

EXPLANATORY NOTE

SUPPLEMENTARY CHARGE: CLUSTER AREA ALLOWANCE

SUMMARY

1. Clause [X] and Schedule [A] introduce a new allowance for the purposes of calculating the amount of supplementary charge (SC) payable, which will remove an amount equal to 62.5 per cent of capital expenditure incurred by a company in relation to a cluster area from its adjusted ring fence profits. It has effect in relation to capital expenditure incurred on or after 3 December 2014.

DETAILS OF THE SCHEDULE

Part 1 – Amendments of Part 8 of Corporation Tax Act 2010 (CTA 2010)

1. Paragraph 1 provides that the Schedule amends part 8 of CTA 2010 (oil activities).
2. Paragraph 2 inserts, after Chapter 8, a new Chapter 9 entitled “Supplementary Charge: Cluster Area Allowance which makes provision for a new allowance (reducing the supplementary charge) for capital expenditure incurred in relation to a cluster area.
3. New section 356JC provides an overview of new Chapter 9.
4. New section 356JD defines “cluster area”, including that it is an offshore area only, as determined by the Secretary of State, and does not include any previously authorised oil fields. It provides for notice to be given of proposed cluster areas, as well as a 30 day period for representations to be made prior to the publication of a final determination. A determination has effect from the day on which it is published. It also provides that determinations can be varied or revoked.
5. New section 356JDA defines “previously authorised oil field”, to exclude from the cluster area oil fields authorised for development before the cluster area determination date, other than a decommissioned oil field. Decommissioned oil fields will have their original authorisation date ignored for the purposes of exclusion from the cluster area, so will be eligible for cluster allowance if in a determined cluster area. It also provides that authorisation for development is interpreted according to section 351 of CTA 2010, and refers to paragraph 6 of the Schedule to Finance Act 2015 for the treatment of proposed determinations before the date the Act is passed.
6. New section 356JE explains how cluster area allowance is generated including that an amount of “relievable capital expenditure” (as defined by reference to activities in the course of which it is incurred) generates an allowance of 62.5 per cent of that amount, and that

allowance is generated in relation to a cluster area. It provides that capital expenditure is not relievable if it is incurred in relation to the acquisition of an asset, which has already generated allowance for any company. There is also provision for cases where relievable capital expenditure is incurred only partly for the purposes of oil-related activities, or is incurred only partly in relation to the cluster area; in both cases the expenditure is to be apportioned to that cluster area on a just and reasonable basis.

7. New section 356JF provides for a company's adjusted ring fence profits for an accounting period to be reduced (but not below zero) by the total amount of activated allowance in that period.
8. New section 356JFA provides that a company's unused activated allowances are carried forward to the next accounting period.
9. New section 356JG provides that where a company's share of the equity in the cluster area remains unchanged during an accounting period, that is to have activated allowances no greater than the relevant income from that cluster area. The company must hold a closing balance of unactivated allowance greater than zero, and have relevant income from the cluster area. "Relevant income" is also defined in this section.
10. New section 356JGA provides for the calculation of the closing balance of unactivated allowances held by a company for an accounting period.
11. New section 356JGB provides that an amount equal to the company's closing balance of unactivated allowances, less relevant income for the period, is to be carried forward to the next accounting period.
12. New section 356JH introduces and defines reference periods where a company's share of equity in any licensed area or sub-area in a cluster changes in any one accounting period. The accounting period is divided into as many reference periods as is necessary according to the acquisitions and disposals made by the company in the cluster area.
13. New section 356JI provides for the calculation of a company's activated allowance in any reference period, being the smaller of the relevant income in the reference period, or the total amount of unactivated allowance attributable to that reference period.
14. New section 356JIA provides that the unactivated allowance in a reference period is carried forward to the next period (being either a reference or accounting period).
15. New section 356JIB provides for the calculation of the total amount of unactivated allowances attributable to a reference period and a cluster area. This includes allowance generated in the reference period (including transfer of allowance following an acquisition of equity share), the amount carried forward from preceding periods, and any deductions for transfer of allowance following a disposal of equity share.

