



UK oil and gas fiscal regime: extension of the ring fence expenditure supplement for onshore activities

Who is likely to be affected?

Companies involved in exploration, appraisal and development of onshore oil and gas.

General description of the measure

The measure will extend the number of accounting periods a company can claim ring fence expenditure supplement (RFES) in relation to qualifying expenditure or losses from onshore oil and gas activity.

Policy objective

This measure supports the early development of onshore oil and gas projects which are economic but not commercially viable at the 62 per cent tax rate. Shale gas and other onshore hydrocarbons could help increase our energy security as resources in the North Sea basin decline. It does so by recognising the longer payback period for these projects and the fact that, at least in its early stages, the industry will be dominated by companies without other ring fence profits. The measure will allow companies without existing ring fence profits to maintain the time value of their losses and pre-trading expenditure over this longer payback period.

Background to the measure

This measure was announced at Budget 2013. A consultation, *Harnessing the potential of the UK's natural resources – a fiscal regime for shale gas* was launched on 19 July 2013 and closed on 13 September 2013.

The Government's response to this consultation was published on 10 December 2013.

Detailed proposal

Operative date

This measure will have effect for pre-trading expenditure incurred on and after 5 December 2013. For losses arising in an accounting period straddling commencement date, the measure apportions the losses before and after the commencement date.

Current law

Under sections 307 to 329 Corporation Tax Act (CTA) 2010 a company can make up to six claims for RFES on qualifying expenditure or losses to maintain their time value until they can be offset against future profits. RFES adds a supplement of 10 per cent to the value of unused expenditure carried forward from one time period to another. This applies to both offshore and onshore companies operating inside the ring fence.

Proposed revisions

Legislation will be introduced in Finance Bill 2014 to amend CTA 2010 to extend the number of claims available to companies involved in oil and gas related activities in relation to onshore hydrocarbons from six to ten accounting periods.

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	Together with the onshore allowance, this measure is expected to support companies involved in the exploration and appraisal of onshore oil and gas projects. If exploration establishes the commercial viability of the UK's onshore oil and gas resources then in the longer term it could result in a significant increase in domestic production, increased energy security, business investment and jobs.					
Impact on individuals and households	Any resulting increase in production would contribute to the security of the UK's energy supply and has the potential to lower energy bills for households and businesses.					
Equalities impacts	This measure is considered to have no differential impact on any equality groups.					
Impact on business including civil society organisations	Only a small number of UK businesses will be affected by the measure. This measure is expected to have a negligible impact on these businesses. There will be no impact on civil society organisations.					
Operational impact (£m) (HMRC or other)	The additional costs for HM Revenue & Customs in implementing this change are expected to be negligible.					
Other impacts	<p><u>Sustainable development, wider environment and health</u>: the oil and gas industry is heavily regulated to ensure its activities do not lead to pollution or disturbance to habitat or wildlife, and to ensure the health and wellbeing of its workers.</p> <p><u>Small firms impact test</u>: the administrative impact on small companies is expected to be negligible. The extension of RFES will allow smaller firms with no existing ring fence profits to uplift their losses and pre-trading expenditure by a further four accounting periods.</p> <p>Other impacts have been considered and none have been identified.</p>					

Monitoring and evaluation

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

Further advice

If you have any questions about this change, please contact Nicola Garrod on 03000 589251 (email: nicola.garrod@hmrc.gsi.gov.uk).

1 Extended ring fence expenditure supplement for onshore activities

Schedule 1 contains provision about an extended ring fence expenditure supplement in connection with onshore oil-related activities.

SCHEDULE 1

Section 1

EXTENDED RING FENCE EXPENDITURE SUPPLEMENT FOR ONSHORE ACTIVITIES

1 In Part 8 of CTA 2010 (oil activities), after Chapter 5 insert –

“CHAPTER 5A

EXTENDED RING FENCE EXPENDITURE SUPPLEMENT FOR ONSHORE ACTIVITIES

*Introduction***329A Overview of Chapter**

- (1) This Chapter entitles a company carrying on a ring fence trade, on making a claim in respect of an accounting period, to an additional supplement in respect of –
 - (a) qualifying pre-commencement onshore expenditure incurred before the date the trade is set up and commenced,
 - (b) losses incurred in the trade which relate to onshore oil-related activities,
 - (c) some or all of the supplement allowed in respect of earlier periods under Chapter 5, and
 - (d) the additional supplement allowed in respect of earlier periods under this Chapter.
- (2) Sections 329B to 329H make provision about the application and interpretation of this Chapter.
- (3) Sections 329I to 329M make provision about additional supplement in relation to expenditure incurred by the company –
 - (a) with a view to carrying on a ring fence trade, but
 - (b) in an accounting period before the company sets up and commences that trade.
- (4) Sections 329N to 329T make provision about additional supplement in relation to losses incurred in carrying on the ring fence trade.
- (5) There is a limit (of 4) on the number of accounting periods in respect of which a company may claim additional supplement.
- (6) In determining the amount of additional supplement allowable, reductions fall to be made in respect of –
 - (a) disposal receipts in respect of any asset representing qualifying pre-commencement onshore expenditure,
 - (b) onshore ring fence losses that could be deducted under section 37 (relief for trade losses against total profits) or section 42 (ring fence trades: further extension of period for relief) from ring fence profits of earlier periods,

- (c) onshore ring fence losses incurred in earlier periods that fall to be used under section 45 (carry forward of trade loss against subsequent trade profits) to reduce profits of succeeding periods,
- (d) unrelieved group ring fence profits.

