The Governor may appoint a secretary to the board.

(3) Every member of the board, and every officer or clerk employed in connection with the profits tax, before he commences to act in the execution of this Ordinance, shall take the oath prescribed and contained in the third schedule hereto applicable to members of the board, in the presence of the Colonial Secretary or any other person directed by the Governor. Third schedule.

4.—(1) For the purposes of this Ordinance the accounting period shall be taken to be the last period of twelve months ending at any time within the year nineteen hundred and twenty for which the accounts of the trade Accounting period :

or business have been made up, and, where the accounts of any trade or business have not been made up for that period, shall be taken to be the twelve months ending on the thirty-first day of December, nineteen hundred and twenty.

(2) Every business liable to duty under this Ordinance, shall submit returns of capital and profits to the board in the form prescribed by the board by notice in the Gazette not later than the thirty-first day of March, nineteen hundred and twenty-one :

Proviso.

Provided that the board may in its discretion allow an extension of time within which the prescribed returns of capital and profits are to be submitted, but the business shall be liable to pay interest at the rate of six per centum per annum on the amount assessed from the thirty-first day of March to the date of submitting the returns. Where interest is payable under this sub-section the board may in its discretion remit the whole or any part thereof.

(3) If anyone chargeable with the duty referred to in this Ordinance fails to submit his returns of capital and profits within the prescribed time, he shall be liable on summary conviction to a fine not exceeding two hundred dollars, and to a further fine not exceeding twenty dollars a day for every day during which the offence continues after conviction therefor.

Penalty.

(4) The duty shall be payable within one month from the date of assessment, but the Board may, in any case when it thinks fit, allow the duty to be paid in instalments of an amount and payable at a time directed by the Board, with interest at the rate of six per centum per annum. All duty assessed after the thirtieth day of September shall be payable on demand.

Returns.

5.—(1) Returns of capital and profits shall be made, in the case of limited liability companies by the secretary, agent, or attorney, of the company, and in the case of private businesses by one of the proprietors of the business, or if no proprietor is actively engaged therein, or where he is absent from the colony, by the manager, agent, or attorney.

(2) Every return shall contain an address in the colony for service on the company or proprietor of any process or notice required to be served or given by this Ordinance.



(3) Every return of capital and profits under this Ordinance shall be verified by a statutory declaration under the Statutory Declarations Ordinance, made by the person submitting the return. Chapter 255:

(4) The board may in any case accept a provisional return on any conditions it prescribes, and may make a provisional assessment on that return.

(5) Anyone who without reasonable cause refuses, fails, or neglects to make a statutory declaration as required by this section, shall be liable to a penalty not exceeding five hundred dollars, or to imprisonment with or without hard labour for any term not exceeding six months, and anyone who makes a false declaration, or gives a false certificate, shall be liable to the penalties provided by the Statutory Declarations Ordinance, or to like penalties. Penalty.  
Chapter 255.

6.—(1) The board may by notice in writing require anyone to submit a schedule within a time to be specified in the notice, containing the particulars demanded by the Board respecting the capital and profits of his business. Particulars  
of business.

(2) Anyone who, after he is required by the board to submit that schedule, refuses, fails, or neglects to do so, shall be liable to a penalty not exceeding twenty dollars for every day after the date named in the notice during which the refusal, failure, or neglect continues. Penalty.

7.—(1) For the purpose of testing the accuracy of any return made or schedule submitted under this Ordinance, or of obtaining information in case of the refusal, failure, or neglect to make a return or submit a schedule, any member, or the secretary, of the board may enter any premises belonging to anyone making or submitting, or refusing, failing, or neglecting to make or submit the return or schedule, and examine all books, documents and papers referring or relating to, or in any way connected with, the business carried on by that person, or connected with any business included, or which ought to have been included, in the return. Power to  
enter  
premises.

