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## SCHEDULES

### SCHEDULE 13

#### SUPPLEMENTARY CHARGE: CLUSTER AREA ALLOWANCE

#### PART 1

##### AMENDMENTS OF PART 8 OF CTA 2010

- 1 Part 8 of CTA 2010 (oil activities) is amended in accordance with paragraphs 2 to 4.

##### *Cluster area allowance*

- 2 After Chapter 8 insert—

#### “CHAPTER 9

##### SUPPLEMENTARY CHARGE: CLUSTER AREA ALLOWANCE

##### *Introduction*

##### **Overview**

356J(1) This Chapter sets out how relief for certain expenditure incurred in relation to a cluster area is given by way of reduction of a company's adjusted ring fence profits.

- (2) The Chapter includes provision about—
- (a) the determination of cluster areas (sections 356JD and 356JDA);
  - (b) the meaning of investment expenditure (section 356JE);
  - (c) the generation of allowance by the incurring of relievable investment expenditure in relation to a cluster area (section 356JF);
  - (d) how allowance is activated by relevant income from the same cluster area (sections 356JH to 356JHB and 356JJ to 356JJB) in order to be available for reducing adjusted ring fence profits (sections 356JG and 356JGA);
  - (e) the division of an accounting period into reference periods where a company has different shares of the equity in a licensed area or sub-area at different times in the period (section 356JI);
  - (f) the transfer of allowance where shares of the equity in a licensed area or sub-area are disposed of (sections 356JK to 356JKB);
  - (g) elections to treat allowance attributable to an unlicensed part of a cluster area as if it were attributable to a licensed area or sub-area in the cluster area (section 356JL).

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### *Determination of cluster areas*

#### **Meaning of “cluster area”**

356JD(1) In this Part “cluster area” means an offshore area which the Secretary of State determines to be a cluster area.

- (2) A cluster area is treated as not including any previously authorised oil field (or any part of such an oil field) (see section 356JDA).
- (3) An area is “offshore” for the purposes of this section if the whole of it lies on the seaward side of the baselines from which the territorial sea of the United Kingdom is measured.
- (4) Before determining an area to be a cluster area the Secretary of State must—
  - (a) give written notice of the proposed determination to every person who is a licensee in respect of a licensed area or sub-area which is wholly or partly included in the proposed cluster area and to any other licensee whose interests appear to the Secretary of State to be affected, and
  - (b) publish a notice of the proposed determination on a website that is, and indicates that it is, kept by or on behalf of the Secretary of State.
- (5) The Secretary of State must consider any representations made in writing and within 30 days of the date of the publication of the notice under subsection (4)(b) (or, in the case of representations made by a person to whom notice is given under subsection (4)(a), within 30 days of receipt of the notice, if later).
- (6) A determination under this section—
  - (a) has effect from the day on which it is published,
  - (b) may be in any form the Secretary of State thinks appropriate, and
  - (c) must assign to the cluster area an identifying number or other designation.
- (7) After making a determination the Secretary of State must—
  - (a) give written notice of the determination to every person who is a licensee in respect of a licensed area or sub-area which is wholly or partly included in the cluster area and any other person to whom notice of the proposed determination was given;
  - (b) publish a notice of the determination on a website that is, and indicates that it is, kept by or on behalf of the Secretary of State.
- (8) The Secretary of State may vary or revoke a determination made under this section, and subsections (4), (5), (6)(a) and (b) and (7) are to apply as if the variation or revocation were a new determination.

#### **Meaning of “previously authorised oil field”**

356JD(A1) In section 356JD “previously authorised oil field”, in relation to a cluster area, means an oil field, other than a decommissioned oil field, whose

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development (in whole or in part) was authorised for the first time before the relevant day.

