

SCHEDULES

SCHEDULE 7

Section 93

TONNAGE TAX

PART 1

AMENDMENTS OF SCHEDULE 22 TO FA 2000

Introduction

1 Schedule 22 to FA 2000 shall be amended as follows.

Period for which election is in force

2 (1) Paragraph 13 is amended as follows.

(2) After sub-paragraph (2) insert—

“(2A) A tonnage tax election ceases to be in force—

- (a) in the case of a company election, if a withdrawal notice in respect of the company takes effect under paragraph 15A;
- (b) in the case of a group election, if a withdrawal notice in respect of the group takes effect under that paragraph.”.

Withdrawal notices

3 After paragraph 15 (and before Part 3) insert—

“Withdrawal notices

15A (1) A withdrawal notice (see paragraph 13(2A)) may be given—

- (a) in respect of a single company, or
- (b) in respect of a group,

but only if the following conditions are met.

(2) Condition 1 is that the notice is given during the period—

- (a) beginning with the day on which the Finance Act 2005 is passed, and
- (b) ending with 31st March 2006.

(3) Condition 2 is that, for the whole of the period of three years ending with the day on which the Finance Act 2005 is passed, a tonnage tax election or a renewal election has been in force in respect of the company or group in respect of which the withdrawal notice is to be given.

Status: This is the original version (as it was originally enacted).

- (4) A withdrawal notice must be given to the Inland Revenue—
 - (a) in the case of a withdrawal notice in respect of a single company, by that company;
 - (b) in the case of a withdrawal notice in respect of a group, jointly by all the qualifying companies in the group.
- (5) A withdrawal notice given in accordance with this paragraph takes effect at the end of the accounting period that precedes the first accounting period of the company to begin after 1st July 2005.
- (6) In the case of a withdrawal notice given in respect of a group, sub-paragraph (5) has effect in relation to each qualifying company in the group by reference to that company's accounting periods.

Power to provide further opportunities for withdrawal

- 15B (1) The Treasury may by order provide for further periods during which withdrawal notices under paragraph 15A may be given.
- (2) Any such order may provide for that paragraph to apply, with such consequential adaptations as appear to the Treasury to be appropriate, in relation to any such further period as it applies in relation to the period specified in sub-paragraph (2) of that paragraph.
- (3) The consequential adaptations that may be made include adaptations of the reference in sub-paragraph (3) of that paragraph to the period of three years ending with the day on which the Finance Act 2005 is passed.”.

Qualifying ships

- 4 (1) Paragraph 19 is amended as follows.
- (2) In sub-paragraph (1) (meaning of “qualifying ship”)—
- (a) in paragraph (a), after “carriage” insert “by sea”;
 - (b) in paragraph (b), after “carriage” insert “by sea”;
 - (c) in paragraph (c), after “assistance” insert “carried out at sea”;
 - (d) in paragraph (d), after “transport” insert “by sea”.
- (3) In sub-paragraph (3) (other provisions to which sub-paragraph (1) is subject)—
- (a) after “subject to” insert—
“a”;
 - (b) at the end insert—
“(b) paragraph 20A (qualifying dredgers and tugs);
(c) paragraphs 22A to 22F (flagging).”.
- (4) After sub-paragraph (4) insert—
- “(5) For the purposes of sub-paragraph (1) “sea” does not include—
- (a) a port or harbour;
 - (b) an estuary, a tidal or other river or an inland waterway.”.

Vessels excluded from being qualifying ships

- 5 (1) Paragraph 20 is amended as follows.
- (2) In sub-paragraph (1) (list of excluded vessels) for paragraph (f) (dredgers) substitute—
- “(f) dredgers other than qualifying dredgers.”.
- (3) After sub-paragraph (6) insert—
- “(7) In this Schedule “qualifying dredger” means a dredger which—
- (a) is self-propelled, and
- (b) is constructed or adapted for the carriage of cargo;
- (but see further paragraph 20A).”.

Qualifying dredgers and tugs

- 6 After paragraph 20 insert—
- “*Qualifying dredgers and tugs*
- 20A (1) This paragraph applies where a company operates a ship in an accounting period and the ship—
- (a) is a qualifying dredger or a tug, and
- (b) would, apart from this paragraph, be a qualifying ship.
- (2) The ship shall not be regarded as a qualifying ship operated by the company in that accounting period unless it is used for one or more of the activities mentioned in paragraph 19(1)(a) to (d) for more than 50% of its operational time.
- (3) In this paragraph “operational time”, in relation to a ship operated by a company in an accounting period, means the time during that accounting period during which the ship is—
- (a) operated by the company, and
- (b) used for any activity.
- (4) For the purposes of sub-paragraph (2) assisting a self-propelled vessel into or out of a port or harbour is not to be regarded as use for an activity mentioned in paragraph 19(1)(c).
- (5) For the purposes of sub-paragraph (3) any waiting time spent by a tug for the purposes of a particular activity is to be treated as time during which the tug is used for that activity.”.

