

# **Notes for Guidance - Taxes Consolidation Act 1997**

## **Finance Act 2018 edition**

### **PART 24 TAXATION OF PROFITS OF CERTAIN MINES AND PETROLEUM TAXATION**

**December 2018**



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**PART 24**  
**TAXATION OF PROFITS OF CERTAIN MINES AND PETROLEUM**  
**TAXATION**

CHAPTER 1  
*Taxation of profits of certain mines*

**Overview**

This Chapter provides special provisions in connection with the taxation of the profits of certain mines.

**670 Mine development allowance**

**Summary**

<p>This section provides for an allowance to be made to a person carrying on a mining trade in respect of certain capital expenditure on the development of the mine, on construction of mining works and on exploration for and testing of mineral deposits. However, expenditure on the acquisition of the site of the mine or of rights over the deposits do not qualify for relief under this section. Broadly, the section is designed to secure that, year by year over the life of the deposits (which cannot exceed 20 years), allowances will be granted of such an amount that the total of the allowances will be equal to the capital sum expended less the residual value of the assets representing that expenditure when the deposits are exhausted.</p>	
<p><b>Details</b></p>	
<p><b><i>Definitions and construction</i></b></p>	
<p>The term “mine” is defined by reference to the 70 or so minerals listed in the Minerals Development Act, 1940. The definition includes both surface and underground excavation.</p>	<p>(1)</p>
<p>The subsection also sets out the qualifying capital expenditure (developing, searching for, discovering or testing deposits, as well as construction works that are likely to have a residual value); and the non-qualifying expenditure (the site, rights over the site or over the deposits and construction works related to further processing of the minerals extracted).</p>	
<p>Provision is made for excluding State or other grants in calculating the allowance.</p>	<p>(2)</p>
<p><b><i>Conditions for allowance</i></b></p>	
<p>Expenditure must be incurred after 1946 and any claim for the allowance for a chargeable period must be made within 2 years of the end of the chargeable period.</p>	<p>(3) &amp; (4)</p>
<p><b><i>The allowances</i></b></p>	
<p>The qualifying expenditure, less the estimated residual value represented by such expenditure, is allowed on a “straight line” basis over the estimated life of the deposits, but this period cannot in any event exceed 20 years.</p>	<p>(5)</p>
<p>The allowance to be made to any person carrying on the trade of working a mine is to be made in taxing that trade (that is, in charging the profits of the trade in the case of income tax or in computing trading income in the case of corporation tax). For income tax</p>	<p>(6)</p>

purposes, any unused allowances for a year of assessment can be carried forward for set-off against trading profits in subsequent years.	
The allowance is not granted in respect of any part of the capital expenditure resulting in the creation of assets for which wear and tear allowances can be claimed under <b>section 284</b> .	(7)
<b>Denial of deduction under section 85</b>	
The annual deduction under <b>section 85</b> for an industrial building or structure built before 30 September, 1956 cannot be given for a chargeable period for which an allowance in respect of a mine is given under this section.	(8)
<b>Pre-trading expenditure</b>	
If the capital expenditure is incurred before the trade begins, it is regarded as having been incurred on the first day of trading.	(9)
<b>Review of allowances</b>	
If the mine ceases finally to be operated, the allowances are reviewed taking account of —	(10)
• the qualifying capital expenditure ( <i>a</i> ),	
• the allowances already granted ( <i>b</i> ), and	
• the residual value of the assets represented by the expenditure at the date of cessation ( <i>c</i> ).	
If ( <i>b</i> ) + ( <i>c</i> ) is less than ( <i>a</i> ), the allowance for one or more years is adjusted to give a full allowance over the period for which the mine was worked, and where relevant, any excess tax paid may be repaid notwithstanding the general time limit for making a claim for a repayment of tax set out in <b>section 865</b> .	
If ( <i>b</i> ) + ( <i>c</i> ) exceeds ( <i>a</i> ), the excess is treated as a trading receipt arising immediately before the cessation.	
<b>Sales</b>	
If the person who is entitled to the allowance sells any asset representing the qualifying expenditure to another person (other than a person who succeeds the vendor in the trade of working the mine), an adjustment as in <b>subsection (10)</b> is also made.	(11)
If the mine is sold to a successor who continues in the trade, the successor can continue to get an allowance in respect of the capital expenditure incurred by the predecessor; but the allowance cannot exceed the amounts which the predecessor would have obtained.	(12)
<b>Deemed allowances</b>	
If the mining entity was exempt from tax for any period, a mining development allowance is deemed to have been made for such period.	(13)
<b>Appeals</b>	
A person aggrieved by decision by an inspector under this section may appeal the decision by notice in writing to the Appeal Commissioners. An appeal must be made within 30 days after the date of the notice of the decision. The Appeal Commissioners will hear and determine an appeal in the manner provided for in Part 40A.	(14)

**671 Marginal coal mine allowance**

## Summary

This section provides relief for marginal coal mines, that is, coal mines in relation to which the Minister for Communications, Energy and Natural Resources is satisfied that if the profits of the mines were charged to tax in the normal way the mines would not continue to be worked. Essentially, the allowance is the amount which ensures that the tax payable is the amount (which can be nil) specified by the Minister for Finance.

## Details

A “marginal coal mine” is one in respect of which the Minister for Communications, Energy and Natural Resources gives a certificate to the effect that the mine would be unworked if the profits of the mine were subject to tax in the normal way. (1)

The Minister for Finance, after consultation with the Minister for Communications, Energy and Natural Resources, may direct that the tax chargeable on the profits of a marginal coal mine be reduced to such figure (including nil) as the Minister for Finance may specify. (2)

Where such a direction is made, an allowance of such amount is to be made as will reduce the tax chargeable to the amount specified by the Minister in the direction. (3)

The section applies to corporation tax as well as to income tax. (4)

## 672 Interpretation (sections 672 to 683)

### Summary

This section deals with definitions of terms and other interpretation matters relating to the remainder of the Chapter.

### Details

#### *Definitions*

“development expenditure”, “exploration expenditure” and “qualifying mine” are all defined in terms of a list of 14 scheduled minerals. While this is less than the 70 or so minerals covered by the mine development allowance (*section 670* refers), the minerals listed cover most (if not all) of the types of mining currently carried on in the State. The 14 scheduled minerals are: lead, zinc, gold, silver, iron, copper, quartz, sulphur, serpentinous marble, manganese, barytes, felspar, soapstone and molybdenum. (1)

“development expenditure” means not only capital expenditure on developing a qualifying mine and connected construction works, but also includes interest on money borrowed to meet such expenditure. However, it does not include the acquisition of the site of a mine, or the acquisition of mineral deposits or land comprising such deposits, or construction works related to further processing of the minerals extracted.

“exploration expenditure” means expenditure on searching for scheduled minerals (by drilling or otherwise) or on testing such deposits.

#### *State grants*

Expenditure is not regarded as having been incurred by the claimant if it has been met either out of State funds or by another person. (2)

#### *Additions to list of scheduled minerals*

The list of scheduled minerals may be added to by way of regulations made by the Minister for Finance. (3) & (4)

## 673 Allowance in respect of development expenditure and exploration expenditure

### Summary

This section provides that a person working a qualifying mine may claim an immediate allowance in respect of the full amount of any qualifying development or exploration expenditure (whether successful or abortive) incurred on or after 6 April 1974. The relief is given by way of an increased mine development allowance under *section 670*.

### Details

The development or exploration expenditure concerned is deemed to be expenditure on foot of which an allowance under *section 670* may be granted. (This deeming provision is necessary since *section 670* does not allow either abortive exploration expenditure or interest on borrowed money to meet development expenditure.) (1)(a)

The amount of the allowance to be made is an amount equal to the entire amount of the exploration expenditure plus the entire amount of the development expenditure less the estimated residual value of any assets representing the development expenditure at the end of the mine's estimated life. (1)(b)

Any reference in the Tax Acts to an allowance under *section 670* is to be read as including a reference to an allowance under this section. (1)(c)

Abortive expenditure incurred before 1 April, 1990, which was also incurred more than 10 years before the mining trade commenced, is not eligible for a "deemed" mine development allowance. (2)

No allowance is given in respect of expenditure incurred before 6 April 1974, even where such expenditure may be deemed to have been incurred after that date. (3)

## 674 Expenditure on abortive exploration

### Summary

This section deals with certain abortive exploration expenditure not already covered by *section 673*.

### Details

Abortive exploration expenditure qualifies for a deemed mine development allowance even if the expenditure was not incurred in connection with a qualifying mine. However, abortive expenditure incurred before 1 April, 1990, which was also incurred more than 10 years before the mining trade commenced, does not qualify for a deemed mine development allowance. (1)

In order to prevent avoidance through the use of the provisions of *section 675* (exploration expenditure incurred by certain bodies corporate), it is provided that where the person who incurred abortive expenditure is a body corporate, and there is a change of ownership of the body corporate, no deduction is to be allowed in respect of expenditure incurred before the date of change. Change of ownership is defined as a change within the meaning of *Schedule 9* (change of ownership of company: disallowance of trading losses) but the acquisition of ordinary share capital by a Minister of the Government is to be disregarded for this purpose. (2)

A further anti-avoidance provision prevents a person who commences to work a qualifying mine in respect of which the person has not incurred the exploration expenditure (that is, a mine the person acquired from some other person) from obtaining (3)

an allowance in respect of prior abortive exploration expenditure incurred by himself.

Apart from transitional relief (*paragraphs 16 and 18 of Schedule 32*), a double allowance (4) will not be obtained for abortive exploration expenditure.

## **675 Exploration expenditure incurred by certain bodies corporate**

### **Summary**

This section provides that exploration expenditure incurred by a company which is a member of a group of companies may be attributed to any other group member.

### **Details**

An exploration company in a group of wholly-owned subsidiaries may elect to have its (1) exploration expenditure (whether successful or abortive) attributed to any other subsidiary in the group or to the parent company so that the exploration expenditure may be set off against mining profits wherever they arise within the group. Where the expenditure was incurred before the company which is deemed to have incurred it was incorporated, the company is deemed to have been in existence and to have incurred the expenditure at that time.

The same expenditure cannot be taken into account in more than one trade. (2)(a)

Apart from transitional relief (*paragraphs 16 and 18 of Schedule 32*), expenditure that (2)(b) qualifies for an allowance by virtue of this section cannot qualify for a deduction or allowance under some other tax provision.

A body corporate is deemed to be a wholly-owned subsidiary of another body corporate (3) if the latter owns all the ordinary share capital of the former, either directly, or through other bodies corporate, or both. A holding of ordinary share capital by a Minister of the Government is disregarded for this purpose.

The provisions of *section 9* are applied for the purposes of determining the amount of (4) ordinary share capital held in a body corporate through other bodies corporate.

## **676 Expenditure incurred by person not engaged in trade of mining**

### **Summary**

This section provides relief in respect of exploration expenditure incurred by a person who finds a deposit of scheduled minerals and who, without having carried on a trade of working that deposit, sells the assets representing that expenditure to another person. In such cases the person who develops and works the mine is entitled to claim relief for the exploration expenditure incurred in connection with the mine.

### **Details**

Relief is provided for exploration expenditure incurred by a person who finds a scheduled (1) mineral deposit and then sells the assets representing the expenditure to another person who develops and works the mine. In such circumstances, the purchaser is regarded as having incurred exploration expenditure equal to the amount represented by the assets or the price paid for those assets, whichever is the less, and is entitled to a deduction in respect of this expenditure.

