



# Finance Act 1991

## 1991 CHAPTER 31

### PART III

#### OIL TAXATION

##### *Abandonment etc.*

#### **103 Allowance of certain expenditure relating to abandonment, decommissioning assets, etc**

- (1) Section 3 of the principal Act (allowance of certain expenditure) shall be amended in accordance with subsections (2) to (6) below.
- (2) With respect to expenditure incurred on or after 19th March 1991, in subsection (1), after paragraph (h) there shall be inserted the following paragraph—
  - “(hh) obtaining an abandonment guarantee, as defined in section 104 of the Finance Act 1991”.
- (3) With respect to expenditure incurred after 30th June 1991, in subsection (1), for paragraph (i) there shall be substituted the following paragraphs—
  - “(i) closing down, decommissioning, abandoning or wholly or partially dismantling or removing any qualifying asset;
  - (j) carrying out qualifying restoration work consequential upon the closing down of the field or any part of it.”
- (4) After subsection (1) there shall be inserted the following subsections—
  - “(1A) In this section “qualifying asset” has the same meaning as in the Oil Taxation Act 1983; and, in the case of a qualifying asset which was leased or hired, the reference in subsection (1)(i) above to decommissioning includes a reference to carrying out any restoration or similar work which is required to be carried out to comply with the terms of the contract of lease or hire.
  - (1B) In subsection (1)(j) above “qualifying restoration work”, in relation to a participator in an oil field, means—

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- (a) restoring (including landscaping) land on which a qualifying asset is or was situated; or
- (b) restoring the seabed (including the subsoil thereof) on which a qualifying asset is or was situated.

(1C) In any case where—

- (a) expenditure is incurred by a participator for any of the purposes mentioned in paragraph (i) or paragraph (j) of subsection (1) above, and
- (b) the participator is or was a participator in two or more oil fields and the qualifying asset which is relevant to the incurring of that expenditure is, at the end of the claim period concerned, a qualifying asset in respect of more than one of those oil fields,

the expenditure shall be apportioned between those oil fields in such manner as is just and reasonable.

(1D) Without prejudice to any apportionment under subsection (1C) above, in any case where—

- (a) any expenditure incurred by a participator would, apart from this subsection, be regarded as wholly incurred for any of the purposes mentioned in paragraph (i) or paragraph (j) of subsection (1) above, and
- (b) the qualifying asset which is relevant to the incurring of that expenditure has at some time been used otherwise than in connection with an oil field,

only such portion of the expenditure as it is just and reasonable to apportion to the use in connection with an oil field shall be regarded as allowable for any of the purposes referred to in paragraph (a) above.”

(5) After subsection (5A) there shall be inserted the following subsection—

“(5B) Expenditure incurred by a participator in an oil field shall be taken to be incurred for the purpose mentioned in paragraph (hh) of subsection (1) above if, and only if,—

- (a) it consists of fees, commission or incidental costs incurred wholly and exclusively for the purposes of obtaining an abandonment guarantee; and
- (b) the abandonment guarantee is obtained in order to comply with a term of a relevant agreement relating to that field under which the participator is required to provide security (whether or not specifically in the form of an abandonment guarantee) in respect of his liabilities to contribute to field abandonment costs;

and expressions used in this subsection shall be construed in accordance with section 104 of the Finance Act 1991.”

(6) In subsection (6) (apportionment of expenditure)—

- (a) at the beginning there shall be inserted “Without prejudice to any apportionment under subsection (1C) or subsection (1D) above”; and
- (b) after the words “subsections (1) and (5) above” there shall be inserted “other than paragraph (hh) of subsection (1)”.

(7) In section 10 of the principal Act (exempt gas)—

- (a) in subsection (2) for the words “and (i) of subsection (1)” there shall be substituted “(hh), (i) and (j) of subsection (1) and subsection (1D)”;
  - (b) in subsection (3) for the words “paragraph (a), (b), (c) or (i)” there shall be substituted “any of paragraphs (a), (b), (c), (hh), (i) and (j)”;
  - (c) in subsection (3)(b) for the words “paragraph (i)” there shall be substituted “paragraph (hh), (i) or (j)”.
- (8) So far as they relate to the paragraph (hh) inserted by subsection (2) above, the amendments in subsections (5) to (7) above have effect with respect to expenditure incurred on or after 19th March 1991 and, subject to that, the amendments in subsections (4) to (7) above have effect with respect to expenditure incurred after 30th June 1991.

