HIGH COURT OF JUSTICE (CHANCERY DIVISION)—26, 27 AND 28 APRIL AND 29 JULY 1988

COURT OF APPEAL—9, 10 AND 11 JULY 1990

HOUSE OF LORDS—12 AND 13 NOVEMBER AND 12 DECEMBER 1991

BP Oil Development Ltd. *v.* Commissioners of Inland Revenue(1)

Petroleum revenue tax—Tariff receipts from providing the use of a pipeline and other facilities to another oil field—Tariff receipts allowance—Whether allowance to be calculated by reference to the totality of receipts from a user field or each amount separately which is paid for the use of separate qualifying assets—Oil Taxation Act 1983, *ss* 6–9, *Sch* 3, *paras* 1(2), 2(1).

BP Oil Development Ltd. ("BP") owned a pipeline running from its Forties oil field in the North Sea to the Kerse of Kinneil, on the Firth of Forth where it had a processing plant. A pipeline owned by the M group ran from the Brae Field, some 70 miles to the north, to the Forties Field, where it was connected to BP's pipeline to Scotland. By an agreement taking effect from 17 June 1980, M agreed to pay to BP:

i. a price per barrel to transport the pipeline liquids from M's Brae Field, separate them into crude oil and raw gas (and water which after treatment was disposed of), store the crude oil temporarily and deliver it to a shipping terminal;

ii. a price per tonne of raw gas to process it to produce dry gas, propane, butane and C5+ condensate, store temporarily the three latter gases and deliver gases to Grangemouth Dock or other delivery points; and

iii. a price per barrel of the original pipeline liquids to undertake further processing ("sweetening") of dry gas and propane.

It was common ground that payments under the Agreement were "tariff receipts" within the meaning of s 6(2) Oil Taxation Act 1983 and thus under s 6(1) fell to be taken into account in computing BP's assessable profit from the Forties Field as reduced by the tariff receipts allowance under s 9(1). For the relevant chargeable periods the allowance was based upon the cash equivalent of 375,000 metric tonnes per user field and calculated by a formula—para 2(1) Sch 3:

$$£\frac{(A \times B)}{C}$$

(1) Reported (Ch D) [1989] STC 213; (CA) [1990] STC 632; (HL) [1992] STC 28.

where "A" was the amount of the qualifying receipts, "B" 375,000 and "C" the amount, in metric tonnes, of the oil to which those tariff receipts related.

The total amount of the qualifying tariff receipts received by BP during the chargeable period to 31 December 1983 was £8,606,422 of which £6,279,764 was for the facilities described in para i. above and £2,326,658 for those in paras ii. and iii. The total volume of the pipeline liquids was 1,016,098 metric tonnes. The gas content subjected to the separation treatment was 16,385 metric tonnes, part only of the separated gases being subjected to sweetening.

On appeal to the Special Commissioners against assessments to petroleum revenue tax in respect of the Forties Field for that and the following chargeable period to 30 June 1984, made by applying the formula once to the totality of the tariff receipts, BP contended that it was entitled to an allowance calculated by applying the formula successively to the tariff receipts paid for the use of each of the facilities for which a separate charge was made. Because, by para 2(2), Sch 3, if B is more than C the fraction is treated as unity and as the tonnage of gas processed was small, the effect of this approach was that the tariff receipts allowance included the equivalent of the whole and not the proportionate part of the receipts from the facilities in paras ii. and iii. The Special Commissioners rejected that contention. BP appealed.

The Chancery Division held, allowing the appeal, that, applying the definition in para 1(2), Sch 3 Oil Taxation Act 1983, "C" in the para 2(1) formula refers to the amount of oil won from a given user field which ". . ., is extracted, transported, initially treated or initially stored (or subjected to two or more of those operations) *by means of* the asset to which the qualifying receipts are referable." Thus the reference in para 2(1) to "an amount of qualifying receipts received" links any given amount of qualifying tariff receipts to the specific amount of oil to which they relate and to the asset by means of which that oil was extracted etc. Where distinct assets give rise to distinct tariff receipts, paras 1(2) and 2(1) are to be read as requiring separate calculations of a tariff receipts allowance appropriate to each "bundle" of receipts.

Per curiam: in a case concerning legislation of great complexity and in which the amount of tax at stake is very large the Special Commissioners should not base their decision on grounds not canvassed at the hearing but call Counsel so that they can have their assistance and the assistance of their advisers in interpreting those provisions and placing them in context.

The Crown appealed.

The Court of Appeal held, allowing the appeal, that in respect of each user field a participator in a principal field is entitled to a single allowance calculated by reference to the aggregate of the tariff receipts from the user field in the particular chargeable period in respect of any qualifying assets used, because:

(1) the natural meaning of "an amount of qualifying tariff receipts" in s 9(1) Oil Taxation Act 1983 is the aggregate of qualifying tariff receipts received from the particular user field—not the aggregate

received from a particular user field for a particular facility or in respect of a particular qualifying asset; and

(2) the construction of s 9(1) is crucial, because "those qualifying tariff receipts" in C of the formula in para 2(1) Sch 3 refers back to "those qualifying tariff receipts" in A of the formula, which refers back to the opening words of para 2(1) ("where an amount of qualifying tariff receipts received or receivable by a participator"), which in turn refers back to "an amount of qualifying tariff receipts received or receivable by him for that period for a user field" in s 9(1).

per Dillon L.J.:—it is well established that it is not permissible to have recourse to so-called anomalies to override the obvious construction of a provision which is not ambiguous.

BP appealed.

Held, in the House of Lords, dismissing BP's appeal, that on a true construction of the relevant provisions of the Oil Taxation Act 1983 it was plain that its intention was to make only one tariff receipts allowance available to a participator in a principal field in respect of the use by a user field of assets of the principal field for the specified purposes, and that the Crown's method of calculating the cash equivalent of the tariff receipts allowance was correct. In particular:

(1) section 6 required the whole of the tariff receipts attributable to a field to be brought into the computation;

(2) the references in s 9 to the amount of qualifying tariff receipts from a user field which would fall to be taken into account must be to the whole amount of such qualifying tariff receipts, not to particular parts of them derived from the use of particular qualifying assets;

(3) in the formula in para 2(1) Sch 3, A refers to s 9(1) and therefore to the whole amount of qualifying tariff receipts, not to particular discrete amounts of such receipts derived from the use of particular assets; and

(4) it was apparent that different assets are likely to be used in carrying out each of the four operations specified in para 1(2) Sch 3 so, quite apart from the Interpretation Act 1978, "asset" in that provision was to be read as impliedly including "or assets", and C in the formula in para 2(1) was the whole of the oil which had been subjected to any one or more of those operations by means of any one or more of the qualifying assets to which the qualifying tariff receipts were referable.

per Lord Jauncey of Tullichettle (with whom Lord Ackner and Lord Browne-Wilkinson agreed):— as the provisions were unambiguous it did not avail BP to show that their application could in certain circumstances produce anomalies.

A

CASE

Stated under the Taxes Management Act 1970, s 56 as applied by the Oil Taxation Act 1975 Sch 2 para 1 by the Commissioners for the Special Purposes of the Income Tax Acts for the opinion of the High Court of Justice.

B

1. On 26 February 1987 I, one of the Special Commissioners heard the appeals of BP Oil Development Ltd. ("BP") against assessments in respect of the Forties oil field to petroleum revenue tax as follows:

Six-month period to 31/12/83: £1,206,111,967

C

Six-month period to 30/6/84: £1,102,586,934

2. The issue between the parties related to the application of the formula (set out in para 2(1) of Sch 3 to the Oil Taxation Act 1983) by which a "tariff receipts allowance" is calculated, in money terms. Where an oilfield participator receives from a third party one sum for performing certain operations in relation to a quantity of oil belonging to that third party, and also another sum from the same third party for performing further operations in relation to part of the same quantity of oil:—

D

(i) is the formula operated twice: once, in relation to the first sum (and the whole quantity of oil) and again in relation to the second sum (and the lesser quantity of oil to which it specifically relates), as BP contends? or

E

(ii) are the two sums added together, as the Revenue contends, to form a single amount of "tariff receipts", all relating to the whole quantity of oil, so that the formula is operated once only?

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3. There was no oral evidence. I had before me an agreed Statement of Facts, to which was annexed: a copy of the Letter of Intent (June 1980) between BP and Marathon Oil UK Ltd.; a copy of the Brae-Forties Transportation and Processing Agreement (15 August 1985); an agreed synopsis of the latter; and agreed computations on the alternative bases contended for by the parties.

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None of these documents is annexed hereto, but all or any of them are available for inspection by the Court if required.

4. The facts and the contentions of the parties are set out in my reserved Decision which was issued on 24 March 1987. A copy thereof is annexed hereto and forms part of this Case. As will be seen therefrom I decided the issue in principle in favour of the Revenue's contention.

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5. Figures were subsequently agreed between the parties in accordance with my decision and on 12 May 1987 I formally determined the appeals by confirming the assessments for the two periods at £1,206,111,967 and £1,102,586,934 respectively.

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6. Immediately after the determination of the appeals BP declared to us its dissatisfaction therewith as being erroneous in point of law and on 3 June 1987 required us to state a Case for the opinion of the High Court pursuant to the Taxes Management Act 1970, s 56 as applied by the Oil Taxation Act

1975 Sch 2 para 1, which Case we have stated and I, the Commissioner who heard the appeals, do sign accordingly.

7. The question of law for the opinion of the Court is whether, on the true interpretation of para 2 of Sch 3 to the Oil Taxation Act 1983, I erred in holding that the receipts in respect of Brae Field gas and oil fell to be aggregated in computing the amounts of the tariff receipts allowance.

B. O'Brien } Commissioner for the Special Purposes of the Income Tax Acts

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13 August 1987

DECISION

This is an appeal by BP Oil Development Ltd. ("BP") against assessments to petroleum revenue tax for the two successive six-month periods ending 31 December 1983 and 30 June 1984, each in a figure exceeding £1b. In computing BP's profits for the purposes of that tax, certain receipts ("tariff receipts") are required to be brought into the calculation as "positive amounts"; but in arriving at the amount of tariff receipts to be so brought in, account has to be taken of a "tariff receipts allowance", which reduces the amount of such receipts for computational purposes. The only issue before me in the present appeals—and I am asked only for a decision in principle—relates to the manner in which, in the circumstances of the case, the statutory formula for arriving at the amount of the tariff receipts allowance falls to be applied.

Petroleum revenue tax was introduced by the Oil Taxation Act 1975. For the purposes of that tax, each oilfield is treated as a separate taxable entity. Broadly speaking, expenditure on assets connected with the operation of a field is a "negative amount" in the computation of profit/loss, without reference to the usual distinction between capital and income. There is, therefore, no separate system of capital allowances/balancing charges. Under the 1975 Act, the "positive amounts" in the profit/loss computation were substantially confined to oil profits derived from the field in question. However, it became apparent that assets belonging to a particular oilfield were often, by arrangement, used (at least in part) by other oilfields ("user fields"); and the extension of facilities to user fields in different ownership would naturally not be gratuitous. It appears that an oilfield's receipts of this description came to be known in the industry as "tariff receipts". Since the acquisition of the assets in question had given rise to "negative amounts" in the oilfield's tax accounts, it was thought right that the tariff receipts should come in as a "positive amount"; and that was brought about by s 6 of the Oil Taxation Act 1983. By the same reasoning, the proceeds of disposals of assets were also brought into the computation of profit/loss (s 7). The "tariff receipts allowance" with which I am concerned, which reduces the amount of tariff

A receipts which would otherwise be brought into the computation, is provided for by s 9 of the 1983 Act, coupled with Sch 3 which contains the formula by which the allowance is calculated. (There is no corresponding allowance in relation to disposal receipts.)

B Although the legislation is complex, the facts of the case (all of which are agreed between the parties) are short and simple.

BP owns the Forties Field, which is in the North Sea about 100 miles east of the Scottish Coast. The assets of that field include (principally) a pipeline which runs from the field itself to the coast at Cruden Bay, north of C Aberdeen, and thence across country to the Kerse of Kinneil, which is on the Firth of Forth, west of Edinburgh; and processing plant at Kinneil. In addition, there are, in the neighbourhood of the Kerse of Kinneil, temporary storage facilities (for both oil and gas) and terminals at which products are delivered (and, I assume, the means of transporting products between the processing plant and the delivery points, via storage).

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Some 70 miles north of the Forties Field there lies the Brae Field, owned by a group the leading member of which is Marathon Oil UK Ltd. ("Marathon"). A pipeline, owned by the Marathon group, runs from that field to Forties, where it is connected to BP's pipeline to Scotland.

E

By an Agreement entered into on 15 August 1985, but of which the effective data is agreed to have been 17 June 1980, BP agreed to transport and process pipeline liquids from Marathon's Brae field. In terms of the payments to be made by the Marathon group, the facilities to be provided by BP fell into three parts:

F

(i) The transportation of the pipeline liquids from Forties to the Kerse of Kinneil; their separation into crude oil and raw gas (and water, which after treatment, was disposed of into the Firth of Forth); the temporary storage of the crude oil; and its delivery to a shipping terminal. The consideration payable for those operations was 50p per barrel. (For G comparison purposes, I understand that seven barrels are approximately equal to one tonne.)

(ii) Processing the raw gas to produce dry gas, propane, butane and C5+ condensate; the temporary storage of the three latter gases; and the delivery of the gases to Grangemouth Dock or other delivery points. H The consideration payable for these gas operations was £14.50 per tonne of raw gas.

(iii) Some further processing of dry gas and propane (known as "sweetening") at 10p per barrel of the original pipeline liquids.

I BP has since entered into agreements of a similar nature in relation to other oilfields (whether also owned by the Marathon group or not, I do not know); but it is common ground that in calculating tariff receipts allowances one must look at the receipts from each user field separately. It happens that it is only in relation to the Brae Field receipts that the figures are such that the question of principle before me is a material question: in the other cases the result is the same, whichever way the calculation is done.

Inserting proper names and the appropriate metric tonne figure into s 9 of the Oil Taxation Act 1983, subs (1) of that section reads, so far as material, as follows:

> "... if, in computing the assessable profit or allowable loss accruing to BP from Forties in any chargeable period, account would be taken, apart from this section, of an amount of qualifying tariff receipts received or receivable by BP for that period from Brae, then, for the purpose of determining BP's liability (if any) to tax for that period, the amount of those qualifying tariff receipts shall be treated as reduced as follows, that is to say,—
>
> (a) if that amount exceeds the cash equivalent of 375,000 metric tonnes, to an amount equal to the excess; or
>
> (b) if that amount equals that cash equivalent, to nil."

It is common ground that all BP's receipts from the Marathon group under the Brae agreement were "qualifying tariff receipts" (as defined in s 9(6)).

The method of arriving at the "cash equivalent" is set out in para 2 of Sch 3. There is a simple formula:

$$£\left(A \times \frac{B}{C}\right)$$

"A" being the amount of the qualifying tariff receipts, "B" being (in this and any case where the relevant contract was made before 8 May 1982) 375,000 metric tonnes, and "C" being "the amount, in metric tonnes, of the oil to which those qualifying tariff receipts relate". It is also provided that if B exceeds C, that fraction should be treated as unity—otherwise the allowance against the qualifying tariff receipts would exceed those receipts.

