

1 Restriction on allowances for certain decommissioning expenditure

- (1) CAA 2001 is amended as follows.
- (2) After section 165 insert –

“Restrictions on allowances: anti-avoidance

165A Decommissioning services supplied by connected person

- (1) Allowances under this Part are restricted under subsection (9) if –
 - (a) a person (“R”) carrying on a ring fence trade enters into an arrangement,
 - (b) under the arrangement, a person (“S”) who is connected with R provides a service to R, and
 - (c) all or part of the consideration for the service is decommissioning expenditure.
- (2) Subsection (1)(b) may be satisfied whether the service is provided to R directly or indirectly; and in particular it does not matter –
 - (a) whether R and S are parties to the same contract, or
 - (b) whether payments are made by R directly to S.
- (3) Subsections (4) to (8) apply for the purposes of this section and sections 165B to 165D.
- (4) “Decommissioning expenditure” means expenditure in connection with decommissioning.
- (5) “Decommissioning” means –
 - (a) demolishing plant or machinery,
 - (b) preserving plant or machinery pending its reuse or demolition,
 - (c) preparing plant or machinery for reuse, or
 - (d) arranging for the reuse of plant or machinery.
- (6) It is immaterial for the purposes of subsection (5)(b) whether the plant or machinery is reused, is demolished or is partly reused and partly demolished.
- (7) It is immaterial for the purposes of subsection (5)(c) and (d) whether the plant or machinery is in fact reused.
- (8) References to R’s expenditure under the arrangement are to so much of the consideration for the service as is decommissioning expenditure incurred by R.
- (9) The amount, if any, by which R’s expenditure under the arrangement exceeds D is to be left out of account in determining R’s available qualifying expenditure.
- (10) D is the cost to S of providing the service or the part of the service to which R’s expenditure under the arrangement relates.
- (11) But if, under any arrangement, a particular service is provided by more than one person who is connected with R (so that without this subsection there would be more than one amount for D in relation to that service), D is the lowest of those amounts.

- (12) Subsections (10) and (11) are subject to sections 165B and 165C, which provide for D to be calculated differently in certain circumstances.

165B Allowance in respect of certain services related to decommissioning

- (1) This section applies to so much of R's expenditure under the arrangement as relates to the supply by S of a service within subsection (2).
- (2) A service is within this subsection if—
- (a) it is a planning or project management service,
 - (b) the cost plus method is an appropriate method of applying the arm's length principle to the provision of the service, and
 - (c) in the application of that method to the service, the appropriate mark up is no greater than [x] %.
- (3) D is the amount determined as R's appropriate expenditure on the service by applying that method to the service.
- (4) Any expression which is used in this section and in the transfer pricing guidelines has the meaning given in those guidelines.
"The transfer pricing guidelines" has the meaning given by section 164(4) of TIOPA 2010.

165C Allowance where decommissioning undertaken for other participants in oil field

- (1) This section applies where—
- (a) S decommissions the plant or machinery,
 - (b) there are, in addition to R, one or more other participators in the oil field in which the plant or machinery is being used or, when last in use for the purposes of a ring fence trade, was being used, and
 - (c) the expenditure incurred in respect of the decommissioning of the plant or machinery is apportioned between the participators (including R) in accordance with their shares in the oil won from the field.
- (2) D is the amount of expenditure incurred by R in respect of the decommissioning.
- (3) But subsection (2) does not apply (and section 165A(10) and (11) apply instead) if—
- (a) the amount of consideration to be received by S under the arrangement or arrangements, or
 - (b) the apportionment between the participators of the liability for paying that consideration,
- has been agreed as, or as part of, an avoidance scheme.
- (4) A scheme is an "avoidance scheme" if the main purpose, or one of the main purposes, of a party in entering into the scheme is to enable a person to obtain a tax advantage under this Part that would not otherwise be obtained.
- (5) The reference in subsection (4) to obtaining a tax advantage that would not otherwise be obtained includes obtaining an allowance that is in

any way more favourable to a person than the one that would otherwise be obtained.

