EXPLANATORY MEMORANDUM TO

THE INVESTMENT ALLOWANCE AND CLUSTER AREA ALLOWANCE (INVESTMENT EXPENDITURE) (AMENDMENT) REGULATIONS 2024

2024 No. 395

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) on behalf of His Majesty's Treasury and is laid before the House of Commons by Command of His Majesty.

2. Declaration

2.1 Gareth Davies MP, Exchequer Secretary to the Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 James Konya, Deputy Director for Business, Assets and International, at HMRC confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Matthew Weightman at HMRC Telephone: 03000 562 380 or email: oilandgaspolicy@hmrc.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This statutory instrument ensures that 'The Investment Allowance and Cluster Area Allowance (Investment Expenditure) Regulations 2017' apply as intended for oil and gas activities located onshore and in Northern Ireland waters.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 The Supplementary Charge Investment Allowance (IA) and Cluster Area Allowance (CAA) were introduced by Finance Act 2015 to encourage oil and gas companies operating in the UK or on the UK Continental Shelf to invest in upstream oil and gas production. Initially only available for capital expenditure, the allowances apply across the UK and on the UK Continental Shelf.

5.2 The Investment Allowance and Cluster Area Allowance (Investment Expenditure) Regulations 2017 extended the definition of investment expenditure to include certain operating and leasing expenditure in scope of the allowances.

5.3 The current drafting of the 2017 regulations means that some oil and gas facilities located onshore and in Northern Ireland waters are not in scope of the operating expenditure that qualifies for allowance, which was not the intention of the legislation.

5.4 This instrument amends the 2017 regulations to ensure the allowances apply as intended for oil and gas activities located onshore and in Northern Ireland waters.

What was the previous policy, how is this different?

5.5 The policy position has not changed. This instrument merely ensures that the Supplementary Charge IA and CAA apply as intended.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument amends the Regulation 3(6) definition of "facility" included in the 2017 Regulations. This definition is used to determine which oil and gas facilities are in scope of the operating expenditure that qualifies for allowance.

6.2 This instrument amends the definition of "facility" by removing the words "a subsea" in "a subsea oil well" so as to include onshore oil wells in the new definition of "facility".

6.3 This instrument also amends the definition of "upstream petroleum infrastructure" to ensure that oil processing facilities, gas processing facilities, and upstream petroleum pipelines located both onshore and offshore anywhere in the United Kingdom are included in scope of the operating expenditure that qualifies for allowance. This instrument achieves this by incorporating the section 18(1) Energy (Oil and Gas) Profits Levy Act 2022 definition of "upstream petroleum infrastructure".

Why was this approach taken to change the law?

6.4 It is within the intention of the relevant powers to make technical amendments of this nature.

7. Consultation

Summary of consultation outcome and methodology

7.1 As this legislation is a minor technical amendment to existing legislation, no formal consultation has been undertaken.

8. Applicable Guidance

8.1 Further guidance on this change will be provided in HMRC's Oil Taxation Manual[1] on 11 April 2024.

[1] https://www.gov.uk/hmrc-internal-manuals/oil-taxation-manual

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A Tax Information and Impact Note has not been prepared for this instrument because the instrument merely ensures the 2017 regulations apply as intended.

Impact on businesses, charities and voluntary bodies

9.2 There is no impact on business, charities or voluntary bodies because the instrument merely ensures the 2017 regulations apply as intended.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no impact on the public sector because this legislation only applies to oil and gas companies operating in the UK and on the UK Continental Shelf.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through regular communication with the affected taxpayer group.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").