- (2) An oil field is a “decommissioned oil field” in relation to a cluster area if, immediately before the relevant day, all assets of the oil field which are relevant assets have been decommissioned.
- (3) In this section, “relevant day”, in relation to an oil field and a cluster area, means the date of publication of the first determination, or variation of a determination, under section 356JD as a result of which the oil field is (ignoring section 356JD(2)) wholly or partly included in the cluster area.
- (4) Sub-paragraphs (2) to (9) of paragraph 7 of Schedule 1 to OTA 1975 apply for the purpose of determining whether relevant assets of an oil field are decommissioned as they apply for the purpose of determining whether qualifying assets of a relevant area are decommissioned.
- (5) For the purposes of this section, an asset is a relevant asset of an oil field if—
  - (a) it has at any time been a qualifying asset (within the meaning of the Oil Taxation Act 1983) in relation to any participator in the field, and
  - (b) it has at any time been used for the purpose of winning oil from the field.
- (6) In this section references to authorisation of development of an oil field are to be interpreted in accordance with section 356IB.
- (7) See also paragraph 5 of Schedule 13 to FA 2015, as a result of which certain proposed determinations made before the day on which that Act is passed are treated as made under section 356JD for the purposes of this Chapter.

#### *Meaning of “investment expenditure”*

#### **Meaning of “investment expenditure”**

- 356J(1) For the purposes of this Chapter, expenditure incurred by a company is “investment” expenditure only if it is—
- (a) capital expenditure, or
  - (b) expenditure of such other description as may be prescribed by the Treasury by regulations.
- (2) Regulations under subsection (1)(b) may provide for any of the provisions of the regulations to have effect in relation to expenditure incurred before the regulations are made.
  - (3) But subsection (2) does not apply to any provision of amending or revoking regulations which has the effect that expenditure of any description ceases to be investment expenditure.
  - (4) Regulations under subsection (1)(b) may—
    - (a) make different provision for different purposes;
    - (b) make transitional provision and savings.

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### *Cluster area allowance*

#### **Generation of cluster area allowance**

- 356J(F) Subsection (2) applies where a company—
- (a) is a licensee in a licensed area or sub-area which is wholly or partly included in a cluster area, and
  - (b) incurs any relievable investment expenditure on or after 3 December 2014 in relation to the cluster area.
- (2) The company is to hold an amount of allowance equal to 62.5% of the amount of the expenditure.
- Allowance held under this Chapter is called “cluster area allowance”.
- (3) For the purposes of this section investment expenditure incurred by a company is “relievable” only if, and so far as, it is incurred for the purposes of oil-related activities (see section 274).
- (4) Subsections (1) to (3) are subject to section 356JFA (which prevents expenditure on the acquisition of an asset from being relievable in certain circumstances).
- (5) Cluster area allowance is said in this Chapter to be “generated” at the time when the investment expenditure is incurred (see section 356JN) and is referred to as being generated—
- (a) “by” the company concerned;
  - (b) “in” the cluster area concerned.
- (6) Where—
- (a) investment expenditure is incurred only partly for the purposes of oil-related activities, or
  - (b) the oil-related activities for the purposes of which investment expenditure is incurred are carried on only partly in relation to a particular cluster area,
- the expenditure is to be attributed to the activities or area concerned on a just and reasonable basis.

#### **Expenditure on acquisition of asset: disqualifying conditions**

- 356JF(A) Investment expenditure incurred by a company (“the acquiring company”) on the acquisition of an asset is not relievable expenditure for the purposes of section 356JF if either of the disqualifying conditions in this section applies to the asset.
- (2) The first disqualifying condition is that investment expenditure incurred before the acquisition, by the acquiring company or another company, in acquiring, bringing into existence or enhancing the value of the asset was relievable under section 356JF.
- (3) The second disqualifying condition is that—
- (a) the asset—

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- (i) is the whole or part of the equity in a licensed area or sub-area, or
  - (ii) is acquired in connection with a transfer to the acquiring company of the whole or part of the equity in a licensed area or sub-area,
- (b) expenditure was incurred, at any time before the acquisition, by the acquiring company or another company, in acquiring, bringing into existence or enhancing the value of the asset, and
- (c) any of that expenditure—
- (i) related to the cluster area, and
  - (ii) would have been relievable under section 356JF if this Chapter had applied to expenditure incurred at that time.
- (4) For the purposes of subsection (3)(a)(ii), it does not matter whether the asset is acquired at the time of the transfer.

