
STATUTORY INSTRUMENTS

1982 No. 92

TAXES

The Oil Taxation (Gas Banking Schemes) Regulations 1982

Laid before the House of Commons in draft

Made - - - - 29th January 1982

Coming into Operation 1st February 1982

Whereas a draft of these Regulations has been laid before the House of Commons and approved by resolution of that House pursuant to section 108(6) of the Finance Act 1980⁽¹⁾:

Now, therefore, the Commissioners of Inland Revenue, in exercise of the powers conferred on them by section 108 of the said Act, hereby make the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Oil Taxation (Gas Banking Schemes) Regulations 1982 and shall come into operation on 1st February 1982.

Interpretation

2. In these Regulations, unless the context otherwise requires:—

“associated gas” means gas found in an oil field in association with oil other than gas, which has been won from the field at a rate dependent on that at which the oil other than gas is so won;

“election” means an election under the principal section;

“gas” means oil consisting of gas;

“gas banking scheme” means such a scheme as is defined in subsection (2) of the principal section as a gas banking scheme for the purposes of the section;

“the modifications” means the modifications to the operation of the Oil Taxation Acts prescribed by Regulation 3 below;

“the Oil Taxation Acts” has the same meaning as in the principal section;

“the principal section” means section 108 of the Finance Act 1980;

“relevant field” means, in relation to a gas banking scheme, an oil field to which the scheme applies;

(1) section 108 was extended by sections 121 and 128(3) of the Finance Act 1981 (c. 35).

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“responsible persons” means the bodies corporate or partnerships appointed in accordance with paragraph 4 of Schedule 2 to the Oil Taxation Act 1975 as the responsible persons for the oil fields to which a gas banking scheme applies;

“transferor field” and “transferee field” mean, in relation to a transfer of gas won from a relevant field by the participators in that field to the participators in another relevant field under a gas banking scheme, the first-mentioned field and the last-mentioned field respectively;

other expressions have the same meaning as in the Oil Taxation Act 1975.

Modifications to the operation of the Oil Taxation Acts

3.—(1) This Regulation shall apply for the purposes of modifying the operation of the Oil Taxation Acts in their application to cases where—

- (a) a gas banking scheme which satisfies the additional conditions contained in Regulation 4 below is in force between the participators in two or more relevant fields;
- (b) the participators in those fields have elected under the principal section in the manner prescribed by Regulation 6 below that the modifications prescribed by this Regulation shall apply; and
- (c) gas won from a relevant field is transferred by the participators in that field to the participators in another relevant field under the scheme.

(2) Gas which is transferred in the circumstances described in paragraph (1)(c) above (in this Regulation referred to as “transferred gas”) shall be disregarded in determining—

- (a) the gross profit or gross loss for the purposes of petroleum revenue tax and supplementary petroleum duty accruing to a participator from the transferor field in a chargeable period;
- (b) the share of a participator in a transferor field of the oil allowance referred to in section 8 of the Oil Taxation Act 1975 and the exempt allowance referred to in section 124 of the Finance Act 1981 for that field for a chargeable period; and
- (c) the total amount of oil ever won and saved from the transferor field referred to in section 10(1)(b) of the Oil Taxation Act 1975.

(3) For all the purposes of petroleum revenue tax and supplementary petroleum duty, transferred gas shall be treated as having been won and saved from the transferee field by the participators in the field in the chargeable period in which it is transferred to them, in shares proportionate to their shares of oil actually won and saved from the field during the period.

(4) For the purposes of income tax and of the charge of corporation tax on income, transferred gas shall be treated—

- (a) as not having been extracted from the transferor field by the participators in the field in the course of oil extraction activities carried on by them nor as having been acquired by those participators by virtue of oil rights held by them; and
- (b) as having been extracted from the transferee field by the participators in the field in the course of oil extraction activities carried on by them.

Additional conditions for gas banking schemes

4.—(1) The additional conditions to be satisfied for a scheme to constitute a gas banking scheme are—

- (a) that the scheme provides that the transfer of gas won from a relevant field to or to the order of the participators in another relevant field, in consideration for which gas won from the other field is subsequently transferred to or to the order of the participators in the first-mentioned field, is to be transfer of associated gas;

- (b) that the scheme provides that gas won from a relevant field and transferred to or to the order of the participators in another relevant field under the scheme is to be of a kind which, after it has been subjected to initial treatment, would be suitable for use by the British Gas Corporation in the National Gas Transmission System; and
- (c) that the scheme is a separate scheme constituted by one or more agreements under which it enters into force between the participators in each relevant field as from the same date.