No such allowance is to be granted unless the person acquiring the assets produces (2) qualifying minerals in reasonable commercial quantities.

Apart from transitional relief (*paragraphs 16 and 18 of Schedule 32*), expenditure that (3) qualifies for an allowance by virtue of this section cannot qualify for a deduction or



allowance under some other tax provision.

The investment allowance in respect of exploration expenditure provided for in *section 677* (4) is not to apply to the expenditure covered by this section.

### **677 Investment allowance in respect of exploration expenditure**

#### **Summary**

This section provides for an investment allowance of 20 per cent of exploration expenditure (whether successful or abortive) incurred on or after 6 April 1974 and before 1 January 2011.

#### **Details**

In addition to any mine development allowance granted in respect of exploration expenditure in relation to which *section 673* has effect, a further allowance (to be known as an “exploration investment allowance”) amounting to 20 per cent of such expenditure is granted. This allowance is to be made in taxing the trade (that is, in charging the profits of the trade in the case of income tax or in computing trading income in the case of corporation tax). For income tax purposes, where full effect cannot be given to any allowance for a year of assessment, the allowance or part of it may be carried forward for set-off against trading profits in subsequent years. The allowance is restricted to expenditure incurred on or after 6 April 1974 and before 1 January 2011. (1)

No allowance is to be granted in respect of exploration expenditure which was incurred before 6 April 1974, even where a provision of the Tax Acts may provide that such expenditure is deemed to be incurred on or after that date, or which is deemed to have been incurred by a person other than the person who incurred the expenditure. (2)(a)

The rules above (*subsection (2)(a)*) do not apply in respect of expenditure deemed under *section 675* to have been incurred by a body corporate which is in the same group as the body corporate which actually incurred the expenditure. (2)(b)

### **678 Allowance for machinery and plant**

#### **Summary**

This section provides for certain measures in relation to the capital allowances to be granted in respect of machinery or plant provided for use for the purposes of the trade of working a qualifying mine. In particular, it provides for a special investment allowance of 20 per cent in respect of expenditure on the provision of new machinery and plant (other than road vehicles) used for those purposes. This allowance is in addition to the normal capital allowance available for machinery and plant (for example, wear and tear allowances). The special investment allowance is restricted to expenditure incurred on or after 6 April 1974 and before 1 January 2011.

#### **Details**

Provision is made for accelerated wear and tear allowances in respect of new machinery or plant (excluding road vehicles) provided for use on or after 6 April 1974 in the working of a qualifying mine by deeming such machinery or plant to be qualifying machinery or plant for the purpose of *section 285*. However, it should be noted that since the capital allowances changes in 1992, accelerated wear and tear allowances under *section 285* are not generally available. (1)

An investment allowance of 20 per cent applies to expenditure on new machinery or plant brought into use for mining operations where the expenditure has been incurred on or (2)

after 6 April 1974 and before 1 January 2011.

In general, the total capital allowances to be given in respect of machinery or plant cannot exceed the price paid for the asset. However, the 20 per cent investment allowance is not taken into account for this purpose. (3)

If the machinery or plant is sold or ceases to be used within 2 years of the time it began to be used, the investment allowance is to be withdrawn. (4)

Rules are set out to govern such matters as the date on which expenditure is deemed to be incurred, the non-allowance of expenditure which is met by State grants, the treatment of pre-trading expenditure and the determination of the chargeable period in which the allowance is to be made. (5)

A claim for the investment allowance must be included with the taxpayer's annual statement under the Income Tax Acts and must be accompanied by a certificate stating that the expenditure was incurred on qualifying plant or machinery. (6)

Provision is made for the carry forward for income tax purposes of any excess investment allowance. (7)

## 679 Exploration expenditure

### Summary

Where a company is only exploring for mineral deposits and is not working a qualifying mine, it is not carrying on a trade for tax purposes. Thus, without special provision, it could not obtain relief for exploration expenditure against whatever profits it may have, for example, income arising on the investment of the funds financing the exploration. The purpose of this section is to allow the set-off for tax purposes of the exploration expenditure of such a company against its profits, even where the company does not work a qualifying mine.

### Details

#### *Definitions*

The definition of “exploration company” requires that so long as a company is to be classified as an exploration company its chief business must be exploration. The definition of “exploring for scheduled minerals” is based on the definition of “exploration expenditure” in *section 672* and does not include exploring outside the State for minerals. (1)

#### *Deemed trade*

Where a company is an exploration company but does not work a qualifying mine, it will nevertheless be entitled to allowances for its expenditure as if it were carrying on a trade. The allowances in question are — (2)

- a 100 per cent write-off of exploration expenditure,
- a further 20 per cent investment allowance in respect of such expenditure,
- normal capital allowances in respect of expenditure on plant and machinery, and
- a further 20 per cent investment allowance in respect of such expenditure on new machinery or plant.

The provisions for which an exploration company is deemed to be carrying on a mining trade, etc are listed as *sections 673, 674(3), 677 and 678*. *Section 674(3)* is included in this list to eliminate any doubt that it might preclude a deduction under *section 673*.

The company is deemed to come within the charge to corporation tax in respect of this deemed trade when it first incurs capital expenditure (including such expenditure incurred

on the provision of plant and machinery) for the purposes of exploring for scheduled minerals.

The capital expenditure incurred on the provision of plant and machinery (mentioned in parentheses in *paragraph (c)* of the subsection) is to be treated as incurred for the purposes of the trade the company is deemed to be carrying on.

The results of the deeming provisions (i) to (iii) are set out at the end of the subsection by way of clarification or exposition of the link with *section 307(2)*. That clarification is essentially superfluous to the subsection but is intended to indicate how a claim under the provision can give rise to a trading loss (referred to at the beginning of *subsection (3)*) as a result of an excess of trading expenses over trading receipts (including “nil” receipts).

### ***Loss relief***

Full loss relief is provided for exploration expenditure against all of an exploration company's profits of whatever description. (3)(a)

The losses of an exploration company may be set off against the income and gains of that company whether they are income and gains of —

- the same accounting period,
- the previous accounting period, or
- any succeeding accounting period so long as the company continues to be an exploration company.

If a company ceases carrying on business while it is an exploration company, its final year's loss may be set off against any income and gains of the company of the previous 3 years.

There is a prohibition on the surrender of those losses to other companies by way of group relief. (Group relief requires a 75 per cent shareholding relationship.) Exploration companies are able to surrender tax relief to 100 per cent subsidiary or parent companies under *section 675*. (3)(b)

If a company begins to actually work a qualifying mine, it can carry forward unused losses of the trade it was previously deemed to carry on – but only against the trading income from actually working the mine and not against all the profits (of whatever description) of the company. Hence the introductory phrase of *paragraph (b)* “subject to *subsection (4)(b)(ii)*”.

### ***Balancing adjustments***

The balancing adjustment provision of *section 670* applies as it does in the case of companies which are actually mining – and not merely deemed to be mining. The sale of assets leading to a recovery of exploration expenditure in respect of which allowances have been given may result in a withdrawal, by way of balancing charge, of some of those allowances. The company will be deemed to have continued to be carrying on the trade of working the mine only “in the event of such a sale”, that is, only for the purposes of the balancing adjustment required as a result of a sale. (4)(a)

### ***Company begins to actually work a mine***

If a company begins to actually work a mine, it is allowed to carry forward losses against mining income (but not against any other profits), and to continue writing down expenditure on plant and machinery, as if there were no change in its trade. (4)(b)

There will, however, be no carry-forward of losses if the ownership of the company changes. In the absence of such a provision, *paragraph (b)* would present a ready means of avoiding balancing charges on the sale of assets representing exploration expenditure. (4)(c)

Shares in the exploration company would be sold instead of the company's assets.

**Schedule 9** applies for the purposes of defining change of ownership. (4)(d)

### **Miscellaneous**

There is a prohibition of any double deduction in respect of expenditure. (5)(a)

Provision is made to prevent any repayment of Deposit Interest Retention Tax (DIRT) by virtue of relief under this section. (5)(b)

## **680 Annual allowance for mineral depletion**

### **Summary**

This section provides for a mineral depletion allowance in respect of capital expenditure incurred in acquiring a deposit of scheduled minerals or land containing such a deposit, for the purposes of engaging in mining.

### **Details**

Where a person who is engaged in working a qualifying mine incurs capital expenditure after 31 March 1974 on the acquisition of a scheduled mineral asset, the person will, on commencing to work the deposits, be entitled to claim a mine development allowance in respect of that capital expenditure. The allowance is given under **section 670** over the life of the mine (or 20 years), and not in the form of an “immediate” allowance under **section 673**. (1)

Where a person who commences working a deposit of scheduled minerals on or after 6 April 1974 had incurred expenditure on acquiring the deposit prior to such commencement, the person is deemed to have incurred that expenditure on the date of such commencement and the allowance provided by **subsection (1)** applies accordingly. (2)

## **681 Allowance for mine rehabilitation expenditure**

### **Summary**

This section provides tax relief for expenditure incurred in relation to the rehabilitation work necessary after certain mines cease to be operated. Two separate measures are provided.

Firstly, when expenditure on rehabilitation is incurred the person who worked the mine may have ceased to carry on a mining trade. If the person is carrying on a mining trade at that time, the expenditure is deductible against the trading income of that trade. If the person is not carrying on the trade at that time, the expenditure is regarded as incurred on the last day on which the trade was carried on. It follows that the expenditure is then deductible in the final period of trading and is available, if necessary, for terminal loss purposes.

Secondly, where a person who is working a qualifying mine make payments into a mine rehabilitation fund, the person is entitled to an allowance in respect of the payment. The total estimated amount which is to be paid into the fund is allowable for tax purposes on an even spread basis over the life of the mine. However, the aggregate of allowances at any time may not exceed the aggregate of payments made into the fund up to that time.

Whenever payments are made out of the fund to the person concerned there will be a clawback of the allowances made. When the funds so paid out are used to rehabilitate the mine the expenditure on rehabilitation will be tax deductible. The reason for this mechanism is that if the full cost of rehabilitating a mine is not tax deductible until the

point at which the mine ceases to be operated there may not be sufficient income against which to set the expenditure. Under the regime provided in the section the payments into the fund are allowed for tax purposes as they are paid and at the end of the day the clawback of allowances and tax deductibility of expenditure should match each other. If the receipt from the fund exceeds the expenditure on the mine rehabilitation, the clawback ensures taxation on the excess. If there is a shortfall, the allowance in respect of the actual expenditure ensures appropriate relief.

## Details

### *Definitions and construction*

“the Minister” is the Minister for Communications, Energy and Natural Resources. (1)(a)

“integrated pollution control license” is a license granted under the Environmental Protection Agency Act, 1992.

“mine rehabilitation fund” is defined as a fund which satisfies the following conditions —

- Payments must be made into the fund by a person who is carrying on a trade of working a qualifying mine, and the fund-holder must be a third party unconnected with the person working the mine.
- The fund must be obligatory under a State mining facility or under another agreement with the Minister to which the State mining facility is subject. The latter provision enables a company, whose State mining facility does not oblige it to operate a fund, to enter a formal agreement with the Minister which, in effect, obliges it to operate such a fund as a condition of its State mining facility.
- The sole purpose of the fund must be to have the amount, no more and no less, of funds which, in the opinion of the Minister, could reasonably be expected to be necessary to meet rehabilitation expenditure in relation to the mine. That amount is to be specified in a certificate given by the Minister.
- No part of the fund may be paid to the person who is working the mine or to a person who has worked the mine, except in the following circumstances —
  - where the fund-holder has been authorised by the Minister and either the Environmental Protection Agency (EPA) or the local authority to release funds to finance rehabilitation expenditure, or
  - where any balance in the fund may be paid out following a certificate of completion of rehabilitation being approved by the Minister and either the EPA or the local authority.

