



Capital allowances: mineral extraction allowances

Who is likely to be affected?

Businesses with a mineral extraction trade (MET) that may enter or leave the scope of UK tax.

General description of the measure

This measure introduces legislation relating to the treatment of mineral extraction allowances (MEAs) where the mineral extraction activity enters or ceases to be within the charge to UK tax.

Policy objective

This measure ensures that the treatment of MEAs is certain and consistent between businesses and aligns with the existing principles for plant and machinery allowances (PMAs). It will confirm that for the purposes of MEAs, a mineral extraction trade consists of activity within the charge to UK tax. This will prevent UK taxable profits being reduced by MEAs that are given in respect of activities where the profits are not subject to UK tax.

Background to the measure

The Government announced at Budget 2013 that, following the introduction of the Foreign Branch Exemption rules, it would consult informally on its proposals to align the treatment of assets for MEAs with that for assets eligible for PMAs where profits are not taxed in the UK.

Detailed proposal

Operative date

Under the Foreign Branch Exemption rules an election for exemption applies from the day on which, when the election is made, the next accounting period is expected to begin. The changes introduced by this measure will have effect on and after 1 April 2014 for businesses within the charge to corporation tax and 6 April 2014 for businesses within the charge to income tax.

Current law

Section 18A of Corporate Tax Act 2009 (CTA) allows a company to elect for the profits and losses of its foreign permanent establishment(s) (FPE) to be excluded from the calculation of profits chargeable to UK tax (FPE exemption).

Capital allowances are made available in respect of capital expenditure on the provision of plant and machinery for the purposes of qualifying activities. Activities of a company are only qualifying activities for capital allowances purposes to the extent that profits or gains from the activity are chargeable to UK tax.

Where a company carries on a business through an FPE and an election for exemption is made under section 18A CTA, the business carried on in the FPE is treated as a separate activity whose profits and gains are not chargeable to tax. No actual capital allowances can be claimed by the company in respect of any past or current capital expenditure on assets being used for the purposes of FPE activity.

There are however no specific rules for MEAs that deal with FPEs, UK Permanent Establishments, branches, or agencies of non-resident businesses.

Proposed revisions

Sections 160, 161, 394(2) and, 399 Capital Allowances Act 2001 (CAA) will be amended to confirm that, for the purposes of MEAs, a MET consists of activity that is within the charge to UK tax.

Section 431A CAA will be introduced to provide for activity of an exempt FPE to be treated as a separate MET for the purposes of MEA.

Section 431B CAA will introduce transitional rules for MEAs, similar to those for PMAs, so that where a disposal value is required to be brought into account, this would not, in most cases, give rise to a balancing allowance or balancing charge when a company elects into FPE exemption. However exceptionally, for some assets, the normal disposal value (typically market value) will be brought into account for capital allowance purposes.

Section 431C will stipulate that notional allowances are given automatically in calculating the profits or losses attributable to the exempt FPE, as if the exempt FPE were within the charge to UK tax.

Summary of impacts

Exchequer impact (£m)	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
	nil	nil	nil	nil	nil	nil
	This measure is not expected to have an Exchequer impact.					
Economic impact	The measure is not expected to have any significant economic impacts.					
Impact on individuals and households	This measure affects companies and does not impact on individuals and households.					
Equalities impacts	This measure is not expected to have any adverse impacts on the equality of groups with protected characteristics.					
Impact on business including civil society organisations	<p>When the FPE exemption regime was introduced in 2011, it had impacts on around 150 companies owned by large UK multinational groups, plus a small number of companies owned by non-UK multinational groups that have established foreign branches from the UK.</p> <p>This measure will affect only a small subset of this group carrying on a MET, mainly those in the oil and gas sector. The administrative and compliance costs of introducing this change will be negligible.</p> <p>This measure is expected to have no impact on civil society organisations.</p>					
Operational impact (£m) (HMRC or other)	There will be no material impact on HMRC running costs. This measure will be incorporated within routine IT and guidance changes.					
Other impacts	Other impacts have been considered and none have been identified.					

