

Status: Point in time view as at 01/09/2013.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2013, SCHEDULE 32. (See end of Document for details)

SCHEDULES

SCHEDULE 32

Section 93

RESTRICTIONS ON ALLOWANCES FOR CERTAIN OIL-RELATED EXPENDITURE

PART 1

DECOMMISSIONING EXPENDITURE

- 1 CAA 2001 is amended as follows.
- 2 After section 165 insert—

“Restrictions on allowances: anti-avoidance

165A Decommissioning services supplied by connected person

- (1) Allowances under this Part are restricted under section 165B(1) if—
 - (a) a person (“R”) who is carrying on, or has ceased to carry on, a ring fence trade enters into an arrangement,
 - (b) under the arrangement, a person (“S”) who is connected with R provides a service to R, and
 - (c) all or part of the consideration for the service is decommissioning expenditure.
- (2) Subsection (1)(b) may be satisfied whether the service is provided to R directly or indirectly; and in particular it does not matter—
 - (a) whether R and S are parties to the same contract, or
 - (b) whether payments are made by R directly to S.
- (3) Subsections (4) to (9) apply for the purposes of this section and sections 165B to 165E.
- (4) References to providing a service include—
 - (a) letting a ship on charter or any other asset on hire, and
 - (b) providing goods which are to be used up in the course of providing a service.
- (5) “Decommissioning expenditure” means expenditure in connection with decommissioning.
- (6) “Decommissioning” means—
 - (a) demolishing plant or machinery,
 - (b) preserving plant or machinery pending its reuse or demolition,
 - (c) preparing plant or machinery for reuse, or
 - (d) arranging for the reuse of plant or machinery.

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- (7) It is immaterial for the purposes of subsection (6)(b) whether the plant or machinery is reused, is demolished or is partly reused and partly demolished.
- (8) It is immaterial for the purposes of subsection (6)(c) and (d) whether the plant or machinery is in fact reused.
- (9) References to R's expenditure under the arrangement are to so much of the consideration for the service as is decommissioning expenditure incurred by R.

165B Restriction on allowance available

- (1) The amount, if any, by which R's expenditure under the arrangement exceeds D is to be left out of account in determining R's available qualifying expenditure.
- (2) D is the cost to S of providing the service or, if R's expenditure under the arrangement relates to only part of the service, that part.
- (3) Subsection (2) is subject to sections 165C and 165D, which provide for D to be calculated differently in certain circumstances.
- (4) But if, under any arrangement, a particular service or part of a service is provided by more than one person who is connected with R (so that without this subsection there would be more than one amount for D in relation to that service or part), D is the lowest of those amounts.

165C Allowance in respect of certain services related to decommissioning

- (1) This section applies to so much of R's expenditure under the arrangement as relates to the supply by S of a service if—
 - (a) the service is a planning or project management service, and
 - (b) the cost plus method is an appropriate method of applying the arm's length principle to the provision of it.
- (2) D is the sum of—
 - (a) the cost to S of providing the service or, if R's expenditure under the arrangement relates to only part of the service, that part, and
 - (b) the appropriate percentage of that amount.
- (3) The appropriate percentage is the smaller of—
 - (a) the appropriate mark up determined in accordance with the cost plus method, and
 - (b) 10%.
- (4) Any expression which is used in this section and in the transfer pricing guidelines has the meaning given in those guidelines.

“The transfer pricing guidelines” has the meaning given by section 164(4) of TIOPA 2010.

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165D Allowance where decommissioning undertaken for other participators in oil field

- (1) This section applies where—
 - (a) S decommissions the plant or machinery,
 - (b) there are, in addition to R, one or more other participators in the relevant field, and
 - (c) the expenditure incurred in respect of the decommissioning is apportioned between the participators (including R) in accordance with their shares in the oil won from the relevant field or their shares in the equity of that field.
- (2) D is the part of the expenditure referred to in subsection (1)(c) which is incurred by R.
- (3) Where—
 - (a) plant or machinery is or has been used in connection with the winning of oil from more than one relevant field, and
 - (b) the expenditure incurred in respect of the decommissioning is apportioned between those fields in accordance with the contribution from each field to the total of the oil won using that plant or machinery,subsections (1) and (2) apply to each such field as if subsection (1)(c) referred to the expenditure apportioned to that field.
- (4) But subsections (2) and (3) do not apply (and section 165B(2) applies instead) if—
 - (a) the amount of consideration, or the method of determining the amount of consideration, to be received by S under the arrangement or arrangements, or
 - (b) the apportionment of the liability for that consideration (whether between the participators as mentioned in subsection (1)(c) or between the fields as mentioned in subsection (3)(b)),has been agreed as, or as part of, an avoidance scheme.
- (5) A scheme is an “avoidance scheme” if the main purpose, or one of the main purposes, of a party in entering into the scheme is to enable a person to obtain a tax advantage under this Part that would not otherwise be obtained.
- (6) The reference in subsection (5) to obtaining a tax advantage that would not otherwise be obtained includes obtaining an allowance that is in any way more favourable to a person than the one that would otherwise be obtained.
- (7) In this section—

“licensee”, “oil” and “oil field” have the same meaning as in Part 1 of OTA 1975,

“other participator” means a person, not connected with R, who is a licensee in respect of any licensed area wholly or partly included in the oil field in question, and

“relevant field” means an oil field—

 - (a) in which plant or machinery is located, or

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- (b) in connection with which the plant or machinery is being or has been used for the purposes of a ring fence trade.