(2) Anyone who—

- (a) obstructs or impedes any person authorised as in this section mentioned in the exercise of powers under this section; or
- (b) refuses, fails, or neglects, to produce any books, documents or papers as aforesaid, to the authorised person; or



(c) refuses or fails to answer, or wilfully gives a false answer to, any question put by an authorised person for the purpose of testing the accuracy of a return or schedule, or of obtaining information for the purpose of this Ordinance,

Penalty.

shall be liable on summary conviction before a magistrate to a penalty not exceeding two hundred and fifty dollars, or to imprisonment with or without hard labour for any term not exceeding six months.

(3) The board may summon anyone whom it thinks able to give information respecting any return made under this Ordinance and shall have the same power as to summoning witnesses and compelling their attendance as to employing bailiffs, police or rural constables, as to examination of witnesses, and as to adjournments, as are for the time being vested in a magistrate in the exercise of his jurisdiction under the Summary Jurisdiction (Petty Debt) Ordinance.

Chapter 15.

(4) All persons summoned to attend and give evidence or to produce documents shall be entitled to the expenses allowed to witnesses who are summoned to attend the Supreme Court on a criminal trial, if the expenses are allowed by the board, but the board may disallow the whole or any part thereof, if it thinks fit.

Assessment  
by board in  
case of  
failure to  
make return.

8.—(1) Where no return of capital and profits has been made, or where the board is not satisfied that the full amount of duty payable has been shown on any return of capital and profits submitted to it, it may assess the person liable for an amount of duty which it in its discretion thinks fit, and that assessment shall not affect any liability incurred by the person by reason of his not having submitted a return or having submitted an incorrect return.

(2) When the board is satisfied that the return is correct, that return shall be deemed an assessment by the board, and the board shall, by notice addressed to the person assessed at his address for service, notify him to that effect.

Increase of  
original  
assessment.

9.—(1) If, after assessing anyone for duty under this Ordinance, the board discovers that he should have been assessed at a greater amount than that at which he has in fact been assessed, the board may proceed to increase the assessment accordingly, and the provisions of this Ordinance as to notice of assessment, appeal, and payment and recovery of duty shall apply to that increase of assessment.

(2) The power to increase an assessment under this Ordinance may be exercised so often as the board discovers that any particular assessment should be increased.

10. After making an assessment under this Ordinance the board shall cause to be sent to the person assessed a notice addressed to him at his address for service stating the amount of the assessment.

Notice to person assessed.

11.—(1) The Colonial Treasurer shall refund any amount proved to the satisfaction of the board to have been paid in excess of the amount required under this Ordinance, provided a claim to that amount be established within six months from the date of assessment.

Refund of excess payments.

(2) Anyone who wilfully makes or furnishes any false statement or information with a view to obtaining repayment of any amount under this Ordinance shall be liable to a penalty not exceeding five hundred dollars, or to imprisonment with or without hard labour for any term not exceeding six months, or to both fine and imprisonment.

Penalty.

12.—(1) The duty under this Ordinance may be assessed on anyone for the time being owning or carrying on the business, or where business has ceased on the person who owned it or carried it on, or acted as agent or attorney in carrying it on, immediately before the time at which it ceased, and when there has been a change of ownership the board may, if it thinks fit, divide the accounting period so that one part of it shall end on the date on which the ownership has so changed and assess the duty for that part of the accounting period on the person who owned or carried on the business, or acted as agent or attorney for him at that date, and assess the duty for the remaining part of the accounting period on the person who owned or carried on the business or acted as his agent or attorney during the latter part of the accounting period.

Method of assessment.

(2) If a person carries on more than one business the assessment may be made on the aggregate, but in the case of partnerships, the partners must be the same in each business.

13.—(1) No one shall, for the purpose of avoiding the payment of any duty levied under this Ordinance, enter into any fictitious or artificial transaction, or carry out any fictitious or artificial operation, and, if he has entered

Fictitious transactions.



into that transaction or carried out that operation before the commencement of this Ordinance, he shall inform the board of its nature.

Penalty. (2) If anyone acts in contravention of, or fails to comply with, this provision, he shall be liable on summary conviction to a fine not exceeding five hundred dollars.

