

Interpretation

2.—(1) In these Regulations—

“FA” followed by a year means the Finance Act of that year; and

“ICTA” means the Income and Corporation Taxes Act 1988(a)

“OTA” means the Oil Taxation Act 1975.

(2) In these Regulations—

“Category 1 oil” is oil of any of the kinds specified in regulation 4;

“the relevant differential” means the differential, upon the day in question, from the relevant value, for the Category 1 oil being valued shown—

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

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

(c) 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”);

“the relevant reports” means—

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

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

(f) 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;

“the relevant value” is the value quoted for dated Brent blend—

(g) in the case of Argus Crude as “Dated BFO” in the section of the report entitled “Atlantic Basin Crudes, London 16.30, North Sea”;

(h) in the case of ICIS, as “Dated BFO” in the North Sea 3rd Update; and

(i) in the case of Platts Oilgram, as “Brent (DTD)” in the International section of the report; and

“relevantly appropriated” has the meaning given by section 12(1) of OTA(b).

Scope

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

(a) which is disposed of by way of sale otherwise than at arm’s length; or

(b) which is relevantly appropriated.

(2) A sale of oil is at arm’s length if (but only if) it satisfies paragraph 1 of Schedule 3 to OTA(c).

Category 1 oil

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

(a) Brent blend;

(b) Ekofisk blend;

(a) 1988 c. 1.

(b) The definition of “relevantly appropriated” in section 12(1) was amended by section 39 of FA 1983 (c. 28).

(c) Paragraph 1 was amended by paragraph 32 of Schedule 29 to the Income and Corporation Taxes Act 1988 (c. 1).

- (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 transported to the Teesside Oil Terminal at Seal Sands via the Norpipe pipeline;

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

“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(a) applies.

Market value of Category 1 oil on appropriation or sale not at arm’s length

5.—(1) The method of determining the market value of Category 1 oil sold otherwise than at arm’s length, or relevantly appropriated, is as follows.

Step 1 Finding the notional delivery day

Find the notional delivery day for the oil in accordance with paragraph 1A of Schedule 3 to OTA(b) (determination of market value: notional delivery day for a quantity of oil).

Step 2 Notional delivery day one for which relevant values available

If the notional delivery day is a day for which relevant values are available find the daily average of the relevant values for Brent blend 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.

If any of the relevant reports contains more than one price for Brent blend for any of these dates, the result for that report is the arithmetical mean of those prices.

Step 3: Notional delivery day one for which relevant values not available

3.1. Notional delivery day a Saturday, or a Bank Holiday which is not a Monday

If the notional delivery day is not a day for which the relevant values are available but is a Saturday, or a bank holiday which is not a Monday, find the daily average of the relevant values for Brent blend from each of the three relevant reports for—

- (d) each of the three business days immediately preceding the notional delivery day; and
- (e) each of the two business days immediately following the notional delivery day.

3.2 Notional delivery day a Sunday, or a Bank Holiday which is a Monday

If the notional delivery day is not a day for which the relevant values are available but is a Sunday, or a bank holiday which is a Monday, find the daily average of the relevant values for Brent blend from each of the three relevant reports for—

- (f) each of the two business days immediately preceding the notional delivery day; and
- (g) each of the three business days immediately following the notional delivery day.

(a) Treaty series reference?
 (b) Section 12A is inserted by

Step 4

Find the average of the daily averages found by Step 2 or 3 (as the case requires) for each of the five days specified in that Step.

The result is the Brent blend unit price for the notional delivery day.

Step 5

In the case of a Category 1 oil other than Brent blend, find the daily average of the differentials from the unit price for Brent blend quoted in the three relevant reports for each of the days—

- (h) during the period which begins 21 days, and ends 14 days before the notional delivery day, and
- (i) in respect of which at least one such report is produced.

If any of the relevant reports contains more than one value for the differential from Brent blend unit price for any of these days, the result for that report for that day is the arithmetical mean of those values.

Find the average of the daily averages found by the preceding provisions of this Step for each of the days specified in it.

The result of this Step is the Brent blend unit value adjustment factor for the relevant Category 1 oil.

Step 6

In the case of Brent blend, multiply the Brent blend unit price for the notional delivery day by the volume of oil delivered or relevantly appropriated.

In the case of Category 1 oil other than Brent blend, find the sum of the Brent blend unit price for the notional delivery day and the Brent blend unit adjustment factor appropriate to that day, and multiply the result by the volume of oil delivered or relevantly appropriated.

The result is the market value of the Category 1 oil sold or relevantly appropriated.

This paragraph is subject to the qualifications in the following paragraphs of this regulation.

(2) If in respect of any of the days specified in Step 2 or 3 one of the relevant reports is not published, that Step has effect as if references to the relevant reports were to such of the relevant reports as are actually published in respect of that day.

