**1 Decommissioning relief agreements**

(1) There are to be paid out of money provided by Parliament any sums which a Minister of the Crown is liable to pay under a decommissioning relief agreement.

(2) A "decommissioning relief agreement" is an agreement which—

(a) is made between a Minister of the Crown and a qualifying company, and

(b) provides that, in such circumstances as are specified in the agreement, if the amount of tax relief in respect of any decommissioning expenditure incurred by the qualifying company is less than an amount determined in accordance with the agreement ("the reference amount"), the difference is payable to the company.

(3) "Qualifying company" means—

(a) any company that has at any time carried on a ring fence trade,

(b) any company that is associated with a company carrying on a ring fence trade, and

(c) any company that has at any time been associated with a company that was carrying on a ring fence trade at that time.

(4) For the purposes of subsection (2)(b) the amount of tax relief in respect of any decommissioning expenditure is to be determined in accordance with the agreement; and in making such a determination tax relief in respect of expenditure incurred by the qualifying company that is not decommissioning expenditure may, in such circumstances as are specified in the agreement, be treated as if it were tax relief in respect of decommissioning expenditure.

(5) A payment made to a company under a decommissioning relief agreement is not to be regarded as income or a gain of the company for any purpose of the Tax Acts.

(6) Section 18(1) of the Commissioners for Revenue and Customs Act 2005 (restriction on disclosure by Revenue and Customs officials) does not prevent disclosure to a party to a decommissioning relief agreement for the purpose of enabling the party to determine the reference amount.

(7) In this section—

"decommissioning expenditure" has the meaning given by section 2,

"Minister of the Crown" includes the Treasury, and

"ring fence trade" has the same meaning as in Part 8 of CTA 2010 (see section 277 of that Act).

(8) Subsections (8) to (9) of section 30 of the Petroleum Act 1998 (which specifies when one body corporate is associated with another) apply for the purposes of this section as they apply for the purposes of that section.

**2 Meaning of "decommissioning expenditure"**

(1) In section 1 "decommissioning expenditure" means expenditure incurred in connection with—

(a) demolishing any plant or machinery,

(b) preserving any plant or machinery pending its reuse or demolition,

(c) preparing any plant or machinery for reuse,

(d) arranging for the reuse of any plant or machinery, or

(e) the restoration of any land.

(2) It is immaterial for the purposes of subsection (1)(b) whether the plant or machinery is reused, is demolished or is partly reused and partly demolished.

(3) It is immaterial for the purposes of subsection (1)(c) and (d) whether the plant or machinery is in fact reused.

(4) In subsection (1)(e) "restoration" includes landscaping.

(5) The Treasury may by order amend this section.

(6) An order under subsection (5) may include transitional provision and savings.

(7) The power to make an order under subsection (5) is exercisable by statutory instrument.

(8) A statutory instrument containing an order under subsection (5) is subject to annulment in pursuance of a resolution of the House of Commons.

**3 Annual report**

(1) For each financial year the Treasury must prepare a report containing the information in subsection (2).

(2) The information is—

(a) the number of decommissioning relief agreements entered into in that year,

(b) the total number of decommissioning relief agreements in force at the end of that year,

(c) the number of payments made under any decommissioning relief agreements during that year, and the amount of each such payment,

(d) the total number of payments that have been made under any decommissioning relief agreements as at the end of that year, and the total amount of those payments, and

(e) an estimate of the maximum amount liable to be paid under any decommissioning relief agreements.

(3) The report for a financial year must be laid before the House of Commons as soon as is reasonably practicable after the end of that year.

(4) In this section "decommissioning relief agreement" has the same meaning as in section 1.

(5) This section has effect in relation to financial years ending on or after 31 March 2014.

**4 Decommissioning relief agreements: effect of claim on PRT**

(1) This section applies where a sum is payable to a company ("the claimant") under a decommissioning relief agreement.

(2) Subsection (3) applies where the reference amount is calculated by reference to what the claimant's assessable profit in any chargeable period would be if any expenditure incurred by it were used to reduce its profit in a particular way (rather than in any way that it has in fact been used).

(3) For the purposes of petroleum revenue tax—

(a) the expenditure is treated as having been used to reduce the claimant's profit in that way (rather than in any way that it has in fact been used), and

(b) the claimant is treated as if it had received the tax relief it would receive if its profit were reduced in that way (so no repayment of tax is to be made by virtue of this subsection).

(4) Subsection (5) applies where the reference amount is calculated by reference to what any other company's assessable profit in any chargeable period would be if any expenditure incurred by the claimant—

(a) had been incurred by the other company, and

(b) were used to reduce the other company's profit in a particular way.

(5) For the purposes of petroleum revenue tax—

(a) the expenditure is treated as incurred by the other company (and not the claimant),

(b) the expenditure is treated as having been used by the other company to reduce its profit in that way, and

(c) the other company is treated as if it had received the tax relief it would receive if its profit were reduced in that way (so no repayment of tax is to be made by virtue of this subsection).

(6) "Decommissioning relief agreement" has the same meaning as in section 1.

(7) "The reference amount" means the reference amount (within the meaning of that section) that relates to the sum mentioned in subsection (1).

**5 Decommissioning relief agreements: terminal losses accrued by virtue of another's default**

(1) This section applies where—

(a) a company defaults on a liability under a relevant agreement or abandonment programme to incur decommissioning expenditure in respect of an oil field, and

(b) in consequence of the default, another company ("the other company") that is a party to a decommissioning relief agreement at the time of the default incurs decommissioning expenditure in respect of that oil field.

(2) Paragraph 15 of Schedule 17 to FA 1980 (terminal losses) does not apply in relation to allowable losses accrued by the other company in respect of that oil field.

(3) In this section—

"abandonment programme" means an abandonment programme approved under Part 4 of the Petroleum Act 1998 (including such a programme as revised);

"decommissioning expenditure" has the same meaning as in section 1;

"decommissioning relief agreement" has the same meaning as in that section;

"oil field" has the same meaning as in OTA 1975;

"relevant agreement" has the meaning given by section 104(5)(a) of FA 1991.

**EXPLANATORY NOTE**

**DECOMMISSIONING RELIEF AGREEMENTS**

## SUMMARY

1. This clause provides that payments due under decommissioning relief agreements shall be made out of money provided by Parliament. It defines such agreements and the type of expenditure to which they apply, and introduces a requirement for the Treasury to lay before Parliament an annual report on the Government's liabilities under these agreements.

## DETAILS OF THE CLAUSE

2. Subsection (1) provides that sums due under a decommissioning relief agreement shall be paid out of money provided by Parliament.

3. Subsection (2) defines a "decommissioning relief agreement" as an agreement between a Minister of the Crown and a qualifying company.

4. Subsection (3) defines a "qualifying company" for the purposes of a decommissioning relief agreement.

5. Subsection (4) provides that for the purposes of subsection (2) the amount of tax relief in respect of decommissioning expenditure is to be determined in accordance with the decommissioning relief agreement, and may in some circumstances, which will be specified in the decommissioning relief agreement include tax relief in respect of expenditure that is not decommissioning expenditure.