Increase of capital.

14.—(1) In case of the alteration of the capital of a company or of the acquisition of a business by a new company or an individual, at any date subsequent to the first day of January, nineteen hundred and seventeen, the board may assess the business on the basis of its estimate of the actual capital employed in the business, independently of actual purchase price in money or shares or otherwise.

(2) In the case of a company or body corporate whose directors have a controlling interest, the board may, if it thinks fit, for the purpose of the determination and computation of profits, treat the company, or body corporate, and the directors or any of them, as if they were partners in the firm.

(3) In the last preceding sub-section, the expression "directors" includes any managers or persons concerned in the management of the trade or business who are remunerated out of the funds thereof.

Statutory percentage.

(4) Where the capital of a business has been increased during the accounting period the statutory percentage per annum shall be allowed on the amount by which the capital has been increased for so much of the accounting period as the increased capital has been employed.

(5) Where capital has been decreased during the accounting period, the statutory percentage per annum shall not be allowed on the amount by which the capital has been decreased for so much of the accounting period as the capital has been decreased.

Return of capital and profits.

15.—(1) The board may by notice require anyone or the attorney of anyone, or the secretary, or attorney, or agent of a company, carrying on any trade or business in the colony to make a return of capital and profits under this Ordinance within a time to be specified in the notice.

Penalty. (2) Anyone who, after being required by the board to make a return, refuses, fails, or neglects to do so, shall be liable on summary conviction to a fine not exceeding two hundred dollars and to a further fine not exceeding twenty

dollars for every day after the date named in the notice during which the refusal, failure, or neglect continues.

16.—(1) Anyone assessed by the board may, and previous to any appeal to a judge in chambers shall, within fifteen days after service of notice of assessment, apply in writing to the board for a reconsideration of the assessment.

Application  
for recon-  
sideration of  
assessment.

(2) The board shall, on receipt of the application, fix as early a date as convenient for the reconsideration of the assessment and shall serve the applicant with notice thereof at least seven days before the date so fixed.

(3) The applicant may on the reconsideration produce any additional document, or papers, or evidence for the consideration of the board.

(4) The board shall, after considering any documents or papers and hearing any evidence adduced, give its decision shortly in writing, hereinafter called its reconsidered decision.

17.—(1) Anyone assessed may appeal to a judge in chambers against any reconsidered decision of the board within fifteen days of the date of the reconsidered decision after giving three days' notice to the board of the reasons for appeal, and a judge in chambers shall have jurisdiction to hear and determine all questions relating to any assessment under this Ordinance.

Appeals  
from board :

(2) The appeal shall be by summons and shall be heard in camera and in a summary way, seven days' notice of the date fixed therefor being given by the registrar to the parties.

(3) Immediately after the receipt of the notice referred to in sub-section (1) of this section, the board shall transmit to the registrar all the documents and papers laid before it and any evidence taken in connection with the assessment under appeal, together with its reasons for the assessment.

(4) The judge shall have the same power of summoning and examining witnesses on oath as he has in any case before the Supreme Court in its original jurisdiction :

Provided that no evidence shall be received or allowed on the hearing of the appeal which was not tendered before

Proviso.



the board, unless the judge is satisfied that the appellant was prevented from tendering it to the board by circumstances over which he had no control, or by the refusal of the board to hear it.

(5) The judge may refer the assessment back to the board to be dealt with in any manner he directs.

(6) The judge shall determine the true and proper amount of the tax notwithstanding any error or omission in connection with the making of an assessment.

(7) The onus of proving that the assessment complained of or any part thereof is wrong shall be on the appellant.

(8) The costs of the appeal shall be in the discretion of the judge.

Appeals to  
West Indian  
Court of  
Appeal.

18. An appeal shall lie from a judge in chambers to the West Indian Court of Appeal on a point of law only, to be stated by the judge at the request of the appellant.

Recovery of  
duty by  
parate  
execution.

