

2016 No.

CORPORATION TAX

**The Investment Allowance and Cluster Area Allowance
(Investment Expenditure) Regulations 2016**

<i>Made</i>	- - - -	***
<i>Laid before the House of Commons</i>		***
<i>Coming into force</i>	- -	***

The Treasury make the following Regulations in exercise of the powers conferred by sections 332BA, 332K, 356JE and 356JN of the Corporation Tax Act 2010(a).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Investment Allowance and Cluster Area Allowance (Investment Expenditure) Regulations 2016 and come into force on [date].

(2) These Regulations have effect in relation to any expenditure that is incurred on or after 8th October 2015.

Investment expenditure

2. Expenditure which is operating expenditure within regulation 3 or leasing expenditure within regulation 4 is investment expenditure for the purposes of Chapter 6A and Chapter 9 of Part 8 of the Corporation Tax Act 2010(b).

Operating expenditure

3.—(1) Expenditure is “operating expenditure” for the purposes of these Regulations if it satisfies Conditions A, B and C.

(2) Condition A is that the expenditure is incurred by a company for the purpose of increasing—

- (a) the rate at which oil is extracted from a qualifying oil field or a cluster area;
- (b) the reserves of oil of a qualifying oil field or a cluster area;
- (c) the number of years for which it is economically viable to carry out oil extraction activities in relation to a qualifying oil field or a cluster area;
- (d) the number of years for which a facility can be used for the purposes of oil extraction activities in relation to a qualifying oil field or a cluster area; or

(a) 2010 c.4. Sections 332BA and 332K were inserted by section 49 of, and Schedule 12 to, the Finance Act 2015 c.11. Sections 356JE and 356JN were inserted by section 50 of, and Schedule 13 to, 2015 c.11.
(b) Chapter 6A was inserted by section 49 of, and Schedule 12 to, 2015 c.11. Chapter 9 was inserted by section 50 of, and Schedule 13 to, 2015 c.11.

- (e) the amount of tariff receipts or tax-exempt tariff receipts that are earned by the company in respect of upstream petroleum infrastructure.
- (3) Condition B is that the expenditure is not routine repair or maintenance expenditure.
- (4) Condition C is that the expenditure is incurred in the course of—
- (a) any of the following activities in relation to a facility—
 - (i) the replacement of equipment that is no longer capable of being used for the purposes of oil extraction activities;
 - (ii) modification to increase the capacity to carry out oil extraction activities;
 - (iii) modification to increase the availability to carry out oil extraction activities;
 - (iv) modification to enable the handling of reduced volumes that arise as a result of reduced operating pressures;
 - (v) modification to enable the handling of different fluid compositions; or
 - (b) any of the following activities in relation to an oil well—
 - (i) water shut off;
 - (ii) fracturing;
 - (iii) the removal of sand, salt, scale or hydrates.
- (5) In paragraph (2), references to a qualifying oil field or a cluster area include references to a part of the field or the cluster area.
- (6) In this regulation—
- “equipment” means—
- (i) a valve;
 - (ii) a pump;
 - (iii) a pipeline;
 - (iv) a power generation plant; or
 - (v) a compressor;
- “facility” means—
- (i) a platform;
 - (ii) a subsea oil well;
 - (iii) a platform well;
 - (iv) an oil well head; or
 - (v) upstream petroleum infrastructure;
- “tariff receipt” has the meaning given by the Oil Taxation Act 1983(a);
- “tax-exempt tariff receipt” has the meaning given by section 6A of the Oil Taxation Act 1983(b); and
- “upstream petroleum infrastructure” has the meaning given by section 9H of the Petroleum Act 1998(c).

Leasing expenditure

4.—(1) Expenditure is “leasing expenditure” for the purposes of these Regulations if it satisfies Conditions A to E and either Condition F or, to the extent that Condition F is not satisfied, Condition G.

(a) 1983 c.56.
 (b) Section 6A was inserted by section 285 of the Finance Act 2004. c.12, and was amended by section 103 of the Finance Act 2007 c.11.
 (c) 1998. c.17. Section 9H was inserted by section 41 of the Infrastructure Act 2015. c.7.

(2) Condition A is that the expenditure is incurred by a company in relation to the lease of an asset.

(3) Condition B is that the asset that is leased is a mobile asset whose main function is the production or storage of oil.

(4) Condition C is that on the date that the expenditure is incurred, no company has obtained investment allowance or cluster area allowance in respect of the acquisition of the asset.

(5) Condition D is that the expenditure, when added to any previous expenditure that has been incurred by any company in relation to the lease of the asset, does not exceed the value that the asset had on the date when such expenditure was first incurred by any company in relation to that asset (“the initial value”).

(6) Condition E is that the lease is for a term of 5 years or longer.

(7) Condition F is that the asset is used in relation to—

- (a) a qualifying oil field whose development is authorised for the first time on or after 8th July 2015; or
- (b) a cluster area that is determined on or after 3rd December 2014.

(8) Condition G is that—

- (a) the asset is used in relation to a qualifying oil field;
- (b) since the time when consent for development of the oil field was first granted, a project in relation to the field is authorised by the national authority;
- (c) the project is described in a further consent for development of the field;
- (d) the project is authorised on or after 8th July 2015; and
- (e) the asset is used for the purposes of the project in respect of which the authorisation is granted.

