

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, SCHEDULE 37. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 37 **U.K.**

Section 285

#### OIL TAXATION: TAX-EXEMPT TARIFFING RECEIPTS AND ASSETS PRODUCING THEM

#### PART 1 **U.K.**

##### AMENDMENTS OF THE OIL TAXATION ACT 1983 RELATING TO ALLOWABLE EXPENDITURE AND DISPOSAL RECEIPTS

###### *Introductory*

- 1 The Oil Taxation Act 1983 (c. 56) is amended in accordance with the following provisions of this Part.

###### *Expenditure incurred on long-term assets other than non-dedicated mobile assets*

- 2 (1) Section 3 (expenditure incurred on long-term assets other than non-dedicated mobile assets) is amended as follows.
- (2) In subsection (4) (whole of expenditure to be allowable, except as provided by the provisions there specified) for “section 4” substitute “sections 3A and 4”.

###### *Exclusion from s.3(4) of expenditure on assets giving rise to tax-exempt tariffing receipts*

- 3 After section 3 insert—

###### **“3A Exclusion from section 3(4) of expenditure on assets giving rise to tax-exempt tariffing receipts**

- (1) This section applies where—
- (a) expenditure incurred on or after 1st January 2004 falls within section 3 (1) above, but
  - (b) some of the use (or expected use) of the asset in relation to which the expenditure was incurred is use in a way that gives rise to tax-exempt tariffing receipts (see section 6A(2) below).
- (2) In any such case, such part of the expenditure as it is just and reasonable to apportion to the use mentioned in subsection (1)(b) above shall be excluded from the expenditure which is allowable as mentioned in section 3(4) above.”.

###### *Expenditure related to exempt gas: asset use giving rise to tax-exempt tariffing receipts*

- 4 (1) Section 4 (expenditure related to exempt gas and deballasting) is amended as follows.

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(2) After subsection (5) insert—

“(6) But where—

- (a) expenditure would (apart from this subsection) fall within paragraph (a) of subsection (5) above, and
- (b) the asset has, at any time in the period of 6 years ending with the date on which the expenditure was incurred, been used in a way that gives rise to tax-exempt tariffing receipts,

the expenditure shall not be regarded for the purposes of that subsection as expenditure incurred in enhancing the value of the asset with a view to the subsequent disposal of the asset, or of an interest in it, to the extent that the amount of the expenditure falls to be reduced in accordance with subsection (7) below.

(7) The reduction is to be made by applying section 7A below in relation to the expenditure as it applies in relation to disposal receipts in respect of a disposal, but with the substitution—

- (a) for references to the disponor, of references to the person incurring the expenditure (“the relevant participator”),
- (b) for references to the amount or value (apart from that section) of any disposal receipts of the disponor in respect of the disposal, of references to the amount which would, apart from subsection (6) above, be the amount of the expenditure incurred by the relevant participator with a view to the subsequent disposal of the asset or of an interest in it,
- (c) for references to the interest disposed of, of references to the asset or interest whose subsequent disposal gives or is expected to give rise to disposal receipts,
- (d) for references to the date of the disposal, of references to the date on which the expenditure was incurred,

and taking the reference in subsection (6)(b) of that section to a reduction made by virtue of that section as a reference to a reduction made by virtue of that section for the purposes of section 7(9) of this Act.”.

*Disposal receipts from assets used in a way that gives rise to tax-exempt tariffing receipts*

5 (1) Section 7 (chargeable receipts from disposals) is amended as follows.

(2) In subsection (4) (no account to be taken of disposal more than 2 years after cessation of use in connection with any oil field whatsoever or ceasing to give rise to tariff receipts)—

- (a) at the end of paragraph (b) insert “or
  - (c) ceases to give rise to tax-exempt tariffing receipts of that participator,”; and
- (b) in the closing words, for “later” substitute “ latest ”.