19.—(1) If the duty is not paid within the prescribed time, the board may recover it by parate execution against the property of the person liable to pay it.

(2) In every proceeding by parate execution the signatures of the members of the board subscribed to a document setting forth or containing a statement of the amount shall without proof of those signatures, or of any other matter or thing, be held to be *primâ facie* evidence of the amount claimed being in every particular correct, and that it is due.

Notices and  
meetings of  
board.

20.—(1) Every notice required to be given under this Ordinance shall be signed by the secretary, and any signature attached to the notice shall, until the contrary is shown, be taken to be that of the secretary.

(2) A notice may be served by being sent through the post, by prepaid registered letter, and in proving the service it shall be sufficient to prove that the letter containing the notice was addressed to the address for service of the person for whom the notice was intended and was registered, prepaid and posted.

(3) The date of the posting of the notice shall be deemed to be the date of service.



21. Meetings of the board may, when necessary, be summoned by the official member.

Meetings of board.

22. No member, or secretary of the board, or officer of the Government, shall communicate or allow to be communicated to anyone not legally entitled thereto any information obtained by virtue of anything done in pursuance of this Ordinance, subject to a penalty on summary conviction not exceeding two hundred and fifty dollars, or to imprisonment, with or without hard labour, not exceeding three months.

Privilege.

Penalty.

23. All penalties under this Ordinance may be recovered before a magistrate in the manner provided in the Summary Jurisdiction (Procedure) Ordinance.

Recovery of penalties.

Chapter 14.

24. The Board may by notice in the Gazette prescribe from time to time forms to be used under this Ordinance, and may alter or cancel any form so prescribed.

Forms.

25. Any assessment made hereunder shall be subject to any deduction authorised by arrangements made pursuant to any order of His Majesty in Council under section twenty-three of the Finance Act, 1917, of the Imperial Parliament.

Reciprocal arrangement under Finance Act, 1917.

26.—(1) Notwithstanding any repeal by this Ordinance, the board may assess and collect under and subject to the provisions of this Ordinance any duty and interest which may now or hereafter be found to be due and payable in respect of any accounting period provided for in the Excess Profits Tax Ordinances of 1918 or 1919, or in the Profits Tax Ordinance, 1920, or which although previously assessed under either of those Ordinances remains unpaid :

Saving :  
(No. II of 1918),  
(No. I of 1919),  
(No. XIII of 1920) :

Provided that any such assessment shall be in accordance with the provisions of the Tax Ordinances of 1918, 1919, or 1920, as the case may be, relating to excess profits tax or to profits tax.

Proviso.

(2) For the purposes of this section the board may require anyone, whether doing business on his own account or as agent, attorney, or manager, for some other person, firm, or company, to submit returns in the form provided for in section four of this Ordinance in respect of the capital and the profits of that business during the accounting periods provided for in the Profits Tax Ordinances of 1918, or 1919, or in the Profits Tax Ordinance, 1920.

(3) Notwithstanding any repeal by this Ordinance, the Colonial Treasurer may refund any amount proved to the satisfaction of the board to have been paid in excess of the amount required in respect of the year nineteen hundred and twenty; if a claim to that amount is established within six months from the date of payment.

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FIRST SCHEDULE.

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CAPITAL.

