

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1982, SCHEDULE 18. (See end of Document for details)

SCHEDULES

SCHEDULE 18

Section 134.

ALTERNATIVE VALUATION OF ETHANE USED FOR PETROCHEMICAL PURPOSES

Modifications etc. (not altering text)

C1 See Finance Act 1986 (c. 41), s. 109(5) and Sch. 21

The election

- 1 (1) An election shall be made—
 - (a) in so far as it is to apply to ethane which is relevantly appropriated, by the participator alone; and
 - (b) in so far as it is to apply to ethane which is disposed of, by the participator and the person to whom it is disposed of.
- (2) An election shall be made in such form as may be prescribed by the Board and shall—
 - (a) identify, by reference to volume, chemical composition and initial treatment, the ethane to which the election is to apply;
 - (b) specify the period, beginning on or after the date of the election and not exceeding fifteen years, which is covered by the election;
 - (c) specify the price formula which is to apply for determining the market values of ethane during that period;
 - (d) specify the petrochemical purposes for which ethane to which the election applies will be used; and
 - (e) specify the place to or at which any such ethane is to be delivered or appropriated.
- (3) The reference in sub-paragraph (2)(a) above to initial treatment is a reference to such initial treatment (if any) as the ethane will have been subjected to before it is disposed of or relevantly appropriated.

Conditions for acceptance of an election

- 2 (1) Subject to sub-paragraphs (2) and (3) below, the Board shall accept an election if they are satisfied that, under a relevant contract (as defined in paragraph 3 below) for the sale at arm's length of the ethane to which the election applies, the contract prices would not differ materially from the market values determined in accordance with the price formula specified in the election ; and if the Board are not so satisfied they shall reject the election.
- (2) The Board shall reject an election if they are not satisfied that the price formula specified in the election is such that the market value of ethane disposed of or relevantly appropriated at any time during the period covered by the election will be

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readily ascertainable either by reference to the price formula alone or by reference to that formula and to information—

- (a) which is, or is expected to be at that time, publicly available; and
- (b) which is not related or dependent, in whole or to any substantial degree, to or on the activities of the person or persons making the election or any person connected or associated with him or them.

(3) The Board shall reject an election if, after receiving notice in writing from the Board, the person or, as the case may be, either of the persons by whom the election was made—

- (a) fails to furnish to the Board, before the appropriate date, any information which the Board may reasonably require for the purpose of determining whether the election should be accepted; or
- (b) fails to make available for inspection, before the appropriate date, by an officer authorised by the Board any books, accounts or documents in his possession or power which contain any information relevant for that purpose.

(4) In sub-paragraph (3) above “the appropriate date” means such date as may be specified in the notice concerned, being a date not earlier than one month after the date on which the notice was given.

(5) Any notice under sub-paragraph (3) above shall be given within the period of three months beginning on the date of the election in question.

3 (1) In paragraph 2 above “relevant contract” means a contract which is entered into,—

- (a) if the price formula specified in the election is derived from an actual contract which is identified in the election and was entered into not more than two years before the date of the election, at the time at which that contract was entered into, and
- (b) in any other case, at the time of the election in question,

and which incorporates the terms specified in sub-paragraph (2) below, but it is not necessarily a contract for the sale of ethane for petrochemical purposes.

(2) The terms referred to in sub-paragraph (1) above are—

- (a) that the ethane is required to be delivered at the place in the United Kingdom [^{F1}or another country] at which the seller could reasonably be expected to deliver it or, if there is more than one such place, the one nearest to the place of extraction; and
- (b) that the price formula may be varied only in the event of a substantial and lasting change in the economic circumstances surrounding or underlying the contract and that any such variation may not take place before the expiry of the period of five years beginning on the date of the first delivery of ethane during the period covered by the election.

Textual Amendments

F1 Words in [Sch. 18 para. 3\(2\)\(a\)](#) inserted (16.7.1992) by [Finance \(No. 2\) Act 1992 \(c. 48\)](#), s. 74, [Sch. 15 para.5](#)

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Notice of acceptance or rejection

- 4 (1) Notice of the acceptance or rejection of an election shall be given to the party or, as the case may be, each of the parties to the election before the expiry of the period of three months beginning on—
- (a) the date of the election, or
 - (b) if a notice has been given under paragraph 2(3) above relating to the election, the date or, as the case may be, the last date which is the appropriate date, as defined in paragraph 2(4) above, in relation to such a notice.
- (2) If no such notice of acceptance or rejection is so given, the Board shall be deemed to have accepted the election and to have given notice of their acceptance on the last day of the period referred to in sub-paragraph (1) above.
- (3) After notice of the acceptance of an election has been given under this paragraph, a change in the identity of the participator or, where appropriate, of the person to whom the ethane in question is disposed of shall not, of itself, affect the continuing operation of the election.

