Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

PART VI

COMPANIES, OIL, INSURANCE ETC.

CHAPTER II

OIL AND MINING INDUSTRIES

Oil exploration and exploitation

193 Roll-over relief not available for gains on oil licences

(1) A licence under the Petroleum (Production) Act 1934 or the Petroleum (Production) Act (Northern Ireland) 1964 is not and, subject to subsection (2) below, shall be assumed never to have been an asset falling within any of the classes in section 155.

(2) Nothing in subsection (1) above affects the determination of any Commissioners or the judgment of any court made or given before 14th May 1987.

194 Disposals of oil licences relating to undeveloped areas

(1) In this section any reference to a disposal (including a part disposal) is a reference to a disposal made by way of a bargain at arm's length.

(2) If, at the time of the disposal, the licence relates to an undeveloped area, then, to the extent that the consideration for the disposal consists of—

(a) another licence which at that time relates to an undeveloped area or an interest in another such licence, or

(b) an obligation to undertake exploration work or appraisal work in an area which is or forms part of the licensed area in relation to the licence disposed of,

the value of that consideration shall be treated as nil for the purposes of this Act.

(3) If the disposal of a licence which, at the time of the disposal, relates to an undeveloped area is part of a larger transaction under which one party makes to another disposals of 2 or more licences, each of which at the time of the disposal relates to an undeveloped area, the reference in subsection (2)(b) above to the licensed area in relation to the licence disposed of shall be construed as a reference to the totality of the licensed areas in relation to those 2 or more licences.

(4) In relation to a disposal of a licence which, at the time of the disposal, relates to an undeveloped area, being a disposal—

(a) which is a part disposal of the licence in question, and

(b) part but not the whole of the consideration for which falls within paragraph (a) or paragraph (b) of subsection (2) above,

section 42 shall not apply unless the amount or value of the part of the consideration which does not fall within one of those paragraphs is less than the aggregate of the amounts which, if the disposal were a disposal of the whole of the licence rather than a part disposal, would be—

(i) the relevant allowable expenditure, as defined in section 53; and

(ii) the indexation allowance on the disposal.

(5) Where section 42 has effect in relation to such a disposal as is referred to in subsection (4) above, it shall have effect as if, for subsection (2) thereof, there were substituted the following subsection—

"(2) The apportionment shall be made by reference to—

(a) the amount or value of the consideration for the disposal on the one hand (call that amount or value A), and

(b) the aggregate referred to in section 194(4) on the other hand (call that aggregate C),

and the fraction of the said sums allowable as a deduction in computing the amount of the gain (if any) accruing on the disposal shall be—

$$\frac{A}{C}$$

and the remainder shall be attributed to the part of the property which remains undisposed of."

195 Allowance of certain drilling expenditure etc

(1) On the disposal of a licence, relevant qualifying expenditure incurred by the person making the disposal—

(a) in searching for oil anywhere in the licensed area, or

(b) in ascertaining the extent or characteristics of any oil-bearing area the whole or part of which lies in the licensed area or what the reserves of oil of any such oil-bearing area are,

shall be treated as expenditure falling within section 38(1)(b).

(2) Expenditure incurred as mentioned in subsection (1) above is relevant expenditure if, and only if—

(a) it is expenditure of a capital nature on scientific research; and

(b) either it was allowed or allowable under section 137 of the 1990 Act (capital expenditure on scientific research) for a relevant chargeable period which, or the basis year for which, began before the date of the disposal or it would have been so allowable if the trading condition had been fulfilled; and

(c) the disposal is an occasion by virtue of which section 138 of the 1990 Act (termination of user of assets representing scientific research expenditure of a capital nature) applies in relation to the expenditure or would apply if the trading condition had been fulfilled and the expenditure had been allowed accordingly.

(3) In subsection (2) above and subsection (4) below, the expression "if the trading condition had been fulfilled" means, in relation to expenditure of a capital nature on scientific research, if, after the expenditure was incurred but before the disposal concerned was made, the person incurring the expenditure had set up and commenced a trade connected with that research; and in subsection (2)(b) above—

"relevant chargeable period" has the same meaning as in section 137 of the 1990 Act; and

"basis year" has the same meaning as in subsection (6)(c) of that section.