#### **104 Abandonment guarantees**

- (1) Subject to subsection (2) below, for the purposes of section 3 of the principal Act and sections 105 and 106 below, an abandonment guarantee is a contract under which a person (“the guarantor”) undertakes to make good any default by a participator in an oil field (“the relevant participator”) in meeting the whole or any part of those liabilities of his which—
- (a) arise under a relevant agreement relating to that field; and
  - (b) are liabilities to contribute to field abandonment costs;
- and such a contract is an abandonment guarantee regardless of the form of the undertaking of the guarantor and, in particular, whether or not it is expressed as a guarantee or arises under a letter of credit, a performance bond or any other instrument.
- (2) For the purposes of section 3 of the principal Act and section 106 (but not section 105) below a contract is not an abandonment guarantee—
- (a) unless it is entered into in good faith and on terms reasonably appropriate to the nature and extent of the guarantee; or
  - (b) if the guarantor undertakes any liability beyond that of making good any such default as is referred to in subsection (1) above; or
  - (c) if it can be revoked by the guarantor otherwise than on account of some fraud, misrepresentation or other fault on the part of the relevant participator occurring prior to the making of the contract; or
  - (d) if, subject to subsection (3) below, the guarantor is, or is a person connected with, a participator in one or more oil fields.
- (3) Paragraph (d) of subsection (2) above does not apply if—
- (a) the main business carried on by the guarantor is such that it is in the ordinary course of that business to provide guarantees; and
  - (b) the relevant participator is not connected with the guarantor;
- and section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of this subsection and subsection (2) above.
- (4) Without prejudice to the generality of paragraph (a) of subsection (2) above, a contract shall not be regarded as entered into in good faith if, as a result of any arrangement, the liability to make good any such default as is referred to in subsection (1) above will be met, directly or indirectly, by such a person that, if he were the guarantor under the contract, the contract could not be an abandonment guarantee by virtue of paragraph (d) of subsection (2) above.

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- (5) In this section and in section 3(5B) of the principal Act—
- (a) in relation to an oil field, a “relevant agreement” means a joint operating agreement, a unitisation agreement (within the meaning of paragraph 1(1) of Schedule 17 to the Finance Act 1980) or an agreement entered into by some or all of the parties to a joint operating agreement or such a unitisation agreement; and
  - (b) in relation to an oil field, “field abandonment costs” means costs incurred in closing down the field or any part of it, together with any costs incurred in discharging any continuing liabilities resulting directly from that closure.

## **105 Restriction of expenditure relief by reference to payments under abandonment guarantees**

- (1) If, under an abandonment guarantee, a payment is made by the guarantor on or after 19th March 1991, then, to the extent that any expenditure for which the relevant participator is liable is met, directly or indirectly, out of the payment, that expenditure shall not be regarded for any of the purposes of the principal Act as having been incurred by the relevant participator or any other participator in the oil field concerned.
- (2) In any case where—
- (a) a payment made by the guarantor under an abandonment guarantee is not immediately applied in meeting any expenditure, and
  - (b) the payment is for any period invested (either specifically or together with payments made by persons other than the guarantor) so as to be represented by, or by part of, the assets of a fund or account, and
  - (c) at a subsequent time, any expenditure for which the relevant participator is liable is met out of the assets of the fund or account,
- any reference in subsection (1) above or section 106 below to expenditure which is met, directly or indirectly, out of the payment shall be construed as a reference to so much of the expenditure for which the relevant participator is liable as is met out of those assets of the fund or account which, at the subsequent time referred to in paragraph (c) above, it is just and reasonable to attribute to the payment.
- (3) In subsections (1) and (2) above “the guarantor” and “the relevant participator” have the same meaning as in subsection (1) of section 104 above.

## **106 Relief for reimbursement expenditure under abandonment guarantees**

- (1) This section applies in any case where—
- (a) on or after 19th March 1991 a payment (in this section referred to as “the guarantee payment”) is made by the guarantor under an abandonment guarantee; and
  - (b) by virtue of the making of the guarantee payment, the relevant participator becomes liable under the terms of the abandonment guarantee to pay any sum or sums to the guarantor; and
  - (c) in any claim period (in this section referred to as “the relevant period”) expenditure is incurred, or consideration in money’s worth is given, by the relevant participator in or towards meeting that liability.
- (2) In any case where the whole of the guarantee payment or, as the case may require, of the assets which, under section 105(2) above, are attributed to the guarantee payment

is not applied in meeting liabilities of the relevant participator which fall within paragraphs (a) and (b) of subsection (1) of section 104 above and a sum representing the unapplied part of the guarantee payment or of those assets is repaid, directly or indirectly, to the guarantor,—