1. The amount of capital of a business shall, so far as it does not consist of money, be taken to be,
  - (a) so far as it consists of assets acquired by purchase, the price at which those assets were acquired, subject to such allowance, if any, for wear and tear or replacement or improvements made prior to the commencement of the accounting period, as the board considers proper, and to any proper allowance for unpaid purchase money :
    - in the case of goodwill the board shall fix the value of an amount to it seeming fair, provided that no such asset shall be included unless it has been acquired by payment in cash or shares and provided further that the value attached thereto shall not exceed the amount paid therefor in cash or shares :
    - in the case of stock in trade, the value shall be taken as the landed cost or local market price, whichever is the lower, and no reserve will be allowed in anticipation of some future falling off in value, or for any other reason;
  - (b) so far as it consists of assets, being debts due to the business, the nominal amount of those debts subject to any reduction which the board considers necessary for bad debts. No deduction shall be made in respect of any general reserve for bad or doubtful debts ;
  - (c) so far as it consists of any other assets which have not been acquired by purchase, the value of the assets at the time when they became assets to the trade or business, subject to any allowances for wear and tear or replacement or improvements made prior to the commencement of the accounting period allowed by the board.
2. In arriving at the amount of capital the following shall be deducted ;
  - (a) cash in a bank on deposit account ;
  - (b) investments (except in the case of businesses where the principal business consists of making investments, and government bonds issued under authority of the Public Loan Ordinance, 1916, and in accordance with the provisions of Ordinances 32 of 1916, 28 of 1917, 48 of 1918, and the Excess Profits Tax Ordinance, 1919, and owned at the commencement of the accounting period by the parties to whom they were originally issued).



3. In the case of businesses where the principal business consists of the making of investments, the investments shall be taken at cost price subject to any allowance for depreciation or appreciation decided on by the board.

4. Items such as preliminary expenses, or expenditure of a revenue character carried forward for a period of years to which no realisable or market value is attached shall be deducted in arriving at the amount of capital.

5. Liabilities for debentures, loans on mortgage, unsecured loans, bills payable, amounts due to creditors, unpaid purchase money, any other liabilities to third parties including the amount of tax assessed under the provisions of the Excess Profits Tax Ordinances, 1918, 1919, and 1920, and any capital the income on which is not taken into account in computing the profits of the business, shall be deducted in arriving at the amount of capital.

6. Accumulated profits employed in the business may be treated as capital, but those profits shall be subject to the tax in the year in which they arise. No profits which are intended to be distributed as dividends within the next accounting period shall be regarded as accumulated profits in arriving at the amount of capital.

7. Where any asset has been paid for otherwise than in cash, the cost price of that asset shall be taken to be the value of the consideration at the time the asset was acquired, but where a business has been converted into a company and the shares in the company are wholly or mainly held by the person or persons who were the owners of the business, no value shall be attached to those shares so far as they are represented by goodwill or otherwise than by material assets of the company, unless the board in special circumstances otherwise directs. Patents and secret processes shall be deemed to be material assets.

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## SECOND SCHEDULE.

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### PROFITS.

1. The profits shall be taken to be the actual profits arising in the accounting period.

2. In arriving at the profits, deductions shall be allowed for—

- (a) interest on money borrowed for the purpose of the business ;
- (b) the rent of leased premises used solely for the purposes of the business, and not as a place of residence, or a proportion not exceeding two-thirds of the rent of any leased dwelling-house partly used for the purposes of the business ;
- (c) repairs and improvements to and depreciation of premises, plant, machinery, furniture, or any asset employed in the business to an amount allowed by the board and the decision of the board as to the amount shall be final ;
- (d) amounts expended upon the development of the land for the purposes of the business which the board considers reasonable ;
- (e) bad debts shown to be such to the satisfaction of the board ;
- (f) other disbursements or expenses incurred solely and exclusively for the purposes of the business and which the board considers reasonably and properly attributable to the accounting period.



3. Deductions for any expenditure of a capital nature for renewals or for the development of the business, or otherwise in respect of the business shall not be allowed except amounts the board considers reasonable.

4. Deductions shall not be allowed on account of the liability to pay or the payment of the tax referred to in the Ordinance.

5. (1) Any deduction allowed for the remuneration of directors, managers, and persons concerned in the management of the business of any limited company shall not, unless the board, owing to any special circumstances or to the fact that the remuneration of any managers or managing directors depends on the profits of the business, otherwise directs, exceed the sum allowed for those purposes in the accounting period of the year immediately preceding the accounting period in respect of which the tax is levied, and no deduction shall be allowed in respect of any transaction or operation of any nature, when it appears, or to the extent to which it appears, that the transaction or operation has artificially reduced the amount to be taken as the amount of the profits of business for the purposes of the Ordinance.

