

SCHEDULES

SCHEDULE 3

Section 35.

ASSETS HELD ON 31ST MARCH 1982

Previous no gain/no loss disposals

- 1 (1) Where—
 - (a) a person makes a disposal, not being a no gain/no loss disposal, of an asset which he acquired after 31st March 1982, and
 - (b) the disposal by which he acquired the asset and any previous disposal of the asset after 31st March 1982 was a no gain/no loss disposal,he shall be treated for the purposes of section 35 as having held the asset on 31st March 1982.
- (2) For the purposes of this paragraph a no gain/no loss disposal is one on which by virtue of any of the enactments specified in section 35(3)(d) neither a gain nor a loss accrues to the person making the disposal.
- 2 (1) Sub-paragraph (2) below applies where a person makes a disposal of an asset acquired by him on or after 6th April 1988 in circumstances in which section 58 or 171 applied.
- (2) Where this sub-paragraph applies—
 - (a) an election under section 35(5) by the person making the disposal shall not cover the disposal, but
 - (b) the making of such an election by the person from whom the asset was acquired shall cause the disposal to fall outside subsection (3) of that section (so that subsection (2) of that section is not excluded by it) whether or not the person making the disposal makes such an election.
- (3) Where the person from whom the asset was acquired by the person making the disposal himself acquired it on or after 6th April 1988 in circumstances in which section 58 or 171 applied, an election made by him shall not have the effect described in sub-paragraph (2)(b) above but an election made by—
 - (a) the last person by whom the asset was acquired after 5th April 1988 otherwise than in such circumstances, or
 - (b) if there is no such person, the person who held the asset on 5th April 1988,shall have that effect.

Capital allowances

- 3 If under section 35 it is to be assumed that any asset was on 31st March 1982 sold by the person making the disposal and immediately reacquired by him, sections 41 and 47 shall apply in relation to any capital allowance or renewals allowance made in respect of the expenditure actually incurred by him in providing the asset as if

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it were made in respect of expenditure which, on that assumption, was incurred by him in reacquiring the asset on 31st March 1982.

Part disposals etc.

- 4 (1) Where, in relation to a disposal to which section 35(2) applies, section 42 has effect by reason of an earlier disposal made after 31st March 1982 and before 6th April 1988, the sums to be apportioned under section 42 shall for the purposes of the later disposal be ascertained on the assumption stated in section 35(2).
- (2) In any case where—
- (a) subsection (2) of section 35 applies in relation to the disposal of an asset,
 - (b) if that subsection did not apply, section 23(2), 122(4), 133(4) or 244 would operate to disallow expenditure as a deduction in computing a gain accruing on the disposal, and
 - (c) the disallowance would be attributable to the reduction of the amount of the consideration for a disposal made after 31st March 1982 but before 6th April 1988,

the amount allowable as a deduction on the disposal shall be reduced by the amount which would be disallowed if section 35(2) did not apply.

Assets derived from other assets

- 5 Section 35 shall have effect with the necessary modifications in relation to a disposal of an asset which on 31st March 1982 was not itself held by the person making the disposal, if its value is derived from another asset of which account is to be taken in relation to the disposal under section 43.

Apportionment of pre-1965 gains and losses

- 6 In a case where because of paragraph 16 of Schedule 2 only part of a gain or loss is a chargeable gain or allowable loss, section 35(3)(a) and (b) shall have effect as if the amount of the gain or loss that would accrue if subsection (2) did not apply were equal to that part.

Elections under section section 35(5): excluded disposals

- 7 (1) An election under section 35(5) shall not cover disposals such as are specified in sub-paragraph (2) below.
- (2) The disposals mentioned in sub-paragraph (1) above are disposals of, or of an interest in—
- (a) plant or machinery,
 - (b) an asset which the person making the disposal has at any time held for the purposes of or in connection with—
 - (i) a trade consisting of the working of a source of mineral deposits, or
 - (ii) where a trade involves (but does not consist of) such working, the part of the trade which involves such working, or
 - (c) a licence under the Petroleum (Production) Act 1934 or the Petroleum (Production) Act (Northern Ireland) 1964; or
 - (d) shares which, on 31st March 1982, were unquoted and derived their value, or the greater part of their value, directly or indirectly from oil exploration

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or exploitation assets situated in the United Kingdom or a designated area or from such assets and oil exploration or exploitation rights taken together; but a disposal does not fall within paragraph (a) or (b) above unless a capital allowance in respect of any expenditure attributable to the asset has been made to the person making the disposal or would have been made to him had he made a claim.

