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SCHEDULE 21

[M1]MODIFICATIONS OF FINANCE ACT 1982, SCHEDULE 18 IN RELATION TO ELECTIONS UNDER SECTION 109 OF THIS ACT

Marginal Citations

M1 1982 c. 39.

Specific modifications

2 (1) In paragraph 1 (provisions as to the election), in sub-paragraph (2)(b) for the words "and not exceeding fifteen years" there shall be substituted "or in the case of an election made before 31st December 1986, beginning on 1st July 1986" and for sub-paragraph (2)(d) there shall be substituted—

"(d) specify the purposes for which the light gases to which the election applies will be applied or used,".

(2) At the end of that paragraph there shall be inserted the following sub-paragraph—

"(4) If an election relates to light gases, then, in addition to the matters referred to in sub-paragraph (2) above, the election shall contain—

(a) a description of the characteristics of the supply by which the disposal or appropriation is intended to be effected; and

(b) if that supply is of such a description that, if it were under a contract at arm's length, it is reasonable to expect that the price of the gas would vary with the level of the supply, a description of the pattern of supply which the party or parties to the election consider most probable."

3 (1) In paragraph 2 (conditions for acceptance of an election) in sub-paragraph (1) after the words "and (3)" there shall be inserted "and paragraph 2A".

(2) In sub-paragraph (2) of that paragraph, after the words "such that" there shall be inserted "subject to paragraphs 2A and 3A below".

4 After paragraph 2 there shall be inserted the following paragraph—

"(2A) —

(1) The provisions of this paragraph apply if, having regard to the pattern of supply described in an election as mentioned in paragraph 1(4)(b) above, it is reasonable to assume that, under a contract for the sale at arm's length of the light gases to which the election applies, the consideration would include—

(a) any such payments as are referred to in subsection (2) of section 114 of the Finance Act 1984 ("take or pay" payments), or

(b) any capacity payments, as defined in subsection (5) of that section.

(2) The relevant contract—

(a) shall be assumed to be for the delivery of gas according to the pattern of supply described in the election; and

(b) shall be assumed to contain provision for such of the payments referred to in sub-paragraph (1) above as are appropriate to that pattern of supply.

(3) Sub-paragraph (1) of paragraph 2 above shall have effect as if for the words following "sale at arm's length" there were substituted "of the light gases to which the election applies, the total sums payable under the contract in respect of deliveries of gas in any chargeable period would not differ materially from the sums determined in accordance with the price formula specified in the election for gases disposed of or appropriated in that period; and if the Board are not so satisfied they shall reject the election".

(4) The price formula specified in the election shall contain provisions for determining sums corresponding to such of the payments referred to in sub-paragraph (1) above as, by virtue of sub-paragraph (2) above, are assumed to be provided for by the relevant contract."

5 (1) In paragraph 3 (definition of "the relevant contract"**[**[F1]in sub-paragraph (1)**]**) in paragraph (a) after the word "and", in the first place where it occurs, there shall be inserted the words "which, subject to sub-paragraph (3) below" and in the words following paragraph (b) for the words from "is not" onwards, there shall be substituted "which, subject to paragraph 2A(2) above, is not necessarily a contract for the sale of light gases for the purposes specified in the election".

(2) At the end of that paragraph there shall be added the following sub-paragraphs—

"(3) In the case of an election which relates to light gases which are "excluded oil", as defined in section 10(1) of the principal Act, sub-paragraph (1)(a) above shall have effect with the omission of the words from "and which" to "date of the election".

(4) Sub-paragraph (4) of paragraph 2A of Schedule 3 to the principal Act (assumptions as to consents in determining price under an arm's length contract) shall apply for the purposes of paragraphs 2 and 2A above as it applies for the purposes of paragraph 2 of that Schedule, substituting a reference to a relevant contract (as defined above) for any reference to the contract mentioned in paragraph 2(2) of that Schedule."

Textual Amendments

F1 Words in Sch. 21 para. 5(1) inserted (16.7.1992) by Finance (No. 2) Act 1992 (c. 48), s. 74, **Sch. 15 para.9**.

6 After paragraph 3 there shall be inserted the following paragraph—

" Market value where paragraph 2A applies

3A (1) Where an election is accepted by the Board and the price formula contains provision for the determination of sums as mentioned in paragraph 2A(4) above, then, for the purpose of determining the market value of gas to which the election applies, section 114 of the Finance Act 1984 (which deals with the treatment of such payments as are referred to in paragraph 2A(1) above) shall have effect in relation to those sums and that gas as if—

(a) those sums were part of the consideration under a contract for the sale of gas to which the election applies, and

(b) that contract provided for delivery of the gas according to the pattern of supply described in the election,

and where the said section 114 has effect by virtue of this sub-paragraph, subsections (4), (6) and (7) of that section (which provide for and relate to the deemed delivery of one tonne of oil in certain periods) shall be treated for the purposes of the principal Act as providing for and relating to the deemed disposal or appropriation of one tonne of gas to which the election applies.

(2) Where sub-paragraph (1) above applies, the market value of the gas to which the election applies which is disposed of or appropriated in any chargeable period shall consist of—

(a) such amount (if any) as is determined in accordance with the price formula by reference to the quantity of gas disposed of or appropriated in that chargeable period; and

(b) any sums which, by virtue of sub-paragraph (1) above, either are treated as payments for gas supplied free of charge in that period or are treated as an additional element of the price received or receivable for gas disposed of or appropriated in that period.

