This draft replaces that laid on 21st November 2006.
Draft Regulations laid before the House of Commons under paragraph 10 of Schedule 3 to the Oil Taxation Act 1975, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2006 No.

CORPORATION TAX
PETROLEUM REVENUE TAX

The Oil Taxation (Market Value of Oil) Regulations 2006

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Coming into force in accordance with regulation 1(1)

A draft of these Regulations was laid before the House of Commons in accordance with paragraph 10 of Schedule 3 to the Oil Taxation Act 1975(**1**).

The draft was approved by a resolution of that House.

Accordingly, the Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 21(2) of, and paragraph 2(1B), (1C), (2E) and (2F) of Schedule 3 to that Act, (**2**) and section 147(4) and (7) of the Finance Act 2006(**3**).

Introduction

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Oil Taxation (Market Value of Oil) Regulations 2006, and shall come into force on the day after that on which they are made.

(2) These Regulations have effect in relation to the first new period, within the meaning of section 147(4)(b) of FA 2006 (commencement and transitional provisions for amendments to Schedule 3 to OTA by section 146 of, and Schedule 18 to, FA 2006) and subsequent periods.

(**1**) 1975 c. 22. Paragraph 10 is added to Schedule 3 by paragraph 10 of Schedule 18 to the Finance Act 2006 (c. 25).
(**2**) Section 21(2) is cited because of the definition of "the Board". The functions of the Commissioners of Inland Revenue ("the former Commissioners") were transferred to the Commissioners for Her Majesty's Revenue and Customs ("the new Commissioners") by section 5 of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50 of that Act provides that a reference in any other enactment to the former Commissioners is to be construed, in so far as is appropriate in consequence of section 5 of the 2005 Act, as a reference to the new Commissioners. Paragraph 2 of Schedule 3 is amended by subsections (2) to (10) of section 146 of the Finance Act 2006.
(**3**) Section 147(4) is cited because of the definition of "the first new period", which is relevant to the power contained in section 147(7) exercised in the making of these Regulations.

Interpretation

2.—(1) This paragraph gives the meaning of the abbreviated references used in these Regulations—

"FA 2006" means the Finance Act 2006;

"ICTA" means the Income and Corporation Taxes Act 1988(**4**); and

"OTA" means the Oil Taxation Act 1975.

(2) This paragraph gives the meaning of other terms used in these Regulations—

"bank holiday" means a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(**5**);

"Category 1 oil" is oil of any of the kinds specified in regulation 3;

"relevantly appropriated" has the meaning given by section 12(1) of OTA(**6**).

(3) A sale of oil is at arm's length if (but only if) it satisfies paragraph 1 of Schedule 3 to OTA(**7**).

Category 1 oil

3.—(1) Category 1 oil is oil of any of the following kinds—

(a) Brent blend;

(b) Ekofisk blend;

(c) Flotta blend;

(d) Forties blend;

(e) Statfjord oil.

(2) In these Regulations—

"Brent blend" means the blend of crude oils landed at Sullom Voe in Shetland via either the Brent or Ninian pipeline systems;

"Ekofisk blend" means the blend of crude oils landed at the Teesside Oil Terminal at Seal Sands via the Norpipe pipeline;

"Flotta blend" means the blend of crude oils landed at the Flotta Oil Terminal in Orkney and originating from the Flotta catchment area;

"Forties blend" means the blend of crude oils landed at Cruden Bay, Aberdeenshire via the Forties pipeline system;

"Statfjord oil" means oil to which article 23 of the Agreement between Her Majesty's Government of the United Kingdom and Northern Ireland and the Government of the Kingdom of Norway relating to the exploitation of the Statfjord Field Reservoirs signed at Oslo on 16th October 1979(**8**) applies.

Interpretation – reports and factors used in calculations

4.—(1) In these Regulations the terms defined in the following paragraphs, which relate to the way in which the market value of a Category 1 oil is determined, have the meanings given there.

(2) "The relevant reports" means—

(**4**) 1988 c. 1.
(**5**) 1971 c. 80.
(**6**) The definition of "relevantly appropriated" in section 12(1) was amended by section 39 of the Finance Act 1983 (c. 28).
(**7**) Paragraph 1 was amended by paragraph 32 of Schedule 29 to the Income and Corporation Taxes Act 1988 (c. 1).
(**8**) Treaty Series No 44 1981, Cmnd 8282, supplemented by an exchange of notes effective from 24th March 1995 (Cm 2941).