6. Subsection (5) provides that a payment made under a decommissioning relief agreement is not to be regarded as income or a gain for the company for any purpose of the Tax Acts.

7. Subsection (6) provides that Section 18 (1) of the Commissioners for Revenue and Customs Act 2005, which restricts disclosure by Revenue and Customs officials, does not prevent disclosure of information to a party to a decommissioning relief agreement for the purposes of enabling that party to determine the reference amount.

8. Subsection (7) provides definitions for, "Minister of the Crown", which includes HM Treasury, and "ring fence trade".

9. Subsection (8) provides that subsections (8) to (9) of section 30 of the Petroleum Act 1998 apply for the purposes of Section 1 of this clause.

10. Subsections (1) to (4) of section 2 define the categories of expenditure which constitute "decommissioning expenditure" for the purpose of this clause.

11. Subsections (5) and (6) provide that HM Treasury may amend this section by order, and this order may include transitional provision and savings. Where such an order is made it shall be subject to the negative resolution procedure.

12. Subsection (1) of section 3 provides that in each financial year HM Treasury must prepare a report.

13. Subsection (2) defines the information which must be contained in the report.

14. Subsection (3) provides that the report for a financial year must be laid before the House of Commons as soon as is reasonably practicable after the end of that year.

15. Subsection (5) provides that this clause has effect in relation to financial years ending on or after 31 March 2014.

## BACKGROUND

16. The amendments made by this clause form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

17. If you have any questions about these changes, or comments on the legislation, please contact Adrian Yeo on 020 7270 5774 (email: adrian.yeo@hmtreasury.gsi.gov.uk).

**EXPLANATORY NOTE**

**DECOMMISSIONING RELIEF AGREEMENTS: EFFECT OF CLAIMS ON PRT**

## SUMMARY

1. This clause makes a number of amendments to existing legislation which have the effect of ensuring that no tax relief can be obtained by a company in respect of expenditure, relief for which has already been obtained under a decommissioning relief agreement. These amendments also ensure that where a company's tax history is used to calculate a payment under a decommissioning relief agreement in respect of any expenditure incurred by a claimant then that tax history will reflect that expenditure so incurred. The amendments come into force in relation to any sum payable to a company under a decommissioning relief agreement on or after the date of Royal Assent to Finance Bill 2013.

## DETAILS OF THE CLAUSE

2. Subsection (1) provides that this section applies where a sum is payable to a claimant under a decommissioning relief agreement.

3. Subsections (2) and (3) provide that where expenditure incurred by the claimant, and taking into account its assessable profits, is used to calculate the payment under the decommissioning relief agreement then, for the purposes of petroleum revenue tax, the claimant's profits are treated as reduced by that expenditure as if the payment had been made by way of relief through a repayment of tax.

4. Subsections (4) and (5) provide that where expenditure incurred by the claimant is used to calculate the payment under the decommissioning relief agreement with reference to another company's assessable profits, then, for the purposes of petroleum revenue tax, that other company's profits are treated as reduced by that expenditure as if that other company had incurred the expenditure and the payment had been made by way of relief through a repayment of tax.

5. Subsection (6) provides that "decommissioning relief agreement" has the same meaning as in clause the draft clause relating to Decommissioning relief agreements.

6. Subsection (7) provides that "the reference amount" has the same meaning as the reference amount relating to the sum mentioned in subsection (1).

## BACKGROUND

7. Companies may obtain relief under a decommissioning relief agreement in respect of expenditure incurred for the purposes of tax. For petroleum revenue tax (PRT) this relief is calculated by reference to assessable profits arising in current and previous chargeable periods. Moreover in a situation where a claimant is incurring decommissioning expenditure as a result of another company defaulting on its decommissioning liability, the profits referred to may be in respect of companies other than the claimant.

8. This clause reduces, for the purposes of PRT, assessable profits of a company where those profits have been used to calculate the reference amount under a decommissioning agreement. This is achieved by deeming expenditure to have been incurred and applied in the same way as provided for under the decommissioning relief agreement.

9. The effect of this clause is to prevent a company obtaining tax relief in respect of profits that have already been used in order to provide relief through the decommissioning relief agreement.

10. The amendments made by this clause form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

11. If you have any questions about these changes, or comments on the legislation, please contact Tony Chanter on 020 7438 7918 (email: tony.chanter@hmrc.gsi.gov.uk).

**EXPLANATORY NOTE**

**DECOMMISSIONING RELIEF AGREEMENTS: TERMINAL LOSSES ACCRUED BY VIRTUE OF ANOTHER'S DEFAULT**

## SUMMARY

1. This clause makes amendments to existing petroleum revenue tax (PRT) legislation which have the effect of ensuring that, where a company that is a party to a decommissioning relief agreement has incurred decommissioning expenditure as a consequence of another company defaulting on its own decommissioning liability, the terminal loss provisions of paragraph 15 of Schedule 17 to FA 1980 will not apply. The amendments come into force in relation to a default occurring on or after the date of Royal Assent to Finance Bill 2013.

## DETAILS OF THE CLAUSE

2. Subsection (1) provides that this section applies where a company that is a party to a decommissioning relief agreement incurs decommissioning expenditure as a consequence of another company's default on a decommissioning liability.

3. Subsection (2) provides that Paragraph 15 of Schedule 17 to FA 1980 does not apply.

4. Subsection (3) provides definitions for "abandonment programme", "decommissioning expenditure", "decommissioning relief agreement", "oil field" and "relevant agreement".

## BACKGROUND

5. For the purposes of PRT paragraph 15 of Schedule 17 to FA 1980 provides for terminal losses in respect of a current participator in an oil field to be carried back and relieved against profits of a former participator in that oil field. This will result in a participator obtaining tax relief in respect of expenditure incurred by another participator.

6. In many cases the effect of this provision is recognised and mitigated through commercial arrangements between the parties involved which often provide for the participator incurring the expenditure to receive the benefit of the relief paid to a former participator.

7. However, where a participator incurs decommissioning expenditure as a result of another participator defaulting on its decommissioning

liability then such commercial arrangements are unlikely to apply and the participator incurring the expenditure is denied the benefit of the relief paid to former predecessors in respect of that expenditure.

8. To address this issue clause this clause disapplies paragraph 15 of Schedule 17 to FA 1980 where a participator has incurred decommissioning expenditure as a consequence of a default and is party to a decommissioning relief agreement. In such cases, a participator will instead be able to achieve an equivalent amount of relief directly through a decommissioning relief agreement.

9. The amendments made by this clause form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

10. If you have any questions about these changes, or comments on the legislation, please contact Tony Chanter on 020 7438 7918 (email: tony.chanter@hmrc.gsi.gov.uk).

**1 Restriction on allowances for certain 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 subsection (9) if—
  (a) a person ("R") carrying 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 (8) apply for the purposes of this section and sections 165B to 165D.

(4) "Decommissioning expenditure" means expenditure in connection with decommissioning.

(5) "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.

(6) It is immaterial for the purposes of subsection (5)(b) whether the plant or machinery is reused, is demolished or is partly reused and partly demolished.

