

Status: Point in time view as at 30/07/2009.

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SCHEDULES

SCHEDULE 22

Sections 231 and 234.

SUPPLEMENTARY PROVISIONS AS TO ELECTIONS BY REFERENCE TO PIPE-LINE USAGE

PART I

PROCEDURE FOR AND IN CONNECTION WITH AN ELECTION

The election

- 1 (1) An election shall be made by serving it on the Board, shall be in such form as may be prescribed by the Board and shall contain such information as the Board may reasonably require with respect to—
- (a) the oil field to which the election is to apply, the pipe-line by reference to which the election is being made and whether the election is to be limited in accordance with subsection (6) of section 231 of this Act;
 - (b) all other assets which, if the election were to be accepted, would at the date of the election be assets to which the election applies;
 - (c) the electing participator's interest in those assets;
 - (d) the sums to which, if the election is accepted, it is reasonable to expect that section 233 of this Act will apply and the sources, quantities and descriptions of oil which will give rise to those sums;
 - (e) any other oil field (whether taxable or non-taxable) in connection with which any of the assets referred to in paragraph (b) above is or is expected to be used or in respect of which services or other business facilities in connection with that use are or are expected to be provided; and
 - (f) the initial usage fraction and the amounts which make up the numerator and the denominator of that fraction.
- (2) The reference in sub-paragraph (1)(e) above to an oil field includes a reference to any area which the electing participator expects might be determined as an oil field under Schedule 1 to the principal Act.
- (3) An election shall include a declaration that it is correct and complete to the best of the knowledge and belief of the electing participator.
- (4) An election shall be irrevocable.

Conditions for acceptance of an election

- 2 (1) The Board shall reject an election if they are not satisfied—
- (a) that the conditions relating to the pipe-line in paragraphs (a) to (d) of subsection (1) or in subsection (3) of section 231 of this Act are fulfilled; or

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- (b) that the conditions relating to the oil field or the participator in subsection (2) of that section are fulfilled; or
 - (c) that, if the election were to be accepted, the assets to which the election would apply (having regard to any limitation under subsection (6) of that section) have the capacity and characteristics, and are otherwise suitable, to handle the quantities and descriptions of oil specified in accordance with paragraph 1(1)(d) above.
- (2) Subject to sub-paragraph (3) below, the Board shall also reject an election if it appears to them—
- (a) that any of the information required to be contained in the election by virtue of paragraph 1(1) above is incorrect; or
 - (b) that, after receiving notice in writing from the Board, the electing participator has failed to furnish to the Board on or before the specified date any information which the Board have reasonably required either with respect to the matters specified in paragraph 1(1) above or for the purpose of satisfying themselves as to the matters referred to in sub-paragraph (1) above.
- (3) Before rejecting an election under sub-paragraph (2)(a) above the Board may, if they think fit, by notice in writing give the electing participator an opportunity to correct any error in the information and, if he does so, the information shall then be treated as having been provided in the correct form.
- (4) In sub-paragraph (2)(b) above “the specified date” means such date as may be specified in the notice concerned, being a date not earlier than one month after the date on which the notice was given.
- (5) A notice under sub-paragraph (2)(b) above shall be given within the period of three months beginning on the date on which the election was received by the Board.

Notice of acceptance or rejection

- 3 (1) Notice of the acceptance or rejection of an election shall be served on the electing participator before the expiry of the period of three months beginning on whichever of the following dates is the later or latest—
- (a) the date on which the election was received by the Board;
 - (b) if a notice was given under paragraph 2(2)(b) above relating to the election, the date or, as the case may be, the last date which is the specified date, as defined in paragraph 2(4) above, in relation to such a notice;
 - (c) if a notice was given under paragraph 2(3) above relating to the election, the date on which that notice was given.
- (2) If no such notice of acceptance or rejection is so served, the Board shall be deemed to have accepted the election and to have served notice of their acceptance on the last day of the period referred to in sub-paragraph (1) above.

Appeals

- 4 (1) Where the Board serve notice on an electing participator under paragraph 3 above rejecting an election, he may appeal ^{F1}... against the notice.
- (2) An appeal under sub-paragraph (1) above shall be made by notice of appeal served on the Board within thirty days beginning on the date of the notice in respect of which the appeal is brought.