#### *Reduction of adjusted ring fence profits*

#### **Reduction of adjusted ring fence profits**

- 356JG(1) A company's adjusted ring fence profits for an accounting period are to be reduced by the cumulative total amount of activated allowance for the accounting period (but are not to be reduced below zero).
- (2) In relation to a company and an accounting period, the “cumulative total amount of activated allowance” is—

$$A + C$$

where—

A is the total of any amounts of activated allowance the company has, for any cluster areas, for the accounting period (see section 356JH(2)) or for reference periods within the accounting period (see section 356JJ(1)), and

C is any amount carried forward to the period under section 356JGA.

#### **Carrying forward of activated allowance**

- 356JG(1) This section applies where, in the case of a company and an accounting period, the cumulative total amount of activated allowance (see section 356JG(2)) is greater than the adjusted ring fence profits.
- (2) The difference is carried forward to the next accounting period.

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*Activated and unactivated allowance: basic calculation rules*

**Activation of allowance: no change of equity share**

356JH(1) This section applies where—

- (a) for the whole or part of an accounting period, a company is a licensee in a licensed area or sub-area which is wholly or partly included in a cluster area,
  - (b) the accounting period is not divided into reference periods (see section 356JI),
  - (c) the company holds, for the accounting period and the cluster area, a closing balance of unactivated allowance (see section 356JHA) which is greater than zero, and
  - (d) the company has relevant income from the cluster area for the accounting period.
- (2) The amount of activated allowance the company has for that accounting period and that cluster area is the smaller of—
- (a) the closing balance of unactivated allowance held for the accounting period and the cluster area;
  - (b) the company's relevant income for that accounting period from that cluster area.
- (3) In this Chapter “relevant income”, in relation to a cluster area and an accounting period of a company, means production income of the company from any oil extraction activities carried on in that area that is taken into account in calculating the company's adjusted ring fence profits for the accounting period.

**The closing balance of unactivated allowance for an accounting period**

356JHA The closing balance of unactivated allowance held by a company for an accounting period and a cluster area is—

**Carrying forward of unactivated allowance**

356JH(1) If, in the case of an accounting period of a company and a cluster area, the amount given by subsection (2) is greater than zero, that amount is treated as cluster area allowance held by the company for that cluster area for the next period (and is treated as held with effect from the beginning of that period).

(2) The amount is—

$$U - A - T$$

where—

U is the closing balance of unactivated allowance held for the accounting period and the cluster area;

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A is the amount of activated allowance that the company has for the accounting period and the cluster area (see section 356JH(2));

T is the sum of any amounts transferred by the company under section 356JK in connection with a disposal or disposals made on the day following the end of the accounting period.

- (3) If the accounting period is followed by a reference period of the company belonging to that cluster area (see section 356JI), “the next period” means that period.
- (4) If subsection (3) does not apply “the next period” means the next accounting period of the company.

#### *Changes in equity share: reference periods*

#### **Reference periods**

356JL) This section applies where—

- (a) a company is a licensee for the whole or part of an accounting period in one or more licensed areas or sub-areas (“the relevant areas”) which are wholly or partly included in a cluster area, and
  - (b) in the case of at least one of the relevant areas, the company has different shares of the equity in the area on different days in the accounting period.
- (2) For the purposes of this Chapter, the accounting period is to be divided into as many consecutive periods (called “reference periods”) as are necessary to secure that—
- (a) a reference period begins with the first day of the accounting period,
  - (b) a reference period begins with the date of each disposal or acquisition of a share of the equity in any of the relevant areas that is made by the company in that accounting period (not including acquisitions or disposals made on the first day of the accounting period), and
  - (c) a reference period ends with the last day of the accounting period.
- (3) Each such reference period “belongs to” the cluster area concerned.

