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DRAFT ORDINANCES.

MINUTE.

The following Draft of a proposed Ordinance is published for general information :—

L. D.—O 16/42 45/1/3 (FSO)

An Ordinance further to amend certain provisions of the Excess Profits Duty Ordinance, No. 38 of 1941.

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows :—

Short title

1. This Ordinance may be cited as the Excess Profits Duty (Amendment) Ordinance, No. of 1942.

Amendment of section 2 of Ordinance No. 38 of 1941.

2. Section 2 of the Excess Profits Duty Ordinance, No 38 of 1941, (hereinafter referred to as " the principal Ordinance "), is hereby amended as follows :—

(1) in sub-section (1), by the substitution, for the words " this Ordinance applies,", of the words " this Ordinance applies (other than the business of an agricultural undertaking or any business of mining plumbago),";

(2) by the insertion, immediately after sub-section (1), of the following new sub-section which shall have effect as sub-section (1A) of section 2 :—

" (1A) There shall be charged, levied, and paid on the amount by which the profits arising from the business of an agricultural undertaking or any business of mining plumbago, in any accounting period ending after the first day of January one thousand nine hundred and forty-two, exceed, by more than three thousand rupees, the pre-war standard of profits as defined for the purposes of this Ordinance, excess profits duty of an amount equal—

(*a*) in the case of the business of an agricultural undertaking, to fifty per centum of such excess ; or

(*b*) in the case of any business of mining plumbago, to thirty per centum of such excess." ;

(3) in sub-section (4), by the addition at the end of that sub-section of the following proviso :—

" Provided, however, that the preceding provisions of this sub-section shall, in their application in the case of the business of an agricultural undertaking or of any business of mining plumbago, have effect as though—

(*a*) for the references to the first day of January one thousand nine hundred and forty-one, there were substituted references to the first day of January, one thousand nine hundred and forty-two ; and

(*b*) for the reference to a period of three years there were substituted a reference to a period of two years.".

Amendment of section 3 of the principal Ordinance.

3. Section 3 of the principal Ordinance is hereby amended as follows :—

(1) in sub-section (1)—

(*a*) by the substitution, for paragraph (*b*) of that sub-section, of the following:—

"(*b*) any business of life assurance ; " ; and

(*b*) by the omission of paragraph (*c*) of that sub-section ;

(2) by the addition, at the end of that section, of the following new sub-sections :—

"(6) In any case where the business of mining plumbago is carried on on any land, and any person having any interest in the land whether as owner, lessee, usufructuary mortgagee, trustee, executor or administrator, or being or having been vested with any right to mine plumbago on that land, receives or is entitled to receive, by way of royalty or otherwise, any payment the amount of which is determined by reference to the quantity of plumbago won from such land, then, notwithstanding that such person may not be a partner in such business, the amount of such payment shall be deemed for the purposes of this Ordinance to be moneys accruing to that person from a business of mining plumbago carried on by him.

(7) Where any person receives or is entitled to receive a share in the profits of the business of an agricultural undertaking or any business of mining plumbago, whether as co-owner, joint owner or partner, the Commissioner may in his discretion direct that the share of such person in the profits arising from such business shall be deemed for the purposes of this Ordinance to be the profits of a business separately carried on by that person ; and the Proviso to sub-section (1) shall apply accordingly in any such case if any other business of a like nature is carried on by that person.".

Amendment of section 4 of the principal Ordinance.

4. Section 4 of the principal Ordinance is hereby amended in sub-section (1) thereof as follows :—

(1) in paragraph (*h*) of that sub-section, by the omission of the words " life assurance businesses and " ;

(2) by the addition, at the end of that sub-section, of the following new paragraphs (*l*), (*m*) and (*n*) :—

"(*l*) In determining the profits arising in any accounting period or pre-war trade year from any business of mining plumbago, a deduction shall be made in respect of expenditure incurred during that accounting period or pre-war trade year for the purpose of prospecting for plumbago or of sinking plumbago pits.