(7) It is immaterial for the purposes of subsection (5)(c) and (d) whether the plant or machinery is in fact reused.

(8) 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.

(9) 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.

(10) D is the cost to S of providing the service.

(11) But if, under any arrangement, a particular 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), D is the lowest of those amounts.

(12) Subsections (10) and (11) are subject to sections 165B and 165C, which provide for D to be calculated differently in certain circumstances.

**165B 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 within subsection (2).

(2) A service is within this subsection if—

(a) it is a planning or project management service,

(b) the cost plus method is an appropriate method of applying the arm's length principle to the provision of the service, and

(c) in the application of that method to the service, the appropriate mark up is no greater than [x]%.

(3) D is the amount determined as R's appropriate expenditure on the service by applying that method to the service.

(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.

**165C Allowance where decommissioning undertaken for other participants 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 oil field in which the plant or machinery is being used or, when last in use for the purposes of a ring fence trade, was being used, and

(c) the expenditure incurred in respect of the decommissioning of the plant or machinery is apportioned between the participators (including R) in accordance with their shares in the oil won from the field.

(2) D is the amount of expenditure incurred by R in respect of the decommissioning.

(3) But subsection (2) does not apply (and section 165A(10) and (11) apply instead) if—

(a) the amount of consideration to be received by S under the arrangement or arrangements, or

(b) the apportionment between the participators of the liability for paying that consideration,

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

(4) 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.

(5) The reference in subsection (4) 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.

(6) In this section—

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

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

**165D Transaction to obtain tax advantage**

(1) Allowances under this Part are restricted under subsection (5) if—

(a) a person ("R") carrying 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 entering into 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 165D (restrictions on allowances: anti-avoidance)."

(4) In section 57(3), after the reference to section 70DA insert—

"sections 165A to 165D (restrictions on allowances: anti-avoidance);".

(5) In section 161C(3), for "and 164(4)" substitute ", 164(4) and 165A to 165D".

(6) In section 164(5A), at the end insert "and sections 165A to 165D."

(7) After section 165(3) insert—

"(3A) Subsection (3) is subject to sections 165A to 165D."

(8) In section 213 of TIOPA 2010 (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 165D of CAA 2001."

**EXPLANATORY NOTE**

**RESTRICTION ON ALLOWANCES FOR CERTAIN COMMISSIONING EXPENDITURE**

**SUMMARY**

1. This clause provides that where a connected person provides a decommissioning service to a ring fence company, the plant and machinery allowances in respect of decommissioning expenditure are restricted to the cost to the connected person of providing the service. The clause provides exceptions to this rule for certain expenditure to which the cost plus method is to be applied, and for expenditure where unconnected parties are co-licensees in the field. The clause also restricts allowances where a transaction, scheme or arrangement has an avoidance purpose.

**DETAILS OF THE CLAUSE.**

2. Subsection (1) provides that Capital Allowances Act 2001 (CAA 2001) is amended by the following subsections.

3. Subsection (2) inserts new sections 165A to 165D into CAA 2001.

4. Subsection (1) of new section 165A provides that plant and machinery allowances are restricted under subsection (9) if a connected person (S) provides a service to a person (R) carrying on a ring fence trade and all or part of the consideration for the service is decommissioning expenditure.

5. Subsection (2) of new section 165A provides that subsection (1)(b) may be satisfied whether the service is provided to R directly or indirectly, and it does not matter whether R and S are parties to the same contract or whether payments are made by R directly to S.

6. Subsection (3) of new section 165A applies subsections (4) to (8) for the purposes of sections 165A to 165D.

7. Subsection (4) of new section 165A defines ‘decommissioning expenditure’.

8. Subsection (5) of new section 165A defines ‘decommissioning’.

9. Subsections (6) and (7) of new section 165A provide further detail for the purposes of section (5).

10. Subsection (8) of new section 165A provides the meaning of 'R's expenditure under the arrangement'.

11. Subsection (9) of new section 165A provides that 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.

12. Subsection (10) of new section 165A provides that D is the cost to S of providing the service.

13. Subsection (11) of new section 165A provides that if a particular 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) then D is the lowest of those amounts.

14. Subsection (12) of new section 165A provides that sections 165B and 165C provide for D to be calculated differently in certain circumstances.

15. Subsection (1) of new section 165B provides that section 165B applies to so much of R's expenditure as relates to the supply by S of services within subsection (2).

16. Subsection (2) of new section 165B provides that services are within subsection (2) if:

> (a) they are planning or project management services;
>
> (b) the cost plus method is an appropriate method of applying the arm's length principle to the provision of those services; and,
>
> (c) in applying that method to the services, the appropriate mark-up is no greater than [X]%.

17. Subsection (3) of new section 165B provides that D is the amount determined by applying the cost plus method to the services.

18. Subsection (4) of new section 165B provides that any expression used in section 165B and in the transfer pricing guidelines (as defined by section 164(4) TIOPA 2010) takes its meaning from those guidelines.

19. Subsection (1) of new section 165C provides that section 165C applies where S decommissions the plant or machinery, there are one or more other participators in the oil field in which the plant or machinery is or was being used, and the decommissioning expenditure is apportioned between the participators in accordance with their shares in the oil won from the field.

20. Subsection (2) of new section 165C provides that D is the amount of expenditure incurred by R in respect of the decommissioning.

21. Subsection (3) of new section 165C provides that subsection (2) does not apply, and section 165A(10) applies instead, if the amount of consideration to be received by S, or the apportionment for paying that amount between the participators, is part of an avoidance scheme.

22. Subsection (4) of new section 165C provides that a scheme is an 'avoidance scheme' if a main purpose is to obtain a tax advantage under Part 2 CAA 2001 that would not otherwise be obtained.

23. Subsection (5) of new section 165C provides that obtaining a tax advantage that would not otherwise be obtained includes obtaining an allowance that is in any way more favourable than the allowance that would otherwise be obtained.

24. Subsection (6) of new section 165C provides that 'licensee' and 'oil field' take their meaning from Part 1 of OTA 1975 and provides a definition of 'other participator'.

25. Subsection (1) of new section 165D provides that allowances under Part 2 CAA 2001 are restricted under subsection (5) if

> (a) a person (R) carrying on a ring fence trade enters into a transaction with another person (S);
>
> (b) S receives from R consideration for services provided;
>
> (c) all or part of that consideration is decommissioning expenditure; and,
>
> (d) the transaction has, or is part of or occurs as a result of a scheme or arrangement that has, an avoidance purpose.

26. Subsection (2) of new section 165D provides further detail as to the circumstances in which subsection (1)(d) may be satisfied.

27. Subsection (3) of new section 165D provides that a transaction, scheme or arrangement has an 'avoidance purpose' if a main purpose of a party is to enable a person to obtain a tax advantage under Part 2 CAA 2001 that would not otherwise be obtained.

28. Subsection (4) of new section 165D provides that obtaining a tax advantage that would not otherwise be obtained includes obtaining an allowance that is in any way more favourable than the allowance that would otherwise be obtained.

29. Subsection (5) of new section 165D provides that all or part of R's expenditure is to be left out of account in determining R's available qualifying expenditure.

