

Status: Point in time view as at 21/07/2008.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001, Part 1. (See end of Document for details)

SCHEDULES

SCHEDULE 22

REMEDICATION OF CONTAMINATED LAND

PART 1

DEDUCTION FOR CAPITAL EXPENDITURE

Modifications etc. (not altering text)

C1 Sch. 22 Pt. 1 applied (11.5.2001) by 1988 c. 1, s. 21A(5) (as inserted (11.5.2001) by 2001 c. 9, s. 70, Sch. 23 para. 1)

Deduction for capital expenditure

- 1 (1) This paragraph applies if—
- (a) land in the United Kingdom is, or has been, acquired by a company for the purposes of a trade carried on by the company,
 - (b) at the time of acquisition all or part of the land is or was in a contaminated state (see paragraph 3), and
 - (c) the company incurs capital expenditure which is qualifying land remediation expenditure in respect of the land (see paragraph 2).
- (2) For the purposes of corporation tax such capital expenditure as is qualifying land remediation expenditure shall (if the company so elects) be allowed as a deduction in computing the profits of the trade for the accounting period in which that expenditure is incurred.
- (3) For the purposes of sub-paragraph (2) any capital expenditure incurred for the purposes of a trade by a company about to carry it on shall be treated as if it had been incurred by that company on the first day on which it does carry it on and in the course of doing so.
- (4) Sub-paragraph (2) shall not apply to so much of the qualifying land remediation expenditure as—
- (a) represents expenditure which has been allowed as a deduction in computing the profits arising from the trade for any accounting period preceding the period in which the expenditure is incurred, or
 - (b) represents capital expenditure in respect of which an allowance has been, or may be, made under the enactments relating to capital allowances.
- (5) A company is not entitled to a deduction under this paragraph in respect of expenditure on land all or part of which is in a contaminated state, if the land is in

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that state wholly or partly as a result of any thing done or omitted to be done at any time by the company or a person with a relevant connection to the company.

- (6) An election under this paragraph must specify the accounting period in respect of which it is made.
- (7) The election must be made by notice in writing to the Inland Revenue.
- (8) The notice must be given before the end of the period of two years beginning with the end of the company's accounting period to which the election relates.

Qualifying land remediation expenditure

- 2 (1) For the purposes of this Schedule “qualifying land remediation expenditure” of a company means expenditure of the company that meets the conditions in subparagraphs (2) to (6).
- (2) The first condition is that it is expenditure on land all or part of which is in a contaminated state (see paragraph 3).
- (3) The second condition is that the expenditure is expenditure on relevant land remediation directly undertaken by the company or on its behalf (see paragraph 4).
- (4) The third condition is that the expenditure is incurred—
 - (a) on employee costs (see paragraph 5), or
 - (b) on materials (see paragraph 6),
 or is qualifying expenditure on sub-contracted land remediation (see paragraphs 9 to 11).
- (5) The fourth condition is that the expenditure would not have been incurred had the land not been in a contaminated state (see paragraph 7).
- (6) The fifth condition is that the expenditure is not subsidised (see paragraph 8).

Land in a contaminated state

- 3 (1) For the purposes of this Schedule land is in a contaminated state if, and only if, it is in such a condition, by reason of substances in, on or under the land, that—
 - (a) harm is being caused or there is a possibility of harm being caused; or
 - (b) pollution of controlled waters is being, or is likely to be, caused.
- (2) For the purposes of this Schedule, a nuclear site is not land in a contaminated state.
- (3) In this paragraph a “nuclear site” means—
 - (a) any site in respect of which a nuclear site licence is for the time being in force, or
 - (b) any site in respect of which, after the revocation or surrender of a nuclear site licence, the period of responsibility of the licensee has not yet come to an end;
 and “nuclear site licence”, “licensee” and “period of responsibility” have the same meaning as in the Nuclear Installations Act 1965 (c. 57).

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Relevant land remediation

- 4 (1) For the purposes of this Schedule relevant land remediation, in relation to land acquired by a company, means—
- (a) activities falling within sub-paragraph (2), and
 - (b) if there are such activities, preparatory activity falling within sub-paragraph (4) which satisfies the condition in sub-paragraph (5).
- (2) The activities referred to in sub-paragraph (1)(a) are the doing of any works, the carrying out of any operations or the taking of any steps in relation to—
- (a) the land in question,
 - (b) any controlled waters affected by that land, or
 - (c) any land adjoining or adjacent to that land,
- for the purpose described in sub-paragraph (3).
- (3) The purpose referred to in sub-paragraph (2) is that of—
- (a) preventing or minimising, or remedying or mitigating the effects of, any harm, or any pollution of controlled waters, by reason of which the land is in a contaminated state; or
 - (b) restoring the land or waters to their former state.
- (4) The preparatory activity referred to in sub-paragraph (1)(b) is the doing of anything for the purpose of assessing the condition of—
- (a) the land in question,
 - (b) any controlled waters affected by that land, or
 - (c) any land adjoining or adjacent to that land.
- (5) Preparatory activity satisfies the condition referred to in sub-paragraph (1)(b) if it is activity connected to such activities falling within sub-paragraph (2) as are undertaken by the company (whether directly or on its behalf).
- (6) For the purposes of this paragraph, controlled waters are “affected by” land in a contaminated state if, and only if, the land in question is in such a condition, by reason of substances in, on or under the land, that pollution of those waters is being, or is likely to be, caused.

