

EXCESS PROFITS TAX BILL

EXPLANATORY MEMORANDUM

Basis of Proposals in Bill.—The proposals contained in this Bill involve the ascertainment by the Commissioner of Taxes of the amount which *prima facie* constitutes excess profits, and the issue of an assessment accordingly. Objections based solely upon the ground that the Commissioner's assessment is not in accordance with the statutory provisions binding on him are to be determined under the ordinary income-tax procedure, but objections on the ground that what appears *prima facie* to be excess profit is in fact not excess profit, or is not wholly excess profit, are to be determined by a special Committee constituted for that purpose.

The Commissioner is bound to find that sums in excess of the taxpayer's standard income are *prima facie* excess profits. If this finding is objected to, the Committee is charged with the duty of fixing the excess profits at a sum equal to such part of the assessable income as in the opinion of the Committee exceeds the amount which the taxpayer might reasonably expect to derive under peace-time conditions of trade and industry, having regard to the nature of the taxpayer's business or occupation, to the special circumstances of the case, and to all other relevant considerations.

Rate of Excess Profits Tax.—The rate of excess profits tax is 60 per cent. of the residue of the excess profits which is left after there have been paid out of it—(i) the income-tax payable on the excess profits; and (ii) the social security charge and the national security tax payable on those excess profits.

For the purpose of ascertaining this residue, the income-tax payable on the excess profits is taken as being the amount by which the total income-tax payable has been increased because the excess profits were received: in other words the income-tax on the excess profits is taken as being the difference between the income-tax payable on the whole income and the amount of income-tax that would have been payable if the standard income only had been received.

Standard Income.—The standard income of *an individual taxpayer* is whichever of the following three sums he may select, namely:—

- (a) The sum of £500; or
- (b) A sum (called the normal income) equal to the greatest amount of assessable income derived by the taxpayer during any one of the three income years ended respectively on the 31st March, 1937, 1938, and 1939, or to the average of the assessable income for those three years plus 30 per cent., whichever is the less; or
- (c) A sum equal to 6 per cent. of the value of the assets used in producing the income plus an allowance (not being less than £500 or more than £1,000) for the personal exertion of the taxpayer.

For a *company taxpayer* the standard income is whichever of the following two sums the company selects, namely:—

- (a) A sum (called the normal income) equal to the greatest amount of assessable income derived by the company during any one of the three income years ended respectively on the 31st March, 1937, 1938, and 1939, or to the average of the assessable income for those three years plus 30 per cent., whichever is the less; or

- (b) The sum which, after paying thereout income-tax computed at the basic rates (that is the 1940 rate without the 15 per cent. war addition) represents 6 per cent. of the value of the assets used in the production of the assessable income.

Both in the case of individuals and in the case of companies, the taxpayer is regarded as having selected for his standard the normal income basis (increased where necessary to the £500 minimum in the case of individuals) unless he notifies the Commissioner of Taxes to the contrary when the return of income is made.

Valuation of Assets.—Where the value of the assets used in producing income is material in order to determine the standard income, that value is taken as being the difference between the value at the end of the income year of the taxpayer's assets, and the amount at the end of the income year of his liabilities. The value of the assets and the amount of the liabilities are to be determined by the Commissioner of Taxes.

Powers of Excess Profits Committee.—The provisions relating to the standard income and the valuation of assets govern only the making of the Commissioner's original computation of the amount of the excess profits. The Excess Profits Committee is not bound by these provisions, and, if an objection to the Commissioner's assessment is lodged, the Committee may fix the amount of the excess profits after taking into account all relevant circumstances.

The Committee is given the powers of a Commission under the Commissions of Inquiry Act, 1908. The proposal is that proceedings on appeal shall be largely informal in character, and it is anticipated that the great majority of the objections will be determined after the making of representations by correspondence, leaving only a minority of objections to be determined after appearance and evidence before the Committee.

