Finance Act 1990

1990 CHAPTER 29

PART II

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER I

GENERAL

Oil industry

60 Allowance for abandonment expenditure related to offshore machinery or plant

In section 62 of the Capital Allowances Act 1990 (treatment of demolition costs) in subsection (1)(b) after the words "machinery or plant" there shall be inserted "then, subject to section 62A"; and after that section there shall be inserted the following sections—

"**62A Special allowance for demolition costs related to offshore machinery or plant**

(1) Subject to subsection (3) below, this section applies to expenditure which, apart from this section, would fall within section 62(1)(b) and which is incurred—

(a) by any person carrying on a ring fence trade; and

(b) for the purposes of or in connection with the closing down of, or of any part of, an oil field, within the meaning of Part I of the Oil Taxation Act 1975; and

(c) on the demolition of machinery or plant which has been brought into use for the purposes of that trade and which is or forms part of an offshore installation or a submarine pipe-line;

and in this section any such expenditure is referred to as "abandonment expenditure".

(2) In this section "ring fence trade" means activities which—

(a) fall within any of paragraphs (a) to (c) of subsection (1) of section 492 of the principal Act (treatment of oil extraction activities etc. for tax purposes); and

(b) constitute a separate trade (whether by virtue of that subsection or otherwise).

(3) In subsection (1)(c) above—

(a) the reference to demolition is a reference to demolition which is carried out, wholly or substantially, in order to comply with an abandonment programme, within the meaning of Part I of the Petroleum Act 1987, or with any condition to which the approval of such a programme is subject; and

(b) "offshore installation" and "submarine pipe-line" have the same meaning as in that Part.

(4) If the person incurring any abandonment expenditure so elects,—

(a) for the chargeable period related to the incurring of that expenditure there shall be made to that person an allowance equal to the excess of the abandonment expenditure to which the election relates over any moneys received for the remains of the machinery or plant concerned; and

(b) that excess shall not be taken into account to increase qualifying expenditure as mentioned in section 62(1)(b).

(5) An election under this section—

(a) shall specify the abandonment expenditure to which it relates and the amounts of any such moneys received as mentioned in subsection (4)(a) above;

(b) shall be made by notice in writing given to the inspector not later than two years after the end of the chargeable period related to the incurring of the abandonment expenditure; and

(c) shall be irrevocable.

(6) This section has effect where the chargeable period related to the incurring of the expenditure or its basis period ends after 30th June 199l.

62B Treatment of post-cessation abandonment expenditure related to offshore machinery or plant

(1) Subsection (2) below applies in any case where—

(a) a person (in this section referred to as "the former trader") ceases to carry on a ring fence trade; and

(b) after 30th June 1991 and within the period of three years immediately following the last day on which he carried on that trade, the former trader incurs expenditure (in this section referred to as "post-cessation expenditure") on the demolition of machinery or plant which falls within section 62A(1)(c); and

(c) the post-cessation expenditure would have been abandonment expenditure for the purposes of section 62A if the demolition had been

carried out and the expenditure incurred before the cessation of the ring fence trade; and

(d) apart from this section, the post-cessation expenditure would not be deductible in computing the income of the former trader for any purpose of corporation tax or income tax.

(2) Where this subsection applies, the qualifying expenditure of the former trader for the chargeable period related to the cessation of his ring fence trade shall be treated for the purposes of sections 24 and 25 as increased by so much of the post-cessation expenditure as exceeds any moneys received in the three year period referred to in paragraph (b) of subsection (1) above for the remains of the machinery or plant referred to in that paragraph.

(3) Where subsection (2) above applies, any moneys received as mentioned in that subsection shall not constitute income of the former trader for any purpose of income tax or corporation tax.

(4) All such adjustments shall be made, whether by way of discharge or repayment of tax or otherwise, as may be required in consequence of the provisions of this section.

(5) In this section "ring fence trade" has the same meaning as in section 62A."

61 Carrying back of losses referable to allowance for abandonment expenditure

In section 393 of the Taxes Act 1988 (loss relief: losses other than terminal losses) after subsection (4) there shall be inserted the following subsections—

"(4A) Where a company carrying on a ring fence trade incurs a loss in that trade in an accounting period for which an allowance falls to be made to it under section 62A of the 1990 Act, subsections (2) and (3) above shall have effect in relation to so much of the loss as does not exceed that allowance as if the time specified in subsection (3) above were a period of three years ending immediately before the accounting period in which the loss is incurred.

(4B) In subsection (4A) above "ring fence trade" has the same meaning as in section 62A of the 1990 Act."

62 CT treatment of PRT repayment

(1) In section 500 of the Taxes Act 1988 (deduction of PRT in computing income for corporation tax purposes), in subsection (4) (reduction or extinguishment of deduction where PRT repaid)—

(a) at the beginning there shall be inserted the words "Subject to the following provisions of this section"; and

(b) for the words "accounting period" there shall be substituted "calendar year".

