



# Finance Act 2004

## 2004 CHAPTER 12

### PART 5

#### OIL

#### **285 Certain receipts not to be tariff receipts**

- (1) The Oil Taxation Act 1983 (c. 56) is amended as follows.
- (2) In section 6(2) (meaning of tariff receipts) after “Subject to the provisions of this section” insert “and section 6A below”.
- (3) After section 6 insert—

#### **“6A Tax-exempt tariffing receipts**

- (1) An amount which is a tax-exempt tariffing receipt (see subsection (2) below) does not constitute a tariff receipt for the purposes of the Oil Taxation Acts.
- (2) An amount is a “tax-exempt tariffing receipt” for the purposes of the Oil Taxation Acts if—
  - (a) it would, apart from this section, be a tariff receipt of a participator in an oil field,
  - (b) it is received or receivable by the participator in a chargeable period ending on or after 30th June 2004 under a contract entered into on or after 9th April 2003, and
  - (c) it is in respect of tax-exempt business (see subsection (3) below).
- (3) For the purposes of this section an amount is in respect of tax-exempt business if it is an amount received or receivable by a participator in an oil field in respect of—
  - (a) the use of a qualifying asset, or

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- (b) the provision of services or other business facilities of whatever kind in connection with the use, otherwise than by the participator himself, of a qualifying asset,

and that use of the qualifying asset falls within subsection (4) below.

- (4) Use of a qualifying asset falls within this subsection if it is—
  - (a) use in relation to a new field (see subsection (5) below) or oil won from such a field, or
  - (b) use in relation to a qualifying existing field (see subsection (5) below) or oil won from such a field.

- (5) In this section—

“existing field” means any oil field or foreign field which is not a new field;

“foreign field” means, subject to subsection (6) below (treatment of transmedian fields), any hydrocarbon accumulation which is not under the jurisdiction of the government of the United Kingdom;

“licensee”, in relation to a foreign field, means a person who has rights, interests or obligations in respect of the foreign field under a licence or other authority granted by the government of a country other than the United Kingdom;

“new field” means—

- (a) an oil field for no part of which had—
  - (i) consent for development been granted to a licensee by the Secretary of State before 9th April 2003; or
  - (ii) a programme of development been served on a licensee or approved by the Secretary of State before that date; or
- (b) a foreign field for no part of which had—
  - (i) any consent for development been granted to a licensee by the government of a country other than the United Kingdom before 9th April 2003; or
  - (ii) a programme of development been served on a licensee or approved by such a government before that date;

and subsections (4) and (5) of section 36 of the Finance Act 1983 (which define “development” for the purposes of subsections (2) and (3) of that section) shall apply also for the purposes of this definition;

“the Oil Taxation Acts” means—

- (a) Parts 1 and 3 of the principal Act;
- (b) this Act; and
- (c) any other enactment relating to petroleum revenue tax;

“qualifying existing field” means an existing field as respects which the condition in section 6B(1) below is satisfied.

- (6) For the purposes of this section, in the case of an oil field which, by virtue of section 107 of the Finance Act 1980 (transmedian fields), is deemed to include the sector mentioned in subsection (1)(a)(ii) of that section—
  - (a) that sector shall be treated as a foreign field, and
  - (b) the remainder of that field shall be treated as a separate oil field.

- (7) In the application of provisions of the Oil Taxation Acts relating to tax-exempt tariffing receipts, references to oil, in relation to a foreign field, are references to any substance that would be oil within the meaning of the principal Act if the enactments mentioned in section 1(1) of that Act extended to the foreign field.
- (8) This section is subject to the transitional provisions in Part 2 of Schedule 37 to the Finance Act 2004 (expenditure incurred between 9th April and 31st December 2003: treatment of initial portion of tax-exempt tariffing receipts as tariff receipts).

### **6B The condition for being a qualifying existing field**

- (1) The condition for an existing field to be a qualifying existing field for the purposes of section 6A above is that at no time in the period of 6 years ending with 8th April 2003 (“the 6 year period”) was there—
- (a) any use of a disqualifying asset (see subsection (2) below) in a UK area (see subsection (11) below) in relation to the field or oil won from it, or
  - (b) any provision of any services or other business facilities of whatever kind in connection with the use of a disqualifying asset in a UK area in relation to the field or oil won from it.
- (2) For the purposes of subsection (1) above “disqualifying asset”, in relation to an existing field and any time in the 6 year period, means an asset which at that time—
- (a) was a qualifying asset in relation to a participator in an oil field; and
  - (b) was not an excepted asset (see subsection (3) below).
- (3) For the purposes of subsection (2) above “excepted asset”, in relation to an existing field and any time in the 6 year period, means any of the following—
- (a) any asset (other than a tanker) which at that time was wholly situated in the existing field;
  - (b) any tanker which at that time was a non-dedicated tanker (see subsection (10) below) being used for transporting from the existing field oil which had been won from that field;
  - (c) any asset which at that time was being used in relation to oil which had been won from the existing field and transported from that field by a non-dedicated tanker;
  - (d) if the existing field is an oil field and is expected not to be a tanker loading field (see subsection (7) below)—
    - (i) any tanker which at that time was a dedicated tanker (see subsection (9) below) being used for transporting from the existing field oil which had been won from that field;
    - (ii) any asset which at that time was being used in relation to oil which had been won from the existing field and transported from that field by a dedicated tanker;
    - (iii) any asset which at that time was being used to transport from the existing field oil consisting of gas won from that field to another oil field for the purpose of enabling that oil to be used for assisting the extraction of oil from that other field;