- (3) For the purposes of sub-paragraph (2)(d) above,—
- (a) “shares” includes stock and any security, as defined in section 254(1) of the Taxes Act; and
 - (b) shares (as so defined) were unquoted on 31st March 1982 if, on that date, they were neither quoted on a recognised stock exchange nor dealt in on the Unlisted Securities Market;

but nothing in this paragraph affects the operation, in relation to such unquoted shares, of sections 126 to 130.

- (4) In sub-paragraph (2)(d) above—
- “designated area” means an area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964;
 - “oil exploration or exploitation assets” shall be construed in accordance with sub-paragraphs (5) and (6) below; and
 - “oil exploration or exploitation rights” means rights to assets to be produced by oil exploration or exploitation activities (as defined in sub-paragraph (6) below) or to interests in or to the benefit of such assets.

- (5) For the purposes of sub-paragraph (2)(d) above an asset is an oil exploration or exploitation asset if either—
- (a) it is not a mobile asset and is being or has at some time been used in connection with oil exploration or exploitation activities carried on in the United Kingdom or a designated area; or
 - (b) it is a mobile asset which has at some time been used in connection with oil exploration or exploitation activities so carried on and is dedicated to an oil field in which the company whose shares are disposed of by the disposal, or a person connected with that company, is or has been a participator;

and, subject to sub-paragraph (6) below, expressions used in paragraphs (a) and (b) above have the same meaning as if those paragraphs were included in Part I of the Oil Taxation Act 1975.

- (6) In the preceding provisions of this paragraph “oil exploration or exploitation activities” means activities carried on in connection with—
- (a) the exploration of land (including the seabed and subsoil) in the United Kingdom or a designated area, as defined in sub-paragraph (4) above, with a view to searching for or winning oil; or
 - (b) the exploitation of oil found in any such land;

and in this sub-paragraph “oil” has the same meaning as in Part I of the Oil Taxation Act 1975.

- (7) Where the person making the disposal acquired the asset on a no gain/no loss disposal, the references in sub-paragraph (2) above to that person are references to the person making the disposal, the person who last acquired the asset otherwise than on a no gain/no loss disposal or any person who subsequently acquired the asset on such a disposal.

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- (8) In this paragraph—
- (a) “source of mineral deposits” shall be construed in accordance with section 121 of the 1990 Act, and
 - (b) references to a no gain/no loss disposal shall be construed in accordance with paragraph 1 above.
- Elections under section 35(5): groups of companies*
- 8 (1) A company may not make an election under section 35(5) at a time when it is a member but not the principal company of a group unless the company did not become a member of the group until after the relevant time.
- (2) Subject to sub-paragraph (3) below, an election under section 35(5) by a company which is the principal company of a group shall have effect also as an election by any other company which at the relevant time is a member of the group.
- (3) Sub-paragraph (2) above shall not apply in relation to a company which, in some period after 5th April 1988 and before the relevant time, is not a member of the group if—
- (a) during that period the company makes a disposal to which section 35 applies, and
 - (b) the period during which an election under subsection (5) of that section could be made expires without such an election having been made.
- (4) Sub-paragraph (2) above shall apply in relation to a company notwithstanding that the company ceases to be a member of the group at any time after the relevant time except where—
- (a) the company is an outgoing company in relation to the group, and
 - (b) the election relating to the group is made after the company ceases to be a member of the group.
- (5) In relation to a company which is the principal company of a group the reference in section 35(6) to the first relevant disposal is a reference to the first disposal to which that section applies by a company which is—
- (a) a member of the group but not an outgoing company in relation to the group, or
 - (b) an incoming company in relation to the group.
- 9 (1) In paragraph 8 above “the relevant time”, in relation to a group of companies, is—
- (a) the first time when any company which is then a member of the group, and is not an outgoing company in relation to the group, makes a disposal to which section 35 applies,
 - (b) the time immediately following the first occasion when a company which is an incoming company in relation to the group becomes a member of the group,
 - (c) the time when an election is made by the principal company,
- whichever is earliest.
- (2) In paragraph 8 above and this paragraph—
- “incoming company”, in relation to a group of companies, means a company which—

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- (a) makes its first disposal to which section 35 applies at a time when it is not a member of the group, and
- (b) becomes a member of the group before the end of the period during which an election under section 35(5) could be made in relation to it and at a time when no such election has been made, and

“outgoing company”, in relation to a group of companies, means a company which ceases to be a member of the group before the end of the period during which an election under section 35(5) could be made in relation to it and at a time when no such election has been made.

- (3) Section 170 shall have effect for the purposes of paragraph 8 above and this paragraph as for those of sections 170 to 181.