(2) For subsection (5) of that section there shall be substituted the following subsections—

"(5) If, in a case where paragraph 17 of Schedule 2 to the 1975 Act applies, an amount of petroleum revenue tax in respect of which a deduction has been made under subsection (1) above is repaid by virtue of an assessment under that Schedule or an amendment of such an assessment, then, so far as concerns so much of that repayment as constitutes the appropriate repayment,—

(a) subsection (4) above shall not apply; and

(b) the following provisions of this section shall apply in relation to the company which is entitled to the repayment.

(6) In subsection (5) above and the following provisions of this section—

(a) "the appropriate repayment" has the meaning assigned by sub-paragraph (2) of paragraph 17 of Schedule 2 to the 1975 Act;

(b) in relation to the appropriate repayment, a "carried back loss" means an allowable loss which falls within sub-paragraph (1)(a) of that paragraph and which (alone or together with one or more other carried back losses) gives rise to the appropriate repayment;

(c) in relation to a carried back loss, "the operative chargeable period" means the chargeable period in which the loss accrued; and

(d) in relation to the company which is entitled to the appropriate repayment, "the relevant accounting period" means the accounting period in or at the end of which ends the operative chargeable period or, if the company's ring fence trade is permanently discontinued before the end of the operative chargeable period, the last accounting period of that trade.

(7) In computing for corporation tax the amount of the company's income arising in the relevant accounting period from oil extraction activities or oil rights there shall be added an amount equal to the appropriate repayment; but this subsection has effect subject to subsection (8) below in any case where—

(a) two or more carried back losses give rise to the appropriate repayment; and

(b) the operative chargeable period in relation to each of the carried back losses is not the same; and

(c) if subsection (6)(d) above were applied separately in relation to each of the carried back losses there would be more than one relevant accounting period.

(8) Where paragraphs (a) to (c) of subsection (7) above apply, the appropriate repayment shall be treated as apportioned between each of the relevant accounting periods referred to in paragraph (c) of that subsection in such manner as to secure that the amount added by virtue of that subsection in relation to each of those relevant accounting periods is what it would have been if—

(a) relief for each of the carried back losses for which there is a different operative chargeable period had been given by a separate assessment or amendment of an assessment under Schedule 2 to the 1975 Act; and

(b) relief for a carried back loss accruing in an earlier chargeable period had been so given before relief for a carried back loss accruing in a later chargeable period.

(9) Any additional assessment to corporation tax required in order to give effect to the addition of an amount by virtue of subsection (7) above may be made at any time not later than six years after the end of the calendar year in which is made the repayment of petroleum revenue tax comprising the appropriate repayment.

(10) In this section "allowable loss" and "chargeable period" have the same meaning as in Part I of the 1975 Act and "calendar year" means a period of twelve months beginning on 1st January."

(3) At the end of section 502(1) of the Taxes Act 1988 (defined expressions for Chapter V of Part XII) there shall be added "and

"ring fence trade" means activities which—

(a) fall within any of paragraphs (a) to (c) of subsection (1) of section 492; and

(b) constitute a separate trade (whether by virtue of that subsection or otherwise)".

63 Disposals of certain shares deriving value from exploration or exploitation assets or rights

(1) In Schedule 8 to the Finance Act 1988 (capital gains: assets held on 31st March 1982) in paragraph 12 (certain disposals excluded from elections under section 96(5) of that Act), in sub-paragraph (2) at the end of paragraph (c) there shall be inserted "or

(d) shares which, on 31st March 1982, were unquoted and derived their value, or the greater part of their value, directly or indirectly from oil exploration or exploitation assets situated in the United Kingdom or a designated area or from such assets and oil exploration or exploitation rights taken together".

(2) After the said sub-paragraph (2) there shall be inserted the following sub-paragraphs—

"(2A) For the purposes of sub-paragraph (2)(d) above,—

(a) "shares" includes stock and any security, as defined in section 254(1) of the Taxes Act 1988; and

(b) shares (as so defined) were unquoted on 31st March 1982 if, on that date, they were neither quoted on a recognised stock exchange nor dealt in on the Unlisted Securities Market;

but nothing in this paragraph affects the operation, in relation to such unquoted shares, of sections 77 to 81 of the Capital Gains Tax Act 1979 (under which, on a reorganisation etc., a new holding may fall to be treated as the same asset as the original shares).

(2B) In sub-paragraph (2)(d) above—

"designated area" means an area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964;

"oil exploration or exploitation assets" shall be construed in accordance with sub-paragraphs (2C) and (2D) below; and

"oil exploration or exploitation rights" means rights to assets to be produced by oil exploration or exploitation activities (as defined in sub-paragraph (2D) below) or to interests in or to the benefit of such assets.