(*m*) In determining the profits arising from the business of an agricultural undertaking for the production of tea or of rubber, there shall be added to the nett proceeds of the sale of any tea or rubber which is produced in the course of that business and which is sold on any date in any accounting period, being a date later than the ninth day of July, nineteen hundred and forty-one, a sum determined as hereinafter provided representing the amount levied in respect of the additional export duty which was imposed on tea or on rubber, as the case may be, with effect from the tenth day of July, nineteen hundred and forty-one ; such sum shall be determined at the rate, in the case of tea, of one and a half cents per pound so sold, and in the case of rubber, of two and a half cents per pound so sold.

(*n*) In determining the profits arising from any business of mining plumbago, there shall be added to the nett proceeds of the sale of any plumbago which is obtained in the course of the business (otherwise than by way of purchase or gift) and which is sold or exported by the person carrying on the business on any date in any accounting period, being a date later than the ninth day of July one thousand nine hundred and forty-one, a sum determined as hereinafter provided representing the amount levied in respect of the export duty imposed on plumbago with effect from the tenth day of July, nineteen hundred and forty-one ; such sum shall be determined at the rate of one rupee per hundred-weight of such plumbago so sold or exported."

Insertion of new section 4A in the principal Ordinance.

5. The following new section shall be inserted immediately after section 4 of the principal Ordinance and shall have effect as section 4A of that Ordinance :—

Relief in respect of intensive production of rubber.

4A. (1) In determining the profits for any accounting period ending after the first day of January, 1942, from the business of an agricultural undertaking for the production of rubber, a deduction on account of the intensive production of rubber on any estate shall be made in accordance with the following provisions :—

(a) in any case where the accounting period falls wholly within a year of control, the standard production of the estate for the accounting period shall be deemed to be an amount which bears to the standard production for that year of control the same proportion as the number of days in the accounting period bears to the total number of days in that year ;

in any case where the accounting period falls within two years of control (hereinafter referred to, respectively, as "the first year" and "the second year"), the standard production of the estate for the accounting period shall be specially computed for the purposes of this section and shall be deemed to be the total of—

(i) an amount which bears to the standard production for the first year of control the same proportion as the number of days in the accounting period which fall within that year bears to the total number of days in that year ; and

(ii) an amount which bears to the standard production for the second year of control the same proportion as the number of days in the accounting period which fall within the second year bears to the total number of days in that year ;

(c) where the number of pounds of rubber produced on the estate during the accounting period exceeds seventy-five per centum of the standard production for that accounting period, but does not exceed such standard production, a deduction shall be made of an amount equivalent to one-half of the profits arising in respect of such excess production ;

(d) where the number of pounds of rubber produced on the estate during the accounting period exceeds the standard production for that accounting period, a deduction shall be made—

(i) of an amount equivalent to one half of the profits arising in respect of twenty-five per centum of such standard production ; and

(ii) of an amount equivalent to the whole of the profits arising in respect of the number of pounds produced in excess of such standard production ;

(e) for the purposes of the preceding paragraphs, the profits in respect of each pound of any excess production shall be determined by dividing the nett profits of the whole estate ascertained in accordance with this Ordinance, (before any adjustment is made under section 11), by the number of pounds of rubber produced during the accounting period.

(2) All deductions authorised under this section shall be separately determined in relation to each estate registered under the Rubber Control Ordinance, No. 63 of 1938.

(3) Notwithstanding anything in section 9, no deduction shall be made under this section in determining the profits of any pre-war trade year.

(4) In this section—

"estate" and "year of control" have, respectively, the same meaning as in the Rubber Control Ordinance, No. 63 of 1938 ;

"standard production", when used with reference to a year of control, has the same meaning as in the aforesaid Ordinance.

(5) The Governor may, by Order published in the *Gazette*, make provision prescribing the circumstances in which, and the terms and conditions subject to which, relief may be granted in respect of the intensive production of

rubber in any place outside Ceylon in cases where excess profits duty is payable under this Ordinance on the profits arising from the production of such rubber.

Amendment of section 10 of the principal Ordinance.

