Finance Act 2008

2008 CHAPTER 9

PART 6

OIL

Petroleum revenue tax

102 Meaning of "participator"

(1) In section 12 of OTA 1975 (interpretation of Part 1), the definition of "participator" is amended as follows.

(2) In the words before paragraph (a), after "chargeable period" insert "("the relevant chargeable period")".

(3) In paragraphs (a), (b) and (c), for "that chargeable period" substitute "the relevant chargeable period".

(4) At the end of paragraph (c) insert "and

(d) a former participator to whom an amount is attributed under paragraph 2A(2) of Schedule 5 in respect of a default payment made in relation to the field in the relevant chargeable period; and

(e) a former participator to whom an amount was attributed under paragraph 2A(2) of Schedule 5 in respect of a default payment made in relation to the field in either of the two chargeable periods preceding the relevant chargeable period; and

(f) a person who—

(i) made a default payment in relation to the field (whether the person was then a current participator or former participator),

(ii) is not a participator during the relevant chargeable period under any of paragraphs (a) to (e) of this definition, and

(iii) receives, in the relevant chargeable period, reimbursement expenditure (within the meaning of section 108(1)(c) of the Finance Act 1991) in respect of the default payment; and

(g) a person who—

(i) made a default payment in relation to the field (whether the person was then a current participator or former participator),

(ii) is not a participator during the relevant chargeable period under any of paragraphs (a) to (f) of this definition, and

(iii) received, in either of the two chargeable periods preceding the relevant chargeable period, reimbursement expenditure (within the meaning of section 108(1)(c) of the Finance Act 1991) in respect of the default payment;

(and for the purposes of paragraphs (f)(i) and (g)(i), "current participator", "former participator" and "default payment" have the same meaning as in paragraph 2A of Schedule 5;".

(5) The amendments made by this section have effect in relation to expenditure incurred after 30 June 2008.

103 Abandonment expenditure: default by participator met by former participator

(1) In Schedule 5 to OTA 1975 (allowance of expenditure, other than abortive exploration expenditure), for paragraph 2A substitute—

"2A (1) This paragraph applies if—

(a) a current participator ("the defaulter") has defaulted on a liability under—

(i) a relevant agreement, or

(ii) an abandonment programme,

to make a payment towards abandonment expenditure, and

(b) a current or former participator ("the contributing participator") pays an amount in or towards meeting the whole or part of the default ("a default payment").

(2) If a claim is made under this Schedule for the allowance of the abandonment expenditure, the amount of the default payment is to be attributed to the contributing participator for the purposes of paragraphs 2(4)(b) and 3(1)(c).

(3) But the amount attributed under sub-paragraph (2) may not exceed—

(a) so much of the sum in default as the contributing participator is required to meet in accordance with—

(i) the relevant agreement, or

(ii) the abandonment programme, or

(b) such other amount as the participator may be required to meet in accordance with a direction given under Part 4 of the Petroleum Act 1998.

(4) Sub-paragraph (2) is subject to paragraph 2B.

(5) In determining the amount which is to be attributed to the contributing participator under sub-paragraph (2), account shall be taken of the whole of the defaulter's interest in the relevant oil field.

(6) But in determining the share of the abandonment expenditure to be attributed to the defaulter under paragraph 2(4)(b), the amount which

would be attributed by reference to the defaulter's interest in the relevant oil field is to be reduced or (as the case may be) extinguished by the deduction of the aggregate of—

(a) the amount attributed to the contributing participator under sub-paragraph (2), and

(b) any other amounts attributed under sub-paragraph (2) to other current or former participators who make default payments in respect of the defaulter's default.

2B (1) No amount is to be attributed to a contributing participator under paragraph 2A(2) unless the following conditions are all met.

(2) The first condition is that the contributing participator is not connected with the defaulter, applying section 839 of the Taxes Act (connected persons) for the purposes of this sub-paragraph.

(3) The second condition is that, at the end of the claim period for which the claim is made, the defaulter still has an interest in the relevant oil field which, under paragraph 2(4)(b), falls to be taken into account in determining the shares in the abandonment expenditure.