“qualifying mine” is a mine which is being worked for the purposes of obtaining any scheduled minerals as set out in *section 672*, or dolomite, dolomitic limestone, fireclay, coal, calcite or gypsum.

“rehabilitation expenditure” is expenditure in connection with the rehabilitation of the site of a mine in order to comply with a condition of a State mining facility, planning permission or an integrated pollution control licence. This can include —

- the physical closing of the mine,
- longer term work involved in the monitoring to be carried out by the mining company at lower underground levels (this would include a capital sum paid to the local authority to assume responsibility for the site), and
- the putting in place of certain infrastructure such as the provision of a water system where, following the mining operations, wells formerly used as a water source have dried up.

“rehabilitation” and “relevant local authority” are self-explanatory.

“relevant payments” are payments into a mine rehabilitation fund made in accordance with a schedule certified by the Minister in accordance with *subsection (2)(b)(ii)*.

“State mining facility” means a licence, lease or permission given by the Minister in relation to a mine.

Any land used in connection with the working of a mine is to be regarded as being within the site of a mine so that its rehabilitation will qualify for relief. *(1)(b)(i)*

Any incidental receipts in the course of closure are to be netted against rehabilitation expenditure to arrive at a net amount of expenditure. *(1)(b)(ii)*

The rules of *subsections (2) and (3) of section 306* are to apply in determining the basis period of a year of assessment for the purposes of the section. *(1)(c)*

### ***Certification process***

The Minister may give a certificate in relation to a mine rehabilitation fund where he/she is of the opinion that the conditions in the definition of “mine rehabilitation fund” are satisfied, and that the sole purpose of the fund is to accumulate an amount which could reasonably be expected to be necessary to finance rehabilitation expenditure in relation to the mine. *(2)(a)*

The other information which must be included in a certificate is — *(2)(b)*

- the Minister’s estimate of the life of the mine at the time the certificate is given,
- the Minister’s estimate of rehabilitation expenditure, and
- a schedule of payments to be made to the fund-holder so as to fund rehabilitation expenditure.

A certificate may be amended by giving notice in writing to the person to whom the certificate was given. *(2)(c)*

### ***Allowance for rehabilitation expenditure***

An allowance is to be made in respect of rehabilitation expenditure. The allowance cannot exceed the net cost of the rehabilitation of the site of the mine and is given for the chargeable period in which (or in the basis period for which) the expenditure is incurred. *(3)(a)*

Expenditure incurred after a person ceases to carry on the trade of working a qualifying mine is to be treated as incurred on the last day of trading so as to be available for relief against income of the period in which trading ceased. *(3)(b)*

### ***Allowances for payments to a mine rehabilitation fund***

Allowances are to be made in respect of payments into a mine rehabilitation fund. The total payments into the fund over the life of the mine are to be allowed on an equal annual instalment basis over the life of the mine. This is achieved by taking the total of all payments set out in the schedule and allowing in each year an amount equal to that amount divided by the number of years in the life of the mine. *(4)(a)*

The allowance is given to a person working the mine and who is obliged to make the payment in accordance with the schedule. The allowance is made for any chargeable period falling in the life of the mine (that is, the period from the date of the certificate to the estimated end of the mine’s life).

This is achieved by the formula in the subsection. The normal situation is covered by  $E \times 1/L$  (that is, the total of all payments to be paid into the fund divided by the number of years in the mine’s life). The  $N/12$  part of the formula deals with a situation where there is a chargeable period of less than 12 months. This could arise in the first or last year of the life of the mine where only part of a chargeable period would be within the life period – it

could also arise in the case of a short accounting period of a company. In such a case the allowance is reduced proportionately.

At no stage can the cumulative allowances made in respect of payments to a mine rehabilitation fund exceed the cumulative payments made at that stage. This is necessary because of the basing of the allowances on payments to be made over the life of the mine. If, for example, payments were in the main to be made in the later stages of the life of the mine, allowances could, without this provision, be made before payments were made. (4)(b)

A person who has been denied an allowance under *paragraph (b)* is allowed to bring the allowance forward to be added to the allowance for the next year and to be given as part of the allowance in that year but subject to the overall test that at that stage cumulative allowances cannot exceed cumulative payments. (4)(c)

### ***Amendment of Ministerial certificate***

Special rules apply in a situation where the Minister has amended a certificate. An amendment of a certificate could arise where the estimated life of the mine changes, where the schedule of payments changes or where the estimated cost of rehabilitation changes. (5)

Where, having regard to the certificate as amended, excessive allowances have been granted, the excess of allowances made over the allowances which would have been made by reference to the amended certificate are to be treated as trading income at the time of revision of the certificate.

If the allowances made are less than the allowances which would have been made by reference to the amended certificate, the allowance for the year of amendment is to be increased by the difference. This is subject to the rule that cumulative allowances cannot exceed cumulative payments.

### ***Payments made out of mine rehabilitation fund***

Where a payment is made out of a mine rehabilitation fund to a person who worked the mine or to a connected person, the amount is treated as trading income of the person. (6)(a)

The amount to be so treated as trading income is limited to the excess of cumulative allowances made over cumulative amounts treated as trading income in all previous chargeable periods. In effect, this limits the amount treated as trading income to a clawback of allowances already made and not already clawed back. (6)(b)

In the case of a person carrying on the trade of working the qualifying mine, the deemed trading income is treated as arising at the time of receipt. If the person is not carrying on the trade, the amount is to be treated as trading income arising in the chargeable period in which the mine ceased to be worked. This latter provision is necessary to match the trading income with the actual costs of rehabilitation which are also referable to that period. (6)(c)

An amount received is to be returned, and assessed, for the chargeable period in which (or in the basis period for which) it is received – even though it is referable to another period. This allows for the smooth functioning of the Self Assessment system. (6)(d)

### ***Transfer of obligations***

Where the obligations of a person to rehabilitate a mine are transferred to another person (this could arise, for example, on a sale of the mine), the person to whom the obligations were transferred is to be treated as if everything done to or by the transferor was done to or by the transferee. This ensures, inter alia, that the clawback provisions can continue to apply. (7)



### ***Bar on double relief and double counting of certain receipts***

Rehabilitation expenditure which qualifies for an allowance under **subsection (3)** cannot also qualify for any other allowance or deduction. (8)(a) & (b)

Incidental receipts which are netted off against expenditure in calculating the net cost of the rehabilitation of the site of a mine are not to be treated as trading receipts as this would involve double taxation. (8)(c)

### ***Making of allowances***

Allowances to be made under the section to a person carrying on a trade of working a mine are to be made in taxing that trade (that is, in the case of income tax, in charging the profits of the trade and, in the case of corporation tax, in computing trading income). For income tax purposes, an excess allowance that cannot be offset against the profits of the trade for a year of assessment may be carried forward for set-off against the profits of the trade for subsequent years of assessment. (9)

## **682 Marginal mine allowance**

### **Summary**

This section effectively applies the marginal coal mine allowance, as set out in **section 671**, to any qualifying mine within the definition in **section 672**. If the Minister for Communications, Energy and Natural Resources is satisfied that a qualifying mine would not continue to be worked if the profits of that mine were charged to tax in the normal way, then, the Minister for Finance may direct that a “marginal mine allowance” be given. The allowance is the amount which will ensure that the tax payable is the amount (which can be nil) specified by the Minister for Finance.

### **Details**

A “marginal mine” is one in respect of which the Minister for Communications, Energy and Natural Resources gives a certificate to the effect that the mine would be unworked if the profits of the mine were subject to tax in the normal way. (1)

The Minister for Finance, after consultation with the Minister for Communications, Energy and Natural Resources, may direct that the tax chargeable on the profits of a marginal mine be reduced to such figure (including nil) as the Minister for Finance may specify. (2)

Where such a direction is made, an allowance of such amount is to be made as reduces the tax chargeable to the amount specified by the Minister in the direction. (3)

The section applies to corporation tax as well as to income tax. (4)

## **683 Charge to tax on sums received from sale of scheduled mineral assets**

### **Summary**

This section imposes a charge to tax under Case IV of Schedule D on sums received from the sale, after 31 March 1974, of a scheduled mineral asset (which includes not only mineral deposits but also land comprising such a deposit or an interest or right over such a deposit or land). The taxable amount is the consideration less any capital sum paid by the vendor to acquire the scheduled mineral asset. The rules applicable are similar to those applying to the sale of patent rights (see **section 757**).



## Details

### ***Definitions and construction***

“chargeable period” is a company’s accounting period or a year of assessment, as may be appropriate. (1)

References to the sale of scheduled minerals include references to the grant of a licence to work scheduled minerals.

### ***Charge on residents***

Persons (individuals and companies) resident in the State are to be charged to tax under Case IV of Schedule D on the net proceeds of the sale of scheduled mineral assets for the chargeable period in which the sum is received. However, an individual may elect (within 24 months of the end of the year of assessment) to have the charge spread equally over 6 years, starting with the tax year in which the payment is received. (2)

### ***Charge on non-residents***

There is special provision to meet the case where a person resident outside the State sells scheduled mineral assets. Since the seller is non-resident, proceedings for recovery of tax might be ineffective. It is provided, therefore, that tax on the whole sum is to be charged under Case IV of Schedule D and that the purchaser must deduct income tax at the standard rate from the payment as if it were an annual payment under *section 238*. (3)

The seller, if an individual, may, by notice in writing to the inspector within 24 months of the end of the year of assessment in which the capital sum is paid, elect to be charged on one-sixth of that sum for that year and for each of the 5 succeeding years. This option for a 6-year spread of the charge does not, however, affect the obligation of the purchaser to deduct income tax at source under *section 238* but the seller may claim repayment subsequently year by year, as and when his/her revised liability can be worked out on the basis of the charge being spread over 6 years.

### ***Allowance for acquisition costs***

Due account can be taken of the fact that the seller of scheduled mineral assets may have incurred capital expenditure on their acquisition at an earlier date. The capital gain which the seller makes and for which the seller is to be charged with tax under the section is the difference between what was paid and what is received. Where part of the scheduled mineral assets have already been sold, the amount received from that sale must be reflected in an equivalent lowering of the acquisition costs to be deducted from the final sale proceeds. These adjustments cannot, however, influence the amount of tax to be deducted at source under *section 238*. Thus, where a non-resident seller of scheduled mineral assets acquired those assets by purchase, the person to whom the minerals are being sold may have no knowledge of the original cost of acquisition to the seller. It is provided, therefore, that the purchaser (who is to account for tax to the Revenue) is to treat the whole sum which he/she pays as liable to deduction of tax, without any enquiry into the possible reduction in the seller’s liability which might otherwise apply by the application of this provision. Any relief due to the seller is to be given by way of repayment of tax. (4)

### ***Compulsory acquisitions***

Where the Minister for Communications, Energy and Natural Resources compulsorily acquires the mineral rights and pays compensation for those rights, such compensation is deemed to be receipts of a sale and is brought into charge in the same way. (5)

## CHAPTER 2

### *Petroleum taxation*

#### **Overview**

This Chapter provides a comprehensive code of taxation for Irish oil and gas exploration and production.

The tax provisions apply to “relevant fields” only, that is, fields discovered by virtue of the 1975 or 1992 licensing terms or subsequent licensing terms. However, there is an exception for reliefs discovered under a “non-licensing terms” lease so long as that lease had expired before the issue of the petroleum lease under which the petroleum is recovered. The terms do not apply to activities conducted within what is commonly referred to as “Marathon lease acreage”.

