



# Finance Act 1991

## 1991 CHAPTER 31

### PART III

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER I

#### GENERAL

#### *Oil industry*

#### **62 Expenditure on and under abandonment guarantees**

- (1) To the extent that, by virtue of paragraph (hh) of subsection (1) of section 3 of the Oil Taxation Act 1975 (as set out in section 103(2) of this Act), expenditure incurred on or after 19th March 1991 by a participator in an oil field is allowable for the purposes of petroleum revenue tax under the said section 3, that expenditure shall be allowed as a deduction in computing the participator's ring fence income.
- (2) Expressions used in subsection (1) above and the following provisions of this section have the same meaning as in Chapter V of Part XII of the Taxes Act 1988 (petroleum extraction activities).
- (3) If, under an abandonment guarantee, a payment is made by the guarantor on or after 19th March 1991, then, to the extent that any expenditure for which the relevant participator is liable is met, directly or indirectly, out of the payment, that expenditure shall not be regarded for any purposes of tax as having been incurred by the relevant participator or any other participator in the oil field concerned.
- (4) In any case where—
  - (a) a payment made by the guarantor under the abandonment guarantee is not immediately applied in meeting any expenditure, and

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- (b) the payment is for any period invested (either specifically or together with payments made by persons other than the guarantor) so as to be represented by, or by part of, the assets of a fund or account, and
- (c) at a subsequent time, any expenditure for which the relevant participator is liable is met out of the assets of the fund or account,

any reference in subsection (3) above or section 63 below to expenditure which is met, directly or indirectly, out of the payment shall be construed as a reference to so much of the expenditure for which the relevant participator is liable as is met out of those assets of the fund or account which, at the subsequent time referred to in paragraph (c) above, it is just and reasonable to attribute to the payment.

- (5) In subsections (3) and (4) above—
  - (a) “abandonment guarantee” has the same meaning as, by virtue of section 104 of this Act, it has for the purposes of section 105 of this Act; and
  - (b) “the guarantor” and “the relevant participator” have the same meaning as in subsection (1) of section 104 of this Act.

### **63 Relief for reimbursement expenditure under abandonment guarantees**

- (1) This section applies in any case where—
  - (a) on or after 19th March 1991 a payment (in this section referred to as “the guarantee payment”) is made by the guarantor under an abandonment guarantee; and
  - (b) by virtue of the making of the guarantee payment, the relevant participator becomes liable under the terms of the abandonment guarantee to pay any sum or sums to the guarantor; and
  - (c) expenditure is incurred, or consideration in money’s worth is given, by the relevant participator in or towards meeting that liability.
- (2) In any case where the whole of the guarantee payment or, as the case may require, of the assets which, under section 62(4) above, are attributed to the guarantee payment is not applied in meeting liabilities of the relevant participator which fall within paragraphs (a) and (b) of subsection (1) of section 104 of this Act and a sum representing the unapplied part of the guarantee payment or of those assets is repaid, directly or indirectly, to the guarantor,—
  - (a) any liability of the relevant participator to repay that sum shall be excluded in determining the total liability of the relevant participator which falls within subsection (1)(b) above; and
  - (b) the repayment to the guarantor of that sum shall not be regarded as expenditure incurred by the relevant participator as mentioned in subsection (1)(c) above.
- (3) In the following provisions of this section “reimbursement expenditure” means expenditure incurred as mentioned in subsection (1)(c) above or consideration (or, as the case may require, the value of consideration) given as so mentioned; and any reference to the incurring of reimbursement expenditure shall be construed accordingly.
- (4) So much of any reimbursement expenditure as, in accordance with subsection (5) below, is qualifying expenditure shall, by virtue of this section, be allowed as a deduction in computing the relevant participator’s ring fence income; and no part of the expenditure which is so allowed shall be otherwise deductible or allowable by way of relief for any purposes of tax.

