



Income and Corporation Taxes Act 1988

1988 CHAPTER 1

PART IV

PROVISIONS RELATING TO THE SCHEDULE D CHARGE

CHAPTER VIII

MISCELLANEOUS AND SUPPLEMENTAL

122 Relief in respect of mineral royalties

(1) Subject to the following provisions of this section, a person resident or ordinarily resident in the United Kingdom who in any year of assessment or accounting period is entitled to receive any mineral royalties under a mineral lease or agreement shall be treated—

- (a) for the purposes of income tax, or as the case may be for the purposes of corporation tax on profits exclusive of chargeable gains, as if the total of the mineral royalties receivable by him under that lease or agreement in that year or period and any management expenses available for set-off against those royalties in that year or period were each reduced by one-half; and
- (b) for the purposes of the 1979 Act or as the case may be for the purposes of corporation tax on chargeable gains, as if there accrued to him in that year or period a chargeable gain equal to one-half of the total of the mineral royalties receivable by him under that lease or agreement in that year or period;

and this section shall have effect notwithstanding any provision of section 119(1) making the whole of certain kinds of mineral royalties chargeable to tax under Schedule D, but without prejudice to any provision of that section providing for any such royalties to be subject to deduction of income tax under section 348 or 349.

(2) For the purposes of subsection (1)(a) above, “management expenses available for set-off” against royalties means—

- (a) where section 121 applies in respect of the royalties, any sum brought into account under subsection (1) of that section in determining the amount of

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the repayment of income tax in respect of those royalties or, as the case may be, deductible from those royalties under subsection (2) of that section in computing the income of a company for the purposes of corporation tax; and

- (b) if the royalties are chargeable to tax under Schedule A, any sums deductible under Part II as payments made in respect of management of the property concerned;

and if neither paragraph (a) nor paragraph (b) above applies, the reference in subsection (1)(a) above to management expenses available for set-off shall be disregarded.

- (3) The amount of the chargeable gain treated as accruing to any person by virtue of subsection (1)(b) above shall, notwithstanding anything in the enactments relating to the computation of chargeable gains, be the whole amount calculated in accordance with that subsection, and, accordingly, no reduction shall be made on account of expenditure incurred by that person or of any other matter whatsoever.

- (4) Where subsection (1) above applies in relation to mineral royalties receivable under a mineral lease or agreement by a person not chargeable to corporation tax in respect of those royalties, then, in so far as the amount of income tax paid, by deduction or otherwise, by him in respect of those mineral royalties in any year of assessment exceeds the amount of income tax for which he is liable in respect of those royalties by virtue of subsection (1)(a) above—

- (a) the amount of the excess shall in the first instance be set against the tax for which he is chargeable by virtue of subsection (1)(b) above; and
- (b) on the making of a claim in that behalf, he shall be entitled to repayment of tax in respect of the balance of that excess.

- (5) In this section references to mineral royalties refer only to royalties receivable on or after 6th April 1970, and the expression “mineral royalties” means so much of any rents, tolls, royalties and other periodical payments in the nature of rent payable under a mineral lease or agreement as relates to the winning and working of minerals; and the Board may by regulations—

- (a) provide whether, and to what extent, payments made under a mineral lease or agreement and relating both to the winning and working of minerals and to other matters are to be treated as mineral royalties; and
- (b) provide for treating the whole of such payments as mineral royalties in cases where the extent to which they relate to matters other than the winning and working of minerals is small.

- (6) In this section—

“minerals” means all minerals and substances in or under land which are ordinarily worked for removal by underground or surface working but excluding water, peat, top-soil and vegetation; and

“mineral lease or agreement” means—

- (a) a lease, profit *à prendre*, licence or other agreement conferring a right to win and work minerals in the United Kingdom;
- (b) a contract for the sale, or a conveyance, of minerals in or under land in the United Kingdom; and
- (c) a grant of a right under section 1 of the Mines (Working Facilities and Support) Act 1966, other than an ancillary right within the meaning of that Act.

- (7) In the application of this section to Northern Ireland—

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- (a) references to mineral royalties include references to periodical payments—
 - (i) of compensation under section 29 or 35 of the Mineral Development Act (Northern Ireland) 1969 (“the 1969 Act”) or under section 4 of the Petroleum (Production) Act (Northern Ireland) 1964 (“the 1964 Act”); and
 - (ii) made as mentioned in section 37 of the 1969 Act or under section 55(4)(b) of that Act or under section 11 of the 1964 Act (payments in respect of minerals to persons entitled to a share of royalties under section 13(3) of the Irish Land Act 1903); and
 - (b) in its application to any such payments as are mentioned in paragraph (a) above, references to the mineral lease or agreement under which mineral royalties are payable shall be construed as references to the enactment under which the payments are made.
- (8) In any case where, before the commencement of this section, for the purposes of the 1979 Act or of corporation tax on chargeable gains, a person was treated as if there had accrued to him in any year of assessment or accounting period ending before 6th April 1988 a chargeable gain equal to the relevant fraction, determined in accordance with section 29(3)(b) of the Finance Act 1970, of the total of the mineral royalties receivable by him under that lease or agreement in that year or period, subsection (1) (b) above shall have effect in relation to any mineral royalties receivable by him under that lease or agreement in any later year or period with the substitution for the reference to one-half of a reference to the relevant fraction as so determined.