The principal feature of the tax package is a corporation tax rate of 25 per cent. This rate applies to production of oil and gas under leases granted before cut-off dates listed in **section 686**. The cut-off dates for granting of leases qualifying for the 25 per cent rate vary with the difficulty of exploring the waters for which the lease is granted. The 25 per cent rate will only apply to production profits or royalty income earned under a lease granted before the cut-off dates. Accordingly, the advantageous tax terms will only be available for a limited period.

The provisions extend the period for write-off of unsuccessful exploration expenditure against subsequent oil or gas profits to 25 years. The terms also provide for a 100 per cent write-off for tax purposes of capital expenditure on development of fields discovered under the 1975 or 1992 or subsequent licensing terms. Development expenditure incurred in respect of a field will not be written off against the oil or gas profits of the company until production of oil or gas in commercial quantities from the field begins.

In addition to allowing full write-offs against oil and gas profits for exploration and development expenditure, the terms also make provision for expenditure which companies may incur in withdrawing from or shutting down an oil or gas field. A 100 per cent write-off of abandonment expenditure against oil and gas profits is provided for. If allowances for abandonment expenditure create or increase a loss for tax purposes, a company may carry back the loss attributable to its abandonment expenditure against the profits of the preceding 3 years. If a company ceases trading before incurring abandonment expenditure, that expenditure will be treated as expenditure of its last period of trading. If there is then an abandonment loss in that last period of trading, it may be carried back through the 3 years preceding that last period, as mentioned above. If at that stage any allowance for abandonment expenditure remains unused, it may be deducted from the profits of a subsequent oil or gas trade carried on by the company.

The terms also facilitate disposals and acquisitions of interests in licensed areas. The Minister for Communications, Energy and Natural Resources must be satisfied that the sole purpose for the disposal of an interest in a licensed area is the proper exploration and development of the area. If the Minister is satisfied in that regard, tax will not be payable so long as the proceeds of the disposal of an interest are applied to exploration and development activities, or so long as the interest is disposed of in exchange for an interest in another licensed area. To the extent that the disposal of the interest does not involve a farm-out or an exchange of interests, capital gains tax or corporation tax will be charged on any capital gains on the disposal at the normal rate.

A person acquiring an interest in a licensed area will be entitled to a write-off of the exploration expenditure incurred in connection with the area when the person begins to

work the area under a petroleum lease. The write-off of exploration expenditure will be limited to the cost of acquiring the interest in the area.

The terms recognise that the scale of costs associated with oil and gas exploration and production requires special measures to protect tax revenues. The tax yield to the Exchequer from other sectors of the economy is protected by confining relief for oil and gas exploration and production costs to set-off against income and profits of oil and gas production. Accordingly, the terms include extensive “ring-fencing” measures restricting relief for oil and gas losses, group relief, charges on income and advance corporation tax.

In addition, to protect the State’s tax take from oil and gas profits chargeable under the provisions, the “ring-fence” also prevents losses from other sectors of the economy being set against oil and gas profits. The fence set up around a company’s oil and gas activities therefore protects, for example, both against oil and gas losses being taken out and against losses from other activities being brought in. This ring-fence recognises the unique potential of the oil and gas exploration and production industry for exceptionally large costs and losses and also for exceptionally large profits. The ring-fence protects the tax payable by other sectors and also ensures a tax yield from profitable oil and gas production.

The terms also provide against the reduction of the Irish tax yield from oil and gas production by the payment of charges on income, such as royalties, or excessive interest by a producer to a connected person. For example, excessive interest paid by an Irish oil producing company to a foreign company, both companies being members of the same multinational group, would reduce the Irish company’s profits and Ireland’s tax take – if the relief for the interest were not restricted.

Provision is also made against artificial pricing arrangements between connected persons which would have the effect of reducing the profits, and therefore the tax, from Irish oil and gas production. For tax purposes, all transactions in Irish oil or gas between parties who are not dealing with each other at arm’s length will be recomputed on the basis of market prices for oil and gas at the time.

The central thrust of the provisions is clearly to provide a favourable tax regime for the development of an Irish oil and gas industry. At the same time, care has been taken to protect the State’s interests as respects revenues from other sectors and future revenues from an oil and gas industry.

## **684 Interpretation (Chapter 2)**

### **Definitions**

Some of the following notes on the definitions are arranged in terms of connectedness – (1) which may not conform to alphabetical order.

“abandonment activities” are defined as activities required under a petroleum lease in relation to withdrawal from a relevant field or part of a relevant field and the removal of pipelines to shore. The activities must be undertaken by the holder of the lease or on the holder’s behalf. In the case of a company the lease may be held by a company “associated” with the company undertaking the abandonment activities. The meaning of companies being associated is set out in **subsection (2)**.

“abandonment expenditure” is expenditure on abandonment activities.

“development expenditure” is capital expenditure incurred in connection with a relevant field on the provision for use in carrying on petroleum extraction activities of —

- machinery or plant (This covers assets provided for use in drilling, production or transportation (pipe-line or tanker) of petroleum in or from a relevant field, where

such assets would be regarded as machinery or plant under normal tax rules. This will operate only in respect to non-Marathon fields and will cover persons carrying on a petroleum trade and lessors of equipment to such traders.),

- works (such as fixed platforms, pipe-lines, storage tanks or jetties) or buildings (such as on-shore structures for initial storage or initial treatment of oil or gas), and
- any other assets – such as intangible assets – which are of such a nature as to have no more than a minimal value at the end of the field’s life.

Certain expenditure is excluded from qualification as “development expenditure”, namely —

- expenditure on road vehicles,
- expenditure on certain buildings and structures,
- expenditure on drilling, etc at the pre-trading stage or where exploration is being carried on in a separate licensed area by a company also producing in a field (Such searching is captured by the definition of “exploration expenditure” which can normally be relieved fully as soon as a petroleum trade commences.),
- expenditure site costs, particularly in relation to on-shore wells or ancillary buildings,
- licence costs or capital sums paid on a farm-in,
- expenditure on machinery, plant, works, buildings or structures for processing petroleum (other than the initial treatment thereof as defined) or storing petroleum (other than initial storage thereof as defined), and
- interest payments.

“exploration expenditure” is intended to embrace only pure exploration expenditure. If expenditure qualifies as development expenditure it cannot also be exploration expenditure.

“relevant field” is defined for the purposes of describing a petroleum field other than a Marathon area. It confines the field to an area covered by a petroleum lease by narrowing the meaning of “licence”. Accordingly, capital allowances in relation to Marathon fields will not benefit from, or be affected in any way by, the special rules in *section 692*.

“designated area” means an area designated by order of the Government under section 2 of the Continental Shelf Act 1968. Section 2 of that Act vests in the Minister for Communications, Energy and Natural Resources any rights of the State over the seabed and subsoil outside the territorial waters of the State. Section 4 of the Petroleum and Other Minerals Development Act, 1960 vests all State petroleum in the Minister for Communications, Energy and Natural Resources and petroleum in a designated area is also so vested by virtue of section 4 of the Continental Shelf Act, 1968.

Areas in respect of which petroleum licences or leases are granted under the Petroleum and Other Minerals Development Act, 1960 are either in the State (which includes the territorial seas, that is, the 3 mile limit) or a designated area.

A number of definitions are connected. These are “petroleum activities” which include “petroleum extraction activities” which, in turn, include “initial treatment and storage”. The purpose of these definitions is to define the scope of the activities embraced by the “ring-fence” provisions. Broadly, these activities are any activities related to the exploration for and exploitation of petroleum resources in the State or a designated area (other than in areas covered by a Marathon licence) up to the point where crude oil is available for supply to a refinery.

The purpose of the “ring-fence” is to segregate all receipts and expenditure (and, therefore, all profits and losses) of petroleum activities from receipts and expenditure (and profits and losses) of other activities, so that the tax on profits from petroleum activities is

not diluted by losses from other activities and losses incurred in relation to petroleum activities are not available for offset against profits of other activities for tax purposes.

The “ring-fence” isolates trading profits, non-trading profits or income, chargeable gains and the corresponding losses.

As regards petroleum activities carried on in the course of a trade together with other activities, **section 685** provides that the petroleum activities are to be treated for tax purposes as being carried on as a separate trade distinct from the other activities. This will require a separation of the receipts and expenses related to the petroleum activities from the receipts and expenses related to the other activities so that the profit or loss from the petroleum activities can be isolated. That profit or loss will be calculated, firstly, according to ordinary accounting principles and then adjusted by reference to the principles (statute and case law) applied in computing trading profits for tax purposes. The result will show the profit or loss of the “petroleum trade”.

“petroleum activities” means one or more of the following activities —

- “petroleum exploration activities”,
- “petroleum extraction activities”, and
- the acquisition, enjoyment or exploitation of “petroleum rights”.

Activities covered by the separate definition of “petroleum extraction activities” are searching for, extraction of, and the initial treatment or storage of petroleum.

The enjoyment or exploitation of petroleum rights, that is, rights to petroleum or to interests in or to the benefit of petroleum would include, for example, royalties from a petroleum interest.

It is to these activities, trading and non-trading, that the ring-fence applies. The central purpose of the ring-fence is to prevent the dilution of the tax payable on the exploitation of petroleum resources and to prevent the erosion of the corporation tax yield from non-petroleum activities by the set-off of the inevitable early losses incurred in oil production. It does not extend the scope of the charge to corporation tax or income tax but merely restricts the availability of certain reliefs and allowances.

“petroleum extraction activities” means activities of a person carried on under a petroleum lease which involve searching for and extracting, transporting to shore, and the initial treatment or storage of petroleum.

The petroleum lease may be held by an associated company (this principally covers “pass-through” arrangements).

The activities cover exploration for, development of and extraction of petroleum and such initial treatment as is necessary to put it in a condition ready for disposal to a refinery in the case of oil or for distribution in the case of gas.

“initial treatment and storage” includes —

- those processes necessary to permit the safe storage or loading on to a tanker of petroleum, or its acceptance in a safe form by a refinery,
- separating oil from gas,
- separating saleable gas from non-saleable gas,
- liquefying gas for transportation purposes,
- other processes necessary to bring crude petroleum to a saleable condition, and
- storing oil or gas before its disposal or appropriation to refining,

but does not include any activity connected with refining.

“licence” means a licence or lease granted under the Petroleum and Other Minerals

Development Act, 1960 in respect of an onshore area or of an offshore area but subject to the Exclusive Offshore Licensing Terms published in April, 1975 or any subsequent Licensing Terms.

A licence or a lease issued under the 1960 Act may be any of the following (references to sections are references to sections of the 1960 Act), namely, an exploration licence (section 8), a petroleum prospecting licence (section 9), a petroleum lease (section 13), or a reserved area licence (section 13).

Only a petroleum lease confers a right to extract petroleum. An exploration licence and a petroleum prospecting licence confer rights to search for and ascertain the extent and character of petroleum deposits. A reserved area licence is in effect an exploration licence but issued to a holder of a petroleum lease in respect of an area adjacent to the area covered by the lease.

Activities carried on under the authority of a licence or lease will come within the ambit of the activities defined to be “petroleum extraction activities”; interests and rights to petroleum deriving from a licence or lease will be “petroleum rights”, as defined; and interests and rights under a licence or lease will be “petroleum-related assets”, as defined.

