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*Changes to legislation: There are currently no known outstanding effects for the Taxation (International and Other Provisions) Act 2010, Part 1. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 7

#### MISCELLANEOUS RELOCATIONS

##### PART 1

#### RELOCATION OF SECTION 38 OF, AND SCHEDULE 15 TO, FA 1973

##### *Taxes Management Act 1970 (c. 9)*

- 1 TMA 1970 is amended as follows.  
2 After Part 7 insert—

##### “PART 7A

#### HOLDERS OF LICENCES UNDER THE PETROLEUM ACT 1998

##### *Licence-holders' liabilities for tax assessed on non-UK residents*

##### **Pre-conditions for serving secondary-liability notice**

- 77B (1) Conditions A to E are the pre-conditions for the purposes of section 77C.
- (2) Condition A is that tax is assessed on a person not resident in the United Kingdom.
- (3) Condition B is that the tax is assessed in reliance on—
- (a) section 276 of the 1992 Act,
  - (b) section 874 of ITTOIA 2005, or
  - (c) section 1313 of CTA 2009.
- (4) Condition C is that the tax assessed is not tax under ITEPA 2003.
- (5) Condition D is that—
- (a) there is a licence to which the tax assessed is related (see section 77J for the meaning of tax related to a licence),
  - (b) there is more than one licence to which the tax assessed is related, or
  - (c) there is a licence, or more than one licence, to which part of the tax assessed is related but in addition part of the tax assessed is not related to any licence.
- (6) Condition E is that the tax is not paid in full within 30 days after it becomes due and payable.

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(7) In this Part “licence” means a licence under Part 1 of the Petroleum Act 1998.

### **Secondary-liability notices**

77C (1) If each of the pre-conditions (see section 77B) is met, an officer of Revenue and Customs may serve on the holder of the licence concerned, or on the holder of any of the licences concerned, a notice—

- (a) that states particulars of the assessment,
  - (b) that states the amount remaining unpaid and the date when it became payable,
  - (c) that requires the holder to pay, within 30 days of the service of the notice, the amount for which the holder is liable, and
  - (d) that, if the amount for which the holder is liable is given by subsection (3) or section 77G(7), gives particulars of how the amount was determined.
- (2) For the purposes of subsection (1), the amount for which the holder is liable is the amount remaining unpaid, together with any interest on it under sections 86 and 87A, but this is subject to subsection (3) and section 77G(7).
- (3) In a case within section 77B(5)(b) or (c), the amount for which the holder of the licence is liable is given by—

$$\frac{16 - N}{15}$$

- (4) In subsection (3)—
- A is the amount remaining unpaid,
  - I is any interest due on that amount under sections 86 and 87A,
  - T is the total amount of the profits or chargeable gains in respect of which the assessment is made, and
  - L is so much of that total amount as is profits or chargeable gains related to the licence.
- (5) The power under subsection (1) is subject to section 77E (certain pre-1974 cases).
- (6) In this Part “secondary-liability notice” means a notice under subsection (1).

### **Payments under secondary-liability notices**

77D (1) Any amount which a person is required to pay by a secondary-liability notice may be recovered from the person as if it were tax due and duly demanded from the person.

- (2) If a person (“H”) pays any amount which a secondary-liability notice requires H to pay, H may recover the amount from the person on whom the assessment concerned was made.
- (3) A payment in pursuance of a secondary-liability notice is not allowed as a deduction in calculating any income, profits or losses for any tax purposes.

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### **Exception for certain pre-1974 cases**

77E (1) Section 77C(1) does not give power to serve a secondary-liability notice on the holder of a licence if the profits arose, or the chargeable gains accrued, to the assessed person in consequence of a contract made by the holder before 23 March 1973.

- (2) The exception under subsection (1) does not apply if—
- (a) the assessed person is connected with the holder, or
  - (b) the contract was substantially varied on or after 23 March 1973.

(3) For the purposes of subsection (2), whether a person is connected with another is determined in accordance with section 1122 of CTA 2010.”