30. Subsection (6) of new section 165D provides that the amount of expenditure to be left out of account is such amount as would or would in effect cancel out the tax advantage.

31. Subsections (3) to (7) provide consequential amendments.

32. Subsection (8) inserts new subsection (3) into section 213 TIOPA 2010.

33. New subsection (3) of section 213 TIOPA 2010 provides that a claim under section 174 may not be made if the claim would affect the operation of sections 165A to 165D CAA 2001.

## BACKGROUND

34. The amendments made by this clause form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

35. If you have any questions about this change, or comments on the legislation, please contact Hugh Hedges on 020 7438 6576 (email: hugh.hedges@hmrc.gsi.gov.uk).

**1 Capital allowances: expenditure on decommissioning onshore installations**

(1) Section 163 of CAA 2001 (meaning of "general decommissioning expenditure") is amended as follows.

(2) In subsection (1)—

(a) the words after "if" become paragraph (a) of that subsection,

(b) in that paragraph, for "subsections (3) to (4)" substitute "subsections (3), (3A) and (4)", and

(c) at the end of that paragraph insert ", or

(b) the conditions in subsections (3B) and (4) are met."

(3) After subsection (3A) insert—

"(3B) The expenditure must have been incurred on decommissioning plant or machinery—

(a) which has been brought into use wholly or partly for the purposes of a ring fence trade, and

(b) which—

(i) is, or forms part of, a relevant onshore installation, or

(ii) when last in use for the purposes of a ring fence trade, was, or formed part of, such an installation.

(3C) In subsection (3B) "relevant onshore installation" means any building or structure which—

(a) falls within any of sub-paragraphs (ii) to (iv) of section 3(4)(c) of OTA 1975,

(b) is not an offshore installation, and

(c) is or has been used for purposes connected with the extraction of mineral deposits in or under the bed of—

(i) the territorial sea of the United Kingdom, or

(ii) an area designated under section 1(7) of the Continental Shelf Act 1964."

(4) The amendments made by this section have effect in relation to expenditure incurred on decommissioning carried out on or after the day on which this Act comes into force.

**EXPLANATORY NOTE**

**CAPITAL ALLOWANCES: EXPENDITURE ON DECOMMISSIONING ONSHORE INSTALLATIONS**

## SUMMARY

1. This clause extends the meaning of 'general decommissioning expenditure' for plant and machinery allowances to include onshore assets used for the purposes of offshore oil and gas production. This enables the special allowance which is currently available for decommissioning expenditure in respect of offshore assets to apply to such onshore assets.

## DETAILS OF THE CLAUSE

2. Subsection (1) provides that section 163 Capital Allowances Act (CAA) 2001 is amended by subsections (2) and (3).

3. Subsection (2) amends subsection (1) of section 163 to extend the qualifying conditions for expenditure to be 'general decommissioning expenditure'.

4. Subsection (3) inserts new subsections (3B) and (3C) into section 163.

5. New subsection (3B) of section 163 requires that the expenditure must have been incurred on decommissioning plant or machinery:

   (a) which has been used for the purposes of a ring fence trade; and,

   (b) which is or forms part of a relevant onshore installation, or when last in use for the purposes or a ring fence trade was or formed part of such an installation.

6. New subsection (3C) of section 163 provides the definition of a 'relevant onshore installation'.

7. Subsection (4) provides that the changes made by the clause have effect in relation to expenditure incurred on decommissioning carried out on or after Royal Assent to Finance Bill 2013.

## BACKGROUND

8. The amendments made by this clause form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

9. If you have any questions about this change, or comments on the legislation, please contact Hugh Hedges on 020 7438 6576 (email: hugh.hedges@hmrc.gsi.gov.uk).

**1 Removal of IHT charges in respect of decommissioning security settlements**

(1) In Chapter 3 of Part 3 of IHTA 1984 (settled property: settlements without interests in possession etc), section 58 (relevant property) is amended as follows.

(2) In subsection (1), omit the "and" at the end of paragraph (ea) and before paragraph (f) insert—

"(eb) property comprised in a decommissioning security settlement; and".

(3) At the end insert—

"(6) For the purposes of subsection (1)(eb) above a settlement is a "decommissioning security settlement" if the sole or main purpose of the settlement is to provide security for the performance of obligations under an approved abandonment programme.

(7) In subsection (6)—

"abandonment programme" has the meaning given by section 29 of the Petroleum Act 1998;

"approved" means approved by the Secretary of State in accordance with section 32 of that Act;

"security" has the same meaning as in section 38A of that Act."

(4) This section is treated as having come into force on [the first day of the period of 20 years ending immediately before the date of the 2013 Budget].

(5) For the purposes of section 58 of IHTA 1984—

(a) any reference in that section to section 29 or 32 of the Petroleum Act 1998 has effect, in relation to any period before the coming into force of the section, as a reference to the corresponding provision of the Petroleum Act 1987, and

(b) section 38A of the Petroleum Act 1998 is to be treated as having come into force at the same time as this section.

(6) There is to be no charge to tax under section 65 of IHTA 1984 if the only reason for such a charge would be that property ceases to be relevant property by virtue of the coming into force of this section.

**EXPLANATORY NOTE**

**REMOVAL OF INHERITANCE TAX CHARGES IN RESPECT OF DECOMMISSIONING SECURITY SETTLEMENTS**

## SUMMARY

1. This clause removes the charge to inheritance tax (IHT) on property held in decommissioning security settlements. The clause achieves this by amending the definition of relevant property at section 58(1) Inheritance Act 1984 (IHTA) to exclude property held in decommissioning security settlements from that definition. The change is treated as having come into force on [the first day of the period of 20 years ending immediately before the date of the 2013 Budget].

## DETAILS OF THE CLAUSE

2. Subsection 1 of the clause provides for amendments to section 58 of IHTA which deals with the interpretation of relevant property.

3. Subsection 2 inserts a new section 58(1)(eb) to add property in a decommissioning security settlement as one of the categories of settled property in section 58(1) that is not to be regarded as relevant property. This has the effect of excluding such settlements from the IHT charges which would otherwise apply to relevant property.

4. Subsection 3 inserts new sections 58(6) and 58(7) into IHTA, which define the meaning of "decommissioning security settlement" and explain the meaning of certain terms used in these provisions respectively.

5. Subsection 4 provides the commencement provisions. The new section is treated as coming into effect on [the first day of the period of 20 years ending immediately before the date of the 2013 Budget].

6. Subsection 5 provides necessary linkage to the Petroleum Act 1987 so that the new exclusion in section 58(1) also applies to the equivalent of an approved abandonment programme under that Act.

7. Subsection 6 provides that the charge which would normally arise under section 65 IHTA when property ceases to be relevant property will not apply if the only reason for that charge would be the application of these new provisions.

## BACKGROUND

8. Property held in decommissioning security settlements, whether money or alternative provision such as standby letters of credit, is settled property for IHT purposes and as such is "relevant property" as defined in section 58(1) IHTA. Relevant property held in settlements is within the charge to IHT in accordance with the provisions contained in Part 3 of IHTA.

9. The change made by this clause forms part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, removing barriers to the transfer of licence interests and increasing capacity for additional investment in the UK Continental Shelf.