(3) After subsection (8) insert—

“(9) In determining the amount or value of the disposal receipts of the participator in question in a case where the qualifying asset has been used in a way that gives rise to tax-exempt tariffing receipts, the amount or value (apart from

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this subsection) of any disposal receipts of his in respect of the disposal shall be reduced in accordance with section 7A below.”.

(4) After section 7 insert—

**“7A Reduction of disposal receipts: use giving rise to tax-exempt tariffing receipts**

- (1) Where this section applies, the amount or value (apart from this section) of any disposal receipts of the participator (“the disponor”) in respect of the disposal shall be reduced in accordance with the following provisions of this section.
- (2) The reduction is to be made by multiplying that amount or value by the fraction that is equal to—

$$1 - \frac{T}{A}$$

(3) In that formula—

T is the aggregate of the tax-exempt tariffing use of the asset in the reference period by—

- (a) the disponor, so far as referable to the interest disposed of, and
- (b) each of the previous owners, so far as referable to that previous owner’s represented interest, and

A is the aggregate of all use of the asset in the reference period by—

- (a) the disponor, so far as referable to the interest disposed of, and
- (b) each of the previous owners, so far as referable to that previous owner’s represented interest,

but only taking into account for this purpose use of the asset by a person at a time when he is or was a participator in a taxable field.

(4) For the purposes of this section—

“the interest disposed of” means the asset, or the interest in an asset, the disposal of which gives rise to the disposal receipts mentioned in subsection (1) above;

“previous owner” means any person from whom the disponor directly or indirectly derives his title to the whole or any part of the interest disposed of;

“the reference period” means the shorter of the following periods ending with the date of the disposal—

- (a) the period of 6 years; or
- (b) the period beginning with the bringing into existence of the asset;

“represented interest”, in the case of a previous owner, means so much of the interest which that previous owner had in the asset as is represented in the interest disposed of;

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“tax-exempt tariffing use”, in relation to an asset, means use of the asset in a way that gives rise to tax-exempt tariffing receipts.

(5) Any apportionment that falls to be made for the purpose of determining a previous owner’s represented interest shall be made using a method which is just and reasonable, having regard to—

- (a) the proportion of any person’s interest that was acquired from any particular person, and
- (b) the proportion of any person’s interest that was transferred to any particular person.

(6) Where—

- (a) the donor or any previous owner acquired the asset or an interest in the asset from another person, and
- (b) on that other person’s corresponding disposal of the asset or interest a reduction was made by virtue of this section,

use of the asset shall not be brought into account in determining T or A in the formula in subsection (2) above to the extent that it was so brought into account in relation to that corresponding disposal.

(7) Where paragraph 9 of Schedule 2 to this Act (reduction of disposal receipts in respect of brought-in assets) applies in relation to an asset, no account shall be taken for the purposes of this section of any use of the asset during the initial period.

In this subsection “the initial period”, in relation to an asset, has the same meaning as it has in relation to that asset in paragraph 7 of Schedule 1 to this Act (restriction on allowable expenditure on brought-in asset).

(8) For the purposes of this section, the amount of use of an asset—

- (a) where the use is in relation to oil, is to be determined by reference to the volume of oil in relation to which the asset is used, and
- (b) where the use is otherwise than in relation to oil, is to be determined on a just and reasonable basis.

(9) For the purposes of this section, the extent to which use of an asset is referable to—

- (a) the interest disposed of, or
- (b) the represented interest of a previous owner,

shall be determined on a just and reasonable basis, having regard to the size of the interest in question and the size from time to time of the whole interest in the asset of the donor or, as the case may be, that previous owner.”.

*Assets no longer in use for the principal field*

6 (1) In Schedule 1 (allowable expenditure) in Part 1 (extensions of allowable expenditure for assets generating receipts) paragraph 3 is amended as follows.