Effect of change of use

- 7 (1) Paragraph 22 is amended as follows.
- (2) In sub-paragraph (1) (qualifying ship beginning to be used as vessel of excluded kind ceases to be such ship when it begins to be so used) for “as a vessel of an excluded kind” substitute “for non-qualifying purposes”.

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- (3) In sub-paragraph (2)(b) (use as vessel of excluded kind for up to 30 days in accounting period to be disregarded) for “as a vessel of an excluded kind” substitute “for non-qualifying purposes”.
- (4) In sub-paragraph (5) (meaning of references to use as vessel of excluded kind) for “as a vessel of an excluded kind are to” substitute “for non-qualifying purposes are to—
 - (a) use for an activity other than any of the activities mentioned in paragraph 19(1)(a) to (d), or
 - (b)”.
- (5) After that sub-paragraph insert—
 - “(6) This paragraph does not apply for the purposes of sub-paragraphs (2) to (5) of paragraph 20A (qualifying dredgers and tugs).”.

Flagging: rule for ships other than dredgers and tugs

8 After paragraph 22 insert—

“Flagging: rule for ships other than dredgers and tugs

- 22A (1) This paragraph applies if the following conditions are satisfied in the case of a ship which—
- (a) is neither a qualifying dredger nor a tug, and
 - (b) would, apart from this paragraph, be a qualifying ship.
- (2) Condition 1 is that, at a time after the later of the reference date (see paragraph 22B(1)) and 30th June 2005,—
- (a) in the case of a tonnage tax company which is a single company, the company begins, in a financial year which is not excepted (see paragraph 22B(2)), to operate the ship for the first time, or
 - (b) in the case of a tonnage tax company which is a member of a tonnage tax group, the company begins, in a financial year which is not excepted, to operate the ship for the first time, the ship not having previously been operated by any other member of the group.
- (3) Condition 2 is that less than 60% of the company’s total tonnage is Community-flagged (see paragraph 22B(3)) on average over the period—
- (a) beginning with the first day of the financial year mentioned in condition 1, and
 - (b) ending with the day on which the company so begins to operate the ship.
- (4) Condition 3 is that—
- (a) the percentage of the company’s total tonnage which is Community-flagged on average over the period mentioned in condition 2,
 is less than
 - (b) the percentage of the company’s total tonnage which was Community-flagged on the reference date.

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- (5) Condition 4 is that, on the date on which the company so begins to operate the ship, the ship is not registered in one of the Member States' registers (see paragraph 22B(7)).
- (6) Where this paragraph applies in relation to the ship, the ship shall not, at any time on or after that date, be regarded as—
- (a) a qualifying ship operated by the company, or
 - (b) if immediately before that date the company is a member of a tonnage tax group, a qualifying ship operated by any company that is or becomes a member of the group.
- (7) But sub-paragraph (6) does not apply if—
- (a) the ship has become registered in one of the Member States' registers by the end of the period of three months beginning with that date, or
 - (b) the conditions in sub-paragraph (8) are satisfied.
- (8) Those conditions are that—
- (a) a substitute ship which was not registered in one of the Member States' registers has, during the period mentioned in sub-paragraph (7)(a), become so registered, and
 - (b) no later than the end of that period—
 - (i) if the company is a single company, the company makes an election under this sub-paragraph in relation to the substitute ship, or
 - (ii) if the company is a member of a tonnage tax group, all the qualifying companies in the group jointly make such an election.
- (9) In sub-paragraph (8) a “substitute ship” means a qualifying ship—
- (a) the tonnage of which is no less than that of the ship mentioned in sub-paragraph (1), and
 - (b) which was first operated by the company or, if the company is a member of a tonnage tax group, by any other member of the group more than three months before that date;
- and for this purpose the tonnage of a ship is to be determined on the same basis as it is under paragraph 22B(3).
- (10) An election under sub-paragraph (8) is made by notice to the Inland Revenue.

Flagging: meaning of terms used in paragraph 22A

- 22B (1) In paragraph 22A “the reference date” means 17th January 2004 or, if later,—
- (a) in the case of a single company, the date of the end of the accounting period in which the company became (or becomes) a tonnage tax company;
 - (b) in the case of a member of a group, the date of the end of the accounting period in which the group became (or becomes) a tonnage tax group;

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but where the members of a group had (or have) different accounting periods at the time the group became (or becomes) a tonnage tax group, paragraph (b) has effect by reference to the first of those accounting periods.