Equalization of Profits: Carrying forward of Losses.—Provision is made enabling the reduction of excess profits for any income year by the amount by which the income for any of the three former years fell short of the standard income for that former year.

Losses incurred in former years in respect of which the taxpayer would be entitled to an allowance in the computation of his taxable income for income-tax purposes are to be deducted from the assessable income before the amount of the excess profits is computed.

Assessments: Time for payment of Excess Profits Tax.—Where the Commissioner of Taxes makes an assessment of excess profits tax, the assessments of income-tax and of social security charge and national security tax are made in the usual way. These assessments of income-tax, social security charge, and national security tax are not varied by any later alteration in the amount of the excess profits by the Excess Profits Committee: the only amendment subsequent to the original assessment (save where the total income is found to have been incorrectly stated) will be any necessary amendment to the assessment of excess profits tax. Excess profits tax is payable at the same time as income-tax.

Exempt Income.—The following incomes are exempted from excess profits tax:—

- (a) Income from royalties received from the grant of rights to cut standing timber, or to remove gravel or other minerals:
- (b) Proprietary income derived by shareholders from proprietary companies: the excess profit derived by the proprietary company itself is liable for excess profits tax in the hands of the company:
- (c) Salaries and wages, except in those cases where excessive salaries are paid by proprietary companies to the directors or shareholders or to their relatives:
- (d) The income of gold-mining companies and of petroleum-mining companies.

NOTES ON VARIOUS CLAUSES.

Clause 1: Short Title.

Clause 2: Definitions.

Clause 3: This clause imposes excess profits tax upon excess profits derived during the continuance of the present war, and fixes the rate of tax payable. As already pointed out the rate is 60 per cent. of the amount by which the excess profits exceed the total of—

- (i) The social security charge and national security tax payable on the excess profits; plus
- (ii) The amount by which the taxpayer's income-tax for the year exceeds the income-tax that would have been payable had he derived no excess profits.

Clause 4: Sets out the classes of exempt income.

Clause 5: This clause makes provision for the computation by the Commissioner of Taxes of the excess profits by reference to the standard income, and for the assessment of excess profits tax. The provisions of the clause bind the Commissioner in the making of his initial computation of excess profits, but do not affect the Excess Profits Committee, which is charged with the duty of fixing the amount of the excess profits after having regard to all relevant circumstances.

It will be observed that clause 5 makes special provision in respect of the following taxpayers:—

- (a) Taxpayers who did not derive assessable income during each of the three years by reference to which the normal income is determined. See proviso to subclause (5):
- (b) Taxpayers who derive income of a kind that is now liable for income-tax but which was exempt from income-tax during the years 1937–1939. (The normal income of these taxpayers will be increased by taking the income that was exempt in 1937–1939 into account as if it had been assessable income—*i.e.*, income liable to income-tax). See subclause (6):
- (c) Taxpayers whose assets used in production of income have varied considerably in value during the year. See proviso to subclause (5) and also proviso to subclause (8):
- (d) Taxpayers who make returns for broken periods of a year. See subclause (10).

Clause 6: Provides for the making of objections, and that objections on grounds not relating to excess profits shall be disposed of before consideration of any objection on the ground that the sum *prima facie* regarded by the Commissioner as being excess profits is greater than the excess profits (if any) actually derived.

Clause 7: Constitution and powers of the Committee.

Clause 8: Defines the basis upon which the Committee shall fix the amount of the excess profit. The clause provides that the Committee's determination is final, and provides also for the amendment of assessments by the Commissioner of Taxes so as to conform to that determination.

Clause 9: This clause by subclause (2) excludes from the proprietary income derived by shareholders in a proprietary company that portion of the company's income which is excess profit of the company, and upon which the company itself will accordingly be liable to pay income-tax and excess profits tax; and limits the credit granted to shareholders in proprietary companies in reduction of the income-tax payable by them on their proprietary income to the credit that would be available if the company had derived only its standard profit.

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.

House of Representatives,

10th October, 1940.