- (6) In this section –
- “licensee” and “oil field” have the same meaning as in Part 1 of OTA 1975, and
 - “other participator” means a person, not connected to R, who is a licensee in respect of any licensed area wholly or partly included in the oil field in question.

165D Transaction to obtain tax advantage

- (1) Allowances under this Part are restricted under subsection (5) if –
- (a) a person (“R”) carrying on a ring fence trade enters into a transaction with another person (“S”),
 - (b) S receives from R consideration for services provided in pursuance of the transaction,
 - (c) all or part of that consideration is decommissioning expenditure, and
 - (d) the transaction either has an avoidance purpose, or is part of, or occurs as a result of, a scheme or arrangement that has an avoidance purpose.
- (2) Subsection (1)(d) may be satisfied –
- (a) whether the scheme or arrangement was made before or after the transaction was entered into, and
 - (b) whether or not the scheme or arrangement is legally enforceable.
- (3) A transaction, scheme or arrangement has an “avoidance purpose” if the main purpose, or one of the main purposes, of a party in entering into the transaction, scheme or arrangement is to enable a person to obtain a tax advantage under this Part that would not otherwise be obtained.
- (4) The reference in subsection (3) to obtaining a tax advantage that would not otherwise be obtained includes obtaining an allowance that is in any way more favourable to a person than the one that would otherwise be obtained.
- (5) All or part of R’s expenditure under the transaction is to be left out of account in determining R’s available qualifying expenditure.
- (6) The amount of expenditure to be left out of account is –
- (a) such amount as would or would in effect cancel out the tax advantage mentioned in subsection (3) (whether that advantage is obtained by R or another person and whether it relates to the transaction or something else), or
 - (b) if the amount found under paragraph (a) exceeds the whole of R’s expenditure under the transaction, the whole of that expenditure.”
- (3) In section 26(5), at the end insert “and sections 165A to 165D (restrictions on allowances: anti-avoidance).”
- (4) In section 57(3), after the reference to section 70DA insert –

“sections 165A to 165D (restrictions on allowances: anti-avoidance);”.

- (5) In section 161C(3), for “and 164(4)” substitute “, 164(4) and 165A to 165D”.
- (6) In section 164(5A), at the end insert “and sections 165A to 165D.”
- (7) After section 165(3) insert—

“(3A) Subsection (3) is subject to sections 165A to 165D.”
- (8) In section 213 of TIOPA 2010 (effect of Part 4 on capital allowances), after subsection (2) insert—

“(3) But a claim under section 174 may not be made if the claim would affect the operation of sections 165A to 165D of CAA 2001.”

EXPLANATORY NOTE

**RESTRICTION ON ALLOWANCES FOR CERTAIN
COMMISSIONING EXPENDITURE**

SUMMARY

1. This clause provides that where a connected person provides a decommissioning service to a ring fence company, the plant and machinery allowances in respect of decommissioning expenditure are restricted to the cost to the connected person of providing the service. The clause provides exceptions to this rule for certain expenditure to which the cost plus method is to be applied, and for expenditure where unconnected parties are co-licensees in the field. The clause also restricts allowances where a transaction, scheme or arrangement has an avoidance purpose.

DETAILS OF THE CLAUSE.

2. Subsection (1) provides that Capital Allowances Act 2001 (CAA 2001) is amended by the following subsections.
3. Subsection (2) inserts new sections 165A to 165D into CAA 2001.
4. Subsection (1) of new section 165A provides that plant and machinery allowances are restricted under subsection (9) if a connected person (S) provides a service to a person (R) carrying on a ring fence trade and all or part of the consideration for the service is decommissioning expenditure.
5. Subsection (2) of new section 165A provides that subsection (1)(b) may be satisfied whether the service is provided to R directly or indirectly, and it does not matter whether R and S are parties to the same contract or whether payments are made by R directly to S.
6. Subsection (3) of new section 165A applies subsections (4) to (8) for the purposes of sections 165A to 165D.
7. Subsection (4) of new section 165A defines ‘decommissioning expenditure’.
8. Subsection (5) of new section 165A defines ‘decommissioning’.
9. Subsections (6) and (7) of new section 165A provide further detail for the purposes of section (5).