6. Section 10 of the principal Ordinance is hereby amended as follows :—

(1) in sub-section (1) of that section, by the substitution, for the words and figures " sub-sections (2), (3) and (4) ", of the words and figures " sub-sections (2) to (4A) " ;

(2) by the insertion, immediately after sub-section (4) of that section, of the following new sub-section :—

(4A) In computing the capital of the business of an agricultural undertaking, the value of the mature area of an estate, inclusive of all buildings on such area which are used or occupied for the purposes of the business, shall not in any case be taken to be less than an amount determined at the rate—

(*a*) where the area is planted with tea, of one hundred rupees per acre ; or

(*b*) where the area is planted with rubber, of six hundred rupees per acre ; or

(*c*) where the area is planted with coconut, of four hundred rupees per acre,

and the value of any area, other than a mature area, which is planted or interplanted with tea, rubber or coconut, shall not be taken to be less than such an amount as may be reasonable in the circumstances of the case, having regard to the rate per acre prescribed by the preceding provisions of this sub-section in relation to a mature area planted with tea, rubber or cocount, as the case may be.

In this sub-section, " mature area " means an area fully planted with tea or with rubber or with coconut, the bushes, trees or palms on which are in full bearing.

Amendment of section 14 of the principal Ordinance

7. Section 14 of the principal Ordinance is hereby amended by the addition, at the end of that section, of the following new sub-sections :—

(5) In any case where the Commissioner is satisfied, upon application made to him by any person from whom payment is due of any amount as excess profits duty in respect of the profits arising from any business in the first accounting period for which such duty is payable by that person—

(*a*) that the moneys in the possession of that person are insufficient, having regard to all the circumstances of the case, to enable that person to pay such amount on the date on which payment thereof is due ; and

(*b*) that that person has delivered any plumbago or agricultural produce to any officer or person authorised by the Government of the United Kingdom or of Ceylon to purchase plumbago or such agricultural produce for or on behalf of any such Government in accordance with any purchasing scheme approved by such Government for the purpose, or has in his possession any plumbago or agricultural produce which he has offered for immediate delivery to any officer or person so authorised ; and

(*c*) that payment has not been made of the purchase price of such plumbago or agricultural produce,

the Commissioner may direct that the amount so payable as excess profits duty, or such part of that amount as in his opinion represents the sums which will be ultimately payable as the purchase price of such plumbago or agricultural produce, as the case may be, shall not be deemed to be in default until payment is made of the purchase price of such plumbago or agricultural produce :

Provided, however, that the Commissioner may, by notice in writing, revoke, with effect from a date specified in the notice, any directions issued by him under this sub-section in any case where any person has offered any plumbago or agricultural produce for immediate delivery as hereinbefore provided, if the Commissioner is satisfied that that person has disposed of such plumbago or agricultural produce otherwise than in pursuance of such offer or will for any other reason be unable to deliver such plumbago or agricultural produce in pursuance of such offer.

(6) As a condition precedent to the issue in any case of any directions under sub-section (5), the Commissioner may require the person by whom the excess profits duty is

payable to authorise and request the officer or person to whom the plumbago or agricultural produce has been or is to be delivered to pay to the Commissioner the purchase price for such plumbago or agricultural produce, or to pay to the Commissioner out of such purchase price an amount equivalent to the amount due as excess profits duty from the vendor of such plumbago or agricultural produce.

(7) The provisions of sub-sections (5) and (6) of this section shall have effect notwithstanding anything in section [illegible] the Income Tax Ordinance.

Amendment of section 15 of the principal Ordinance.

9. [illegible]on 15 of the principal Ordinance is hereby amended [illegible]dition at the end thereof of the following :—

[illegible]here relief in respect of additional export duties has been granted or is due in any case by reason of the provisions of section 16A, account shall be taken of the amount of such relief in the determination, for the purposes of this section, [illegible] the total amount of excess profits duty paid in respect [illegible]e business during the whole period for which such duty payable."

Insertion of new section 16A in the principal Ordinance.

The following new section shall be inserted immediately after section 16 of the principal Ordinance, and shall have effect as section 16A of that Ordinance :—

Relief in respect of additional export duties on tea, rubber and plumbago.