Hon. Mr. Nash

EXCESS PROFITS TAX

ANALYSIS

Title.	5. Commissioner of Taxes to make assessments.
1. Short Title.	6. Objections to assessments.
2. Interpretation.	7. Excess Profits Committee.
3. Excess profits tax imposed.	8. Determination of excess profits by Committee on objection.
4. Incomes exempted from excess profits tax.	9. Provisions as to assessment of income-tax.

A BILL INTITULED

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

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

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

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

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

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

Excess profits
tax imposed.

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

(2) Subject to the provisions of this Act, the provisions of the principal Act or any other Act shall apply with respect to excess profits tax and the assessment, recovery, and payment thereof as if it were income-tax. 5

(3) Excess profits tax shall be levied and paid in and for the year of assessment commencing on the first day of April, nineteen hundred and forty-one, and in and for each subsequent year of assessment that commences not later than one year after the termination of the present war with Germany. 10

(4) Excess profits tax shall be payable by every taxpayer at the rate of sixty per centum of the amount by which the excess profits derived by the taxpayer during the income year preceding the year of assessment exceeds the sum of the following amounts:— 15

(a) The amount of the social security charge and the national security tax payable by the taxpayer in respect of the excess profits: 20

(b) The amount by which the income-tax payable by the taxpayer for the year of assessment exceeds the income-tax that would have been so payable if he had not derived that portion of his assessable income that constitutes excess profits. 25

Incomes
exempted
from excess
profits tax.

4. (1) The following incomes shall be exempt from excess profits tax:— 30

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

(b) Proprietary income within the meaning of section twenty-three of the Land and Income Tax Amendment Act, 1939: 53

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

(d) Income derived by any company that is for the time being assessable for income-tax under section ninety-seven of the principal Act or section three of the Finance Act (No. 2), 1937. 40

1939, No. 34

1937, No. 36

(2) For the purposes of this section the term "salary or wages" includes any bonus, gratuity, extra salary, fee, allowance, or emolument of any kind derived by any person in respect of or in relation to his employment or service otherwise than in the course of a business conducted by him.

(3) Any amount which by virtue of section twenty-four of the Land and Income Tax Amendment Act, 1939, is deemed to be a dividend paid by a proprietary company to any person shall for the purposes of section *five* of this Act be deemed to be excess profits derived by that person, and shall not be exempted under this section as salary or wages:

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

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

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

1939, No. 34

Commissioner
of Taxes to
make
assessments.

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

(a) A sum equal to his normal income within the meaning of this section: 5

(b) In the case of a company or a public authority, the sum which, after the deduction therefrom of income-tax thereon at the basic rates, equals six per centum of the amount of the capital employed by the taxpayer in the production during that year of assessable income other than income exempted by section *four* of this Act: 10

(c) In the case of a taxpayer other than a company or a public authority, the sum which, after the deduction therefrom of such amount (not being less than five hundred pounds or more than one thousand pounds) as the Commissioner deems just and reasonable as remuneration for the personal exertion of the taxpayer in the production of his assessable income during that year, equals six per centum of the amount of the capital employed by the taxpayer in the production during that year of assessable income other than income exempted by section *four* of this Act. 15
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(4) Every taxpayer shall be deemed to have selected the sum referred to in paragraph (a) of the *last preceding* subsection unless, at the time of making his return of income or within such further time as the Commissioner in any case allows, he notifies the Commissioner that he has selected the sum referred to in paragraph (b) or paragraph (c), as the case may require. 30
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(5) For the purposes of this section the term “normal income”, in relation to any taxpayer, means—

(a) A sum equal to the greatest amount of assessable income derived by the taxpayer during any one of the income years included in the period of three years ended on the thirty-first day of March, nineteen hundred and thirty-nine; or 40

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

5 whichever sum is the less:

