



Oil and gas fiscal regime: substantial shareholding exemption

Who is likely to be affected?

Companies involved in oil and gas exploration and appraisal (E&A) activity in the UK or UK Continental Shelf (UKCS) which have not commenced a ring fence trade.

General description of the measure

The measure will extend the scope of the Substantial Shareholding Exemption to treat a company as having held a substantial shareholding in a subsidiary being disposed of for the 12 month period before the disposal. To qualify, the subsidiary has to be using assets for oil and gas E&A activity that have been transferred from other group companies and meet the other conditions for the exemption.

Policy objective

This measure is intended to support investment in E&A activity in the UK and UKCS by ensuring that the structure of the oil and gas fiscal regime does not prevent amendments made to SSE in Finance Act 2011 from operating in the way they were intended to. It will remove a barrier to the transfer of assets from a group undertaking E&A activity in the oil and gas sector to another group in that sector that will use the licence in the trade of extracting oil or gas.

Background to the measure

The Government announced this measure in Autumn Statement 2013.

Detailed proposal

Operative date

This measure will have effect on and after the date that Finance Bill 2014 receives Royal Assent.

Current law

Under Schedule 7AC Taxation of Chargeable Gains Act 1992 (TCGA 1992), a company disposing of shares in another company does not incur a chargeable gain if it holds a substantial shareholding in that company and both the investing company and the company invested in meet certain requirements.

Finance Act 2011 inserted paragraph 15A, which allows a company to be treated as if it has met the time requirement where it meets certain conditions.

Proposed revisions

Legislation will be introduced in Finance Bill 2014 to amend the definition of trade at paragraph 15A(2)(b) and 15A(2)(d) Schedule 7AC TCGA 1992 to ensure that it also refers to an asset which, at the time of disposal, is being used for the purposes of E&A activity and which was previously used for those purposes by a company in the same group.

Summary of impacts

Exchequer impact (£m)	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
	-	nil	nil	nil	nil	nil
	This measure is not expected to have an Exchequer impact.					
Economic impact	This measure is not expected to have any significant economic impacts, but forms part of a package to encourage exploration activity.					
Impact on individuals and households	Any resulting increase in production would contribute to the security of the UK's energy supply.					
Equalities impacts	This measure is considered to have no differential impact on any equality groups.					
Impact on business including civil society organisations	<p>Only a small number of UK businesses will be affected by the measure. The proposals are designed to support exploration companies. This measure is expected to have a negligible impact on these businesses.</p> <p>There will be no impact on civil society organisations.</p>					
Operational impact (£m) (HMRC or other)	The additional costs for HM Revenue & Customs in implementing this change are expected to be negligible.					
Other impacts	<p><u>Sustainable development, wider environment and health</u>: the oil and gas industry is heavily regulated to ensure its activities do not lead to pollution or disturbance to habitat or wildlife, and to ensure the health and wellbeing of its workers.</p> <p><u>Small and micro business assessment</u>: it is not anticipated that many small or micro businesses will be affected by this measure. This change applies only to oil and gas companies operating in the UK or UKCS. The administrative impact on small companies is expected to be negligible.</p> <p>Other impacts have been considered and none have been identified.</p>					

Monitoring and evaluation

The measure will be kept under review through regular communication with affected taxpayer groups.

Further advice

If you have any questions about this change, please contact Natalie Reeder on 03000 586574 (email: natalie.reeder@hmrc.gsi.gov.uk).

1 Substantial shareholder exemption: oil and gas

- (1) In Schedule 7AC to TCGA 1992 (exemption for disposals by companies with substantial shareholding), in paragraph 15A (effect of transfer of trading assets within a group), after sub-paragraph (2) insert –
 - “(2A) For the purposes of sub-paragraph (2)(b) and (d), “trade” includes oil and gas exploration and appraisal.”
- (2) The amendment made by this section has effect in relation to disposals on or after the day on which this Act is passed.

EXPLANATORY NOTE

SUBSTANTIAL SHAREHOLDER EXEMPTION: OIL AND GAS

SUMMARY

1. Clause [X] amends Schedule 7AC of the Taxation of Chargeable Gains Act 1992 (TCGA) to extend the scope of the substantial shareholding exemption. A company disposing of a substantial shareholding in a subsidiary will be treated as having owned that shareholding for twelve months prior to disposal (a condition of the exemption), where the subsidiary is using assets for oil and gas exploration and appraisal activity that have been transferred from other group companies.

DETAILS OF THE CLAUSE

2. Subsection (1) inserts new subparagraph (2A) into paragraph 15A Schedule 7AC of the TCGA 1992 and provides that the amendments will take effect for disposals made on or after Royal Assent to Finance Act 2014.

3. New subparagraph (2A) amends the definition of “trade” at subparagraphs (2)(b) and (2)(d) of paragraph 15A to include oil and gas exploration and appraisal. “Oil and gas exploration and appraisal” is defined at section 1134 Corporation Tax Act 2010.

BACKGROUND NOTE

4. The substantial shareholding exemption provides that where a company disposes of shares or an interest in shares that it holds in a second company, the gain is not a chargeable gain, and a loss is not allowable, if certain conditions are met. Those conditions include the substantial shareholding requirement, as set out in paragraph 7 of the Schedule. This requires that, in the period starting two years before the disposal, there is a continuous period of 12 months when the shareholding company holds a “substantial shareholding” in the company whose shares it then disposes of.

5. At paragraph 15A of the Schedule, the rules also provide that as long as the shareholding company holds a substantial shareholding immediately before the disposal, in certain circumstances the company does not need to have held it for a 12 month period within the previous two years. The circumstances concerned are where there has been an earlier transfer of assets used in a trade between members of the same group.

6. If, at the time of the disposal, the company whose shares are being disposed of is using an asset which was transferred to it from another company within the same group of companies, and both companies were using the asset for the purposes of their trades, the period during which the shareholding company is treated as having a substantial shareholding

is extended to include the earlier period when the asset was used by the other company in the capital gains group for the purposes of its trade. This can enable the shareholding company to meet the 12 month requirement at paragraph 7 of the Schedule, even where the disposal is of shares in a company that is newly incorporated, provided that all other requirements for the exemption are met.

7. The substantial shareholding exemption allows companies flexibility in restructuring their business by removing potential tax barriers to that flexibility. This amendment will ensure that the structure of the oil and gas fiscal regime does not prevent E&A companies from benefiting from the amendments made to SSE in Finance Act 2011. It will remove a barrier to the transfer of companies from a group undertaking E&A activity in the oil and gas sector to another group in that sector.

8. If you have any questions about this change, or comments on the legislation, please contact Natalie Reeder on 03000 586574 (email: natalie.reeder@hmrc.gsi.gov.uk).