Application and interpretation

329B Qualifying companies

- (1) This Chapter applies in relation to any company which—
 - (a) carries on a ring fence trade, or
 - (b) is engaged in any activities with a view to carrying on a ring fence trade.
- (2) In this Chapter such a company is referred to as a “qualifying company”.

329C Onshore and offshore oil-related activities

- (1) This section applies for the purposes of this Chapter.
- (2) “Onshore oil-related activities” has the same meaning as in Chapter 8 (supplementary charge: onshore allowance) (see section 357ZB).
- (3) “Offshore oil-related activities” means oil-related activities that are not onshore oil-related activities.

329D Accounting periods and straddling periods

- (1) In this Chapter, in the case of a qualifying company—
 - “the commencement period” means the accounting period in which the company sets up and commences its ring fence trade,
 - “post-commencement period” means an accounting period ending on or after 5 December 2013—
 - (a) which is the commencement period, or
 - (b) which ends after the commencement period, and
 - “pre-commencement period” means an accounting period ending—
 - (a) on or after 5 December 2013, and
 - (b) before the commencement period.
- (2) For the purposes of this Chapter, a company not within the charge to corporation tax which incurs any expenditure is to be treated as having such accounting periods as it would have if—
 - (a) it carried on a trade consisting of the activities in respect of which the expenditure is incurred, and
 - (b) it had started to carry on that trade when it started to carry on the activities in the course of which the expenditure is incurred.
- (3) In this Chapter, “straddling period” means an accounting period beginning before and ending on or after 5 December 2013.

329E The relevant percentage

- (1) For the purposes of this Chapter, the relevant percentage for an accounting period is 10%.
- (2) The Treasury may by order vary the percentage for the time being specified in subsection (1) for such accounting periods as may be specified in the order.

329F Restrictions on accounting periods for which additional supplement may be claimed

- (1) A company may claim additional supplement under this Chapter in respect of no more than 4 accounting periods.
- (2) The accounting periods in respect of which claims are made need not be consecutive.
- (3) The additional supplement under this Chapter –
 - (a) is additional to any supplement allowed under Chapter 5, but
 - (b) may only be claimed for accounting periods which fall after 6 accounting periods for which supplement is allowed as a result of claims by the company under Chapter 5.

329G Qualifying pre-commencement onshore expenditure

- (1) For the purposes of this Chapter, expenditure is “qualifying pre-commencement onshore expenditure” if it meets Conditions A to D.
- (2) Condition A is that the expenditure is incurred on or after 5 December 2013.
- (3) Condition B is that the expenditure is incurred in the course of oil extraction activities which are onshore oil-related activities.
- (4) Condition C is that the expenditure is incurred by a company with a view to carrying on a ring fence trade, but before the company sets up and commences that ring fence trade.
- (5) Condition D is that the expenditure –
 - (a) is subsequently allowable as a deduction in calculating the profits of the ring fence trade for the commencement period (whether or not any part of it is so allowable for any post-commencement period), or
 - (b) is relevant R&D expenditure incurred by an SME.
- (6) Section 312(6) to (9) apply for the purposes of this section as they apply for the purposes of section 312.

329H Unrelieved group ring fence profits

In this Chapter “unrelieved group ring fence profits” has the same meaning as in Chapter 5 (see sections 313 and 314).

*Pre-commencement additional supplement***329I Additional supplement in respect of a pre-commencement accounting period**

- (1) If—
 - (a) a qualifying company incurs qualifying pre-commencement onshore expenditure in respect of a ring fence trade, and
 - (b) the expenditure is incurred before the commencement period,the company may claim additional supplement under this section (“pre-commencement additional supplement”) in respect of one or more pre-commencement periods.
This is subject to section 329F(3)(b).
- (2) Any pre-commencement additional supplement allowed on a claim in respect of a pre-commencement period is to be treated as expenditure—
 - (a) which is incurred by the company in the commencement period, and
 - (b) which is allowable as a deduction in calculating the profits of the ring fence trade for that period.
- (3) The amount of the additional supplement for any pre-commencement period in respect of which a claim under this section is made is the relevant percentage for that period of the reference amount for that period.
- (4) Sections 329J to 329M have effect for the purpose of determining the reference amount for the pre-commencement period.
- (5) If the pre-commencement period is a period of less than 12 months, the amount of the additional supplement for the period (apart from this subsection) is to be reduced proportionally.
- (6) If the pre-commencement period is a straddling period, the amount of the additional supplement is to be reduced (or, if it has already been reduced under subsection (5), further reduced) proportionally so that it reflects the number of days in the straddling period which fall on or after 5 December 2013 as compared to the total number of days in that period.
- (7) Any claim for pre-commencement supplement in respect of a pre-commencement period must be made as a claim for the commencement period.
- (8) Paragraph 74 of Schedule 18 to FA 1998 (company tax returns etc: time limit for claims for group relief) applies in relation to a claim for pre-commencement supplement as it applies in relation to a claim for group relief.