- (2) For the purposes of sub-paragraph (2) of paragraph 22A a financial year is excepted if it is designated by an order made by the Treasury as a financial year in relation to which that paragraph is not to have effect (see further paragraph 22C(1) to (3)).
- (3) For the purposes of paragraph 22A the percentage of a company's total tonnage which is Community-flagged is—

$$\frac{\text{CFT}}{\text{TT}} \times 100$$

where—

CFT is the aggregate tonnage of such of the relevant ships as are registered in one of the Member States' registers, and

TT is the aggregate tonnage of all the relevant ships.

- (4) For the purposes of sub-paragraph (3) the ships which are the relevant ships are—
- (a) if the company is a single company, the ships operated by the company, or
 - (b) if the company is a member of a tonnage tax group, the ships operated by each member of the group which is a qualifying company.
- (5) Sub-paragraphs (3) and (4) are subject to any regulations made under paragraph 22C(4).
- (6) A ship shall not be counted more than once in determining for the purposes of sub-paragraph (3) the aggregate tonnage of relevant ships.
- (7) In this Schedule “Member States' registers” has the meaning given by the Annex to Commission communication C(2004) 43 — Community guidelines on State aid to maritime transport (as from time to time amended or replaced).

Flagging: provisions supplementing paragraphs 22A and 22B

- 22C (1) An order under paragraph 22B(2) designating a financial year shall be made if—
- (a) the Treasury are satisfied, on the basis of the information available to them, that the percentage of the tonnage tax fleet which is Community-flagged has not decreased on average over a prescribed three year period, and
 - (b) the order is made before the beginning of that financial year.
- (2) The Treasury may make provision by regulations for or in connection with—

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- (a) specifying the meaning, for the purposes of sub-paragraph (1)(a), of the percentage of the tonnage tax fleet which is Community-flagged;
 - (b) specifying the way in which an average is to be calculated for those purposes;
 - (c) requiring any tonnage tax company or tonnage tax group to provide prescribed information for the purposes of enabling the Treasury to determine whether the condition in sub-paragraph (1)(a) is met;
 - (d) imposing penalties in respect of a failure to comply with a provision of the regulations made by virtue of paragraph (c) (including, in prescribed cases or circumstances, the exclusion of a company or group from tonnage tax).
- (3) Section 828(3) of the Taxes Act 1988 shall not apply in relation to an order under paragraph 22B(2).
- (4) The Treasury may make provision by regulations as to the way in which the percentage of a company's total tonnage which is Community-flagged is to be calculated for the purposes of paragraph 22A.
- (5) The provision that may be made by regulations under sub-paragraph (4) includes provision for or in connection with—
- (a) determining the percentage of a company's total tonnage which is Community-flagged on average over a period;
 - (b) specifying the basis on which the tonnage of a ship is to be determined;
 - (c) treating ships which would, but for the regulations, be relevant ships for the purposes of paragraph 22B(3) as not being relevant ships for those purposes;
 - (d) including in the calculation set out in paragraph 22B(3) only such proportion of the tonnage of a relevant ship as may be prescribed.
- (6) Regulations under this paragraph—
- (a) may make different provision for different cases or circumstances, and
 - (b) may contain such supplementary, incidental, consequential and transitional provisions as appear to the Treasury to be necessary or expedient.
- (7) In this paragraph “prescribed” means—
- (a) specified in, or
 - (b) determined in accordance with, regulations under this paragraph.”.

Flagging: rules for dredgers and tugs

9 After paragraph 22C insert—

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“Flagging: rule on first operation of qualifying dredger or tug

- 22D (1) This paragraph applies if—
- (a) a company begins to operate a ship which—
 - (i) is a qualifying dredger or a tug,
 - (ii) would, apart from this paragraph, be a qualifying ship, and
 - (iii) has not previously been operated by the company or, if the company is a member of a group, by any member of the group, and
 - (b) on the date on which the company so begins to operate the ship, the ship is not registered in one of the Member States' registers.
- (2) The ship shall not, at any time on or after that date, be regarded as—
- (a) a qualifying ship operated by the company, or
 - (b) if immediately before that date the company is a member of a group, a qualifying ship operated by any company that is or becomes a member of the group.
- (3) But sub-paragraph (2) does not apply if the ship has become registered in one of the Member States' registers by the end of the period of three months beginning with that date.

