



Corporation tax: extension of Ring Fence Expenditure Supplement

Who is likely to be affected?

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

General description of the measure

The measure will extend Ring Fence Expenditure Supplement (RFES) to 10 accounting periods and remove Extended Ring Fence Expenditure Supplement (ERFES).

Policy Objective

The measure will improve help for oil companies without ring fence profits to preserve the value of their tax losses. It will achieve equal treatment of offshore and onshore expenditure and losses and simplify the existing legislation.

Background to the Measure

A call for evidence entitled *Review of the Oil and Gas Fiscal Regime* was launched on 14 July 2014 and closed on 3 October 2014. The initial findings of the review, including a summary of responses, were published on 4 December 2014.

Detailed Proposal

Operative Date

This measure will have effect for pre-trading expenditure and losses incurred in accounting periods ending on or after 5 December 2013.

Current Law

Under Chapter 5 (sections 307 to 329) of Corporation Tax Act (CTA) 2010, a company may claim RFES on accumulated qualifying expenditure and losses in up to six accounting periods. For claims made after 2012, the supplement is 10 per cent of the value of qualifying pre-trading expenditure, trading losses incurred after 2006 and supplement generated in previous accounting periods. The supplement may then be carried forward to offset future profits for corporation tax purposes.

Under Chapter 5A (sections 329A to 329T) of CTA 2010, a company may claim ERFES in an additional 4 accounting periods for onshore expenditure, losses and supplement. The supplement is 10 per cent of the value of onshore expenditure and losses incurred after 5 December 2013 and any supplement previously generated through onshore activities.

Proposed Revisions

Legislation will be introduced in Finance Bill 2015 to amend CTA 2010 to extend the number of claims available to companies involved in oil and gas related activities from 6 to 10 accounting periods. For claims in addition to their existing 6, companies will not be able to claim supplement on expenditure or losses incurred or supplement generated prior to 5 December 2013.

Sections 329A to 329T will be removed in their entirety.

Summary of Impacts

| Exchequer impact (£m) | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 | 2019-20 |
|---|---|---------|---------|---------|---------|---------|
| | nil | -5 | -15 | -15 | -10 | -95 |
| | <p>These figures are set out in Table 2.1 of Autumn Statement 2014, as part of <i>Oil and gas: support for investment, and have been certified by the Office for Budget Responsibility</i>. The figures incorporate the yield from <i>Corporation tax: extension of Ring Fence Expenditure Supplement</i>. More details can be found in the policy costings document published alongside Autumn Statement 2014.</p> | | | | | |
| Economic impact | <p>This measure is expected to support companies involved in the exploration and appraisal of oil and gas projects and production companies making investments who are without ring fence profits.</p> | | | | | |
| Impact on individuals, households and families | <p>There is no expected impact on individuals, households or families because this is a change that affects offshore oil extraction only.</p> | | | | | |
| Equalities impacts | <p>There is no expected impact on equalities because this is a change that affects offshore oil extraction only.</p> | | | | | |
| Impact on business including civil society organisations | <p>This measure will affect up to 200 companies. The measure will allow companies without existing ring fence profits to maintain the time value of their losses and pre-trading expenditure over a 10 year payback period, hence increasing the commercial viability of oil and gas activity.</p> <p>The removal of ERFES will ease the regulatory burden for companies with onshore oil related projects as they will no longer need to distinguish between onshore and offshore expenditure and losses.</p> <p>This measure will have no impact on civil society organisations.</p> | | | | | |
| Operational impact (£m) (HMRC or other) | <p>There will be no significant operational impact on HM Revenue & Customs.</p> | | | | | |
| Other impacts | <p><u>Sustainable development, wider environment and health</u>: by providing additional supplement on costs and losses, this measure supports costs associated with positive environmental impacts such as clean up costs. Beyond this, the oil and gas industry is heavily regulated to ensure its activities do not lead to pollution or disturbance to habitat or wildlife, and to ensure the health and wellbeing of its workers.</p> <p><u>Small and micro business assessment</u>: the impact of this measure on small businesses is not anticipated to differ from that on large businesses.</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 Lloyd Hopkin on 03000 532634 (email: lloyd.hopkin@hmrc.gsi.gov.uk).