I am now close to being able to state the particular problem that has arisen in applying that formula: and it can be easiest seen in terms of figures. I shall confine myself to those for the first of the two half-years under appeal: those for the second are, *mutatis mutandis*, the same.

A total of 1,016,098 metric tonnes of Brae pipeline liquid were accorded the Agreement facilities which I earlier numbered (i), and the consideration therefor was £6,279,764.

Of that pipeline liquid, the gas content was 16,385 metric tonnes; and that was accorded the facilities (ii) and (iii) for payments totalling £2,326,658. (Logically, Mr. Peter Whiteman Q.C., who appeared for BP, should have subdivided these figures further; but to have done so would not have made any practical difference in this instance).

On those facts, the rival contentions on the operation of the "cash equivalent" formula are these:

BP contends that it received two separate "qualifying tariff receipts", each having its own amount of oil to which the receipt related. The $£A \times \frac{B}{C}$

formula is applicable separately to each. The "cash equivalent" in relation to the consideration for the transportation etc., operation is

$$£6{,}279{,}764 \times \frac{375{,}000}{1{,}016{,}098} = £2{,}317{,}603$$

and that in relation to the consideration for the gas processing

$$£2{,}326{,}658 \times \frac{375{,}000}{16{,}385} = £2{,}326{,}658 \text{ (unity rule)}$$

If aggregated, there is a total allowance of £4,644,261 against total receipts of £8,606,422, leaving £3,962,161 chargeable. Put another way, the first receipt is reduced to £3,962,161 and the second to nil.

The Revenue contends that there is in these circumstances only one amount of "qualifying tariff receipts" to be reduced, a single "A" figure of £8,606,422. There is no problem with "C" because although part of the sum of £8,606,422 relates specifically to only 16,385 tonnes, as that gas tonnage is part of the total 1,016,098 pipeline liquids tonnage, the total receipts relate to that total tonnage. On that footing, the "cash equivalent" calculation is

$$£8{,}606{,}422 \times \frac{375{,}000}{1{,}016{,}098} = £3{,}176{,}276$$

which reduces the chargeable receipts down to £5,430,146 only.

Mr. Whiteman's argument for BP founded principally on the fact that throughout ss 6 to 12 of the 1983 Act, and Sch 3—the part of the Act concerned with the new charge imposed on receipts—the focus is on *individual* assets and the receipts derived from their use. By s 6(2) (in accordance with which the expression "tariff receipts" is to be construed) tariff receipts are the "aggregate of the amount or value of any consideration ... received or receivable ... in respect of the use of *a qualifying asset*." Section 7, which deals not with tariff receipts but with disposal receipts, refers correspondingly to "the amount or value of any consideration received or receivable ... in respect of the disposal ... of *a qualifying asset or of an interest in such an asset*". The "tariff receipts referable to the asset" in s 8(4) must, in the context, be those referable to a single, particular asset. References to "the asset" (in the singular) continue into Sch 3, most relevantly perhaps in para 1(2) which has a direct bearing on the "C" factor in the cash equivalent formula.

Mr. Whiteman also drew attention to the fact that the draftsman was not, it seems, one who relied on the Interpretation Act to pluralise singular words: note "contract or contracts" in s 9(3); and "asset or assets" in Sch 3 para 4(5)—the latter in a special context but otherwise one parallel to that of para 1(2) of that Schedule. Mr. Whiteman summarised his submissions thus:—

First, BP's interpretation was consistent with the tariff receipts sub-code as a whole. The scheme of the provisions is to link tariff receipts (and the allowances) to the assets producing them; and establishes the nexus by looking at each individual asset and the particular receipt (and hence the particular allowance) produced by that individual asset.

Secondly, the statutory provisions are most carefully (and technically) drafted; and BP's interpretation gives effect to each word in its natural meaning. No re-writing is done, and nothing is treated as surplusage.

Third, BP's interpretation produces sensible and consistent results. (In this connexion, Mr. Whiteman put forward an example, based on admittedly extreme figures, which showed how the Revenue's construction was capable of producing somewhat surprising effects.)

For the Revenue Mr. Ridd (of the Solicitor of Inland Revenue's Office) contended that the key to the question lay in determing the meaning of the "A" factor in the cash equivalent formula, because "the amount" of the qualifying tariff receipts is the matter on which the reduction operates. His case was that "the amount" of the qualifying tariff receipts is an aggregate concept. "Qualifying tariff receipts" are "tariff receipts" (answering a particular description—s 9(6)(a)) and so are an aggregate because s 6(2) appears to define "tariff receipts" in terms which makes them an aggregate for the purpose of these provisions. So, in ordinary cases, there is only one application of the formula (per user field) because there is one aggregate "A" (and accordingly a single "C"). In support of that he drew attention to para 3 of Sch 3 which deals with the special case where some of the (aggregate) receipts are referable to contracts antedating 8 May 1982 and some are referable to later contracts. That creates a problem because the "B" factor for the first should be (as in the present instance) 375,000 tonnes, whereas for the second it should be 250,000 tonnes only. In these circumstances, and in these circumstances alone, the "A" factor is divided so that there are two calculations, one employing the larger "B" and one the smaller. The existence of para 3 indicates that normally a single "A" factor is the rule.

I would have found it somewhat easier to come to a conclusion on this matter if there had been some clue in the legislation as to the purpose of the allowance in question. Mr. Ridd offered the suggestion that it existed in order to exclude "small cases": but if so, I find it impossible to identify the criterion of "smallness". It cannot be related to the amount of the receipts, because so long as the volume of user field throughput does not exceed the allowed tonnage, the receipts are wholly exempted from chargeability, however much the provider of the facility charges for it. Nor can it be related to the extent of third-party use of an oilfield's assets because there is a separate allowed tonnage for each user field and there is no limit on the number of user fields with which an oilfield may have arrangements.

I am not satisfied that either of Mr. Ridd's arguments is really sound, in the sense that Mr. Whiteman is unable to deflect it. Quite what the function of "aggregate" in s 6(2) is, I am not sure; but what is clear is that it does not point unambiguously to the need to aggregate all amounts of consideration, derived from whatever asset or assets. The words are "the aggregate of the amount ... of any consideration ... in respect of the use of a qualifying asset"; and Mr. Whiteman is content to accept aggregation so long as it is limited to receipts in respect of a particular individual asset. Mr. Ridd's argument does not circumvent the problem created by the use of the singular number.

As to para 3 of Sch 3, it would seem that the need for such a provision exists on either view of the normal procedure. On Mr. Whiteman's approach

A it could result in there being more than two applications of the formula, but that is all.

I feel the force of Mr. Whiteman's argument that where legislation has been drafted like this is, there must be a strong presumption that a singular
B word is to be understood in the singular only. Nevertheless, the rigid adoption of that approach here does seem to me to lead to certain problems.

First, I note that under s 10 (the returns section) a participator in an oilfield is required to state "the amount or value *and the source* of any tariff receipts". The surrounding wording picks up that of s 6(1) and (2) and the
C "aggregate" concept in s 6(2) is accordingly incorporated. Even if that aggregate is of the limited nature acceptable to Mr. Whiteman, it is quite possible (indeed, it may be probable) that the receipts do not come from a single source. There is nothing in s 6(2) to limit the aggregation further to receipts from particular user fields. I conclude that "source" must include "sources".

D

Secondly, if in para 1(2) of Sch 3 "the asset to which the qualifying tariff receipts are referable" is read strictly in the singular one has a truly remarkable asset, because by means of it oil is "extracted, transported, initially treated or initially stored (*or subjected to two or more of those operations*)". The only escape from the conclusion that "asset" means "asset or
E assets" (as indeed is how the phrase actually appears in para 5, as already noted) is to treat "asset" not as an individual asset but as an entire installation. That would, in practice, knock the bottom out of Mr. Whiteman's approach.

More generally, Mr. Whiteman's approach—concentrating as it does on
F individual assets—gives rise to a problem over the definition of "asset" for this purpose. How particular, or how general, can one be? Associated with that question is the further problem which may arise (and in fact does appear to arise in the instant case) if a contract provides for payment of an amount for an operation involving the use of a number of different individual assets. Marathon's payments at the 50p per barrel rate covered the use of the
G pipeline from Forties to the Kerse of Kinneil (which may indeed be two pipelines, one marine and one land), pumping stations along the way, the oil-gas separating plant, and further plant/machinery involved in bringing the crude oil to the point of delivery. The legislation does contain some provisions for apportionment but any provision for apportioning payments for the use of mixed assets in the very ordinary circumstances of the present case is
H very conspicously absent. Mr. Whiteman's answer to this was, as I understood it, that the parties had by the form of their contract treated all the "50p per barrel assets" as a single asset. To my mind, that is cheating: the rules of the game cannot be determined *ad hoc* by the taxpayer parties in that way.

I

At the end of the day the scales are, in my judgment, tipped in the Revenue's favour by two provisions in the Schedules which seem to me to presuppose that the "qualifying tariff receipts" from each user field which fall to be reduced are (except perhaps in exceptional cases) a single aggregate sum. I bring these into consideration with some hesitation because I was in fact referred to neither in argument; but I nevertheless think that they should not be overlooked.

The first indication is in Sch 1. This is directly concerned not with receipts but with expenditure, and in particular with the allowance of expenditure on assets ("remote assets") at some distance from the relevant oilfield's main installations, which are acquired in connexion with arrangements with some other field. Paragraph 2(6) limits the amount of expenditure on a remote asset which may be brought into account, by reference, *inter alia*, to the amount of the tariff receipts derived (in whole or in part) therefrom; and it is clear from sub-para (7) that that amount means the amount net of any tariff receipts allowance. If Mr. Whiteman is right, the remote asset would automatically have its own separately calculated cash equivalent, and so its own allowance; but sub-para (7) proceeds on the footing that the allowance is calculated on a wider basis which includes the receipts connected with the use of the remote asset, and then arrives at an amount of reduced remote asset tariff receipts (for the purposes of subs (6)) by a process of apportionment.

The second indication is contained in the later provisions of Sch 3. Paragraphs 4 and 5 are concerned with the manner in which the $£A \times \frac{B}{C}$ formula is to be applied in a case where a receipt relates to more than one chargeable period (a "straddling" receipt). Put very generally, the amount is split between the relevant periods so that each has a separate "A" factor; and provision is also made for the attribution to each period of a quantity of oil to form the "C" factor for each period. Then, in para 6, provision is made for the further case where there is, in respect of a chargeable period, not only a straddling receipt attributable to that period, but also a "normal" receipt (i.e. one relating to that period only). In such a case, the cash equivalent calculation requires a two-stage operation. At stage 1, "straddler A" is to be added to "normal A"; and "straddler C" is to be added to "normal C". To my mind, this can only work on the assumption that there is only one "normal A" (and "normal C").

For those reasons, I am of the opinion that the Revenue's approach is to be preferred, and I hold in principle accordingly. The appeals are adjourned for agreement of the figures.

B. O'Brien } Commissioner for the Special Purposes of the Income Tax Acts

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24 March 1987

The case was heard in the Chancery Division before Vinelott J. on 26, 27, and 28 April 1988 when judgment was reserved. On 29 July 1988 judgment was given against the Crown, with costs.

Peter Whiteman Q.C. for the Company.

A *Alan Moses* for the Crown.

No cases were cited in argument.

B

Vinelott J.:—This is an appeal from one of the Special Commissioners who heard and dismissed an appeal by BP Oil Development Ltd. ("BP") against assessments to petroleum revenue tax ("PRT") charged on revenue derived from the Forties oilfield.

C

The circumstances in which PRT was first introduced and the general structure and history of that tax are described by Lord Templeman in his speech in *Inland Revenue Commissioners* v. *Mobil North Sea Ltd.*(1) [1987] STC 458. I do not need to repeat what is there said. It is sufficient to say that PRT is charged on the assessable profit accruing to a participator in an oilfield during a chargeable period which, for present purposes, can be taken as
D a half-yearly period. The chargeable profit is the difference for that period between the sum of the positive and the sum of the negative amounts therein defined. The positive amounts consist of the gross profit accruing to the participator together with his licence credit and any amount credited in respect of expenditure for that period: the negative amounts consist of the gross loss so accruing and any licence debit and any amount debited to expenditure for
E that period.

In the early days the gross profit comprised the price received for or, in certain circumstances, the market value of oil won from the field. The expenditure allowable included expenditure incurred in acquiring, bringing into
F existence or enhancing the value of assets used in connection with the field together with a supplement equal to a given percentage of the expenditure. The gross profit did not include payments received by the participator for the use of the pipeline and other facilities of the oilfield in which he was the participator for the purpose of transporting, storing or processing oil won from another neighbouring oilfield. Those receipts were excluded even though the
G cost of the pipeline and other facilities had been allowed as expenditure in calculating the assessable profit in earlier periods.

In the early days such payments (which have come to be known as tariff receipts) were rare. With the development of the North Sea oilfield and the bringing into production of remote fields which could use the pipelines and
H other facilities installed by nearer and older fields and of smaller fields whose expected yield might not justify the installation of a separate pipeline and other facilities tariff receipts became more common. In these circumstances the legislation was amended (by the Oil Taxation Act 1983) to bring them into charge. But the participator in receipt of tariff receipts is given an allowance (a tariff receipts allowance) against the tariff receipts which he has
I to bring into account. It is calculated by reference to a standard tonnage of oil. This appeal is concerned with the calculation of what is described in the legislation as the cash equivalent of the tariff receipts allowance; that is, the sum that a participator is entitled to deduct in calculating the profit on which he is chargeable to PRT.

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(1) 60 TC 310.

The context in which this question arises is clearly and succinctly described in a passage in the Decision of the Special Commissioner which I will read in full(1):

"BP owns the Forties Field, which is in the North Sea about 100 miles east of the Scottish Coast. The assets of that field include (principally) a pipeline which runs from the field itself to the coast at Cruden Bay, north of Aberdeen, and thence across country to the Kerse of Kinneil, which is on the Firth of Forth, west of Edinburgh; and processing plant at Kinneil. In addition, there are, in the neighbourhood of the Kerse of Kinneil, temporary storage facilities (for both oil and gas) and terminals at which products are delivered (and, I assume, the means of transporting products between the processing plant and the delivery points, via storage).

Some 70 miles north of the Forties Field there lies the Brae Field, owned by a group the leading member of which is Marathon Oil UK Ltd. ('Marathon'). A pipeline, owned by the Marathon group, runs from that field to Forties, where it is connected to BP's pipeline to Scotland.

By an agreement entered into on 15 August 1985, but of which the effective date is agreed to have been 17 June 1980, BP agreed to transport and process pipeline liquids from Marathon's Brae field. In terms of the payments to be made by the Marathon group, the facilities to be provided by BP fell into three parts:

(i) The transportation of the pipeline liquids from Forties to the Kerse of Kinneil; their separation into crude oil and raw gas (and water, which after treatment, was disposed of into the Firth of Forth); the temporary storage of the crude oil; and its delivery to a shipping terminal. The consideration payable for those operations was 50*p* per barrel. (For comparison purposes, I understand that seven barrels are approximately equal to one tonne.)