Market value ceasing to be readily ascertainable

- 5 (1) In any case where—
- (a) it appears to the Board that, at some time during the period covered by an election, the market value of ethane to which the election applies has ceased or is ceasing to be readily ascertainable as mentioned in paragraph 2(2) above, and
 - (b) the Board give notice of that fact to the party or, as the case may be, each of the parties to the election and in that notice specify a date for the purposes of this paragraph (which may be a date earlier than that on which the notice is given),
- then, subject to sub-paragraph (2) below, on the date so specified the election shall cease to have effect.
- (2) If—
- (a) within the period of three months beginning on the date of a notice under sub-paragraph (1)(b) above, the party or parties to the election by notice in writing given to the Board specify a new price formula, and
 - (b) the new price formula is accepted by the Board in accordance with paragraph 7 below,
- the election shall continue to have effect and, subject to paragraph 9 below, for the purpose of determining the market value, on and after the date specified in the notice under sub-paragraph (1)(b) above, of ethane to which the election applies, section 134 of this Act shall have effect as if the new price formula were the formula specified in the election.

Price formula ceasing to give realistic market values

- 6 (1) If, at any time after the expiry of the period of five years beginning on the date of the first delivery or relevant appropriation of ethane during the period covered by an election,—
- (a) it appears to the party or parties to the election or, as the case may be, to the Board that, by reason of any substantial and lasting change in any economic circumstances which were relevant at the time referred to in paragraph 3(1)

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above, the market values determined in accordance with the price formula specified in the election are no longer realistic; and

- (b) the party or parties to the election give notice of that fact to the Board, or the Board give notice of that fact to the party or, as the case may be, each of the parties to the election,

then, subject to the following provisions of this paragraph, sub-paragraph (2) below shall apply.

- (2) Where this sub-paragraph applies, the election shall not have effect with respect to any chargeable period beginning after the date of the notice under sub-paragraph (1) (b) above.
- (3) Before the expiry of the period of three months beginning on the date on which a notice under sub-paragraph (1)(b) above given by the party or parties to the election is received by the Board, the Board shall give notice of acceptance or rejection of that notice to the party or parties concerned; and
 - (a) if the Board give notice of rejection, sub-paragraph (2) above shall not apply; and
 - (b) if no notice of acceptance or rejection is in fact given as required by this sub-paragraph, the Board shall be deemed to have given notice of acceptance on the last day of the period of three months referred to above.
- (4) If a notice under sub-paragraph (1)(b) above which has been given by the party or parties to the election contains a new price formula, the Board shall first consider the notice without regard to that formula and if, following upon that consideration, the Board give a notice of acceptance under sub-paragraph (3) above, they shall then proceed to consider the new price formula.
- (5) In any case where—
 - (a) sub-paragraph (4) above applies and the new price formula contained in the notice under sub-paragraph (1)(b) above is accepted by the Board in accordance with paragraph 7 below, or
 - (b) within the period of three months beginning on the date of a notice given by the Board under sub-paragraph (1)(b) above, the party or parties to the election by notice in writing given to the Board specify a new price formula which is accepted by the Board in accordance with paragraph 7 below,
 sub-paragraph (2) above shall not apply and for the purpose of determining, for any chargeable period beginning after the date of the notice under sub-paragraph (1)(b) above, the market value of ethane to which the election applies, section 134 of this Act shall have effect as if the new price formula were the formula specified in the election.
- (6) If, by virtue of sub-paragraph (5) above or an appeal under paragraph 8 below, a new price formula has effect for determining the market value of ethane to which an election applies, sub-paragraph (1) above shall thereafter have effect in relation to the market value of any such ethane as if—
 - (a) the reference therein to the date of the first delivery or relevant appropriation of ethane during the period covered by the election, and
 - (b) the reference therein to the time referred to in paragraph 3(1) above,
 were each a reference to the beginning of the first chargeable period for which the new price formula has effect.