16. New section 356JJ provides for a company to elect to transfer a specified amount of cluster area allowance on disposal of an equity share in a licensed area or sub area, subject to a minimum and maximum transferable amount.
17. New section 356JJA provides for a company to elect the order of priority of disposals if there is more than one disposal on a single day.
18. New section 356JJB provides for the calculation of the amount to be treated as generated by the transferee following the acquisition of an equity share in a licensed area.
19. New section 356JK provides for use of allowance attributable to an unlicensed area in a cluster area. A company may elect a licensed area or sub area to attribute allowance generated in an unlicensed area to.
20. New section 356JL provides that any alteration to a company's adjusted ring fence profits is reflected in the operation and calculations of Chapter 9.
21. New section 356JLA provides that Treasury may by regulations make adjustments to the percentage specified at section 356JE(2).
22. New section 356JM explains when capital expenditure can be said to be incurred for the purposes of new Chapter 9.
23. New section 356JMA provides for licensed areas and licensed sub-area in a cluster area.
24. New section 356JMB provides interpretation on definitions for "adjusted ring fence profits", "cluster area allowance", "cumulative total amount of activated allowance", "licence", "licensed area", "licensee", "qualifying oil field", and "relevant income".
25. Paragraph 3 makes provision that oil fields with an authorisation date after the date of determination of a cluster area are not additionally developed oil fields and so are unable to qualify for field allowance under Chapter 7.
26. Paragraph 4 makes provision that oil fields with an authorisation date after the date of determination of a cluster area are not qualifying oil fields and so are unable to qualify for field allowances under chapter 7.

Part 2 – Minor and consequential amendments

27. Paragraph 5 contains minor and consequential amendments to other Acts that flow from this new legislation, including a new section 330ZA in CTA 2010 enabling companies who hold allowances under more than one chapter to choose the order in which they are applied.

Part 3 – Commencement and transitional provisions

28. Paragraph 6 provides for proposed determinations of cluster areas in the period between 3 Dec 2014, and the date of Royal Assent to Finance Bill 2015, to ensure companies in a licensed area in a proposed cluster area are able to generate cluster area allowance from the date of the proposed cluster area being published. It provides for such proposed determinations to be treated as valid determinations under section 356JD.
29. Paragraph 7 provides that the amendments are to have effect in relation to capital expenditure incurred on or after 3 December 2014.
30. Paragraph 8 introduces arrangements for companies who are licensees in oil fields in a cluster area, to elect to exclude certain fields from the cluster area until a date to be specified.
31. Paragraph 9 introduces arrangements in paragraphs 10 and 11 for accounting periods which straddle the commencement date of 3 December 2014.
32. Paragraph 10 provides for the apportionment of a company's adjusted ring fence profits in a straddling accounting period according to the number of days falling on or after the commencement day.
33. Paragraph 11 provides for the apportionment of relevant income for determining activated allowance in a straddling accounting period according to the number of days falling on or after the commencement day.

BACKGROUND NOTE

34. In addition to ring fence corporation tax (RFCT), 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. The rate of SC is currently 32 per cent.
35. Field allowances provide relief by reducing the amount of adjusted profits on which SC is due for oil and gas projects which meet certain conditions. Existing field allowances and the onshore allowance are provided by Part 8, Chapters 7 and 8 CTA 2010, and apply to fields, projects and sites which satisfy the relevant criteria.
36. This clause introduces a new allowance, designed to support the development of oil and gas projects and encourage exploration and appraisal within the surrounding area (or "cluster").
37. This measure was announced in Budget 2014, and a consultation entitled *Maximising economic recovery: consultation on a cluster allowance* was launched on 24 July 2014 and closed on 30 September 2014. The Government's response to this consultation will be published on 10 December 2014.

38. 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).