(ii) Processing the raw gas to produce dry gas, propane, butane and C5+ condensate; the temporary storage of the three latter gases; and the delivery of the gases to Grangemouth Dock or other delivery points. The consideration payable for these gas operations was £14.50 per tonne of raw gas.

(iii) Some further processing of dry gas and propane (known as 'sweetening') at 10*p* per barrel of the original pipeline liquids."

The question is whether BP is entitled to a single allowance calculated by reference to all the tariff receipts paid under the agreement or to separate allowances calculated by reference to the tariff receipts paid for each of the facilities afforded to the participators in the Brae Field for which a separate charge was made.

The tariff receipts allowance and its cash equivalent are to be found in s 9 of and Sch 3 to the 1983 Act. However, those sections cannot be understood in isolation. They must be read in the context of the very detailed provisions which bring tariff receipts into charge.

(1) Page 503 B/H *ante*.

A I can pass over the first group of sections (ss 1 to 5) at this stage: those sections, together with Sch 1, deal with the allowance of expenditure in calculating gross profit and in particular the allowance of expenditure for assets the use of which is expected to give rise to tariff receipts. Tariff receipts are brought into charge by ss 6 to 12 which must be read together with Schs 2 and 3. Section 6(1) provides that in computing the assessable profit accruing B to a participator from an oilfield the positive amounts are to be taken to include any tariff receipts attributable to that field; and the tariff receipts so attributable are described in subs (2) as

> "the aggregate of the amount or value of any consideration (whether in the nature of income or capital) received or receivable by C him in that period (and after 30th June 1982) in respect of—
>
> (a) the use of a qualifying asset; or
>
> (b) the provision of services or other business facilities of whatever kind in connection with the use, otherwise than by the participator himself, of a qualifying asset."

D Subsection (2) is then restricted by subs (4) which provides that

> "Notwithstanding anything in subsection (2) above, any amount which—
>
> (a) is, in relation to the person giving it, expenditure in respect of E interest or any other pecuniary obligation incurred in obtaining a loan or any other form of credit, or
>
> (b) is referable to the use of an asset for, or the provision of services or facilities in connection with, deballasting, does not constitute a tariff receipt for the purposes of this Act."

F Section 7 deals with the disposal of an asset: subject to immaterial exceptions,

> "for the purposes of this Act the disposal receipts of a participator in an oil field which are attributable to that field for any chargeable period are the aggregate of the amount or value of any consideration G received or receivable by him in respect of the disposal in that period of a qualifying asset or of an interest in such an asset."

There is of course no distinction for the purposes of PRT between income and capital receipts and expenditure.

H The expression "qualifying asset" is defined in s 8(1) (again, subject to exceptions which are not material)

> "an asset—
>
> (a) which either is not a mobile asset or is a mobile asset dedicated to that oil field; and
>
> I
>
> (b) in respect of which expenditure incurred by the participator is allowable, or has been allowed, for that field under" s 3 of the 1983 Act or s 4 or (subject to s 3(2) of the 1983 Act) s 3 of the 1975 Act.

Then by subs (2) that definition is qualified by a provision that if the expenditure within subs (1)(*b*) is expenditure allowable under s 3 of the 1975 Act then

"the asset shall not be a qualifying asset unless, at the time the expenditure was incurred, it was expected that the useful life of the asset would continue after the end of the claim period in which the asset was to be first used in a way which would constitute use in connection with an oil field for the purposes of that section."

The tariff receipts allowance is introduced by s 9. I must read subss (1) and (2) in full. They provide:

"(1) Subject to the provisions of this section and Schedule 3 to this Act if, in computing the assessable profit or allowance loss accruing to a participator from an oil field (in this section referred to as 'the principal field') in any chargeable period, account would be taken, apart from this section, of an amount of qualifying tariff receipts received or receivable by him for that period from a user field, then, for the purpose of determining his liability (if any) to tax for that period, the amount of those qualifying tariff receipts shall be treated as reduced as follows, that is to say,—

(a) if that amount exceeds the cash equivalent of his share of the tariff receipts allowance in respect of that user field for that period, to an amount equal to the excess; or

(b) if that amount equals the cash equivalent of his share of that allowance, to nil.

(2) Subject to subsections (3) and (4) below, for the participators in the principal field there shall be, for each chargeable period, a separate tariff receipts allowance of 250,000 metric tonnes in respect of each user field."

Subsection (3) substitutes 375,000 metric tonnes for 250,000 metric tonnes in respect of chargeable periods ending before 30 June 1987 in cases where the tariff receipts are receipts under the contract made before 8 May 1982. Subsection (4) provides that Sch 3 is to have effect for determining the cash equivalent of a participator's share of the tariff receipts allowance, and subs (5) provides that a reference to a user field is to be read (so far as material) as reference to an oilfield other than the principal field.

The expression "qualifying tariff receipts" is defined in subs (6), which again I must read in full:

"(6) In this section—

(a) 'qualifying tariff receipts' means tariff receipts in relation to which the principal field is the chargeable field and which are attributable to, or to the provision of services or other business facilities in connection with, the use of any asset for extracting, transporting, initially treating or initially storing oil won otherwise than from the principal field; and

(b) any reference to qualifying tariff receipts received from a user field is a reference to any of those receipts which are received from a participator in the user field in respect of the use of an asset for extracting, transporting, initially treating or initially storing oil won from that field or the provision of services or other business facilities in connection with that use."

Section 10 deals with the returns to be made by a participator. They are to include

> "(a) a statement of the amount or value and the source of any tariff receipts or disposal receipts of the participator which are attributable to that field for the chargeable period to which the return relates; and
>
> (b) a statement of the assets to which any such tariff receipts or disposal receipts are referable."

There is nothing in s 11 or s 12 or in the supplementary provisions in ss 13 to 15 to which I need refer.

Turning to Sch 3, sub-para (2) of para 1 provides:

> "In relation to a user field, any reference in the following provisions of this Schedule to the oil to which any qualifying tariff receipts which are received or receivable in a chargeable period relate is a reference to the oil won from that user field which, in that chargeable period, is extracted, transported, initially treated or initially stored (or subjected to two or more of those operations) by means of the asset to which the qualifying tariff receipts are referable."

The calculation of the cash equivalent of a participator's share of the tariff receipts allowance is then set out in para 2, which again I must read in full:

> "2(1) Subject to paragraphs 3 and 6 below, where an amount of qualifying tariff receipts received or receivable by a participator in a chargeable period from a user field falls to be treated, for the purpose mentioned in subsection (1) of the principal section, as reduced in accordance with paragraph (*a*) or paragraph (*b*) of that subsection, the cash equivalent of his share of the tariff receipts allowance in respect of the user field for that period is the amount given, subject to sub-paragraph (2) below, by the formula:—
>
> $$£(A \times \frac{B}{C})$$
>
> where—
>
> 'A' is the amount of those qualifying tariff receipts;
>
> 'B' is the tariff receipts allowance in respect of that user field, expressed in metric tonnes; and
>
> 'C' is the amount, in metric tonnes, of the oil to which those qualifying tariff receipts relate.
>
> (2) If, apart from this sub-paragraph, the fraction $\frac{B}{C}$ in the formula in sub-paragraph (1) above would exceed unity, it shall be treated as unity for the purposes of this Schedule."

Returning to the facts of the present case, the total amount of the qualifying tariff receipts received by BP during the chargeable period to 31 December 1983 was £8,606,422. Of that sum £6,279,764 was paid for the use of the facilities described in para (i) of the excerpt from the Special Commissioner's Decision I have cited and £2,326,658 for the use of the facil-

ities described in paras (ii) and (iii) of that excerpt. (I shall refer to these facilities as the main facility, the gas separation facility and the sweetening facility respectively). The total of the pipeline liquids transported from the Brae Field to the Kerse of Kinneil was 1,016,098 metric tonnes. Of that pipeline liquid the gas content was 16,385 metric tonnes (translating gas into tonnes in accordance with a formula in the Act) and that gas was subjected to the gas separation facility. Part only of the separated gases was subjected to the sweetening facility.

The questions can now be formulated. The Crown's case is that the total amount of the qualifying tariff receipts during the chargeable period must be inserted in place of "A" in the para 2(1) formula; the total of the petroleum liquids passed through the pipeline must similarly be inserted in place of "C". The cash equivalent of the tariff receipts allowance is then £8,606,422 x $\frac{375,000}{1,016,098}$ which equals £3,176,276.

BP's case is that the formula must be applied separately to tariff receipts which are paid for the use of distinct facilities. As the tonnage equivalent of the gas subjected to the gas separation facility was less than 375,000 tonnes and as part only of that gas was subjected to the sweetening facility, it is unnecessary to do a separate calculation of the cash equivalent of the tariff receipts allowance for each; the effect of the "unity rule" in para 2(2) of Sch 3 is that the cash equivalent of the tariff receipts allowance must equal the whole amount of the tariff receipts paid for the use of those facilities. Applied to the tariff receipts for the use of the main facility the cash equivalent of the tariff receipts allowance is £6,279,764 x $\frac{375,000}{1,016,098}$ which is equal to £2,317,603. The cash equivalent of the tariff receipts allowance applicable to the other facilities must then be added. The total is £4,644,261 (£2,317,603 plus £2,326,658).

The starting point of the argument for the Crown, shortly stated, is that Sch 3 provides for the application of the formula to an aggregate amount of qualifying tariff receipts derived from a given user field; there is no provision in that schedule which justifies the sub-division of the qualifying tariff receipts into separate aggregates and the successive application of the formula to those separate aggregates; it is implicit in the "unity rule" in para 2(2) that the formula will be applied to a single aggregate. The Crown then seeks support for this contention in other provisions of the 1983 Act to which I have not yet referred and to which I will return in a moment.

The immediate difficulty which confronts the Crown's argument is that this construction gives rise to an anomaly which is most easily explained by an example given by Mr. Whiteman. It is this. Suppose that during a chargeable period (the second half of 1981) a participator is entitled under a contract for the transport and initial processing of gas from a user field to tariff receipts. The tonnage equivalent of the gas is 275,000 tonnes, and the qualifying tariff receipts are £20,000,000. The participator received no other qualifying tariff receipts for that period in respect of that user field. The participator's cash equivalent of his share of the tariff receipts allowance for that period is accordingly £20,000,000 (by virtue of the "unity rule") and the "positive amount" to be included in his return for PRT purposes is nil. In the following period he is offered the opportunity of entering into a further

A contract for the transport through the pipeline of an estimated 1,000,000 tonnes of oil in each chargeable period in respect of which the estimated "amount of qualifying tariff receipts" is £10,000,000. If the Crown's construction is correct then if the participator accepts the offer he will pay either £3,125,000 or £4,823,637 more in the second chargeable period than the amount of the qualifying tariff receipts he will receive under the second con-
B tract.

The calculation is shortly as follows. If "C" in the formula is taken to be the 1,000,000 tonnes of oil transported under the second contract, the cash equivalent of the tariff receipts allowance will be £30,000,000 x $\frac{375,000}{1,000,000}$,
C which is £11,250,000, and the positive amount to be included for the chargeable period will be £30,000,000 minus £11,250,000 or £18,750,000, on which (at the rate of 70 per cent. then in force) the PRT chargeable will be £13,125,000 (as compared with tariff receipts under the second contract of £10,000,000). If "C" in the formula is ascertained by adding the 275,000 tonnes of gas in respect of which qualifying tariff receipts continue to be
D received under the first contract and the 1,000,000 tonnes of oil in respect of which qualifying tariff receipts are received under the second contract, the cash equivalent of the tariff receipts allowance will be £30,000,000 x $\frac{375,000}{1,275,000}$,
which is equal to £8,823,375, and the positive amount to be included for the
E chargeable period will be £18,750,000, which at a rate of PRT of 70 per cent. will give rise to a charge of £14,823,637. BP's construction gives rise to a more rational result. The two calculations produce a cash equivalent of the tariff receipts allowance of £23,750,000 (£20,000,000 in respect of the qualifying tariff receipts under the first contract and £10,000,000 x $\frac{375,000}{1,000,000}$, or
F £3,750,000, in respect of qualifying tariff receipts under the second contract). The second contract would thus give rise to a positive amount in the second period of £6,250,000 and with a tax rate of 70 per cent. to PRT of £4,375,000, yielding a net profit from the second contract of £5,625,000.

G Mr. Moses submitted that the adoption of a tonnage basis for calculating the tariff receipts allowance is bound to give rise to anomalies in that once the tonnage allowance has been fully used any qualifying tariff receipts from any further tonnage, whether under the same or a different contract, attract no allowance. But the difficulty that arises in this case is that (as Mr. Whiteman's example shows) once the tariff allowance has been fully utilised by entering into a contract for the transport, storage and initial processing of
H oil, entering into a further contract (whether relating to the same or a distinct quantity of oil) may give rise to a charge to PRT in excess of the qualifying tariff receipts paid under the second contract. It is one thing to construe s 9 and its related schedule in a way which limits the allowance to cases where the facilities of the principal field are afforded to a user field in respect of a small quantity of oil, leaving the participator in the principal field with no
I fiscal encouragement to offer the user field use of the facilities of the principal field for any further tonnage: it is another to construe s 9 and paras 1 and 2 of Sch 3 in a way which positively penalises him for doing so.

The question is whether s 9 and paras 1 and 2 of Sch 3 are fairly capable of a construction which avoids this anomaly. The case for BP is that they are so capable and indeed that a close examination of the 1983 Act shows that

the formula was carefully designed to avoid the anomaly. The starting point is factor "C" of the formula. The problem which confronts the Crown can be put in this way. If, in the example given by Mr. Whiteman, the "amount of qualifying tariff receipts received by" the participator is the aggregate of the qualifying tariff receipts received during the second chargeable period under both contracts, what is the "amount of the oil to which those qualifying tariff receipts relate"? The amount cannot be the 1,000,000 tonnes of oil in respect of which qualifying tariff receipts were received under the second contract because the qualifying tariff receipts received under the first contract do not relate in any way to that amount of oil. The Crown is therefore driven to say that the amount in "C" is the aggregate of the 275,000 tonnes of gas to which part of the aggregate of the qualifying tariff receipts relates and the 1,000,000 tonnes of oil to which the other part of that aggregate relates. That is a possible construction but if it had been intended it would I think have been more natural to have used the phrase "any qualifying tariff receipts" in place of "an amount of qualifying tariff receipts" in the opening part of para 2(1) and to have used the phrase "those qualifying tariff receipts or any of them relate" in place of "those qualifying tariff receipts relate" at the end of the description of factor "C".

In the example given by Mr. Whiteman the 275,000 tonnes of gas and the 1,000,000 tonnes of oil are distinct quantities of oil and the qualifying tariff receipts are paid under distinct contracts. However, the same difficulty arises in the present case. The consideration paid for the gas separation facility and the sweetening facility related to the tonnage equivalent (or part of the tonnage equivalent) of the gas content of the liquids passed through the pipeline and not to the whole of those liquids.