- (e) if at that time the existing field was not a taxable field, any asset by reference to which an election under section 231 of the Finance Act 1994 (election by reference to asset with excess capacity) was at that time in operation with respect to an oil field.
- (4) Where any use of an asset is, by virtue of subsection (3) above, use of an excepted asset, the provision of any services or other business facilities of whatever kind in connection with that use of that asset accordingly falls to be disregarded for the purposes of subsection (1)(b) above.
- (5) Where an asset in a UK area—
- (a) is a qualifying asset in relation to a participator in such an oil field as is mentioned in section 107 of the Finance Act 1980 (a “participator in the UK sector”), and
  - (b) is also, by virtue of paragraph 3 of Schedule 4 to this Act, a chargeable asset in relation to a participator in a foreign field (a “participator in the foreign sector”),
- subsection (6) below applies in relation to use of the asset in relation to the existing field or oil won from it.
- (6) Where this subsection applies, then, in determining for the purposes of subsection (1) above whether there has been any use of a disqualifying asset in relation to the existing field or oil won from it, any use of the asset in relation to that field or oil won from it shall be treated—
- (a) as use of a qualifying asset in relation to a participator in an oil field, if or to the extent that the use is attributable, on a just and reasonable basis, to a participator in the UK sector, or
  - (b) as use of an asset which was not a qualifying asset in relation to a participator in an oil field, if or to the extent that the use is attributable, on a just and reasonable basis, to a participator in the foreign sector.
- (7) For the purposes of subsection (3) above, the existing field is expected not to be a tanker loading field if, at the time when the relevant contract is entered into, it is expected that all (or virtually all) of the oil (other than oil consisting of gas) to be won from that field and transported from it after the beginning of the operational period will be so transported otherwise than by tanker.
- (8) For the purposes of subsection (7) above—
- (a) “the relevant contract” means the contract mentioned in section 6A(2)(b) above; and
  - (b) “the beginning of the operational period” means the time at which the qualifying asset to which that contract relates begins to be used under that contract in relation to the existing field or oil won from that field.
- (9) For the purposes of subsection (3) above a tanker is a dedicated tanker at any time if—
- (a) the existing field mentioned in that subsection is an oil field, and
  - (b) at that time the tanker is a mobile asset dedicated to that oil field (see section 2 above).
- (10) For the purposes of subsection (3) above a tanker is a non-dedicated tanker—
- (a) at any time, if the existing field mentioned in that subsection is not an oil field, or

- (b) where that field is an oil field, at any time when the tanker is not a mobile asset dedicated to that oil field.
- (11) In this section “UK area” means each of the following—
- (a) the United Kingdom;
  - (b) the territorial sea of the United Kingdom;
  - (c) a designated area, to the extent that it does not fall to be treated by virtue of section 6A(6) above as a foreign field.
- (12) This section shall be construed as one with section 6A above.”.
- (4) In Schedule 2 (supplemental provisions in relation to receipts from qualifying assets) in paragraph 12 (purchase at place of extraction)—
- (a) in sub-paragraph (1), for “Subject to sub-paragraphs (4) and (5)” substitute “Subject to sub-paragraphs (4) to (6)”, and
  - (b) at the end of the paragraph add—
    - “(6) In any chargeable period ending on or after 30th June 2004, sub-paragraph (1) above does not apply to oil in a case where—
    - (a) had the operation or operations to which the oil was subjected as mentioned in paragraph (b) of that sub-paragraph been carried out under a contract entered into on or after 9th April 2003, and
    - (b) had an amount been received or receivable under the contract in that chargeable period by the participator, that amount would have been a tax-exempt tariffing receipt.”.
- (5) Schedule 37 to this Act has effect; and in that Schedule—
- Part 1 makes amendments to the Oil Taxation Act 1983 (c. 56) relating to allowable expenditure and disposal receipts;
  - Part 2 makes transitional provision;
  - Part 3 makes amendments to the Taxes Act 1988;
  - Part 4 makes amendments to other enactments.
- (6) In Part 1 of Schedule 37 to this Act—
- (a) the amendments made by paragraph 5 (which relate to disposal receipts) have effect in relation to disposals in chargeable periods ending on or after 30th June 2004, and
  - (b) the other amendments made by that Part have effect in relation to expenditure incurred on or after 1st January 2004.
- (7) The amendments made by Part 3 of that Schedule have effect in relation to chargeable periods, within the meaning of the Taxes Act 1988, ending on or after 1st January 2004.
- (8) The amendments made by Part 4 of that Schedule have effect in relation to chargeable periods (within the meaning of section 98 of the Finance Act 1999 (c. 16)) ending on or after 30th June 2004.