329J The mixed pool of qualifying pre-commencement onshore expenditure and supplement previously allowed

- (1) For the purpose of determining the amount of any pre-commencement additional supplement, a qualifying company is to be taken to have had, at all times in the pre-commencement periods of the company, a continuing mixed pool of—

- (a) qualifying pre-commencement onshore expenditure,
 - (b) pre-commencement supplement under Chapter 5, and
 - (c) pre-commencement additional supplement under this Chapter.
- (2) The pool is to be taken to have consisted of –

 - (a) the company’s qualifying pre-commencement onshore expenditure, allocated to the pool for each pre-commencement period in accordance with subsection (3),
 - (b) the company’s pre-commencement supplement under Chapter 5, allocated to the pool in accordance with subsections (4) to (6), and
 - (c) the company’s pre-commencement additional supplement under this Chapter, allocated to the pool in accordance with subsection (7).
- (3) To allocate qualifying pre-commencement onshore expenditure to the pool for any pre-commencement period, take the following steps –

Step 1
Count as eligible expenditure for that period so much of the qualifying pre-commencement onshore expenditure mentioned in section 329I(1) as was incurred in that period.

Step 2
Find the total of all the eligible expenditure for that period (amount E).

Step 3
If section 329K (reduction in respect of disposal receipts under CAA 2001) applies, reduce amount E in accordance with that section.

Step 4
If section 329L (reduction in respect of unrelieved group ring fence profits) applies, reduce (or, as the case may be, further reduce) amount E in accordance with that section.
And so much of amount E as remains after making those reductions is to be taken to have been added to the pool in that period.
- (4) If any pre-commencement supplement is allowed on a claim under Chapter 5 in respect of a pre-commencement period, the appropriate proportion of that supplement is to be taken to have been added to the pool in that period.
- (5) “The appropriate proportion” means –

 - (a) if, before the end of the pre-commencement period, the company has incurred qualifying pre-commencement expenditure (within the meaning of section 312) on offshore oil-related activities, such proportion of the pre-commencement supplement under Chapter 5 as it is just and reasonable to attribute (directly or indirectly) to the company’s qualifying pre-commencement onshore expenditure, and
 - (b) in any other case, 100%.
- (6) In the case of a straddling period –

- (a) the appropriate proportion of the pre-commencement supplement allowed on a claim under Chapter 5 in respect of the period is apportioned between so much of that period as falls before 5 December 2013 and so much of it as falls on or after that date, on the basis of the number of days in each part, and
 - (b) only so much of the appropriate proportion of the supplement as is apportioned to the later period is taken to have been added to the pool under subsection (4).
- (7) If any pre-commencement additional supplement is allowed on a claim under this Chapter in respect of a pre-commencement period, the amount of that supplement is to be taken to have been added to the pool in that period.

329K Reduction in respect of disposal receipts under CAA 2001

- (1) This section applies in the case of the qualifying company if –
 - (a) it incurs qualifying pre-commencement onshore expenditure in respect of a ring fence trade in any pre-commencement period,
 - (b) it would, on the relevant assumption, be entitled to an allowance under any provision of CAA 2001 in respect of that expenditure,
 - (c) an event occurs in relation to any asset representing the expenditure in any pre-commencement period, and
 - (d) the event would, on the relevant assumption, require a disposal value to be brought into account under any provision of CAA 2001 for any pre-commencement period.
- (2) The relevant assumption is that the company was carrying on the ring fence trade –
 - (a) when the expenditure was incurred, and
 - (b) when the event giving rise to the disposal value occurred.
- (3) For the purpose of allocating qualifying pre-commencement onshore expenditure to the pool for each pre-commencement period –
 - (a) find the total amount of the disposal values in the case of all such events (amount D), and
 - (b) taking later periods before earlier periods, reduce (but not below nil) amount E for any pre-commencement period by setting against it so much of amount D as does not fall to be set against amount E for a later pre-commencement period.
- (4) Where the asset represented by the qualifying pre-commencement onshore expenditure is a mixed-activities asset, subsection (3) applies as if the disposal value required to be brought into account as mentioned in subsection (1)(d) were such proportion of the actual disposal value as is just and reasonable having regard to that expenditure.
- (5) The asset is a “mixed-activities asset” if it also represents expenditure on offshore oil-related activities which is incurred by the company in a pre-commencement period and in respect of which the company would, on the relevant assumption, be entitled to an allowance under any provision of CAA 2001.

329L Reduction in respect of unrelieved group ring fence profits

- (1) This section applies if there is an amount of unrelieved group ring fence profits for a pre-commencement period.
- (2) For the purpose of allocating qualifying pre-commencement onshore expenditure to the pool for that period –
 - (a) find so much (if any) of amount E for that period as remains after any reduction falling to be made under section 329K (“the amount of the net onshore expenditure”), and
 - (b) reduce the amount of the net onshore expenditure (but not below nil) by setting against it a sum equal to the aggregate of the amounts of unrelieved group ring fence profits for the period.
- (3) If the pre-commencement period is a straddling period, the unrelieved group ring fence profits for that period are to be determined as if the period began on 5 December 2013 and ended at the same time as the straddling period.
- (4) Subsection (5) applies where in the pre-commencement period the company carries on both onshore oil-related activities and off-shore oil related activities.
- (5) The sum to be set against the net onshore expenditure under subsection (2)(b) is first to be reduced (but not below nil) by the amount of the company’s net offshore expenditure for the period.
- (6) “The net offshore expenditure” of the company for the period is determined as follows –

Step 1

Determine the amount of the company’s total pre-commencement offshore expenditure incurred in the period.