(4) The third condition is that the relevant participators have taken all reasonable steps by way of legal remedy—

(a) to secure that the defaulter meets the whole of the liability referred to in paragraph 2A(1)(a), and

(b) to enforce any guarantee or other security provided in respect of that liability.

(5) In sub-paragraph (4) "relevant participators" means—

(a) each current participator (other than the defaulter), and

(b) each former participator who makes a default payment in respect of the defaulter's default.

2C (1) An amount attributed under paragraph 2A(2) is—

(a) in the case of a current participator, to be an addition to the share of the abandonment expenditure referable to the current participator's interest in the oil field, or

(b) in the case of a former participator, to be the share of the abandonment expenditure referable to the former participator's interest in the oil field.

(2) In paragraphs 2A and 2B and this paragraph—

"abandonment expenditure" means expenditure which is allowable for an oil field by virtue of section 3(1)(i) or (j);

"abandonment programme" means an abandonment programme approved under Part 4 of the Petroleum Act 1998 (including any such programme as revised);

"current participator" means a person who is, by virtue of paragraph (a), (b) or (c) of the definition in section 12, a participator in the relevant oil field in the chargeable period in which the abandonment expenditure is incurred;

"former participator" means a person who—

(a) is not a current participator, but

(b) was, by virtue of paragraph (a), (b) or (c) of the definition in section 12, a participator in the relevant oil field in any chargeable period before the chargeable period in which the abandonment expenditure is incurred;

"relevant agreement" has the meaning given by section 104(5)(a) of the Finance Act 1991;

"relevant oil field" means the oil field to which the abandonment expenditure relates;

"sum in default" means the amount of the payment which the defaulter is liable to make as mentioned in paragraph 2A(1)(a), less the aggregate of—

(a) so much of that payment as has been made by the defaulter, and

(b) so much of that payment as has been met by virtue of any guarantee or security provided in respect of the defaulter's liability.

(3) For the purposes of paragraph 2A, a current participator is to be regarded as defaulting on a liability to make a payment towards abandonment expenditure if the following conditions are met.

(4) The first condition is that the current participator has failed to make the payment in full on the due day.

(5) The second condition is that—

(a) any of the payment remains unpaid on the sixtieth day after the due day, or

(b) before that sixtieth day, the current participator's interest in a relevant licence becomes liable under the relevant agreement to be sold or forfeited, in whole or in part, by reason of the failure to meet the liability.

(6) In sub-paragraphs (4) and (5) "due day" means the day on which the payment towards abandonment expenditure becomes due under the relevant agreement or the abandonment programme."

(2) The amendment made by subsection (1) has effect in relation to expenditure incurred after 30 June 2008.

104 Abandonment expenditure: deductions from ring fence income

(1) FA 1991 is amended as follows.

(2) Section 64 (relief for expenditure incurred by a participator in meeting defaulter's abandonment expenditure) is amended as follows.

(3) In subsection (1)(a)—

(a) omit "(as set out in section 107 of this Act)", and

(b) for "sub-paragraph (1)(a)" substitute "sub-paragraph (2)".

(4) In subsection (1)(b)—

(a) for "sub-paragraph (4)" substitute "sub-paragraph (2)", and

(b) for "qualifying" substitute "contributing".

(5) In subsections (2), (3), (4) and (5) (in each place), for "qualifying" substitute "contributing".

(6) Section 65 (reimbursement by defaulter in respect of certain abandonment expenditure) is amended as follows.

(7) In subsection (1)(a)—

(a) omit "(as set out in section 107 of this Act)", and

(b) for "sub-paragraph (1)(a)" substitute "sub-paragraph (2)".

(8) In subsection (1)(b), for "sub-paragraph (4)" substitute "sub-paragraph (2)".

(9) In subsections (1) (in each place), (4), (5) (in each place), (6), (7) (in each place) and (8), for "qualifying" substitute "contributing".

(10) The amendments made by this section have effect in relation to expenditure incurred after 30 June 2008.

105 Abandonment expenditure: former participator reimbursed by defaulter

(1) Section 108 of FA 1991 (reimbursement by defaulter in respect of certain abandonment expenditure) is amended as follows.