16A. (1) In any case where excess profits duty is payable in respect of the [illegible]s arising in any accounting period from the business of an agricultural undertaking for the production of tea or rubber, and the additional export duty on tea or rubber, as the case may be, which is referred to in paragraph (*m*) of section 4 (1) is in force at any time during that accounting period, there shall be deducted, from the amount which has been paid or is payable as excess profits duty in respect of the profits arising from that business, a sum equal to the sum which under the aforesaid paragraph (*m*) is added in respect of that accounting period to the nett proceeds of the sale of the tea or rubber produced in the course of that business, and a repayment or set off shall be made accordingly from or against the amount so paid or payable as excess profits duty.

(2) In any case where excess profits duty is payable in respect of the profits arising in any accounting period from any business of mining plumbago, and the export duty on plumbago which is referred to in paragraph (*n*) of section 4 (1) is in force at any time during that accounting period, there shall be deducted, from the amount which has been paid or is payable as excess profits duty in respect of the profits of that business, a sum equal to the sum which under the aforesaid paragraph (*n*) is added in respect of that accounting period to the nett proceeds of the sale of plumbago obtained in the course of that business, and a repayment or set-off shall be made accordingly from or against the amount so paid or payable as excess profits duty.

(3) For the purposes of section 16, the amount of excess profits duty paid or payable in any case to which sub-section (1) or sub-section (2) applies shall be deemed to be the amount which would have been paid or payable if provision for relief had not been made by sub-section (1) or sub-section (2), as the case may be.

Insertion of new section 18A in the principal Ordinance

10. The following new section shall be inserted immediately after section 18 of the principal Ordinance, and shall have effect as section 18A of that Ordinance :—

Rules for the purposes of this Ordinance. Cap. 188.

18A. (1) The Board of Income Tax constituted under the Income Tax Ordinance may make rules, consistent with this Ordinance, for the ascertainment and determination of any class of profits or income and generally for carrying out the provisions of this Ordinance.

(2) The matters in relation to which the Board of Income Tax is authorised to make rules under sub-section (1) shall be deemed to be added to the matters referred to in sub-sections (1), (2) and (3) of section 90 of the Income Tax Ordinance, and the provisions of sub-sections (4), (5) and (6) of that section shall apply accordingly in the case of any rules made under the powers conferred by sub-section (1) of this section in like manner as they apply in the case of rules made by the Board under the aforesaid section 90.

Amendments made by sections 2 to 9 to have retrospective effect.

11. The amendments and additions effected by sections 2 to 9 of this Ordinance shall have effect and shall for all purposes be deemed to have had effect on and after the fifth day of October, 1941, (being the date of the commencement of the principal Ordinance) ; and the provisions of the principal Ordinance shall accordingly be deemed on and after that date to have had effect in like manner as though that Ordinance had on that date been amended in the manner provided in the aforesaid sections 2 to 9 of this Ordinance.

Objects and Reasons.

The object of this Bill is to amend the Excess Profits Duty Ordinance, No. 38 of 1941, in order to impose the duty on excess profits from the business of agriculture and the business of mining plumbago.

2. In so far as business other than agriculture and the mining of plumbago are concerned, the principal Ordinance presently imposes the duty in respect of profits in any accounting period ending after January 1, 1941; but, in relation to agriculture and the mining of plumbago, the duty will only be imposed in respect of profits arising in any accounting period ending after January 1, 1942.

The duty in the case of agricultural undertakings, as in other cases, be fifty per centum of the excess profits but, in the case of profits from the mining of plumbago, the duty will be fixed at thirty per centum. (Clause 2 (2))

3. Clause 3 (2) will insert in section 3 of the principal Ordinance a new sub-section (6), the effect of which will be that if the owner of any land or the holder of any mining rights receives any payment, by way of rent, royalty or otherwise, in respect of plumbago won from the land, such owner or holder will, to the extent of the amount so received, be deemed to carry on a business of mining plumbago and become liable as such to pay excess profits duty.