(a) Argus Crude published by Argus Media Limited, whose registered office is Argus House, St. John Street London EC1V 4LW;

(b) ICIS (the Independent Chemical Information Services' World Crude Report), published by Reed Elsevier Group plc whose registered office is Quadrant House, The Quadrant, Sutton, Surrey, SM2 5AS; and

(c) Platts Oilgram published by Platts, a division of the McGraw-Hill Companies, whose registered office is Two Penn Plaza, 25th Floor, New York, N.Y. 10121-2298.

(3) "The reference value" is the value quoted—

(a) in the case of Argus Crude as "Dated BFO" in the section of the report entitled "Atlantic Basin Crudes, London 16.30 hours, North Sea";

(b) in the case of ICIS, as "Dated BFO" in the North Sea 3rd Update; and

(c) in the case of Platts Oilgram, as "Brent (DTD)" in the International section of the report.

(4) "Adjustment factor" means the differential, upon the day in question, from the reference value—

(a) found, in the case of Brent blend, in accordance with regulation 14;

(b) for any other Category 1 oil, shown—

(i) in the case of Argus Crude, in the report under "Atlantic Basin Crudes, London 16.30 hours North Sea";

(ii) in the case of ICIS, in North Sea 3rd Update; and

(iii) in the case of Platts Oilgram, as the assessment of the spread against forward dated Brent blend (described in the report as "spread vs fwd DTD Brent").

Scope

General scope of these Regulations

5. These Regulations apply for the purpose of determining the market value of oil won from a field to which section 2(5)(b) or (c) of OTA applies and which is—

(a) delivered, or relevantly appropriated, on or after 1st July 2006; or

(b) held by a participator and not delivered at the end of a chargeable period.

Valuing Category 1 oil

General

6. The method of determining the market value of Category 1 oil to which these Regulations apply is as follows—

(a) find the notional delivery day (see regulations 7 and 8);

(b) find the average reference value for that day (see regulations 9 to 12);

(c) add the adjustment factor (see regulations 13 to 15); and

(d) find the total market value of the oil (see regulation 16).

The notional delivery day: the general rule

7.—(1) The general rule is that the notional delivery day is found in accordance with paragraph 1A of Schedule 3 to OTA(**9**) (determination of market value: notional delivery day for a quantity of oil).

(2) The general rule is subject to regulation 8.

The notional delivery day: additional rule

8.—(1) Paragraph (2) applies to a delivery of Category 1 oil by way of a sale otherwise than at arm's length if—

(a) during any period of 24 months, beginning on or after 1st July 2006, the total quantity of equity oil of that type disposed of by a participator and persons connected with him is not less than 4,000,000 barrels;

(b) a lower price would fall to be taken into account in determining the participator's gross profit under section 2(1) of OTA for the delivery from that which would have applied if it had been by way of a sale at arm's length;

(c) the reason for that lower price is because the notional delivery day is a day other than that on which the actual delivery takes place;

(d) the whole or main benefit which might reasonably be expected to be obtained from a sale otherwise than at arm's length, when compared with a sale at arm's length, is a tax advantage within the meaning of section 709 of ICTA(**10**).

(2) The notional delivery day is the day specified in paragraph (a) or (b) (as the case requires) of paragraph 1A(7) of Schedule 3 to OTA.

(3) In this regulation—

"barrel" means a volume of 0.158987 cubic metres of oil; and

"equity oil" means oil forming part of the trading stock of a participator or a person connected with him which has been won by that participator or a person connected with him from a field in the United Kingdom sector of the North Sea.

(4) Section 839 of ICTA (connected persons) applies for determining whether persons are connected for the purposes of this regulation.

The average reference value: notional delivery day one for which reference values available

9.—(1) If the notional delivery day is a day for which reference values are available find the daily average of the reference values from each of the three relevant reports for—

(a) each of the two dates immediately preceding the notional delivery day;

(b) the notional delivery day; and

(c) each of the two dates immediately following notional delivery day.

(2) If any of the relevant reports contains more than one reference value for any of these dates, the result for that report for that date is the arithmetical mean of those values.

(3) Find the average of the daily averages found for each of the five days referred to in paragraph (1).

(4) The result is the average reference value for the notional delivery day.

(**9**) Paragraph 1A was inserted by section 146(1) of the Finance Act 2006.

(**10**) Section 709 has been amended. Subsection (2A) was inserted by section 73 of the Finance Act 1997 (c. 16) and partly repealed by the relevant entry in Part II(9) of Schedule 8 to the Finance (No. 2) Act 1997 (c. 58)