(2) In subsection (1)(a), omit "(as set out in section 107 above)".

(3) For subsection (1)(b) substitute—

"(b) an amount is attributed to a contributing participator under paragraph 2A(2) of Schedule 5 to the principal Act; and".

(4) In subsection (1)(c), for "qualifying participator" substitute "contributing participator".

(5) In subsection (4), for "qualifying participator" (in each place) substitute "contributing participator".

(6) In subsection (5), for "qualifying participator" substitute "contributing participator".

(7) In subsection (7), for "qualifying participator" substitute "contributing participator".

(8) The amendments made by this section have effect in relation to expenditure incurred after 30 June 2008.

106 Returns of relevant sales of oil

(1) Section 62 of FA 1987 (returns of relevant sales of oil) is amended as follows.

(2) After subsection (3) insert—

"(3A) Subsection (4) applies to a participator in an oil field in any case where—

(a) paragraph 2 of Schedule 2 to the principal Act requires the participator to make a return for any chargeable period (including cases where the latest time for the delivery of that return is deferred), and

(b) there are any relevant sales of Category 2 oil (as defined in subsection (6) below)."

(3) In subsection (4), for the words before paragraph (a) substitute—

"(4) In such a case, that participator shall also be required, not later than the end of the second month after the end of that chargeable period, to deliver to the Board a return of all relevant sales of Category 2 oil stating—".

(4) In subsection (4), in paragraphs (d), (e) and (f), for "oil" (in each place) substitute "Category 2 oil".

(5) In subsection (6)—

(a) in the words before paragraph (a), for "oil", in each place except in the expression "oil field", substitute "Category 2 oil",

(b) in paragraph (a), for "subsection (4)" substitute "subsection (3A)",

(c) in paragraph (c), for "oil" substitute "Category 2 oil", and

(d) omit paragraph (d) and the "and" before it.

(6) After subsection (8) insert—

"(8A) For provision about the meaning of "Category 2 oil", see paragraph 2 of Schedule 3 to the principal Act (which applies by virtue of section 72(6) below)."

(7) The amendments made by this section have effect in relation to chargeable periods ending on or after 30 June 2008.

107 Elections for oil fields to become non-taxable

(1) Section 185 of FA 1993 is amended as follows.

(2) Before subsection (1) insert—

"(A1) In this Part of this Act—

"non-taxable field" means an oil field which meets the conditions in subsection (1), (1ZA) or (1A), and

"taxable field" means an oil field which is not a non-taxable field."

(3) In subsection (1)—

(a) for the words before paragraph (a) substitute—

"(1) An oil field meets the conditions in this subsection if it is an oil field—", and

(b) omit the words after paragraph (b).

(4) After that subsection insert—

"(1ZA) An oil field meets the conditions in this subsection if—

(a) the field does not meet the conditions in subsection (1), and

(b) an election under Schedule 20A that the field is to be non-taxable is in effect."

(5) In subsection (1A), before paragraph (a) insert—

"(za) the field does not meet the conditions in subsection (1),".

(6) Before Schedule 21 to FA 1993, insert Schedule 20A that is set out in Part 1 of Schedule 33 to this Act.

(7) Part 2 of Schedule 33 contains other amendments relating to the amendments made by this section.

Corporation tax

108 Capital allowances: plant and machinery for use in ring fence trade

(1) In section 52(3) of CAA 2001 (amount of first-year allowances), for the two entries in the table relating to section 45F substitute—

"Expenditure qualifying under section 45F (expenditure for use wholly in a ring fence trade)	100%".

(2) The amendment made by subsection (1) has effect in relation to expenditure incurred on or after 12 March 2008.

109 Capital allowances: decommissioning expenditure

(1) Section 163 of CAA 2001 (meaning of "abandonment expenditure") is amended as follows.

(2) For the heading substitute "**Meaning of "general decommissioning expenditure"**".

(3) For subsections (1) to (3) substitute—

"(1) Expenditure is "general decommissioning expenditure" for the purposes of sections 164 and 165 if the conditions in subsections (3) and (4) are met.