Employee costs

- 5 (1) For the purposes of this Schedule the employee costs of a company are—
- [^{F1}(a) the emoluments paid by the company to directors or employees of the company, including all salaries, wages, perquisites and profits whatsoever other than benefits in kind;]
 - (b) the secondary Class 1 national insurance contributions paid by the company; and
 - (c) the contributions paid by the company to any pension fund (within the meaning of section 231A(4) of the Taxes Act 1988) operated for the benefit of directors or employees of the company.

^{F2}(1A)

- (2) The employee costs of a company attributable to relevant land remediation are those paid to, or in respect of, directors or employees directly and actively engaged in that relevant land remediation.

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- (3) In the case of a director or employee partly engaged directly and actively in relevant land remediation the following rules apply—
- (a) if the time he spends so engaged is less than 20% of his total working time, none of the employee costs relating to him are treated as attributable to relevant land remediation;
 - (b) if the time he spends so engaged is more than 80% of his total working time, the whole of the employee costs relating to him are treated as attributable to relevant land remediation;
 - (c) in any other case, an appropriate proportion of the employee costs relating to him are treated as attributable to relevant land remediation.
- (4) For the purpose of sub-paragraphs (2) and (3) persons who provide services, such as secretarial or administrative services, in support of activities carried on by others, are not, by virtue of providing those services, to be treated as themselves directly and actively engaged in those activities.

Textual Amendments

- F1** Sch. 22 para. 5(1)(a) substituted (with effect in accordance with Sch. 17 para. 7(3) of the amending Act) by Finance Act 2004 (c. 12), **Sch. 17 para. 7(2)(a)**
- F2** Sch. 22 para. 5(1A) repealed (with effect in accordance with Sch. 17 para. 7(3) of the amending Act) by Finance Act 2004 (c. 12), Sch. 17 para. 7(2)(b), **Sch. 42 Pt. 2(12)**

Expenditure on materials

- 6 For the purposes of this Schedule expenditure on materials is attributable to relevant land remediation if the materials are employed directly in that relevant land remediation.

Expenditure incurred because of contamination

- 7 (1) Without prejudice to the generality of paragraph 2(5), this paragraph has effect for the purpose of determining whether expenditure would or would not have been incurred had not all or part of the land been in a contaminated state.
- (2) If expenditure on the land is increased by reason only that the land is in a contaminated state, the amount by which such expenditure is increased shall be considered to be expenditure satisfying the condition in paragraph 2(5).
- (3) If any works are done, operations are carried out or steps are taken mainly for the purpose described in paragraph 4(3), expenditure on such works, operations or steps shall be taken to satisfy the condition in paragraph 2(5).

Subsidised expenditure

- 8 (1) For the purposes of this Schedule a company's expenditure is treated as subsidised to the extent that—
- (a) a grant or subsidy is obtained in respect of the expenditure; or
 - (b) it is otherwise met directly or indirectly by any person other than the company.

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- (2) For the purposes of this Schedule a grant, subsidy or payment that is not allocated to particular expenditure shall be allocated to expenditure of the recipient in such manner as is just and reasonable.

Qualifying expenditure on sub-contracted land remediation

- 9 (1) The provisions of paragraphs 10 and 11 have effect for determining the amount of the qualifying expenditure of a company (“the company”) on sub-contracted land remediation.
- (2) For the purposes of this Schedule the company incurs expenditure on sub-contracted land remediation if it makes a payment (a “sub-contractor payment”) to another person (“the sub-contractor”) in respect of relevant land remediation contracted out by the company to that person.

Treatment of expenditure where company and sub-contractor are connected persons

- 10 (1) Where—
- (a) the company and the sub-contractor are connected persons, and
 - (b) in accordance with [^{F3}generally accepted accounting practice]—
 - (i) the whole of the sub-contractor payment has been brought into account in determining the sub-contractor’s profit or loss for a relevant period, and
 - (ii) all of the sub-contractor’s relevant expenditure has been so brought into account,the whole of the payment (up to the amount of the sub-contractor’s relevant expenditure) is qualifying expenditure on sub-contracted land remediation.
- (2) In sub-paragraph (1)—
- (a) references to the “relevant expenditure” of the sub-contractor are to expenditure that—
 - (i) is incurred by the sub-contractor in carrying on, on behalf of the company, the activities to which the sub-contractor payment relates,
 - (ii) is not of a capital nature,
 - (iii) is incurred on employee costs or materials, and
 - (iv) is not subsidised;
 - (b) a “relevant period” means a period—
 - (i) for which accounts are drawn up for the sub-contractor, and
 - (ii) that ends not more than twelve months after the end of the company’s period of account in which the sub-contractor payment is, in accordance with [^{F3}generally accepted accounting practice], brought into account in determining the company’s profit or loss.
- (3) Paragraph 5 (employee costs) and paragraph 8 (subsidised expenditure) apply for the purposes of determining whether the sub-contractor’s expenditure meets the requirements of sub-paragraph (2)(a)(iii) and (iv).

For this purpose the references in those paragraphs to a company shall be read as references to the sub-contractor.

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- (4) Any apportionment of expenditure of the company or the sub-contractor necessary for the purposes of this paragraph shall be made on a just and reasonable basis.

Textual Amendments

- F3** Words in Sch. 22 para. 10(1)(b) substituted (24.7.2002) by 2002 c. 23, s. 103(4)(h)
Words in Sch. 22 para. 10(2)(b)(ii) substituted (24.7.2002) by 2002 c. 23, s. 103(4)(h)

Treatment of sub-contractor payment in other cases

- 11 Where—
- (a) the company makes a sub-contractor payment, and
 - (b) paragraph 10 (treatment of expenditure where company and sub-contractor are connected) does not apply,
- the whole of the amount of the sub-contractor payment is treated as qualifying expenditure on sub-contracted land remediation.

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