(2) For the purposes of this Regulation there will be a separate scheme whenever the participators in a relevant field who have entered into an agreement constituting a scheme enter into a further agreement with the participator in an oil field to which the first agreement did not apply; but a further agreement which is entered into solely for the purpose of replacing a participator as a party to a scheme by another person or of adding another person as a party to a scheme, on his becoming a participator in a relevant field by virtue of the transfer to him of the first participators interest in the field, or part of that interest as the case may be, shall not constitute a separate scheme.

Conditions for elections

5.—(1) The consent of the Board shall be obtained before an election is made by the participators in the relevant fields that the modifications shall apply in the case of a gas banking scheme.

(2) An application for the consent of the Board to the making of an election—

- (a) shall be made, in such form as the Board may prescribe, jointly by the responsible persons within three months after the end of the chargeable period in which gas is first transferred under the scheme or, in the case of a scheme under which gas has been transferred before these Regulations come into operation, before 1st May 1982; and
- (b) shall be accompanied by the agreement or agreements constituting the scheme, the undertaking referred to in paragraph (5) below and such other documents and information as the Board may require.

(3) A separate application under paragraph (2) above shall be made on behalf of all the participators in the relevant field in respect of each scheme that is in force between them.

(4) If the Board are of the opinion that the documents or information accompanying an application under paragraph (2) above are not sufficient to enable them to decide whether to consent to the making of an election, they shall within three months of the receipt thereof notify in writing to the responsible persons what further documents or information they require for that purpose.

(5) In connection with an application under paragraph (2) above the participators in each relevant field shall undertake to the Board, in consideration of the Board's consent to the making of an election in respect of the scheme to which the application relates—

- (a) that they will, within three months after the making of an election, accept a variation of the provisions of any licence granted under the Petroleum (Production) Act 1934 or the Petroleum (Production) Act (Northern Ireland) 1964 in respect of the licensed area of which the relevant field in which they are participators forms part, in terms proposed by the Secretary of State for Energy or by the Department of Commerce for Northern Ireland as the case may be, to the effect that gas transferred under the scheme shall, so long as the election is in force, be—
 - (i) disregarded in determining the value of petroleum relating to any chargeable period for the purpose of the payment of royalty, and the quantity of petroleum won and saved in any half year for the purpose of delivery of petroleum to the Minister, under a licence in respect of a licensed area of which a transferor field forms part, and
 - (ii) taken into account in determining the value of petroleum relating to the chargeable period, and the quantity of petroleum won and saved in the half-year, in which it is so transferred for the purpose of the payment of royalty and delivery of petroleum

to the Minister under a licence in respect of a licensed area of which a transferee field forms part; and

- (b) that they will each use gas which is transferred to them under the scheme for one or more of the following purposes, and for no purpose other than these, namely—
- (i) sale to the British Gas Corporation,
 - (ii) production purposes in relation to the transferee field on the footing that such gas has been won from the field, or
 - (iii) in an emergency, flaring or venting at any place outside the transferor field.

(6) The Board shall not consent to the making of an election in respect of a gas banking scheme unless the participators in each relevant field show to the satisfaction of the Board that they entered into the scheme for *bona fide* commercial reasons.

(7) The Board shall within three months from the receipt of an application under paragraph (2) above give notice of their decision in writing to the responsible persons consenting to or refusing consent to the making of an election and, subject to paragraph (8) below, if no such notice has been given within the said period of three months, the Board will be deemed to have so consented.

(8) In any case where the Board have notified to the responsible persons that they require further documents or information in accordance with paragraph (4) above the period of three months referred to in the preceding paragraph shall not commence until the Board have received the further documents or information so required.

(9) If a participator in a relevant field is in breach of an undertaking given by him to the Board under paragraph (5)(a) above or ceases to be a party to the scheme other than on the transfer of his interest in the field to another person who becomes a party to it or the scheme ceases to be a gas banking scheme, the Board may at any time thereafter by notice in writing to the responsible persons revoke their consent to the making of an election in respect of the scheme and any election which has been made shall thereupon cease to be in force and be treated as if it never was in force and the Board may make such assessments or determinations or such amendments of assessments or determinations in relation to petroleum revenue tax and supplementary petroleum duty and the inspector may make such assessments or adjustments to assessments to income tax or corporation tax (notwithstanding that the assessments concerned may have become final or that the time for making assessments may have expired) as may be necessary in the circumstances.

Election under the principal section

6.—(1) On being notified of the decision of the Board consenting to the making of an election, or on the expiration of the period of three months referred to in paragraph (7) of Regulation 5 above, the responsible persons shall forthwith inform the participators in the relevant fields that the Board have, or are to be deemed to have, so consented and the participators in each relevant field may within one month of such notification make an election in the manner prescribed by this Regulation.

(2) An election shall be made by all the participators in the relevant fields in the form of a notice to the Board signed by each of them stating that they have elected that the modifications shall apply in the case of the scheme.