A licence or lease in respect of an offshore area must be one which was issued subject to the Exclusive Offshore Licensing Terms Published in April, 1975 or subsequent Licensing Terms. This is so as to exclude any licence or lease granted under an agreement in 1959 with the Ambassador Oil Company and now held by Marathon Petroleum Ireland Ltd. Activities carried out under a Marathon licence or lease are not “petroleum activities” for the purpose of this Chapter and no profits, losses or gains from such activities are covered by the special tax terms provided for. This is in line with the policy decision to exclude any activities covered by the 1959 Agreement. That Agreement contains particular clauses as to the maximum amount of Irish tax and royalties to which receipts from petroleum covered by the Agreement should be subjected.

“licensed area” means an area covered by a licence, that is, exclusive of areas covered by an extant Marathon licence.

“petroleum” means petroleum won or capable of being won under a licence which, therefore, excludes petroleum won under a Marathon licence or lease.

“petroleum profits” are defined for the purposes of corporation tax. The definition is derived from the definition of “profits” in *section 4*. Petroleum profits means all of a company’s income deriving from petroleum activities (for example, income of its petroleum trade, income from petroleum rights) and chargeable gains from disposals of petroleum-related assets.

“petroleum-related asset” means —

- petroleum rights which includes any interest in a licence,
- any asset representing exploration expenditure, or development expenditure, that is, tangible and intangible assets deriving from exploration and development expenditure such as the results of seismic and exploration work and physical assets such as rigs, pipelines or wells, and
- shares, other than quoted shares, deriving their value from petroleum activities.

“petroleum trade” means a trade consisting only of petroleum activities or the part of a trade consisting of such activities which is treated as a separate trade under *section 685*.

### ***Associated companies***

Rules are provided for determining whether or not one company is associated with another for the purposes of the definition of “petroleum extraction activities”. A company may be regarded as carrying on petroleum extraction activities under rights held by an (2)

associated company. This is to facilitate use of “pass-through” arrangements.

### **685 Separation of trading activities**

Where petroleum activities are carried on in the course of a trade in conjunction with other activities, the petroleum activities will be treated as a separate trade for tax purposes. This ensures that, for the purposes of the ring-fence provisions relating to petroleum trades, the part of a mixed trade that consists of petroleum activities will be treated as a separate trade. (1)

Where a person works a mine in the State for scheduled minerals that activity will be treated as a separate trade. This provision is necessary because charges on income, losses and group relief arising from such activity may be set off against income from petroleum activities and petroleum profits as an exception to the ring-fence set up around such income and profits by *sections 687, 688 and 689*. (2)

### **686 Reduction of corporation tax**

This section was repealed by section 55 of the Finance Act 2005 and ceased to have effect as respects accounting period ending on or after 3 February 2005.

### **687 Treatment of losses**

#### **Summary**

This section contains ring-fence provisions restricting relief for losses and surplus capital allowances where profits or losses arising from petroleum activities are involved. It restricts relief under *section 381* and *section 396(2)* so that a trading loss incurred in a petroleum trade will be relieved only against income or profits from petroleum activities, and any other loss (except a loss incurred in a mining trade) will not be relieved under those sections against such income or profits.

Similar restrictions apply in relation to income from petroleum activities (for example, royalties from an interest in a petroleum deposit) which may be taxable under Case IV of Schedule D, where losses arise from another Case IV source. Furthermore, surpluses of certain capital allowances over the relevant income against which they can be relieved are not to be set off against income or profits from petroleum activities.

#### **Details**

A trading loss incurred in a petroleum trade cannot be relieved except, for the purposes of income tax, against income from petroleum activities or, for the purposes of corporation tax, against profits from petroleum activities. Any other loss cannot be relieved against income or profits from petroleum activities. (1)

This effectively constitutes a 2 way ring-fence in respect of trading losses and any other loss that may be relieved under *section 381* (trading losses for the purposes of *section 381* can, under *section 392*, be supplemented by capital allowances).

Income from petroleum activities chargeable under Case IV of Schedule D (for example royalties from an interest in a petroleum deposit) cannot be offset by losses arising under Case IV except such losses as arise from petroleum activities, and the latter cannot be set off against income chargeable under Case IV except such income arising from petroleum activities. This imposes a 2 way ring-fence with respect to Case IV income and losses arising from petroleum activities. (2)

Surpluses of certain capital allowances over the relevant income against which they can be relieved are not to be relieved against income or profits from petroleum activities. This (3)



is a one-way restriction since the type of capital allowances (wear and tear and industrial buildings allowances) will not, as such, be available in respect of petroleum activities.

## **688 Treatment of group relief**

### **Summary**

This section applies a 2 way ring-fence, for group relief purposes, with respect to profits and losses from petroleum activities. (The group relief provisions allow for the set-off, against the profits of a company in a group, of trading losses incurred and certain other amounts paid by another company in the same group. Both companies must be Irish resident companies.)

In effect, the section restricts group relief that may be claimed against petroleum profits to trading losses and surplus charges on income but only where these relate to a surrendering company's own petroleum trade.

### **Details**

#### **Definitions**

The meanings of “claimant company” and “surrendering company” in *section 411* are (1) adopted for the purposes of this section.

#### **Restriction on group relief**

Provision is made to ensure that — (2)

- in general, losses or any other amounts which are within the scope of group relief cannot erode ring-fence profits, but
- ring-fence losses and excess charges on income which are related to the petroleum trade of the surrendering company may be offset against the claimant company's petroleum profits. If the charges on income were paid to a connected person no group relief will be allowed.

The 2 way ring-fence is completed by providing that where the surrendering company incurs trading losses in its petroleum trade, or has an excess of charges on income consisting of payments made wholly and exclusively for the purposes of such a trade, those losses or excess charges cannot be allowed against the profits other than its petroleum profits (if any).

## **689 Restriction of relief for losses on certain disposals**

### **Summary**

This section provides for a 2 way ring-fence with regard to chargeable gains and allowable losses on disposals of petroleum-related assets (“petroleum-related asset” is defined in *section 684*).

### **Details**

The preamble overrides the normal capital gains tax rules which provide for the deduction (1) of allowable losses from chargeable gains.

A loss on a disposal of an asset other than a petroleum-related asset may not be deducted from a gain on a disposal of a petroleum related asset.

A loss on a disposal of a petroleum-related asset may not be deducted from a gain on a disposal of an asset other than a petroleum-related asset.

The “roll-over relief” provisions of *section 597* are also ring-fenced as respects petroleum (2)



trades. Capital gains tax on the disposal of an asset used for the purposes of a petroleum trade carried on by a person will only be deferred by reference to the application of the disposal proceeds on the acquisition of assets to be used in another trade of that person if that other trade is also a petroleum trade.

## 690 Interest and charges on income

### Summary

This section provides, among other things, for certain restrictions on the allowance of interest as an expense of a petroleum trade. Provision is also made to restrict the extent to which charges may be deducted from petroleum profits.

### Details

There is a prohibition on the deduction of certain interest as a trading expense of a petroleum trade for the purposes of both income tax and corporation tax. (1)(a) & (b)

Specifically —

- allowable interest payable to a connected person is restricted to an amount which would be expected to be payable if the parties to the transaction were independent parties dealing at arm's length;
- interest on any money borrowed for the purpose of funding exploration expenditure is disallowed (Interest payable on such loans in periods before the commencement of a petroleum trade would rank as pre-trading expenditure and would not qualify as a trading expense. This provision serves to deny relief for interest on such loans payable after the commencement of a petroleum trade whether related to the exploration expenditure which led to the fields in production or to exploration in other areas.);
- relief is denied for interest on money borrowed to finance the acquisition of petroleum rights (as defined in *section 684*) from a connected person (the denial of relief in the case of connected persons is intended to pre-empt abusive arrangements).

Provision is made for a relaxation of the provisions of *section 130(2)(d)(iv)* which, by treating interest on a loan to a company from a foreign parent as a distribution, denies any deduction for such interest against profits. Specifically, those provisions will not apply to so much of such interest as — (2)

- apart from those provisions would be a trading expense of the petroleum trade,
  - would not be precluded by *subsection (1)* from being so treated because it —
    - exceeded an arm's length rate,
    - was interest on money borrowed for exploration, or
    - was interest on money borrowed to acquire oil rights from a connected person,
- and
- is payable to a resident of a “treaty country”.

No deduction will be allowed under *section 243* against the petroleum profits of a company in respect of — (3)(a)

- a charge on income (for example, a royalty) paid to a person connected with the company, or
- any other charge, unless it is a payment made wholly and exclusively for the purposes of a petroleum trade carried on by the company.

Provision is also made to “ring-fence” charges on income paid wholly and exclusively for the purposes of a petroleum trade to set-off against petroleum profits only. (3)(b)

A person liable to income tax on income from petroleum activities cannot treat the income tax retained by that person on making the annual payments (for example, interest payable to a non-resident, royalties, etc) as having been accounted for to Revenue out of income tax charged on profits or gains from petroleum activities. (4)(a)

A person cannot treat the income tax retained by that person, on making annual payments wholly and exclusively for the purpose of a petroleum trade, as having been accounted for to Revenue out of income tax charged on profits or gains which are not profits or gains from petroleum activities. (4)(b)

Non-arm’s length charges on income and annual payments, which are not to reduce petroleum profits, may not be carried forward as a loss to reduce the petroleum profits of a subsequent year. (5)

A consequential adjustment is made with regard to the application of the group relief provisions arising from the creation of the ring-fence around charges on income paid wholly and exclusively for the purposes of a petroleum trade. Under *subsection (3)* certain charges on income of a company with a “ring-fence” trade may not be deducted from its “ring-fence” profits and, accordingly, the company might have no (or insufficient) other profits to absorb the disallowed charges. The group relief rules in *section 420(6)* are accordingly modified in this subsection to allow any excess of such charges (that is, over and above the non-petroleum profits) to be offset by way of group relief. Without this provision *section 420(6)* would allow only the excess of charges over the total profits of the company to be surrendered. (6)

### **691 Restriction of set-off of advance corporation tax**

This section was deleted by section 41 of the Finance Act 2003 as respects accounting periods ending on or after 6 February 2003.

### **692 Development expenditure: allowances and charges**

#### **Summary**

This section provides for a 100 per cent writing-down allowance for capital expenditure incurred on production and development in connection with a relevant field being worked in the course of carrying on a petroleum trade. The allowance will be available for the period in which the asset represented by the expenditure is brought into use for the purposes of the trade, subject to production in commercial quantities having begun in the relevant field in respect of which the assets were provided. Assets leased to a person for the purposes of a petroleum trade will, broadly, be treated in the same manner.

#### **Details**

The provisions of the tax code (other than those excluded by *subsection (4)*) relating to expenditure on machinery or plant are applied to items of development expenditure which are not machinery or plant as identified in *paragraph (a)* of the definition of “development expenditure” in *section 684*. (1)

A 100 per cent writing-down allowance is provided for capital expenditure on assets representing development expenditure. (2)

Allowances for development expenditure cannot be granted in respect of periods ending before production of petroleum in commercial quantities begins. The 100 per cent allowance for development expenditure is a generous allowance and it is appropriate that (3)

it should be tied in with the ultimate object of all tax incentives in this area, that is, the achievement of commercial production of oil and gas. If producers were allowed set development expenditure allowances off against income from other petroleum activities before commercial production began in the field in question, the incentive to develop the field to the point of commercial production would be significantly reduced. Linking the tax allowance to achievement of production from the field for which the assets representing the development expenditure were provided means that the tax incentive is targeted directly at its object, that is, the production of Irish oil and gas.