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Acceptance or rejection of new price formula

- 7 (1) Subject to sub-paragraph (3) below, the Board shall accept a new price formula specified in a notice under paragraph 5(2) above if they are satisfied that the new formula provides for readily ascertainable market values which correspond, so far as practicable, with those which were intended to be provided for under the original price formula ; and if the Board are not so satisfied they shall reject such a new price formula.
- (2) Subject to sub-paragraph (3) below, sub-paragraphs (1) and (2) of paragraph 2 above and paragraph 3 above shall apply to determine whether the Board shall accept—
- (a) a new price formula contained in a notice under paragraph 6(1)(b) above which has been accepted by the Board under paragraph 6(3) above, or
 - (b) if the Board have given notice under paragraph 6(1)(b) above, a new price formula specified in a notice under paragraph 6(5)(b) above,
- as if the new price formula were specified in an election made at the time the notice under paragraph 6(1)(b) above was given.
- (3) The Board shall reject such a new price formula as is referred to in sub-paragraph (1) or sub-paragraph (2) above if, after receiving notice in writing from the Board, the party or, as the case may be, either of the parties to the election—
- (a) fails to furnish to the Board, before the appropriate date, any information which the Board may reasonably require for the purpose of determining whether the new formula should be accepted in accordance with sub-paragraph (1) or, as the case may be, sub-paragraph (2) above, or
 - (b) fails to make available for inspection, before the appropriate date, by an officer authorised by the Board nay books, accounts or documents in his possession or power which contain information relevant for that purpose.
- (4) Sub-paragraph (4) of paragraph 2 above applies in relation to sub-paragraph (3) above as it applies in relation to sub-paragraph (3) of that paragraph.
- (5) Notice of the acceptance or rejection of a new price formula—
- (a) specified in a notice under paragraph 5(2) or paragraph 6(5)(b) above, or
 - (b) contained in a notice under paragraph 6(1)(b) above which has been accepted by the Board by a notice under paragraph 6(3) above,
- shall be given to the party or, as the case may be, each of the parties to the election concerned before the expiry of the period of three months beginning on the relevant date (as defined in sub-paragraph (6) below), and if no notice of acceptance or rejection is in fact given as required by this sub-paragraph, the Board shall be deemed to have accepted the formula and to have given notice of their acceptance on the last day of that period.
- (6) In sub-paragraph (5) above “the relevant date” means—
- (a) if a notice has been given under sub-paragraph (3) above relating to the price formula in question, the date or, as the case may be, the last date which is the appropriate date, within the meaning of that sub-paragraph, in relation to such a notice; and
 - (b) if no such notice has been given, then—
 - (i) in relation to a new price formula falling within paragraph (a) of sub-paragraph (5) above, the date on which the notice referred to in that paragraph was received by the Board; and

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(ii) in relation to a new price formula falling within paragraph (b) of that sub-paragraph, the date of the notice from the Board under paragraph 6(3) above.

- 8 (1) Where the Board give notice to any person or persons—
- (a) under paragraph 4 above, rejecting an election; or
 - (b) under paragraph 5 above, that the value of any ethane has ceased or is ceasing to be readily ascertainable; or
 - (c) under paragraph 6(1)(b) above, that a price formula is no longer realistic; or
 - (d) under paragraph 6(3) above, rejecting a notice given under paragraph 6(1)(b) above; or
 - (e) under paragraph 7(5) above, rejecting a new price formula;
- that person or, as the case may be, those persons acting jointly may appeal^{F2}... against the notice.
- (2) An appeal under sub-paragraph (1) above shall be made by notice in writing given to the Board within thirty days after the date of the notice in respect of which the appeal is brought.
- (3) Where at any time after the giving of notice of appeal under this paragraph and before the determination of the appeal by the [^{F3}tribunal], the Board and the appellant agree that the notice in respect of which the appeal is brought should be accepted or withdrawn or varied, the same consequences shall ensue as if the [^{F3}tribunal] had determined the appeal to that effect.
- (4) [^{F4}If an appeal under this paragraph is notified to the tribunal and the tribunal determines] that the appeal should be allowed [^{F5}it] shall allow the appeal and—
- (a) where the appeal is against a notice of rejection of an election or proposed new price formula, [^{F6}the tribunal shall] substitute a notice of acceptance of the election or price formula without modification or with such modifications as [^{F7}the tribunal thinks] fit;
 - (b) where the appeal is against a notice under paragraph 5 or paragraph 6(1)(b) above, [^{F8}the tribunal may direct] that the price formula in question shall continue to have effect as if the notice had not been given; and
 - (c) where the appeal is against a notice under paragraph 6(3) above rejecting a notice under paragraph 6(1)(b) above, the [^{F9}tribunal] shall substitute a notice of acceptance.
- (5) Sub-paragraphs (2), (8) and (11) of paragraph 14 of Schedule 2 to the principal Act^{F10}, and paragraphs 14A to 14I of that Schedule] shall apply in relation to an appeal against any such notice as is referred to in sub-paragraph (1) above as they apply in relation to an appeal against any such notice as is referred to in sub-paragraph (1) above as they apply in relation to an appeal against an assessment or determination made under the principal Act, but with the substitution, for any reference to the participator, of a reference to the person or persons who gave notice of appeal under sub-paragraph (2) above [^{F11}and, in the case of paragraphs 14A to 14I of Schedule 2, with such other modifications as may be necessary].
- (6) Where notice of appeal is duly given against a notice given by the Board under paragraph 5 or paragraph 6(1)(b) above, the period of three months referred to in paragraph 5(2)(a) or, as the case may be, paragraph 6(5)(b) above shall not begin to run until the appeal is withdrawn or finally determined.

