



# 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 <sup>M1</sup>Petroleum (Production) Act 1934 or the <sup>M2</sup>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.

#### **Marginal Citations**

- M1** 1934 c. 36.  
**M2** 1964 c. 28 (N.I.).

#### **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.

*Status: Point in time view as at 29/04/1996.*

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- (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

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- (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 [F<sup>1</sup>UK licence] relates to an undeveloped area at any time if—

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- (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.

[<sup>F2</sup>(1A) For the purposes of section 194 a licence other than a UK licence relates to an undeveloped area at any time if, at that time—

- (a) no development has actually taken place in any part of the licensed area; and
- (b) no condition for the carrying out of development anywhere in that area has been satisfied—
  - (i) by the grant of any consent by the authorities of a country or territory exercising jurisdiction in relation to the area; or
  - (ii) by the approval or service on the licensee, by any such authorities, of any programme of development.]

(2) Subsections (4) and (5) of section 36 of the <sup>M3</sup>Finance Act 1983 (meaning of “development”) shall have effect in relation to [<sup>F3</sup>subsections (1) and (1A) above] as they have effect in relation to subsection (2) of that section.

(3) In relation to a licence under the <sup>M4</sup>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.

[<sup>F4</sup>(5) In sections 194 and 195 and this section—

“foreign oil concession” means any right to search for or win overseas petroleum, being a right conferred or exercisable (whether or not by virtue of a licence) in relation to a particular area;

“interest” in relation to a licence, includes, where there is an agreement which—

- (a) relates to oil from the whole or any part of the licensed area, and
- (b) was made before the extraction of the oil to which it relates,

any entitlement under that agreement to, or to a share of, either that oil or the proceeds of its sale;

“licence” means any UK licence or foreign oil concession;

“licensed area” (subject to subsection (4) above)—

- (a) in relation to a UK licence, has the same meaning as in Part I of the <sup>M5</sup>Oil Taxation Act 1975; and
- (b) in relation to a foreign oil concession, means the area to which the concession applies;

“licensee”—

- (a) in relation to a UK licence, has the same meaning as in Part I of the Oil Taxation Act 1975; and
- (b) in relation to a foreign oil concession, means the person with the concession or any person having an interest in it;

“oil”—

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- (a) except in relation to a UK licence, means any petroleum (within the meaning of the <sup>M6</sup>Petroleum (Production) Act 1934); and
  - (b) in relation to such a licence, has the same meaning as in Part I of the Oil Taxation Act 1975;
- “overseas petroleum” means any oil that exists in its natural condition at a place to which neither the <sup>M7</sup>Petroleum (Production) Act 1934 nor the <sup>M8</sup>Petroleum (Production) Act (Northern Ireland) 1964 applies; and
- “UK licence” means a licence within the meaning of Part I of the <sup>M9</sup>Oil Taxation Act 1975.

(5A) References in sections 194 and 195 to a part disposal of a licence shall include references to the disposal of any interest in a licence.]

(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.

#### Textual Amendments

- F1** Words in s. 196(1) substituted (with effect in accordance with s. 181(4) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 181\(1\)](#)
- F2** S. 196(1A) inserted (with effect in accordance with s. 181(4) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 181\(2\)](#)
- F3** Words in s. 196(2) substituted (with effect in accordance with [s. 181\(4\)](#) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 181\(2\)](#)
- F4** S. 196(5)(5A) substituted for s. 196(5) (retrospectively and with effect in accordance with [s. 181\(4\)\(5\)](#) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 181\(3\)](#)

#### Marginal Citations

- M3** 1983 c. 28.
- M4** 1964 c. 28 (N.I.).
- M5** 1975 c. 22.
- M6** 1934 c. 36.
- M7** 1934 c. 36.
- M8** 1964 c. 28 (N.I.).
- M9** 1975 c. 22.

## 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 <sup>M10</sup>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 <sup>M11</sup>Finance Act 1980.

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- (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

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- (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.

#### **Marginal Citations**

**M10** 1975 c. 22.

**M11** 1980 c. 48.

### **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

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- (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—



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- (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 <sup>M12</sup>Oil Taxation Act 1975.

**Marginal Citations**

**M12** 1975 c. 22.

**<sup>F5</sup>200 Limitation of losses on disposal of oil industry assets held on 31st March 1982.**

**Textual Amendments**

**F5** S. 200 repealed (with effect in accordance with s. 93(11) of the amending Act) by [Finance Act 1994](#) (c. 9), s. 93(7), [Sch. 26 Pt. V\(8\)](#) (with [Sch. 12](#))

**Status:**

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