FINANCE BILL

10. Subsection (8) of new section 165A provides the meaning of ‘R’s expenditure under the arrangement’.
11. Subsection (9) of new section 165A provides that the amount if any by which R’s expenditure under the arrangement exceeds D is to be left out of account in determining R’s available qualifying expenditure.
12. Subsection (10) of new section 165A provides that D is the cost to S of providing the service or the part of the service to which R’s expenditure under the arrangement relates
13. Subsection (11) of new section 165A provides that if a particular service is provided by more than one person who is connected with R (so that without this subsection there would be more than one amount for D) then D is the lowest of those amounts.
14. Subsection (12) of new section 165A provides that sections 165B and 165C provide for D to be calculated differently in certain circumstances.
15. Subsection (1) of new section 165B provides that section 165B applies to so much of R’s expenditure as relates to the supply by S of services within subsection (2).
16. Subsection (2) of new section 165B provides that services are within subsection (2) if:
 - (a) they are planning or project management services;
 - (b) the cost plus method is an appropriate method of applying the arm’s length principle to the provision of those services; and,
 - (c) in applying that method to the services, the appropriate mark-up is no greater than [X]%.
17. Subsection (3) of new section 165B provides that D is the amount determined by applying the cost plus method to the services.
18. Subsection (4) of new section 165B provides that any expression used in section 165B and in the transfer pricing guidelines (as defined by section 164(4) TIOPA 2010) takes its meaning from those guidelines.
19. Subsection (1) of new section 165C provides that section 165C applies where S decommissions the plant or machinery, there are one or more other participators in the oil field in which the plant or machinery is or was being used, and the decommissioning

FINANCE BILL

expenditure is apportioned between the participators in accordance with their shares in the oil won from the field.

20. Subsection (2) of new section 165C provides that D is the amount of expenditure incurred by R in respect of the decommissioning.
21. Subsection (3) of new section 165C provides that subsection (2) does not apply, and section 165A(10) applies instead, if the amount of consideration to be received by S, or the apportionment for paying that amount between the participators, is part of an avoidance scheme.
22. Subsection (4) of new section 165C provides that a scheme is an 'avoidance scheme' if a main purpose is to obtain a tax advantage under Part 2 CAA 2001 that would not otherwise be obtained.
23. Subsection (5) of new section 165C provides that obtaining a tax advantage that would not otherwise be obtained includes obtaining an allowance that is in any way more favourable than the allowance that would otherwise be obtained.
24. Subsection (6) of new section 165C provides that 'licensee' and 'oil field' take their meaning from Part 1 of OTA 1975 and provides a definition of 'other participator'.
25. Subsection (1) of new section 165D provides that allowances under Part 2 CAA 2001 are restricted under subsection (5) if
 - (a) a person (R) carrying on a ring fence trade enters into a transaction with another person (S);
 - (b) S receives from R consideration for services provided;
 - (c) all or part of that consideration is decommissioning expenditure; and,
 - (d) the transaction has, or is part of or occurs as a result of a scheme or arrangement that has, an avoidance purpose.
26. Subsection (2) of new section 165D provides further detail as to the circumstances in which subsection (1)(d) may be satisfied.
27. Subsection (3) of new section 165D provides that a transaction, scheme or arrangement has an 'avoidance purpose' if a main purpose of a party is to enable a person to obtain a tax advantage under Part 2 CAA 2001 that would not otherwise be obtained.
28. Subsection (4) of new section 165D provides that obtaining a tax advantage that would not otherwise be obtained includes obtaining an

FINANCE BILL

allowance that is in any way more favourable than the allowance that would otherwise be obtained.

29. Subsection (5) of new section 165D provides that all or part of R's expenditure is to be left out of account in determining R's available qualifying expenditure.
30. Subsection (6) of new section 165D provides that the amount of expenditure to be left out of account is such amount as would or would in effect cancel out the tax advantage.
31. Subsections (3) to (7) provide consequential amendments.
32. Subsection (8) inserts new subsection (3) into section 213 TIOPA 2010.
33. New subsection (3) of section 213 TIOPA 2010 provides that a claim under section 174 may not be made if the claim would affect the operation of sections 165A to 165D CAA 2001.