(2) In businesses other than limited companies, a deduction of fifteen per centum, where the capital is \$25,000 or less, and where the capital is in excess of that amount a deduction of fifteen per centum on \$25,000 of the capital, may be allowed as remuneration for the management of the business, provided the proprietor or the proprietors are actively engaged in the colony in the management of that business, but no deduction shall be allowed in respect of the drawings of the proprietor or proprietors, and in the case of a company or body corporate which has been treated as a firm under the provisions of section 14 (2) of the Ordinance.

6. No deduction shall be allowed in respect of interest on capital; losses not connected with, or arising out of the business; expenses of maintenance of the persons assessable, their families or private establishments; premiums for life insurance; losses recoverable under an insurance or contract of indemnity.

7. Where any company, either in its own name or that of a nominee, owns the whole of the ordinary capital of any other company carrying on the same business, or so much of that capital as under the Companies Ordinance a single shareholder can legally own, the provisions of this Ordinance shall apply as if that other company were a branch of the first-named company, and the profits of the two companies shall not be separately assessed.

8. In estimating the profits no account shall be taken of income received from investments except in the case of businesses where the principal business consists of the making of investments and of interest on government bonds allowed as capital under the first schedule clause 2 (b).

9. In computing the total profits of a local authority from any businesses carried on by that authority, the total amount which is required to be raised by it, out of the rates or otherwise, for sinking fund purposes in connection with those businesses, shall be allowed as a deduction.

10. In case of any contract extending beyond the accounting period from the date of its commencement to the completion thereof and only partially performed in the accounting period, there shall (unless the board, owing to any special circumstances, otherwise directs) be attributed to the accounting period the proportion of the entire profits or loss, or estimated profits or loss, in respect of the complete performance of the contract properly attributable to the accounting period, having regard to the extent to which the contract was performed in that period.



## THIRD SCHEDULE.

FORM OF OATH OR AFFIRMATION TO BE TAKEN BY MEMBERS  
AND SECRETARY OF THE BOARD.

I, *A.B.*, do swear (*or affirm as the case may be*) that I will truly, faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the powers and authorities vested in me by the Profits Tax Ordinance, and that I will exercise the powers entrusted to me by the said Ordinance, in such manner only as shall appear to be necessary for the due execution of the same, and that I shall judge and determine upon all matters and things which shall be brought before me under the said Ordinance without favour, affection, or malice, and that I will not disclose any particular contained in any schedule, return, statement, book of assessment, or book of account, delivered or opened to my inspection with respect to any duties charged under the provisions and regulations of the Ordinance; or any evidence or answer given by any person who shall be examined or shall make affidavit, deposition, or affirmation respecting the same in pursuance of the Ordinance, except in such cases and to such persons only who shall be sworn to the due execution of the Ordinance and where it shall be necessary to disclose the same for the purposes of the Ordinance or in order to or in the course of a prosecution for perjury committed in that examination, affidavit, deposition or affirmation. So help me God.

FORM OF OATH TO BE TAKEN BY AN AUDIT OR TREASURY  
OFFICER EMPLOYED IN CONNECTION WITH THE PROFITS TAX  
ORDINANCE.

I, *A.B.*, do swear that in the execution of my duties as clerk in connection with the Profits Tax Ordinance, I will diligently and faithfully perform my duties to the best of my knowledge and judgement and that I will not disclose any particular contained in any statement, return, schedule, book of assessment, or book of account, delivered or opened to my inspection with respect to any duties charged under the provisions and regulations of that Ordinance, or the amount of any sum paid or to be paid by any person under that Ordinance; or any evidence or answer given by any person who shall be examined or who shall make affidavit, deposition, or affirmation respecting the same; except in such cases and to such persons only, who shall be sworn to the due execution of the Ordinance, and when I shall be directed to do so by the regulations of the Ordinance; or by the board; or in order to and in the course of a prosecution for perjury committed on that examination, affidavit, deposition, or affirmation. So help me God.