Development expenditure which qualifies for the 100 per cent write-off cannot qualify for capital allowances provided under other provisions of the tax code. (4)

Lessors of assets representing development expenditure will be entitled to 100 per cent writing down allowances in respect of their expenditure. However, by virtue of *paragraph (a)(ii)* of this provision, the ring-fence imposed by *section 403* on the set-off of capital allowances arising in a leasing trade will also apply to capital allowances granted to lessors in respect of assets representing development expenditure. (5)

### 693 Exploration expenditure: allowances and charges

#### Summary

This section provides for a 100 per cent allowance against the profits of a petroleum trade in respect of exploration expenditure (as defined in *section 684*) and for recovery of such an allowance by way of a balancing charge where an asset representing such expenditure is realised.

Relief is given for successful and abortive expenditure subject to the abortive expenditure having been incurred not more than 25 years before the commencement of the petroleum trade against the profits of which the allowance is claimed.

#### Details

##### *Allowance for exploration expenditure*

A person who has incurred exploration expenditure for the purposes of a petroleum trade carried on by that person will be granted an allowance for “the chargeable period related to” the expenditure against the profits of the petroleum trade for the same period. No allowance will, however, be made to the extent that (for example, on a farm-in) the exploration expenditure is reimbursed to the claimant. (1)

##### *Balancing charge*

Provision is made for a clawback, by way of a balancing charge, of an allowance made under *subsection (1)* where (for example, on a subsequent farm-in or arising out of a rearrangement of licence interests in a unitisation) there is a disposal or part disposal of “an asset representing” the amount of expenditure in respect of which the allowance was made. The expression “an asset representing exploration expenditure” is defined in *section 684*. (2)(a)

The maximum balancing charge is limited to the amount of the allowances made under *subsection (1)* or the appropriate part of that amount in the case of a part disposal. (2)(b)

A balancing charge is to be made under *subsection (2)* where compensation is received on the destruction of an asset representing exploration expenditure for which an allowance has been given under *subsection (1)*. The compensation can be reduced by any amount spent on demolition of the asset. (3)

### ***Purchase of assets representing exploration expenditure***

A person who buys assets representing exploration expenditure connected with a relevant field (as defined in **section 684**) or part of a relevant field may claim an allowance under **subsection (1)**, if that person carries on a petroleum trade which consists of or includes the working of that or part of that field. The allowance cannot exceed the exploration expenditure actually incurred or, if less, the price paid for the assets representing that expenditure. (4)

### ***Pre-trading exploration expenditure***

Relief will be given under **subsection (1)** for pre-trading exploration expenditure by treating the expenditure as having been incurred on the first day on which the trade is being carried on. Accordingly, such expenditure is allowed in the first chargeable period for which the trade is carried on. (5)(a)

### ***Abortive exploration expenditure***

There is a 25 year limitation on the allowance of abortive exploration expenditure. There is no such limit in respect of expenditure in an area which becomes a relevant field or part of such a field, that is, an area in respect of which a petroleum lease is granted by the Minister for Communications, Energy and Natural Resources. The 25 year limit also applies where the company claiming the relief incurred unsuccessful expenditure in an area which was later developed by another company (unless **section 694** applies because the 2 companies are under common control). (5)(b)

### ***Pre-trading sales***

The allowance for exploration expenditure due to the claimant is to be reduced by the proceeds of any sale or transfer, before trading commences, of assets representing exploration expenditure. (6)

### ***When is expenditure incurred?***

This is a standard provision related to capital allowances given by reference to the date on which expenditure is incurred. It defines that date as the date on which the money is payable. (7)

### ***Allowances and charges to be made in taxing the petroleum trade***

Allowances for exploration expenditure and related balancing charges are to be made in taxing a person's petroleum trade, that is, in the case of income tax, in charging trading profits and, in the case of corporation tax, in computing trading income. (8)

By applying to an exploration allowance the provisions of **section 304(4)**, a petroleum trader liable to income tax is permitted to carry forward allowances to the extent to which they cannot be offset against profits of the particular chargeable period to which the allowable expenditure relates. (9)

### ***Application of specific provisions relating to capital allowances***

**Section 307(2)(a)** is applied so as to treat, for corporation tax purposes, an exploration allowance as a trading expense and a balancing charge as a trading receipt. (10)

**Section 321** is applied for the interpretation of this section. That section defines, for example, "chargeable period", "chargeable period related to expenditure" and "chargeable period related to" another event, that is, a disposal on the discontinuance of a trade.

The provisions of **subsections (2) and (3) of section 306** are applied so as to identify the basis period for a year of assessment for the purposes of income tax. (11)

### ***Bar on double relief***

Provision is made to prevent relief being given under any of the capital allowances provisions for expenditure which is exploration expenditure. In effect a double allowance is prevented and abortive exploration expenditure which may not be relieved under this section cannot be the subject of a claim under any other provision of the Tax Acts. The provision also prevents exploration expenditure qualifying for relief as expenditure on “know-how” under **section 768**. (12)

Despite the above rule, the following capital allowance provisions are applied, with any necessary modifications, for the purposes of this section — (13)

- **section 312**, which deals with sales of property between connected persons and sales the sole or main purpose of which is to obtain a tax allowance,
- **section 316**, which provides for the interpretation of “capital expenditure” for the purposes of capital allowances,
- **section 317(2)**, which relates to the treatment of grants,
- **section 318**, which provides a definition of “sale, insurance, salvage or compensation moneys” for the purposes of **subsection (3)** which provides for balancing charges, and
- **subsections (4) and (5) of section 320** which pertain to the date of a sale and the dates of commencement or permanent discontinuance of a petroleum trade.

### ***Adaptation of capital gains tax provisions***

Necessary adjustments are made to certain provisions of **Part 19** (Taxation of Chargeable Gains). (14)

A balancing charge under this section is to be treated in the same way as a normal balancing charge is under **section 551(3)**. Normally, an amount charged to tax as income is not included in the consideration taken into account for capital gains tax purposes but this rule does not apply to sums taxed as balancing charges.

Exploration allowances and balancing charges under this section are treated in the same way as normal capital allowances and balancing charges for the purposes of **section 555**.

### ***Value-added tax***

Provision is made for the deduction from the expenditure incurred on an asset of any VAT included in that expenditure which is creditable or refundable to the person incurring the expenditure. (15)

### ***When will relief be given?***

Relief will not be given for exploration expenditure until a petroleum lease has been granted in respect of the area being worked by the claimant or from which the claimant is transporting petroleum to land or from which the claimant obtains petroleum which the claimant is treating or storing. (16)

A petroleum lease will normally only be granted where subsequent production of petroleum is assured.

### ***Part disposals***

Provision is made for part disposals of assets representing exploration expenditure for the purposes of **subsections (2), (4) and (6)**. (17)

## **694 Exploration expenditure incurred by certain companies**

## Summary

This section provides for the granting of an exploration allowance against the profits of a petroleum trade carried on by one company in respect of exploration expenditure incurred by another company, where one company is a wholly owned subsidiary of the other company or both are wholly owned subsidiaries of a third company.

## Details

The provision ties the transferable exploration expenditure into **section 693** by ensuring that it is the same type of unreimbursed expenditure that may be allowed under **subsection (1)** of that section. The provision also specifies the type of group structure required and provides for an election by the exploring company to transfer to another company so much of its exploration expenditure as it specifies. The expenditure so transferred is deemed to have been incurred by the transferee. (1)

Transferred expenditure is to be treated as incurred by the transferee at the time it was actually incurred (this prevents old abortive exploration expenditure being used by the transferee any later than it could have been used by the exploration company). (2)(a)

A transferee company which was not in existence when the expenditure was incurred will be deemed to have been so in existence. (2)(b)

The exploration expenditure deemed to have been incurred by a transferee company is — (2)(c)

- also deemed to have been incurred for the purpose of any petroleum trade carried on by it, and
- deemed not to have been met by the exploration company (to prevent operation of the provision in brackets in **section 693(1)** which denies an allowance for exploration expenditure which has been met by a person other than the claimant).

Provision is made to prevent duplication of allowances. (3) & (4)

A company is a wholly-owned subsidiary of another company if all its ordinary share capital is owned directly or indirectly by that other company. The provision adapts rules set out in **paragraph 6** of **Schedule 9** for the purposes of determining indirect ownership of shares. (5)

## 695 Abandonment expenditure: allowances and loss relief

### Summary

This section provides for —

- a 100 per cent deduction for tax purposes in respect of abandonment expenditure,
- a 3 year carrying back of losses for tax purposes attributable to abandonment expenditure deductions, and
- the carrying forward to a new trade of any unused relief for abandonment expenditure incurred in connection with a permanently discontinued trade.

The terms “abandonment activities” and “abandonment expenditure” are defined in **section 684**. Abandonment activities are essentially those activities required by a petroleum lease on the cessation of production in a relevant field or part of a relevant field. The definition includes the dismantling and removal of pipelines used to bring petroleum to dry land. “Abandonment expenditure” is expenditure on “abandonment activities”.



## Details

### **Definition**

So much of a loss in a petroleum trade in a period as does not exceed deductions for abandonment expenditure related to that trade will be an “abandonment loss”. (1)

### **Allowance for abandonment expenditure**

Where — (2)

- a person has been involved in winning petroleum from a relevant field or part of a relevant field or in bringing the petroleum to shore from the field or the part of it, and
- the person incurs abandonment expenditure on that field or the part of it and the expenditure is not borne by some other person,

then, a 100 per cent allowance will be made in respect of the abandonment expenditure for tax purposes for the chargeable period in which the expenditure is incurred.

### **Abandonment losses**

Losses will arise where petroleum income of the period in which the abandonment expenditure is incurred is insufficient to fully absorb the 100 per cent allowance in respect of such expenditure. In such cases, the loss may be carried back to be set off against the income from petroleum activities or petroleum profits of the 3 previous years. The loss will be set off against the most recent income or profits available to absorb it in the 3 year period. (3)

**Paragraph (a)** addresses loss relief for income tax purposes. The opening lines are modelled on **section 381** but allow a carry back of losses for 3 years. **Subparagraph (ii)** is intended to require the set-off of the abandonment loss against later periods in priority to earlier periods.

**Paragraph (b)** is intended to prevent any double relief for abandonment losses. The application of **section 381** covers questions in relation to the computation of the relief, claims to the relief and appeals.

**Paragraph (c)** provides for an extension of the carry back of abandonment losses for the purposes of corporation tax.

Provision is made for a carryover of unused abandonment losses where a person “permanently discontinues” one trade and subsequently commences a new trade. If the losses have not been used against income from petroleum activities or petroleum profits of the person who incurred them, or have not been surrendered by way of group relief, they will be deductible in the first chargeable period of a new petroleum trade carried on by the person. (4)

### **Post-trading abandonment expenditure**

Abandonment expenditures incurred after a petroleum trade has ceased is brought back into the final period of trading. If the deductions for the expenditure then create a loss, that loss may be carried back, for set-off under **subsection (3)**, against income and profits of the 3 years preceding the final year of trading. (5)

### **When is expenditure incurred?**

Expenditure is incurred on the day it becomes payable. (6)

### **Allowances to be made in taxing petroleum trade**

Allowances for abandonment expenditure are to be made in taxing a person’s petroleum (7)

trade, that is, in the case of income tax, in charging trading profits and, in the case of corporation tax, in computing trading income. An allowance will not be made to 2 trades in respect of the same expenditure.

