



Finance Act 1994

1994 CHAPTER 9

PART V

OIL TAXATION

CHAPTER I

ELECTION BY REFERENCE TO PIPE-LINE USAGE

231 Election by reference to pipe-line with excess capacity

- (1) The provisions of this Chapter apply where, on or before 1st January 1996, a participator in a taxable field makes, in accordance with Part I of Schedule 22 to this Act, an election with respect to that field by reference to a pipe-line—
- (a) which is a qualifying asset;
 - (b) which is used or intended to be used for transporting oil in circumstances which give rise or are expected to give rise to tariff receipts;
 - (c) which, at the date of the election, is at least 25 kilometres in length; and
 - (d) for which the initial usage fraction does not exceed one-half.
- (2) A participator may not make an election—
- (a) unless the field to which the election applies is (or, as the case may be, is intended to be) the chargeable field in relation to the tariff receipts referred to in subsection (1)(b) above; or
 - (b) if the first chargeable period of that field ended on or before 30th June 1982; or
 - (c) if the participator's net profit period with respect to that field ended on or before 30th June 1993;

and for the purposes of paragraph (c) above no account shall be taken of the operation of section 113 of the Finance Act 1981 (loss following net profit period).

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- (3) If there is more than one pipe-line by reference to which the electing participator could, apart from this subsection, make an election (with respect to the same field) he may make an election only by reference to that pipe-line which is the longer or longest.
- (4) In this Chapter, in relation to a pipe-line or an election made by reference to a pipe-line, “the initial usage fraction” means the fraction of which—
 - (a) the numerator is the daily contracted and production throughput of oil in relation to the pipe-line on 16th March 1993; and
 - (b) the denominator is the design capacity of the pipe-line, expressed on a daily basis.
- (5) Subject to subsection (6) below, where an election is in operation it shall apply to all those assets which, by reference to the field to which the election applies, are at the date of the election or subsequently become—
 - (a) qualifying assets in relation to the electing participator; and
 - (b) assets to which are or are expected to be referable any tariff receipts of the electing participator attributable to that field.
- (6) If the electing participator specifies in his election that the election is to be limited to oil which is, or is expected to be, transported by the pipe-line by reference to which the election is made, the election shall apply only to such of the assets referred to in subsection (5) above as, in whole or in part, are or subsequently become used in connection with that oil.
- (7) For the purposes of this Chapter, unless it is just and reasonable to determine some other quantity of oil, the daily contracted and production throughput of oil in relation to a pipe-line on 16th March 1993 is the aggregate of—
 - (a) the maximum daily capacity specified in contracts then in force for the use of the pipe-line (whether at that date or in the future) for transporting oil won from any taxable field (including the field to which the election applies); and
 - (b) the maximum expected daily throughput, otherwise than pursuant to such contracts, of oil transported by the pipe-line and won from the field to which the election applies or any other taxable field, being the throughput ascertained by reference to what was at that date the most recent development plan applicable to the field to which the election applies or, as the case may be, the other taxable field.
- (8) For the purposes of this Chapter, unless it is just and reasonable to determine some other capacity, the design capacity of a pipe-line is that which is specified for the pipe-line as a whole in what was, on 16th March 1993, the most recent development plan applicable to the field to which the election applies or, as the case may be, the pipe-line itself.

232 Restriction on electing participator’s allowable expenditure on elected assets

- (1) This section has effect in relation to expenditure which is incurred on an asset to which an election applies; and in this section “allowable or allowed”, in relation to any expenditure, means allowable or allowed under any of the expenditure relief provisions.
- (2) Subject to the following provisions of this section, in the case of expenditure incurred before the date of the election, the amount which, apart from this section, would

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be allowable or allowed in the case of the electing participator shall be reduced by multiplying it by the initial usage fraction.

- (3) Subject to subsection (5) below, in the case of expenditure incurred on or after the date of the election, the amount which, apart from this section, would be allowable or allowed in the case of the electing participator shall be reduced to nil.
- (4) Where, after 30th November 1993 and before the date of the election, expenditure was incurred on an asset to which the election applies and—
 - (a) apart from this section, that expenditure would have qualified for supplement by virtue of paragraph (c) or paragraph (d) of subsection (5) of section 3 of the principal Act, and
 - (b) the effect of the expenditure is to increase the maximum capacity of the pipe-line by reference to which the election was made above its design capacity or to increase the capacity of any asset used or to be used for the initial treatment or initial storage of oil transported by the pipe-line above its development plan capacity,that expenditure shall be treated for the purposes of the application of subsections (2) and (3) above as if it had been incurred after the date of the election.
- (5) Where, at the date of the election, an asset to which the election applies is for the time being leased or hired under a contract which was entered into before 16th March 1993, any expenditure—
 - (a) which is incurred on or after the date of the election on the leasing or hiring of the asset under the contract, and
 - (b) which is not of a description falling within paragraphs (a) and (b) of subsection (4) above,shall be treated for the purposes of the application of subsections (2) and (3) above as if it had been incurred before the date of the election.
- (6) For the purposes of subsection (4)(b) above, the development plan capacity of any asset used or to be used for the initial treatment or initial storage of oil transported by a pipe-line is—
 - (a) the maximum capacity of that asset as specified in what, on 16th March 1993, was the most recent development plan applicable to the field to which the election applies or, as the case may be, to the asset itself; or
 - (b) if no such maximum capacity was so specified in relation to an asset, its actual maximum capacity on that date or, if there was no such capacity on that date, nil.
- (7) Where a claim under Schedule 5 or Schedule 6 to the principal Act relates to the allowance of any expenditure to which subsection (2) above applies, the amount claimed shall take account of the operation of that subsection; and where subsection (3) above applies to any expenditure, no such claim shall be made with respect to it.
- (8) Where a claim has been made under Schedule 5 or Schedule 6 to the principal Act with respect to any expenditure and, subsequently, an election is made which has the effect of altering the amount of expenditure which is allowable or allowed,—
 - (a) a notice of variation such as is mentioned in paragraph 9 of Schedule 5 to the principal Act may be served after the end of the period referred to in subparagraph (1) of that paragraph if it is served before the expiry of the period of three years beginning on the date of the election; and