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- (7) Any reference in section 134 of this Act or the preceding provisions of this Schedule to an election accepted by the Board shall be construed as including a reference to an election accepted in pursuance of an appeal under this paragraph.

Textual Amendments

- F2** Words in Sch. 18 para. 8(1) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 101(2)**
- F3** Word in Sch. 18 para. 8(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 101(3)**
- F4** Words in Sch. 18 para. 8(4) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 101(4)(a)(i)**
- F5** Word in Sch. 18 para. 8(4) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 101(4)(a)(ii)**
- F6** Words in Sch. 18 para. 8(4)(a) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 101(4)(b)(i)**
- F7** Words in Sch. 18 para. 8(4)(a) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 101(4)(b)(ii)**
- F8** Words in Sch. 18 para. 8(4)(b) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 101(4)(c)**
- F9** Word in Sch. 18 para. 8(4)(c) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 101(4)(d)**
- F10** Words in Sch. 18 para. 8(5) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 101(5)(a)**
- F11** Words in Sch. 18 para. 8(5) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 101(5)(b)**

Returns

- 9 In any case where a notice under paragraph 5(1)(b) above or paragraph 6(1)(b) above relating to an election has been given to a party to the election or to the Board then, unless the notice has been withdrawn (whether in pursuance of an appeal or otherwise) or a price formula different from that to which the notice referred has effect as if specified in the election, any party to the election, in making a return under paragraph 2 of Schedule 2 to the principal Act with respect to ethane to which that election applies or which by virtue of that election falls within section 134(3) of this Act—
- (a) where the notice was given under paragraph 5 above, may include the market value on and after the date specified in the notice of any such ethane determined on such basis as appears to him to be the best practical alternative to that provided by the price formula to which the notice referred; and
- (b) where the notice was given under paragraph 6 above, shall include the market value of any such ethane determined in accordance with the price formula to which the notice referred.

Penalties for incorrect information etc.

- 10 (1) [F12Schedule 24 to the Finance Act 2007 (which penalises inaccurate documents and is in this paragraph referred to as “the penalty provisions”)] shall apply,

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in accordance with sub-paragraph (2) or sub-paragraph (3) below, in relation to inaccurate information—

- (a) contained in an election; or
- (b) furnished pursuant to a notice under paragraph 2(3) or paragraph 7(3) above; or
- (c) contained in any books, accounts or documents made available as mentioned in paragraph 2(3)(b) or paragraph 7(3)(b) above.

(2) Where the inaccurate information is provided by a participator, the penalty provisions shall apply—

- (a) as they apply in relation to an incorrect return under paragraph 2 of Schedule 2 to the principal Act; and

^{F13}(b)

(3) Where the incorrect information is provided by a person other than a participator, the penalty provisions shall apply—

- (a) as they apply to an incorrect return under paragraph 5 of Schedule 2 to the principal Act; and
- (b) as if that person were the responsible person for an oil field.

Textual Amendments

F12 Words in Sch. 18 para. 10(1) substituted (1.4.2009) by The Finance Act 2008, Schedule 40 (Appointed Day, Transitional Provisions and Consequential Amendments) Order 2009 (S.I. 2009/571), art. 1(1), **Sch. 1 para. 8(1)**

F13 Sch. 18 para. 10(2)(b) omitted (1.4.2009) by virtue of The Finance Act 2008, Schedule 40 (Appointed Day, Transitional Provisions and Consequential Amendments) Order 2009 (S.I. 2009/571), art. 1(1), **Sch. 1 para. 8(2)**

Interpretation

- 11 (1) Subsection (6) of section 134 of this Act has effect in relation to this Schedule as it has effect in relation to the preceding provisions of that section.
- (2) In this Schedule, any reference to an election is a reference to an election under section 134 of this Act ; and any reference to the date of an election is a reference to the date on which the election (made as mentioned in paragraph 1 above) is received by the Board.
- (3) Any reference in the preceding provisions of this Schedule to the party to an election is relevant only to an election applying to ethane which is relevantly appropriated and is a reference to the participator by whom the ethane is for the time being so appropriated.
- (4) Any reference in the preceding provisions of this Schedule to the parties to an election is relevant only to an election applying to ethane which is disposed of as mentioned in section 134(2)(a) of this Act and is a reference to the participator by whom and the person to whom the ethane is for the time being so disposed of.

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