Step 2

Make any reduction in that amount required by subsection (9).
So much as remains is the net offshore expenditure of the company for the period.
- (7) “Pre-commencement offshore expenditure” means expenditure which –
 - (a) is incurred in the course of oil extraction activities which are offshore oil-related activities, and
 - (b) meets Conditions A, C and D in section 329G.
- (8) Subsection (9) applies if –
 - (a) the qualifying company incurs pre-commencement offshore expenditure in respect of a ring fence trade in any pre-commencement period,
 - (b) it would, on the relevant assumption in section 329K, be entitled to an allowance under any provision of CAA 2001 in respect of that expenditure,
 - (c) an event occurs in relation to any asset representing the expenditure in any pre-commencement period, and
 - (d) the event would, on that assumption, require a disposal value to be brought into account under any provision of CAA 2001 for any pre-commencement period.

- (9) For the purposes of *Step 2* in subsection (6) –
 - (a) find the total amount of the disposal values in the case of all such events (amount D), and
 - (b) taking later periods before earlier periods, reduce (but not below nil) the amount of pre-commencement offshore expenditure for any pre-commencement period by setting against it so much of amount D as does not fall to be set against that total for a later pre-commencement period.
- (10) Where the asset represented by the pre-commencement offshore expenditure is a mixed-activities asset, subsection (9) applies as if the disposal value required to be brought into account as mentioned in subsection (8)(d) were such proportion of the actual disposal value as is just and reasonable having regard to that expenditure.
- (11) The asset is a “mixed-activities asset” if it also represents expenditure on onshore oil-related activities which is incurred by the company in a pre-commencement period and in respect of which the company would, on the relevant assumption, be entitled to an allowance under any provision of CAA 2001.

329M The reference amount for a pre-commencement period

For the purposes of section 329I, the reference amount for a pre-commencement period is the amount in the pool at the end of the period –

- (a) after the addition to the pool of any qualifying pre-commencement onshore expenditure allocated to the pool for that period in accordance with section 329J(3), but
- (b) before determining, and adding to the pool, the amount of any pre-commencement additional supplement claimed in respect of the period under this Chapter.

Post-commencement additional supplement

329N Supplement in respect of post-commencement period

- (1) A qualifying company which incurs an onshore ring fence loss (see section 329P) in any post-commencement period may claim supplement under this section (“post-commencement additional supplement”) in respect of –
 - (a) that period, or
 - (b) any subsequent accounting period in which it carries on its ring fence trade.
- (2) Any post-commencement additional supplement allowed on a claim in respect of a post-commencement period is to be treated for the purposes of the Corporation Tax Acts (other than the post-commencement additional supplement provisions) as if it were a loss –
 - (a) which is incurred in carrying on the ring fence trade in that period, and
 - (b) which falls in whole to be used under section 45 (carry forward of trade loss against subsequent trade profits) to reduce trading income from the ring fence trade in succeeding accounting periods.

- (3) Paragraph 74 of Schedule 18 to FA 1998 (company tax returns etc: time limit for claims for group relief) applies in relation to a claim for post-commencement additional supplement as it applies in relation to a claim for group relief.
- (4) In this Chapter “the post-commencement additional supplement provisions” means this section and sections 329O to 329T.

329O Amount of post-commencement additional supplement for a post-commencement period

- (1) The amount of the post-commencement additional supplement for any post-commencement period in respect of which a claim under section 329N is made is the relevant percentage for that period of the reference amount for that period.
- (2) Sections 329P to 329T have effect for the purpose of determining the reference amount for a post-commencement period.
- (3) If the post-commencement period is a period of less than 12 months, the amount of the post-commencement onshore additional supplement for the period (apart from this subsection) is to be reduced proportionally.
- (4) If the post-commencement period is a straddling period, the amount of the post-commencement onshore additional supplement for the period is reduced (or, if it has already been reduced under subsection (3), further reduced) proportionally so that it reflects the number of days in the straddling period which fall on or after 5 December 2013 as compared to the total number of days in that period.

329P Onshore ring fence losses

- (1) If—
 - (a) in a post-commencement period (“the period of the loss”) a qualifying company carrying on a ring fence trade consisting solely of onshore oil-related activities incurs a loss in the trade, and
 - (b) some or all of the loss falls to be used under section 45 (carry forward of trade loss against subsequent profits) to reduce trading income from the trade in succeeding accounting periods,
 so much of the loss as falls to be so used is an “onshore ring fence loss” of the company.
 This is subject to subsection (4).
- (2) If—
 - (a) in a post-commencement period (“the period of the loss”) a qualifying company carrying on a ring fence trade consisting of both onshore oil-related activities and offshore oil-related activities incurs a loss in the trade, and
 - (b) some or all of the loss falls to be used under section 45 (carry forward of trade loss against subsequent profits) to reduce trading income from the trade in succeeding accounting periods,
 the appropriate proportion of so much of the loss as falls to be so used is an “onshore ring fence loss” of the company.