## **286 Petroleum extraction activities: exploration expenditure supplement**

- (1) Chapter 5 of Part 12 of the Taxes Act 1988 (petroleum extraction activities) is amended as follows.

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(2) After section 496 (tariff receipts) insert—

**“496A Exploration expenditure supplement**

Schedule 19B to this Act (exploration expenditure supplement) shall have effect.”.

(3) Before Schedule 20 insert the Schedule 19B set out in Schedule 38 to this Act.

**287 Restrictions on expenditure allowable**

(1) In Schedule 4 to the Oil Taxation Act 1975 (c. 22), paragraph 2 (restrictions on expenditure allowable where acquisition etc from connected person or otherwise not at arm’s length) is amended as follows.

(2) In sub-paragraph (1), for the words following paragraph (b) (which limit the expenditure allowable to the cost in a transaction to which paragraph 2 does not apply) substitute—

“as having incurred that expenditure only to the extent that it does not exceed the lowest of the amounts described in sub-paragraph (1ZA) below which is applicable in the particular case.”.

(3) After sub-paragraph (1) insert—

“(1ZA) Those amounts are—

- (a) the amount of expenditure (other than loan expenditure) incurred up to the time mentioned in sub-paragraph (1) above in a transaction to which this paragraph does not apply (or, if there has been more than one such transaction, the later or latest of them) in acquiring, bringing into existence, or enhancing the value of, the asset;
- (b) the amount of the open market consideration for the acquisition, bringing into existence, or enhancement of the value, of the asset;
- (c) in a case where the other party to the transaction is a participator in a taxable field and in the case of that participator either—
  - (i) an amount is brought into account under section 2 of this Act in accordance with section 7(1) of the Oil Taxation Act 1983 as disposal receipts in respect of the transaction, or
  - (ii) no amount is so brought into account by reason of reductions falling to be made in the amount that would have been so brought into account apart from those reductions,

the amount so brought into account or, as the case may be, nil;

- (d) in a case where the other party to the transaction is not a participator in a taxable field but—
  - (i) the transaction is the latest in a series of transactions in respect of the asset (or in respect of an asset or assets in which the asset was comprised),
  - (ii) those transactions are transactions to which this paragraph applies,

- (iii) in the case of at least one of those transactions, there is a party who is a participator in an oil field, and
  - (iv) in the case of any such party, an amount either is brought into account as mentioned in paragraph (c)(i) above in respect of the transaction or would have been so brought into account but for such reductions as are mentioned in paragraph (c)(ii) above,  
so much of the amount so brought into account in respect of that transaction (or, where there are two or more such transactions, the later or latest of them) as is justly and reasonably referable to the asset mentioned in sub-paragraph (1) above (taking that amount as being nil in the case of any transaction where no amount is so brought into account by reason of any such reductions).”.
- (4) In sub-paragraph (1B) (meaning of “loan expenditure” in sub-paragraph (1)) for “(1)” substitute “(1ZA)(a)”.
- (5) After sub-paragraph (1B) insert—
- “(1C) The reference in sub-paragraph (1ZA)(b) above to the open market consideration for the acquisition, bringing into existence, or enhancement of the value, of an asset is a reference to the consideration which might reasonably have been given for the acquisition, bringing into existence, or enhancement of the value, of the asset (whatever the nature of the acquisition, bringing into existence or enhancement of the value) had it been made in a transaction to which this paragraph does not apply.”.
- (6) The amendments made by this section have effect in relation to expenditure incurred on or after 17th March 2004.