165E Transaction to obtain tax advantage

- (1) Allowances under this Part are restricted under subsection (5) if—
- (a) a person (“R”) who is carrying on, or has ceased to carry on, a ring fence trade enters into a transaction with another person (“S”),
 - (b) S receives from R consideration for services provided in pursuance of the transaction,
 - (c) all or part of that consideration is decommissioning expenditure, and
 - (d) the transaction either has an avoidance purpose, or is part of, or occurs as a result of, a scheme or arrangement that has an avoidance purpose.
- (2) Subsection (1)(d) may be satisfied—
- (a) whether the scheme or arrangement was made before or after the transaction was entered into, and
 - (b) whether or not the scheme or arrangement is legally enforceable.
- (3) A transaction, scheme or arrangement has an “avoidance purpose” if the main purpose, or one of the main purposes, of a party in—
- (a) entering into the transaction, scheme or arrangement, or
 - (b) agreeing an amount of consideration, or a method of determining an amount of consideration, to be paid in pursuance of the transaction, scheme or arrangement,
- is to enable a person to obtain a tax advantage under this Part that would not otherwise be obtained.
- (4) The reference in subsection (3) to obtaining a tax advantage that would not otherwise be obtained includes obtaining an allowance that is in any way more favourable to a person than the one that would otherwise be obtained.
- (5) All or part of R's expenditure under the transaction is to be left out of account in determining R's available qualifying expenditure.
- (6) The amount of expenditure to be left out of account is—
- (a) such amount as would or would in effect cancel out the tax advantage mentioned in subsection (3) (whether that advantage is obtained by R or another person and whether it relates to the transaction or something else), or
 - (b) if the amount found under paragraph (a) exceeds the whole of R's expenditure under the transaction, the whole of that expenditure.”

3 In section 26(5), at the end insert “ and sections 165A to 165E (restrictions on allowances: anti-avoidance). ”

4 In section 57(3), after the reference to section 70DA insert— “ sections 165A to 165E (restrictions on allowances: anti-avoidance); ”.

5 In section 161C(3), for “and 164(4)” substitute “ , 164(4) and 165A to 165E ”.

6 In section 164(5A), at the end insert “ and sections 165A to 165E. ”

7 After section 165(3) insert—

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“(3A) Subsection (3) is subject to sections 165A to 165E.”

- 8 The amendments made by this Part have effect in relation to expenditure incurred on decommissioning carried out on or after the day on which this Act is passed.

PART 2

EXPENDITURE ON SITE RESTORATION

- 9 After section 416ZB of CAA 2001 (inserted by section 92) insert—

“416ZC Site restoration services supplied by connected person

- (1) Where—
- (a) a person (“R”) who is carrying on, or has ceased to carry on, a ring fence trade enters into an arrangement,
 - (b) under the arrangement, a person (“S”) who is connected with R provides a service to R in connection with work on the restoration of a relevant site, and
 - (c) (in the absence of this section) all or part of the consideration for the service would be qualifying expenditure of R under section 416ZA, the amount of the expenditure which is qualifying expenditure is restricted under section 416ZD(1).
- (2) Subsection (1)(b) may be satisfied whether the service is provided to R directly or indirectly; and in particular it does not matter—
- (a) whether R and S are parties to the same contract, or
 - (b) whether payments are made by R directly to S.
- (3) Subsections (4) and (5) apply for the purposes of this section and sections 416ZD and 416ZE.
- (4) “Relevant site” has the meaning given by section 416ZA(8).
- (5) References to providing a service include—
- (a) letting a ship on charter or any other asset on hire, and
 - (b) providing goods which are to be used up in the course of providing a service.

416ZD Restriction on allowance available

- (1) In determining how much of the consideration for the service is qualifying expenditure, there is to be left out of account the amount (if any) by which that consideration exceeds D.
- (2) D is the cost to S of providing the service or, if the qualifying expenditure relates to only part of the service, that part.
- (3) Subsection (2) is subject to—
- (a) subsection (4), and
 - (b) section 416ZE,
- which provide for D to be calculated differently in certain circumstances.