(3) Following the making of an election the modifications shall, subject to paragraph (4) below, apply—

- (a) for the purposes of petroleum revenue tax and supplementary petroleum duty, for chargeable periods beginning with that in which gas is first transferred under the scheme, and
- (b) for the purposes of income tax and the charge of corporation tax on income, in relation to any gas transferred under the scheme.

(4) Where gas has been transferred under a gas banking scheme before these Regulations come into operation and an election is subsequently made in accordance with this Regulation the modifications shall apply—

- (a) for the purposes of petroleum revenue tax and supplementary petroleum duty, for chargeable periods before these Regulations came into operation beginning with that in which gas was first transferred under the scheme, and
- (b) for the purposes of income tax and the charge of corporation tax on income, in relation to any gas transferred under the scheme whether before or after these Regulations came into operation,

and the Board shall make such assessments and determinations or such amendments of assessments and determinations in relation to petroleum revenue tax and supplementary petroleum duty and the inspector shall make such assessments or adjustments to assessments to income tax or corporation tax (notwithstanding that the assessments in question may have become final) as may be necessary in the circumstances.

(5) An election shall continue in force so long as gas is transferred under the gas banking scheme in respect of which the election was made and the Board have not revoked their consent to the making of the election; and any person to whom a participator in a relevant field transfers his interest, or part of his interest, in the field and who is or becomes a participator in that field shall be treated by virtue of the transfer as having joined in the election and as having given the same undertakings to the Board under paragraph (5)(b) of Regulation 5 above as were given by the participators in connection with the application for the Board's consent to the making of the election.

(6) No election may be made otherwise than in accordance with this Regulation.

Appeals

7.—(1) The responsible persons may by notice in writing given to the Board not more than two months after receipt of notice of a decision of the Board refusing or revoking consent to the making of an election in respect of a gas banking scheme appeal to the Special Commissioners; but the bringing of an appeal under this paragraph shall not affect the operation of any revocation of consent under paragraph (9) of Regulation 5 above.

(2) A participator in a relevant field, whether or not himself an appellant, shall be entitled to appear and be heard on the appeal and any proceedings arising out of it.

(3) An appeal against a decision of the Board refusing or revoking consent to the making of an election may at any time be abandoned by a notice in writing given to the Board by the appellants.

(4) On an appeal against a decision of the Board refusing or revoking consent to the making of an election the Special Commissioners may vary the decision appealed against, whether or not the variation is to the advantage of all or any of the participators in the relevant fields, and the provisions of the Taxes Management Act 1970 shall apply in relation to such an appeal as they apply in relation to an appeal under Part I of the Oil Taxation Act 1975.

Payment on account

8. For the purposes of determining under the Schedule to the Petroleum Revenue Tax Act 1980 and paragraph 10 of Schedule 16 to the Finance Act 1981 (computation of payment on account) the tax and duty payable for any chargeable period in respect of an oil field, it shall be assumed that the consent of the Board to the making of an election in respect of a gas banking scheme, for which application has been made under paragraph (2) of Regulation 5 above at the time when the statements under section 1(1)(a) of the said Act of 1980 and paragraph 10(1)(a) of Schedule 16 to the said Act of 1981 are to be delivered, will be forthcoming and that such election will be made.

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International gas banking schemes

9. These Regulations do not apply to international gas banking schemes as defined for the purposes of the principal section by subsection (4) of the section.

By Order of the Commissioners of Inland Revenue.

29th January 1982

J.M. Green
Secretary

EXPLANATORY NOTE

These Regulations provide, at the election of participators in gas banking schemes (other than international gas banking schemes) modifications to the normal rules under which oil and gas is brought into account for tax purposes at the time it is transferred and provide rules for the making of elections.

The modified tax treatment is set out in Regulations 3 and 8. Gas produced from one field and transferred to another field in the course of a gas banking scheme is to be left out of account for the purposes of charging Supplementary Petroleum Duty, Petroleum Revenue Tax and Corporation Tax or Income Tax on the participators in the field from which it is produced; instead, it is treated for the purposes of these taxes as having been produced from the field to which it is transferred. This modified tax treatment may be applied retrospectively to schemes which were in operation before these Regulations came into force (Regulation 6). The statutory authority for this is in Section 121 Finance Act 1981.

Participators in fields must, as a condition of the Board's consent to make an election, enter into undertakings with the Board that they will accept a variation of licences granted to them under the Petroleum (Production) Act 1934 (or other legislation) concerning the treatment of transferred gas for the purposes of royalty; and that they will use gas transferred to them in specified ways (Regulation 5). Other conditions concerning application for the Board's consent to make an election and the making of an election are contained in Regulations 5 and 6; procedures for appeals against the Board's refusal of consent are set out in Regulation 7.