This is subject to subsection (4)

- (3) “The appropriate proportion” means such proportion as it is just and reasonable to attribute to the company’s onshore oil-related activities carried out in the course of its ring fence trade.
- (4) In the case of a straddling period –
 - (a) the amount of the onshore ring fence loss determined under subsection (1) or (2) in respect of the period is apportioned between so much of that period as falls before 5 December 2013 and so much of it as falls on or after that date, on the basis of the number of days in each part, and
 - (b) only so much of the loss as is apportioned to the later part of the period is an onshore ring fence loss of the company for the straddling period.
- (5) In determining for the purposes of the post-commencement additional supplement provisions how much of a loss incurred in a ring fence trade falls to be used as mentioned in subsection (1)(b) or (2)(b), the following assumptions are to be made.
- (6) The first assumption is that every claim is made that could be made by the company under section 37 (relief for trade losses against total profits) to deduct losses incurred in the ring fence trade from ring fence profits of earlier post-commencement periods.
- (7) The second assumption is that (where appropriate) section 42 (ring fence trades: further extension of period for relief) applies in relation to every such claim under section 37.
- (8) This section has effect for the purposes of the post-commencement additional supplement provisions.

329Q The onshore ring fence pool

- (1) For the purpose of determining the amount of any post-commencement additional supplement, a qualifying company is to be taken at all times in its post-commencement periods to have a continuing mixed pool (the “onshore ring fence pool”) of –
 - (a) the company’s onshore ring fence losses,
 - (b) post-commencement supplement under Chapter 5,
 - (c) post-commencement additional supplement under this Chapter.
- (2) The onshore ring fence pool continues even if the amount in it is nil.
- (3) The onshore ring fence pool consists of –
 - (a) the company’s onshore ring fence losses, allocated to the pool in accordance with subsection (4)(a),
 - (b) the company’s post-commencement supplement allowed under Chapter 5, allocated to the pool in accordance with subsections (4)(b), (5) and (6), and
 - (c) the company’s post-commencement additional supplement allowed under this Chapter, allocated to the pool in accordance with subsection (4)(c).
- (4) The allocation to the pool is made as follows –

- (a) the amount of an onshore ring fence loss is added to the pool in the period of the loss,
 - (b) if any post-commencement supplement is allowed on a claim under Chapter 5 in respect of a post-commencement period, the appropriate proportion of the amount of that supplement is added to the pool in that period,
 - (c) if any post-commencement additional supplement is allowed on a claim under this Chapter in respect of a post-commencement period, the amount of that supplement is added to the pool in that period.
- (5) “The appropriate proportion” is –
- (a) if the ring fence trade carried on by the company includes, or has at any time included, offshore oil-related activities, such proportion of the supplement as it is just and reasonable to attribute (directly or indirectly) to the company’s onshore oil-related activities carried on in the period for which the supplement is allowed or an earlier post-commencement period, and
 - (b) in any other case, 100%.
- (6) In the case of a straddling period –
- (a) the appropriate proportion of the post-commencement supplement allowed on a claim under Chapter 5 in respect of the period is apportioned between so much of that period as falls before 5 December 2013 and so much of it as falls on or after that date, on the basis of the number of days in each part, and
 - (b) only so much of the appropriate proportion of the supplement as is apportioned to the later period is added to the pool under subsection (4)(b).
- (7) The amount in the onshore ring fence pool is subject to reductions in accordance with the following provisions of this Chapter.
- (8) If a reduction in the amount in the onshore ring fence pool falls to be made in any accounting period, the reduction is made –
- (a) after the addition to the pool of –
 - (i) the amount of any onshore ring fence losses allocated to the pool in that period in accordance with subsection (4)(a), and
 - (ii) any amount of post-commencement supplement under Chapter 5 claimed in respect of the period allocated to the pool in accordance with subsection (4)(b), but
 - (b) before determining and adding to the pool under subsection (4)(c) the amount of any post-commencement additional supplement under this Chapter, claimed in respect of the period,
- and references to the amount in the pool are to be read accordingly.

329R Reductions in respect of utilised onshore ring fence losses

- (1) If one or more losses incurred by a qualifying company in its ring fence trade in a post-commencement period are used under section

45 (carry forward of trade loss against subsequent trade profits) to reduce any profits of a post-commencement period, a reduction is to be made in that period in accordance with this section.

- (2) To the extent that the losses used as mentioned in subsection (1) are onshore ring fence losses, the amount in the onshore ring fence pool is to be reduced (but not below nil) by setting against it a sum equal to such amount of those onshore ring fence losses as is so used.
- (3) For the purposes of determining the extent to which losses used as mentioned in subsection (1) are onshore ring fence losses, relevant offshore losses are to be treated as so used in priority to onshore ring fence losses.
- (4) For this purpose “relevant offshore loss” means so much (if any) of a loss used as mentioned in subsection (1) as is given by –

$$X - Y$$

where –

X is the amount of the loss so used, and

Y is so much of that loss as (ignoring section 329P(4)) is an onshore ring fence loss.