#### *Changes in equity share: activation of allowance*

#### **Activation of allowance: reference periods**

356JM) The amount (if any) of activated allowance that a company has for a cluster area for a reference period is the smaller of the following—

- (a) the company's relevant income from the cluster area for the reference period;
- (b) the total amount of unactivated allowance that is attributable to the reference period and the cluster area (see section 356JJA).

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- (2) The company's relevant income from the cluster area for the reference period is so much of the company's relevant income from the cluster area for the accounting period (see section 356JH(3)) as arises in the reference period.

**Unactivated amounts attributable to a reference period**

356JJ~~1~~) For the purposes of section 356JJ(1)(b), the total amount of unactivated allowance attributable to a reference period and a cluster area is—

$$P + Q$$

where—

P is the amount of allowance generated by the company in the reference period in the cluster area (including any amount treated under section 356JKB(1) as generated by the company in that area in that reference period);

Q is the amount given by subsection (2) or (3).

- (2) Where the reference period is not immediately preceded by another reference period but is preceded by an accounting period of the company, Q is equal to the amount (if any) that is to be carried forward from that preceding accounting period under section 356JHB(1).
- (3) Where the reference period is immediately preceded by another reference period, Q is equal to the amount (if any) carried forward under section 356JJB(1).

**Carry-forward of unactivated allowance from a reference period**

356JJ~~1~~) If, in the case of a reference period (“RP1”) of a company, the amount given by subsection (2) is greater than zero, that amount is treated as cluster area allowance held by the company for the cluster area concerned for the next period.

- (2) The amount is—

$$U - A - T$$

where—

U is the total amount of unactivated allowance attributable to the reference period and the cluster area (see section 356JJA);

A is the amount of activated allowance that the company has for the cluster area for the reference period (see section 356JJ);



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T is the sum of any amounts transferred by the company under section 356JK in connection with a disposal or disposals made on the day following the end of the reference period.

- (3) If RP1 is immediately followed by another reference period of the company (belonging to the same cluster area), “the next period” means that reference period.
- (4) If subsection (3) does not apply, “the next period” means the next accounting period of the company.

### *Transfers of allowance on disposal of equity share*

#### **Disposal of equity share: transfer of allowance**

356JKL Subsections (2) and (3) apply where—

- (a) a company (“the transferor”) makes a disposal, on the day following the end of an accounting period or reference period, of the whole or part of its share of the equity in a licensed area or sub-area which is wholly or partly included in a cluster area (“the relevant cluster area”), and
- (b) the maximum transferable amount is greater than zero.

Each company to which a share of the equity is disposed of is referred to in this section as a “transferee”.

- (2) The transferor may, by an election, transfer to the transferee (or transferees) a specified amount of cluster area allowance (greater than zero) which—
  - (a) is not less than the minimum transferable amount, and
  - (b) is not more than the maximum transferable amount.
- (3) If the transferor does not make an election under subsection (2), the minimum transferable amount of cluster area allowance (if greater than zero) is transferred to the transferee (or transferees).
- (4) An election under subsection (2)—
  - (a) must be made within the 60 days beginning with the date of the disposal,
  - (b) must—
    - (i) specify the date of the disposal and the amount of cluster area allowance transferred, and
    - (ii) identify the transferees, and
  - (c) is irrevocable.
- (5) The minimum transferable amount is—

$$(G - A) \times \frac{E1 - E2}{E1}$$

where—

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G is so much of the total generated allowance for the relevant cluster area (see subsection (6)) as is attributable on a just and reasonable basis to the licensed area or sub-area mentioned in subsection (1);

A is the total of any amounts of allowance which have, in relation to any accounting period or reference period of the transferor ending before the date of the disposal, been activated under section 356JH or 356JJ in relation to the relevant cluster area;

E1 is the transferor's share of the equity in the licensed area or sub-area immediately before the disposal;

E2 is the transferor's share of the equity in the licensed area or sub-area immediately after the disposal.