3 After section 77E insert—

#### *“Exemption certificates*

### **77F Issue, cancellation and effect of exemption certificates**

- (1) This section applies if there is a person (“T”) who will or might become liable to tax which, if unpaid, could be recovered under this Part from a person (“H”) who is the holder of a licence.
- (2) If an officer of Revenue and Customs, on an application made by T, is satisfied that T will comply with any obligations imposed on T by the Taxes Acts, the officer may issue to H a certificate exempting H from section 77C with respect to any tax payable by T.
- (3) If a certificate is issued to H under subsection (2), an officer of Revenue and Customs may, by notice in writing to H, cancel the certificate from the date specified in the notice.
- (4) The date specified in a notice under subsection (3) may not be earlier than 30 days after the service of the notice.
- (5) If a certificate is issued to H under subsection (2), section 77C does not apply to any tax payable by T which becomes due while the certificate is in force.
- (6) If a certificate is issued to H under subsection (2) but is subsequently cancelled under subsection (3), section 77C also does not apply to any tax payable by T which—
  - (a) becomes due after the certificate is cancelled, but
  - (b) is in respect of profits arising, or chargeable gains accruing, while the certificate is in force.

### **77G Liabilities for assessments made after exemption certificate cancelled**

- (1) Subsection (7) applies if—
  - (a) each of conditions A to C is met, and
  - (b) one of conditions D and E is met.

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- (2) Condition A is that, after the cancellation under section 77F(3) of a certificate issued under section 77F(2) to a person (“H”) who is the holder of a licence, tax related to the licence is assessed on the applicant for the certificate.
- (3) Condition B is that the tax is assessed in reliance on—
- (a) section 276 of the 1992 Act,
  - (b) section 874 of ITTOIA 2005, or
  - (c) section 1313 of CTA 2009.
- (4) Condition C is that the tax assessed is not tax under ITEPA 2003.
- (5) Condition D is that—
- (a) ignoring section 77F, H could be required by a secondary-liability notice to pay all of the tax remaining unpaid under the assessment, and
  - (b) the profits or chargeable gains in respect of which the assessment is made include (but are not limited to) profits arising, or chargeable gains accruing, while the certificate is in force.
- (6) Condition E is that—
- (a) as a result of section 77C(3), but ignoring section 77F, H could be required by a secondary-liability notice to pay some, but not all, of the tax remaining unpaid under the assessment, and
  - (b) the profits or chargeable gains that are—
    - (i) ones in respect of which the assessment is made, and
    - (ii) related to the licence,
 include (but are not limited to) profits arising, or chargeable gains accruing, while the certificate is in force.
- (7) If this subsection applies then, for the purposes of section 77C(1), the amount for which the holder of the licence is liable is the amount given by—

$$A \times \left( 1 - \frac{CIF}{CIF + NIF} \right)$$

together with a corresponding proportion of any interest due under sections 86 and 87A on the amount remaining unpaid.

- (8) In subsection (7)—
- A is the amount that H could be required to pay as mentioned in paragraph (a) of whichever of conditions D and E is met (“the operative condition”),
- CIF is the amount of the profits or chargeable gains mentioned in paragraph (b) of the operative condition that are ones arising, or accruing, while the certificate is in force, and
- NIF is the amount of the profits or chargeable gains mentioned in paragraph (b) of the operative condition that are ones arising, or accruing, while the certificate is not in force.”

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*“Supplementary*

**77H Calculations under sections 77C(3) and 77G(7)**

- (1) Subsection (2) applies for the purposes of calculating any of the following amounts of profits or chargeable gains—
  - (a) L in a calculation under section 77C(3),
  - (b) CIF in a calculation under section 77G(7), and
  - (c) CIF + NIF in a calculation under section 77G(7) when it is condition E in section 77G that is met.
- (2) The amount is to be calculated as if for the purposes of making a separate assessment in respect of those profits or chargeable gains on the person on whom the assessment was made.
- (3) An officer of Revenue and Customs applying subsection (2) is to make all such allocations and apportionments of receipts, expenses, allowances and deductions taken into account, or made, for the purposes of the actual assessment as appear to the officer to be just and reasonable in the circumstances.