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- (5) Subject to subsection (6) below, of the reimbursement expenditure incurred in any accounting period by the relevant participator, the amount which constitutes qualifying expenditure shall be determined by the formula—

$$A \times \frac{B}{C}$$

where—

- “A” is the reimbursement expenditure incurred in the accounting period;  
“B” is so much of the expenditure represented by the guarantee payment as, if it had been incurred by the relevant participator, would have been taken into account (by way of capital allowance or a deduction) in computing his ring fence income; and  
“C” is the total of the sums which, at or before the end of the accounting period, the relevant participator is or has become liable to pay to the guarantor as mentioned in subsection (1)(b) above.

- (6) In relation to the guarantee payment, the total of the reimbursement expenditure (whenever incurred) which constitutes qualifying expenditure shall not exceed whichever is the less of “B” and “C” in the formula in subsection (5) above; and any limitation on qualifying expenditure arising by virtue of this subsection shall be applied to the expenditure of a later in preference to an earlier accounting period.
- (7) For the purposes of this section, the expenditure represented by the guarantee payment is any expenditure—
- for which the relevant participator is liable; and
  - which is met, directly or indirectly, out of the guarantee payment (and which, accordingly, by virtue of section 62(3) above is not to be regarded as expenditure incurred by the relevant participator).
- (8) In this section—
- “abandonment guarantee” has the same meaning as, by virtue of section 104 of this Act, it has for the purposes of section 3 of the 1975 Act;
  - “the guarantor” and “the relevant participator” have the same meaning as in subsection (1) of section 104 of this Act; and
  - other expressions have the same meaning as in Chapter V of Part XII of the Taxes Act 1988 (petroleum extraction activities).

#### **64 Relief for expenditure incurred by a participator in meeting defaulter’s abandonment expenditure**

- (1) This section applies in any case where—
- paragraph 2A of Schedule 5 to the 1975 Act (as set out in section 107 of this Act) applies or would apply if a claim were made as mentioned in sub-paragraph (1)(a) of that paragraph; and
  - under sub-paragraph (4) of that paragraph the default payment falls, in whole or in part, to be attributed to the qualifying participator (as an addition to his share of the abandonment expenditure).
- (2) In this section “default payment”, “the defaulter” and “qualifying participator” have the same meaning as in paragraph 2A of Schedule 5 to the 1975 Act and other

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expressions have the same meaning as in Chapter V of Part XII of the Taxes Act 1988 (petroleum extraction activities).

- (3) In this section, the amount which is attributed to the qualifying participator as mentioned in subsection (1)(b) above (whether representing the whole or only a part of the default payment) is referred to as the additional abandonment expenditure.
- (4) Relief by way of capital allowance or, as the case may be, a deduction in computing ring fence income shall be available to the qualifying participator by virtue of this section in respect of the additional abandonment expenditure in any case where any such relief or deduction would have been available to the defaulter if—
  - (a) the defaulter had incurred the additional abandonment expenditure; and
  - (b) at the time that that expenditure was incurred the defaulter continued to carry on a ring fence trade.
- (5) The basis of qualification for or entitlement to any relief or deduction which is available to the qualifying participator by virtue of this section shall be determined on the assumption that the conditions in paragraphs (a) and (b) of subsection (4) above are fulfilled but, subject to that, any such relief or deduction shall be available in like manner as if the additional abandonment expenditure had been incurred by the qualifying participator for the purposes of the ring fence trade carried on by him.

## **65 Reimbursement by defaulter in respect of certain abandonment expenditure**

- (1) This section applies in any case where—
  - (a) paragraph 2A of Schedule 5 to the 1975 Act (as set out in section 107 of this Act) applies or would apply if a claim were made as mentioned in sub-paragraph (1)(a) of that paragraph; and
  - (b) under sub-paragraph (4) of that paragraph the default payment falls, in whole or in part, to be attributed to the qualifying participator (as an addition to his share of the abandonment expenditure); and
  - (c) expenditure is incurred, or consideration in money's worth is given, by the defaulter in reimbursing the qualifying participator in respect of, or otherwise making good to him, the whole or any part of the default payment;