- (a) any liability of the relevant participator to repay that sum shall be excluded in determining the total liability of the relevant participator which falls within subsection (1)(b) above; and
  - (b) the repayment to the guarantor of that sum shall not be regarded as expenditure incurred by the relevant participator as mentioned in subsection (1)(c) above.
- (3) In the following provisions of this section “reimbursement expenditure” means expenditure incurred as mentioned in subsection (1)(c) above or consideration (or, as the case may require, the value of consideration) given as so mentioned; and any reference to the incurring of reimbursement expenditure shall be construed accordingly.
- (4) So much of any reimbursement expenditure as, in accordance with subsection (5) below, is qualifying expenditure shall be treated for the purposes of the principal Act as if it were expenditure incurred by the relevant participator for the purpose of obtaining an abandonment guarantee.
- (5) Subject to subsection (6) below, of the reimbursement expenditure which is incurred in the relevant period, the amount which constitutes qualifying expenditure shall be determined by the formula—

$$A \times \frac{B}{C}$$

where—

- “A” is the reimbursement expenditure incurred in the relevant period;  
“B” is so much of the expenditure represented by the guarantee payment as, if it had been incurred by the relevant participator, would have constituted expenditure allowable under section 3 of the principal Act; and  
“C” is the total of the sums which, at or before the end of the relevant period, the participator is or has become liable to pay to the guarantor as mentioned in subsection (1)(b) above.

- (6) In relation to the guarantee payment, the total of the reimbursement expenditure (whether incurred in one or more claim periods) which constitutes qualifying expenditure shall not exceed whichever is the less of “B” and “C” in the formula in subsection (5) above; and any limitation on qualifying expenditure arising by virtue of this subsection shall be applied to the expenditure of a later in preference to an earlier claim period.
- (7) For the purposes of this section, the expenditure represented by the guarantee payment is any expenditure—
- (a) for which the relevant participator is liable; and
  - (b) which is met, directly or indirectly, out of the guarantee payment (and which, accordingly, by virtue of section 105 above is not to be regarded as expenditure incurred by the relevant participator).
- (8) In this section “the guarantor” and “the relevant participator” have the same meaning as in subsection (1) of section 104 above.

**107 Allowance of expenditure of participator meeting defaulter's field abandonment expenditure**

- (1) In Schedule 5 to the principal Act (procedure for allowance of expenditure) at the beginning of paragraph (b) of sub-paragraph (4) of paragraph 2 (claim must state the shares, by reference to their respective interests in the oil field, in which participators propose to divide expenditure) there shall be inserted “Subject to paragraph 2A below”.
- (2) After paragraph 2 of Schedule 5 to the principal Act there shall be inserted the following paragraph—
- “2A (1) This paragraph applies where—
- (a) a claim is made under this Schedule for the allowance of any expenditure which is incurred after 30th June 1991 and is allowable for an oil field by virtue of paragraph (i) or paragraph (j) of subsection (1) of section 3 of this Act (in this paragraph referred to as “the abandonment expenditure”);
  - (b) a participator (in this paragraph referred to as “the defaulter”) has defaulted on his liability under a relevant agreement to make a payment towards the abandonment expenditure;
  - (c) at the end of the claim period for which the claim is made, the defaulter still has an interest in the oil field which falls to be taken into account in determining, under paragraph 2(4)(b) above, the shares of each of the participators in the abandonment expenditure;
  - (d) the participators (other than any who have defaulted as mentioned in paragraph (b) above) have taken all reasonable steps by way of legal remedy to secure that the defaulter meets the whole of the liability referred to in paragraph (b) above and to enforce any guarantee or other security provided in respect of that liability; and
  - (e) one or more of those participators has paid an amount in or towards meeting the whole or any part of the payment for which the defaulter was liable as mentioned in paragraph (b) above.
- (2) For the purposes of this paragraph, a participator is to be regarded as defaulting on his liability to make a payment as mentioned in sub-paragraph (1)(b) above if he has failed to make the payment in full on the date on which it becomes due under the relevant agreement and either—
- (a) on the sixtieth day after that due date any of the payment remains unpaid; or
  - (b) before that sixtieth day the participator's interest in a relevant licence becomes liable under the relevant agreement to be sold or forfeited, in whole or in part, by reason of his failure to meet his liability.
- (3) In this paragraph—
- (a) “relevant agreement” has the meaning given by section 104(5)(a) of the Finance Act 1991;
  - (b) “the sum in default” means so much of the payment referred to in sub-paragraph (1)(b) above as has neither been paid by the

