# EXPLANATORY MEMORANDUM TO

# THE QUALIFYING OIL FIELDS ORDER 2012

# 2012 No. 3153

**1.** This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ('HMRC') and is laid before the House of Commons by Command of Her Majesty.

## 2. Purpose of the instrument

2.1 This instrument extends the scope of an existing tax relief (field allowance) which applies to oil and gas fields whose development is technically or commercially challenging. It does so by extending the definition of one of the existing descriptions of oil fields ("small oil fields") which qualify for the allowance so as to bring more fields within its scope and increases the amount of the maximum allowance to which such fields are entitled; in addition it creates two new descriptions of oil field ("large deep water oil fields" and "large shallow water gas fields"), which qualify for the allowance. Finally, the instrument makes minor technical amendments so as to incorporate all legislation relating to the field allowance within a single Act.

## 3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

## 4. Legislative Context

4.1 Part 8 of the Corporation Tax Act 2010 (c.4) ("CTA 2010") puts a "ring fence" around a company's profits from oil and gas production to ensure they are not reduced by losses the company incurs in other areas of its business. Ring fenced profits are subject to corporation tax and to an additional tax called the supplementary charge.

4.2 When certain criteria are met, a field allowance is available to a company. The field allowance reduces the ring fence profits to which the supplementary charge applies. The field allowance was introduced by Schedule 44 to the Finance Act 2009 (c.10) and is now found in Chapter 7 of Part 8 of the CTA 2010.

4.3 The field allowance regime applies to any oil field that satisfies one of a number of descriptions of oil field that are set out in sections 350 to 355 of the CTA 2010 and article 3 of the Field Allowance for New Oil Fields Order 2010 (S.I. 2010/610) ("2010 Order"), while sections 356 CTA 2010 and article 7 of the 2010 Order specify the amount of the allowance to which the licensees in a particular description of oil field are entitled.

4.4 This instrument extends the scope of the field allowance by amending Part 8 of the CTA 2010 to include two descriptions of oil field which qualify for the field allowance, and specifies the amount of the allowance to which a field that meets either of those new categories is entitled. It also extends the scope of the field allowance available for small oil fields by amending the definition of a "small oil field" in section 353 CTA and amends section 356(2) CTA so as to increase the total amount of field allowance to which the licensees in such oil fields are entitled. Finally this instrument revokes the 2010 Order and incorporates its material provisions into the CTA 2010 so as to bring all of the existing categories of field allowances within the same legislation.

4.5 The changes to the allowance for small oil fields and the introduction of a new description of qualifying field for large deep water oil fields were announced at Budget 2012. The introduction of a new description of qualifying field for large shallow water gas fields was announced on 25 July 2012.

4.6 The instrument has retrospective effect. The effect of each extension to the scope of the allowance is backdated to the date of announcement of the introduction of or change to the allowance to ensure companies have no incentive to delay authorisation of field developments that meet the qualifying criteria for the amended allowance. The power to make this retrospective provision is provided for by section 349(3)(b) CTA.

## 5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

## 6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury, Sajid Javid MP, has made the following statement regarding Human Rights:

> In my view the provisions of the Qualifying Oil Fields Order 2012 are compatible with the Convention rights.

## 7. Policy background

7.1 The policy aim of the field allowance is to provide an incentive to increase the economic production of oil and gas in the UKCS by encouraging the development of technically or commercially challenging oil and gas fields. It does this by a statutory mechanism which operates so as to provide that such fields are, in effect, subject to a lower rate of taxation than that to which oil extraction activities would usually be subject. Maximising the economic recovery of the UK's indigenous hydrocarbons benefits UK taxpayers and supports the security of the UK's energy supply.

7.2 This Order furthers the policy aim of the field allowance by providing an allowance for a wider range of technically and commercially challenging oil and gas fields. The Government believes that introducing additional descriptions of qualifying field, and making changes to the existing small field allowance, will contribute to the economic production of oil and gas by facilitating investment in commercially marginal oil and gas fields that might not otherwise be developed.

7.3 This instrument inserts the changes to the field allowance legislation in the primary legislation, and also consolidates there the earlier instrument relating to deep water gas fields.

## 8. Consultation outcome

8.1 HMRC has not followed the consultation procedure set out in the Tax Consultation Framework. This is because this measure increases the scope of an existing tax relief but does not materially alter the way in which the relief operates. The field allowance regime is itself well established and its operation has been subject to extensive informal engagement between Government and representative industry bodies. Government's intention to extend the scope of the field allowance regime was first announced on Budget Day, with a further announcement in July.

8.2 Consultation on the form of the draft legislation has been undertaken with the oil and gas industry tax representative bodies over a 2 week period. The draft legislation was also published on the HMRC website. No responses were received.

## 9. Guidance

9.1 HMRC will publish guidance on this Order shortly.

## 10. Impact

10.1 No regulatory impact on business, charities or voluntary bodies is foreseen.

10.2 No impact on the public sector is foreseen.

10.3 A Tax Information and Impact Note covering this instrument was published on 23rd October 2012 on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm.

## 11. Regulating small business

11.1 The legislation provides for a relief from a tax to which all oil and gas production companies operating in the UK or UK Continental Shelf are already subject. Entitlement to the relief is automatic with no need to submit a claim to HMRC. It is therefore not considered that legislation providing for this relief from tax would have any adverse impact upon small business.

## 12. Monitoring & review

12.1 These Regulations will not be subject to specific monitoring or review although the field allowance legislation is regularly reviewed to ensure it meets its policy objectives.

## 13. Contact

13.1 Hugh Hedges at HMRC Tel: 020 7438 6576 or email: hugh.hedges@hmrc.gsi.gov.uk can answer any queries regarding the instrument.