(2) But that is subject to subsections (4ZA) to (4ZC).

(3) The expenditure must have been incurred on decommissioning plant or machinery—

(a) which has been brought into use for the purposes of a ring fence trade, and

(b) which—

(i) is, or forms part of, an offshore installation or a submarine pipeline, or

(ii) when last in use for the purposes of a ring fence trade, was, or formed part of, such an installation or pipeline."

(4) After subsection (4) insert—

"(4ZA) An amount of general decommissioning expenditure determined in accordance with subsection (1) is to be reduced under subsection (4ZB) if it appears that the decommissioned plant and machinery—

(a) was brought into use partly for the purposes of the ring fence trade and partly for the purposes of another trade, or

(b) was brought into use wholly for the purposes of the ring fence trade, but has, at any time since, not been used wholly for those purposes.

(4ZB) The amount determined in accordance with subsection (1) is to be reduced to an amount which is just and reasonable having regard to the relevant circumstances.

(4ZC) The relevant circumstances include, in particular, the extent to which the decommissioned plant and machinery has not been used for the purposes of the ring fence trade."

(5) In subsection (5)(b), omit ""abandonment programme",".

(6) Schedule 34 contains amendments consequential on this section.

(7) The amendments made by this section and that Schedule have effect in relation to expenditure incurred on or after 12 March 2008.

110 Capital allowances: abandonment expenditure after ceasing ring fence trade

(1) Section 165 of CAA 2001 (abandonment expenditure within 3 years of ceasing ring fence trade) is amended as follows.

(2) In the heading, for "**within 3 years of**" substitute "**after**".

(3) For subsection (2) substitute—

"(2) "The post-cessation period" means the period that—

(a) begins with the day following the last day on which the former trader carried on the ring fence trade, and

(b) ends with the day on which condition A and condition B are both met (or, if they are met on different days, the later of those days).

(2A) Condition A is met if each approved abandonment programme that relates wholly or partly to relevant plant and machinery has ceased to have effect.

(2B) Condition B is met if the Secretary of State is satisfied that no other abandonment programmes that relate wholly or partly to relevant plant and machinery will be approved.

(2C) For the purposes of condition A, an approved abandonment programme ceases to have effect if and when—

(a) the programme has been carried out to the satisfaction of the Secretary of State, or

(b) approval of the programme has been withdrawn."

(4) After subsection (4) insert—

"(4A) Abandonment expenditure is to be disregarded for the purposes of this section if the expenditure is incurred in decommissioning plant and machinery at a time—

(a) after an abandonment programme relating wholly or partly to the plant and machinery has had its approval withdrawn, and

(b) when no other abandonment programme relating wholly or partly to the plant and machinery is approved."

(5) After subsection (5) insert—

"(6) For the purposes of this section, it does not matter if approval of an abandonment programme that relates to relevant plant and machinery (including approval of the first such programme) is given before or after the start of the post-cessation period.

(7) In this section—

"abandonment programme" means an abandonment programme under Part 4 of the Petroleum Act 1998;

"approved", in relation to an abandonment programme, means approved or revised under Part 4 of the Petroleum Act 1998 (and "approval" is to be construed accordingly);

"relevant plant and machinery" means plant and machinery—

(a) which has been brought into use for the purposes of the ring fence trade that has ceased, and

(b) which, when last in use for the purposes of that ring fence trade, was, or formed part of, an offshore installation or submarine pipeline;

and for this purpose "offshore installation" and "submarine pipeline" have the same meaning as in Part 4 of the Petroleum Act 1998;

"withdrawn", in relation to approval of an abandonment programme, means withdrawn under Part 4 of the Petroleum Act 1998."

(6) Section 393A of ICTA (losses: set off against profits of the same, or an earlier, accounting period) is amended as follows.

(7) In subsection (11)—

(a) for "In any case where" substitute "Subsection (11A) applies in any case where",

(b) in paragraph (a), for "within 3 years of" substitute "after", and

(c) omit the words after paragraph (b).