BACKGROUND

34. The amendments made by this clause form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.
35. If you have any questions about this change, or comments on the legislation, please contact Hugh Hedges on 020 7438 6576 (email: hugh.hedges@hmrc.gsi.gov.uk).

1 Restriction on allowances for qualifying expenditure on site restoration

After section 416ZA of CAA 2001 (inserted by section [Capital allowances: expenditure on site restoration]) insert—

“416ZB Allowance under section 416ZA restricted for services supplied by connected person

- (1) Where—
 - (a) a person (“R”) enters into an arrangement,
 - (b) under the arrangement, a person (“S”) who is connected with R provides a service to R in connection with work on the restoration of a relevant site, and
 - (c) (in the absence of this section) all or part of the consideration for the service would be qualifying expenditure of R under section 416ZA,the amount of the expenditure which is qualifying expenditure is restricted under subsection (3).
- (2) Subsection (1)(b) may be satisfied whether the service is provided to R directly or indirectly; and in particular it does not matter—
 - (a) whether R and S are parties to the same contract, or
 - (b) whether payments are made by R directly to S.
- (3) In determining how much of the consideration for the service is qualifying expenditure, there is to be left out of account the amount (if any) by which that consideration exceeds D.
- (4) D is the cost to S of providing the service, or the part of the service to which the qualifying expenditure relates.
- (5) But if, under the arrangement, a particular service is provided by more than one person who is connected with R (so that without this subsection there would be more than one amount for D in relation to that service), D is the lowest of those amounts.
- (6) Subsections (4) and (5) are subject to subsection (7) and section 416ZC, which provide for D to be calculated differently in certain circumstances.
- (7) The following provisions apply in relation to an amount restricted under subsection (3) as they apply in relation to an amount restricted under section 165A(9)—
 - (a) section 165B;
 - (b) section 165D, subject to the modifications in subsection (8).
- (8) The modifications are that—
 - (a) the references to Part 2 are to be read as references to this Part,
 - (b) in subsection (1)(c), the reference to decommissioning expenditure is to be read as a reference to qualifying expenditure under section 416ZA, and
 - (c) in subsection (5), the reference to R’s available qualifying expenditure is to be read as a reference to R’s qualifying expenditure on the restoration of the site.

416ZC Allowance where site restoration undertaken for other participants in oil field

- (1) This section applies where—
 - (a) S carries out the restoration of a site,
 - (b) there are, in addition to R, one or more other participators in the relevant field, and
 - (c) the consideration for S's services is apportioned between the participators (including R) in accordance with their shares in the oil won from that field.
- (2) D is the amount of expenditure incurred by R in respect of that consideration.
- (3) But subsection (2) does not apply (and section 416ZB(4) and (5) apply instead) if—
 - (a) the amount of consideration received by S under the arrangement or arrangements, or
 - (b) the apportionment between the persons mentioned in subsection (1)(b) of the liability for paying that consideration, has been agreed as, or as part of, an avoidance scheme.
- (4) A scheme is an “avoidance scheme” if the main purpose, or one of the main purposes, of a party in entering into the scheme is to enable a person to obtain a tax advantage under this Part that would not otherwise be obtained.
- (5) The reference in subsection (4) to obtaining a tax advantage that would not otherwise be obtained includes obtaining an allowance that is in any way more favourable to a person than the one that would otherwise be obtained.
- (6) In relation to the restoration of a site—
 - (a) “the relevant field” is the oil field from which oil is won by means of working a source related to the site (and, if there is more than one such field, the relevant field is the field, if any, in which the site is located), and
 - (b) for the purposes of paragraph (a), whether a source is related to a site is to be determined in accordance with section 416ZA(7)(a) and (b).
- (7) In this section—

“licensee” and “oil field” have the same meaning as in Part 1 of OTA 1975, and

“other participator” means a person, not connected to R, who is a licensee in respect of any licensed area wholly or partly included in a relevant field.”