Flagging: rule on subsequent re-flagging of qualifying dredger or tug

- 22E (1) This paragraph applies if—
- (a) a qualifying ship operated by a company ceases to be registered in any of the Member States' registers, and
 - (b) the ship is a qualifying dredger or a tug.
- (2) The ship shall not, at any time on or after the date on which it ceases to be so registered, be regarded as—
- (a) a qualifying ship operated by the company, or
 - (b) if immediately before that date the company is a member of a group, a qualifying ship operated by any company that is or becomes a member of the group.”.

Flagging: restrictions where dredger or tug ceases to be qualifying ship under paragraph 22E

10 After paragraph 22E insert—

“Flagging: restrictions where ship ceases to be qualifying ship under paragraph 22E

- 22F (1) This paragraph applies where a qualifying ship operated by a tonnage tax company ceases to be a qualifying ship by virtue of paragraph 22E.
- (2) No notice may be given under section 130 of the Capital Allowances Act 2001 for the postponement of all or part of a relevant allowance to which—
- (a) the company, or

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- (b) if immediately before the date on which the ship so ceases to be a qualifying ship (“the cessation date”) the company is a member of a tonnage tax group, any company that is or becomes a member of the group,
becomes entitled on or after the cessation date.
- (3) In sub-paragraph (2) “relevant allowance” means an allowance in respect of—
 - (a) qualifying expenditure on the provision of the ship, or
 - (b) qualifying expenditure which—
 - (i) is incurred on the provision of the ship, and
 - (ii) is allocated to a single ship pool.
- (4) No claim may be made under section 135 of that Act for deferment of all or part of a balancing charge—
 - (a) to which the company or, if immediately before the cessation date the company is a member of a tonnage tax group, any company that is or becomes a member of the group becomes liable, and
 - (b) which arises when there is a disposal event in respect of the ship on or after the cessation date.
- (5) Relief in respect of a relevant loss shall not be given under section 393A(1) of the Taxes Act 1988 (losses: set off against profits of the same, or an earlier, accounting period).
- (6) Group relief under Chapter 4 of Part 10 of that Act shall not be available in respect of a relevant loss.
- (7) Accordingly, relief in respect of a relevant loss shall be given only under section 393(1) of that Act (losses other than terminal losses).
- (8) In sub-paragraphs (5) to (7) “relevant loss” means a loss which is incurred in respect of the ship on or after the cessation date in the course of a trade carried on by—
 - (a) the company, or
 - (b) if immediately before the cessation date the company is a member of a tonnage tax group, any company that is or becomes a member of the group.”.

Requirement to prove compliance with safety etc standards

11 After paragraph 43 insert—

“The requirement to prove compliance with safety etc standards

- 43A (1) The Secretary of State may make provision by regulations for or in connection with requiring qualifying companies or qualifying groups to provide evidence of compliance with prescribed standards relating to—
- (a) health and safety in connection with qualifying ships which are not registered in any of the Member States' registers;
 - (b) environmental performance of such ships;
 - (c) working conditions on such ships.

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- (2) The provision that may be made by regulations under this paragraph includes provision for or in connection with—
- (a) requiring returns to be made at prescribed intervals;
 - (b) authorising the Secretary of State to require persons to provide prescribed information in prescribed cases or circumstances;
 - (c) enabling audits to be carried out on behalf of the Secretary of State;
 - (d) authorising the Secretary of State to issue certificates of non-compliance in prescribed cases or circumstances;
 - (e) the effect of such a certificate (including preventing the making of a renewal election when such a certificate is in force);
 - (f) enabling persons to apply to the Secretary of State for the cancellation of such a certificate;
 - (g) requiring or enabling the Secretary of State to revoke a tonnage tax election after a prescribed period of non-compliance;
 - (h) the making of appeals;
 - (i) authorising the disclosure of information between the Secretary of State and the Inland Revenue.
- (3) Regulations under this paragraph may create criminal offences in respect of failures to comply with requirements imposed by the regulations.
- (4) Regulations under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (5) Regulations under this paragraph—
- (a) may make different provision for different cases, and
 - (b) may contain such supplementary, incidental and transitional provisions as appear to the Secretary of State to be necessary or expedient.
- (6) In this paragraph “prescribed” means prescribed by regulations under this paragraph.”.

The ring fence: capital allowances: general: introduction

- 12 (1) Paragraph 68 is amended as follows.
- (2) In sub-paragraph (2) (description of general scheme of Part 9 of Schedule 22) for paragraph (c) substitute—
- “(c) on leaving tonnage tax—
- (i) a company is treated as having incurred qualifying expenditure on its tonnage tax plant and machinery assets of an amount equal to the lower of cost and market value, where it leaves tonnage tax on expiry of an election or on the taking effect of a withdrawal notice, but
 - (ii) otherwise, a company is put broadly in the position it would have been in if it had never been subject to tonnage tax.”.