(2) After sub-paragraph (2) insert—

“(2A) But where—

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- (a) the expenditure would (apart from this sub-paragraph) be regarded as incurred with a view to the subsequent disposal of the asset or of an interest in it, and
- (b) the asset has, at any time in the period of 6 years ending with the date on which the expenditure was incurred, been used in a way that gives rise to tax-exempt tariffing receipts,

the expenditure shall not be regarded for the purposes of this paragraph as expenditure incurred with a view to the subsequent disposal of the asset or of an interest in it, to the extent that the amount of the expenditure falls to be reduced in accordance with sub-paragraph (2B) below.

(2B) The reduction is to be made by applying section 7A of this Act in relation to the expenditure as it applies in relation to disposal receipts in respect of a disposal, but with the substitution—

- (a) for references to the disponor, of references to the participator incurring the expenditure (“the relevant participator”),
- (b) for references to the amount or value (apart from that section) of any disposal receipts of the disponor in respect of the disposal, of references to the amount which would, apart from sub-paragraph (2A) above, be the amount of the expenditure incurred by the relevant participator with a view to the subsequent disposal of the asset or of an interest in it,
- (c) for references to the interest disposed of, of references to the asset or interest whose subsequent disposal gives or is expected to give rise to disposal receipts,
- (d) for references to the date of the disposal, of references to the date on which the expenditure was incurred,

and taking the reference in subsection (6)(b) of that section to a reduction made by virtue of that section as a reference to a reduction made by virtue of that section for the purposes of section 7(9) of this Act.”.

#### *Brought-in assets*

- 7 (1) In Part 2 of Schedule 1, paragraph 7 is amended as follows.
- (2) In sub-paragraph (1)(c) (use of asset otherwise than in connection with a taxable field between acquisition etc and first use in connection with oil field)—
- (a) after “was used” insert “ (i) ”;
  - (b) after “otherwise than in connection with a taxable field,” insert “ or ”;
  - (c) after the word “or” so inserted, insert the following sub-paragraph—
    - “(ii) in connection with a taxable field in a way that gives rise to tax-exempt tariffing receipts,”.

#### *Subsequent use of new asset otherwise than in connection with a taxable field*

- 8 (1) In Part 2 of Schedule 1, paragraph 8 is amended as follows.
- (2) In sub-paragraph (3) (asset giving rise to tariff receipts attributable to taxable field treated as used in connection with a taxable field)—
- (a) after “gives rise to” insert “ (a) ”;
  - (b) after “attributable to a taxable field,” insert “ or ”;

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- (c) after the word “or” so inserted, insert the following paragraph—
- “(b) tax-exempt tariffing receipts which, if they were tariff receipts (and expenditure were or had been allowable accordingly), would be tariff receipts of the purchaser attributable to a taxable field.”.
- (3) In sub-paragraph (5) (chargeable period to be determined in relation to field in respect of which asset last gave rise to tariff receipts of purchaser etc) at the end of paragraph (b) insert “or
- (c) if it is later than paragraph (a) and (where otherwise applicable) paragraph (b) above, in respect of which the asset would have last given rise to tariff receipts of the purchaser had tax-exempt tariffing receipts of the purchaser been tariff receipts of his (and if expenditure were or had been allowable accordingly);”.

