
Status: Point in time view as at 19/07/2006.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, SCHEDULE 38. (See end of Document for details)

SCHEDULES

SCHEDULE 38

Section 286

SCHEDULE TO BE INSERTED AS SCHEDULE 19B TO THE TAXES ACT 1988

The following is the Schedule to be inserted as Schedule 19B to the Taxes Act 1988—

“SCHEDULE 19B

Section 496A

PETROLEUM EXTRACTION ACTIVITIES: EXPLORATION EXPENDITURE SUPPLEMENT

PART 1

INTRODUCTORY

About this Schedule

- 1 (1) This Schedule entitles a company carrying on a ring fence trade, on making a claim in respect of an accounting period ending on or after 1st January 2004, to a supplement (initially of 6%, but variable by Treasury order) in respect of—
 - (a) qualifying capital expenditure incurred before the trade is set up and commenced,
 - (b) losses incurred in the trade, determined by reference to allowances under Part 6 of the Capital Allowances Act (expenditure on research and development) in respect of qualifying capital expenditure, and
 - (c) some or all of the supplement allowed in respect of earlier periods.
- (2) To qualify, the capital expenditure in question must be incurred on or after 1st January 2004 in respect of oil and gas exploration and appraisal (as well as satisfying other conditions).
- (3) Part 2 makes provision about the application and interpretation of this Schedule.
- (4) Part 3 makes provision about supplement in relation to expenditure incurred by the company—
 - (a) with a view to carrying on a ring fence trade, but
 - (b) in an accounting period before the company sets up and commences that trade.
- (5) Part 4 makes provision about supplement in relation to losses incurred in carrying on the ring fence trade.
- (6) There is a limit on the number of accounting periods (6) in respect of which a company may claim supplement.
- (7) In determining the amount of supplement allowable, reductions fall to be made in respect of—

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- (a) disposal receipts by virtue of section 555 of the Capital Allowances Act (disposal of oil licence with exploitation value),
- (b) ring fence losses that could be set off under section 393A against ring fence profits of earlier periods,
- (c) ring fence losses incurred in earlier periods that fall to be set off under section 393 against profits of succeeding periods,
- (d) unrelieved group ring fence profits.

PART 2

APPLICATION AND INTERPRETATION

Qualifying companies

- 2 This Schedule applies in relation to any company which—
- (a) carries on a ring fence trade, or
 - (b) is engaged in oil and gas exploration and appraisal (see section 837B) with a view to carrying on a ring fence trade,
- and in this Schedule any such company is referred to as a “qualifying company”.

Accounting periods

- 3 (1) In this Schedule, in the case of any qualifying company,—
- “the commencement period” means the accounting period in which the company sets up and commences its ring fence trade;
 - “post-commencement period” means any accounting period ending on or after 1st January 2004—
 - (a) which is the commencement period, or
 - (b) which ends after the commencement period;
 - “pre-commencement period” means any accounting period ending—
 - (a) on or after 1st January 2004, and
 - (b) before the commencement period.
- (2) For the purposes of this Schedule a company not within the charge to corporation tax which incurs qualifying E&A expenditure is to be treated as having such accounting periods as it would have if—
- (a) it carried on a trade consisting of the activities in respect of which the expenditure is incurred, and
 - (b) it had started to carry on that trade when it started to carry on the research and development on which the expenditure is incurred.

The relevant percentage

- 4 (1) For the purposes of this Schedule, the relevant percentage for any accounting period ending on or after 1st January 2004 is 6%.
- (2) The Treasury may by order vary the percentage for the time being specified in subparagraph (1) for such accounting periods as may be specified in the order.

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Limit on number of accounting periods for which supplement may be claimed

- 5 (1) A company may claim supplement under this Schedule in respect of no more than 6 accounting periods.
- (2) The accounting periods in respect of which claims are made need not be consecutive.

Qualifying E&A expenditure

- 6 (1) For the purposes of this Schedule “qualifying E&A expenditure” is any expenditure as respects which the following conditions are satisfied.
- (2) Condition 1 is that the expenditure is incurred on or after 1st January 2004.
- (3) Condition 2 is that, for the purposes of Part 6 of the Capital Allowances Act, the expenditure is qualifying expenditure incurred on research and development consisting of oil and gas exploration and appraisal (see section 437(2)(b) of that Act).
- (4) Condition 3 is that an allowance under section 441 of that Act is claimed in respect of the expenditure.
- (5) Condition 4 is that the expenditure is incurred in the course of oil extraction activities.
- (6) Condition 5 is that—
- (a) those oil extraction activities are comprised in a ring fence trade, or
 - (b) after incurring the expenditure, the person incurring it sets up and commences a ring fence trade connected with the research and development.