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- (b) if the effect of such a notice is that the net profit period with respect to the field to which the election applies is changed, the change shall not (by virtue of section 231(2) above) affect the validity of the election.
- (9) Nothing in this section affects the determination of the question whether an asset is a qualifying asset for the purposes of the 1983 Act and, accordingly, for that purpose, the preceding provisions of this section shall be disregarded in determining whether any expenditure is allowable or allowed.

233 Tax relief for certain receipts of an electing participator

- (1) If any sum—
- (a) is received or receivable by the electing participator on or after the date of an election, and
 - (b) is so received or receivable from a participator in a non-taxable field in respect of the use, in connection with that non-taxable field, of an asset to which the election applies or the provision of services or other business facilities of whatever kind in connection with that use, and
 - (c) would, apart from this section, constitute a tariff receipt attributable to the field to which the election applies,

that sum shall not be regarded as a tariff receipt for the purposes of the Oil Taxation Acts.

- (2) If any sum—
- (a) is received or receivable by the electing participator on or after the date of an election, and
 - (b) is so received or receivable in respect of the disposal of an asset to which the election applies or of an interest in such an asset, and
 - (c) constitutes a disposal receipt of the electing participator attributable to the field to which to the election applies,

that sum shall, for the purposes of the Oil Taxation Acts, be taken to be reduced in accordance with subsection (4) below.

- (3) Any reference in subsection (1) or subsection (2) above to a sum received or receivable includes a reference to an amount which (apart from this section) would be treated as a tariff receipt or disposal receipt by virtue of paragraph 5 of Schedule 2 to the 1983 Act (acquisition and disposal of qualifying assets otherwise than at arm's length).
- (4) Unless it is just and reasonable to make a different reduction, the reduction referred to in subsection (2) above shall be determined by reference to that applicable under subsection (2) or subsection (3) of section 232 above to the expenditure incurred on the asset concerned so that if, for the purposes of determining under those subsections the amount of that expenditure which was allowed or allowable,—
- (a) the whole or any part of that expenditure was reduced by multiplying it by the initial usage fraction, or
 - (b) the whole or any part of that expenditure was reduced to nil,
- a similar reduction shall apply to the whole or, as the case may require, to each correspondingly proportionate part of any sum falling within subsection (2) above.
- (5) In this section “the Oil Taxation Acts” means Parts I and III of the principal Act, the 1983 Act and any other enactment relating to petroleum revenue tax.

234 Interpretation of Chapter and supplementary provisions

- (1) In this Chapter “the 1983 Act” means the Oil Taxation Act 1983 and expressions used in this Chapter have the same meaning as in that Act.
- (2) In this Chapter—
 - (a) “election” means an election under section 231 above and “electing participator” means a participator who makes or has made an election;
 - (b) “the expenditure relief provisions” means sections 3 and 4 of the principal Act and section 3 of the 1983 Act; and
 - (c) “the initial usage fraction” shall be construed in accordance with section 231(4) above.
- (3) In this Chapter—
 - (a) any reference to the assets to which an election applies is a reference to the pipe-line by reference to which the election is made together with the assets determined in accordance with subsections (5) and (6) of section 231 above;
 - (b) any reference to the net profit period is a reference to the chargeable period which is the net profit period for the purposes of section 111 of the Finance Act 1981 (restriction of expenditure supplement); and
 - (c) any reference to a development plan is a reference to a consent for, or programme of, development granted, served or approved by the Secretary of State.
- (4) Any reference in this Chapter to expenditure incurred on an asset is a reference to expenditure (whether or not of a capital nature) which—
 - (a) is incurred in acquiring, bringing into existence or enhancing the value of the asset, or
 - (b) is incurred (for any of the purposes mentioned in section 3(1) of the principal Act) by reference to the use of the asset in connection with a taxable field, other than expenditure which, in the hands of the recipient, constitutes a tariff receipt.
- (5) For the purposes of this Chapter—
 - (a) an election is “in operation” if it has been accepted by the Board; and
 - (b) the date of an election which is in operation is the date on which the election was received by the Board.
- (6) The provisions of Part II of Schedule 22 to this Act shall have effect for supplementing the preceding provisions of this Chapter.
- (7) The Board may make all such amendments of assessments or determinations or of decisions on claims as may be necessary in consequence of the provisions of this Chapter.