What is said on behalf of BP is that the very precise language of para 2 of Sch 3 indicates that the draftsman foresaw the anomaly to which the Crown's interpretation leads and avoided it by linking any given amount of qualifying tariff receipts to the specific amount of oil to which they relate and to the asset by means of which that oil was extracted transported treated or stored and from which, therefore, the tariff receipts were derived. Of course, different facilities may be provided and different qualifying tariff receipts may be payable in respect of the same amount of oil. If so, the cash equivalent of the tariff receipts allowance will be the same whether the formula is applied to the aggregate of the qualifying tariff receipts or separately to the qualifying tariff receipts payable in respect of each facility. The construction advanced by BP does not therefore give rise to the possible abuse of the allowance by artificially splitting up the tariff receipts payable between a number of related facilities (transport through a pipeline and storage, for example) afforded to the same quantity of oil. It may give rise to anomalous results if for example a single tariff is charged for the transport of oil through a pipeline and for the temporary storage of part only of that oil, and if the tariff is not apportioned between the two processes. Indeed in the present case a single tariff is paid for the transportation and separation of the pipeline liquids as a whole and for the temporary storage of the oil, which is only part of that whole; similarly, the tariff paid for the gas separation facility is paid for the processing of all the gas and the temporary storage of only three components of it. However, in practice no difficulty or anomaly arises because in practice a single unapportioned tariff will only be charged when there is a single continuous process albeit that at one stage separated oil or gas has to be temporarily stored. In substance, therefore, BP's approach only yields a different result if an amount of qualifying tariff receipts is received

A for facilities provided in respect of an amount of oil and an amount of qualifying tariff receipts is received for facilities provided in respect of a different amount of oil or in respect of facilities provided for part only of that same amount of oil.

Mr. Whiteman then submitted that throughout the main provisions of
B the Act the draftsman has been careful to link tariff receipts to the asset for the use of which the tariff is charged. The case for BP in this respect does not rest, as the Special Commissioner thought, solely on the consistent use of the singular where reference is made, for instance, in s 6(2) to "the amount ... of any consideration ... received ... in respect of ... the use of a qualifying asset," or in s 7(2) to "a qualifying asset or ... an interest in such an
C asset", but on the way in which qualifying tariff receipts are throughout related to the facilities for the use of which they are paid. The main provisions relied on are:

(a) para 1(2) of Sch 3, which identifies "oil to which any qualifying tariff receipts ... relate" as oil won from a given user field "by means of the
D asset to which the qualifying tariff receipts are referable." What is said on behalf of BP is that there is no purpose in linking the particular quantity of oil to the asset to which qualifying tariff receipts are referable unless it is designed to identify a particular amount of qualifying tariff receipts with the particular amount of oil to which the qualifying tariff receipts relate and so to make it clear that the formula must be applied separately where different
E amounts of qualifying tariff receipts are received for different facilities, that is for the use of different "assets" (although, as I have said, if different facilities are afforded in respect of the same oil the separate application of the formula to each specific amount of qualifying tariff receipts will produce the same result as the application of the formula to the aggregate of the qualifying tariff receipts). If the Crown are right the last part of para 1(2), beginning
F with the words "which, in that chargeable period", is otiose and can be replaced with the words " in that chargeable period."

(b) the language of para 1(2) reflects the language of s 6(3). Paragraph 1(2) relates an amount of qualifying tariff receipts to the asset for the use of which the qualifying tariff receipts are referable. Section 6(3) similarly links
G qualifying tariff receipts with the asset for the use of which or in connection with which the qualifying tariff receipts are payable.

(c) this link or nexus is then carried into s 9. Subsection (1) first identifies "an amount of qualifying tariff receipts" which is later referred to as "that amount" or "the amount" of qualifying tariff receipts. Paragraph (a) of
H subs (6) relates the qualifying tariff receipts to those attributable to services or facilities provided in connection with the use of an asset of the principal field; para (b) of subs (6) relates any qualifying tariff receipts received from a participator in a user field to receipts in respect of the use of an asset of the principal field. On the Crown's construction this linking of receipts with the asset from which they are derived would be unnecessary. It is necessary only
I for the purpose of linking them to a particular user field.

I think there is considerable force in Mr. Moses' contention that the linking of tariff receipts with the assets from which they are derived is to be explained by the need to relate each "bundle" of tariff receipts on the one hand to a given user field and on the other hand to the principal field from which (or from the use of the assets of which) they are derived (a user field

might use the facilities of more than one principal field and a participator might have an interest in more than one principal field) and to connect the receipts with an asset expenditure on which has been allowed. But he was not, I think, able to meet Mr. Whiteman's main point which rests on paras 1(2) and 2(1) of Sch 3. "C" in the para 2(1) fraction can be expanded (taken in conjunction with para 1(2)) to refer to the amount of oil won from a given user field which is "extracted, transported, initially treated or initially stored *by means of* the asset to which the qualifying tariff receipts are referable." Suppose, for example, that oil is fed through the main pipeline of a principal field to the Scottish coast. Later, following the installation of a main trunk gas pipeline the principal field ties into it (by a new gas pipeline) and the user field in turn ties into the principal field's gas pipeline. A separate tariff is paid. It would be unnatural to describe the tariff paid for the transport of the gas as referable to the oil pipeline or to describe the tariff paid for the transport of the oil as referable to the gas pipeline. They are distinct assets and give rise to distinct tariff receipts. Paragraphs 1(2) and 2(1) are at least capable of being read as requiring separate calculations of a tariff receipts allowance appropriate to each "bundle" of tariff receipts and, as I have said, this construction avoids the anomaly illustrated by Mr. Whiteman's example.

Before the Special Commissioner the Crown relied on two provisions of the 1983 Act in support of its "broad-brush" approach. The first is the reference in s 10(1)(a) to "the source of any tariff receipts." It is said that "source" in that context must include "sources" and (as I understand the argument) that similarly "asset" when used elsewhere in the Act must include "assets". The use of the singular "source" to include "sources" seems to me to lead nowhere. It is natural to use the singular in the context of a reference to "the source of any tariff receipts".

The second is founded on para 3 of Sch 3. Paragraph 3 deals with qualifying tariff receipts received before 30 June 1987 where some are received under contracts in force when the Act was first promulgated and some are not, with the result that there is a different tariff receipts allowance applicable to different parts of the aggregate of the qualifying tariff receipts. The formula in para 2(1) is in effect elaborated to provide a series of calculations applicable to qualifying tariff receipts relating to existing and qualifying tariff receipts relating to later contracts. That paragraph seems to me to work equally well whether para 2(1) is construed in accordance with the Crown's or BP's submissions. Construed in accordance with BP's submissions the calculations required are very complex. But it must be borne in mind that the PRT legislation is not directed to the ordinary taxpayer: it is designed to be interpreted and applied by the Crown's and BP's teams of experts.

Up to this point the Special Commissioner found the Crown's and BP's respective contentions evenly balanced. He persuaded himself that the Crown's contentions were to be preferred on two grounds, neither of which had been put to Mr. Whiteman in the course of the hearing. It is, I think, unfortunate that in a case concerned with legislation of great complexity and in which the amount of tax at stake is very large indeed the Special Commissioner did not recall Counsel so that he could have their assistance and the assistance of their advisers in interpreting these provisions and placing them in context.

To explain the first of the two grounds which influenced the Special Commissioner it is necessary to travel a long way from s 9 and Sch 3. Tariff

A receipts are brought into charge by s 6. The allowance for expenditure is extended by s 3 in conjunction with Part I of Sch 1 to cover expenditure which was incurred to enable tariff receipts to be earned but which had not previously ranked for deduction because it was not incurred in relation to the production of oil from the principal field: a pipeline linking the user field and the principal field is an example. The allowance for expenditure operates ret-
B rospectively. The provisions of Sch 1 are exceedingly complex even by the standards of the 1983 Act. "Associated assets" are defined in para 1 as (in broad terms) qualifying assets which give rise to tariff receipts and which are used in association with an asset used in connection with the principal field. Paragraph 2 of Sch 1 limits the relief for "remote associated assets", defined as (in broad terms) assets more than 100 metres from the nearest part of
C another asset in association with which the remote associated asset is used and which is used in a way which "otherwise than by virtue of paragraph 1 . . . , constitutes use in connection with the principal field." Paragraph 2(6) limits the expenditure allowed by reference to the tariff receipts from and disposal receipts derived or received on the disposal of the remote associated asset which are included in the positive amounts for a given chargeable
D period (after taking into account any reduction under s 9 of the 1983 Act); and, under para 2(7), when qualifying tariff receipts have been reduced by s 9 only a proportion of the expenditure corresponding to the proportion which the chargeable tariff receipts bore to the whole of the qualifying tariff receipts is allowable. (I observe in passing that there is a drafting slip in sub-para (7), which refers to "section 2 of this Act". The reference should clearly
E be to s 2 of the principal Act).

The Special Commissioner concluded(1):

> "If Mr. Whiteman is right, the remote asset would automatically have its own separately calculated cash equivalent, and so its own
F allowance; but sub-para (7) proceeds on the footing that the allowance is calculated on a wider basis which includes the receipts connected with the use of the remote asset, and then arrives at an amount of reduced remote asset tariff receipts (for the purposes of subs (6)) by a process of apportionment."

G I do not think that any clear inference can be drawn from the very special provisions of Sch 1. Relief for expenditure on remote associated assets is unusual in that the relief is not given when the expenditure is incurred but (under sub-para (3) of para 2) only to the extent to which the remote associated asset gives rise to qualifying tariff receipts. The ceiling in sub-para (6) operates when tariff receipts are derived in whole or in part from the remote
H associated asset (see sub-para (8)). Sub-paragraph (7) specifies the proportion of the expenditure that is allowable. For this purpose it is unnecessary and would, in most if not in all cases, be impracticable to relate the tariff receipts to the particular remote associated asset; normally the participator in a user field will pay one tariff for the use of the main pipeline of the principal field and for the use of an extension and for a remote associated asset for instance
I linking the extension to the oil-producing installation in the user field. The Special Commissioner was led to attach too much importance to the way in which this restriction is framed because he interpreted the submission on behalf of BP as founded essentially on the use of the singular "asset" and on the proposition that under the 1983 Act tariff receipts are linked to the use of

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(1) Page 508B/C *ante*.

specific assets and that the formula in para 2 of Sch 3 must be applied to tariff receipts derived from the use of each particular asset. To seek to identify each asset generating tariff receipts would plainly be to follow a will-o'-the-wisp. BP's case rests on relating factor "A" in the formula to the appropriate amount of oil for which facilities are provided from which a given bundle of qualifying tariff receipts is derived; the use of the singular "asset" and the very detailed provisions relating qualifying tariff receipts to the use of a qualifying asset or the use of services or facilities in connection with a qualifying asset are of importance only in so far as they reinforce that interpretation of para 2.

The other provisions which influenced the Special Commissioner are to be found in paras 4, 5 and 6 of Sch 3. Those provisions deal with the case where tariff receipts payable under an agreement for a period are payable at a rate higher in one (normally the earlier) than in another (normally the later) part of that period. The payment in the earlier part of the period may confer a right of user over the whole of the period. An extreme example from an earlier period would be the dead rent payable under a conventional mining lease. Under paras 4 and 5 such receipts have to be apportioned, for if production in the earlier years is lower than in the later years the tariff receipts allowance might produce a result which is unduly favourable to the participator in the principal field and indeed give room for abuse (by weighting tariff receipts so that they are paid during a period when the tonnage of oil from the user field is expected to be small). Paragraphs 4 and 5 accordingly provide for the apportionment of tariff receipts referable to the use of a qualifying asset for a period not wholly comprised in a given chargeable period.

They operate in this way. Under paras 4 and 5 each bundle of qualifying tariff receipts referable to the use of a qualifying asset over a period not limited to a given chargeable period has to be apportioned between the part attributed to use for the chargeable period ("normal qualifying tariff receipts") and the part which straddles the whole period ("straddling qualifying tariff receipts"). The tariff receipts allowance for that chargeable period is then restricted to the qualifying tariff receipts and the corresponding quantity of oil appropriate to that period. The purpose of para 6 is to determine the amount of the tariff receipts allowance in a period in which there are normal qualifying tariff receipts and a proportion of straddling qualifying tariff receipts has also been attributed to that period. Under sub-para (2) the cash equivalent of the participator's share of the tariff receipts allowance must be determined on the basis that there is added to the normal qualifying tariff receipts the proportion of the straddling qualifying tariff receipts attributable to that period, the oil by reference to which the straddling qualifying tariff receipts relate being similarly added to the oil to which the normal qualifying tariff receipts relate.

The Special Commissioner, having summarised the effect of paras 4 and 5, explained the difficulty which he felt confronted the case for BP in the following terms[1]:

> "Put very generally, the amount is split between the relevant periods so that each has a separate 'A' factor; and provision is also made for the attribution to each period of a quantity of oil to form the 'C' factor for

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[1] Page 508D/F *ante*.

A each period. Then, in para 6, provision is made for the further case where there is, in respect of a chargeable period, not only a straddling receipt attributable to that period, but also a 'normal' receipt (i.e. one relating to that period only). In such a case, the cash equivalent calculation requires a two-stage operation. At stage 1, 'straddler A' is to be added to 'normal A'; and 'straddler C' is to be added to 'normal C'. To
B my mind, this can only work on the assumption that there is only one 'normal A'(and 'normal C')."

Before me it was as I understand it accepted by Mr. Moses that para 6 does not present any insuperable obstacles to the construction advanced by BP. The several "A" and "C" factors which arise on its construction can be
C added together for the purposes of para 6.

There is I think no guidance to be had from a careful examination and comparison of the formula provided for ascertaining the cash equivalent of the tariff receipts allowance when an apportioned part of straddling tariff receipts and the notional amount of oil appropriate to them have to be
D added to normal tariff receipts and the oil to which they relate. As Mr. Whiteman observed this formula is differently expressed and is designed for a special purpose.

Appeal allowed, with costs.

E

The Crown's appeal was heard in the Court of Appeal (Dillon, Butler-Sloss and Staughton L.JJ.) on 9 and 10 July 1990 when judgment was reserved. On 11 July 1990 judgment was given in favour of the Crown, with
F costs.

Peter Whiteman Q.C. and *Marion Simmons* for the Company.

Alan Moses Q.C. for the Crown

G No cases were cited in argument.

Dillon L.J.:—This is an appeal by the Crown against a decision of Vinelott J. of 29 July 1988 which allowed an appeal of the taxpayer against a
H decision of one of the Special Commissioners of Income Tax, Mr. O'Brien. The proceedings concern the liability of the taxpayer, BP Oil Development Ltd., to petroleum revenue tax and in particular the taxpayer's entitlement in reduction of that liability to tariff receipts allowance, which arises under s 9 of and the third schedule to the Oil Taxation Act 1983.

I The case was decided on an agreed statement of facts with no oral evidence. The relevant facts can be shortly stated. The Judge took them from the Special Commissioner's decision and I do likewise.