- (5) But if the loss is incurred in a straddling period –
 - (a) the amount of the relevant offshore loss is apportioned between so much of that period as falls before 5 December 2013 and so much of it as falls on or after that date, on the basis of the number of days in each part, and
 - (b) only so much of the loss as is apportioned to the later part of the period is a relevant offshore loss of the company for the straddling period.

329S Reductions in respect of unrelieved group ring fence profits

- (1) If there is an amount of unrelieved group ring fence profits for a post-commencement period, reductions are to be made in that period in accordance with this section.
- (2) After making any reductions that fall to be made in accordance with section 329R, the remaining amount in the onshore ring fence pool is to be reduced (but not below nil) by setting against it a sum equal to the aggregate of the amounts of unrelieved group ring fence profits for the period.
This is subject to subsection (4).
- (3) If the post-commencement period is a straddling period, the unrelieved group ring fence profits for that period are to be determined as if the period began on 5 December 2013 and ended at the same time as the straddling period.
- (4) If the ring fence trade carried on by the company includes, or has at any time included, offshore oil-related activities, the sum to be set against the onshore ring fence pool under subsection (2) is first to be reduced by the notional offshore loss pool.
- (5) “The notional offshore loss pool” means –

- (a) the sum of the relevant offshore losses (see section 329R(4)) for the post-commencement period mentioned in subsection (1) and earlier post-commencement periods, less
- (b) the sum of any amounts treated as used under section 329R(3) and any reductions previously made under subsection (2) of this section.

329T The reference amount for a post-commencement period

For the purposes of section 329O the reference amount for a post-commencement period is so much of the amount in the onshore ring fence pool as remains after making any reductions required by sections 329R and 329S.”

- 2 In section 270 of CTA 2010 (overview of Part 8), after subsection (5) insert –
“(5A) Chapter 5A makes provision about onshore additional ring fence expenditure supplement.”
- 3 The amendments made by this Schedule have effect in relation to accounting periods ending on or after 5 December 2013.

EXPLANATORY NOTE

EXTENSION OF THE RING FENCE EXPENDITURE SUPPLEMENT FOR ONSHORE ACTIVITIES

SUMMARY

1. Clause X and Schedule Y will extend from six to ten the number of accounting periods for which a company can claim ring fence expenditure supplement (RFES) in relation to qualifying expenditure or losses from onshore oil and gas activity.

DETAILS OF THE SCHEDULE

2. Paragraph 1 inserts a new chapter after Chapter 5 of Part 8 of Corporation Tax Act 2010 (CTA). New Chapter 5A contains new sections 329A to 329T.

3. New Section 329A provides an overview of the chapter.

4. Subsection (1) explains that the new provisions allow a company which has a ring fence trade to claim additional RFES for a) qualifying pre-trade expenditure, b) onshore losses, c) supplement which they have received in relation to RFES claims made under Chapter 5 CTA 2010, and d) the additional supplement claimed under new Chapter 5A, in respect of onshore oil related activities.

5. Subsection (2) refers to the interpretative provisions at new sections 329B to 329H that apply for the purposes of Chapter 5A.

6. Subsections (3) and (4) explain that provisions about pre-trade expenditure are at new Sections 329I to 329M, and those related to losses are at new Sections 329N to 329T.

7. Subsection (5) explains that a company may only make 4 claims for additional supplement.

8. Subsection (6) sets out the adjustments which need to be made to the qualifying expenditure and losses before the claim for supplement is allowed.

9. New Section 329B defines a “qualifying company”.

10. New Section 329C provides definitions for “onshore oil-related activities” and “offshore oil-related activities”.

11. New Section 329D defines key terms relating to accounting periods, by reference to whether a company commenced its ring fence trade in that accounting period (“the commencement period”), and whether, or not, a company was carrying on a ring fence trade in an accounting period that ended on or after 5 December 2013 (a “post-commencement

period” and a “pre-commencement period” respectively). It also introduces the concept of a “straddling period” as an accounting period straddling 5 December 2013.

12. New Section 329E sets the “relevant percentage” for an accounting period (that is, the rate at which supplement is payable on an amount specified under the Chapter) as 10 per cent and provides that the relevant percentage can be varied by order by the Treasury.

13. New Section 329F provides that a company may make no more than 4 claims for additional supplement, and the claims need not be consecutive, but can only be made after 6 claims allowed under Chapter 5.

14. New Section 329G subsections (1) to (5) define “qualifying pre-commencement onshore expenditure”. Subsection (6) specifies that certain existing provisions in Chapter 5 for existing RFES, which contain the definition and rules for research and development expenditure that qualifies for RFES, also apply to section 329G.

15. New Section 329H provides the same definition for “unrelieved group ring fence profits” as is contained in the existing provisions in Chapter 5.

16. New Section 329I is concerned with the availability of additional supplement in respect of a pre-commencement accounting period.

17. Subsection (1) makes provision for a qualifying company to claim additional supplement for pre-commencement onshore expenditure relating to a ring fence trade.

18. Subsection (2) sets out that any additional supplement allowed on a claim made for a pre-commencement period is to be treated as expenditure incurred by the company in the commencement period and allowable as a deduction in calculating profits.