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- (3) Where, at any time after the service of notice of appeal under this paragraph and before the determination of the appeal by the [^{F2}tribunal], the Board and the appellant agree that the notice in respect of which the appeal is brought should stand or that the election to which it related should be accepted with or without modification, the same consequences shall ensue as if the [^{F2}tribunal] had determined the appeal to that effect.
- (4) On the hearing of an appeal under this paragraph, the [^{F3}tribunal] shall either dismiss the appeal or allow it; and if the [^{F4}tribunal allows] the appeal, [^{F5}the tribunal shall] direct either—
- (a) that the election shall be accepted; or
 - (b) that the election shall have effect subject to such modifications as may be specified in the direction and shall be accepted in its modified form.
- [^{F6}(5) In an appeal under sub-paragraph (1)—
- (a) paragraphs 14(2), (8) and (11) and 14A to 14I of Schedule 2 to the principal Act shall apply as they apply in relation to an appeal against an assessment or determination made under that Act subject to any necessary modifications including the following;
 - (b) any reference in those paragraphs to an agreement under paragraph 14(9) shall be construed as a reference to an agreement under sub-paragraph (3) above.]
- (6) Any reference in this Chapter to an election accepted by the Board shall be construed as including a reference to an election accepted in pursuance of an appeal under this paragraph.

Textual Amendments

- F1** Words in Sch. 22 para. 4(1) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 211(2)**
- F2** Word in Sch. 22 para. 4(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 211(3)**
- F3** Word in Sch. 22 para. 4(4) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 211(4)(a)**
- F4** Words in Sch. 22 para. 4(4) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 211(4)(b)**
- F5** Words in Sch. 22 para. 4(4) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 211(4)(c)**
- F6** Sch. 22 para. 4(5) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 211(5)**

Information to the responsible person

- 5 (1) Within thirty days of the relevant date, the electing participator shall furnish to the responsible person for the field to which the election applies (or would apply if the election were accepted) a copy of—
- (a) any election made by him; and
 - (b) any notice under paragraph 3 above accepting or rejecting the election.
- (2) For the purposes of sub-paragraph (1) above, the relevant date is—

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- (a) in the case of an election made by the electing participator, the date on which it was served on the Board; and
 - (b) in the case of a notice under paragraph 3 above, the date on which the electing participator received it.
- (3) In a case where paragraph 9 below applies (or would apply if an election were accepted) sub-paragraphs (1) and (2) above shall require the electing participator additionally to furnish copies of the same documents to the responsible person for any non-chargeable field mentioned in sub-paragraph (3) of that paragraph.
- (4) In a case where paragraph 11 below applies (or would apply if an election were accepted) sub-paragraphs (1) and (2) above shall require the electing participator additionally to furnish copies of the same documents to the old participator referred to in that paragraph.

Penalties for incorrect information

- 6 Where a participator fraudulently or negligently furnishes any incorrect information or makes any incorrect declaration in or in connection with an election he shall be liable to a penalty not exceeding—
- (a) in the case of negligence, £50,000, and
 - (b) in the case of fraud, £100,000.

Re-opening election decisions on grounds of incorrect information

- 7 (1) Without prejudice to paragraph 6 above, this paragraph applies if, at any time after notice of the acceptance of an election has been served by the Board, it appears to the Board that, as a result of an error in the information furnished to the Board, the election should not have been accepted.
- (2) If, in a case where this paragraph applies, either—
- (a) the error was attributable, in whole or in part, to the fraudulent or negligent conduct of the electing participator or a person acting on his behalf, or
 - (b) on the error coming to the notice of the electing participator, or a person acting on his behalf, the error was not remedied without unreasonable delay,
- the Board may serve on the electing participator and on the responsible person for the field to which the election applies a notice rescinding the acceptance and stating what appears to the Board to be the correct position.
- (3) When a notice under sub-paragraph (2) above becomes effective, the election shall be treated as having been rejected in accordance with paragraph 3 above.
- (4) If, in a case where this paragraph applies,—
- (a) neither of the conditions in sub-paragraph (2) above is fulfilled, and
 - (b) the Board are of the opinion that, if the correct information had been furnished, the election could have been accepted,
- the election shall be treated as having been made and accepted subject to such modifications (being modifications to correct the effect of the error) as the Board may direct, by notice served on the electing participator and on the responsible person for the field to which the election applies.
- (5) A notice served under sub-paragraph (2) or sub-paragraph (4) above shall become effective either—

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- (a) on the expiry of the period during which notice of appeal against the notice may be served on the Board under paragraph 8 below without such notice of appeal being served; or
- (b) where such notice of appeal is served, when the notice can no longer be varied or quashed by the [F7tribunal] or by the order of any court.