BP owns the Forties Field, which is in the North Sea about 100 miles east of the Scottish coast. The assets of that field include (principally) a pipeline which runs from the field itself to the coast at Cruden Bay, north of

Aberdeen, and thence across country to the Kerse of Kinneil, which is on the Firth of Forth, west of Edinburgh; and processing plant at Kinneil. In addition, there are, in the neighbourhood of the Kerse of Kinneil, temporary storage facilities (for both oil and gas) and terminals at which products are delivered (and, I assume, the means of transporting products between the processing plant and the delivery points, via storage). Some 70 miles north of the Forties Field there lies the Brae Field, owned by a group the leading member of which is Marathon Oil UK Ltd. (Marathon). A pipeline, owned by the Marathon group, runs from that field to Forties, where it is connected to BP's pipeline to Scotland. By agreement entered into on 15 August 1985, but of which the effective date is agreed to have been 17 June 1980, BP agreed to transport and process pipeline liquids from Marathon's Brae Field. In terms of the payments to be made by the Marathon group, the facilities to be provided by BP fell into three parts: i) The transportation of the pipeline liquids from Forties to the Kerse of Kinneil; their separation into crude oil and raw gas (and water, which after treatment, was disposed of into the Firth of Forth); the temporary storage of the crude oil; and its delivery to a shipping terminal. The consideration payable for those operations was 50p per barrel. (For comparison purposes, I understand that seven barrels are approximately equal to one tonne.) ii) Processing the raw gas to produce dry gas, propane, butane and C5+ condensate; the temporary storage of the three latter gases; and the delivery of the gases to Grangemouth Dock or other delivery points. The consideration payable for these gas operations was £14.50 per tonne of raw gas. iii) Some further processing of dry gas and propane (known as "sweetening") at 10p per barrel of the original pipeline liquids.

Petroleum revenue tax was first imposed by the Oil Taxation Act 1975. It is imposed in lieu, where it applies, of corporation tax. The participator is taxed in respect of each field taken separately. BP is liable to petroleum revenue tax in respect of the Forties Field. If BP is a participator in other fields, in that capacity it is treated separately and the other fields can for present purposes be ignored. For the purposes of the petroleum revenue tax there is calculated an aggregate of positive amounts and an aggregate of negative amounts for each six month chargeable period and the tax is chargeable on the balance, if any, of the former over the latter. I do not need to go into detail in relation to the provisions of the 1975 Act. But I should mention, without going into detail, that the negative amounts can include allowances for expenditure, including expenditure (not necessarily capital expenditure) in respect of certain assets. These assets had to be identified for the obvious purpose of seeing whether they qualified for allowances.

By 1983 a system had developed among the proprietors of the North Sea oilfields of tariff receipts. Broadly what was happening was on these lines. If a new field is being opened far out in the North Sea, and possibly without enormous reserves, the proprietors would not wish to lay their own pipelines to Scotland and build their own processing plants in Scotland. They would prefer to connect the new field to a nearby established field, and let their oil be carried through the pipelines of the established field to a terminal or processing plant of the proprietors of the established field in Scotland. For this the proprietors of the new field would make payments to the proprietors of the established field, and these payments were known as "tariff receipts". The established field comes to be referred to in the legislation as a principal field and the new field as a "user field", because it uses the facilities or assets of the principal field.

A It was decided to tax the tariff receipts to bring them into the system for taxing petroleum revenue. This was done by s 6 of the Oil Taxation Act 1983. I read the opening subsections of that section:

> "6(1) In computing under section 2 of the principal Act the assessable profit or allowable loss accruing to a participator from an oil field
B in any chargeable period ending after 30 June 1982, the positive amounts for the purposes of that section (as specified in subsection (3) (*a*) thereof) shall be taken to include any tariff receipts of the participator attributable to that field for that period.
>
> (2) Subject to the provisions of this section, for the purposes of this Act the tariff receipts of a participator in an oil field which are
C attributable to that field for any chargeable period are the aggregate of the amount or value of any consideration (whether in the nature of income or capital) received or receivable by him in that period (and after 30th June 1982) in respect of—
>
> (a) the use of a qualifying asset; or
>
D (b) the provision of services or other business facilities of whatever kind in connection with the use, otherwise than by the participator himself, of a qualifying asset.
>
> (3) Any reference in this Act to the asset to which any tariff receipts are referable is a reference to the qualifying asset referred to in
E paragraph (*a*) or, as the case may be, paragraph (*b*) of subsection (2) above."

It is as well to bear in mind that that provision in subs (3) applies not only to s 6 but to s 9 and the Third Schedule. The whole scheme under s 6(1) and (2) is to bring into charge as positive amounts all tariff receipts of the
F participator attributable to the field in question for the period in question. In the present case "the field", for the purposes of s 6, is of course the Forties Field. There is an aggregate to be brought into account from all user fields and from all assets of the participator, provided that they are qualifying assets.

G "Qualifying asset" is defined in s 8(1) of the 1983 Act as follows:

> "8(1) Subject to paragraph 4 of Schedule 2 to this Act, for the purposes of this Act a 'qualifying asset' in relation to a participator in an oil field, means ... an asset—
>
H (a) which either is not a mobile asset or is a mobile asset dedicated to that oil field; and
>
> (b) in respect of which expenditure incurred by the participator is allowable, or has been allowed, for that field under section 3 [of the 1983 Act] section 4 of the principal Act or, subject to subsection (2) below, section 3 of that Act."

I The qualification of the asset is thus linked to the allowance of expenditure under the 1975 Act. It seems to have been the thinking that if allowances for the construction of qualifying assets are granted to the participator for the purposes of petroleum revenue tax, receipts from the use of those assets by others should be brought into charge for that tax. But the receipts in question do not extend to receipts for the use of assets which are

not qualifying assets. One asset, in the case of BP, which we are told is not a qualifying asset, is the Grangemouth Refinery itself.

At the same time that taxation of tariff receipts attributable to qualifying assets was introduced by the 1983 Act it was decided to grant allowances referred to as tariff receipts allowances. Such an allowance is granted to the participator in a principal field in respect of each user field which makes a qualifying use of a qualifying asset of the principal field.

Each user field is therefore, for the purposes of the allowances, dealt with separately from other user fields, though all tariff receipts are aggregated together, as I have already said, for the purposes of s 6 of the 1983 Act and the general liability of the participator in the principal field to Petroleum Revenue Tax before allowances are deducted.

The allowance given is basically up to a maximum of 250,000 metric tonnes of oil processed in respect of a particular user field in each chargeable accounting period, though if, as in the present case, the tariff receipts are under a contract made before 8 May 1982, the figure of 250,000 metric tonnes is increased by 50 per cent. to 375,000. 8 May 1982 was the date on which the intention to subject tariff receipts to petroleum revenue tax was first announced. The 50 per cent. increase of the allowance to 375,000 tonnes, if the receipts are under a pre-8 May 1982 contract, would seem therefore to be of the nature of a solatium to those proprietors who had fixed their charges while tariff receipts were not within the charge to petroleum revenue tax. The basic allowance of 250,000 metric tonnes would seem, in so far as one can discern the purpose, to be a figure—possibly arbitrary—decided on as appropriate to encourage proprietors of principal fields to continue to make their assets available for use by the proprietors of user fields, thereby encouraging the continued development of the user fields.

In the process of calculating the tariff receipts allowance there is a formula £A x B over C in para 2(1) of the Third Schedule to the 1983 Act.

The question at issue on this appeal was stated by the Special Commissioner in para 2 of the Case Stated as follows(1):

> "The issue between the parties related to the application of the formula (set out in para 2(1) of Sch 3 to the Oil Taxation Act 1983) by which a 'tariff receipts allowance' is calculated, in money terms. Where an oilfield participator receives from a third party one sum for performing certain operations in relation to a quantity of oil belonging to that third party, and also another sum from the same third party for performing further operations in relation to part of the same quantity of oil:
>
> (i) is the formula operated twice: once in relation to the first sum (and the whole quantity of oil) and again in relation to the second sum (and the lesser quantity of oil to which it specifically relates), as BP contends? or
>
> (ii) are the two sums added together, as the Revenue contends, to form a single amount of 'tariff receipts', all relating to the whole quantity of oil, so that the formula is operated once only?"

(1) Page 501C/E *ante*.

A The Judge fined down the question further and formulated it, correctly in my respectful view, as follows at page 221(b) of the judgment(1):

> "The question is whether BP is entitled to a single allowance calculated by reference to all the tariff receipts laid under the agreement or to separate allowances calculated by reference to the tariff receipts paid for each of the facilities afforded to the participators in the Brae Field for which a separate charge was made."

Is there in respect of each user field one allowance only for the participator in the principal field calculated by reference to the aggregate of the tariff receipts from the user field in the particular chargeable period in respect of any qualifying assets used, or is the allowance so linked to assets that there is to be taken to be a separate allowance in respect of each facility or asset for which a separate rate of charge is imposed. I interject that if the same rate of charge is imposed for the use of two different facilities, it matters not whether there are two allowances or only one since the mathematical result would be the same.

The key statutory provision which grants the allowance is s 9(1) of the 1983 Act. That, in my judgment, is crucial to the question at issue. Section 9(1) reads as follows:

> "Subject to the provisions of this section and Schedule 3 to this Act if, in computing the assessable profit or allowable loss accruing to a participator from an oil field (in this section referred to as 'the principal field') in any chargeable period, account would be taken, apart from this section, of an amount of qualifying tariff receipts received or receivable by him for that period from a user field, then, for the purpose of determining his liability (if any) to tax for that period, the amount of those qualifying tariff receipts shall be treated as reduced as follows, that is to say—
>
> (a) if that amount exceeds the cash equivalent of his share of the tariff receipts allowance in respect of that user field for that period, to an amount equal to the excess; or
>
> (b) if that amount equals the cash equivalent of his share of that allowance, to nil."

The amount of qualifying tariff receipts referred to in subs (1) of s 9 must in that context be an aggregate. The natural meaning in the context is, in my judgment, that it is the aggregate of qualifying tariffs received from the particular user field—not the aggregate tariffs received from a particular user for a particular facility or in respect of a particular qualifying asset.

Subsections (2) and (3) of s 9 explain the difference between the figures of 250,000 metric tonnes and 375,000 metric tonnes as the amount of the allowance, which I have mentioned, but do not, to my mind, cast any significant light on the question for decision. I should, however, read them:

> "(2) Subject to subsections (3) and (4) below, for the participators in the principal field there shall be, for each chargeable period, a separate tariff receipts allowance of 250,000 metric tonnes in respect of each user field.

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(1) Page 510H *ante*.

(3) In a case where the whole of the qualifying tariff receipts of the participators in the principal field from a particular user field are receipts under a contract or contracts made before 8th May 1982, subsection (2) above shall have effect with respect to chargeable periods ending on or before 30th June 1987 with the substitution, for 250,000 metric tonnes, of 375,000 metric tonnes."

Subsection (4) of s 9 then introduces Sch 3. It provides:

"Schedule 3 to this Act shall have effect—

(a) for determining for the purposes of this section the cash equivalent of a participator's share of the tariff receipts allowance in respect of a user field for a chargeable period; and

(b) generally for supplementing subsections (1) to (3) above."

Paragraphs 1 and 2 of the Schedule are directed at determining the cash equivalent of the participator's share. Paragraphs 3 onwards apply more under (b) of subs (4) for generally supplementing subss 1 to 3 in particular cases.

Subsection (5) of s 9 I can pass over. Subsection (6) contains definition provisions which are heavily relied on by the taxpayer on this appeal. Subsection (6) reads as follows, so far as material:

"(6) In this section—

(a) 'qualifying tariff receipts' means tariff receipts in relation to which the principal field is the chargeable field and which are attributable to, or to the provision of services or other business facilities in connection with, the use of any asset for extracting, transporting, initially treating or initially storing oil won otherwise than from the principal field; and

(b) any reference to qualifying tariff receipts received from a user field is a reference to any of those receipts which are received from a participator in the user field in respect of the use of an asset for extracting, transporting, initially treating or initially storing oil won from that field or the provision of services or other business facilities in connection with that use."

Then there is a further provision where an oil field is deemed to include a sector mentioned in a particular subsection, but that does not assist for present purposes.

Again, one has to remember that the word "asset" in the phrase "use of an asset" or "use of any asset" means a qualifying asset: see s 6(3) of the 1983 Act. Further, where an asset is referred to, the singular would include the plural. Subsection (6)(a) therefore has the effect of limiting qualifying tariff receipts to receipts attributable to the use of a qualifying asset for any of the four qualifying purposes which are mentioned, that is to say (1) extracting, (2) transporting, (3) initially treating or (4) initially storing oil won otherwise than from the principal field. There are other purposes which are not qualifying purposes, just as there are assets, as I have mentioned, which are not qualifying assets.

Sub-paragraph (b) of subs (6) relates the definition in (a) to the particular user field. I do not, for my part, find subs (6)(a) and (b) taken either jointly or severally enough to override the general wording in the governing s 9(1) and so produce separate allowances for each asset rather than one aggregate allowance for all qualifying tariff receipts from the one user field. I read subs (6) as explaining how the aggregate tariff receipts from the user field are to be arrived at for the purpose of the grant of the one tariff receipts allowance in respect of that user field.

I pass to Sch 3 to the 1983 Act. Paragraph 1(1) defines the principal section as meaning s 9 and then defines "receipts from existing contracts" as meaning qualifying tariff receipts under a contract or contracts made as mentioned in subs (3), that is to say the pre-8th May 1982 contract. It adds that "other expressions have the same meaning as in the principal section", which means that the word "asset", which has been given the meaning by s 6(3) throughout the Act of qualifying asset, must because of s 6(3) and because it has that meaning in the principal section, bear the same meaning of qualifying asset throughout Sch 3.

Sub-paragraph (2) of para 1 is as follows:

> "(2) In relation to a user field, any reference in the following provisions of this Schedule to the oil to which any qualifying tariff receipts which are received or receivable in a chargeable period relate is a reference to the oil won from that user field which, in that chargeable period, is extracted, transported, initially treated or initially stored (or subjected to two or more of those operations) by means of the asset to which the qualifying tariff receipts are referable."

That picks up the four qualifying operations which we had in subs (6)(a) of s 9. Paragraph 2 of Sch 3 then provides:

> "2(1) Subject to paragraphs 3 and 6 below [to which I will return later], where an amount of qualifying tariff receipts received or receivable by a participator in a chargeable period from a user field falls to be treated, for the purpose mentioned in subsection (1) of the principal section, as reduced in accordance with paragraph (*a*) or paragraph (*b*) of that subsection, the cash equivalent of his share of the tariff receipts allowance in respect of that user field for that period is the amount given, subject to sub-paragraph (2) below, by the formula:
>
> $$£(A \times \frac{B}{C})$$
>
> where—
>
> 'A' is the amount of those qualifying tariff receipts;
>
> 'B' is the tariff receipts allowance in respect of that user field, expressed in metric tonnes; and
>
> 'C' is the amount, in metric tonnes, of the oil to which those qualifying tariff receipts relate.
>
> (2) If, apart from this sub-paragraph, the fraction B/C in the formula in sub-paragraph (1) above would exceed unity, it shall be treated as unity for the purposes of this Schedule."

I can for the present leave aside the remaining paragraphs of Sch 3.

In relation to the formula given in para 2(1), it was argued for the taxpayer in the court below that it is crucial to identify, first, C in the formula and all would follow from that. In this Court Mr. Whiteman has accepted that that approach is not crucial. Either side can reach the result they desire, if it is permissible under the general provisions of the Act, whatever the approach to the formula. In the formula £(A x $\frac{B}{C}$) B is of course a constant, in this case 375,000.