(4) Relevant expenditure is qualifying expenditure only to the extent that it does not exceed the trading receipt which, by reason of the disposal—

(a) is treated as accruing under section 138(2) of the 1990 Act; or

(b) would be treated as so accruing if the trading condition had been fulfilled and the expenditure had been allowed accordingly.

(5) On the disposal of a licence, sections 37 and 41 shall apply in relation to any such trading receipt as is mentioned in subsection (4)(a) above as if it were a balancing charge falling to be made by reference to the disposal.

(6) Where, on the disposal of a licence, subsection (1) above has effect in relation to any relevant qualifying expenditure which had not in fact been allowed or become allowable as mentioned in subsection (2)(b) above—

(a) no allowance shall be made in respect of that expenditure under section 137 of the 1990 Act; and

(b) no deduction shall be allowed in respect of it under section 138(3) of that Act.

(7) Where, on the disposal of a licence which is a part disposal, subsection (1) above has effect in relation to any relevant qualifying expenditure, then, for the purposes of section 42, that expenditure shall be treated as wholly attributable to what is disposed of (and, accordingly, shall not be apportioned as mentioned in that section).

196 Interpretation of sections 194 and 195

(1) For the purposes of section 194, a licence relates to an undeveloped area at any time if—

(a) for no part of the licensed area has consent for development been granted to the licensee by the Secretary of State on or before that time; and

(b) for no part of the licensed area has a programme of development been served on the licensee or approved by the Secretary of State on or before that time.

(2) Subsections (4) and (5) of section 36 of the Finance Act 1983 (meaning of "development") shall have effect in relation to subsection (1) above as they have effect in relation to subsection (2) of that section.

(3) In relation to a licence under the Petroleum (Production) Act (Northern Ireland) 1964 any reference in subsection (1) above to the Secretary of State shall be construed as a reference to the Department of Economic Development.

(4) In relation to a disposal to which section 194 applies of a licence under which the buyer acquires an interest in the licence only so far as it relates to part of the licensed area, any reference in subsection (1) or subsection (3) of that section or subsection (1) above to the licensed area shall be construed as a reference only to that part of the licensed area to which the buyer's acquisition relates.

(5) In sections 194 and 195 and the preceding provisions of this section "oil", "licence", "licensee" and, subject to subsection (4) above, "licensed area" have the meaning assigned by section 12(1) of the Oil Taxation Act 1975.

(6) In section 194—

(a) "exploration work", in relation to any area, means work carried out for the purpose of searching for oil anywhere in that area;

(b) "appraisal work", in relation to any area, means work carried out for the purpose of ascertaining the extent or characteristics of any oil-bearing area the whole or part of which lies in the area concerned or what the reserves of oil of any such oil-bearing area are.

197 Disposals of interests in oil fields etc: ring fence provisions

(1) This section applies where in pursuance of a transfer by a participator in an oil field of the whole or part of his interest in the field, there is—

(a) a disposal of an interest in oil to be won from the oil field; or

(b) a disposal of an asset used in connection with the field;

and section 12 of the Oil Taxation Act 1975 (interpretation of Part I of that Act) applies for the interpretation of this subsection and the reference to the transfer by a participator in an oil field of the whole or part of his interest in the field shall be construed in accordance with paragraph 1 of Schedule 17 to the Finance Act 1980.

(2) In this section "material disposal" means—

(a) a disposal falling within paragraph (a) or paragraph (b) of subsection (1) above; or

(b) the sale of an asset referred to in section 178(3) or 179(3) where the asset was acquired by the chargeable company (within the meaning of that section) on a disposal falling within one of those paragraphs.

(3) For any chargeable period in which a chargeable gain or allowable loss accrues to any person ("the chargeable person") on a material disposal (whether taking place in that period or not), subject to subsection (6) below there shall be aggregated—

(a) the chargeable gains accruing to him in that period on such disposals, and

(b) the allowable losses accruing to him in that period on such disposals,

and the lesser of the 2 aggregates shall be deducted from the other to give an aggregate gain or, as the case may be, an aggregate loss for that chargeable period.