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

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

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

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

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

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

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

(8) For the purposes of this section the amount of the capital employed by any taxpayer in the production of assessable income during any year shall be deemed

to be the value at the end of that year as determined by the Commissioner of the taxpayer's assets employed in the production of that income, reduced by the amount at the end of the year as determined by the Commissioner of the taxpayer's liabilities incurred for the purpose of producing that income: 5

Provided that the Commissioner may make such adjustment as he deems just and reasonable in any case where the amount of the capital so employed by the taxpayer has been substantially increased or reduced during the year. 10

(9) Where the assessable income derived by any taxpayer during any income year commencing after the thirty-first day of March, nineteen hundred and thirty-nine, is less than the standard income of the taxpayer for that year, the amount of the deficiency shall for the purposes of this section be carried forward, and, so far as may be, deducted from or set off against his excess profits for the three following income years: 15

Provided that any relief under this subsection shall be given so far as possible in respect of the first of those years and, so far as it cannot then be given, shall be given in respect of the next year, and so on. 20

(10) Where a return of income has been made for a period that is less or greater than a year the assessable income shall be determined as for a year both for the purpose of calculating the standard income of the taxpayer and for the purpose of calculating the proportion of the assessable income deemed by virtue of this section to constitute excess profits. For the purposes of this subsection the income of the taxpayer shall be deemed to have been derived at a uniform daily rate throughout the period for which the return is made, and where that period is less than a year that daily rate shall be deemed to have continued for a year. 25 30 35

Objections to assessments.

6. (1) Any taxpayer who has been assessed for excess profits tax under section *five* of this Act may object to the assessment in accordance with the principal Act upon either or both of the following grounds, namely:— 40

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

(b) That, whether or not the assessment is in accordance with sections *three* to *five* of this Act, he has not derived any excess profits, or 45

has not derived any excess profits other than an amount admitted in the notice of objection.

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

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

15 7. (1) For the purposes of this Act there is hereby established a committee, to be called the Excess Profits Committee (hereinafter referred to as the Committee). Excess Profits
Committee.

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

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

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

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

30 (6) The Committee shall within the scope of its jurisdiction be deemed to be a Commission under the Commissions of Inquiry Act, 1908, and subject to the provisions of this Act all the provisions of that Act (except sections eleven and twelve thereof) shall apply accordingly. See Reprint
of Statutes,
Vol. I, p. 1036

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

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

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

Determination
of excess profits
by Committee
on objection.

8. (1) On the determination of any objection under this Act the Committee shall not be bound by section *five* of this Act, but shall fix the excess profits of the taxpayer at an amount equal to such part of the assessable income specified in the assessment (exclusive of any income exempted by section *four* of this Act) as in the opinion of the Committee exceeds the amount which the taxpayer might reasonably expect to derive under peace-time conditions of trade and industry, having regard to the nature of the taxpayer's business or occupation, to the special circumstances of the case, and to all other relevant considerations: 5 10

Provided that the amount of excess profits fixed by the Committee shall not exceed the amount of excess profits specified in the assessment, or be less than the amount of excess profits (if any) admitted in the notice of objection. 15

(2) The determination of the Committee on any objection shall be final and conclusive and shall be communicated to the Commissioner, and the assessment shall be altered by the Commissioner, if necessary, so as to conform to the determination: 20

Provided that if the assessment of the taxpayer's assessable income for income-tax purposes is at any time subsequently duly amended the assessment of excess profits shall be amended so as to conform thereto, and the taxpayer shall have the same rights of objection to the amended assessment as if it had been made under section *five* of this Act. 25

Provisions as
to assessment
of income-tax.
1939, No. 34

9. (1) Except as provided in this section, nothing in this Act shall affect the assessment of income-tax. 30

(2) For the purposes of section twenty-three of the Land and Income Tax Amendment Act, 1939, the term "total income", in relation to any proprietary company, shall be deemed not to include any excess profits derived by the company, and the deduction from the income-tax payable by any shareholder provided for by paragraph (c) of subsection three of the said section twenty-three shall be calculated as if the proprietary company had not derived that portion of its assessable income that constitutes excess profits. 35 40