1 Extension of ring fence expenditure supplement

Schedule 1 contains provision enabling the ring fence expenditure supplement to be claimed for an additional 4 accounting periods (and as a result repeals provision for the extended ring fence expenditure supplement for onshore activities).

SCHEDULE 1

Section 1

EXTENSION OF RING FENCE EXPENDITURE SUPPLEMENT

Amendments of Chapter 5 of Part 8 of CTA 2010

- 1 Chapter 5 of Part 8 of CTA 2010 (ring fence expenditure supplement) is amended as follows.
- 2 In section 307 (overview of Chapter), in subsection (5) for “6” substitute “10”.
- 3 In section 309 (accounting periods), in subsection (4), for the words from “Chapter” to the end substitute “Chapter –
 - (a) in relation to straddling periods (see sections 311, 324 and 327(4) to (7)), and
 - (b) in relation to accounting periods which begin before, but end on or after, 5 December 2013 (see sections 311(1C), 318A and 328A).”
- 4 (1) Section 311 (limit on number of accounting periods for which supplement may be claimed) is amended as follows.
 - (2) In subsection (1) for “6” substitute “10”.
 - (3) After subsection (1) insert –
 - “(1A) In this Chapter –
 - “the initial 6 periods” means the first 6 accounting periods (in chronological order) for which the company claims supplement under this Chapter;
 - “the additional 4 periods” means the 4 accounting periods after the initial 6 periods for which the company claims supplement under this Chapter.
 - (1B) None of the additional 4 periods may be accounting periods beginning before 5 December 2013.
 - (1C) But, where –
 - (a) a company has an accounting period which begins before 5 December 2013 and ends on or after that date, and
 - (b) that accounting period falls after the initial 6 accounting periods,so much of that accounting period as falls before 5 December 2013 and so much of it as falls on or after that date are treated as separate accounting periods for the purposes of this Chapter.”
 - (4) In the heading of the section after “Limit on number” insert “etc”.
- 5 In section 316 (the mixed pool of qualifying pre-commencement expenditure and supplement previously allowed), after subsection (5) insert –

- “(6) This section is subject to section 318A (adjustment of pool to remove pre-2013 expenditure after the initial 6 periods).”
- 6 In section 317 (reduction in respect of disposal receipts under CAA 2001), at the end insert –
- “(4) This section is subject to section 318A(5) (exclusion of deductible amounts in respect of pre-2013 expenditure when determining pre-commencement supplement for additional 4 periods).”
- 7 After section 318 insert –

“318A Adjustment of pool to remove pre-2013 expenditure after the initial 6 periods

- (1) This section applies for the purposes of determining the amount of any pre-commencement supplement on any claim made by a company for supplement under this Chapter in respect of an accounting period which is one of the additional 4 periods.
- (2) The pool which (under section 316) the company is to be taken to have had, at all times in the pre-commencement periods of the company, is to be taken to have been reduced at the time specified in subsection (4).
- (3) The amount of the reduction is the sum of –
 - (a) the relevant amount (if any) which the company carries forward under Schedule 19B to ICTA,
 - (b) the total amount of qualifying pre-commencement expenditure allocated to the pool for pre-commencement periods beginning before 5 December 2013, and
 - (c) the total amount of the company’s pre-commencement supplement allocated to the pool for pre-commencement periods beginning before that date.
- (4) The time is –
 - (a) immediately after the last of the initial 6 periods, or
 - (b) if later, 5 December 2013.
- (5) Subsection (3) of section 317 (reduction in respect of disposal receipts under CAA 2001) has effect as if the reference in paragraph (a) of that subsection to “all such events” did not include events occurring in relation to an asset representing expenditure incurred before 5 December 2013.
- (6) Where a company has a pre-commencement period (“the straddling 2013 period”) which begins before 5 December 2013 and ends on or after that date, for the purposes of making a reduction under this section –
 - (a) so much of the straddling 2013 period as falls before 5 December 2013 (“the pre-2013 period”), and
 - (b) so much of that period as fall on or after that date (“the post-2013 period”)are to be treated as separate pre-commencement periods.
- (7) Accordingly, any amount of qualifying pre-commencement expenditure, and any amount of the company’s pre-commencement

supplement, allocated to the pool for the straddling 2013 period is to be –

- (a) apportioned between the pre-2013 period and the post-2013 period in proportion to the number of days in each, and
- (b) treated as allocated to the pool in question for the period in question (rather than the straddling 2013 period).