(3) If in respect of any of the days specified in Step 2 or 3 other than the notional delivery day, none of the relevant reports is published (“a non-publication day”), that Step has effect as if—

- (a) references to a day which is a non-publication day falling before the notional delivery day were to the day falling next before that day on which at least one of the relevant reports is published; and
- (b) references to a day which is a non-publication day falling after the notional delivery day were to the day falling next before the non-publication day on which at least one of the relevant reports is published.

If the application of the rule in sub-paragraph (a) or (b) would lead to the reports for a day being taken into account more than once, a reference to the day falling next before, or after, the non-publication day shall be read as a reference to the first day falling next before or after (as the case may be) the non-publication day which would not otherwise be taken into account for the purposes of this paragraph.

(4) In cases where the date of completion of load or the date of the bill of lading is substituted for the notional delivery day under regulation 6, references in this regulation to the notional delivery day are to be read as references to the day substituted under that regulation.

Substituted notional delivery day

6.—(1) This regulation applies to a delivery of Category 1 oil by way of relevant appropriation or a sale otherwise than at arm’s length if—

- (a) during any period of 12 months, beginning on or after 1st July 2006, the total quantity of [equity] oil disposed of by a participator and persons connected with him is not less than 4,000,000 barrels;
- (b) a different 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; and
- (c) the whole or main benefit which might reasonably be expected to be obtained from relevant appropriation or 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.

(2) Where this regulation applies to a delivery of Category 1 oil, 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.

Market value: Category 2 oils

7.—(1) The market value of a quantity of Category 2 oil which is relevantly appropriated or sold otherwise than at arm's length is found by whichever of the following methods more closely reflects the price which would normally apply in a sale at arm's length for a similar quantity of that oil on the notional delivery day.

Method 1

Find the average unit price for actual sales at arm's length of the relevant Category 2 oil under contracts meeting the conditions set out in paragraphs (a) to (e) of paragraph 2(2AA) of Schedule 3 to OTA(a).

Method 2

Step 1

Ascertain which crude oils are normally used as reference oils ("the marker crudes") for the purposes of determining the market value of the relevant Category 2 oil under contracts at arm's length.

Step 2

Find the average of the prices quoted by the relevant reports for the sale of the marker crudes in respect of trades during the reference period normally adopted in contracts for the sale of the relevant Category 2 oil at arm's length.

Step 3

Apply to the result of Step 2 the differential or combination of differentials normally applied in a contract for the sale at arm's length of the relevant Category 2 oil.

Step 4

Multiply the result of Step 3 by the volume of Category 2 oil sold or relevantly appropriated.

The result of this step is the market value for the purposes of the sale or relevant appropriation of the Category 2 oil in question.

This paragraph is subject to the following modification.

(2) If a participator's contracts for the sale of Category 2 oil in sales at arm's length normally provide for the price to be determined—

- (a) in the case of oil transported by ship from the place of extraction to a place in the United Kingdom or elsewhere, by reference to the actual date of the completion of load; or
- (b) in the case of oil transported by pipeline to a place in the United Kingdom and loaded on to a ship there, by reference to the date of the bill of lading;

references to the notional delivery day in paragraph (1) are to be construed, in relation to that participator as references to the day mentioned in sub-paragraph (a) or (b) (as the case requires).

(a) Sub-paragraph (2AA) was inserted by section [147](5) of FA 2006.

(3) The modification in paragraph (2) also applies where Category 2 oil is loaded onto a ship by reason of force majeure.

A. Commissioner

A. N. Other

Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe which oils are Category 1 oils for the purposes of paragraph 2(2) of Schedule 3 to the Oil Taxation Act 1975. They also prescribe the methods of valuing Category 1 and Category 2 oils which are either sold otherwise than at arm's length or relevantly appropriated.

Regulation 1 provides for citation and commencement.

Regulation 2 explains the meaning of certain abbreviations used in the Regulations and defines other terms used in them.

Regulation 3 explains the scope of the Regulations.

Regulation 4 prescribes the kinds of oils which are Category 1 oils.

Regulation 5 prescribes the method of determining the market value of Category 1 oils.

Regulation 6 prescribes circumstances in which the alternative notional delivery day provided for in paragraph 1A(7) of Schedule 3 (inserted by section 147 of the Finance Act 2006) is to be used.

Regulation 7 prescribes the methods of valuing Category 2 oils which are appropriated or are sold otherwise than at arm's length.

By virtue of section 148(1) of the Finance Act 2006 these Regulations have effect in relation to oil delivered or appropriated on or after 1st July 2006.

The effect of subsection (A1) of section 493 of the Income and Corporation Taxes Act 1988 (c. 1), inserted by paragraph 12(2) of Schedule [18] to the Finance Act 2006 is to provide that the value of oil disposed of in an arm's length sale is to be computed, for all purposes of income tax, and for the purposes of corporation tax in relation to that disposal, in accordance with section 2(5A) of the Oil Taxation Act 1975.

A regulatory impact assessment was prepared by HM Revenue and Customs in respect of Part 5 of the Finance (No. 2) Bill of the 2005-06 Session and was published on 22nd March 2006.