- (6) In the definition of “G” in subsection (5), “the total generated allowance for the relevant cluster area” means the total of—
- (a) all amounts of cluster area allowance generated by the transferor in that cluster area before the date of the disposal, and
  - (b) any amounts treated under section 356JKB(1) as so generated on the date of the disposal.
- (7) The maximum transferable amount is—

$$M \times \frac{E1 - E2}{E1}$$

where—

M is the smaller of—

- (a) G (as defined in subsection (5)), and
- (b) the transferor's pre-transfer total of unactivated allowance for the relevant cluster area;

E1 and E2 have the same meaning as in subsection (5).

- (8) In subsection (7) the transferor's “pre-transfer total of unactivated allowance for the relevant cluster area” means—

$$P + Q - (A + S)$$

where—

P and Q are—

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- (a) if the disposal is made on the day following the end of an accounting period, the same as in section 356JHA (in its application to that period), or
- (b) if the disposal is made on the day following the end of a reference period, the same as in section 356JJA(1) (in its application to that period);

A is—

- (a) if the disposal is made on the day following the end of an accounting period, the same as in section 356JHB(2) (in its application to that period), or
- (b) if the disposal is made on the day following the end of a reference period, the same as in section 356JJB(2) (in its application to that period);

S is the total of any amounts of allowance transferred by the transferor in connection with any prior disposals (see section 356JKA) made in relation to the relevant cluster area on the day on which the disposal is made.

- (9) For the effect of a transfer of cluster area allowance in relation to the transferor, see—
  - (a) for disposals made on the day following the end of an accounting period, section 356JHB (reduction of unactivated allowance carried forward from accounting period), or
  - (b) for disposals made on the day following the end of a reference period, section 356JJB (reduction of unactivated allowance carried forward from reference period).

#### **More than one disposal on a single day**

356JK(A) Subsections (2) to (4) apply where a company makes, on a single day and in relation to a single cluster area, more than one disposal falling within section 356JK(1)(a).

- (2) The company may, by an election, choose the order of priority of the disposals for the purposes of section 356JK(8).
- (3) A disposal which is placed higher in the order of priority than another disposal is a “prior disposal” in relation to the other for the purposes of the definition of “S” in section 356JK(8).
- (4) An election under subsection (2) is irrevocable.

#### **Effect of transfer of allowance for transferee**

356JK(B) Where a transfer of cluster area allowance is made under section 356JK, each transferee is treated as generating in the cluster area concerned, at the beginning of the accounting period or reference period of the transferee that begins with the day on which the disposal is made, cluster area allowance of the amount given by subsection (2).

- (2) The amount is—

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$$T \times \frac{E3}{E1 - E2}$$

where—

T is the total amount of cluster area allowance transferred in connection with the disposal;

E3 is the share of equity in the licensed area or sub-area that the transferee has acquired from the transferor;

E1 and E2 are the same as in section 356JK(5).

- (3) In this section references to the transferor and the transferees are to be read in accordance with section 356JK(1).

#### *Use of allowance attributable to unlicensed area*

#### **Use of allowance attributable to unlicensed area**

356J(1) Subsection (2) applies where—

- (a) a company (“C”) disposes of the whole or part of its share of the equity in a licensed area or sub-area (“area A”),
  - (b) that area is wholly or partly included in a cluster area, and
  - (c) C has generated in the cluster area, on or before the day of the disposal, cluster area allowance which is wholly or partly attributable to an unlicensed area (“area U”) in the cluster area.
- (2) C may, by an election, assign to area A, or to any other relevant licensed area or sub-area in the cluster area, so much of the total of generated allowance for the cluster area as is attributable to area U.
- (3) The reference in subsection (2) to a “relevant” licensed area or sub-area is to a licensed area or sub-area in which C is a licensee.
- (4) In subsection (2), “the total of generated allowance for the cluster area” means the total of all amounts of cluster area allowance generated by C in the cluster area at any time on or before the day of the disposal (including any amounts treated under section 356JKB(1) as so generated).
- (5) An election under this section must be made within the 60 days beginning with the date of the disposal and must specify—
- (a) the amount of cluster area allowance transferred,
  - (b) the unlicensed area to which it was attributable, and
  - (c) the licensed area or sub-area to which it is assigned.
- (6) An election under this section is irrevocable.