## PART 2 U.K.

### TRANSITIONAL PROVISION

#### *Expenditure incurred in transitional period: restriction of tax-exempt tariffing receipts*

- 9 (1) In this paragraph—
- “claim period” has the same meaning as in Part 1 of the Oil Taxation Act 1975 (c. 22);
- “relevant receipts” means each of the following—
- (a) tax-exempt tariffing receipts;
- (b) amounts that would be tax-exempt tariffing receipts apart from sub-paragraph (4);
- “the transitional period” means the period—
- (a) beginning with 9th April 2003, and
- (b) ending with 31st December 2003.
- (2) This paragraph applies where—
- (a) expenditure was incurred in the transitional period by a participator in an oil field in acquiring, bringing into existence or enhancing the value of an asset,
- (b) the asset is one whose useful life continues, or is expected to continue, after the end of the claim period in which the expenditure was incurred,
- (c) the expenditure is allowable for a claim period ending after 9th April 2003,
- (d) at the time the expenditure was incurred, the asset was being, or was expected to be, used to any extent in relation to—
- (i) an oil field or foreign field (a “user field”), or
- (ii) oil won from such a field, and
- (e) that use (or expected use) is use in such a way as, in a chargeable period ending on or after 30th June 2004, gives rise, or would have given rise, to relevant receipts of the participator or, where sub-paragraph (3) applies, of a successor.
- (3) This sub-paragraph applies where—
- (a) after the incurring of the expenditure, there is or has been a transfer of an interest of the participator’s in the asset, and

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- (b) as a result of that transfer (or of any subsequent transfer of the whole or any part of that interest), relevant receipts (“consequential relevant receipts”) arise, or are expected to arise, to a person (a “successor”) who is a participator in an oil field.
- (4) In the case of each user field, the initial portion of the aggregate of the relevant receipts of the participator, and the consequential relevant receipts of each successor, that are referable to—
- (a) use of the asset in relation to that field or oil won from it, or
  - (b) the provision of services or other business facilities of whatever kind in connection with any such use of the asset (otherwise than by the participator or the successor himself),
- shall not be tax-exempt tariffing receipts (and shall accordingly continue to be tariff receipts).
- (5) In this paragraph—
- “the initial portion”, in relation to the aggregate of any relevant receipts, means so much of that aggregate as does not exceed the qualifying threshold for the user field in question; and for this purpose amounts received or receivable at an earlier date are to be attributed to the initial portion before amounts received or receivable at a later date;
  - “the qualifying threshold”, in relation to a user field, means an amount equal to such part of the aggregate of the expenditure—
    - (a) incurred by the participator in relation to the asset in question, and
    - (b) falling within sub-paragraph (2),
 as it is just and reasonable to apportion to the use (or expected use) of the asset, in relation to that user field or oil won from it, in a way that gives rise to relevant receipts of the participator or consequential relevant receipts of any successor.
- (6) Expressions used in this paragraph and in section 6A of the Oil Taxation Act 1983 (c. 56) have the same meaning in this paragraph as they have in that section.

**PART 3 U.K.**

AMENDMENTS OF THE TAXES ACT 1988

*Introductory*

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**Textual Amendments**

**F1** Sch. 37 para. 11 repealed (1.4.2010) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\)](#), [Sch. 10 Pt. 6](#) (with [Sch. 9 paras. 1-9, 22](#)) and repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\)](#), [Sch. 3 Pt. 2](#) (with [Sch. 2](#))

*Section 496: treatment of tax-exempt tariffing receipts for income and corporation tax*

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### Textual Amendments

- F1** Sch. 37 para. 11 repealed (1.4.2010) by Taxation (International and Other Provisions) Act 2010 (c. 8), s. 381(1), **Sch. 10 Pt. 6** (with Sch. 9 paras. 1-9, 22) and repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 3 Pt. 2** (with Sch. 2)

## PART 4 **U.K.**

### AMENDMENTS OF OTHER ENACTMENTS

#### *FINANCE ACT 1999*

#### *Qualifying assets*

#### *Qualifying assets*

- 12 (1) Section 98 of the Finance Act 1999 (c. 16) is amended as follows.
- (2) After the words “tariff receipts”, in each place where they occur, insert “, tax-exempt tariffing receipts”.
- (3) After subsection (6) insert—
- “(6A) In relation to tax-exempt tariffing receipts, any reference in this section—
- (a) to being attributable to a field for a period, or
- (b) to being referable to an asset,
- shall be construed as if tax-exempt tariffing receipts were tariff receipts (and expenditure were or had been allowable accordingly).”.



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