Textual Amendments

- F7** Word in Sch. 22 para. 7(5)(b) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 212](#)

Appeals against re-opening notices

- 8 (1) This paragraph applies where the Board serve notice under sub-paragraph (2) or sub-paragraph (4) of paragraph 7 above; and in the following provisions of this paragraph such a notice is referred to as a “re-opening notice”.
- (2) The electing participator may, by notice of appeal served on the Board within thirty days beginning on the date of the re-opening notice, appeal ^{F8}... against the re-opening notice.
- (3) A notice of appeal under sub-paragraph (2) above shall state the grounds on which the appeal is brought.
- (4) An appeal under this paragraph may at any time [F9before it is notified to the tribunal] be abandoned by notice served on the Board by the electing participator.
- (5) A re-opening notice may be withdrawn at any time before it becomes effective.
- (6) In any case where—
- (a) the electing participator serves notice of appeal against a re-opening notice served under sub-paragraph (4) of paragraph 7 above, and
 - (b) before the appeal is determined by the [F10tribunal] , the Board and the electing participator agree as to the modifications necessary to correct the effect of the error concerned,
- the re-opening notice shall take effect subject to such modifications as may be necessary to give effect to that agreement; and thereupon the appeal shall be treated as having been abandoned.
- (7) Subject to sub-paragraph (8) below, on an appeal against a re-opening notice the [F11tribunal] may vary the notice, quash the notice or dismiss the appeal; and the notice may be varied whether or not the variation is to the advantage of the electing participator.
- (8) The provisions relating to the variation of a re-opening notice referred to in sub-paragraph (7) above shall not apply in respect of any such notice served under sub-paragraph (2) of paragraph 7 above.
- [F12(9) In an appeal under sub-paragraph (2)—
- (a) paragraphs 14A to 14I of Schedule 2 to the principal Act shall apply as they apply in relation to an appeal against an assessment or determination made under that Act subject to any necessary modifications including the following;

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- (b) any reference in those paragraphs to an agreement under paragraph 14(9) shall be construed as a reference to an agreement under sub-paragraph (6) above.]

Textual Amendments

- F8** Words in Sch. 22 para. 8(2) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 213(2)**
- F9** Words in Sch. 22 para. 8(4) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 213(3)**
- F10** Word in Sch. 22 para. 8(6)(b) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 213(4)**
- F11** Word in Sch. 22 para. 8(7) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 213(4)**
- F12** Sch. 22 para. 8(9) inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 213(5)**

PART II

SUPPLEMENTARY PROVISIONS

Assets used in connection with more than one taxable field

- 9 (1) The provisions of this paragraph apply where—
- (a) an election is in operation; and
 - (b) any of the assets to which the election applies is used or expected to be used in connection with two or more taxable fields.
- (2) Any reference in this paragraph to allowable expenditure has the same meaning as in Part II of Schedule 1 to the 1983 Act and is a reference to expenditure incurred on an asset to which the election applies.
- (3) Sub-paragraph (4) below applies if, by virtue of paragraph 5 of Schedule 1 to the 1983 Act (which, in a case falling within this paragraph, provides for the apportionment of allowable expenditure between two or more fields), any part of the allowable expenditure is apportioned to a taxable field (a “non-chargeable field”) other than the field to which the election applies.
- (4) Where this sub-paragraph applies, then, so far as concerns the electing participator (as a participator in a non-chargeable field), section 232 of this Act shall apply in relation to that part of the allowable expenditure which is apportioned to the non-chargeable field as it applies in relation to the part apportioned to the field to which the election applies.