10. If you have any questions about this change, or comments on the legislation, please contact Paul Philip on 0207 438 6993 (email: paul.philip@hmrc.gsi.gov.uk) for general oil and gas decommissioning issues, or Danka Wigley on 0207 7147 3674 (email: danka.wigley@hmrc.gsi.gov.uk) for IHT issues.

**1 Capital allowances: expenditure on site restoration**

(1) Part 5 of CAA 2001 (mineral extraction allowances) is amended as follows.

(2) In section 395 (qualifying expenditure), in subsection (1)(d), omit "post-trading".

(3) In section 403 (qualifying expenditure on acquiring a mineral asset), after subsection (2) insert—

"(2A) For the purposes of this section the reference to expenditure on acquiring a mineral asset does not include expenditure incurred on the restoration of a relevant site (within the meaning of section 416 or 416ZA)."

(4) In section 416 (expenditure on restoration within 3 years of ceasing to trade)—

(a) in subsections (1)(a) and (6)(a), before "mineral extraction trade" insert "relevant";

(b) after subsection (7) insert—

"(7A) "Relevant mineral extraction trade" means a mineral extraction trade that is not a ring fence trade within the meaning of Part 8 of CTA 2010 (see section 277 of that Act).";

(c) the heading of section 416 becomes "**Non-ring fence trades: expenditure on restoration within 3 years of ceasing to trade**".

(5) After section 416 insert—

**"416ZA Ring fence trades: expenditure on site restoration**

(1) If—

(a) a person who is or has been carrying on a ring fence trade incurs expenditure on the restoration of a relevant site,

(b) that part of the restoration work to which the expenditure relates has been carried out, and

(c) the expenditure has not been deducted in calculating for tax purposes the profits of any trade carried on by the person,

the net cost of the restoration is qualifying expenditure.

(2) The qualifying expenditure is treated as incurred—

(a) in the case of a person carrying on a ring fence trade, in the chargeable period in which that part of the restoration work to which the expenditure relates is carried out, and

(b) in the case of a person who has ceased to carry on a ring fence trade, on the last day of trading.

(3) If the amount of expenditure incurred on any part of the restoration work carried out in a chargeable period is disproportionate to that part of the restoration work, only so much of the net cost of the restoration as is proportionate to that part of the restoration work (the "allowable expenditure for the period") is to be treated as qualifying expenditure incurred in that chargeable period.

(4) But subsection (3) does not prevent that part of the expenditure that is not allowable expenditure for the period from being treated as qualifying expenditure incurred in a subsequent chargeable period.

(5) If any expenditure incurred by a person is qualifying expenditure under this section—

(a) the whole of the expenditure on the restoration (not just the net cost) is not deductible in calculating the person's income for any tax purposes, and

(b) none of the amounts subtracted to produce the net cost is to be treated as the person's income for any tax purposes.

(6) "Restoration" is to be read in accordance with section 416(5).

(7) A "relevant site" means—

(a) the site of a source to the working of which the ring fence trade relates (or related), or

(b) land used in connection with working such a source.

(8) "The net cost of the restoration" means the expenditure incurred on the restoration less any amounts attributable to the restoration of the relevant site.

(9) "Ring fence trade" has the same meaning as in Part 8 of CTA 2010 (see section 277 of that Act).

(10) All such adjustments are to be made, by way of discharge or repayment of tax or otherwise, as are necessary to give effect to this section."

(6) Part 4 of CTA 2010 (loss relief) is amended as follows.

(7) In section 40 (ring fence trades: extension of periods for which relief may be given), in subsection (1)(b), for "403" substitute "by virtue of 416ZA".

(8) In section 43 (claim period in case of ring fence or mineral extraction trades), in subsection (1)(b)—

(a) after "416" insert "or 416ZA", and

(b) for the words from "restoration" to "trade" substitute "site restoration".

(9) The amendments made by this section have effect in relation to expenditure incurred on restoration carried out on or after the day on which this Act comes into force.

**EXPLANATORY NOTE**

**CAPITAL ALLOWANCES: EXPENDITURE ON SITE RESTORATION**

## SUMMARY

1. This clause inserts a new section 416ZA into Capital Allowances Act (CAA) 2001. The section provides relief under the Mineral Extraction Allowances code for expenditure on site restoration incurred by a person who is or has been carrying on a ring fence trade. The clause also provides that any resulting loss can access the extended period for which loss relief may be given for ring fence trades.

## DETAILS OF THE CLAUSE

2. Subsection (1) provides that part 5 of CAA 2001 is amended by subsections (2) to (5).

3. Subsection (2) makes a consequential change to the definition of 'qualifying expenditure' in section 395 CAA 2001.

4. Subsection (3) inserts new subsection (2A) into section 403 CAA 2001. The new subsection provides that for the purposes of section 403 expenditure incurred on the restoration of a relevant site is not expenditure on acquiring a mineral asset.

5. Subsection (4) makes consequential changes to section 416 CAA 2001 (expenditure on restoration within 3 years of ceasing to trade).

6. Subsection (5) inserts new section 416ZA (ring fence trades: expenditure on site restoration) into CAA 2001.

7. New subsection (1) of section 416ZA provides that if certain conditions are met the net cost of the restoration is qualifying expenditure.

8. New subsection (2) of section 416ZA provides when the qualifying expenditure is treated as incurred.

9. New subsection (3) of section 416ZA provides that if the expenditure incurred is disproportionate to the work carried out in a chargeable period, only so much of the net cost of the restoration as is proportionate is to be treated as qualifying expenditure incurred in that chargeable period.

10. New subsection (4) of section 416ZA provides that subsection (3) does not prevent that part of the expenditure that is not allowable expenditure for the period from being treated as qualifying expenditure incurred in a subsequent chargeable period.

11. New subsection (5) of section 416ZA provides that if any expenditure is qualifying expenditure:

(a) all the expenditure on the restoration is not deductible in calculating income for tax purposes; and,

(b) none of the amounts subtracted to produce the net cost is to be treated as income for tax purposes.

12. New subsection (6) of section 416ZA provides that 'restoration' is to be read in accordance with section 416.

13. New subsection (7) of section 416ZA provides the definition of a 'relevant site'.

14. New subsection (8) of section 416ZA provides the definition of 'the net cost of the restoration'.

15. New subsection (9) of section 416ZA provides that the definition of 'ring fence trade' in section 277 CTA 2010 applies.

16. New subsection (10) of section 416ZA provides that all such adjustments are to be made as are necessary to give effect to this section.

17. Subsection (6) provides that part 4 of CTA 2010 (loss relief) is amended by subsections (7) to (9).

18. Subsection (7) replaces a reference to section 403 CAA 2001 in section 40 CTA 2010 with a reference to new section 416ZA.

19. Subsection (8) amends section 43 CTA 2010 (claim period) to include new section 416ZA and to make a consequential amendment.

20. Subsection (9) provides that the changes made by the clause have effect in relation to expenditure incurred on restoration carried out from Royal Assent to Finance Bill 2013.