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- (7) Where an amount of cluster area allowance is assigned to a licensed area or sub-area by an election under this section, that amount is taken, for the purposes of this Chapter—
- (a) to have been attributable to that licensed area or sub-area with effect from the beginning of the day on which the disposal is made, and
  - (b) never to have been attributable to area U.
- (8) In this section—
- “attributable” means attributable on a just and reasonable basis;
  - “unlicensed area” means an area which is not (and is not part of) a licensed area or sub-area.

### *Miscellaneous*

#### **Adjustments**

- 356JM~~(1)~~) This section applies if there is any alteration in a company's adjusted ring fence profits for an accounting period after this Chapter has effect in relation to the profits.
- (2) Any necessary adjustments to the operation of this Chapter (whether in relation to the profits or otherwise) are to be made (including any necessary adjustments to the effect of section 356JG on the profits or to the calculation of the amount to be carried forward under section 356JGA).

#### **Regulations amending percentage in section 356JF(2)**

- 356JM~~(1)~~) The Treasury may by regulations substitute a different percentage for the percentage that is at any time specified in section 356JF(2) (calculation of allowance as a percentage of investment expenditure).
- (2) Regulations under subsection (1) may include transitional provision.

### *Interpretation*

#### **When capital expenditure is incurred**

- 356JN~~(1)~~) Section 5 of CAA 2001 (when capital expenditure is incurred) applies for the purposes of this Chapter as for the purposes of that Act.
- (2) Regulations under section 356JE(1)(b) may make provision about when any expenditure that is investment expenditure as a result of the regulations is to be treated for the purposes of this Chapter as incurred.

#### **Licensed sub-areas**

- 356JNA) Where any person is entitled to a share of equity in a licensed area which relates to part only of that area—
- (a) that part is referred to in this Chapter as a “licensed sub-area”, and
  - (b) the share of equity is referred to in this Chapter as a share of equity in the licensed sub-area,

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and references to a licensee in a licensed sub-area are to be interpreted accordingly.

### Other definitions

356JNB In this Chapter (except where otherwise specified)—

“adjusted ring fence profits”, in relation to a company and an accounting period, is to be read in accordance with section 330ZA;

“cluster area allowance” has the meaning given by section 356JF(2);

“cumulative total amount of activated allowance” has the meaning given by section 356JG(2);

“licence” has the same meaning as in Part 1 of OTA 1975 (see section 12(1) of that Act);

“licensed area” has the same meaning as in Part 1 of OTA 1975;

“licensee” has the same meaning as in Part 1 of OTA 1975 (but see also section 356JNA);

“relevant income”, in relation to a cluster area and an accounting period, has the meaning given by section 356JH(3).”

### *Restriction of field allowances*

3 Section 349A (meaning of “additionally-developed oil field”), so far as it continues to have effect for certain purposes (in accordance with Part 2 of Schedule 12 to this Act) in the case of projects authorised before 1 April 2015, is to be read as if in subsection (1)—

(a) the “and” at the end of paragraph (aa) were omitted;

(b) after paragraph (b) there were inserted “, and

(c) on the authorisation day the oil field has never been (and is not treated by virtue of paragraph 5 of Schedule 13 to FA 2015 as having been) wholly or partly included in a cluster area.”

4 Section 350 (meaning of “new oil field”), so far as it continues to have effect for certain purposes (in accordance with Part 2 of Schedule 12 to this Act) in the case of development authorised before 1 January 2016, is to be read as if after subsection (4) there were inserted—

“(5) Any authorisation of development of an oil field is treated as not being an authorisation of development for the purposes of subsection (1)(b) if it is given on a day on which the oil field is (or is treated by virtue of paragraph 5 of Schedule 13 to FA 2015 as having been) wholly or partly included in a cluster area.”

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 21 para. 2(e) and word inserted by [2021 c. 26 Sch. 27 para. 44\(3\)\(b\)](#)
- Sch. 21 para. 5(6) inserted by [2021 c. 26 Sch. 27 para. 44\(4\)\(b\)](#)