As I read the explanations of the formula, C, in referring to the amount in metric tonnes of the oil to which "those qualifying tariff receipts" relate, depends on and refers back to A. Those qualifying tariff receipts are those referred to in A, which is the amount of those qualifying tariff receipts. That refers back to the opening words of para 2(1) "where an amount of qualifying tariff receipts received or receivable by a participator" falls to be treated for the purpose mentioned in subs (1) of the principal section as reduced in accordance with that subsection. That in turn refers back to subs (1) of s 9 where we have the same words "an amount of qualifying tariff receipts received or receivable by him for that period from a user field . . .". But that, as I have indicated, is in my judgment the aggregate of all qualifying tariff receipts so received from that user field, not a separate aggregate of qualifying tariff receipts received in respect of a separate qualifying asset. It is s 9(1) that is crucial, with or without s 9(6)(a) and (b), not the formula. The formula is applied, depending on the construction put on s 9(1).

The learned Judge was driven to a different conclusion by what he regarded as an anomaly put forward by Mr. Whiteman for the taxpayer, though Mr. Whiteman, who puts it forward, shrinks from the word "anomaly" and prefers to describe it as an indication of a better construction of the statutory provisions.

The Judge said, at page 225D of his judgment[1]: "The question is whether s 9 and paras 1 and 2 of Sch 3 are fairly capable of a construction which avoids this anomaly."

The anomaly, to give it the pejorative name attached to it in argument, is set out at page 224 of the Judge's judgment.

We have been treated to several versions of it in the course of the argument on this appeal. We have had the benefit—if it can properly be so called—of a folder of hypothetical instances from counsel on each side. Broadly it comes down to this. Since the basis of the allowance is the volume of oil treated, then if the rate of charge for some services is very much higher per quantity of oil treated than the rate of charge for other services, it is possible to devise instances under which if the proprietor of a principal field performs one contract in a chargeable period whereby a relatively small volume of oil, not much if at all in excess of the limit for the allowance, is treated by a process for which the charge is very high and also performs another contract to treat a large amount of other oil by a less expensive process, the tax burden on the receipts from one of the contracts can seem to be disproportionately high compared with the position if that contract had stood alone

[1] Page 515I *ante*.

A without the other, or if that contract had stood to be performed by some other participator from some other principal field where that other participator was providing no other facilities for the user field in question. This apparently anomalous or disproportionate result is achieved by treating the tax burden calculated by reference to the receipts under both contracts as largely defrayed out of the receipts of one of the contracts. In other words, if
B one contract stood alone it would be franked by the allowance, but if there are two contracts the allowance is diluted by the volume treated under the second contract and an apparently disproportionate result is reached by comparing the effect of one contract with the whole of the burden thrown on it, with the position of that one contract if it stood alone.

C To my mind the argument really only illustrates that dealing with user fields would be more profitable for the participator in a principal field if he had more tariff receipts allowances, but that does not help me on the construction of s 9(1), which I find clear and unambiguous as it stands. It is of course well established that it is not permissible to have recourse to so-called anomalies to override the obvious construction of a provision which is not
D ambiguous. This anomaly, to my mind, rather approaches construction by begging the question so as to give maximum allowance to the proprietor of the principal field.

The Judge also accepted a submission from counsel for the taxpayer that
E if the Crown is right the latter part of para 1(2) of Sch 3 is otiose, and so also possibly para (b) of s 9(6) (or part of it).

As I see it the provisions of s 9 and Sch 3 deal with complicated concepts and the draftsman has taken great care in the drafting. I find what he has produced clear and remarkably comprehensible, given the complexity of
F the matters with which he was dealing. No doubt it would be possible to alter the wording and yet achieve the result for which the Crown contend. I am not persuaded that a redraft would be an improvement. If in the redraft words are omitted from what we have the argument would no doubt be that they cannot have been omitted because they are implicit from some other provision, but must have been omitted in order to achieve some different
G result. I do not say that, in an area of drafting as complex as this, it would have been easily possible for the draftsman to have said something else if he had intended to say something else. But it does seem to mean that it can at least be said that if the draftsman had intended, not just that there should be one tariff receipt allowance for each user field in each period but one allowance for each asset separately used by the user field in the period, he
H could have made that intention much more clear by his drafting of subs 9(1) than he has.

Mr. Moses has referred also to paras 3 to 6 of Sch 3. This was an approach to the case which appealed to the Special Commissioner. These paragraphs are concerned with special situations which have to be fitted into
I the scheme for the tariff receipts allowance. Paragraph 3 deals with the situation where, for a chargeable period ending before a date in 1987 of the qualifying tariff receipts which—"(a) are received or receivable from a user field, and (b) fall to be treated as reduced as mentioned in paragraph 2(1) above, some are receipts from existing contracts and some are not." "Existing contracts" means pre-8th May 1982 contracts. There are then provisions at some length, setting out what is to happen.

Paragraph 4 is concerned with a situation where a qualifying tariff receipt which is received or receivable by a participator for a chargeable period is referable to the use of a qualifying asset for a period which is not wholly comprised in that chargeable period. For instance, if there is an advance payment for several years of use of some particular asset. It is envisaged that the advance payment might have been intended to cover even more thatn ten years. That has therefore to be reduced so as to be applicable to successive relevant chargeable periods.

Then there is the further complication where there are what are referred to as "straddling" qualifying tariff receipts which relate to more than one relevant chargeable period and also normal qualifying tariff receipts from the same user field for the particular chargeable period. All that is dealt with in paras 4 to 6.

Mr. Moses submitted that those paragraphs really were not workable if the contentions for the taxpayer were correct than in respect of each user field there is not one tariff receipts allowance but a separate tariff receipts allowance in respect of each separate qualifying asset.

I believe that the paragraphs are workable, whichever side is right on the construction of s 9(1), because these are merely ancillary paragraphs which have to be applied, giving effect to s 9(1) and therefore to paras 1 and 2 of the Third Schedule, according to the correct construction of s 9(1). But the Crown can fairly say that para 3 hides a great deal of complexity if the taxpayer is right. Paragraph 3 on its face proceeds on the footing that there are two alternative situations only to be considered. Sub-paragraphs (2) applies—"If the oil to which any of the receipts from existing contracts relate is the same as the oil to which any of the other qualifying tariff receipts relate ...". Sub-paragraph (3) then provides a case where "any of the receipts from existing contracts relate to oil to which the other qualifying tariff receipts do not relate ...". It all seems very simple, but if the taxpayer is right those two sub-paras would in turn have to be applied separately to the oil from existing contracts and from new contracts which has been subjected to each separate process by the use of a different qualifying asset. It would certainly be a more complicated computation than the innocent might suppose from a first reading of para 3.

For the reasons that I have given I would allow this appeal.

Butler-Sloss L.J.:— For the reasons given in the judgment of Dillon L.J. I agree that this appeal should be allowed.

Staughton L.J.:— Section 6(1) of the 1983 Act provides that the positive amounts referred to in s 2 of the 1975 Act "shall be taken to include any tariff receipts of the participator."

There is nothing there to suggest that the tariff receipts are to be divided into groups or bundles; all of them are to be taken as included. That is underlined by s 6(2), by which the tariff receipts are "the aggregate of the amount or value of any consideration" in respect of the use of qualifying asset or services in connection with such use. That must refer to any and every qualifying asset.

Section 9(1) begins with a condition—

A

> "... if, in computing the assessable profit or allowable loss accruing to a participator ... account would be taken, apart from this section, of an amount of qualifying tariff receipts received or receivable by him for that period from a user field ... ."

B

It is true that this may refer to several different amounts from different user fields. But apart from that there is nothing to suggest that several amounts, derived from different groups or bundles of qualifying tariff receipts arising from different assets, are contemplated. On the contrary, the reference must be to the tariff receipts mentioned in s 6(1), subject only to the point that they are now narrowed to qualifying tariff receipts and to a particular user field.

C

I next turn to para 2(1) of Sch 3, which also contains a condition:

> "... where an amount of qualifying tariff receipts ... falls to be treated, for the purpose mentioned in subsection (1) of the principal section, as reduced ... ."

D

That is, in terms, a reference back to s 9(1). If the "amount" in s 9(1) is a single amount for each user field, as I think it is, and not several different amounts, the same must be true of the first "amount" in para 2(1).

E

It follows that, when A in the formula is defined as "the amount of those qualifying tariff receipts", the reference must be to a single amount. And C which is defined as "the amount, in metric tonnes, of the oil to which those qualifying tariff receipts relate" must likewise refer to a single amount.

F

In the same way consideration of the language of the statute persuades me that a participator can have only one share of the tariff receipts allowance for each user field. I have doubts about the use of the word "share" in s 9(1) and para 2(1) in Sch 3, which implies that the participator takes part of the tariff receipts allowance and that another or others take the rest. That is not the case. Any number of participators can have a tariff receipts allowance. What is meant, I think, is the proportion of the tariff receipts allowance appropriate for that participator for a particular user field

G

in a given chargeable period. But however that may be, s 9(1) (a) and 9(4) (a) refer only to a single tariff receipts allowance, and not to two or more. So do paras 2(1) and 3(2) of Sch 3. And s 9(2) says in terms that, for each chargeable period, there shall be "a separate tariff receipts allowance ... in respect of each user field."

H

I cannot read these provisions as permitting or envisaging several tariff receipts allowances for the same participator in respect of the same user field in the same chargeable period.

I

It is argued that a different result emerges when one considers s 9(6) and para 1(2) of Sch 3, with their references to "any asset", "an asset" and "the asset". This is said to show that there must be separate tariff receipts allowances for qualifying tariff receipts derived from different assets. Quite apart from the difficulty of defining what is an asset for this purpose, I do not so read the statutory provisions. Section 9(6)(a) is concerned to provide that a qualifying tariff receipt must be derived from the use of an asset (or, I would add, assets) for certain purposes—extracting, transporting, initially treating or initially storing oil. Section 9(6)(b) adds the further requirements

that the oil must have been won from the user field in question, and that the receipt must be received from a participator in that user field. Much of those provisions is repeated in para 1(2) of Sch 3, which also stipulates that a qualifying tariff receipt is said to relate to particular oil, if that oil is extracted, transported etc. by means of an asset to which the qualifying tariff receipt is referable. I cannot derive from those provisions a rule that there must be a separate tariff receipts allowance for each asset.

In reaching these conclusions I have not attempted to achieve any purposive construction of the detailed provisions of the Act, since I am not sure what their purpose is. It is understandable that there should be a deductible or tax holiday for tariff receipts up to a certain minimum level in respect of each user field, but I do not follow why such a benefit should be afforded to each of any number of participators. It may be that Mr. Whiteman is right in saying that the object is to prevent participators arranging their affairs in some way which would reduce their tax liabilities.

Nor have I found it necessary to dwell upon the anomalies which each side claimed as the result of the other's constructions. It is true that Mr. Whiteman, in order to avoid anomalous consequences from para 3 of Sch 3, has to contend that the paragraph does not apply at all when the two groups of qualifying tariff receipts which it refers to are derived from different assets. I find it difficult to reconcile that with the language of para 3(1); but I suppose that it might have been possible if I had reached a different conclusion on the main aspect of the dispute. The other anomaly relied on by Mr. Moses related to straddling receipts under paras 4 to 6. I am grateful that it has not proved necessary to understand it.

Mr. Whiteman relied on two anomalies, although he preferred to call them something else. First, he observed that if the argument for the Inland Revenue is correct there might come a time when a participator would receive no benefit from a second or subsequent contract in a chargeable period, because the additional tax payable would exceed the receipt which he could earn. Secondly, circumstances could arise where two oil companies as participators would be taxed differently on receipts which were, in themselves, entirely similar. In neither case do I find the result surprising. A participator who has already used up his deductible or tax holiday can expect to fare worse than he would have done if he had not already used it. Furthermore, the same results could, on slightly different facts from those put forward by Mr. Whiteman, arise even if his contruction is correct—although it must be admitted that such facts seem unlikely to arise in the case of his first example.

I too would allow this appeal.

Appeal allowed, with costs. Application for leave to appeal to the House of Lords refused.

The Company's appeal was heard in the House of Lords (Lords Keith of Kinkel, Ackner, Goff of Chieveley, Jauncey of Tullichettle and Browne-Wilkinson) on 12 and 13 November 1991 when judgment was reserved. On

A 12 December 1991 judgment was given unanimously in favour of the Crown, with costs.

Peter Whiteman Q.C. and *Marion Simmons* for the Company.

Alan Moses Q.C. and *Launcelot Henderson* for the Crown.

B

No cases were cited in argument.

C **Lord Keith of Kinkel**:—My Lords, this appeal is concerned with the correct method of calculation of the cash equivalent of the tariff receipts allowance which by s 9 of the Oil Taxation Act 1983 may be available to be deducted from the amount of qualifying tariff receipts received by a participator in an oil field which falls to be taken into account in computing for purposes of petroleum revenue tax (PRT) the assessable profit or allowable loss accruing to the participator from that oil field.

D

PRT was introduced by the Oil Taxation Act 1975. It is charged on the assessable profit accruing to a participator in an oil field during each half-yearly period. That profit is the difference for the period between the sum of the positive and the sum of the negative amounts, as these amounts are elaborately defined in the Act of 1975. The positive amounts include the price E received for oil won from the field which was sold and delivered by the participator during the chargeable period. The negative amounts include expenditure, which may be of a capital nature, incurred in winning the oil. If the positive amounts for the period exceed the negative amounts there is an assessable profit. If the negative amounts exceed the positive amounts for the F period there is an allowable loss.

As the development of North Sea Oil proceeded it was found convenient and economic for newer and more outlying fields to utilise the facilities available to older established fields for the purpose of transporting and processing oil won from the new fields. The participators in the new fields made payG ments to the participators in the established fields for the use of these facilities. Such payments came to be known as tariff receipts. The Act of 1975 did not provide for them to be taken into account as positive amounts in the hands of the recipient. They were first brought into charge by the Act of 1983.

H The tariff receipts which are the subject of this appeal were paid during the relevant chargeable period to the Appellants, BP Oil Development Ltd., by Marathon Oil UK Ltd. The circumstances were thus described in the Case Stated by the Special Commissioners(1):

> "BP owns the Forties Field, which is in the North Sea about 100 miles east of the Scottish coast. The assets of that field include (principally) a pipeline which runs from the field itself to the coast at Cruden I Bay, north of Aberdeen, and thence across country to the Kerse of Kinneil, which is on the Firth of Forth, west of Edinburgh; and processing plant at Kinneil. In addition, there are, in the neighbourhood of the Kerse of Kinneil, temporary storage facilities (for both oil and gas) and

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(1) Page 503B/H *ante*.

terminals at which products are delivered (and, I assume, the means of transporting products between the processing plant and the delivery points, via storage). Some 70 miles north of the Forties Field there lies the Brae Field, owned by a group the leading member of which is Marathon Oil UK Ltd. ('Marathon'). A pipeline, owned by the Marathon group, runs from that field to Forties, where it is connected to BP's pipeline to Scotland.

By an agreement entered into on 15 August 1985, but of which the effective date is agreed to have been 17 June 1980, BP agreed to transport and process pipeline liquids from Marathon's Brae Field. In terms of the payments to be made by the Marathon group, the facilities to be provided by BP fell into three parts:

(i) The transportation of the pipeline liquids from Forties to the Kerse of Kinneil; their separation into crude oil and raw gas (and water, which after treatment, was disposed of into the Firth of Forth); the temporary storage of the crude oil; and its delivery to a shipping terminal. The consideration payable for those operations was 50p per barrel. (For comparison purposes, I understand that seven barrels are approximately equal to one tonne.)