Monitoring and evaluation

This measure will be kept under review through existing arrangements for regular contact and communication with industry stakeholders.

Further advice

If you have any questions about this change, please contact Paul Philip on 03000 589279 (email: paul.philip@hmrc.gsi.gov.uk).

1 Mineral extraction allowances

- (1) CAA 2001 is amended as follows.
- (2) In section 394(2) (meaning of mineral extraction trade), after “deposits” insert “but to the extent only that the profits or gains from that trade are, or (if there were any) would be, chargeable to tax”.
- (3) In section 399 (expenditure excluded from being qualifying expenditure), after subsection (1) insert –
 - “(1A) Expenditure incurred by a person for the purposes of a mineral extraction trade is not qualifying expenditure if –
 - (a) when the expenditure is incurred, the person is carrying on the trade but the trade is not at that time a mineral extraction trade, or
 - (b) the person has not begun to carry on the trade when the expenditure is incurred and, when the person begins to carry on the trade, the trade is not a mineral extraction trade.
 - (1B) Section 577(2) (references to commencement etc of a trade) does not apply to subsection (1A).”
- (4) In section 160 (expenditure treated as incurred for purposes of mineral extraction trade) –
 - (a) the existing text becomes subsection (1), and
 - (b) after that subsection insert –
 - “(2) Subsection (1) does not apply to expenditure if –
 - (a) when it is incurred, the person is carrying on the trade but the trade is not at that time a mineral extraction trade, or
 - (b) when it is incurred, the person has not begun to carry on the trade and, when the person begins to carry on the trade, the trade is not a mineral extraction trade.
 - (3) Section 577(2) (references to commencement etc of a trade) does not apply to subsection (2).”
- (5) For section 161(4)(a) (pre-trading expenditure on plant or machinery for mineral exploration and access), substitute –
 - “(a) “pre-trading expenditure” means capital expenditure incurred –
 - (i) before the day on which a person begins to carry on a trade that is a mineral extraction trade, but
 - (ii) only if there is no prior time when the person carried on that trade and the trade was not a mineral extraction trade.”.
- (6) After section 161(4) insert –
 - “(4A) Section 577(2) (references to commencement etc of a trade) does not apply to subsection (4)(a).”
- (7) After section 431 (discontinuance of trade) insert –

“431A Foreign permanent establishment exemption

- (1) Subsection (2) applies if –
 - (a) an election under section 18A of CTA 2009 has effect in relation to a company, and
 - (b) the company carries on any trade which consists of, or includes, the working of a source of mineral deposits.
- (2) That trade so far as carried on through one or more permanent establishments outside the United Kingdom is treated for the purposes of this Part as a trade –
 - (a) separate from any other trade of the company, and
 - (b) all the profits and gains from which are not, or (if there were any) would not be, chargeable to tax.

431B Disposal value: no allowance/no charge cases

- (1) If –
 - (a) an election under section 18A of CTA 2009 has effect in relation to a company, and
 - (b) the operation of sections 431A and 421(1)(b)(ii) and (2) requires the company to bring the disposal value of an asset into account,
the disposal value is such an amount as gives rise to neither a balancing allowance nor a balancing charge.
- (2) Subsection (1) does not apply if –
 - (a) the company’s qualifying expenditure in respect of the asset exceeds £5 million,
 - (b) the company has claimed any capital allowance in respect of any of that expenditure, and
 - (c) the company has, at any time in a relevant accounting period, used the asset otherwise than for the purposes of a permanent establishment outside the United Kingdom.
- (3) In subsection (2)(c) “relevant accounting period” means an accounting period ending before, but ending not more than 6 years before, “the relevant day” as defined by section 18F of CTA 2009.

