

# The Excess Profits Tax Act, 1940

( ACT NO. XV OF 1940 )

**An Act to impose a tax on excess profits arising out of certain businesses. <sup>1♣♠♦</sup>**

WHEREAS it is expedient to impose a tax on excess profits arising out of certain businesses in the conditions prevailing during the present hostilities;

It is hereby enacted as follows:-

**Short title,  
extent and  
commencement**

1. (I) This Act may be called the Excess Profits Tax Act, 1940.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint.

**Definitions**

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

(1) "accounting period" in relation to any business means

(a) where the accounts of the business are made up for successive periods of twelve months, each of such periods;

(b) in any other case, such period as the Excess Profits Tax Officer may determine:

Provided that in determining any accounting period under sub clause (b) the Excess Profits Tax Officer shall have regard to the period, if any, which is, or has been, determined as the previous year for that business for the purposes of the Income tax Act, 1922;

(2) "Appellate Assistant Commissioner" means a person appointed to be an Appellate Assistant Commissioner of Excess Profits Tax under section 3;

(3) “average amount of capital” means the average amount of capital employed in any business as computed in accordance with the Second Schedule;

(4) “Board of Referees” means a Board of Referees appointed under section 3;

(5) “business” includes any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture or any profession or vocation, but does not include a profession carried on by an individual or by individuals in partnership if the profits of the profession depend wholly or mainly on his or their personal qualifications unless such profession consists wholly or mainly in the making of contracts on behalf of other persons or the giving to other persons of advice of a commercial nature in connection with the making of contracts:

Provided that where the functions of a company or of a society incorporated by or under any enactment consist wholly or mainly in the holding of investments or other property the holding of the investments or property shall be deemed for the purpose of this definition to be a business carried on by such company or society:

Provided further that all businesses to which this Act applies carried on by the same person shall be treated as one business for the purposes of this Act;

(6) “chargeable accounting period” means

(a) any accounting period falling wholly within the term beginning on the 1st day of September, 1939, and ending on the 31st day of March, 1946; and

(b) where any accounting period falls partly within and partly without the said term, such part of that accounting period as falls within the said term;

(7) “Commissioner” means a person appointed to be a Commissioner of Excess Profits Tax under section 3;

(8) “company” means a company as defined in the Companies Act, 1913, or formed in pursuance of an Act of Parliament of the United Kingdom or of Royal Charter or Letters Patent, or of an Act of the legislature of a British possession <sup>2</sup>[\* \* \*], and includes any foreign association whether incorporated or not which the National Board of Revenue may, by general or special order, declare to be a company for the purposes of this Act;

(9) “deficiency of profits” means

(i) where profits have been made in any chargeable accounting period, the amount by which such profits fall short of the standard profits;

(ii) where a loss has been made in any chargeable accounting period, the amount of the loss added to the amount of the standard profits;

(10) “director” includes any person occupying the position of a director by whatever name called and also includes any person who-

(i) is a manager of the company or concerned in the management of the business; and

(ii) is remunerated out of the funds of the business; and

(iii) is the beneficial owner of not less than twenty per cent of the ordinary share capital of the company;

(11) “dividend” has the meaning assigned to the expression in section 2 of the Income tax Act, 1922;

(12) “Excess Profits Tax Officer” means a person appointed to be an Excess Profits Tax Officer under section 3;

(13) “Income” has the meaning assigned to the expression in section 2 of the Income-tax Act, 1922;

(14) “fixed rate” in relation to dividends on share capital, other than ordinary share capital, includes a rate fluctuating in accordance with the maximum rate of income-tax;

<sup>3</sup>[(14A) “Government” means, except where the context otherwise requires, the Government of the People's Republic of Bangladesh;]

- (15) "Inspecting Assistant Commissioner" means a person appointed to be an Inspecting Assistant Commissioner of Excess Profits Tax under section 3;
- (16) "loss" means a loss computed in the same manner as, for the purposes of this Act, profits are to be computed;
- (16) "ordinary share capital" has the meaning assigned to that expression in sub-section (8) of section 9;
- (17) "person" includes a Hindu undivided family;
- (18) "prescribed" means prescribed by rules made under this Act;
- (19) "profits" means profits as determined in accordance with the first Schedule;
- (20) "standard profits" means standard profits as computed in accordance with the provisions of section 6;
- (21) "statutory percentage" means-
- (a) in relation to a business carried on by a body corporate (other than a company the directors whereof have a controlling interest therein), eight per cent per annum;
  - (b) in relation to a business carried on by a partnership of which one or more of the partners is a body corporate (other than a company the directors whereof have a controlling interest therein), such a rate per cent as is equivalent to-
    - (i) eight per cent per annum on so much of the average amount of the capital employed in the business during the chargeable accounting period as represents the share of any such body corporate, and
    - (ii) ten per cent per annum on the remainder of that amount;
  - (c) in relation to a business to which neither sub-clause (a) nor sub-clause (b) applies, ten per cent per annum:

Provided that in relation to any decrease of capital the statutory percentage shall be in all cases six per cent:

Provided further that where the business was commenced on or after the 1st day of July, 1938, the foregoing percentages shall be increased from eight, ten and six per cent to ten, twelve and eight per cent respectively;

(21A) "taxable territories" has the meaning assigned to that expression by clause <sup>4</sup>[(14AA)] of section 2 of the Income-tax Act, 1922.

(22) "written down value" has the meaning assigned to that expression in sub-section (5) of section 10 of the Income-tax Act, 1922.

### **Excess profits tax authorities**

3. (1) There shall be the following classes of excess profits tax authorities for the purposes of this Act, namely:-

(a) the National Board of Revenue;

(b) Commissioners of Excess Profits Tax;

(c) Assistant Commissioners of Excess Profits Tax, who may be either Appellate Assistant Commissioners of Excess Profits Tax or Inspecting Assistant Commissioners of Excess Profits Tax;

(d) Excess Profits Tax Officers;

(e) Boards of Referees.

(2) Every Commissioner of Excess Profits Tax, Appellate Assistant Commissioner of Excess Profits Tax, Inspecting Assistant Commissioner of Excess Profits Tax and Excess Profits Tax Officer shall be a person who is exercising the functions of Commissioner of Income-tax, Appellate Assistant Commissioner of Income-tax, Inspecting Assistant Commissioner of Income-tax and Income-tax Officer, respectively, under the Income-tax Act, 1922.

(3) The National Board of Revenue shall, subject to the provisions of sub section (2), appoint such persons as Commissioners of Excess Profits Tax, Appellate Assistant Commissioners of Excess Profits Tax, Inspecting Assistant Commissioners of Excess Profits Tax and Excess Profits Tax Officers as it thinks fit and such persons shall perform their functions in