(ii) Processing the raw gas to produce dry gas, propane, butane and C5+ condensate; the temporary storage of the three latter gases: and the delivery of the gases to Grangemouth Dock or other delivery points. The consideration payable for these gas operations was £14.50 per tonne of raw gas.

(iii) Some further processing of dry gas and propane (known as 'sweetening') at 10p per barrel of the original pipeline liquids."

Section 6(1), (2) and (3) of the Act of 1983 provide:

"(1) In computing under section 2 of the principal Act [the Act of 1975] the assessable profit or allowable loss accruing to a participator from an oil field in any chargeable period ending after 30th June 1982, the positive amounts for the purposes of that section (as specified in subsection (3)(*a*) thereof) shall be taken to include any tariff receipts of the participator attributable to that field for that period.

(2) Subject to the provisions of this section, for the purposes of this Act the tariff receipts of a participator in an oil field which are attributable to that field for any chargeable period are the aggregate of the amount or value of any consideration (whether in the nature of income or capital) received or receivable by him in that period (and after 30th June 1982) in respect of—

(*a*) the use of a qualifying asset; or

(b) the provision of services or other business facilities of whatever kind in connection with the use, otherwise than by the participator himself, of a qualifying asset.

(3) Any reference in this Act to the asset to which any tariff receipts are referable is a reference to the qualifying asset referred to in paragraph (*a*) or, as the case may be, paragraph (*b*) of subsection (2) above."

"Qualifying asset" is thus defined by s 8(1) of the Act:

A "Subject to paragraph 4 of Schedule 2 to this Act, for the purposes of this Act a 'qualifying asset', in relation to a participator in an oil field, means an asset—

(*a*) which either is not a mobile asset or is a mobile asset dedicated to that oil field; and

B (*b*) in respect of which expenditure incurred by the participator is allowable, or has been allowed, for that field under section 3 above, section 4 of the principal Act or, subject to subsection (2) below, section 3 of that Act."

C The pipeline by which the Brae Field oil and gas are transported to the Kerse of Kinneil and the storage and processing facilities used in connection with that oil and gas are qualifying assets. So the payments received by BP from Marathon as described by the Special Commissioner are tariff receipts which require to be included in BP's positive amounts in respect of the Forties Field.

D Tariff receipts allowances are dealt with in s 9 and Sch 3 to the Act of 1983. The first six subsections of s 9 provide:

"(1) Subject to the provisions of this section and Schedule 3 to this Act if, in computing the assessable profit or allowable loss accruing to a participator from an oil field (in this section referred to as 'the principal E field') in any chargeable period, account would be taken, apart from this section, of an amount of qualifying tariff receipts received or receivable by him for that period from a user field, then, for the purpose of determining his liability (if any) to tax for that period, the amount of those qualifying tariff receipts shall be treated as reduced as follows, that is to say,—

F (*a*) if that amount exceeds the cash equivalent of his share of the tariff receipts allowance in respect of that user field for that period, to an amount equal to the excess; or

(*b*) if that amount equals the cash equivalent of his share of that allowance, to nil.

G (2) Subject to subsections (3) and (4) below, for the participators in the principal field there shall be, for each chargeable period, a separate tariff receipts allowance of 250,000 metric tonnes in respect of each user field.

H (3) In a case where the whole of the qualifying tariff receipts of the participators in the principal field from a particular user field are receipts under a contract or contracts made before 8th May 1982, subsection (2) above shall have effect with respect to chargeable periods ending on or before 30th June 1987 with the substitution, for 250,000 metric tonnes, of 375,000 metric tonnes.

I (4) Schedule 3 of this Act shall have effect—

(*a*) for determining for the purposes of this section the cash equivalent of a participator's share of the tariff receipts allowance in respect of a user field for a chargeable period; and

(*b*) generally for supplementing subsections (1) to (3) above.

(5) Any reference in this section or in Schedule 3 to this Act to a user field is a reference—

(*a*) to an oil field other than the principal field; or

(*b*) to an area which is not under the jurisdiction of the government of the United Kingdom but which, by an order made by statutory instrument by the Secretary of State for the purposes of this Act, is specified as a foreign field.

(6) In this section—

(*a*) 'qualifying tariff receipts' means tariff receipts in relation to which the principal field is the chargeable field and which are attributable to, or to the provision of services or other business facilities in connection with, the use of any asset for extracting, transporting, initially treating or initially storing oil won otherwise than from the principal field; and

(*b*) any reference to qualifying tariff receipts received from a user field is a reference to any of those receipts which are received from a participator in the user field in respect of the use of an asset for extracting, transporting, initially treating or initially storing oil won from that field or the provision of services or other business facilities in connection with that use;. . ."

The final words of subs (6) are omitted as not being material for present purposes. Paragraphs 1 and 2 of Sch 3 provide:

"1.—(1) In this Schedule—

'the principal section' means section 9 of this Act; 'receipts from existing contracts' means qualifying tariff receipts under a contract or contracts made as mentioned in subsection (3) of the principal section;

and other expressions have the same meaning as in the principal section.

(2) In relation to a user field, any reference in the following provisions of this Schedule to the oil to which any qualifying tariff receipts which are received or receivable in a chargeable period relate is a reference to the oil won from that user field which, in that chargeable period, is extracted, transported, initially treated or initially stored (or subjected to two or more of those operations) by means of the asset to which the qualifying tariff receipts are referable.

2.—(1) Subject to paragraphs 3 and 6 below, where an amount of qualifying tariff receipts received or receivable by a participator in a chargeable period from a user field falls to be treated, for the purpose mentioned in subsection(1) of the principal section, as reduced in accordance with paragraph (*a*) or paragraph (*b*) of that subsection, the cash equivalent of his share of the tariff receipts allowance in respect of that user field for that period is the amount given, subject to sub-paragraph (2) below, by the formula:—

$$£(A \times \frac{B}{C})$$

where—

'A' is the amount of those qualifying tariff receipts;

A 'B' is the tariff receipts allowance in respect of that user field, expressed in metric tonnes; and

'C' is the amount, in metric tonnes, of the oil to which those qualifying tariff receipts relate.

(2) If, apart from this sub-paragraph, the fraction B/C in the formula in sub-paragraph (1) above would exceed unity, it shall be treated as unity for the purposes of this Schedule."

It is common ground between the parties that all the sums received by BP from Marathon during the relevant periods in respect of the use of the facilities described in the Case Stated are qualifying tariff receipts within the meaning of s 9(6). During the six month period to 31 December 1983 1,016,098 metric tonnes of Brae pipeline liquid were accorded the facilities described by the Special Commissioner as "(i)", i.e. transportation to Kerse of Kinneil, temporary storage and delivery to a shipping terminal, and the consideration received from Marathon was £6,279,764. The gas content of that liquid was 16,385 metric tonnes, and this received the processing facilities described by the Special Commissioner as "(ii)" and "(iii)", the consideration paid by Marathon being £2,326,658. The total amount of consideration for all three facilities comes to £8,606,422. The contracts under which the facilities were made available by BP were made before 8 May 1982, so by virtue of s 9(3) of the Act the tariff receipts allowance for the Forties Field in respect of the Brae Field was 375,000 metric tonnes. The Inland Revenue assessed BP to petroleum revenue tax in respect of the period in question on the basis that in applying the formula in para 2(1) of Sch 3, "A" should be the total consideration of £8,606,422 and "C" should be the total metric tonnage of 1,016,098. On that basis the cash equivalent calculation was:

$$£8{,}606{,}422 \times \frac{375{,}000}{1{,}016{,}098} = £3{,}176{,}276$$

thus reducing the chargeable receipts to £5,430,146.

BP appealed to the Special Commissioners against the resultant assessment to petroleum revenue tax, claiming that it was entitled to a separate tariff receipts allowance in respect of each of the qualifying assets which it made available for use by the Brae Field. However, it did not seek to separate out "(ii)" and "(iii)" (the separation and the sweetening facilities) since to do so would not result in any difference to the mathematical result. On BP's basis the cash equivalent for the transportation operation would be:

$$£6{,}279{,}764 \times \frac{375{,}000}{1{,}016{,}098} = £2{,}317{,}603$$

and that for the other operations:

$$£2{,}326{,}658 \times \frac{375{,}000}{16{,}385}$$

which, applying the unity rule in para 2(2) of Sch 3, would come to £2,326,658. The two sums of money added together amount to £4,644,261, which being deducted from the total receipts of £8,606,422 leaves a chargeable amount of £3,962,161. The Special Commissioner who heard BP's appeal rejected its contention and sustained that of the Inland Revenue,

affirming in consequence the assessment to petroleum revenue tax. He dealt similarly with an assessment for the period to 30 June 1984, against which BP had appealed on the same grounds, and which does not require separate consideration, the same principles being applicable to both appeals. BP appealed to the High Court, where Vinelott J. on 29 July 1988 accepted its argument and reversed the Special Commissioner. However, on appeal by the Inland Revenue the Court of Appeal, (Dillon, Butler-Sloss and Staughton L.JJ.) on 11 July 1990 reversed Vinelott J. and restored the decision of the Special Commissioner. BP now appeals, with leave given here, to your Lordships' House.

The argument for BP depends essentially upon reading the word "asset" where that word appears in s 9(6)(*a*) and (*b*) of the Act and in para 1(2) of Sch 3 as being restricted to the singular, and not as including the plural, as it would normally do under the Interpretation Act. By this means it is sought to bring about the result that each particular amount of qualifying tariff receipts which is derived from the use of a particular asset for any of the specified purposes, i.e. extracting, transporting, initially treating or initially storing oil won from the user field, is entitled to a separate tariff receipts allowance. The argument is sought to be buttressed by the anomalies which it is said would arise from a contrary construction. One of the supposed anomalies pointed to is that, in the event that a contract entered into for dealing with oil won from a user field by the use of a particular asset leads to an amount of qualifying tariff receipts such that, having regard to the quantity of oil dealt with, the whole of the tariff receipts allowance is used up, a later contract for dealing with a further quantity of oil through the use of a different asset could have the result that the participator in the principal field would be liable to a charge for petroleum revenue tax exceeding the total amount of tariff receipts under the second contract. Such consequences, so it is maintained, would frustrate the purpose of the Act of encouraging participators in established oil fields to make facilities available to newer and more outlying fields.

I am of the opinion, however, that on a true construction of the relevant provisions of the Act it is plain that its intention is to make only one tariff receipts allowance available to a participator in a principal field in respect of the use by a user field of assets of the principal field for the specified purposes. In the first place, s 6 requires the whole of the tariff receipts attributable to his field to be included in the positive amounts of a participator for the purpose of computing his assessable profit or allowable loss under s 2 of the Act of 1975 for any chargeable period. This follows from the reference in subs (1) of s 6 to "any tariff receipts" and in subs (2) to "the aggregate of the amount or value of any consideration" received by the participator in respect of the specified matters. It is clear that any number of qualifying assets may contribute to the aggregate of such consideration. Section 9 of the Act of 1983 proceeds to provide for the tariff receipts allowance. Subsection (1) refers to the amount of qualifying tariff receipts from a user field which would fall to be taken into account (viz. under s 6) in computing the participator's assessable profit or allowable loss for the chargeable period. That must be the whole amount of such qualifying tariff receipts, not particular parts of them derived from the use of particular qualifying assets. Likewise, in paras (*a*) and (*b*) of the subsection, it is that whole amount which is envisaged as either exceeding the cash equivalent of the participator's share of the tariff receipts allowance in respect of the user field or as being equal to that cash equivalent. Subsection (2) of s 9 provides that the

participators in the principal field are to have for each chargeable period a separate tariff receipts allowance of a stated number of metric tonnes in respect of each user field. This must mean that there is to be one tariff receipts allowance only in respect of each user field, not any number of different allowances depending on the number of qualifying assets which are used to provide facilities to the user field.

Turning now to Sch 3, which deals with the method of determining the cash equivalent of the tariff receipts allowance, para 1(2) contains a definition which is relevant to the factor "C" which appears in the formula set out in para 2(1). "C" is there stated to be "the amount, in metric tonnes, of the oil to which those qualifying tariff receipts [viz. those in factor "A"] relate." That oil, under para 1(2), is "the oil won from that user field which, in that chargeable period, is extracted, transported, initially treated or initially stored (or subjected to two or more of those operations) by means of the asset to which the qualifying tariff receipts are referable." It is apparent that different assets are likely to be used in carrying out each of the four specified operations. So quite apart from the Interpretation Act it is apparent that the word "asset" is to be read as impliedly including the words "or assets", thus indicating that the qualifying tariff receipts may be referable not to one asset only, but to a group of assets. The next step is to identify the factors "A" and in the formula £(A x B/C) which appears in para 2(1), factor "B", of course, being the fixed amount of 250,000 or 375,000 metric tonnes, as the case may be. "A" is the "amount of qualifying tariff receipts received...by a participator in a chargeable period from a user field [which] falls to be treated, for the purpose mentioned in subs (1) of [s 9], as reduced in accordance with para (*a*) or para (*b*) of that subsection. As already observed, the amount of such qualifying tariff receipts which falls to be so reduced under s 9(1) is the whole of the qualifying tariff receipts which fall to be taken into account in computing assessable profit or allowable loss, not particular discrete amounts of qualifying tariff receipts derived from the use of particular assets. The oil to which that whole amount of tariff receipts relates (factor "C") is the whole of the oil which has been subjected to any one or more of the four operations mentioned in para 1(2) by means of any one or more of the qualifying assets to which the qualifying tariff receipts are referable, i.e. the whole group of such assets. So the Inland Revenue's method of calculating the cash equivalent of the tariff receipts allowance is correct.

I am unable to find any ambiguity in the provisions examined above such as might warrant construing them so as to give fuller effect to what BP claims to be the purpose of introducing the tariff receipts allowance, namely that of encouraging participators in established fields to make their facilities available to new fields. No doubt the larger the cash allowance the more such encouragement would be given. But the question at issue relates to the extent in cash of the allowance Parliament has actually thought fit to grant, and I consider that this can be ascertained with reasonable certainty from the language used in the relevant provisions of the Act.

My Lords, for these reasons, which are essentially the same as those founded on by the Court of Appeal, I would dismiss this appeal, with costs.

Lord Ackner:—My Lords, I have read the speeches of my noble and learned friends Lord Keith of Kinkel and Lord Jauncey of Tullichettle. For the reasons which they give, I too would dismiss this appeal.

Lord Goff of Chieveley:—My Lords, I have had the advantage of reading the speech of my noble and learned friend, Lord Keith of Kinkel and, for the reasons which he gives, I too would dismiss this appeal.

Lord Jauncey of Tullichettle:—My Lords, this appeal is concerned with the proper method of calculating the monetary value of a tariff receipts allowance available to a participator in an oil field in computing his assessable profit for the purposes of petroleum revenue tax. That tax was introduced by the Oil Taxation Act 1975 and is charged on profits from oil won under the authority of a licence during a chargeable period, which, for practical purposes, is defined as each half-year ending at the end of June or December. The tax is charged on the profits accruing to each participator in an oil field,a participator being broadly defined as a person who is a licensee of any licensed area in the field. Profits are computed by reference to the difference between the aggregate of positive and negative amounts, which latter can include expenditure on assets both of a capital and revenue nature (s 2).