## **288 Terminal losses**

- (1) Schedule 17 to the Finance Act 1980 (c. 48) (transfers of interests in oil fields) is amended as follows.
- (2) For paragraph 15 (terminal losses) substitute—

### *“Terminal losses*

- 15 (1) This paragraph applies in any case where—
- (a) such an allowable loss as falls to be relieved under section 7(3) accrues to the new participator from the field in a chargeable period ending after 17th March 2004, but
  - (b) some or all of the loss cannot be relieved under section 7(3) against assessable profits accruing to him from the field.
- (2) So much of the loss as cannot be so relieved (“the remaining loss”) shall be regarded as an allowable unrelievable field loss in relation to the new participator (“the loss-maker”) only to the extent that—
- (a) so much of it as cannot be relieved in accordance with sub-paragraphs (3) to (6) below,  
exceeds

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- (b) the aggregate of any relevant previous participators' expenditure unrelated to the field (see sub-paragraphs (10) and (11) below).
- (3) The remaining loss shall be treated as an allowable loss which falls to be relieved under section 7(3) against so much of any assessable profits accruing to the old participator from the field as is attributable to his represented interest (see sub-paragraphs (9) and (12) below).
- (4) Where a person is the new participator in relation to two or more old participators—
- (a) the remaining loss shall be apportioned between those old participators in such manner as is just and reasonable having regard to the interests respectively transferred by them to the new participator,
  - (b) sub-paragraph (3) above shall have effect separately in relation to each of them (and the part of the remaining loss apportioned to him).
- (5) Any relief by virtue of sub-paragraph (3) above shall be given against the assessable profits accruing to the old participator in an earlier chargeable period only to the extent to which it cannot be given against the assessable profits accruing to him in a later chargeable period.
- (6) If—
- (a) the old participator acquired some or all of his interest in the field by a previous transfer in relation to which he was the new participator,
  - (b) Parts 2 and 3 of this Schedule applied in relation to that previous transfer, and
  - (c) some or all of the part of the remaining loss treated as an allowable loss of his cannot be relieved in accordance with sub-paragraph (3) above,
- sub-paragraphs (3) to (5) above shall apply in relation to so much of that part of the remaining loss as cannot be so relieved as they apply in relation to the remaining loss, but construing the references in those sub-paragraphs to the new participator and the old participator by reference to that previous transfer and the parties to it, and then applying this sub-paragraph accordingly (and so on).
- (7) But where—
- (a) the person who is the old participator in relation to a transfer made before 17th March 2004 (“the later transfer”) is also the new participator in relation to a previous transfer, and
  - (b) Parts 2 and 3 of this Schedule applied in relation to both of those transfers,
- sub-paragraph (3) above shall not apply by virtue of sub-paragraph (6) above in relation to so much of the assessable profits of the person who is the old participator in relation to that previous transfer as is attributable to so much of his interest as constitutes the whole or part of his represented interest by virtue of the later transfer.
- (8) Where losses accruing to each of two or more participators fall to be relieved by virtue of sub-paragraph (3) above against the same assessable



profits, a loss accruing to the person who last had an interest representing the whole or part of the transferred interest at an earlier time shall be so relieved before one accruing to a person who last had such an interest at a later time.

In this sub-paragraph “the transferred interest” means the interest transferred by the person against whose assessable profits the losses fall to be relieved.

(9) In determining for the purposes of this paragraph the assessable profits of a participator that are attributable to his represented interest, the assessable profits shall be apportioned between—

- (a) the represented interest, and
- (b) the remainder of the participator’s interest,

using such method as is just and reasonable, having regard to the respective sizes of those interests.

(10) For the purposes of this paragraph “relevant previous participators’ expenditure unrelated to the field” means so much of each relevant previous participator’s allowed expenditure unrelated to the field as is referable to his represented interest, other than excepted old expenditure.

(11) For the purposes of sub-paragraph (10) above—

“allowed expenditure unrelated to the field”, in relation to a participator, is expenditure unrelated to the field which is allowed on a claim or election made by the participator;

“excepted old expenditure” is expenditure which has been allowed in pursuance of a claim or election for its allowance received by the Board before 17th March 2004;

“relevant previous participator” means a participator against any of whose assessable profits relief is given in accordance with sub-paragraphs (3) to (6) above;

and sub-paragraph (9) above shall apply in relation to allowed expenditure unrelated to the field as it applies in relation to assessable profits.

(12) In this paragraph—

“expenditure unrelated to the field” has the meaning given by section 6(9);

“the loss-maker” shall be construed in accordance with sub-paragraph (2) above;

“previous owner” means a person from whom the loss-maker directly or indirectly derives his title to the whole or any part of his interest;

“represented interest”, in the case of a previous owner, means so much of the interest which that previous owner transferred, by a transfer to which Parts 2 and 3 of this Schedule apply, as is represented in the loss-maker’s interest by virtue only of—

- (a) that transfer, or
- (b) that transfer and one or more subsequent transfers to which those Parts apply,

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making, for the purposes of paragraph (b) above, such apportionments as are just and reasonable, having regard to the interests transferred by each of the transferors.”.

- (3) The amendment made by this section has effect in relation to losses accruing in chargeable periods ending after 17th March 2004.