

Scope of the Supplementary Charge

Who is likely to be affected?

Oil and gas companies that operate in the UK and on the UK Continental Shelf (UKCS).

General description of the measure

Legislation will be introduced in Finance Bill 2012 to ensure the Supplementary Charge (SC) applies to ring fence chargeable gains, and to confirm that the scope of the SC matches the scope of Ring Fence Corporation Tax (RFCT).

The Government announced on 6 December 2011 that the legislation implementing both aspects of this measure will be effective from 6 December 2011, to prevent any potential future loss of tax to the Exchequer.

Policy objective

This measure supports the Government's objective of promoting fairness in the tax system. The measure does this by preventing a potential loss of tax through ensuring the SC applies to ring fence chargeable gains, and by confirming that the scope of the SC matches the scope of RFCT.

Background to the measure

The Government has announced that this measure, with legislation effective from 6 December 2011, will be introduced in Finance Bill 2012 and will not be subject to formal consultation.

Detailed proposal

Operative date

The legislative change to ensure the SC applies to ring fence chargeable gains has effect in relation to chargeable gains accruing on or after 6 December 2011. The legislative change confirming that the scope of the SC matches the scope of RFCT also comes into force on 6 December 2011.

Current law

Section 171A Taxation of Chargeable Gains Act 1992 (TCGA 1992), which was introduced in Finance Act 2009, allows a group company to enter into a joint election with another group company to transfer gains and losses between them.

Where there is a transfer within a group of companies of a ring fence chargeable gain from a ring fence company to a non-ring fence company, the ring fence gain is not subject to SC because the non-ring fence company does not fall within the scope of the SC.

The scope of the SC is defined in section 330 Corporation Tax Act 2010 (CTA 2010) by reference to a company's adjusted ring fence profits.

Proposed revisions

The changes in the law will be made by amendments to primary legislation.

Section 171A TCGA 1992 will be amended to provide that an election cannot be made to transfer a ring fence chargeable gain from a company carrying on a ring fence trade to a company not carrying on a ring fence trade.

Section 330 CTA 2010 will be amended to put beyond doubt that SC is charged by reference to a company's ring fence profits chargeable to corporation tax; that is by reference to its chargeable gains and other income, in addition to the trading profits arising to the company as a result of its ring fence trade.

Summary of impacts

Exchequer impact (£m)	2011-12	2012-13	2013-14	2014-15	2015-16
	This measure is expected to increase receipts by approximately £5 million per annum. The final costing will be subject to scrutiny by the Office for Budget Responsibility, and will be set out at Budget 2012. This measure also supports the Exchequer in its commitment to protect revenue.				
Economic impact	This measure is not expected to have any significant impact on stability and investment in the UKCS, or the wider economy.				
Impact on individuals and households	The changes apply only to companies involved in the UK or UKCS oil and gas industry.				
Equalities impact	This measure applies only to companies involved in the oil and gas industry in the UK or UKCS and is considered to have no differential impact on any equality groups.				
Impact on businesses including civil society organisations	<p>There are around 350 companies involved in the UK or UKCS oil and gas industry. Industry has already been made aware that the Government would consider clarifying the legislation in this way, and the proposed change will have no material impact on the vast majority of businesses operating in the ring fence.</p> <p>The measure will have no impact on civil society organisations.</p> <p>The impacts on administrative costs for businesses arising from this proposed measure are expected to be negligible.</p>				
Operational impact (£m) (HMRC or other)	There will be a negligible cost to HMRC for updating guidance.				
Other impacts	<p><u>Carbon assessment:</u> By their nature, oil and gas production installations produce carbon emissions and therefore fall within the scope of the EU Emissions Trading System.</p> <p><u>Sustainable development, wider environment and health:</u> The changes proposed will not of themselves increase activity and therefore risk. The industry is regulated to seek to ensure the health and wellbeing of its workers and that its activities do not lead to pollution or disturbance to habitat or wildlife.</p> <p><u>Small firms impact test:</u> Although small firms may be affected by this measure, the Government is satisfied that any impacted firms will have the capacity to understand and implement the change.</p>				

	<p><u>Competition assessment:</u> None of the changes has a negative effect on competition. The changes will confirm the scope of the SC, and ensure SC is paid on ring fence chargeable gains.</p>
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Monitoring and evaluation

The measure will be kept under review through regular communication with the relevant business sector.

Further advice

If you have any questions about this change, please contact Paul Philip on 020 7438 6993 (email: paul.philip@hmrc.gsi.gov.uk), or Hugh Hedges on 020 7438 6576 (email: hugh.hedges @hmrc.gsi.gov.uk).

1 Supplementary charge

- (1) In section 330 of CTA 2010 (supplementary charge in respect of ring fence trades), in subsection (2), for “profits of the company’s ring fence trade” substitute “company’s ring fence profits”.
- (2) This section comes into force on 6 December 2011.

EXPLANATORY NOTE

SUPPLEMENTARY CHARGE

SUMMARY

1. This clause clarifies the definition of the scope of the supplementary charge (SC) set out in section 330 of Corporation Tax Act 2010 (CTA 2010). The clause provides SC is charged by reference to a company's ring fence profits.
2. This clause has effect from 6th December 2011.

DETAILS OF THE CLAUSE

3. Subsection (1) amends section 330 (2) of CTA 2010 by substituting "company's ring fence profits" for "profits of the company's ring fence trade".