(9) For the purposes of Condition A—

- (a) expenditure is incurred in relation to the lease of an asset only to the extent that it represents payment in return for the asset being made available; and
- (b) expenditure is not incurred in relation to the lease of an asset to the extent that it is incurred—
 - (i) for any alternative purpose; or
 - (ii) in respect of any finance charge.

(10) For the purposes of paragraph 8(b)(i), alternative purposes include, but are not limited to—

- (a) charges for the provision of any staff; and
- (b) charges for any services.

(11) For the purposes of applying Condition D, where an amount of expenditure is only in part in excess of the initial value of the asset, Condition D is satisfied in relation to the part of the expenditure that is not in excess.

(12) For the purposes of this regulation, references to authorisation of development of an oil field are to be interpreted in accordance with section 356IB of the Corporation Tax Act 2010(a).

(13) In this regulation—

“consent for development” and “national authority” have the same meaning as in section 356IB of the Corporation Tax Act 2010; and

“finance charge” means—

- (i) any amount which, in accordance with generally accepted accounting practice, falls (or would fall), to be shown in the company’s accounts as a finance charge in respect of a lease; or, to the extent that subparagraph (i) is not applicable,

(a) Section 356IB was inserted by section 51 of, and Schedule 14 to, 2015 c.11.

- (ii) any amount that can be attributed to finance costs by reference to the interest rate implicit in the lease; and

“interest rate implicit in the lease” is the interest rate that would apply in accordance with normal commercial criteria, including, in particular, generally accepted accounting practice (where applicable).

Arrangements that have an avoidance purpose

5.—(1) For the purposes of these Regulations, expenditure is not operating expenditure or leasing expenditure to the extent that it arises in connection with any arrangements which have an avoidance purpose.

(2) For the purposes of this regulation, arrangements have an avoidance purpose if the main purpose, or one of the main purposes, of a person in entering into the arrangements is to—

- (a) enable expenditure, or part of expenditure, to qualify as operating expenditure or leasing expenditure, if it would otherwise not meet the conditions specified by regulation 3 or regulation 4 respectively;
- (b) enable expenditure to be incurred on a date earlier or later than the date on which it would otherwise have been incurred; or
- (c) otherwise obtain a tax advantage.

(3) In this regulation—

“arrangements” includes any transaction, series of transactions, scheme or arrangement, whether or not legally enforceable; and

“tax advantage” means—

- (i) the generation or increased generation of investment allowance or cluster area allowance; or
- (ii) the generation of investment allowance or cluster area allowance earlier than it otherwise would have been generated.

Attribution of expenditure

6. For the purposes of these Regulations, where a company incurs expenditure and part of that expenditure is operating expenditure or leasing expenditure and part is not, the expenditure is to be attributed to each part on a just and reasonable basis.

When expenditure is incurred

7. For the purposes of Chapter 6A and Chapter 9 of Part 8 of the Corporation Tax Act 2010, operating expenditure and leasing expenditure is incurred on the date when the amount has actually been paid.

Name
Two of the Lords Commissioners of Her Majesty’s Treasury

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for specified items of expenditure to be brought within the definition of investment expenditure for the purposes of the Investment Allowance (Chapter 6A of Part 8 of the Corporation Tax Act 2010) and the Cluster Area Allowance (Chapter 9 of the Corporation Tax Act 2010).

Regulation 1 provides for citation, commencement and effect. Authority for the potential retrospective effect is given by section 332BA(2) and section 356JE(2) of the Corporation Tax Act 2010.

Regulation 2 provides that operating expenditure that is within regulation 3 or leasing expenditure that is within regulation 4 is investment expenditure.

Regulation 3 specifies the conditions that must be met for expenditure to be operating expenditure. The expenditure must be incurred for a purpose that is recognised by regulation 3(2), not be routine repair or maintenance expenditure, and be incurred in the course of an activity that is recognised by regulation 3(4).

Regulation 4 specifies the conditions that must be met for expenditure to be leasing expenditure. Expenditure must be incurred in relation to the lease of an asset whose main purpose is the production or storage of oil. The lease must be for a term of 5 years or longer. The asset must be used in relation to a qualifying oil field or a cluster area that meet the conditions provided by regulation 4(7) and (8).

Regulation 4(4) provides that where investment allowance or cluster area allowance has previously been generated in relation to the acquisition of an asset, expenditure incurred in relation to the lease of that asset is not leasing expenditure.

Regulation 4(5) provides that the amount of leasing expenditure that may be incurred in relation to any particular asset is limited to the value that that asset had on the date when expenditure was first incurred in relation to the lease of it (whether incurred by that company or a previous company).

Regulation 4(9) limits the amount of expenditure that may be incurred in relation to the lease of an asset to payments that are made in return for the asset being made available. It excludes any expenditure that is incurred for an alternative purpose, such as charges for the provision of services or staff. It also excludes any finance charges.

Regulation 5 provides an anti-avoidance rule that removes from the scope of operating or leasing expenditure any expenditure that arises in connection with any arrangements which have an avoidance purpose.

Regulation 6 provides that where expenditure is partly operating or leasing expenditure, and partly not, the expenditure is to be attributed to each part on a just and reasonable basis.

Regulation 7 specifies when expenditure is taken to have been incurred.