- (8) If the basis of the apportionment in subsection (7) would work unjustly or unreasonably in the company’s case, the company may elect for the apportionment to be made on another basis that is just and reasonable and specified in the election.”

8 (1) Section 326 (the ring fence pool) is amended as follows.

(2) In subsection (3), for “the following provisions of this Chapter” substitute “sections 327 and 328”.

(3) In subsection (4), after “made” insert “under section 327 or 328”.

(4) After subsection (5) insert –

“(6) This section is subject to section 328A (adjustment of pool to remove pre-2013 losses after the initial 6 periods).”

9 In section 327 (reductions in respect of utilised ring fence losses), after subsection (3) insert –

“(3A) Subsection (3) is subject to section 328A(11).”

10 After section 328 insert –

“328A Adjustment of pool to remove pre-2013 losses after the initial 6 periods

- (1) This section applies for the purposes of determining the amount of any post-commencement supplement on any claim in respect of any of the additional 4 periods.
- (2) The ring fence pool is to be taken to have been reduced at the time specified in subsection (6).
- (3) The amount of the reduction is the amount of the total pre-2013 pool reduced (but not below nil) by the amount of the total pre-2013 reduction.
- (4) “The amount of the total pre-2013 pool” means the sum of –
 - (a) the carried forward qualifying Schedule 19B amount (within the meaning of section 326(5)) which is in the pool at the time specified in subsection (6) (if any),
 - (b) the total amount of the company’s ring fence losses added to the pool in post-commencement periods beginning before 5 December 2013,
 - (c) if the commencement period begins on or after 5 December 2013, so much of any ring fence loss added to the pool in that period as does not exceed the sum of –
 - (i) any pre-commencement expenditure added to the pool in a pre-commencement period ending before 5 December 2013, and

- (ii) any pre-commencement supplement allowed in respect of such a pre-commencement period, and
 - (d) the total amount of the company's post-commencement supplement added to the pool in post-commencement periods beginning before that date.
- (5) "The amount of the total pre-2013 reduction" means the total amount of the reductions in the ring fence pool falling to be made under section 327 or 328 in post-commencement periods beginning before the time specified in subsection (6).
- (6) The time is –
 - (a) immediately after the last of the 6 initial periods, or
 - (b) if later, 5 December 2013.
- (7) The amount (if any) in the non-qualifying pool under section 325(3) is reduced to nil (and so ceases to exist under section 325(4)).
- (8) Section 318A(6) ("the straddling 2013 period") applies for the purposes of making a reduction under this section as it applies for the purposes of making a reduction under section 318A.
- (9) Accordingly –
 - (a) any ring fence loss of the company added to the pool in the straddling 2013 period is to be apportioned between the pre-2013 period and the post-2013 period in proportion to the number of days in each and treated as allocated to the pool for the period in question;
 - (b) any amount of the company's post-commencement supplement allocated to the pool for the straddling period is to be apportioned between the pre-2013 period and the post-2013 period in proportion to the number of days in each and treated as allocated to the pool for the period in question,
 - (c) the total amount of reductions in the ring fence pool falling to be made in the straddling period is apportioned between the pre-2013 period and the post-2013 period in proportion to the number of days in each and treated as deduction falling to be made in the period in question.
- (10) If the basis of the apportionment in subsection (9)(a), (b) or (c) would work unjustly or unreasonably in the company's case, the company may elect for the apportionment to be made on another basis that is just and reasonable and specified in the election.
- (11) Once a reduction in the pool has been made under this section –
 - (a) nothing in section 327 applies to require a reduction in the pool in respect of the use under section 45 of a loss if and to the extent that the loss is represented by the reduction made under this section, and
 - (b) if and to the extent that losses are represented by the reduction they are to be used under section 45 to reduce any profits of a post-commencement period before ring fence losses of the company the use of which would trigger a reduction of the ring fence pool under section 327."