### ***Bar on double relief***

An allowance, other than an allowance under *subsection (2)*, will not be made in respect of abandonment expenditure. (8)

However, the following capital allowance provisions are applied, with any necessary modifications, for the purposes of this section —

- *subsections (1) and (2) of section 316*, which provide for the interpretation of “capital expenditure” for the purposes of capital allowances,
- *section 317(2)*, which provides that a person will not be treated as having incurred expenditure borne directly or indirectly by the State, and
- *subsection (5) of section 320* which pertains to the date of commencement or permanent discontinuance of a petroleum trade.

### ***Application of certain provisions of section 693***

The provisions of *subsections (9) to (11) and (15) of section 693* apply for the purposes of this section as they apply for the purposes of that section. Thus — (9)

- by applying to the allowance for abandonment expenditure the provisions of *section 304(4)*, a petroleum trader liable to income tax is permitted to carry forward allowances to the extent to which they cannot be offset against profits of the particular chargeable period to which the allowable expenditure relates,
- *section 307(2)(a)* is applied so as to treat, for corporation tax purposes, an abandonment expenditure allowance as a trading expense,
- *section 321* is applied for the interpretation of this section (that section defines, for example, “chargeable period”, “chargeable period related to expenditure” and “chargeable period related to” another event, that is, a disposal on the discontinuance of a trade),
- the provisions of *subsections (2) and (3) of section 306* are applied so as to identify the basis period for a year of assessment for the purposes of income tax, and
- provision is made for the deduction from the abandonment expenditure incurred of any VAT included in that expenditure which is creditable or refundable to the person incurring the expenditure.

## **696 Valuation of petroleum in certain circumstances**

### **Summary**

This section provides rules for the valuation of petroleum which is disposed of otherwise than by sale at arm’s length or is appropriated to use in activities falling outside the ring-fence (for example, where it is appropriated by a production company for its own refinery).

### **Details**

Petroleum disposed of, otherwise than by way of sale at arm’s length, is to be treated as disposed of for a consideration equal to its market value at the time of the disposal. (1)

Provision is made to meet the case of petroleum extracted by a person or to which the person is entitled under a right to a royalty in kind. Petroleum which is “relevantly appropriated” for use in activities outside the person’s ring-fence activities without being disposed of is to be treated, for the purposes of the ring-fence activities and the activities to which it is appropriated, respectively, as having been sold and bought for a price equal (2)



to its market value at the time it is so appropriated.

A “relevant appropriation” is the appropriation of petroleum to refining or to a use other than its use for extraction activities, and “relevantly appropriated” is to be construed accordingly.

The use of petroleum for “petroleum extraction activities” (as defined in *section 684*) would include the use of petroleum for —

- drilling or production operations in a relevant field,
- transportation of petroleum to dry land where the relevant field is an offshore field, or
- the initial treatment of the petroleum.

The market value of petroleum at any time will be the price which petroleum could be expected to fetch on a sale on the open market at that time. (3)

## **696A Treatment of certain disposals**

### **Summary**

This section ensures that changes in licence interests at the pre-production stage, which are approved by the Minister for Communications, Energy and Natural Resources, will not give rise to chargeable gains if their sole purpose is the furtherance of exploration, delineation or development of acreage licensed under the 1975 or 1992 Licensing Terms or subsequent licensing terms.

The section applies to certain disposals made on or after 14 January 1985, that is, a disposal (farm-out) of an interest in a “licensed area”.

### **Details**

#### **Definition**

The definition of “relevant period” is similar to the definition of the period for reinvestment of assets in *section 597* (roll-over relief), namely, the period beginning one year before and ending 3 years after the disposal. However the discretion to extend the period is given to the Minister for Communications, Energy and Natural Resources rather than the Revenue Commissioners. (1)

#### **Conditions**

For the section to apply, the Minister for Communications, Energy and Natural Resources must be satisfied that the sole purpose of the disposal or exchange is the proper exploration, delineation or development of any licensed area (which need not necessarily be the area involved in the licence interest partly disposed of or exchanged). (2)

#### **Disposals**

This provision deals only with disposals. If consideration received is, say, cash which is wholly and exclusively applied by the disponent in exploration or development in a licensed area, or if the consideration is a work programme carried out wholly or partly on the disponent’s behalf in such an area, the disponent may claim the benefit of the subsection. The consideration must be applied in the “relevant period”. (3)

On the making of a claim, the disposal will not be treated as a disposal for the purposes of capital gains tax so that no chargeable gain (or allowable loss) can arise. However, on a subsequent disposal of an asset acquired, or brought into being, or enhanced in value, by the application of the consideration received by the disponent, the consideration will not be deductible in arriving at any chargeable gain.

### ***Exchanges of interests***

The exchanges of licence interests is treated as not involving any disposal or acquisition and treats the asset given and the asset received as the same asset, acquired as the asset given was acquired. (4)(a)

In the case of an exchange of licence interests where one party receives consideration in addition to the licence interest taken by that party, the above rule will not apply to that party unless the additional consideration is applied in full in the same manner as is provided for in **subsection (3)** in the case of a disposal. In addition, the disposal of the proportion of the licence interest given in exchange, which is represented by the additional consideration (that is, over and above the licence taken in exchange), is treated as a part disposal to which **subsection (3)** applies. (4)(b)(i)

Where the claimant has himself given additional consideration as part of the exchange of licence interests, the claimant will be treated as acquiring a proportion of the asset received and the provisions relating to the treatment as one asset of the exchanged interests will not apply to the rest of the asset received. On a subsequent disposal, the latter part will be treated as acquired for the additional consideration. (4)(b)(ii)

## CHAPTER 3 *Profit Resource Rent Tax*

### **Overview**

This Chapter applies a taxation regime to petroleum profits from discoveries made from 2007 onwards.

The Chapter provides for a tax called a “profit resource rent tax”. This tax applies at rates of 5%, 10% or 15% in addition to the corporation tax rate of 25% that currently applies to profits from petroleum activities. It applies when profits exceed certain defined levels. This is worked out by a formula that relates the profits from a petroleum field to the capital investment in the field. While the legislation specifically refers to petroleum, oil and gas are also covered.

When the new tax is applied, the tax rates on relevant petroleum profits will range from 30% to 40%.

### **696B Interpretation and application (Chapter 3)**

The definitions used in this section are as follows — (1)

“cumulative field expenditure” is the denominator in the profit ratio equation (see below). It is the accumulated level of capital investment incurred by a company in relation to a taxable field since 1 January 2007. Taxable field expenditure for a company for an accounting period is defined separately, and this figure is the sum of the taxable field expenditure amounts.

“cumulative field profits” is the numerator in the profit ratio equation. This is the accumulated profits (less 25% corporation tax) earned by a company in relation to a taxable field since 1 January 2007. Net taxable field profits in relation to a company for an accounting period is defined separately, and this figure is the sum of the net taxable field profits amounts.

“net taxable field profits” is defined in terms of an accounting period of a company for a taxable field. It is the taxable field profits figure (also defined) net of 25% corporation tax.

“profit ratio” is defined as the cumulative field profits divided by the cumulative field

expenditure, both of which are defined above. This is the figure that is used to determine whether a company is liable to pay the profit resource rent tax, and if so, the rate at which it will apply.

“profit resource rent tax” is the tax, defined in *section 696C*.

“specified licence” is defined as an exploration licence or a reserved area licence granted on or after 1 January 2007 or a licensing option. The tax applies in respect of discoveries on foot of such licences.

“taxable field” is an area covered by a petroleum lease awarded on foot of a specified licence. Petroleum leases are granted under section 13(1) of the Petroleum and Other Mineral Development Act 1960.

“taxable field expenditure” is the capital expenditure incurred by a company in an accounting period, in relation to a taxable field. It covers abandonment expenditure, exploration expenditure and development expenditure. These terms are already defined in *section 684(1)*.

“taxable field profits” for a company in relation to taxable field is the amount of petroleum profits (defined in *section 684(1)*) of the company in respect of the field in an accounting period.

Provision is made to ensure that the existing interpretations in *section 684* can be applied in this Chapter too, with any necessary modifications. This allows for the use of terms like developments expenditure, petroleum profits, petroleum activities, etc. without having to redefine them specifically to refer to these rules. (2)(a)

As taxable field is defined in terms of a petroleum lease, it is necessary to include capital costs incurred after 1 January 2007 but before the lease was issued, to ensure that the correct cumulative expenditure figure is used in the denominator of the profit ratio. Without a provision like this, the capital costs figure would be too low, resulting in companies reaching the cut off point too soon. (2)(b)

The activities covered by licences issued on or after 1 January 2007 are treated separately, for the purposes of the additional tax. Petroleum trades carried on by companies are already ring-fenced under the 1992 legislation. The purpose of this subsection is to carve out the activities covered by the new regime, in respect of each taxable field. (3)(a)

Any necessary apportionments are made in computing taxable field profits or expenditure. This provision follows on from the fact that a ring-fencing rule is introduced at *subsection (3)(a)*. (3)(b)

The charges, interest and losses ring-fencing provisions from the 1992 legislation apply in respect of each “new” field and that each such field is totally ring-fenced. (3)(c) & (d)

### **696C Charge to profit resource rent tax**

The tax is an additional amount of corporation tax, which applies to profits when the profits ratio is 1.5 or more. (1)

The tax rates are set out, depending on the profit ratio. These are as follows — (2)

<b>Profit ratio</b>	<b>Profit Resource Rent Tax</b>
1.5 or more and less than 3	5%
3 or more and less then 4.5	10%
4.5 or more	15%

The profits which this tax is charged on are set out as follows. The tax applies when the (3)

profit ratio is 1.5 or more. This means that the cumulative net profits (“A” in the profit ratio definition) can be up to 150% of the cumulative capital investment (“B” in the profit ratio definition) before the tax applies.

Only some of the total profits for an accounting period are subject to the new tax in the first accounting period (or any other accounting period where the ratio exceeds 1.5 but was less than 1.5 in the preceding accounting period). The calculation allows for the fact that some profits are not taxable at the higher rate. Because the calculation is based on the cumulative post-tax figures, it is necessary also to “gross-up” the amount (by dividing by  $100 - 25 = 75$  and multiplying by 100).

For other accounting periods, all of the profits in an accounting period are subject to the tax – taxable field profits is already defined.

### **696D Provisions relating to groups (Chapter 3)**

#### **Summary**

This section contains certain provisions in relation to groups. This section provides that capital expenditure incurred by a company may, in certain circumstances, be deemed to have been incurred by an associated company for the purposes of calculating the cumulative expenditure figure, where one company is a subsidiary of the other or both are subsidiaries of a third company.

#### **Details**

Where taxable field expenditure on a taxable field is incurred by one company (the first company) and the first company either — (1)

- (a) owns a subsidiary, or
- (b) is itself owned by another company (the parent),

then the first company can elect that the expenditure is deemed to have been incurred —

- (i) by the subsidiary, or
- (ii) by the parent, or by another subsidiary of the parent.

Where expenditure is deemed to have been incurred by a company (the other company) following an election under *subsection (1)*, then — (2)

- (a) it is deemed to have been incurred at the time it was actually incurred by the first company, and
- (b) it is deemed to have been incurred by the other company for the purposes of determining the cumulative expenditure figure and deemed not to have been incurred by the first company for the purposes of determining the cumulative expenditure figure.

Provision is made to ensure that the same expenditure is not double counted for the purposes of determining the cumulative figures. (3)

The definitions of subsidiary, etc. in *section 694* are applied for the purposes of this section. (4)

### **696E Returns (Chapter 3)**

Returns must be on forms approved by Revenue. A provision for electronic returns (i.e. under ROS) is included. (1)

Returns must be submitted at the same time as the annual corporation tax return (CT 1), and show breakdowns of expenditure and profits for each field, as well as the profit resource rent tax (if any) for the field. Revenue may also require that additional (2)

information be provided on the form.