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- defaulter nor met by virtue of any such guarantee or security as is referred to in sub-paragraph (1)(d) above;
- (c) the “default payment” means the amount which the qualifying participator has paid as mentioned in sub-paragraph (1)(e) above; and
  - (d) a “qualifying participator” means a participator who falls within sub-paragraph (1)(e) above and who is not connected with the defaulter, applying section 839 of the Taxes Act (connected persons) for the purposes of this paragraph.
- (4) For the purposes of paragraphs 2(4)(b) and 3(1)(c) of this Schedule, there shall be attributed to a qualifying participator (as an addition to the share of the abandonment expenditure referable to his own interest in the oil field) whichever is the less of—
- (a) the default payment; and
  - (b) subject to sub-paragraph (5) below, that portion of the sum in default which, in accordance with the relevant agreement, the qualifying participator is required to meet in the event of a failure by the defaulter to meet his liability to pay in full the payment referred to in sub-paragraph (1)(b) above.
- (5) If, in the case of any oil field, there are only two participators and one of them is the defaulter, the portion referred to in sub-paragraph (4)(b) above is the whole.
- (6) Where this paragraph applies, account shall, in the first instance, be taken under paragraph 2(4)(b) above of the whole of the defaulter’s interest in the oil field in determining the share of the abandonment expenditure which, apart from sub-paragraph (4) above, is to be attributed to each of the other participators; but the amount of the abandonment expenditure which, apart from this paragraph, would be attributed to the defaulter by reference to his interest in the oil field shall be reduced (or, as the case may be, extinguished) by deducting therefrom any expenditure attributed to the other participators under sub-paragraph (4) above.”

## **108 Reimbursement by defaulter in respect of certain abandonment expenditure**

- (1) This section applies in any case where—
- (a) paragraph 2A of Schedule 5 to the principal Act (as set out in section 107 above) applies; and
  - (b) under sub-paragraph (4) of that paragraph the default payment falls, in whole or in part, to be attributed to the qualifying participator (as an addition to his share of the abandonment expenditure); and
  - (c) expenditure is incurred, or consideration in money’s worth is given, by the defaulter in reimbursing the qualifying participator in respect of, or otherwise making good to him, the whole or any part of the default payment;
- and expressions used in this section have the same meaning as in the said paragraph 2A.
- (2) In the following provisions of this section “reimbursement expenditure” means expenditure incurred as mentioned in subsection (1)(c) above or consideration (or, as the case may require, the value of consideration) given as so mentioned; and

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any reference to the incurring of reimbursement expenditure shall be construed accordingly.

- (3) Subject to subsection (5) below, in relation to the defaulter, reimbursement expenditure shall be treated for the purposes of the principal Act as if it were expenditure incurred by the defaulter for purposes falling within paragraph (i) of subsection (1) of section 3 of that Act.
- (4) Subject to subsection (5) below, in computing under section 2 of the principal Act the assessable profit or allowable loss accruing to the qualifying participator from the oil field concerned in any chargeable period, the positive amounts for the purposes of that section (as specified in subsection (3)(a) thereof) shall be taken to include any reimbursement expenditure received by the qualifying participator in that period.
- (5) In relation to a particular default payment, reimbursement expenditure incurred at any time—
  - (a) shall be treated as mentioned in subsection (3) above, and
  - (b) shall be taken to be included as mentioned in subsection (4) above,only to the extent that, when aggregated with any reimbursement expenditure previously incurred in respect of that default payment, it does not exceed so much of the default payment as falls to be attributed to the qualifying participator as mentioned in subsection (1)(b) above.
- (6) A claim by the defaulter for the allowance of reimbursement expenditure by virtue of subsection (3) above shall be made under Schedule 6 to the principal Act (instead of under Schedule 5); and, for this purpose only, Schedule 6 to that Act shall have effect as if, in sub-paragraph (1) of paragraph 1, the words from “if the participator” onwards were omitted.
- (7) The incurring of reimbursement expenditure shall not be regarded, by virtue of paragraph 8 of Schedule 3 to the principal Act (certain subsidised expenditure to be disregarded), as the meeting of the expenditure of the qualifying participator in making the default payment.