



# Finance Act 2006

## 2006 CHAPTER 25

### PART 5

#### OIL

##### *New basis for determining market value*

#### **146 New basis for determining the market value of oil**

- (1) In OTA 1975, in Schedule 3 (petroleum revenue tax: miscellaneous provisions) before paragraph 2 (definition of market value of oil) insert—

**“Determination of market value: the notional delivery day for a quantity of oil**

- 1A (1) This paragraph has effect for determining, for the purposes of this Schedule, the day which is the “notional delivery day” in the case of any particular quantity of oil of any particular kind whose market value falls to be determined in accordance with the provisions of this Schedule in the case of any chargeable period.
- (2) The notional delivery day need not be a day in the chargeable period.
- (3) In the case of a quantity of oil which, at the end of the chargeable period,—
- (a) has neither been disposed of nor relevantly appropriated in the period, or
  - (b) has been disposed of but not delivered in the period,
- the notional delivery day is the last business day of the chargeable period.
- (4) In the case of—
- (a) a quantity of oil won and disposed of which is delivered on a day in the chargeable period, or
  - (b) a quantity of oil—

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- (i) relevantly appropriated on a day in the chargeable period, but
  - (ii) not disposed of in the chargeable period,
- the notional delivery day is to be determined in accordance with sub-paragraphs (5) to (7) below.
- (5) If that oil is—
- (a) oil transported by ship from the place of extraction to a place in the United Kingdom or elsewhere, or
  - (b) oil transported by pipeline to a place in the United Kingdom and loaded on to a ship there,
- and there is a loading slot for it (see sub-paragraph (8)), the notional delivery day is the middle day of the loading slot.
- (6) If sub-paragraph (5) above does not apply to that oil, then—
- (a) if it is oil delivered on a day in the chargeable period, the notional delivery day is the date of the delivery, or
  - (b) if it is oil relevantly appropriated on a day in the chargeable period, the notional delivery day is the date of the appropriation.
- (7) The Treasury may by regulations make provision for or in connection with substituting as the notional delivery day in such circumstances as may be prescribed—
- (a) in the case of oil transported by ship from the place of extraction to a place in the United Kingdom or elsewhere, the date of completion of load, or
  - (b) in the case of oil transported by pipeline to a place in the United Kingdom and loaded on to a ship there, the date of the bill of lading.
- (8) The “loading slot” for any oil is the period of three days within which the loading of the oil on to the ship is or was to take place—
- (a) as duly published by the operator of the facility at which that loading is or was to take place (unless paragraph (b) below applies), or
  - (b) as subsequently finally duly varied to give effect to any modifications duly notified to that operator by the participator concerned.
- (9) In sub-paragraph (8) above, “duly” means in accordance with the arrangements for the time being governing the time and manner of—
- (a) publication, or variation, of the final loading schedule for the calendar month in which loading is or was to take place, or
  - (b) notification of modifications to that schedule,
- and, in any case, before the end of the calendar month immediately preceding that in which loading is to take place.
- (10) If the Treasury consider that, for the purpose of defining “loading slot”, any period of days for the time being specified by or under this Act as the period of days within which loading of oil on to a ship is to take place is, or is to be, no longer appropriate, they may by regulations make provision for, or in connection with,—

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- (a) varying the number of days in the period,
- (b) determining the day that is to be the notional delivery day if the number, as varied, is an even number.

The power conferred by this sub-paragraph includes power to make amendments to, or modifications of, this Schedule.”.

(2) Paragraph 2 of that Schedule (definition of market value of oil) is amended as follows.

(3) In sub-paragraph (1) (market value of oil in any calendar month to be determined in accordance with the paragraph) for “any oil in any calendar month” substitute “ any particular quantity of oil of any kind on any day ”.

(4) After sub-paragraph (1) insert—

“(1A) This paragraph makes different provision according to whether the oil is—

- (a) Category 1 oil of any kind, or
- (b) Category 2 oil of any kind.

