



# Capital Allowances Act 2001

## 2001 CHAPTER 2

### PART 2

#### PLANT AND MACHINERY ALLOWANCES

### CHAPTER 13

#### PROVISIONS AFFECTING MINING AND OIL INDUSTRIES

#### *f<sup>1</sup>Restrictions on allowances: anti-avoidance*

#### Textual Amendments

- F1** Ss. 165A-165E and cross-heading inserted (with effect in accordance with Sch. 32 para. 8 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 32 para. 2](#)

#### **165A Decommissioning services supplied by connected person**

- (1) Allowances under this Part are restricted under section 165B(1) if—
  - (a) a person (“R”) who is carrying on, or has ceased to carry on, a ring fence trade enters into an arrangement,
  - (b) under the arrangement, a person (“S”) who is connected with R provides a service to R, and
  - (c) all or part of the consideration for the service is decommissioning expenditure.
- (2) Subsection (1)(b) may be satisfied whether the service is provided to R directly or indirectly; and in particular it does not matter—
  - (a) whether R and S are parties to the same contract, or
  - (b) whether payments are made by R directly to S.
- (3) Subsections (4) to (9) apply for the purposes of this section and sections 165B to 165E.

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- (4) References to providing a service include—
  - (a) letting a ship on charter or any other asset on hire, and
  - (b) providing goods which are to be used up in the course of providing a service.
- (5) “Decommissioning expenditure” means expenditure in connection with decommissioning.
- (6) “Decommissioning” means—
  - (a) demolishing plant or machinery,
  - (b) preserving plant or machinery pending its reuse or demolition,
  - (c) preparing plant or machinery for reuse, or
  - (d) arranging for the reuse of plant or machinery.
- (7) It is immaterial for the purposes of subsection (6)(b) whether the plant or machinery is reused, is demolished or is partly reused and partly demolished.
- (8) It is immaterial for the purposes of subsection (6)(c) and (d) whether the plant or machinery is in fact reused.
- (9) References to R's expenditure under the arrangement are to so much of the consideration for the service as is decommissioning expenditure incurred by R.

#### **165B Restriction on allowance available**

- (1) The amount, if any, by which R's expenditure under the arrangement exceeds D is to be left out of account in determining R's available qualifying expenditure.
- (2) D is the cost to S of providing the service or, if R's expenditure under the arrangement relates to only part of the service, that part.
- (3) Subsection (2) is subject to sections 165C and 165D, which provide for D to be calculated differently in certain circumstances.
- (4) But if, under any arrangement, a particular service or part of a service is provided by more than one person who is connected with R (so that without this subsection there would be more than one amount for D in relation to that service or part), D is the lowest of those amounts.

#### **165C Allowance in respect of certain services related to decommissioning**

- (1) This section applies to so much of R's expenditure under the arrangement as relates to the supply by S of a service if—
  - (a) the service is a planning or project management service, and
  - (b) the cost plus method is an appropriate method of applying the arm's length principle to the provision of it.
- (2) D is the sum of—
  - (a) the cost to S of providing the service or, if R's expenditure under the arrangement relates to only part of the service, that part, and
  - (b) the appropriate percentage of that amount.
- (3) The appropriate percentage is the smaller of—

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- (a) the appropriate mark up determined in accordance with the cost plus method, and
  - (b) 10%.
- (4) Any expression which is used in this section and in the transfer pricing guidelines has the meaning given in those guidelines.
- “The transfer pricing guidelines” has the meaning given by section 164(4) of TIOPA 2010.

### **165D Allowance where decommissioning undertaken for other participators in oil field**

- (1) This section applies where—
- (a) S decommissions the plant or machinery,
  - (b) there are, in addition to R, one or more other participators in the relevant field, and
  - (c) the expenditure incurred in respect of the decommissioning is apportioned between the participators (including R) in accordance with their shares in the oil won from the relevant field or their shares in the equity of that field.
- (2) D is the part of the expenditure referred to in subsection (1)(c) which is incurred by R.
- (3) Where—
- (a) plant or machinery is or has been used in connection with the winning of oil from more than one relevant field, and
  - (b) the expenditure incurred in respect of the decommissioning is apportioned between those fields in accordance with the contribution from each field to the total of the oil won using that plant or machinery,
- subsections (1) and (2) apply to each such field as if subsection (1)(c) referred to the expenditure apportioned to that field.
- (4) But subsections (2) and (3) do not apply (and section 165B(2) applies instead) if—
- (a) the amount of consideration, or the method of determining the amount of consideration, to be received by S under the arrangement or arrangements, or
  - (b) the apportionment of the liability for that consideration (whether between the participators as mentioned in subsection (1)(c) or between the fields as mentioned in subsection (3)(b)),
- has been agreed as, or as part of, an avoidance scheme.
- (5) A scheme is an “avoidance scheme” if the main purpose, or one of the main purposes, of a party in entering into the scheme is to enable a person to obtain a tax advantage under this Part that would not otherwise be obtained.
- (6) The reference in subsection (5) to obtaining a tax advantage that would not otherwise be obtained includes obtaining an allowance that is in any way more favourable to a person than the one that would otherwise be obtained.
- (7) In this section—
- “licensee”, “oil” and “oil field” have the same meaning as in Part 1 of OTA 1975,
  - “other participator” means a person, not connected with R, who is a licensee in respect of any licensed area wholly or partly included in the oil field in question, and

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- “relevant field” means an oil field—
- (a) in which plant or machinery is located, or
  - (b) in connection with which the plant or machinery is being or has been used for the purposes of a ring fence trade.

### **165E Transaction to obtain tax advantage**

- (1) Allowances under this Part are restricted under subsection (5) if—
  - (a) a person (“R”) who is carrying on, or has ceased to carry on, a ring fence trade enters into a transaction with another person (“S”),
  - (b) S receives from R consideration for services provided in pursuance of the transaction,
  - (c) all or part of that consideration is decommissioning expenditure, and
  - (d) the transaction either has an avoidance purpose, or is part of, or occurs as a result of, a scheme or arrangement that has an avoidance purpose.
- (2) Subsection (1)(d) may be satisfied—
  - (a) whether the scheme or arrangement was made before or after the transaction was entered into, and
  - (b) whether or not the scheme or arrangement is legally enforceable.
- (3) A transaction, scheme or arrangement has an “avoidance purpose” if the main purpose, or one of the main purposes, of a party in—
  - (a) entering into the transaction, scheme or arrangement, or
  - (b) agreeing an amount of consideration, or a method of determining an amount of consideration, to be paid in pursuance of the transaction, scheme or arrangement,

is to enable a person to obtain a tax advantage under this Part that would not otherwise be obtained.
- (4) The reference in subsection (3) to obtaining a tax advantage that would not otherwise be obtained includes obtaining an allowance that is in any way more favourable to a person than the one that would otherwise be obtained.
- (5) All or part of R's expenditure under the transaction is to be left out of account in determining R's available qualifying expenditure.
- (6) The amount of expenditure to be left out of account is—
  - (a) such amount as would or would in effect cancel out the tax advantage mentioned in subsection (3) (whether that advantage is obtained by R or another person and whether it relates to the transaction or something else), or
  - (b) if the amount found under paragraph (a) exceeds the whole of R's expenditure under the transaction, the whole of that expenditure.]

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