(3) Where the market value of gas is determined as mentioned in sub-paragraph (2) above, any reference in the following provisions of this Schedule (however expressed) to the market value determined in accordance with the price formula is a reference to that value determined as mentioned in that sub-paragraph (that is to say, in accordance with the formula and section 114 of the Finance Act 1984 as applied by sub-paragraph (1) above).

(4) Where the market value of light gases to which an election applies is determined for a chargeable period as mentioned in sub-paragraph (2) above then, as respects a return for that period under paragraph 2 of Schedule 2 to the principal Act which is made by the participator who is the party or one of the parties to the election,—

(a) sub-paragraphs (2)(a)(iii) and (2)(b)(ii) of that paragraph (which require information with respect to each delivery or relevant appropriation of oil in the period) shall not apply in relation to the light gases to which the election applies; and

(b) there shall be included in his return a statement of the market value (determined as mentioned in sub-paragraph (2) above) of the light gases relevantly appropriated or disposed of by him in that period.

(5) Notwithstanding that, under sub-paragraph (2) above, a market value is determined for all the gas disposed of or appropriated in a particular chargeable period, for the purposes of determining—

(a) the market value referred to in section 2(5)(d) of the principal Act (stocks at the end of a period), and

(b) the market value referred to in subsection (1) or, as the case may be, subsection (2) of section 14 of that Act (valuation for corporation tax purposes of oil disposed of or appropriated),

then, except in a case where the only gas disposed of or appropriated in a particular chargeable period is a single tonne which, by virtue of sub-paragraph (1) above, is treated as being disposed of or appropriated, the market value determined as mentioned in sub-paragraph (2) above shall be apportioned rateably to each quantity of gas disposed of or appropriated in that period."

7 After paragraph 6 there shall be inserted the following paragraph—

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" Price formula no longer appropriate for pattern of supply, etc.

6A (1) In any case where it appears to the Board—

(a) that light gases to which an election applies are being disposed of or appropriated in a manner, to an extent or by a pattern of supply which is different from that which was taken into consideration in the acceptance of the election, and

(b) that if, at the time the Board were considering whether the election should be accepted, they had taken into account as a probability the manner, extent or pattern of supply by which the gases are in fact being disposed of, they would have rejected the election,

then, subject to sub-paragraph (4) below, the election shall not have effect with respect to any chargeable period beginning after the date on which the Board give notice under this paragraph to each of the parties to the election.

(2) Without prejudice to the generality of sub-paragraph (1) above, if at any time in a chargeable period the extent to which gases to which an election applies are disposed of or relevantly appropriated (including the case where none is so disposed of or appropriated) is such that, if the gas were being delivered under a contract at arm's length,—

(a) the seller would be likely to incur financial penalties by reason of a failure to meet requirements arising from the pattern of supply described in the election, and

(b) those penalties would not be insubstantial,

that shall be a ground for the Board to give notice under this paragraph.

(3) A notice under this paragraph shall state that, by reason of the matters referred to in sub-paragraph (1) above, the Board are no longer satisfied that the price formula specified in the election is appropriate to the disposals or appropriations actually being made of gases to which the election applies.

(4) If, within the period of three months beginning on the date of a notice under this paragraph, the party or parties to the election give notice in writing to the Board—

(a) specifying a new price formula taking account of the manner, extent or pattern of supply by which the gases to which the election applies are being disposed of or appropriated, and

(b) containing, if appropriate, a description of the changed pattern of supply which, at the time of the notice, the party or parties to the election consider most probable,

then, if that new price formula is accepted by the Board in accordance with paragraph 7 below, so much of sub-paragraph (1) above as provides that the election shall not have effect with respect to certain periods shall not apply.

(5) If notice has been given under sub-paragraph (4) above and a new price formula has been accepted as mentioned in that sub-paragraph, then, for the purpose of determining, for any chargeable period beginning after the date on which the Board gave notice as mentioned in sub-paragraph (1) above, the market value of light gases to which the election applies, section 109 of the Finance Act 1986 shall have effect as if the new price formula were the formula specified in the election."

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8 (1) In paragraph 7 (acceptance or rejection of new price formula) in sub-paragraph (2) after the words "paragraph 3" there shall be inserted "and, where appropriate, paragraphs 2A and 3A"; and at the end of paragraph (b) of that sub-paragraph there shall be inserted "or

(c) a new price formula specified in a notice under paragraph 6A(4) above";

and for the words from "were specified" onwards there shall be substituted "had been specified in, and at the time of, the election and as if the circumstances giving rise to the new price formula had been in contemplation at that time".

(2) In sub-paragraph (5) of that paragraph, after "6(5)(b)" there shall be inserted "or paragraph 6A(4)".

9 (1) In paragraph 8 (appeals) in sub-paragraph (1) after paragraph (d) there shall be inserted the following paragraph—

"(dd) under paragraph 6A above, that a price formula is no longer appropriate".

(2) In sub-paragraph (4)(b) of that paragraph after "6(1)(b)" there shall be inserted "or paragraph 6A".

10 In paragraph 9 (returns)—

(a) after "6(1)(b)" there shall be inserted "or paragraph 6A"; and

(b) for the words "section 134(3) of this Act" there shall be substituted "section 109(4) of the Finance Act 1986"; and

(c) in paragraph (b) after "6" there shall be inserted "or paragraph 6A".

11 (1) In paragraph 11 (interpretation) sub-paragraph (1) shall be omitted.

(2) In sub-paragraph (2) of that paragraph the words from "to an election" to "and any reference" shall be omitted.

(3) In sub-paragraph (4) of that paragraph for the words "section 134(2)(a) of this Act" there shall be substituted "section 109(3)(a) of the Finance Act 1986".

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