(4) For the purposes of tax in respect of chargeable gains—

(a) the several chargeable gains and allowable losses falling within paragraphs (a) and (b) of subsection (3) above shall be left out of account; and

(b) the aggregate gain or aggregate loss referred to in that subsection shall be treated as a single chargeable gain or allowable loss accruing to the chargeable person in the chargeable period concerned on the notional disposal of an asset; and

(c) if in any chargeable period there is an aggregate loss, then, except as provided by subsection (5) below, it shall not be allowable as a deduction against any chargeable gain arising in that or any later period, other than an aggregate gain treated as accruing in a later period by virtue of paragraph (b) above (so that the aggregate gain of that later period shall be reduced or extinguished accordingly); and

(d) if in any chargeable period there is an aggregate gain, no loss shall be deducted from it except in accordance with paragraph (c) above; and

(e) without prejudice to any indexation allowance which was taken into account in determining an aggregate gain or aggregate loss under subsection (3) above, no further indexation allowance shall be allowed on a notional disposal referred to in paragraph (b) above.

(5) In any case where—

(a) by virtue of subsection (4)(b) above, an aggregate loss is treated as accruing to the chargeable person in any chargeable period, and

(b) before the expiry of the period of 2 years beginning at the end of the chargeable period concerned, the chargeable person makes a claim under this subsection,

the whole, or such portion as is specified in the claim, of the aggregate loss shall be treated for the purposes of this Act as an allowable loss arising in that chargeable period otherwise than on a material disposal.

(6) In any case where a loss accrues to the chargeable person on a material disposal made to a person who is connected with him—

(a) the loss shall be excluded from those referred to in paragraph (b) of subsection (3) above and, accordingly, shall not be aggregated under that subsection; and

(b) except as provided by subsection (7) below, section 18 shall apply in relation to the loss as if, in subsection (3) of that section, any reference to a disposal were a reference to a disposal which is a material disposal; and

(c) to the extent that the loss is set against a chargeable gain by virtue of paragraph (b) above, the gain shall be excluded from those referred to in paragraph (a) of subsection (3) above and, accordingly, shall not be aggregated under that subsection.

(7) In any case where—

(a) the losses accruing to the chargeable person in any chargeable period on material disposals to a connected person exceed the gains accruing to him in that chargeable period on material disposals made to that person at a time when they are connected persons, and

(b) before the expiry of the period of 2 years beginning at the end of the chargeable period concerned, the chargeable person makes a claim under this subsection,

the whole, or such part as is specified in the claim, of the excess referred to in paragraph (a) above shall be treated for the purposes of section 18 as if it were a loss accruing on a disposal in that chargeable period, being a disposal which is not a material disposal and which is made by the chargeable person to the connected person referred to in paragraph (a) above.

(8) Where a claim is made under subsection (5) or subsection (7) above, 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 operation of that subsection.

198 Replacement of business assets used in connection with oil fields

(1) If the consideration which a person obtains on a material disposal is applied, in whole or in part, as mentioned in subsection (1) of section 152 or 153, that section shall not apply unless the new assets are taken into use, and used only, for the purposes of the ring fence trade.

(2) Subsection (1) above has effect notwithstanding subsection (8) of section 152.

(3) Where section 152 or 153 applies in relation to any of the consideration on a material disposal, the asset which constitutes the new assets for the purposes of that section shall be conclusively presumed to be a depreciating asset, and section 154 shall have effect accordingly, except that—

(a) the reference in subsection (2)(b) of that section to a trade carried on by the claimant shall be construed as a reference solely to his ring fence trade; and

(b) subsections (4) to (7) of that section shall be omitted.

(4) In any case where sections 152 to 154 have effect in accordance with subsections (1) to (3) above, the operation of section 175 shall be modified as follows—

(a) only those members of a group which actually carry on a ring fence trade shall be treated for the purposes of those sections as carrying on a single trade which is a ring fence trade; and

(b) only those activities which, in relation to each individual member of the group, constitute its ring fence trade shall be treated as forming part of that single trade.

(5) In this section—

(a) "material disposal" has the meaning assigned to it by section 197; and

(b) "ring fence trade" means a trade consisting of either or both of the activities mentioned in paragraphs (a) and (b) of subsection (1) of section 492 of the Taxes Act.

199 Exploration or exploitation assets: deemed disposals

(1) Where an exploration or exploitation asset which is a mobile asset ceases to be chargeable in relation to a person by virtue of ceasing to be dedicated to an oil field in which he, or a person connected with him, is or has been a participator, he shall be deemed for all purposes of this Act—

(a) to have disposed of the asset immediately before the time when it ceased to be so dedicated, and

(b) immediately to have reacquired it,

at its market value at that time.