Abolition of extended ring fence expenditure supplement for onshore activities

- 11 In section 270 of CTA 2010 (overview of Part 8) omit subsection (5A).
- 12 (1) Schedule 4 to CTA 2010 (index of defined expressions) is amended as follows.
- (2) The following definitions are inserted at the appropriate places –

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| “the initial 6 periods (in Chapter 5 of Part 8) | section 311(1A)”; |
| “the additional 4 periods (in Chapter 5 of Part 8) | section 311(1A)”. |

- (3) The following definitions are omitted –

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| “the commencement period (in Chapter 5A of Part 8) | section 329D(1)”; |
| “offshore oil-related activities (in Chapter 5A of Part 8) | section 329C(3)”; |
| “onshore oil-related activities (in Chapter 5A of Part 8) | section 329C(2)”; |
| “onshore ring fence loss (in Chapter 5A of Part 8) | section 329P”; |
| “the onshore ring fence pool (in Chapter 5A of Part 8) | section 329Q”; |
| “the period of the loss (in Chapter 5A of Part 8) | section 329P”; |
| “post-commencement additional supplement (in Chapter 5A of Part 8) | section 329N(1)”; |
| “the post-commencement additional supplement provisions (in Chapter 5A of Part 8) | section 329N(4)”; |
| “post-commencement period (in Chapter 5A of Part 8) | section 329D(1)”; |
| “pre-commencement additional supplement (in Chapter 5A of Part 8) | section 329I(1)”; |
| “pre-commencement period (in Chapter 5A of Part 8) | section 329D(1)”; |
| “qualifying company (in Chapter 5A of Part 8) | section 329B”; |

| | |
|--|-------------------|
| “qualifying pre-commencement onshore expenditure (in Chapter 5A of Part 8) | section 329G”; |
| “the relevant percentage (in Chapter 5A of Part 8) | section 329E”; |
| “straddling period (in Chapter 5A of Part 8) | section 329D(3)”; |
| “unrelieved group ring fence profits (in Chapter 5A of Part 8) | section 329H”. |

- 13 (1) In Part 8 of CTA 2010, Chapter 5A (extended ring fence expenditure supplement for onshore activities) is repealed.
- (2) Accordingly, section 69 of and Schedule 14 to FA 2014 are also repealed.

Commencement

- 14 The amendments made by this Schedule have effect in relation to accounting periods ending on or after 5 December 2013.

EXPLANATORY NOTE

EXTENSION OF RING FENCE EXPENDITURE SUPPLEMENT

SUMMARY

1. Clause [X] and Schedule [A] increase the number of accounting periods in which a company can claim ring fence expenditure supplement (RFES) from 6 to 10. Losses, expenditure and supplement generated before 5 December 2013 will be excluded from supplement claimed under the additional 4 periods. This removes the need for the existing Extended Ring Fence Supplement and Schedule [A] abolishes this. This clause and schedule will allow companies to maintain the value of their expenditure and losses for longer. These supplemented losses can then be carried forward to offset profits for corporation tax purposes. This will have effect in relation to accounting periods ending on or after 5 December 2013.

DETAILS OF THE SCHEDULE

2. Schedule [A] amends Chapter 5 of Part 8 of the Corporation Tax Act (CTA) 2010 and removes Chapter 5A of the same Part.
3. Paragraph 2 alters the Chapter overview to increase the number of accounting periods in which RFES can be claimed from 6 to 10.
4. Paragraph 3 provides in section 309 where the rules on accounting periods are subject to new and existing special provisions. New special provisions relate to accounting periods straddling 5 December 2013.
5. Paragraph 4; subparagraph 2 increases the number of accounting periods in which RFES can be claimed from 6 to 10.
6. Paragraph 4; subparagraph 3 provides for the concept of initial and additional periods. This distinguishes between the first 6 periods for which a company makes a claim, 'the initial 6 periods' and further claims under the amended legislation, 'the additional 4 periods'. The latter must not begin before 5 December 2013. If the accounting period which straddles 5 December 2013 falls after a company's initial 6 periods, then that accounting period is dealt with as two separate periods.
7. Paragraph 5 sets out that the calculation of the mixed pool must take into account the new adjustments detailed in the new section 318A.
8. Paragraph 6 provides that reductions to the mixed pool due to the disposal of capital assets must be made subject to the adjustment in new section 318A.

9. Paragraph 7 introduces new section 318A. This prevents the additional 4 claims from being made in respect of pre-commencement expenditure incurred and supplement generated before 5 December 2013. Subsections 2 to 4 provide that following a company's 6 initial claims (or if later, 5 December 2013), the mixed pool is reduced by the value of pre-commencement expenditure incurred and supplement generated before 5 December 2013.