BACKGROUND NOTE

4. The SC is chargeable on a company's adjusted ring fence profits as if it were an amount of corporation tax chargeable on the company.
5. A company's adjusted ring fence profits for an accounting period are currently defined in section 330(2) CTA 2010 as the profits of the company's ring fence trade chargeable to corporation tax, on the assumption in subsection (3) that financing costs are left out of account.
6. It was Government's intention when the legislation was introduced in 2002 that a company's adjusted ring fence profits should include all profits that could arise to a company carrying on a ring fence trade from ring fence activities. In other words the intention was that the scope of the SC should match the scope of ring fence corporation tax (RFCT). This includes chargeable gains which can arise on the disposal of an interest in an oil licence.
7. It remains the Government's view that under the existing law the scope of the SC does match the scope of RFCT. Government is however aware that some in industry take a different view and that they believe that chargeable gains fall outside the scope of the SC.
8. For this reason, this clause clarifies the scope of the SC by ensuring that it matches that of RFCT, in accordance with the intention of the Government when the legislation was enacted in 2002.
9. If you have any questions about this change, or comments on the legislation, please contact Paul Philip on 020 7438 6993 (email: paul.philip@hmrc.gsi.gov.uk).

1 Transfers within a group by companies carrying on ring fence trade

- (1) Section 171A of TCGA 1992 (election to reallocate gain or loss to another member of the group) is amended as follows.
- (2) In subsection (4), at the end insert “(but see subsection (4A))”.
- (3) After subsection (4) insert –
 - “(4A) An election may not be made under this section to transfer the whole or part of a ring fence chargeable gain from a company carrying on a ring fence trade to a company not carrying on such a trade.
 - (4B) In subsection (4A) –
 - “ring fence chargeable gain”, in relation to a company, means –
 - (a) a chargeable gain accruing to the company on a material disposal within the meaning of section 197 (disposals of interests in oil fields etc: ring fence provisions), or
 - (b) a chargeable gain treated as accruing to the company by virtue of section 197(4);
 - “ring fence trade” has the same meaning as in Part 8 of CTA 2010 (see section 277 of that Act).”
- (4) The amendments made by this section have effect in relation to chargeable gains accruing, or treated by virtue of section 197(4) of TCGA 1992 as accruing, in chargeable periods ending on or after 6 December 2011 (but see also subsection (5)).
- (5) In relation to a chargeable period of a company beginning before 6 December 2011 and ending on or after that date (“the straddling period”), the amendments made by this section have effect as if, for the purposes of section 197 of TCGA 1992, so much of the straddling period as falls before 6 December 2011, and so much of that period as falls on or after that date, were separate chargeable periods.

EXPLANATORY NOTE

TRANSFERS WITHIN A GROUP BY COMPANIES CARRYING ON A RING FENCE TRADE

SUMMARY

1. This clause amends section 171A of the Taxation of Chargeable Gains Act 1992 (TCGA 1992), which provides an election to transfer a gain or loss from one company to another member of the group. This clause restricts the scope of section 171A. Under the current law where there is a transfer of a ring fence chargeable gain from a ring fence company to a non-ring fence company the ring fence gain is not subject to supplementary charge, because the non-ring fence company does not fall within the scope of the supplementary charge.
2. This clause amends section 171A to ensure that an election cannot be made to transfer a ring fence chargeable gain from a company carrying on a ring fence trade to a company not carrying on a ring fence trade.
3. This clause has effect in relation to chargeable gains accruing, or treated as accruing under section 197(4), in chargeable periods ending on or after 6 December 2011.
4. Where a chargeable period begins before 6 December and ends on or after that date (“the straddling period”) this clause has effect as if so much of the straddling period as falls before 6 December, and so much of that period as falls on or after that date were separate chargeable periods.

DETAILS OF THE CLAUSE

5. Subsection (3) inserts subsections (4A) and (4B) into section 171A TCGA 1992.
6. Subsection (4A) provides that an election cannot be made to transfer a ring fence chargeable gain from a company carrying on a ring fence trade to a company not carrying on a ring fence trade.
7. Subsection (4B) provides the definitions of “ring fence chargeable gain” and “ring fence trade”.

BACKGROUND NOTE

8. From 1 April 2000 to 20 July 2009 it was possible for two companies (“A” and “B”) which were members of a group to make a joint election whose effect was that a disposal by one member of the group A to a person outside the group (“C”) would be treated as a disposal by A to B under the no gain/no loss rules in section 171(1) TCGA 1992 and then from B to C.
9. The legislation was changed significantly in Finance Act 2009 (FA 2009) and the effect of an election was altered.
10. Since the changes made by FA 2009 and now included within section 171A TCGA 1992, the effect of an election has been that an amount of a chargeable gain or allowable loss is treated as accruing in another group company. As a result under an election under section 171A the transferee company cannot be deemed to carry on a ring fence trade, and so the supplementary charge does not necessarily apply.
11. This clause amends section 171A TCGA 1992 to ensure that an election cannot be made to transfer a ring fence chargeable gain from a company carrying on a ring fence trade to a company not carrying on a ring fence trade and so not subject to the supplementary charge.
12. If you have any questions about this change, or comments on the legislation, please contact Paul Philip on 020 7438 6993 (email: paul.philip@hmrc.gsi.gov.uk).