(2) Where a person who is not resident and not ordinarily resident in the United Kingdom ceases to carry on a trade in the United Kingdom through a branch or agency, he shall be deemed for all purposes of this Act—

(a) to have disposed immediately before the time when he ceased to carry on the trade in the United Kingdom through a branch or agency of every asset to which subsection (3) below applies, and

(b) immediately to have reacquired every such asset,

at its market value at that time.

(3) This subsection applies to any exploration or exploitation asset, other than a mobile asset, used in or for the purposes of the trade at or before the time of the deemed disposal.

(4) A person shall not be deemed by subsection (2) above to have disposed of an asset if, immediately after the time when he ceases to carry on the trade in the United Kingdom through a branch or agency, the asset is used in or for the purposes of exploration or exploitation activities carried on by him in the United Kingdom or a designated area.

(5) Where in a case to which subsection (4) above applies the person ceases to use the asset in or for the purposes of exploration or exploitation activities carried on by him in the United Kingdom or a designated area, he shall be deemed for all purposes of this Act—

(a) to have disposed of the asset immediately before the time when he ceased to use it in or for the purposes of such activities, and

(b) immediately to have reacquired it,

at its market value at that time.

(6) For the purposes of this section an asset is at any time a chargeable asset in relation to a person if, were it to be disposed of at that time, any chargeable gains accruing to him on the disposal—

(a) would be gains in respect of which he would be chargeable to capital gains tax under section 10(1), or

(b) would form part of his chargeable profits for corporation tax purposes by virtue of section 10(3).

(7) In this section—

(a) "exploration or exploitation asset" means an asset used in connection with exploration or exploitation activities carried on in the United Kingdom or a designated area;

(b) "designated area" and "exploration or exploitation activities" have the same meanings as in section 276; and

(c) the expressions "dedicated to an oil field" and "participator" shall be construed as if this section were included in Part I of the Oil Taxation Act 1975.

200 Limitation of losses on disposal of oil industry assets held on 31st March 1982

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

(a) the person making the disposal held the asset on 31st March 1982 or, by virtue of paragraph 1 of Schedule 3, is treated as having held the asset on that date for the purposes of section 35;

(b) disregarding the following provisions of this section, for the purposes of this Act, a loss would accrue on the disposal; and

(c) in the application of section 35 subsection (2) of that section does not apply because of the operation of subsection (3)(b) of that section.

(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 paragraph 7(2)(d) of Schedule 3;

(c) oil exploration or exploitation assets, which expression shall be construed, subject to subsection (3) below, in accordance with paragraph 7(5) and (6) of Schedule 3; and

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

(3) In the application of paragraph 7(5)(b) of Schedule 3 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 section 35(2) continues not to apply on the disposal; and

(b) that, in calculating the indexation allowance on the disposal, section 55(1) 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)(b) above, it shall be assumed for the purposes of this Act 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 this Act 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.

Mineral leases

201 Royalties

(1) A person resident or ordinarily resident in the United Kingdom who in any chargeable period is entitled to receive any mineral royalties under a mineral lease or agreement shall be treated for the purposes of this Act as if there accrued to him in that period a chargeable gain equal to one-half of the total of the mineral royalties receivable by him under that lease or agreement in that period.

(2) This section shall have effect notwithstanding any provision of section 119(1) of the Taxes Act making the whole of certain kinds of mineral royalties chargeable to tax under Schedule D, but without prejudice to any provision of that section providing

for any such royalties to be subject to deduction of income tax under section 348 or 349 of that Act.

(3) The amount of the chargeable gain treated as accruing to any person by virtue of subsection (1) above shall, notwithstanding any other provision of this Act, be the whole amount calculated in accordance with that subsection, and, accordingly, no reduction shall be made on account of expenditure incurred by that person or of any other matter whatsoever.