10. New section 318A, subsection 5 provides that for the purposes of calculating the mixed pool for the additional 4 claims, any reduction under section 317 should not include the value of disposals which relate to expenditure incurred before 5 December 2013.

11. New section 318A, subsections 6 to 8 set out how expenditure incurred and supplement generated in a pre-commencement period which straddles 5 December 2013 is apportioned for the purposes of making the adjustment. The period is to be treated as two separate pre-commencement periods: one falling before 5 December 2013 and one falling on and after that date. Expenditure incurred and supplement generated in this period are apportioned between the two in proportion to the number of days in each. If this works unreasonably or unjustly, the company may elect a different basis for apportionment if this is just and reasonable.

12. Paragraph 8 sets out that section 326 is read subject to section 327 and 328 for the initial 6 claims but is also read subject to new section 328A for the additional claims.

13. Paragraph 9 sets out that if the ring fence pool is reduced under section 327, this is done subject to provisions of section 328A.

14. Paragraph 10 introduces new section 328A. This prevents the additional 4 claims from being made in respect of losses incurred and supplement generated before 5 December 2013. This adjusts the ring fence pool following the initial 6 claims, or if later, 5 December 2013.

15. New section 328A, subsections 1 to 6 set out that at this time, the ring fence pool is to be reduced. The value of this reduction is to be the value of the amount carried into the pool under the Exploration Expenditure Supplement, ring fence losses and supplement generated before 5 December 2013 and if the company commences business after that date, the value detailed in subsection 4, paragraph (c), minus any previous reductions made to the pool under sections 327 or 328.

16. New section 328A, subsection 4, paragraph (c) prevents the value of any pre-commencement expenditure and pre-commencement supplement from remaining in the adjusted pool due to this amount being treated as commencement year expenditure. The paragraph sets out that if a company commences trading on or after 5 December 2013, then any commencement year loss is also included in the reduction but only up to an amount equal to the value of pre-commencement expenditure or pre-commencement supplement generated before 5 December 2013.

17. New section 328A, subsection 7 removes any amount generated under Exploration Expenditure Supplement from the pool of non-qualifying losses.
18. New section 328A, subsection 8 to 10 operate for section 328A in the same way that subsections 6 to 8 of section 318A operate for that section. (See Para [11]). These subsections provide for the apportionment of losses incurred, supplement generated and reductions to be made in an accounting period which straddles 5 December 2013.
19. New section 328A, subsection 11 sets out that if a loss is removed from the Ring Fence Pool under section 328A and that loss is subsequently carried forward under section 45, this does not require the pool to be reduced under section 327 in respect of that loss.
20. New section 328A, subsection 12 sets out that if a company has losses which are removed from the pool under this section then these are to be carried forward under section 45 before any losses that remain in the pool.
21. Paragraphs 11 to 13 abolish Extended Ring Fence Supplement by repealing Chapter 5A of Part 8 CTA 10 and remove all statutory references to that Chapter.

BACKGROUND NOTE

22. 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.
23. 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.
24. 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% for up to 6 accounting periods to maintain their time value until they can be offset against future profits.
25. Presently, companies may claim further supplement under Extended Ring Fence Expenditure Supplement against expenditure, losses and supplement relating to onshore oil and gas related activities which were generated after 5 December 2013. This supplement may be claimed in respect of 4 periods at a rate of 10%.
26. A call for evidence entitled *Review of the Oil and Gas Fiscal Regime* was launched on 14 July 2014 and closed on 3 October 2014. The initial findings including a summary of responses were published on 4 December 2014, entitled *Driving Investment – a plan to reform the oil and gas fiscal regime*.

27. Clause [X] and Schedule [A] extend the number of accounting periods for which companies can claim RFES from 6 to 10 for expenditure incurred and losses and supplement generated after 5 December 2013. This recognises the extended period before they are able to utilise those amounts and will allow companies to maintain the value of their expenditure for longer.

28. If you have any questions about this change, or comments on the legislation, please contact Lloyd Hopkin on 03000 532634 (email: lloyd.hopkin@hmrc.gsi.gov.uk).