(8) After that subsection insert—

"(11A) In relation to any claim under subsection (1)—

(a) to the extent that the claim relates to an increase falling within subsection (11)(a), this section shall have effect as if—

(i) in subsection (10), "the relevant period" were substituted for "the period of two years", and

(ii) after subsection (10) there were inserted—

"(10ZA) In subsection (10) "relevant period" means the period calculated by adding two years to the post-cessation period (within the meaning of section 165 of the Capital Allowances Act).";

(b) to the extent that the claim relates to expenditure falling within subsection (11)(b), subsection (10) shall have effect with the substitution of "five years" for "two years"."

(9) The amendments made by this section have effect in relation to ring fence trades that cease to be carried on or after 12 March 2008.

111 Losses: set off against profits of earlier accounting periods

(1) In ICTA, after section 393A insert—

"**393B Losses of ring fence trade: set off against profits of an earlier accounting period**

(1) This section applies if these conditions are met—

(a) a company makes a claim under section 393A(1) requiring that a loss incurred in a ring fence trade be set off against profits;

(b) section 393A(2A) applies in relation to that claim (three year set off period) by virtue of—

(i) section 393A(2B) (loss precedes cessation of trade), or

(ii) section 393A(2C) (loss arises in year when general decommissioning expenditure incurred); and

(c) the loss incurred in the ring fence trade that may be set off under section 393A ("L") exceeds the profits against which L may be set off under section 393A ("P").

(2) The profits of the ring fence trade of an accounting period are to be relieved under subsection (3) if that period—

(a) falls wholly or partly before the three year set off period, and

(b) ends on or after 17 April 2002.

(3) Subject to any relief for an earlier loss, those profits of that accounting period shall be treated as reduced by—

(a) the amount by which L exceeds P, or

(b) so much of that amount as cannot be relieved under this subsection against profits of the ring fence trade of a later accounting period.

(4) Subsection (3) is subject to subsection (5) in the case of an accounting period that falls partly (but not wholly) before the three year set off period.

(5) The amount of the reduction of the profits of the ring fence trade that may be made under subsection (3) shall not exceed a part of those profits proportionate to the part of the accounting period that falls before the three year set off period.

(6) Subsection (3) is subject to subsection (7) in the case of an accounting period that begins before 17 April 2002 and ends on or after that date.

(7) The amount of the reduction of the profits of the ring fence trade that may be made under subsection (3) shall not exceed a part of those profits proportionate to the part of the accounting period that falls after 16 April 2002.

(8) In this section—

"ring fence" has the same meaning as in section 162 of the Capital Allowances Act;

"three year set off period" means the period of three years that applies to the claim under section 393A(1) by virtue of section 393A(2A) and section 393A(2B) or (2C)."

(2) Schedule 35 contains minor and consequential amendments relating to the amendments made by this section.

(3) The amendments made by this section and that Schedule have effect in relation to losses incurred in accounting periods beginning on or after 12 March 2008.

112 Ring fence trade: no deduction for expenses of investment management

(1) In section 492 of ICTA (treatment of oil extraction activities etc for tax purposes), after subsection (3) insert—

"(3A) No deduction under section 75 (expenses of management of investment business) shall be allowed from a company's ring fence profits."

(2) The amendment made by subsection (1) has effect in relation to expenses referable to accounting periods ending on or after 12 March 2008 (but see also subsections (3) and (4)).

(3) In the case of expenses referable to a straddling period, a deduction of the relevant fraction of those expenses shall be allowed under section 75 of ICTA from the company's ring fence profits.

(4) But the deduction allowed under subsection (3) may not exceed the total amount of the expenses referable to the straddling period that have actually been paid—

(a) during the first portion of the straddling period, or

(b) before the start of the straddling period.

(5) In this section—

"first portion", in relation to a straddling period, means the portion which—

(a) begins with the first day of the straddling period, and

(b) ends with 11 March 2008,

"relevant fraction" means—

$$\frac{P}{T}$$

where—

P is the number of days in the first portion of the straddling period, and

T is the total number of days in the straddling period, and

"straddling period" means an accounting period beginning before 12 March 2008 and ending on or after that date.