(1B) For the purposes of this Act—

- (a) Category 1 oil is oil of any of one or more kinds specified as such in regulations made for the purpose by the Board;
- (b) Category 2 oil is oil of any other kind.

(1C) The Board may specify oil of any particular kind as Category 1 oil only if they are satisfied that reports of prices for sales of oil of that kind are published and widely available (whether or not on payment of a fee).”.

(5) For sub-paragraph (2) substitute—

“(2) The market value of any particular quantity of Category 1 oil of any kind is the price for which that quantity of oil of that kind might reasonably have been expected to be sold under a contract of sale that meets the following conditions—

- (a) the contract is for the sale of the oil at arm's length to a willing buyer;
- (b) the contract is for delivery of a single standard cargo of the oil;
- (c) the contract specifies a period of three days within which loading of the oil is to take place and that period includes the notional delivery day for the actual oil;
- (d) the contract requires the oil to have been subjected to appropriate initial treatment before delivery;
- (e) the contract requires the oil to be delivered—
  - (i) in the case of oil extracted in the United Kingdom, at the place of extraction; or
  - (ii) in the case of oil extracted from strata in the sea bed and subsoil of the territorial sea of the United Kingdom or of a designated area, at the place in the United Kingdom or another country at which the seller could reasonably be expected to deliver it or, if there is more than one such place, the one nearest to the place of extraction.

The terms as to payment which are to be implied in the contract are those which are customarily contained in contracts for the sale at arm's length of oil of the kind in question.

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- (2AA) The market value of any particular quantity of Category 2 oil of any kind is the price for which that quantity of oil of that kind might reasonably have been expected to be sold under a contract of sale that meets the following conditions—
- (a) the contract is for the sale of the oil at arm's length to a willing buyer;
  - (b) the contract provides for delivery of the oil on the notional delivery day for the actual oil or within such period that includes that day as is normal under a contract at arm's length for the sale of oil of that kind (or, if there is more than one such period, the shortest of them);
  - (c) the contract is made on a date such that the period between that date and the notional delivery day for the actual oil is the normal period between contract and delivery in the case of a contract at arm's length for the sale of oil of that kind (or, if there is more than one such period, the shortest of them);
  - (d) the contract requires the oil to have been subjected to appropriate initial treatment before delivery;
  - (e) the contract requires the oil to be delivered—
    - (i) in the case of oil extracted in the United Kingdom, at the place of extraction; or
    - (ii) in the case of oil extracted from strata in the sea bed and subsoil of the territorial sea of the United Kingdom or of a designated area, at the place in the United Kingdom or another country at which the seller could reasonably be expected to deliver it or, if there is more than one such place, the one nearest to the place of extraction.

The terms as to payment which are to be implied in the contract are those which are customarily contained in contracts for the sale at arm's length of oil of the kind in question.”.

- (6) For sub-paragraphs (2A) to (2D) substitute—

“(2E) For the purposes of sub-paragraph (2) or (2AA) above, the price of any quantity of Category 1 or Category 2 oil of any kind shall be determined in such manner, on the basis of such information, and by reference to such factors, as may be prescribed for oil of that Category and kind in regulations made by the Board.

- (2F) The provision that may be made by regulations under subsection (2E) above includes provision for or in connection with any or all of the following—
- (a) determining the price by reference to prices, or an average of prices, for sales of oil (whether or not oil of the Category or kind in question, and whether the prices are prices under actual contracts, prices that are published and widely available (whether on payment of a fee or otherwise) or prices ascertained or determined in some other way);
  - (b) the prices to be taken into account;
  - (c) the descriptions of contracts to be taken into account;
  - (d) the method to be used for determining an average of prices;
  - (e) the day or days, or period or periods, by reference to which prices, or any average of prices, is to be determined;