Unrelieved group ring fence profits for accounting periods

- 7 (1) There is an amount of unrelieved group ring fence profits for an accounting period of a qualifying company (“company Q”) in any case where—
- (a) the company and any other company (“company X”) are members of the same group of companies, within the meaning given by section 413(3)(a), and
 - (b) company X has an amount of taxable ring fence profits (see paragraph 8) for a corresponding accounting period.
- (2) An accounting period of company X corresponds to an accounting period of company Q if—
- (a) it coincides with, or falls wholly within, the accounting period of company Q, or
 - (b) it falls partly within the accounting period of company Q.
- (3) Where an accounting period of company X—
- (a) coincides with an accounting period of company Q, or
 - (b) falls wholly within an accounting period of company Q,
- there is, for the accounting period of company Q, an amount of unrelieved group ring fence profits equal to the whole of company X’s taxable ring fence profits for its accounting period.
- (4) Where an accounting period of company X falls partly within an accounting period of company Q—
- (a) there is an amount of unrelieved group ring fence profits for the accounting period of company Q, and

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- (b) that amount is an amount equal to the part of company X's taxable ring fence profits for its accounting period that is attributable, on an apportionment in accordance with section 834(4), to the part of that period which falls within the accounting period of company Q.

(5) This paragraph applies for the purposes of this Schedule.

Taxable ring fence profits of an accounting period

- 8 For the purposes of this Schedule, a company has taxable ring fence profits for an accounting period if it has an amount of ring fence profits which is chargeable to corporation tax for that accounting period after any group relief claimed under Chapter 4 of Part 10.

PART 3

PRE-COMMENCEMENT SUPPLEMENT

Supplement in respect of a pre-commencement accounting period

- 9 (1) Where—
- (a) a qualifying company claims an allowance under section 441 of the Capital Allowances Act (research and development allowances) for the commencement period, and
 - (b) the claim is for an allowance in respect of qualifying E&A expenditure incurred before that period,
- the company may also claim supplement under this Part of this Schedule (“pre-commencement supplement”) in respect of one or more pre-commencement periods.
- (2) Any pre-commencement supplement allowed on a claim in respect of a pre-commencement period shall be treated as an allowance under Part 6 of the Capital Allowances Act for the commencement period in respect of qualifying E&A expenditure incurred by the company.
 - (3) The amount of the supplement for any pre-commencement period in respect of which a claim under this paragraph is made is the relevant percentage for that period of the reference amount for that period.
 - (4) If the pre-commencement period is a period of less than twelve months, the amount of the supplement for the period (apart from this sub-paragraph) shall be reduced proportionally.
 - (5) Paragraphs 10 to 13 have effect for the purpose of determining the reference amount for a pre-commencement period.

The mixed pool of qualifying E&A expenditure and supplement previously allowed

- 10 (1) For the purpose of determining the amount of any pre-commencement supplement, a qualifying company shall be taken to have had, at all times in the pre-commencement periods of the company, a continuing mixed pool of qualifying E&A expenditure and pre-commencement supplement.
- (2) The pool shall be taken to have consisted of—

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- (a) the company's qualifying E&A expenditure, allocated to the pool for each pre-commencement period in accordance with sub-paragraph (3), and
 - (b) the company's pre-commencement supplement, allocated to the pool for each pre-commencement period in accordance with sub-paragraph (4).
- (3) To allocate qualifying E&A expenditure to the pool for any pre-commencement period, take the following steps—
- (a) *Step 1:* count as eligible expenditure for that period so much of the qualifying E&A expenditure mentioned in paragraph 9(1)(b) as was incurred in that period,
 - (b) *Step 2:* find the total of all the eligible expenditure for that period (amount E),
 - (c) *Step 3:* if paragraph 11 applies, reduce amount E in accordance with that paragraph,
 - (d) *Step 4:* if paragraph 12 applies, reduce (or, as the case may be, further reduce) amount E in accordance with that paragraph,
- and so much of amount E as remains after making those reductions shall be taken to have been added to the pool in that period.
- (4) If any pre-commencement supplement is allowed on a claim in respect of a pre-commencement period, the amount of that supplement shall be taken to have been added to the pool in that period.

Treatment of disposal value on disposal of oil licence with exploitation value

- 11 (1) This paragraph applies in any case where—
- (a) the qualifying company disposes of an interest in an oil licence in a pre-commencement period,
 - (b) part of the value of the interest (the “deductible amount”) is attributable to qualifying E&A expenditure incurred by the company, and
 - (c) section 555 of the Capital Allowances Act (disposal of oil licence with exploitation value) has effect in relation to the disposal.
- (2) For the purpose of allocating qualifying E&A expenditure to the pool for each pre-commencement period—
- (a) find the total of the deductible amounts in the case of all such disposals made by the company (amount D), and
 - (b) taking later periods before earlier periods, reduce (but not below nil) amount E for any pre-commencement period by setting against it so much of amount D as does not fall to be set against amount E for a later pre-commencement period.
- (3) In this paragraph “oil licence” has the same meaning as in section 555 of the Capital Allowances Act (see section 552 (1) of that Act).