and in this section “default payment”, “the defaulter” and “qualifying participator” have the same meaning as in the said paragraph 2A and other expressions have the same meaning as in Chapter V of Part XII of the Taxes Act 1988 (petroleum extraction activities).
- (2) In the following provisions of this section “reimbursement expenditure” means expenditure incurred as mentioned in subsection (1)(c) above or consideration (or, as the case may require, the value of consideration) given as so mentioned; and any reference to the incurring of reimbursement expenditure shall be construed accordingly.
- (3) Subject to subsection (7) below, reimbursement expenditure shall be allowed as a deduction in computing the defaulter's ring fence income.
- (4) Subject to subsection (7) below, reimbursement expenditure received by the qualifying participator shall be treated as a receipt (in the nature of income) of his ring fence trade for the relevant accounting period.
- (5) For the purposes of subsection (4) above, the relevant accounting period is the accounting period in which the reimbursement expenditure is received by

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the qualifying participator or, if the qualifying participator's ring fence trade is permanently discontinued before the receipt of the reimbursement expenditure, the last accounting period of that trade.

- (6) Any additional assessment to corporation tax required in order to take account of the receipt of reimbursement expenditure by the qualifying participator may be made at any time not later than six years after the end of the calendar year in which the reimbursement expenditure is so received.
- (7) In relation to a particular default payment, reimbursement expenditure incurred at any time—
- (a) shall be allowed as mentioned in subsection (3) above, and
  - (b) shall be taken into account in computing the qualifying participator's ring fence income by virtue of subsection (4) above,
- only to the extent that, when aggregated with any reimbursement expenditure previously incurred in respect of that default payment, it does not exceed so much of the default payment as falls to be attributed to the qualifying participator as mentioned in subsection (1)(b) above.
- (8) The incurring of reimbursement expenditure shall not be regarded, by virtue of section 153 of the Capital Allowances Act 1990 (subsidies, contributions etc.), as the meeting of the expenditure of the qualifying participator in making the default payment.

## **66 Restriction on setting ACT against liability to corporation tax on profits from oil extraction activities etc**

- (1) In section 497 of the Taxes Act 1988 (restriction on setting ACT against liability to corporation tax on profits from oil extraction activities etc.), in subsection (2) after the words "resident in the United Kingdom" there shall be inserted the words "or in respect of any distribution which, in accordance with subsections (2A) and (2B) below, is made pursuant to a substitution scheme".
- (2) After subsection (2) of that section there shall be inserted the following subsections—
- “(2A) For the purposes of subsection (2) above, a distribution (“the relevant distribution”) is made pursuant to a substitution scheme if—
- (a) it is made on or after 2nd May 1991 in respect of shares or securities issued or transferred pursuant to or otherwise for the purposes of a scheme or arrangements; and
  - (b) by virtue of the scheme or arrangements a person's entitlement to, or to any rights in, the relevant distribution arises, directly or indirectly, by way of substitution for or addition to any entitlement of his to, or any prospect of his of, a distribution in respect of shares in or securities of another company; and
  - (c) at the time of the relevant distribution that other company is associated with the distributing company and is resident in the United Kingdom.
- (2B) Where a distribution is made in respect of shares the issue or transfer of which constituted or formed part of an exempt distribution, within the meaning of section 213 (demergers), the distribution in respect of the shares shall not be regarded for the purposes of subsection (2) above as made pursuant to a

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substitution scheme by reason only that the transfer or issue of the shares was carried out as part of a transaction falling within subsection (1) of that section.”

## 67 Oil licences

- (1) In section 64(6)(c) of the Finance Act 1988 (definition of the expression “the appropriate legislation relating to capital allowances” for the purposes of section 62 of that Act, which relates to disposals of oil licences) for “Part IV of the Capital Allowances Act 1990” there shall be substituted “Parts IV and VII of the Capital Allowances Act 1990”.
- (2) This section shall have effect in relation to disposals on or after the day on which this Act is passed.