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- (4) The following provisions apply in relation to an amount restricted under subsection (1) as they apply in relation to an amount restricted under section 165B(1)—
- (a) section 165C;
 - (b) section 165E, subject to the modifications in subsection (5).
- (5) The modifications are that—
- (a) the references to Part 2 are to be read as references to this Part,
 - (b) in subsection (1)(c), the reference to decommissioning expenditure is to be read as a reference to qualifying expenditure under section 416ZA, and
 - (c) in subsection (5), the reference to R's available qualifying expenditure is to be read as a reference to R's qualifying expenditure on the restoration of the site.
- (6) But if, under the arrangement, a particular service or part of a service is provided by more than one person who is connected with R (so that without this subsection there would be more than one amount for D in relation to that service or part), D is the lowest of those amounts.

416ZE Allowance where site restoration undertaken for other participators in oil field

- (1) This section applies where—
- (a) S carries out the restoration of a relevant site,
 - (b) there are, in addition to R, one or more other participators in the relevant field, and
 - (c) the expenditure incurred in carrying out the restoration is apportioned between the participators (including R) in accordance with their shares in the oil won from the relevant field or their shares in the equity of that field.
- (2) D is the part of the expenditure referred to in subsection (1)(c) which is incurred by R.
- (3) Where—
- (a) a relevant site has been used in connection with the winning of oil from more than one relevant field, and
 - (b) the expenditure incurred in respect of the restoration is apportioned between those fields in accordance with the contribution from each field to the total of the oil won using that site,
- subsections (1) and (2) apply to each such field as if subsection (1)(c) referred to the expenditure apportioned to that field.
- (4) But subsections (2) and (3) do not apply (and section 416ZD(2) applies instead) if—
- (a) the amount of consideration, or the method of determining the amount of consideration, to be received by S under the arrangement or arrangements, or
 - (b) the apportionment of the liability for that consideration (whether between the participators as mentioned in subsection (1)(c) or between the fields as mentioned in subsection (3)(b)),

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has been agreed as, or as part of, an avoidance scheme.

- (5) A scheme is an “avoidance scheme” if the main purpose, or one of the main purposes, of a party in entering into the scheme is to enable a person to obtain a tax advantage under this Part that would not otherwise be obtained.
- (6) The reference in subsection (5) to obtaining a tax advantage that would not otherwise be obtained includes obtaining an allowance that is in any way more favourable to a person than the one that would otherwise be obtained.
- (7) In relation to the restoration of a relevant site, “relevant field” means any of the following—
- (a) the oil field in which the site is located;
 - (b) if the site is the site of a source to the working of which a ring fence trade relates (or related), an oil field from which oil is or has been won by means of working the source;
 - (c) if the site is land used in connection with working such a source, an oil field from which oil is or has been won by means of working the source.

(8) In this section—

“licensee”, “oil” and “oil field” have the same meaning as in Part 1 of OTA 1975, and

“other participator” means a person, not connected with R, who is a licensee in respect of any licensed area wholly or partly included in the oil field in question.”

- 10 In section 395(3) of that Act (provisions limiting “qualifying expenditure”) for “Chapter 4 contains” substitute “ Chapters 4 and 5 contain ”.
- 11 The amendments made by this Part have effect in relation to expenditure incurred on restoration carried out on or after the day on which this Act is passed.

PART 3

AMENDMENTS OF TIOPA 2010

- 12 Part 4 of TIOPA 2010 (transfer pricing) is amended as follows.
- 13 In section 147(6) (list of exceptions to the basic rule stated in that section), after paragraph (b) insert—
- “(ba) section 206A (modification of basic rule where allowances restricted for certain oil-related expenditure),”.
- 14 After section 206 insert—

“206A Modification of basic rule where allowances restricted for certain expenditure

(1) This section applies where—

- (a) in a case to which section 165A(1) of CAA 2001 (restriction of allowances for decommissioning expenditure) applies, R's available qualifying expenditure is restricted under section 165B(2) or 165C of that Act, or

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- (b) in a case to which section 416ZC(1) of that Act (restriction of allowances for expenditure on site restoration) applies, R's qualifying expenditure is restricted under section 416ZD(2) or section 165C as applied by section 416ZD(4)(a) of that Act.
- (2) In calculating for tax purposes S's profits and losses in relation to the service provided by S to R, the amount which S is required to bring into account is an amount equal to R's expenditure (restricted as mentioned in subsection (1) (a) or (b)).
- (3) Section 147(3) and (5) do not apply to the extent that they are inconsistent with subsection (2).
- (4) In this section "R" and "S" have the meaning given by section 165A or 416ZC of CAA 2001 (as the case may be)."
- 15 In section 213 (effect of Part 4 on capital allowances), after subsection (2) insert—
- “(3) But a claim under section 174 may not be made if the claim would affect the operation of sections 165A to 165E or 416ZC to 416ZE of CAA 2001.”
- 16 The amendments made by this Part have effect for accounting periods ending on or after the day on which this Act is passed.

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