Reduction in respect of unrelieved group ring fence profits

- 12 (1) This paragraph applies if there is an amount of unrelieved group ring fence profits for a pre-commencement period.
- (2) For the purpose of allocating qualifying E&A expenditure to the pool for that period—
- (a) find so much (if any) of amount E for that period as remains after any reduction falling to be made under paragraph 11, and

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- (b) reduce that amount (but not below nil) by setting against it a sum equal to the aggregate of the amounts of unrelieved group ring fence profits for the period.

The reference amount for a pre-commencement period

- 13 For the purposes of this Part of this Schedule, the reference amount for a pre-commencement period is the amount in the pool at the end of the period—
- (a) after the addition to the pool of any qualifying E&A expenditure allocated to the pool for that period in accordance with paragraph 10(3), but
 - (b) before determining, and adding to the pool, the amount of any pre-commencement supplement claimed in respect of the period.

Claims for pre-commencement supplement

- 14 (1) Any claim for pre-commencement supplement in respect of a pre-commencement period must be made at the same time as, and as if it were part of, the claim under section 441 of the Capital Allowances Act mentioned in paragraph 9(1)(a).
- (2) Subsection (3) of that section (claim for reduced amount) applies in relation to any such claim.

PART 4

POST-COMMENCEMENT SUPPLEMENT

Supplement in respect of a post-commencement period

- 15 (1) A qualifying company which incurs a qualifying E&A loss (see paragraph 17) in a post-commencement period may claim supplement under this Part of this Schedule (“post-commencement supplement”) in respect of—
- (a) that period, or
 - (b) any subsequent accounting period in which it carries on its ring fence trade.
- (2) Any post-commencement supplement allowed on a claim in respect of a post-commencement period shall be treated for the purposes of the Corporation Tax Acts (other than this Part of this Schedule) as if it were a loss—
- (a) incurred in carrying on the ring fence trade in that period,
 - (b) which falls in whole to be set off under section 393 against trading income from the ring fence trade in succeeding accounting periods.
- (3) Paragraph 74 of Schedule 18 to the Finance Act 1998 (company tax returns etc: time limit for claims for group relief) shall apply in relation to a claim for post-commencement supplement as it applies in relation to a claim for group relief.

Amount of post-commencement supplement for a post-commencement period

- 16 (1) The amount of the post-commencement supplement for any post-commencement period in respect of which a claim under paragraph 15 is made is the relevant percentage for that period of the reference amount for that period.

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- (2) If the post-commencement period is a period of less than twelve months, the amount of the supplement for the period (apart from this sub-paragraph) shall be reduced proportionally.
- (3) Paragraphs 19 to 24 have effect for the purpose of determining the reference amount for a post-commencement period.

Ring fence losses and qualifying E&A losses

- 17 (1) Where—
- (a) in any post-commencement period (“the period of the loss”) a qualifying company carrying on a ring fence trade incurs a loss in the trade, and
 - (b) some or all of the loss falls to be set off under section 393 against trading income from the trade in succeeding accounting periods,
- so much of the loss as falls to be so set off is a “ring fence loss” of the company.
- (2) In determining for the purposes of this Part of this Schedule how much of a loss incurred in a ring fence trade falls to be set off as mentioned in sub-paragraph (1)(b), it shall be assumed that every claim is made that could be made by the company under section 393A to set losses incurred in the ring fence trade against ring fence profits of earlier post-commencement periods.
 - (3) So much of a ring fence loss as is attributable to qualifying E&A allowances for the period of the loss is a “qualifying E&A loss”.
 - (4) A ring fence loss is attributable to qualifying E&A allowances to the extent that the amount of the ring fence loss does not exceed the amount of the qualifying E&A allowances for the period of the loss.
 - (5) But a claim for post-commencement supplement may include an election for a ring fence loss to be treated—
 - (a) as attributable to qualifying E&A allowances for the period of the loss to such lesser extent as may be specified in the election, or
 - (b) as not attributable to such allowances.
 - (6) “Qualifying E&A allowances”, in the case of an accounting period, means allowances for that period under Part 6 of the Capital Allowances Act in respect of qualifying E&A expenditure incurred by the company (including any pre-commencement supplement treated under paragraph 9(2) as such an allowance).
 - (7) This paragraph has effect for the purposes of this Part of this Schedule.