Transfer of interests

- 10 (1) If, while an election is in operation, the electing participator (or a person who is treated as an electing participator by virtue of this paragraph) transfers the whole or part of his interest in the field to which the election applies, then, so far as concerns that interest or part, the new participator shall thereafter be treated as the electing

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participator for the purposes of this Chapter, other than paragraph 11 below, and, in particular,—

- (a) any restriction on the amount of expenditure allowed or allowable by virtue of section 232 of this Act shall continue to apply to any expenditure relief transferred to the new participator under paragraph 6 of Schedule 17 to the ^{M1}Finance Act 1980; and
 - (b) any relief from tax under section 233 of this Act shall apply in relation to the new participator as it applied in relation to the old participator.
- (2) If, in a case where paragraph 9 above applies, the electing participator, as a participator in the non-chargeable field (within the meaning of that paragraph) transfers the whole or part of his interest in that field, sub-paragraph (1) above (except paragraph (b)) shall apply in relation to that transfer as if—
- (a) any reference to the field to which the election applies were a reference to the non-chargeable field; and
 - (b) any reference to the electing participator were a reference to him in his capacity as a participator in the non-chargeable field.
- (3) In sub-paragraph (1) above the expressions “the old participator” and “the new participator” have the same meaning as in Schedule 17 to the Finance Act 1980.

Marginal Citations

M1 1980 c. 48.

- 11 (1) This paragraph applies in any case where—
- (a) the electing participator acquired the whole or any part of his interest in the field to which the election applies as a result of a transfer to which Part I of Schedule 17 to the ^{M2}Finance Act 1980 applies (so that the electing participator is the new participator); and
 - (b) some or all of the relief in respect of any expenditure incurred (before the transfer) on any asset to which the election applies did not fall to be transferred to the electing participator (whether by virtue of paragraph 6 or paragraph 7 of that Schedule).
- (2) With regard to so much of the expenditure referred to in sub-paragraph (1)(b) above as falls to be taken into account under paragraph (b)(i) or paragraph (c)(i) of subsection (9) of section 2 of the principal Act in computing, for any chargeable period ending before the transfer period, the assessable profit or allowable loss accruing to the old participator or any predecessor of his, section 232 of this Act shall apply in the case of the old participator or, as the case may be, his predecessor as it is expressed to apply in the case of the electing participator.
- (3) If, as a result of the operation of sub-paragraph (2) above, there is a reduction in the amount which would otherwise be the accumulated capital expenditure of the old participator at the end of the last chargeable period before the transfer period, paragraph 8 of Schedule 17 to the Finance Act 1980 shall be taken to have transferred a correspondingly reduced amount to the electing participator.
- (4) In this paragraph—
- (a) the expressions “the old participator”, “the new participator” and “the transfer period” have the same meaning as in Schedule 17 to the Finance Act 1980; and

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- (b) any reference to a predecessor of the old participator is a reference to a person who (before the transfer referred to in sub-paragraph (1)(a) above) transferred the whole or part of his interest in the field to which the election applies either to the old participator or to another person who is a predecessor in title of the old participator in respect of that interest or part.

Marginal Citations

M2 1980 c. 48.

Transfer of elected assets

- 12 (1) This paragraph applies if there is a disposal of an asset which, immediately before the disposal or at an earlier time, was an asset to which an election applies; and in this paragraph—
- (a) “the asset transferred” means the asset so disposed of;
- (b) “the vendor” means the electing participator or other person by whom the asset is disposed of.
- (2) Where a person has incurred expenditure on the acquisition of a transferred asset, he shall be treated for the purposes of the expenditure relief provisions as having incurred that expenditure only to the extent that it does not exceed the amount which, having regard to section 232 of this Act or the previous operation of this paragraph, was (in the case of the vendor) allowable under those provisions immediately before the disposal in respect of his expenditure on the asset.
- (3) Any expenditure incurred on the asset after the disposal shall be left out of account for the purposes of the expenditure relief provisions.

*Restriction of relief for expenditure incurred after 30th
November 1993 and before the date of an election*

- 13 (1) This paragraph applies if, after 30th November 1993 and before the date of an election, expenditure was incurred by the electing participator under a contract—
- (a) for the acquisition from any other person of, or of an interest in, an asset to which the election applies; or
- (b) for the provision by any other person of services or other business facilities of whatever kind in connection with the use of an asset to which the election applies.
- (2) If, in a case where this paragraph applies, the other person referred to in paragraph (a) or paragraph (b) of sub-paragraph (1) above (“the contractor”) has performed his obligations by entering into one or more further contracts, the contractor shall be treated for the purposes of subsection (2) of section 191 of the ^{M3}Finance Act 1993 (time when expenditure is incurred) as having performed his obligations under the contract only to the extent that, at that time, the asset or interest in question has been acquired by or, as the case may be, the services or other business facilities have been provided to, the electing participator.

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M3 1993 c. 34.

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