EXPLANATORY NOTE

Restriction on allowances for qualifying expenditure on site restoration

SUMMARY

1. This clause provides that where a connected person provides a service to a ring fence company in connection with site restoration work, the amount of expenditure which qualifies for relief in respect of site restoration is restricted to the cost to the connected person of providing the service. The clause provides exceptions to this rule for certain expenditure to which the cost plus method is to be applied, and for expenditure where unconnected parties are co-licensees in the field. The clause also restricts allowances where a transaction, scheme or arrangement has an avoidance purpose. The clause follows the approach adopted by the clause which applies for plant and machinery allowances in respect of decommissioning expenditure.

DETAILS OF THE CLAUSE

2. This clause inserts sections 416ZB and 416ZC into Capital Allowances Act (CAA) 2001.
3. Subsection (1) of section 416ZB provides that expenditure which is qualifying expenditure under section 416ZA is restricted under subsection (3) where a connected person (S) provides a service to a person (R) in connection with work on the restoration of a relevant site.
4. Subsection (2) of section 416ZB provides that subsection (1)(b) may be satisfied whether the service is provided to R directly or indirectly, and it does not matter whether R and S are parties to the same contract or whether payments are made by R directly to S.
5. Subsection (3) of section 416ZB provides that the amount if any by which the consideration exceeds D is to be left out of account in determining R's qualifying expenditure.
6. Subsection (4) of section 416ZB provides that D is the cost to S of providing the service or the part of the service to which the qualifying expenditure relates.
7. Subsection (5) of section 416ZB provides that if a particular service is provided by more than one person who is connected with R (so that without this subsection there would be more than one amount for D) then D is the lowest of those amounts.

FINANCE BILL 2013

8. Subsection (6) of section 416ZB provides that subsections (4) and (5) are subject to subsection (7) and section 416ZC which provide for D to be calculated differently in certain circumstances.
9. Subsection (7) of section 416ZB provides that
 - (a) section 165B, and
 - (b) section 165D (subject to the modifications provided in subsection (8))apply in relation to an amount restricted under subsection (3) as they apply in relation to an amount restricted under section 165A(9).
10. Subsection (8) of section 416ZB provides necessary modifications so that section 165D can apply to site restoration expenditure.
11. Subsection (1) of section 416ZC provides that section 416ZC applies where S carries out the restoration of a site, there are one or more other participators in the relevant field, and the consideration for S's services is apportioned between the participators in accordance with their shares in the oil won from that field.
12. Subsection (2) of section 416ZC provides that D is the amount of expenditure incurred by R in respect of that consideration.
13. Subsection (3) of section 416ZC provides that subsection (2) does not apply, and section 416ZB(4) and (5) apply instead, if the amount of consideration received by S, or the apportionment for paying that consideration between the participators, is part of an avoidance scheme.
14. Subsection (4) of section 416ZC provides that a scheme is an 'avoidance scheme' if a main purpose is to obtain a tax advantage under Part 5 CAA 2001 that would not otherwise be obtained.
15. Subsection (5) of section 416ZC provides that obtaining a tax advantage that would not otherwise be obtained includes obtaining an allowance that is in any way more favourable than the allowance that would otherwise be obtained.
16. Subsection (6) of section 416ZC provides the meaning of 'the relevant field' and the basis on which a source is to be determined as related to a site.
17. Subsection (7) of section 416ZC provides that 'licensee' and 'oil field' take their meaning from Part 1 of OTA 1975 and provides a definition of 'other participator'.

BACKGROUND NOTE

18. The amendments made by this clause form part of the Government's wider package of measures to provide greater certainty in respect of decommissioning tax relief, remove barriers to the transfer of licence interests and increase capacity for additional investment in the UK Continental Shelf.
19. If you have any questions about this change, or comments on the legislation, please contact Hugh Hedges on 020 7438 6576 (email: hugh.hedges@hmrc.gsi.gov.uk).