**77I Information**

- (1) The holder of a licence must, if required to do so by a notice served on the holder by an officer of Revenue and Customs, give to the officer within the time specified by the notice (which is not to be less than 30 days) such particulars as may be required by the notice of—
  - (a) licence-related transactions (see subsection (2)),
  - (b) licence-related payments (see subsection (3)), or
  - (c) persons to whom licence-related payments have been paid or are payable.
- (2) In subsection (1) “licence-related transaction” means a transaction in connection with activities authorised by the licence as a result of which any person is or might be liable to tax by virtue of—
  - (a) section 276 of the 1992 Act,
  - (b) section 874 of ITTOIA 2005, or
  - (c) section 1313 of CTA 2009.
- (3) In subsection (1) “licence-related payment” means—
  - (a) earnings which constitute employment income (see section 7(2)(a) of ITEPA 2003),
  - (b) amounts which are treated as earnings and constitute employment income (see section 7(2)(b) of ITEPA 2003), or
  - (c) other payments,  
paid or payable in respect of duties or services performed in an area in which activities authorised by the licence may be carried on under the licence.
- (4) If a notice under subsection (1) is served on the holder of a licence, the holder must take reasonable steps to obtain the information necessary to enable the holder to comply with the notice.

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### **77J Meaning of “related to a licence” as respects tax, or profits or gains**

- (1) Subsections (2) and (3) apply for the purposes of this Part.
- (2) An amount of tax is related to a licence if the tax is in respect of profits or chargeable gains related to the licence.
- (3) Profits or chargeable gains are related to a licence if they are—
  - (a) profits from activities authorised by the licence,
  - (b) profits from activities carried on in connection with activities authorised by the licence, or
  - (c) profits from, or chargeable gains accruing on the disposal of, exploration or exploitation rights connected with—
    - (i) activities authorised by the licence, or
    - (ii) activities carried on in connection with activities authorised by the licence.
- (4) In this section—
  - (a) “designated area” means an area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964,
  - (b) “exploration or exploitation activities” means activities carried on in connection with the exploration or exploitation of so much of the seabed and subsoil and their natural resources as is situated in the United Kingdom or a designated area,
  - (c) “exploration or exploitation rights” means rights to—
    - (i) assets to be produced by exploration or exploitation activities,
    - (ii) interests in such assets, or
    - (iii) the benefit of such assets,
  - (d) any reference to the disposal of exploration or exploitation rights includes a reference to the disposal of unlisted shares deriving their value, or the greater part of their value, directly or indirectly from such rights,
  - (e) “shares” includes—
    - (i) stock, and
    - (ii) securities not creating or evidencing a charge on assets,
  - (f) “unlisted shares” means shares that are not listed on a recognised stock exchange, and
  - (g) “recognised stock exchange” has the meaning given by section 1005(1) and (2) of ITA 2007.

### **77K Other definitions in Part 7A**

- (1) This section applies for the purposes of this Part.
  - (2) “Licence” has the meaning given by section 77B(7).
  - (3) “Secondary-liability notice” has the meaning given by section 77C(6).”
- 5 (1) Amend the first column of the Table in section 98 (special returns etc) as follows.

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(2) Omit the entry for paragraph 2 of Schedule 15 to FA 1973.

(3) After the entry for regulations under section 59E of TMA 1970 insert—

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“Section 77I(1) of this Act.”

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*Finance Act 1973 (c. 51)*

6 FA 1973 is amended as follows.

7 Omit section 38 (which introduces and interprets Schedule 15).

8 Omit Schedule 15 (territorial extension of charge to tax: supplementary provisions).

*Oil Taxation Act 1975 (c. 22)*

9 The Oil Taxation Act 1975 is amended as follows.

10 In section 3(4) (expenditure not allowable under the section) for paragraph (f) (which refers to notices under paragraph 4 of Schedule 15 to FA 1973), and the “or” preceding it, substitute “or

(f) any payment made in pursuance of a notice under section 77C of the Taxes Management Act 1970 (notice requiring licence-holder to pay unpaid tax assessed on non-UK resident);”.

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