## BACKGROUND

21. The amendments made by this clause form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence

interests and increase capacity for additional investment in the UK Continental Shelf.

22. If you have any questions about this change, or comments on the legislation, please contact Hugh Hedges on 020 7438 6576 (email: hugh.hedges@hmrc.gsi.gov.uk).

**1 Decommissioning expenditure taken into account for PRT purposes**

(1) Section 330B of CTA 2010 (decommissioning expenditure taken into account for PRT purposes) is amended as follows.

(2) In subsection (1), omit the "and" at the end of paragraph (a) and after paragraph (b) insert ", and

"(c) an amount equal to the appropriate fraction of the used-up amount of that expenditure is added under section 330A(2) in calculating the participator's adjusted ring fence profits for an accounting period."

(3) For subsection (2) substitute—

"(2) In calculating for the purposes of section 330(1) the amount of the participator's adjusted ring fence profits for the accounting period, there is to be deducted the amount given by—

$$RP \times AF \times D$$

where—

RP is the relevant percentage of the decommissioning expenditure,

AF is the appropriate fraction, and

D is the PRT difference."

(4) In subsection (3)—

(a) before the definition of "the appropriate fraction" insert—

""the relevant percentage of the decommissioning expenditure" is the percentage of that expenditure that is the used-up amount referred to in subsection (1)(c),";

(b) in the definition of "the appropriate fraction", omit "relevant";

(c) in the definition of "the PRT difference", for "subsection (1)" substitute "subsection (1)(a)".

(5) In subsection (4), for "subsection (1)" substitute "subsection (1)(a)".

(6) In subsection (7)—

(a) omit the definition of "the relevant accounting period", and

(b) at the end insert—

""the used-up amount", in relation to any expenditure, has the same meaning as in section 330A (see subsection (3))."

(7) The amendments made by this section have effect in relation to expenditure incurred in connection with decommissioning carried out on or after the day on which this Act comes into force.

**EXPLANATORY NOTE**

**DECOMMISSIONING EXPENDITURE TAKEN INTO ACCOUNT FOR PRT PURPOSES**

## SUMMARY

1. This clause amends section 330B CTA 2010 to change the accounting period for which a deduction is given. The clause provides that the deduction from profits provided by section 330B is given for the accounting period for which an addition to profits is provided by section 330A in respect of decommissioning expenditure.

## DETAILS OF THE CLAUSE

2. Subsection (1) provides that section 330B CTA 2010 is amended by subsections (2) to (6).

3. Subsection (2) inserts new paragraph (c) into subsection (1) of section 330B.

4. New paragraph (c) of section 330B(1) CTA 2010 is an additional condition which governs whether section 330B applies. The condition is that an amount equal to the appropriate fraction of the used-up amount of decommissioning expenditure is added under section 330A(2) in calculating the participator's adjusted ring fence profits for an accounting period.

5. Subsection (3) substitutes subsection (2) in section 330B.

6. New subsection (2) of section 330B provides the deduction to be made in respect of the PRT difference in calculating the adjusted ring fence profits for the accounting period.

7. Subsection (4) inserts a definition of 'the relevant percentage of the decommissioning expenditure' in section 330B(3) and makes consequential changes to two other definitions.

8. Subsection (5) makes a consequential amendment to section 330B(4).

9. Subsection (6) amends section 330B(7) to remove one definition and to provide that 'the used-up amount' takes the same meaning as in section 330A.

10. Subsection (7) provides that the amendments have effect in relation to expenditure incurred in connection with decommissioning carried out on or after Royal Assent to Finance Bill 2013.

## BACKGROUND

11. The amendments made by this clause form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

12. If you have any questions about this change, or comments on the legislation, please contact Hugh Hedges on 020 7438 6576 (email: hugh.hedges@hmrc.gsi.gov.uk).

## 1 Oil taxation: abandonment guarantees and abandonment expenditure

Schedule 1 contains provision about expenditure on and under abandonment guarantees and abandonment expenditure.

## SCHEDULE 1

Section 1

OIL TAXATION: ABANDONMENT GUARANTEES AND ABANDONMENT EXPENDITURE

*Expenditure on abandonment guarantees*

1 (1) In Part 2 of ITTOIA 2005 (trading income), Chapter 16A (oil activities) is amended as follows.

(2) In section 225N (expenditure on and under abandonment guarantees)—

(a) after subsection (1) insert—

"(1A) Subsection (2) also applies if expenditure incurred by a participator in an oil field would be so allowable as a result of section 3(1)(hh) of that Act but for the fact that the oil field is a non-taxable oil field within the meaning of Part 3 of FA 1993 (see section 185 of that Act).";

(b) in subsection (2), for "that expenditure is so allowable" substitute "the expenditure mentioned in subsection (1) or (1A) is or would be so allowable".

(3) In section 225R (introduction to sections 225S and 225T)—

(a) in paragraph (a) of subsection (1), omit the words from ", or would apply" to "made";

(b) in paragraph (b) of that subsection, after "Schedule" insert ", or would fall to be so attributed if a claim under paragraph 2A(2) of that Schedule were made";

(c) after subsection (1) insert—

"(1A) The condition in subsection (1)(b) is to be treated as met for the purposes of this section if it would be met but for the fact that the contributing participator is (or was) a participator in an oil field that is a non-taxable oil field within the meaning of Part 3 of FA 1993 (see section 185 of that Act).";

(d) in subsection (2), before "attributed" insert "or would be".

2 (1) In Part 8 of CTA 2010 (oil activities), Chapter 4 (calculation of profits) is amended as follows.

(2) In section 292 (expenditure on and under abandonment guarantees)—

(a) after subsection (1) insert—

"(1A) Subsection (2) also applies if expenditure incurred by a participator in an oil field would be so allowable as a result of section 3(1)(hh) of that Act but for the fact that the oil field is a non-taxable oil field within the meaning of Part 3 of FA 1993 (see section 185 of that Act).";

(b) in subsection (2), for "that expenditure is so allowable" substitute "the expenditure mentioned in subsection (1) or (1A) is or would be so allowable".

(3) In section 296 (introduction to sections 297 and 298)—

(a) in paragraph (a) of subsection (1), omit the words from ", or would apply" to "made";

(b) in paragraph (b) of that subsection, after "Schedule" insert ", or would fall to be so attributed if a claim under paragraph 2A(2) of that Schedule were made";

(c) after subsection (1) insert—

"(1A) The condition in subsection (1)(b) is to be treated as met for the purposes of this section if it would be met but for the fact that the contributing participator is (or was) a participator in an oil field that is a non-taxable oil field within the meaning of Part 3 of FA 1993 (see section 185 of that Act).";

(d) in subsection (2), before "attributed" insert "or would be".

*Expenditure under abandonment guarantees*

3 In Schedule 3 to OTA 1975 (petroleum revenue tax: miscellaneous provisions), in paragraph 8 (certain subsidised expenditure to be disregarded), after sub-paragraph (1) insert—

"(1A) But sub-paragraph (1) above does not apply to any expenditure for which the relevant participator is liable that has been or is to be met directly or indirectly out of a payment made by the guarantor under an abandonment guarantee.