Ring fence losses and non-qualifying losses

- 18 (1) So much of a ring fence loss as is not a qualifying E&A loss is a non-qualifying loss.
- (2) Where—
- (a) a loss was incurred by a qualifying company in its ring fence trade in an accounting period ending on or before 31st December 2003, and
 - (b) some or all of that loss falls to be set off under section 393 against profits of that trade in accounting periods ending on or after that date,
- so much of the loss as falls to be so set off is a ring fence loss and that loss is a non-qualifying loss.

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(3) This paragraph has effect for the purposes of this Part of this Schedule.

The pool of qualifying E&A losses and the pool of non-qualifying losses

- 19 (1) For the purpose of determining the amount of any post-commencement supplement, a qualifying company shall be taken at all times in its post-commencement periods to have—
- (a) a continuing pool of the company's non-qualifying losses (the "non-qualifying pool"), and
 - (b) a continuing mixed pool of the company's qualifying E&A losses and post-commencement supplement (the "qualifying pool").
- (2) A pool continues even if the amount in it is nil.

The non-qualifying pool

- 20 (1) The non-qualifying pool consists of the company's non-qualifying losses, allocated to the pool in accordance with sub-paragraph (2).
- (2) A non-qualifying loss is allocated to the pool by adding the amount of the non-qualifying loss to the pool in the period of the loss.
- (3) In the case of a non-qualifying loss incurred in an accounting period ending on or before 31st December 2003, the period of the loss shall be taken for the purposes of sub-paragraph (2) to be the first accounting period of the company that ends on or after 1st January 2004.
- (4) The amount in the non-qualifying pool is subject to reductions in accordance with the following provisions of this Part of this Schedule.
- (5) Where a reduction in the amount in the non-qualifying pool falls to be made in any accounting period—
- (a) the reduction is to be made after the addition to the pool of any non-qualifying loss allocated to the pool in that period in accordance with sub-paragraph (2), and
 - (b) references to the amount in the non-qualifying pool shall be construed accordingly.

The qualifying pool

- 21 (1) The qualifying pool consists of—
- (a) the company's qualifying E&A losses, allocated to the pool in accordance with sub-paragraph (2)(a), and
 - (b) the company's post-commencement supplement, allocated to the pool in accordance with sub-paragraph (2)(b).
- (2) The allocation of qualifying E&A losses and post-commencement supplement to the pool is as follows—
- (a) the amount of a qualifying E&A loss is added to the pool in the period of the loss, and
 - (b) if any post-commencement supplement is allowed on a claim in respect of a post-commencement period, the amount of that supplement is added to the pool in that period.

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- (3) The amount in the qualifying pool is subject to reductions in accordance with the following provisions of this Part of this Schedule.
- (4) Where a reduction in the amount in the qualifying pool falls to be made in any accounting period, the reduction is to be made—
 - (a) after the addition to the pool of the amount of any qualifying E&A losses allocated to the pool in that period in accordance with sub-paragraph (2)(a), but
 - (b) before determining, and adding to the pool, the amount of any supplement claimed in respect of the period,and references to the amount in the pool shall be construed accordingly.

Reductions in respect of utilised ring fence losses

- 22 (1) If one or more ring fence losses are set off under section 393 against any profits of a post-commencement period, reductions shall be made in that period in accordance with this paragraph.
- (2) The amount in the non-qualifying pool shall be reduced (but not below nil) by setting against it a sum equal to the total amount so set off.
- (3) If any of that sum remains after being so set against the amount in the non-qualifying pool, the amount in the qualifying pool shall be reduced (but not below nil) by setting against it so much of that sum as so remains.

Reductions in respect of unrelieved group ring fence profits

- 23 (1) If there is an amount of unrelieved group ring fence profits for a post-commencement period, reductions shall be made in that period in accordance with this paragraph.
- (2) In the following provisions of this paragraph, references to the remaining amount in a pool are references to so much (if any) of the amount in the pool as remains after making any reductions that fall to be made in accordance with paragraph 22.
- (3) The remaining amount in the non-qualifying pool shall be reduced (but not below nil) by setting against it a sum equal to the aggregate of the amounts of unrelieved group ring fence profits for the period.
- (4) If any of that sum remains after being so set against the remaining amount in the non-qualifying pool, the remaining amount in the qualifying pool shall be reduced (but not below nil) by setting against it so much of that sum as so remains.

The reference amount for a post-commencement period

- 24 For the purposes of this Part of this Schedule the reference amount for a post-commencement period is so much of the amount in the qualifying pool as remains after making any reductions required by paragraph 22 or 23.”

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