STATUTORY INSTRUMENTS

2017 No. 292

CORPORATION TAX

The Investment Allowance and Cluster Area Allowance (Investment Expenditure) Regulations 2017

Made - - - -	*7th March 2017*
Laid before the House of Commons - - - -	*8th March 2017*
Coming into force - -	*29th March 2017*

The Treasury make the following Regulations in exercise of the powers conferred by sections 332BA, 332K, 356JE and 356JN of the Corporation Tax Act 2010(**1**).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Investment Allowance and Cluster Area Allowance (Investment Expenditure) Regulations 2017 and come into force on 29th March 2017.

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

Investment expenditure

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

(2) This is subject to regulations 5, 6 and 7.

Operating expenditure

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

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

(a) the rate at which oil is extracted from a qualifying oil field(**2**) or a cluster area(**3**);

(**1**) 2010 c. 4. Sections 332BA and 332K were inserted by paragraph 2 of Schedule 12 to the Finance Act 2015 (c. 11). Sections 356JE and 356JN were inserted by paragraph 2 of Schedule 13 to the Finance Act 2015.
(**2**) The meaning of "qualifying oil field" is given in section 332B of the Corporation Tax Act 2010.
(**3**) The meaning of "cluster area" is given in section 356JD of the Corporation Tax Act 2010.

(b) the reserves of oil of a qualifying oil field or a cluster area;

(c) the number of years for which it is economically viable to carry out oil extraction activities(**4**) in relation to a qualifying oil field or a cluster area;

(d) the number of years for which a facility can be used for the purposes of oil extraction activities in relation to a qualifying oil field or a cluster area; or

(e) the amount of tariff receipts or tax-exempt tariffing receipts that are earned by the company in respect of upstream petroleum infrastructure.

(3) Condition B is that the expenditure is not routine repair or maintenance expenditure.

(4) Condition C is that the expenditure is incurred—

(a) in relation to a facility, on—

(i) replacement of a valve, pump, pipeline, power generation plant or compressor that is no longer capable of being used for the purposes of oil extraction activities,

(ii) modifications to increase capacity to carry out oil extraction activities,

(iii) modifications to increase availability to carry out oil extraction activities,

(iv) modifications to enable handling of reduced volumes that arise as a result of reduced operating pressures, or

(v) modifications to enable handling of different fluid compositions, or

(b) in relation to an oil well, on—

(i) water shut off,

(ii) gas shut off,

(iii) fracturing, or

(iv) the removal of sand, salt, scale or hydrates.

(5) For the purposes of this regulation, where a company incurs expenditure and part of that expenditure is operating expenditure and part is not, the expenditure is to be apportioned on a just and reasonable basis.

(6) In this regulation—

"facility" means—

(a) a platform;

(b) a subsea oil well;

(c) a platform well;

(d) an oil well head; or

(e) upstream petroleum infrastructure;

"tariff receipts" has the meaning given by section 6 of the Oil Taxation Act 1983(**5**);

"tax-exempt tariffing receipts" has the meaning given by section 6A of the Oil Taxation Act 1983(**6**); and

"upstream petroleum infrastructure" has the meaning given by section 9H of the Petroleum Act 1998(**7**).

(**4**) The meaning of "oil extraction activities" is given in section 272 of the Corporation Tax Act 2010.
(**5**) 1983 c. 56. Section 6 was amended by section 285 of the Finance Act 2004 (c. 12), paragraph 2 of Part 1 of Schedule 41 to the Finance Act 2009 (c. 10) and paragraph 181 of Part 2 of Schedule 1 to the Corporation Tax Act 2010.
(**6**) Section 6A was inserted by section 285 of the Finance Act 2004 and was amended by section 103 of the Finance Act 2007 (c. 11).
(**7**) 1998 c.17. Section 9H was inserted by section 41 of the Infrastructure Act 2015 (c. 7).

Leasing expenditure

4.—(1) Expenditure is "leasing expenditure" for the purposes of these Regulations if it satisfies Conditions A to E.

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

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

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

(5) Condition D is that the asset is used in—

(a) a qualifying oil field whose development was authorised for the first time on or after 8th July 2015;

(b) a qualifying oil field in respect of which—

(i) the national authority authorised a project in relation to the oil field after consent for development of the field was first granted,

(ii) the project was described in a further consent for development of the field,

(iii) the project was authorised on or after 8th July 2015, and

(iv) the asset is used for the purposes of the project in respect of which the authorisation was granted; or

(c) a cluster area that was determined on or after 3rd December 2014.

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

(7) In paragraph (2) (Condition A)—

(a) expenditure is incurred in relation to the lease of an asset only to the extent that it represents payment in return for the asset being made available;

(b) expenditure which does not represent payment in return for the asset being made available includes, in particular, any—

(i) charge for the provision of any staff,

(ii) charge for any services,

(iii) amount payable which is, or represents, a profit or premium on the cost of the asset being made available which is paid by a company to an associated company(**8**),

(iv) amount which, in accordance with generally accepted accounting practice, falls (or would fall) to be shown in the company's accounts as a finance charge in respect of a lease, or

(v) amount that can be attributed to finance costs by reference to the interest rate implicit in the lease, being the interest rate that would apply to the lease in accordance with normal commercial criteria, including, in particular, generally accepted accounting practice (if applicable).

(8) In paragraph (5) (Condition D)—

(a) references to—

(i) authorisation of development of an oil field, and

(ii) consent for development,

(**8**) The meaning of "associated companies" is given in section 271 of the Corporation Tax Act 2010.