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- (f) the application of a prescribed price differential, in cases where the price of oil of one kind falls to be determined in whole or in part by reference to prices for oil of some other kind.
- (2G) Sub-paragraph (2I) below has effect if, or in so far as, the Board are satisfied that it is impracticable or inappropriate to determine for the purposes of sub-paragraph (2) or (2AA) above the price of any oil in accordance with the provisions of regulations for the time being in force under sub-paragraph (2E) above.
- (2H) For that purpose it is immaterial whether the impracticability or inappropriateness is by virtue of—
- (a) an insufficiency of contracts or published prices that satisfy the conditions,
  - (b) an insufficiency of information relating to such contracts or published prices, or
  - (c) the nature of the market for oil of the kind in question,
- or for any other reason.
- (2I) Where this sub-paragraph has effect, the price is to be determined—
- (a) so far as it is practicable and appropriate to do so by reference to other contracts or published prices (whether or not relating to oil of the same kind) and in accordance with the principles set out in the regulations for determining an average of prices; and
  - (b) so far as it is not practicable or appropriate to determine it as mentioned in paragraph (a) above, in such other manner as appears to the Board to be appropriate in the circumstances.”.
- (7) Omit sub-paragraph (3) (which relates to the market value of disposals in a calendar month).
- (8) In sub-paragraph (3A) (oil that has been subjected to initial treatment)—
- (a) for “sub-paragraphs (1) and (2) above” substitute “ sub-paragraph (1) and sub-paragraph (2) or (2AA) above ”, and
  - (b) for “sub-paragraph (2)(a) above” substitute “ sub-paragraph (2)(d) or (2AA) (d) above ”.
- (9) In sub-paragraph (4) (application of sub-paragraphs (2) and (3) in relation to paragraph 2(2) of Schedule 2) for “sub-paragraphs (2) and (3)” substitute “ sub-paragraphs (2) and (2AA) ”.
- (10) After paragraph (4) insert—
- “(5) In this paragraph “prescribed” means specified in, or determined in accordance with, regulations.”.
- (11) Schedule 18 (which makes minor and consequential amendments) has effect.

## **147 Section 146: commencement and transitional provisions**

- (1) The amendments made by section 146 and Schedule 18 have effect in relation to oil delivered or appropriated on or after 1st July 2006 (disregarding section 12A of that Act).

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- (2) Those amendments also have effect for the purpose of determining for any chargeable period ending on or after 31st December 2006—
- (a) the value to be brought into account under section 2(4)(b) of OTA 1975 by reference to a previous chargeable period ending on or after 30th June 2006, and
  - (b) the value to be brought into account under section 2(5)(d) of that Act.
- (3) Subsections (1) and (2) are subject to any express provision in Schedule 18 as to the commencement or application of any provision of that Schedule.
- (4) In the following provisions of this section—
- (a) “the last old period” means the chargeable period that ends on 30th June 2006, and
  - (b) “the first new period” means the chargeable period that ends on 31st December 2006.
- (5) Subsection (6) applies in relation to oil which was won from an oil field before 1st July 2006 and which—
- (a) was loaded on to a ship before 1st July 2006 and transported from the place of extraction to a place in the United Kingdom or elsewhere, or
  - (b) was transported by pipeline from the place of extraction to a place in the United Kingdom and there loaded on to a ship before that date.
- (6) If the oil is or was disposed of crude by a participator in sales otherwise than at arm's length, but the market value of the oil—
- (a) does not fall to be brought into account for the purposes of section 2(5)(b) of OTA 1975 for the last old period by reason only that the oil was not delivered in that period, and
  - (b) would not (apart from this subsection) fall to be brought into account for the purposes of that provision in the first new period by reason only that the date on which the oil is to be regarded by virtue of section 12A of that Act as delivered falls in the last old period,
- the date on which the oil is to be taken for the purposes of section 2(5)(b) of that Act to have been delivered is instead to be the first business day of the first new period.
- (7) Any power to make regulations that is conferred under or by virtue of any of the amendments made by section 146 or Schedule 18 includes power to make regulations having effect for, or in relation to,—
- (a) the first new period, or
  - (b) for the purpose mentioned in subsection (2), the last old period,
- notwithstanding that the period in question has begun or ended before the making of the regulations.
- (8) Any regulations made by virtue of subsection (7) must be made before 31st December 2006.

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