431C Notional allowances

- (1) Subsection (2) applies if –
 - (a) an election under section 18A of CTA 2009 has effect in relation to a company, and
 - (b) but for section 18A of CTA 2009 and section 431A(2)(b), an allowance under this Part (“the notional allowance”) could be claimed under section 3(1) in respect of assets provided for the purposes of a permanent establishment outside the United Kingdom through which business is or has been carried on by the company.
- (2) The notional allowance (and any charge in connection with it which would have arisen if the allowance had been claimed) is to be made automatically and reflected in any calculation, for any relevant accounting period of the company, of the profits or losses attributable

to business carried on by the company through such a permanent establishment.

- (3) Subsection (4) applies if, at the time an election under section 18A of CTA 2009 takes effect in relation to a company, the company is, by reason of sections 431A and 421(1)(b)(ii) and (2), required to bring into account the disposal value of any asset provided for the purposes of a foreign permanent establishment through which business is or has been carried on by the company.
 - (4) For the purposes of subsections (1) and (2), the company is treated as having incurred at that time, for the purposes of the trade mentioned in section 431A(2), qualifying expenditure of an amount equal to that disposal value.
 - (5) In subsection (2) “relevant accounting period” in relation to a company by which an election under section 18A of CTA 2009 is made, means an accounting period of the company to which the election applies (as to which see section 18F of that Act).”
- (8) The amendments made by subsections (1) to (6) of this section have effect –
- (a) for the purposes of corporation tax, in relation to claims made on or after 1 April 2014, and
 - (b) for the purposes of income tax, in relation to claims made on or after 6 April 2014,
- and in relation to those claims the amendments are treated as always having had effect.
- (9) The amendments made by subsection (7) have effect in relation to elections under section 18A of CTA 2009 which start to have effect on or after 1 April 2014.

EXPLANATORY NOTE

MINERAL EXTRACTION ALLOWANCES

SUMMARY

1. Clause [X] introduces legislation relating to the treatment of Mineral Extraction Allowances (MEAs) where the mineral extraction activity enters or ceases to be within the charge to UK tax. It ensures that the treatment of MEAs is certain and consistent between businesses and aligns with the existing principles for plant and machinery allowances. It also confirms that for the purposes of MEAs a mineral extraction trade consists of activity within the charge to UK tax.

DETAILS OF THE CLAUSE

2. Subsections 2 to 6 amend, respectively, sections 394, 399, 160 and 161 of the Capital Allowances Act 2001 (CAA) to confirm that for the purposes of MEAs, a mineral extraction trade consists of activity that is within the charge to UK tax.

3. Subsection 7 inserts a new section 431A CAA to provide for the activity of an exempt foreign permanent establishment (FPE) to be treated as a separate mineral extraction trade for the purposes of MEAs.

4. Subsection 7 inserts a new section 431B CAA which provides transitional rules for MEAs similar to those for plant and machinery allowances. The transitional rules provide that where a disposal value is required to be brought into account this will not, in most cases, give rise to a balancing allowance or a balancing charge when a company elects into FPE exemption. However, for some assets, where the company's qualifying expenditure exceeds £5 million, the normal disposal value will be brought into account for capital allowance purposes.

5. Subsection 7 inserts a new section 431C CAA which provides that notional capital allowances will be given automatically in calculating the profits or losses of the exempt FPE, as if the exempt FPE were within the charge to UK tax.

BACKGROUND NOTE

6. Clause [X] is being introduced following consultation to confirm the treatment of MEAs where the mineral extraction activity enters or ceases to be within the charge to UK tax.

7. There are a number of changes to existing legislation:
 - to confirm that for the purposes of MEAs a mineral extraction trade consists of an activity that is within the charge to UK tax;
 - to confirm that the activity of an exempt FPE is treated as a separate mineral extraction trade for the purposes of MEAs;
 - to align the treatment of MEAs with the existing principles for plant and machinery allowances; and,
 - to confirm that notional allowances will be given automatically in calculating the profits or losses of the exempt FPE as if the exempt FPE were within the charge to UK tax.

8. The amendments made by this clause are treated as having come into force from 1 April 2014 for corporation tax and 6 April 2014 for income tax.

9. If you have any questions about this change, or comments on the legislation, please contact Paul Philip on 03000 589279 (email: paul.philip@hmrc.gsi.gov.uk).