(1B) In sub-paragraph (1A) above—

"abandonment guarantee" has the same meaning as it has for the purposes of section 3 of this Act (see section 104 of the Finance Act 1991), and

"the guarantor" and "the relevant participator" have the same meaning as in section 104 of that Act."

4 (1) Part 3 of FA 1991 (oil taxation) is amended as follows.

(2) Omit section 105 (restriction of expenditure relief by reference to payments under abandonment guarantees).

(3) Omit section 106 (relief for reimbursement expenditure under abandonment guarantees).

5 (1) In Part 2 of ITTOIA 2005 (trading income), Chapter 16A (oil activities) is amended as follows.

(2) In section 225N (expenditure on and under abandonment guarantees), omit subsections (3) and (4).

(3) Omit section 225O (relief for reimbursement expenditure under abandonment guarantees).

6 (1) In Part 8 of CTA 2010 (oil activities), Chapter 4 (calculation of profits) is amended as follows.

(2) In section 292 (expenditure on and under abandonment guarantees), omit subsections (3) and (4).

(3) Omit section 293 (relief for reimbursement expenditure under abandonment guarantees).

*Reimbursement by defaulter in respect of abandonment expenditure*

7 In Part 3 of FA 1991, omit section 108 (reimbursement by defaulter in respect of certain abandonment expenditure).

8 In Part 2 of ITTOIA 2005, omit section 225T (reimbursement by defaulter in respect of certain abandonment expenditure).

9 In Part 8 of CTA 2010, omit section 298 (reimbursement by defaulter in respect of certain abandonment expenditure).

*Consequential amendments*

10 (1) Section 104 of FA 1991 is amended as follows.

(2) In subsection (1), omit "and sections 105 and 106 below".

(3) In subsection (2), omit "and section 106 (but not section 105) below".

11 In FA 2008, omit section 105.

12 In Part 2 of ITTOIA 2005, Chapter 16A is amended as follows.

13 (1) Section 225N is amended as follows.

(2) Omit subsection (5).

(3) In subsection (6), in the definition of "abandonment guarantee"—
(a) for "section 105 of FA 1991" substitute "section 3 of OTA 1975", and
(b) for "that Act" substitute "FA 1991".

(4) The heading of that section becomes "**Expenditure on abandonment guarantees**".

14 Omit sections 225P and 225Q.

15 In section 225R (introduction to sections 225S and 225T)—
(a) in subsection (1), for "Sections 225S and 225T apply" substitute "Section 225S applies";
(b) the heading of section 225R becomes "**Introduction to section 225S**".

16 In Part 8 of CTA 2010, Chapter 4 is amended as follows.

17 (1) Section 292 is amended as follows.

(2) Omit subsection (5).

(3) In subsection (6), in the definition of "abandonment guarantee"—
(a) for "section 105 of FA 1991" substitute "section 3 of OTA 1975", and
(b) for "that Act" substitute "FA 1991".

(4) The heading of that section becomes "**Expenditure on abandonment guarantees**".

18 Omit sections 294 and 295.

19 In section 296 (introduction to sections 297 and 298)—
(a) in subsection (1), for "Sections 297 and 298 apply" substitute "Section 297 applies";
(b) the heading of section 296 becomes "**Introduction to section 297**".

*Application*

20 The amendments made by this Schedule have effect in relation to expenditure incurred on or after the day on which this Act comes into force.

**EXPLANATORY NOTE**

**OIL TAXATION - ABANDONMENT GUARANTEES AND ABANDONMENT EXPENDITURE**

## SUMMARY

1. This clause and Schedule make a number of amendments to existing legislation. These taken collectively have the effect of ensuring, as originally intended, that relief for expenditure on obtaining an abandonment guarantee and expenditure incurred by a company as a result of another company's defaulting on its own abandonment commitments is also available in respect of oil fields that are not subject to petroleum revenue tax (PRT). These amendments also disapply, for the purposes of ring fence corporation tax (RFCT), PRT, and income tax (IT) in the context of oil activities, the general principle that a person is not entitled to relief in respect of expenditure to the extent that is has been met by another party's contribution (contribution and reimbursement rules).

## DETAILS OF THE SCHEDULE

*Expenditure on abandonment guarantees*

2. Paragraphs 1 and 2 amend sections 225N and 225R of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA) and sections 292 and 296 Corporation Tax Act 2010 (CTA) to ensure these sections also apply in respect of oil fields that are not subject to PRT.

*Expenditure under abandonment guarantees*

3. Paragraph 3 provides that paragraph 8 of Schedule 3 to the Oil Taxation Act 1975 (OTA) does not apply to expenditure which is met out of a payment under an abandonment guarantee.

4. Paragraphs 4 to 6 omit sections and sub-sections in the Finance Act 1991 (FA), ITTOIA and CTA.

*Reimbursement by defaulter in respect of abandonment expenditure*

5. Paragraphs 7 to 9 omit sections in FA, ITTOIA and CTA.

*Consequential amendments*

6. Paragraphs 10 to 19 make minor consequential changes resulting from the amendments made by this Schedule.

## BACKGROUND

7. Section 292 (1) and (2) CTA and section 225N ITTOIA provide that where expenditure on an abandonment guarantee qualifies for relief for PRT purposes it also qualifies as a deduction in computing ring fence income.

8. Section 296 CTA and section 225R ITTOIA operate where the PRT provisions in paragraph 2A of Schedule 5 to OTA apply.

9. The changes made by the Schedule ensure sections 292 (1) and (2) and 296 CTA and sections 225N and 225R ITTOIA apply in respect of non-PRT fields as originally intended.

10. This Schedule also amends and repeals the RFCT, PRT and IT contribution and reimbursement rules. This is being done to ensure that companies which accept decommissioning security on a post-tax basis will receive full tax relief for any expenditure they incur in respect of a defaulting company's decommissioning obligations.

11. The amendments made by this Schedule form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

12. The amendments come into force in relation to expenditure incurred on or after the date of Royal Assent to Finance Bill 2013.

13. If you have any questions about these changes, or comments on the legislation, please contact Paul Philip on 020 7438 6993 (email: paul.philip@hmrc.gsi.gov.uk).

## 1 Receipts arising from decommissioning

Schedule 1 contains provision about calculating the profits of a ring fence trade carried on by a person who incurs expenditure on meeting another person's decommissioning liabilities.

## SCHEDULE 1

Section 1

OIL TAXATION: RECEIPTS ARISING FROM DECOMMISSIONING

*Calculation of profits chargeable to corporation tax and supplementary charge*

1 In Chapter 4 of Part 8 of CTA 2010 (oil activities: calculation of profits), after section 298 insert—

*"Receipts arising from decommissioning*

**298A Receipts arising from decommissioning**

(1) This section applies if—

(a) a company that is or has been carrying on a ring fence trade ("the defaulter") has defaulted on a liability under—

(i) a relevant agreement, or

(ii) an abandonment programme,

to make a payment towards decommissioning expenditure,

(b) another company that is or has been carrying on a ring fence trade ("the contributing company") pays an amount ("the relevant contribution") in or towards meeting the whole or part of the default, and

(c) the amount of the relevant contribution is less than the sum of the amounts within subsection (2).