4. Additional export duties on tea and rubber were imposed with effect from July 10, 1941. It is now proposed that, if a producer of tea or rubber becomes liable to pay excess profits duty upon the profits arising from the production of such tea or rubber, the amount of the additional export duty should be deducted or set off against the amount payable by him as excess profits duty. The necessary legal provision for this purpose will be contained in the new section 16A which will be inserted in the principal Ordinance by Clause 9.

Clause 4 (2) will insert in section 4 (1) of the principal Ordinance a new paragraph (*m*) containing provisions consequential to those set out in the new section 16A. This paragraph provides that, for the purposes of determining the profits from any business for the production of tea or of rubber, there shall be added to the nett proceeds of sale the sum representing the additional export duties paid on such tea or rubber; the sum will be determined at the rate of 1½ cents per pound, in the case of tea, and 2½ cents per pound, in the case of rubber.

The new paragraph (*n*) which will be added to section 4 (1) of the principal Ordinance provides for a similar addition, to the sale proceeds of plumbago, of amounts paid in respect of the new export duty on plumbago which was levied with effect from July 10, 1941; and the new section 16A will provide for the grant of relief to producers of plumbago in respect of the amount levied as export duty on plumbago produced by them.

5. The new section 4A, which will be inserted in the principal Ordinance by Clause 5 of the Bill, contains special provisions enabling relief to be granted in cases where there has been intensive production of rubber on any estate.

The standard production of the estate for the accounting period will be specially computed for the purposes of the Ordinance, and relief will be granted in cases where the actual production has exceeded seventy-five per centum of the standard production; profits from any quantity of rubber in excess of the standard production will not be taken into account for the purposes of the Ordinance.

Power has also been taken, in sub-section (5) of the new section 4A, for the Governor, by Order, to provide for the grant of relief in a case where there has been intensive production of rubber outside Ceylon by a person who is liable to pay excess profits duty in Ceylon on the profits arising from the production of such rubber.

6. Clause 6 of the Bill will insert in section 10 of the principal Ordinance a new sub-section providing that the capital value of any mature area of land planted with tea or with rubber or with coconut shall not be taken to be less than an amount determined by reference to the appropriate value per acre which is prescribed in the sub-section; the valuation of immature and interplanted areas is also to be made with due regard to the value per acre prescribed in relation to mature areas.

7. The effect of section 76 of the Income Tax Ordinance (Chapter 188) in its application in relation to the payment of excess profits duty is that the duty will be deemed to be in default if it is not paid on or before a date specified in the notice of assessment.

In view of the fact that producers of plumbago and of agricultural produce may have to await receipt of the proceeds of sale of their plumbago or agricultural produce in order to enable them to pay the sums due as excess profits duty, it is proposed to insert in section 14 of the principal Ordinance special provisions the effect of which will be that where the Commissioner is satisfied that a person from whom duty is due has delivered plumbago or agricultural produce to a purchasing officer under an approved Government purchasing sche[illegible] has [illegible]red plumbago or agricultural produce for imm[illegible] delivery to any such officer, the Commissioner m[illegible] that the duty shall not be dee[illegible]d to be in default [illegible] time as payment is made of [illegible]e purchase price [illegible] plumbago or agricultural produc[illegible] delivered or [illegible]red.

The special provisions which are referred to above will only [illegible]ly in the case of the duty due upon the profits of a business [illegible] first accounting period for which duty is payable upon [illegible]rofits.

It is considered desirable that the Ordinance should be [illegible]ded in order to exempt, from the liability to duty, [illegible]esses of life assurance. This will be effected by Clause 3 (1).

9. The opportunity has been taken to insert in the principal Ordinance a new section enabling the Board of Income Tax to make rules for the ascertainment and determination of any class of profits or income and generally for carrying out the provisions of the Ordinance (Clause 8).

10. In view of the fact that the effect of the amendments in the principal Ordinance will be to impose a duty in respect of profits arising during a period prior to the enactment of the amending Ordinance, it is necessary that the amendments effected by Clauses 2 to 9 of the Bill should have retrospective effect.

Financial Secretary's Office,
Colombo, June 22, 1942.

H. J. HUXHAM,
Financial Secretary.

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