The ring fence: capital allowances: exit: plant and machinery

- 13 (1) Paragraph 85 is amended as follows.
- (2) After sub-paragraph (1) insert—
- “(1A) Sub-paragraph (1C) applies where the company leaves tonnage tax—
- (a) on the expiry of a tonnage tax election, or
 - (b) on a tonnage tax election ceasing to be in force under paragraph 13(2A) (taking effect of withdrawal notice under paragraph 15A).
- (1B) In any other case, sub-paragraph (2) applies.
- (1C) Where this sub-paragraph applies, the amount of qualifying expenditure in respect of each asset used by the company for the purposes of its tonnage tax activities and held by the company when it leaves tonnage tax shall be taken to be—
- (a) the market value of the asset at the time the company leaves tonnage tax, or
 - (b) if less, the amount of expenditure incurred on the provision of the asset that would have been qualifying expenditure if the company had not been subject to tonnage tax.”.

(3) In sub-paragraph (2) (amount of qualifying expenditure to be determined by reference to tax written down value of assets) at the beginning insert “Where this sub-paragraph applies,”.

The ring fence: capital allowances: ship leasing: sale and lease-back arrangements

- 14 (1) Paragraph 92 is amended as follows.
- (2) In sub-paragraph (2) (meaning of “sale and lease-back arrangements”) for “subject to sub-paragraph (3)” substitute “subject to sub-paragraphs (3) and (3A)”.
- (3) After sub-paragraph (3) insert—
- “(3A) This paragraph does not apply if—
- (a) expenditure is incurred on enhancing the ship or on converting it to another use,
 - (b) the amount of that expenditure—
 - (i) is greater than 33% of the market value of the ship immediately after completion of the enhancement or conversion, and
 - (ii) is equal to or greater than the market value of the interest in the ship which is the subject of the transaction mentioned in Step Two in sub-paragraph (2), and
 - (c) that transaction is effected not more than four months after the first occasion following completion of the enhancement or conversion on which the ship is brought into use by any person for any purpose.”.

Meaning of “offshore activities”

- 15 (1) Paragraph 104 is amended as follows.

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(2) After sub-paragraph (1) (meaning of “offshore activities”) insert—

“(1A) But none of the following activities is to be regarded as an offshore activity—

- (a) offshore supply services;
- (b) towage, salvage or other marine assistance;
- (c) anchor handling;
- (d) carriage of liquids or gases;
- (e) safety or rescue services;
- (f) the carriage of cargo in connection with dredging.

(1B) The Treasury may make provision by order amending sub-paragraph (1A) by—

- (a) adding, or
 - (b) varying,
- any description of activity.”.

Vessels to which the special rules for offshore activities do not apply

16 Omit paragraph 105.

Index of defined expressions

17 (1) Paragraph 147 is amended as follows.

(2) Insert each of the following at the appropriate place—

“qualifying dredger	paragraph 20(7)”;
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“Member States' registers	paragraph 22B(7)”.
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PART 2

COMMENCEMENT AND TRANSITIONAL PROVISION

Commencement

18 (1) Subject to paragraphs 19 to 21, paragraphs 4 to 6, 8 to 10 and 15 to 17 (and paragraph 1 so far as relating to those paragraphs) shall come into force on 1st July 2005.

(2) This Part of this Schedule, and the other provisions of Part 1 of this Schedule, shall come into force on the day on which this Act is passed.

Transitional provision: qualifying activities

19 (1) If a withdrawal notice is given on or before 31st March 2006 under paragraph 15A of Schedule 22 to FA 2000 in respect of a single company or a group, the amendments made by—

- (a) paragraph 4, and

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- (b) so far as relating to tugs, paragraph 6,
shall not have effect in relation to that company or group until the day on which the relevant accounting period begins.
- (2) In sub-paragraph (1) “the relevant accounting period” means the first accounting period of the company to begin after 1st July 2005.
- (3) In the case of a withdrawal notice given in respect of a group, this paragraph has effect in relation to each qualifying company in the group by reference to that company’s accounting periods.

Transitional provision: flagging: order designating financial year 2005

- 20 In relation to the financial year 2005, Schedule 22 to FA 2000 shall have effect with the omission of paragraph 22C(1).

Transitional provision: flagging

- 21 Where a company (whether or not a member of a group) has operated a qualifying dredger or a tug at any time before 1st July 2005, the company is to be treated, for the purposes of paragraph 22D of Schedule 22 to FA 2000, as not having operated the qualifying dredger or tug before that date.