19. Subsection (3) states that the amount of the additional supplement is the relevant percentage (as set at 329E) of the reference amount (defined at 329M, in relation to the “mixed pool” as described by s329J) for that period.

20. Subsection (4) states that the reference amount for the pre-commencement period is calculated in accordance with new sections 329J to 329M.

21. Subsection (5) provides for proportional reduction of the amount of additional supplement where the pre-commencement period is shorter than 12 months.

22. Subsection (6) provides for proportional reduction of the amount of additional supplement where the pre-commencement period is a straddling period.

23. Subsection (7) provides that any claim for pre-commencement supplement must be made as a claim for the commencement period.

24. Subsection (8) specifies that existing provisions on the time limit for claims for group relief apply for claims for pre-commencement additional supplement.

25. New Section 329J makes provision for, and determination of the amount of, a mixed pool of qualifying pre-commencement onshore expenditure and supplement.

26. Subsections (1) and (2) provide that during pre-commencement periods, a company is considered to have had a continuing mixed pool comprising qualifying pre-commencement onshore expenditure, and pre-commencement supplement under new Chapter 5A and Chapter 5, as further described by new subsections (3) to (7).
27. Subsection (3) gives instructions on how to calculate the amount of qualifying pre-commencement onshore expenditure to allocate to the mixed pool for any pre-commencement period.
28. Subsections (4) and (5) provide for any pre-commencement supplement, claimed under Chapter 5, to be allocated to the mixed pool to the extent that it relates to qualifying pre-commencement onshore expenditure, based on the proportion of that supplement attributable, on a just and reasonable basis, to the company's qualifying pre-commencement onshore expenditure ('the appropriate proportion').
29. Subsection (6) concerns claims for pre-commencement supplement made under Chapter 5 in respect of pre-commencement expenditure incurred in a straddling period. In that case pre-commencement supplement claimed under Chapter 5 that is attributable to qualifying pre-commencement onshore expenditure on a just and reasonable basis is to be allocated to the mixed pool, according to the proportion of that expenditure incurred on or after 5 December 2013.
30. Subsection (7) provides for any pre-commencement additional supplement, claimed under Chapter 5A, to be allocated to the mixed pool.
31. New Section 329K provides for reductions to the mixed pool in respect of disposal receipts for expenditure for which allowance would be given under the Capital Allowances Act 2001.
32. New Section 329L provides for reduction to the mixed pool in respect of unrelieved group ring fence profits.
33. Subsection (2) provides for reductions to be made firstly under Section 329K (disposal receipts) before reducing the net onshore expenditure by a sum equal to the unrelieved group ring fence profits.
34. Subsection (3) provides that, in a straddling period, the unrelieved group ring fence profits for that period are to be determined as if the period began on 5 December 2013.
35. Subsections (4) and (5) provide that, in the case where a company carries on both onshore and offshore oil related activities in the pre-commencement period, unrelieved group ring fence profits should be set against "net offshore expenditure" first.
36. Subsection (6) gives instructions for calculating the "net offshore expenditure" of the company for that period.
37. Subsection (7) defines "pre-commencement offshore expenditure".

38. Subsections (8) and (9) provide that where there are disposal receipts relating to expenditure for which allowance would be given under the Capital Allowances Act 2001, representing pre-commencement expenditure used for offshore activities, the amount of pre-commencement offshore expenditure should be reduced by those disposal receipts. It should be set against expenditure incurred in the most recent periods first.
39. Subsections (10) and (11) provide for, in the case of a “mixed-activities asset”, only the proportion which is just and reasonable having regard to that expenditure is to be brought to account.
40. New Section 329M defines the reference amount (on which the rate of additional supplement will be calculated under s329I(3)) for a pre-commencement period.
41. New Section 329N is concerned with the availability of additional supplement in respect of a post-commencement period.
42. Subsection (1) provides for a qualifying company to claim additional supplement where it incurs a loss in respect of its onshore ring fence trade in a post-commencement period.
43. Subsection (2) provides that post-commencement additional supplement should be treated as a loss incurred in carrying out the ring fence trade.
44. Subsection (3) specifies that existing provisions on the time limit for claims for group relief apply for claims for post-commencement additional supplement.
45. New Section 329O makes provision for the calculation of the amount of post-commencement additional supplement for a post-commencement period.
46. Subsection (1) provides that the amount of the additional supplement is the relevant percentage (as set at 329E) of the reference amount (defined at 329T in relation to the “onshore ring fence pool” as described by s329Q) for that period.
47. Subsection (2) states that the reference amount for the post-commencement period is to be calculated in accordance with new sections 329P to 329T.
48. Subsection (3) provides for proportional reduction of the amount of additional supplement where the post-commencement period is shorter than 12 months.
49. Subsection (4) provides for further proportional reduction of the amount of additional supplement where the post-commencement period is a straddling period.
50. New Section 329P makes provision for the determination of onshore ring fence losses.
51. Subsection (1) provides that if in a post-commencement period, a company’s ring fence trade consists solely of onshore oil-related activities, then so much of the loss incurred as is available to be carried forward under section 45 is the “onshore ring fence loss” of the company.