(2C) For the purposes of sub-paragraph (2)(d) above an asset is an oil exploration or exploitation asset if either—

(a) it is not a mobile asset and is being or has at some time been used in connection with oil exploration or exploitation activities carried on in the United Kingdom or a designated area; or

(b) it is a mobile asset which has at some time been used in connection with oil exploration or exploitation activities so carried on and is dedicated to an oil field in which the company whose shares are disposed of by the disposal or a person connected with that company, within the meaning of section 839 of the Taxes Act 1988, is or has been a participator;

and, subject to sub-paragraph (2D) below, expressions used in paragraphs (a) and (b) above have the same meaning as if those paragraphs were included in Part I of the Oil Taxation Act 1975.

(2D) In the preceding provisions of this paragraph "oil exploration or exploitation activities" means activities carried on in connection with—

(a) the exploration of land (including the seabed and subsoil) in the United Kingdom or a designated area, as defined in sub-paragraph (2B) above, with a view to searching for or winning oil; or

(b) the exploitation of oil found in any such land;

and in this sub-paragraph "oil" has the same meaning as in Part I of the Oil Taxation Act 1975."

(3) The amendments made by subsections (1) and (2) above have effect with respect to disposals on or after 22nd January 1990.

(4) Notwithstanding that, apart from this subsection, an election under section 96(5) of the Finance Act 1988 is irrevocable, where—

(a) such an election has been made before 22nd January 1990, and

(b) apart from subsection (1) above, the assets to the disposal of which the election would apply include assets falling within paragraph 12(2)(d) of Schedule 8 to the Finance Act 1988 (as set out in subsection (1) above),

the election may be revoked by notice in writing given to the inspector before 1st January 1991 by the person by whom the election was made.

64 Limitation of losses on disposal of oil industry assets

(1) This section applies to a disposal of an oil industry asset where the following conditions are fulfilled—

(a) the disposal occurs on or after 22nd January 1990;

(b) the person making the disposal held the asset on 31st March 1982 or, by virtue of paragraph 1 of Schedule 8 to the Finance Act 1988 (previous no gain/no loss disposals), is treated as having held the asset on that date for the purposes of section 96 of that Act (rebasing to 1982 of assets held on 31st March 1982);

(c) disregarding the following provisions of this section, for the purposes of capital gains tax, a loss would accrue on the disposal; and

(d) in the application of section 96 of the Finance Act 1988 to the disposal, subsection (2) of that section (the rebasing to 1982 values) does not apply because of the operation of subsection (3)(b) of that section (a smaller loss accrues if subsection (2) does not apply).

(2) For the purposes of this section, the following are "oil industry assets"—

(a) a licence under the Petroleum (Production) Act 1934 or the Petroleum (Production) Act (Northern Ireland) 1964;

(b) shares falling within sub-paragraph (2)(d) of paragraph 12 of Schedule 8 to the Finance Act 1988 (exclusion of certain disposals from elections under section 96(5) of the Finance Act 1988);

(c) oil exploration or exploitation assets, which expression shall be construed, subject to subsection (3) below, in accordance with sub-paragraphs (2C) and (2D) of the said paragraph 12; and

(d) any interest in an asset falling within paragraphs (a) to (c) above.

(3) In the application of sub-paragraph (2C)(b) of paragraph 12 of Schedule 8 to the Finance Act 1988 for the purposes of subsection (2)(c) above, for the words from "the company whose shares" to "that company" there shall be substituted "the person making the disposal or a person connected with him".

(4) Where this section applies to a disposal, there shall be determined for the purposes of this section the loss or gain which would accrue on the disposal on the following assumptions—

(a) that subsection (2) of section 96 of the Finance Act 1988 continues not to apply on the disposal; and

(b) that, in calculating the indexation allowance on the disposal, subsection (4) of section 68 of the Finance Act 1985 (indexation based on 1982 values) does not apply;

and in the following provisions of this section the loss or gain (if any) on the disposal, determined on those assumptions, is referred to as the non-rebased loss or, as the case may be, the non-rebased gain.

(5) If there is a non-rebased loss on a disposal to which this section applies and that loss is less than the loss which accrues on the disposal as mentioned in subsection (1)(c) above, it shall be assumed for the purposes of capital gains tax that the loss which accrues on the disposal is the non-rebased loss.

(6) If there is a non-rebased gain on a disposal to which this section applies, it shall be assumed for the purposes of capital gains tax that the oil industry asset concerned was acquired by the person making the disposal for a consideration such that, on the disposal, neither a gain nor a loss accrues to him.

(7) If, on the determination referred to in subsection (4) above, there is neither a non-rebased loss nor a non-rebased gain on a disposal, subsection (6) above shall apply in relation to the disposal as if there were a non-rebased gain on the disposal.