

SCHEDULES

SCHEDULE 9

Section 20.

EXTENSION OF SECTION 485 OF TAXES ACT IN RELATION TO PETROLEUM COMPANIES

Definition of petroleum company

- 1 For the purposes of this Schedule a company is a petroleum company if—
- (a) its activities include those specified in any of sub-paragraphs (a) to (e) of paragraph 2 below ; or
 - (b) it is associated with a company whose activities include those specified in any of those sub-paragraphs and its own activities include those specified in sub-paragraph (f) of paragraph 2 below.
- 2 The activities referred to in paragraph 1 above are—
- (a) the acquisition or disposal of petroleum or of rights to acquire or dispose of petroleum ;
 - (b) the importation into or exportation from the United Kingdom of petroleum products or the acquisition or disposal of rights to such importation or exportation ;
 - (c) the acquisition otherwise than for importation into the United Kingdom of petroleum products outside the United Kingdom or the disposal outside the United Kingdom of petroleum products not exported from the United Kingdom by the company making the disposal;
 - (d) the refining or processing of crude petroleum;
 - (e) the extraction of petroleum, either under rights authorising it or under contractual or other arrangements with persons by whom such rights are exercisable ; and
 - (f) the ownership, operation or management of ships or pipe lines (as denned in section 65 of the Pipe-lines Act 1962) used for transporting or conveying petroleum or petroleum products.

Petroleum company as resident buyer or resident seller

- 3 (1) The application to a transaction of subsection (1) or (2) of section 485 of the Taxes Act shall not be excluded by the proviso thereto (resident buyer or resident seller) if—
- (a) either party to the transaction is a petroleum company or both are petroleum companies ; and
 - (b) the activities of either or both are or include activities with respect to which the conditions stated in sub-paragraph (2)(a) or (2)(b) below are satisfied ; and
 - (c) the transaction is part of such activities or is connected with them.
- (2) The conditions referred to in sub-paragraph (1) above are—

Status: This is the original version (as it was originally enacted).

- (a) that profits from the activities are or would be chargeable to overseas tax for which credit could be given under section 498 of the Taxes Act or in pursuance of arrangements having effect by virtue of section 497 of that Act; and
- (b) that the activities are exploration or exploitation activities within the meaning of section 38 of the Finance Act 1973.

4 Where both the buyer and the seller are resident in the United Kingdom and the Board, in pursuance of the preceding paragraphs, direct that subsection (1) or subsection (2) of section 485 of the Taxes Act is to apply to the computation of the income, profits or losses of the one, the direction may extend the application of that subsection to the computation of the income, profits or losses of the other, and where it does so adjustments shall be made under subsection (3) of that section accordingly.

*Modification of section 485 of Taxes Act in relation
to certain sales to or by petroleum companies*

- 5 Where any property is sold and either the buyer or the seller is a petroleum company or both are petroleum companies, then if—
- (a) the sale is part of a transaction or series of transactions (whether or not between the same persons) and its terms are affected by those of the remainder of the transaction or transactions ; or
 - (b) what is sold is petroleum extracted under rights exercisable by a company other than the buyer, and not less than 20 per cent, of that company's ordinary share capital was at the time of the sale owned directly or indirectly by one or more of the following, that is to say the buyer and any companies associated with the buyer,

section 485 of the Taxes Act shall apply in relation to the sale as if in both subsection (1) and subsection (2) of that section paragraph (a) were omitted.

Determination of arm's length price

- 6 (1) Where a petroleum company was a party to a sale of property, then, in determining for the purposes of section 485 of the Taxes Act what price the property might have been expected to fetch had the parties to the transaction been independent persons dealing at arm's length and what consequences would have ensued in computing the income, profits or losses of the seller or the buyer for tax purposes if the property had been sold for that price, it shall be assumed—
- (a) that the terms of the transaction would have been such as might have been expected to secure both to the buyer and to the seller a reasonable profit from transactions of the same kind carried out on similar terms over a reasonable period ; and
 - (b) that the seller would not have been compelled by law or by executive action of any government to demand a price fixed by law or such action or a price not less than one so fixed ; and
 - (c) that, if the transaction was part of a transaction or series of transactions (whether or not between the same persons), its terms would not have been affected by those of the remainder of the transaction or transactions ; and
 - (d) in a case where the whole of the property sold is not delivered by the seller within twelve months after the date of the sale—

- (i) that such part of the property as is delivered within that time would have fetched a price equal to that which it might have been expected to fetch if sold under a contract for the sale of that part and of no other property, being a contract made at the date of the sale ; and
- (ii) that such part of the property not so delivered as is delivered in any calendar month would have fetched a price equal to that which it might have been expected to fetch if sold under a contract for the sale of that part and of no other property, being a contract made at the material time in that month ;

and no regard shall be had to the terms of similar transactions which were capable of being varied.

- (2) In this paragraph " material time " and " calendar month" have the meaning given by paragraph 3(2) of Schedule 3 to this Act.

Supplementary

- 7 (1) In this Schedule—

" petroleum " includes any mineral oil or relative hydrocarbon, and, except in the expression " crude petroleum ", includes natural gas ;

" petroleum products " means products derived from petroleum and wholly or substantially of a hydrocarbon nature.

- (2) For the purposes of this Schedule—

- (a) two companies are associated with one another if one is under the control of the other or both are under the control of the same person or persons, and " control" has the meaning given by section 534 of the Taxes Act;
- (b) any question whether ordinary share capital is owned by a company directly or indirectly shall be determined as for the purposes of section 532 of the Taxes Act;
- (c) rights are exercisable by a company if they are exercisable by that company alone or jointly with another company or companies ;
- (d) subsection (6) of section 485 of the Taxes Act (which extends the provisions of that section to transactions which are not sales) shall apply for the purposes of this Schedule except those of paragraph 5(b).