Revenue may seek clarification of details, etc. on the return. (3)

Penalties, etc. will apply for non-delivery of the form. (4) & (5)

**696F Collection and general provisions**

The normal corporation tax provisions for assessment, appeals and collection also apply (1)  
to the profit resource rent tax.

The interest charging provisions on overdue tax in *section 1080* also apply to the profit (2)  
resource rent tax.

<p>CHAPTER 4 <i>Petroleum Production Tax</i></p>	
<p><b>Overview</b></p>	
<p>This Chapter introduces a new tax, “petroleum production tax”, which will apply to petroleum profits from discoveries made under petroleum authorisations granted from 18 June 2014 onwards. While the legislation specifically refers to petroleum, oil and gas are also covered. The petroleum production tax will apply on a field by field basis and will be calculated on a field’s net income using a rate that operates on a sliding scale between 0% and 40%. The tax rate is determined by reference to the profit ratio of each field which is calculated using a formula set out in this Chapter. A 10% tax rate will apply where the profit ratio of a field is equal to 1.5, a pro rata tax rate applies for a profit ratio between 1.5 and 4.5 and a maximum tax rate of 40% applies where the profit ratio is equal to 4.5 or above. However, a minimum tax payment of 5% is to be charged, in each year of production, on the gross revenue less transportation costs of a field where the tax payable, based on the formula, would be less than the 5% rate. Petroleum production tax will be payable in addition to the existing 25% corporation tax rate that currently applies to profits from oil and gas production. It will be payable on an annual basis at the same time as corporation tax with the scope for more frequent payments if necessary. Petroleum production tax payments will be deductible for the purposes of calculating the amount of corporation tax due.</p>	
<p><b>696G Interpretation and application</b></p>	
<p>The definitions used in this section are as follows-</p>	
<p>“(cumulative field costs)” is the denominator in the profit ratio (R factor) equation. It is the total of all field costs (both capital and operating costs) incurred by a company in relation to a taxable field since 18 June 2014. Field costs for a company for a relevant period (also defined) is defined separately, and this figure is the sum of the field costs.</p> <p>“(cumulative field gross revenue)” is the numerator in the profit ratio (R factor) equation. It is the total of gross revenues (less petroleum production tax paid for the same taxable field for all preceding relevant periods) earned by a company in relation to a taxable field since 18 June 2014. Gross revenue in relation to a company for a relevant period is defined separately, and this figure is the sum of the gross revenue amounts.</p> <p>“(eligible expenditure)” is defined in terms of a relevant period of a company for a taxable field. It is the total of all expenditure, including exploration and development expenditure, incurred by the company and includes any expenditure, including exploration and development expenditure incurred in any preceding period providing that a deduction for</p>	

<p>such expenditure has not been allowed in computing petroleum production tax. An allowance for abandonment expenditure which can be claimed under section 695 is also included in the definition.</p> <p>“<i>field costs</i>” is defined in terms of a relevant period of a company for a taxable field. It is the total of all expenditure including exploration, development and transportation expenditure incurred by the company whilst carrying out petroleum activities.</p> <p>“<i>gross revenue</i>” is defined in terms of a relevant period of a company for a taxable field. It is the total amounts derived from the sales of petroleum extracted from a taxable field and includes any amounts derived from the assignment, disposal or sale of any assets, interests, options or rights in respect of a taxable field.</p> <p>“<i>net income</i>” is defined in terms of a relevant period of a company for a taxable field. It is the gross revenue less eligible expenditure incurred in respect of that taxable field.</p> <p>“<i>petroleum production tax</i>” is the new tax, defined in <b>section 696H</b>.</p> <p>“<i>relevant period</i>” is the accounting period or part of an accounting period of a company which commences on or after 18 June 2014.</p> <p>“<i>R factor</i>” is defined in terms of a relevant period of a company for a taxable field. It is the formula used to derive the profit ratio of a taxable field and will determine what rate of tax is applicable. It is defined as the cumulative field gross revenue divided by the cumulative field costs, both of which are defined above.</p> <p>“<i>specified licence</i>” is defined as an exploration licence, a reserved area licence or a licensing option granted on or after 18 June 2014. It excludes an exploration licence resulting from the exercise of a licencing option issued prior to 18 June 2014.</p> <p>“<i>taxable field</i>” is an area covered by a petroleum lease awarded on foot of a specified licence. Petroleum leases are granted under section 13(1) of the Petroleum and Other Minerals Development Act 1960.</p> <p>“<i>transportation expenditure</i>” is defined as those costs incurred in transporting the petroleum from the taxable field via pipeline to a place where it is landed in the State or, if produced on a platform, from the wellhead to the carrier, if the carrier serves as the point of export.</p>	
<p>Provision is made to ensure that existing interpretations in <b>section 684</b> can be applied in this Chapter too, with any necessary modifications. This allows for the use of terms like development expenditure, exploration expenditure, abandonment expenditure, etc. without having to redefine them specifically to refer to the new rules.</p>	(2)
<p>Any necessary apportionments are made in computing taxable field profits or expenditure where the accounting period differs from the relevant period.</p>	(3)(a)
<p>As taxable field is defined in terms of a petroleum lease, it is necessary to include expenditure incurred after 18 June 2014 but before the lease was issued, to ensure that the correct cumulative field costs figure is used in the denominator of the profit ratio.</p>	(3)(b)
<p><b>696H Charge to petroleum production tax</b></p>	
<p>The tax is charged in addition to corporation tax for each taxable field and will apply for each year of production.</p>	(1)(a)



The amount of tax payable shall be the greater of -	<b>(1)(b)</b>														
<p>(i) a minimum rate of 5% charged on gross revenue with an allowable deduction for transportation expenditure</p> <p><b>or</b></p> <p>(ii) a rate charged on net income that operates on a sliding scale basis depending on the profitability of the taxable field. Each field’s profitability is determined by the calculation of the R factor (defined above).</p>															
<p>The tax rates are as follows-</p> <table border="1" data-bbox="137 535 1295 913"> <thead> <tr> <th data-bbox="137 535 458 591"><b>R factor</b></th> <th data-bbox="458 535 1295 591"><b>Petroleum production tax rate</b></th> </tr> </thead> <tbody> <tr> <td data-bbox="137 591 458 647"></td> <td data-bbox="458 591 1295 647" style="text-align: center;"><b>THE GREATER OF</b></td> </tr> <tr> <td data-bbox="137 647 458 703" style="text-align: center;"><b>Any</b></td> <td data-bbox="458 647 1295 703" style="text-align: center;">5% of gross revenue less transportation costs</td> </tr> <tr> <td data-bbox="137 703 458 759"></td> <td data-bbox="458 703 1295 759" style="text-align: center;"><b>OR</b></td> </tr> <tr> <td data-bbox="137 759 458 815" style="text-align: center;"><b>=1.5</b></td> <td data-bbox="458 759 1295 815" style="text-align: center;">10% of net income</td> </tr> <tr> <td data-bbox="137 815 458 871" style="text-align: center;"><b>&gt;1.5 to 4.5</b></td> <td data-bbox="458 815 1295 871" style="text-align: center;">10% + <math>\{(R-1.5)/(4.5-1.5) * (40\%-10\%)\}</math> of net income</td> </tr> <tr> <td data-bbox="137 871 458 913" style="text-align: center;"><b>≥4.5</b></td> <td data-bbox="458 871 1295 913" style="text-align: center;">40% of net income</td> </tr> </tbody> </table>	<b>R factor</b>	<b>Petroleum production tax rate</b>		<b>THE GREATER OF</b>	<b>Any</b>	5% of gross revenue less transportation costs		<b>OR</b>	<b>=1.5</b>	10% of net income	<b>&gt;1.5 to 4.5</b>	10% + $\{(R-1.5)/(4.5-1.5) * (40\%-10\%)\}$ of net income	<b>≥4.5</b>	40% of net income	
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The disposal and acquisition of petroleum or a petroleum related asset is treated as having been made for a consideration equal to the market value of the petroleum or petroleum related asset at the time the disposal and acquisition were made.	<b>(2)</b>														
Where a charge to petroleum production tax applies to a taxable field, then no charge to profit resource rent tax under <i>section 696C</i> shall apply to the same field. Hence, a double charge to tax is prevented.	<b>(3)</b>														
<b>696I Petroleum production tax allowable as a deduction for CT purposes</b>															
Any petroleum production tax payment made in respect of a taxable field for the relevant period can be treated as a deduction for the purpose of calculating a company’s corporation tax liability.															
<b>696J Provisions relating to groups</b>															
<b>Summary</b>															
This section contains certain provisions in relation to groups. This section provides that expenditure incurred by a company may, in certain circumstances, be deemed to have been incurred by an associated company for the purposes of calculating the cumulative field costs and eligible expenditure figure, where one company is a subsidiary of the other or both are subsidiaries of a third company.															
<b>Details</b>															
<p>Where the eligible expenditure on a taxable field is incurred by one company (the first company) and the first company either-</p> <p>(a) owns a subsidiary, or</p> <p>(b) is itself owned by another company (the parent),</p> <p>then the first company can elect that the expenditure is deemed have been incurred –</p> <p>(i) by the subsidiary, or</p> <p>(ii) by the parent, or by another subsidiary of the parent.</p>	<b>(1)</b>														

Where expenditure is deemed to have been incurred by a company (the other company), following an election under subsection (1), then – (a) it is deemed to have been incurred at the time it was actually incurred by the first company, and (b) it is deemed to have been incurred by the other company for the purposes of determining the cumulative field costs figure and deemed not to have been incurred by the first company for the purposes of determining the cumulative field costs figure.	(2)
Provision is made to ensure that the same expenditure is not double counted for the purposes of determining cumulative figures.	(3)
The definitions of subsidiary, etc. in <i>section 694</i> are applied for the purposes of this section.	(4)
<b>696K Returns</b>	
Returns must be on forms approved by the Revenue Commissioners.	(1)
Returns must be submitted at the same time as the annual corporation tax return (CT1), and show breakdowns of field costs and gross revenue for each field, as well as the petroleum production tax payable in respect of each field. The Revenue Commissioners may also require that additional information be provided on the form.	(2)
Returns will be filed electronically (i.e. via ROS).	(3)
An officer of the Revenue Commissioners may seek clarification of details submitted on the return.	(4)
A person shall not be required to file a return for a chargeable period on an earlier date than the specified return date for the chargeable period. A certificate, signed by an officer of the Revenue Commissioners stating that, based on the relevant records that have been examined, the person did not file a return, shall be evidence of such unless proven to the contrary.	(5)
Penalties apply for the failure to make returns and the filing of incorrect returns.	(6) & (7)
<b>696L Payment due</b>	
Petroleum production tax for a relevant period is payable on or before the day on which the return (within the meaning of <i>section 959I</i> ) for that relevant period is due.	
<b>696M Collection and general provisions</b>	
The normal corporation tax provisions for assessment and collection also apply to petroleum production tax.	(1)
The interest charging provisions on overdue tax in <i>section 1080</i> also apply to petroleum production tax.	(2)
An appeal of an assessment can be made to the Appeal Commissioners within 30 days after the notice of assessment. No appeal can be made against an assessment until the company concerned has made a return and pays or has paid the amount of petroleum production tax payable on the basis of the return made to the Collector-General.	(3)