(2) The amounts within this subsection are—

(a) any payments made (directly or indirectly) to the contributing company by the guarantor under an abandonment guarantee as a result of the defaulter defaulting on the liability,

(b) any reimbursement payments (see subsection (3)), and

(c) any relief from tax which the contributing company obtains in respect of the relevant contribution.

(3) For the purposes of this section "reimbursement payment" means any payment made to the contributing company by the defaulter in reimbursing the contributing company in respect of, or otherwise making good to the contributing company, the whole or any part of the relevant contribution.

(4) The difference between—

(a) the sum of the amounts within subsection (2), and

(b) the relevant contribution,

is to be treated as a receipt (in the nature of income) of the contributing company's ring fence trade for the relevant accounting period.

(5) In subsection (4) "the relevant accounting period" means the latest of—

(a) the last accounting period in which any of the relevant contribution is paid,

(b) the last accounting period in which any amount within subsection (2)(a) or (b) is paid, and

(c) the last accounting period in which any relief within subsection (2)(c) is obtained.

This is subject to subsections (6) and (7).

(6) If the contributing company has ceased to carry on the ring fence trade before any of the relevant contribution is paid, "the relevant accounting period" is the last accounting period of the trade.

(7) If the contributing company has ceased to be within the charge to corporation tax in respect of the ring fence trade before any of the relevant contribution is paid, "the relevant accounting period" is the accounting period during or at the end of which the contributing company ceased to be within the charge to corporation tax in respect of the trade.

(8) In this section—

"abandonment programme" has the meaning given by section 29 of the Petroleum Act 1998,

"decommissioning expenditure" has the meaning given by section 330C, and

"relevant agreement" has the meaning given by section 104(5)(a) of FA 1991."

*Calculation of profits chargeable to income tax*

2 In Chapter 16A of Part 2 of ITTOIA 2005 (trading income: oil activities), after section 225U insert—

*"Receipts arising from decommissioning*

**225V Receipts arising from decommissioning**

(1) This section applies if—

(a) a person that is or has been carrying on a ring fence trade ("the defaulter") has defaulted on a liability under—

(i) a relevant agreement, or

(ii) an abandonment programme,

to make a payment towards decommissioning expenditure,

(b) another person that is or has been carrying on a ring fence trade ("the contributing person") pays an amount ("the relevant contribution") in or towards meeting the whole or part of the default, and

(c) the amount of the relevant contribution is less than the sum of the amounts within subsection (2).

(2) The amounts within this subsection are—

(a) any payments made (directly or indirectly) to the contributing person by the guarantor under an abandonment

guarantee as a result of the defaulter defaulting on the liability,

(b) any reimbursement payments (see subsection (3)), and

(c) any relief from tax which the contributing person obtains in respect of the relevant contribution.

(3) For the purposes of this section "reimbursement payment" means any payment made to the contributing person by the defaulter in reimbursing the contributing person in respect of, or otherwise making good to the contributing person, the whole or any part of the relevant contribution.

(4) The difference between—

(a) the sum of the amounts within subsection (2), and

(b) the relevant contribution,

is to be treated as a receipt (in the nature of income) of the contributing person's ring fence trade for the relevant tax year.

(5) In subsection (4) "the relevant tax year" means the latest of—

(a) the last tax year in which any of the relevant contribution is paid,

(b) the last tax year in which any amount within subsection (2)(a) or (b) is paid, and

(c) the last tax year in which any relief within subsection (2)(c) is obtained.

This is subject to subsection (6).

(6) If the contributing person's ring fence trade is permanently discontinued before any of the relevant contribution is paid, "the relevant tax year" is the last tax year in which that trade is carried on.

(7) In this section—

"abandonment programme" has the meaning given by section 29 of the Petroleum Act 1998,

"decommissioning expenditure" has the meaning given by section 330C of CTA 2010, and

"relevant agreement" has the meaning given by section 104(5)(a) of FA 1991."

*Application*

3 The amendments made by this Schedule have effect in relation to expenditure incurred on or after the day on which this Act comes into force.

**EXPLANATORY NOTE**

**OIL TAXATION: RECEIPTS ARISING FROM DECOMMISSIONING**

## SUMMARY

1. This clause and Schedule provide for the taxation of any profit which arises to a person from the incurring of decommissioning expenditure as a consequence of the default of another person.

## DETAILS OF THE SCHEDULE

2. Paragraph 1 inserts new section 298A into CTA 2010.

3. Subsection (1) of new section 298A provides that the section applies if:

   (a) a company carrying on a ring fence trade has defaulted on a liability to pay decommissioning expenditure;

   (b) another company carrying on a ring fence trade pays an amount (the relevant contribution) towards meeting that expenditure; and,

   (c) the relevant contribution is less than the sum of the amounts within subsection (2).

4. Subsection (2) of new section 298A provides that the amounts within this subsection are:

   (a) any payments made by the guarantor under an abandonment guarantee;

   (b) any reimbursement expenditure; and,

   (c) any tax relief given to the contributing company in respect of the relevant contribution.

5. Subsection (3) of new section 298A defines 'reimbursement expenditure'.

6. Subsection (4) of new section 298A provides that the difference between the sum of the amounts within subsection (2) and the relevant contribution is to be treated as a receipt of the contributing company's ring fence trade for the relevant accounting period.

7. Subsection (5) of new section 298A defines 'the relevant accounting period'.

8. Subsection (6) of new section 298A provides that in this section 'abandonment programme', 'decommissioning expenditure' and 'relevant agreement' are as defined by other legislation.

9. Paragraph (2) inserts new section 225W into ITTOIA 2005.

10. Subsection (1) of new section 225W provides that the section applies if:

> (a) a person carrying on a ring fence trade has defaulted on a liability to pay decommissioning expenditure,;
>
> (b) another person carrying on a ring fence trade pays an amount ('the relevant contribution') towards meeting that expenditure; and,
>
> (c) the relevant contribution is less than the sum of the amounts within subsection (2).

11. Subsection (2) of new section 225W provides that the amounts within this subsection are:

> (a) any payments made by the guarantor under an abandonment guarantee;
>
> (b) any reimbursement expenditure; and,
>
> (c) any tax relief given to the contributing person in respect of the relevant contribution.

12. Subsection (3) of new section 225W defines 'reimbursement expenditure'.

13. Subsection (4) of new section 225W provides that the difference between the sum of the amounts within subsection (2) and the relevant contribution is to be treated as a receipt of the contributing person's ring fence trade for the relevant tax year.

14. Subsection (5) of new section 225W defines 'the relevant tax year'.

15. Subsection (6) of new section 225W provides that in this section 'abandonment programme', 'decommissioning expenditure' and 'relevant agreement' are as defined by other legislation.

**16.** Paragraph 3 provides that the amendments made by the Schedule have effect in relation to expenditure incurred on or after Royal Assent.

## BACKGROUND

17. The amendments made by this clause form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.

18. If you have any questions about this change, or comments on the legislation, please contact Hugh Hedges on 020 7438 6576 (email: hugh.hedges@hmrc.gsi.gov.uk).