(4) In any case where, before the commencement of section 122 of the Taxes Act, for the purposes of the 1979 Act or corporation tax on chargeable gains a person was treated as if there had accrued to him in any chargeable period ending before 6th April 1988 a chargeable gain equal to the relevant fraction, determined in accordance with section 29(3)(b) of the Finance Act 1970, of the total of the mineral royalties receivable by him under that lease or agreement in that period, subsection (1) above shall have effect in relation to any mineral royalties receivable by him under that lease or agreement in any later chargeable period with the substitution for the reference to one-half of a reference to the relevant fraction as so determined.

202 Capital losses

(1) This section has effect in relation to capital losses which accrue during the currency of a mineral lease or agreement, and applies in any case where, at the time of the occurrence of a relevant event in relation to a mineral lease or agreement, the person who immediately before that event occurred was entitled to receive mineral royalties under the lease or agreement ("the taxpayer") has an interest in the land to which the mineral lease or agreement relates ("the relevant interest").

(2) For the purposes of this section, a relevant event occurs in relation to a mineral lease or agreement—

(a) on the expiry or termination of the mineral lease or agreement;

(b) if the relevant interest is disposed of, or is treated as having been disposed of by virtue of any provision of this Act.

(3) On the expiry or termination of a mineral lease or agreement the taxpayer shall, if he makes a claim in that behalf, be treated for purposes of tax in respect of chargeable gains as if he had disposed of and immediately reacquired the relevant interest for a consideration equal to its market value, but a claim may not be made under this subsection—

(a) if the expiry or termination of the mineral lease or agreement is also a relevant event falling within subsection (2)(b) above; nor

(b) unless, on the notional disposal referred to above, an allowable loss would accrue to the taxpayer.

(4) In this section "the terminal loss", in relation to a relevant event in respect of which a claim is made under subsection (3) above, means the allowable loss which accrues to the taxpayer by virtue of the notional disposal occurring on that relevant event by virtue of that subsection.

(5) On making a claim under subsection (3) above, the taxpayer shall specify whether he requires the terminal loss to be dealt with in accordance with subsection (6) or subsections (9) to (11) below.

(6) Where the taxpayer requires the loss to be dealt with in accordance with this subsection it shall be treated as an allowable loss accruing to him in the chargeable period in which the mineral lease or agreement expires.

(7) If on the occurrence of a relevant event falling within subsection (2)(b) above, an allowable loss accrues to the taxpayer on the disposal or notional disposal which constitutes that relevant event, the taxpayer may make a claim under this subsection requiring the loss to be dealt with in accordance with subsections (9) to (11) below and not in any other way.

(8) In subsections (9) to (11) below "the terminal loss" in relation to a relevant event in respect of which a claim is made under subsection (7) above means the allowable loss which accrues to the taxpayer as mentioned in that subsection.

(9) Where, as a result of a claim under subsection (3) or (7) above, the terminal loss is to be dealt with in accordance with this subsection, then, subject to subsection (10) below, it shall be deducted from or set off against the amount on which the taxpayer was chargeable to capital gains tax, or as the case may be corporation tax, for chargeable periods preceding that in which the relevant event giving rise to the terminal loss occurred and falling wholly or partly within the period of 15 years ending with the date of that event.

(10) The amount of the terminal loss which, by virtue of subsection (9) above, is to be deducted from or set off against the amount on which the taxpayer was chargeable to capital gains tax, or as the case may be corporation tax, for any chargeable period shall not exceed the amount of the gain which in that period was treated, by virtue of section 201(1), as accruing to the taxpayer in respect of mineral royalties under the mineral lease or agreement in question; and subject to this limit any relief given to the taxpayer by virtue of subsection (9) above shall be given as far as possible for a later rather than an earlier chargeable period.

(11) If in any case where relief has been given to the taxpayer in accordance with subsections (9) and (10) above there remains an unexpended balance of the terminal loss which cannot be applied in accordance with those subsections, there shall be treated as accruing to the taxpayer in the chargeable period in which the relevant event occurs an allowable loss equal to that unexpended balance.

203 Provisions supplementary to sections 201 and 202

(1) Subsections (5) to (7) of section 122 of the Taxes Act (meaning of "minerals" etc.) shall apply for the interpretation of this section and sections 201 and 202 as they apply for the interpretation of that section.

(2) No claim under section 202(3) or (7) shall be allowed unless it is made within 6 years from the date of the relevant event by virtue of which the taxpayer is entitled to make the claim.

(3) All such repayments of tax shall be made as may be necessary to give effect to any such claim.