52. Subsections (2) and (3) provide that where a company incurs a loss and carries on both onshore and offshore activities as part of a ring fence trade in a post-commencement period, only the proportion of that loss that is, on a just and reasonable basis, attributable to the company's onshore oil-related activities in that trade ("the appropriate proportion") is the "onshore ring fence loss" of that company.
53. Subsection (4) provides that in the case of a straddling period, a company's onshore ring fence losses are the portion that, if the whole amount is apportioned according to the number of days falling before, and on and after, 5 December 2013, is apportioned to the later period.
54. Subsections (5) to (7) set out the assumptions to be used in calculating how much of the loss falls to be used under section 45 CTA 2010 for the purposes of sub-section (1)(b) and (2)(b). That is, every claim that could be made under section 37 CTA10 is made, and that section 42 CTA10 applies.
55. New Section 329Q makes provision for, and determination of the amount of the onshore ring fence pool.
56. Subsections (1) to (3) makes provision that during post-commencement periods, a company is considered to have a continuing mixed pool comprising the company's onshore ring fence losses, post-commencement supplement under Chapter 5 and post-commencement additional supplement under Chapter 5A, as further described by new subsections (4) to (8).
57. Subsection (4) sets out how allocations are to be made to the onshore ring fence pool in respect of a) onshore ring fence loss in the period of the loss, b) the "appropriate proportion" of post-commencement supplement allowed under a claim under Chapter 5, and c) any post commencement additional supplement claimed under Chapter 5A.
58. Subsection (5) provides that the "appropriate proportion" of Chapter 5 post-commencement supplement is either 100% of that amount, or, where the company has at any time carried on offshore oil related activities, the proportion attributable, on a just and reasonable basis, to the company's onshore oil related activities in the period of Chapter 5 claim.
59. Subsection (6) concerns claims for post-commencement supplement made under Chapter 5 in respect of losses incurred in a straddling period. In that case the "appropriate proportion" of Chapter 5 post-commencement supplement under new subsections (4) and (5) is proportionately divided between the number of days falling before, and on and after, 5 December 2013, and only the amount apportioned to the later period is added to the onshore pool.
60. Subsections (7) and (8) make provision for the order of making additions to the pool (as provided by section 329Q(4) to (6)) and reductions to it (as provided by sections 329R and 329S).
61. New Section 329R provides for reductions to the onshore ring fence pool to be made in respect of utilised onshore ring fence losses.

62. Subsection (1) provides that losses used under section 45, a reduction is to be made in that period.
63. Subsection (2) provides that the onshore ring fence pool is to be reduced by the amount of losses carried forward under s45 that are onshore ring fence losses.
64. Subsection (3) provides that, in the case where a company carries on both onshore and offshore oil related activities in the post-commencement period, the company's offshore losses are to be used in priority to onshore ring fence losses.
65. Subsection (4) defines "relevant offshore loss".
66. Subsection (5) provides that where the loss is incurred in a straddling period, the amount of the relevant offshore loss is proportionately apportioned to the period falling on or after 5 December 2013.
67. New Section 329S Subsections (1) and (2) provide that the onshore ring fence pool is to be reduced by amounts of unrelieved group ring fence profits, after any reductions to be made for utilised onshore ring fence losses under section 329R.
68. Subsection 3 provides that, in a straddling period, the unrelieved group ring fence profits for that period are to be determined as if the period began on 5 December 2013.
69. Subsection 4 provides that, in the case where a company has at any time carried on offshore oil related activities, the sum to be set against the onshore ring fence pool is reduced by the "notional offshore loss pool".
70. Subsection (5) defines the "notional offshore loss pool".
71. New Section 329T defines the reference amount (on which the rate of additional supplement will be calculated under s329O(1)) for a post-commencement period.
72. Paragraph 2 inserts a new subsection after subsection (5) in section 270 of CTA 2010 to make provisions for the new Chapter 5A.
73. Paragraph 3 states that the amendments made by the Schedules have effect on or after 5 December 2013.

BACKGROUND NOTE

74. In addition to corporation tax (CT), oil and gas companies are also subject to an additional tax, the supplementary charge (SC), on adjusted ring fence profits arising from oil-related activities. For the oil and gas industry, CT is set at 30 per cent for profits of more than £1.5m and 19 per cent (the small profits rate) for profits of more than £300k. The SC is set at 32 per cent.

75. Companies are allowed to set qualifying expenditure against profits for CT purposes. For companies engaged in a trade where it may take some years to show a profit, the value of the expenditure will be reduced by the time they come to be utilised.

76. The oil and gas trade is subject to high start-up costs and a relatively lengthy period of likely unprofitability. RFES currently allows companies inside the oil and gas ring fence to uplift their ring fence losses or, in the period before they are trading, their “qualifying pre-commencement expenditure”, by 10 per cent for up to 6 accounting periods to maintain their time value until they can be offset against future profits.

77. The early development of projects for shale gas and other onshore hydrocarbons is expected to have longer payback periods than offshore hydrocarbon projects and to be dominated by companies which do not have existing ring fence profits against which to set their expenditure. Extending the number of accounting periods for which these companies can claim RFES allows them to maintain the value of their expenditure for longer to recognise the extended period before they are able to utilise those amounts.

If you have any questions about this change, or comments on the legislation, please contact Nicola Garrod on 03000 589251 (email: nicola.garrod@hmrc.gsi.gov.uk).