Between 1975 and 1983 there evolved a system whereby operators of smaller oil fields in the North Sea, whose oil reserves did not justify the construction of separate pipelines to the mainland or islands of Scotland, connected their fields to larger established fields (principal fields) and paid to the operators of the principal fields a charge for the landward transportation of their oil through the pipelines of the latter fields and for other associated facilities. The payments received by the operators of the principal fields for the provision of those services came to be known as tariff receipts which were taken into account for the purposes of computing corporation tax but not petroleum revenue tax. The Oil Taxation Act 1983 altered the position by providing that tariff receipts should be included in positive amounts for the purposes of computing profits assessable to petroleum revenue tax but also provided that in certain circumstances a tariff receipts allowance expressed in metric tonnes should be given to reduce the tariff receipts to be included in the positive amounts. Your Lordships were informed that the purpose of this allowance was to encourage operators of principal fields to make available to smaller fields (user fields) the use of expensive assets of which the cost, at least on first coming into operation, such user fields could not afford.

In this case the Revenue have all along accepted that BP as operators of a principal field were entitled to a tariff receipts allowance but the parties have differed as to how the cash equivalent thereof should be calculated. BP's appeal against assessments for the two six-months periods ending 31 December 1983 and 30 June 1984 were rejected by a Special Commissioner but their appeal against his decision was upheld by Vinelott J. ([1989] STC 213). The Crown thereafter successfully appealed to the Court of Appeal [1990] STC 632). The facts were agreed and are set out in the following passage from the Special Commissioner's decision(1):

> "BP owns the Forties Field, which is in the North Sea about 100 miles east of the Scottish coast. The assets of that field include (principally) a pipeline which runs from the field itself to the coast at Cruden Bay, north of Aberdeen,and thence across country to the Kerse of Kinneil, which is on the Firth of Forth, west of Edinburgh; and processing plant at Kinneil. In addition, there are, in the neighbourhood of the

(1) Page 503B/H *ante*.

A Kerse of Kinneil, temporary storage facilities (for both oil and gas) and terminals at which products are delivered (and, I assume, the means of transporting products between the processing plant and the delivery points, via storage).

Some 70 miles north of the Forties Field there lies the Brae Field,
B owned by a group the leading member of which is Marathon Oil UK Ltd.('Marathon'). A pipeline, owned by the Marathon group, runs from that field to Forties, where it is connected to BP's pipeline to Scotland.

By an agreement entered into on 15 August 1985, but of which the effective date is agreed to have been 17 June 1980, BP agreed to trans-
C port and process pipeline liquids from Marathon's Brae Field. In terms of the payments to be made by the Marathon group, the facilities to be provided by BP fell into three parts:

(i) The transportation of the pipeline liquids from Forties to the Kerse of Kinneil; their separation into crude oil and raw gas (and water, which after treatment, was disposed of into the Firth of Forth); the tem-
D porary storage of the crude oil; and its delivery to a shipping terminal. The consideration payable for those operations was 50p per barrel. (For comparison purposes, I understand that seven barrels are approximately equal to one tonne.)

(ii) Processing the raw gas to produce dry gas, propane, butane and
E C5+ condensate; the temporary storage of the three latter gases; and the delivery of the gases to Grangemouth Dock or other delivery points. The consideration payable for these gas operations was £14.50 per tonne of raw gas.

(iii) Some further processing of dry gas and propane (known as
F 'sweetening') at 10p per barrel of the original pipeline liquids."

Having set out the background against which this appeal arises I turn to consider in detail the relevant statutory provisions. I take as a starting point the charging section, s 6 of the Act of 1983 which has, *inter alia*, the follow-
G ing terms:

"(1) In computing under section 2 of the principal Act the assessable profit or allowable loss accruing to a participator from an oil field in any chargeable period ending after 30th June 1982, the positive amounts for the purposes of that section (as specified in subsection (3)(*a*) thereof) shall be taken to include any tariff receipts of the
H participator attributable to that field for that period.

(2) Subject to the provisions of this section, for the purposes of this Act the tariff receipts of a participator in an oil field which are attributable to that field for any chargeable period are the aggregate of the amount or value of any consideration (whether in the nature of
I income or capital) received or receivable by him in that period (and after 30th June 1982) in respect of:

(*a*) the use of a qualifying asset; or

(*b*) the provision of services or other business facilities of whatever kind in connection with the use, otherwise than by the participator himself, of a qualifying asset.

(3) Any reference in this Act to the asset to which any tariff receipts are referable is a reference to the qualifying asset referred to in paragraph (*a*) or, as the case may be, paragraph (*b*) of subsection (2) above."

A qualifying asset is defined in s 8(1) in relation to a participator in an oil field as meaning:

"... an asset—

(*a*) which either is not a mobile asset or is a mobile asset dedicated to that oil field; and

(*b*) in respect of which expenditure incurred by the participator is allowable, or has been allowed, for that field under section 3 above, section 4 of the principal Act or, subject to subsection (2) below, section 3 of that Act."

It will be noted that an asset qualifies only when expenditure in relation thereto is allowable for the purposes of that Act or of the principal Act of 1975. The rationale appears to be that where expenditure is allowable in respect of an asset, receipts derived from the use of that asset by a third party are properly chargeable to tax.

Section 9 provides for the tariff receipts allowance and is for the purpose of the present appeals in *inter alia* the following terms:

"(1) Subject to the provisions of this section and Schedule 3 to this Act if, in computing the assessable profit or allowable loss accruing to a participator from an oil field (in this section referred to as 'the principal field') in any chargeable period, account would be taken, apart from this section, of an amount of qualifying tariff receipts received or receivable by him for that period from a user field, then, for the purpose of determining his liability (if any) to tax for that period, the amount of those qualifying tariff receipts shall be treated as reduced as follows, that is to say,—

(*a*) if that amount exceeds the cash equivalent of his share of the tariff receipts allowance in respect of that user field for that period, to an amount equal to the excess; or

(*b*) if that amount equals the cash equivalent of his share of that allowance, to nil.

(2) Subject to subsections (3) and (4) below, for the participators in the principal field there shall be, for each chargeable period, a separate tariff receipts allowance of [375,000] metric tonnes in respect of each user field.

...

(4) Schedule 3 to this Act shall have effect—

(*a*) for determining for the purposes of this section the cash equivalent of a participator's share of the tariff receipts allowance in respect of a user field for a chargeable period; and

(*b*) generally for supplementing subsections (1) to (3) above.

A (5) Any reference to this section or in Schedule 3 to this Act to a user field is a reference—

(*a*) to an oil field other than the principal field; or...

(6) In this section—

B (*a*) 'qualifying tariff receipts' means tariff receipts in relation to which the principal field is the chargeable field and which are attributable to, or to the provision of services or other business facilities in connection with, the use of any asset for extracting, transporting, initially treating or initially storing oil won otherwise than from the principal field; and

C (*b*) any reference to qualifying tariff receipts received from a user field is a reference to any of those receipts which are received from a participator in the user field in respect of the use of an asset for extracting, transporting, initially treating or initially storing oil won from that field or the provision of services or other business facilities in connection with that use;

D ..."

Schedule 3 is headed "Tariff Receipts Allowance—*The participator's share*" and paras 1 and 2 thereof are in the following terms:

E "1.—(1) In this Schedule:

'the principal section' means section 9 of this Act;

...

and other expressions have the same meaning as in the principal section.

F (2) In relation to a user field, any reference in the following provisions of this Schedule to the oil to which any qualifying tariff receipts which are received or receivable in a chargeable period relate is a reference to the oil won from that user field which, in that chargeable period, is extracted, transported, initially treated or initially stored (or subjected to two or more of those operations) by means of the asset to which the qualifying tariff receipts are referable.

G 2.—(1) Subject to paragraphs 3 and 6 below, where an amount of qualifying tariff receipts received or receivable by a participator in a chargeable period from a user field falls to be treated, for the purpose mentioned in subsection(1) of the principal section, as reduced in accordance with paragraph (*a*) or paragraph (*b*) of that subsection, the cash equivalent of his share of the tariff receipts allowance in respect of that user field for that period is the amount given, subject to sub-paragraph (2) below, by the formula:—

H

$$\pounds\left(A \times \frac{B}{C}\right)$$

I

where—

'A' is the amount of those qualifying tariff receipts;

'B' is the tariff receipts allowance in respect of that user field, expressed in metric tonnes; and

'C' is the amount, in metric tonnes, of the oil to which those qualifying tariff receipts relate.

(2) If, apart from this sub-paragraph, the fraction B/C in the formula in sub-paragraph (1) above would exceed unity, it shall be treated as unity for the purposes of this Schedule."

The broad effect of s 9 when read together with Sch 3 is to confer upon a participator in a principal field a single allowance measured in metric tonnes whose cash equivalent can be set against qualifying tariff receipts received from a user field. Because "B" in the formula is a constant it follows that as the amount of oil to which the qualifying tariff receipts relate increases beyond 375,000 metric tonnes so does the proportion which the cash equivalent of the tariff receipts allowance bears to the qualifying tariff receipts decrease. In short, the tariff receipts allowance is most valuable to a participator when the through-put of oil ("C") is at or below 375,000 metric tonnes.

In his statement of the facts the Special Commissioner referred to three separate facilities provided by BP to Marathon, namely, (1) transportation of the pipeline's liquids, (2) processing the raw gas to produce dry gas, and (3) sweetening the dry gas. A total of 1,016,098 metric tonnes of pipeline liquids were transported at a cost of £6,279,764 and out of this total 16,385 metric tonnes were further processed and sweetened at a cost of £2,326,658.

BP's contention has all along been that in order to determine the cash equivalent of the tariff receipts allowance available in respect of qualifying tariff receipts received from the Brae Field, it was necessary to apply the formula in para 2(1) Sch 3 twice, namely (1) where "A" is the sum of the qualifying tariff receipts attributable to the transportation facilities, and (2) where "A" is the sum of those receipts attributable to the processing and sweetening facility, and thereafter to aggregate the two resultant figures in order to determine the total cash equivalent which falls to be set against the total qualifying tariff receipts received from Marathon for the purposes of s 9(1). BP's contention produces the following results:

(1) *Transportation* 6,279,764 x 375,000/1,016,098 = £2,317,603

(2) *Processing and Sweetening* 2,326,658 x 375,000/16,385 = £2,326,658, by application of the unity rule in para 2(2) of Sch 3. The result of these two calculations is that a total cash equivalent of £4,644,261 falls to be set against total receipts of £8,606,422 leaving a sum of £3,962,161 chargeable to tax. The Revenue's contention is that the formula is applied only once where "A" represents all qualifying tariff receipts received from the Brae Field in the relevant chargeable period. The Revenue's contention produces a cash equivalent of £3,176,276 by the formula of £8,606,422 x 375,000/1,016,098 = £3,176,276 leaving a sum of £5,430,146 chargeable to tax.

Mr. Whiteman for BP argued strenuously that the whole scheme of ss 6 to 9 and Sch 3 of the Act of 1983 when read together with ss 3(5) and 4(1) of the Act of 1975 was to link tariff receipts to the qualifying asset which had enabled the participator in the principal field to earn those receipts. Sections 3 and 4 of the Act of 1975 deal respectively with allowance of expenditure other than expenditure on long term assets and with allowance of expenditure on long term assets. In claiming that any item of expenditure is allow-

able it is of course essential for a participator to identify the asset in respect of which the expenditure has been or will be incurred. Once expenditure is allowed or allowable under one or other of these two sections the asset in question becomes a qualifying asset for the purposes of s 8(1) of the Act of 1983. Tariff receipts earned by the use of such an asset are brought into charge by s 6 of the Act of 1983 but the identification of an asset as qualifying does not infer that such assets have to be isolated asset by asset for the purposes of the application of the formula in para 2(1) of Sch 3.

Mr. Whiteman relied particularly on the use of the word "asset" in the singular in the context of tariff receipts. Such use, he submitted, demonstrated that the legislature was linking tariff receipts to particular assets and was providing for the ascertainment of a separate cash equivalent in relation to qualifying tariff receipts derived from the use of particular qualifying assets. He referred to ss 6(2) and (3), 9(6) and para 1(2) of Sch 3 in support of this proposition. He also referred to certain anomalies which would result if the Revenue's contention were accepted but would be avoided if BP's submissions were correct—anomalies which Vinelott J. sought to avoid by the interpretation which he placed upon s 9 and paras 1 and 2 of Sch 3.

My Lords, I consider that the foregoing contentions over-emphasise the importance of the use of the word "asset" in the singular. The proper approach in my view is, as is so often the case in taxation problems, to start by examining the charging section. Section 6(1) read short provides that "in computing the assessable profit ... accruing to a participator ... positive amounts ... shall be taken to include any tariff receipts of the participator attributable to that field ..." Since all positive amounts in a chargeable period have to be taken into account for the purposes of s 2 of the Act of 1975, s 6(1) must apply to all tariff receipts in such period. Therefore when s 6(2) provides that the tariff receipts of a participator attributable to a field are "the aggregate of the amount ... received ... in respect of (*a*) the use of a qualifying asset; ..." it must also apply to all the tariff receipts. It cannot therefore be read as referring only to those receipts derived from a single asset. The word "asset" in s 6(2) must, therefore, be read as comprehending the plural as well as the singular. While s 6 brings into charge all tariff receipts, which are derived from the use of a qualifying asset, s 9 provides that the tariff receipts allowance can only be set against the narrower class of qualifying tariff receipts as therein defined. It is obvious that the reference in s 9(1) to "an amount of qualifying receipts received ... from a user field" must be to the qualifying tariff receipts which, by virtue of s 6(1), have to be taken into account in determining the positive amounts for the purposes of s 2 of the Act of 1975, that is to say all qualifying tariff receipts from the particular user field in the relevant chargeable period. Thus the amount of "those qualifying tariff receipts" which fall to be reduced in terms of the subsection is once again all the qualifying tariff receipts from the particular user field. The tariff receipts allowance is accordingly applied to the above totality. Paragraph 2(1) of Sch 3 repeats the words "an amount of qualifying tariff receipts" from s 9(1), which words must therefore again be construed as meaning all the qualifying tariff receipts from the particular user field. In the formula "A" is the amount "of those qualifying tariff receipts" which must in turn refer back to "an amount of qualifying tariff receipts", and thus all the qualifying tariff receipts. If all the qualifying tariff receipts derived from one user field have to enter the formula at the same time it follows that to apply that formula more than once in relation to one user field would be to arrive at a cash equivalent of more than one tariff receipts allowance. The position

is quite clear, namely, that s 9 provides for one tariff receipts allowance in respect of each user field irrespective of the number of participators in the principal field and that para 2 of Sch 3 provides for one application of the formula to convert that allowance into a single cash equivalent. There is simply no warrant for separate applications of the formula to separate qualifying tariff receipts derived from individual qualifying assets. BP by seeking to apply the formula to different sets of receipts misconstrue the plain meaning of the words "an amount of qualifying tariff receipts" where they occur in s 9(1) and in para 2(1) Sch 3. That is sufficient for the disposal of this appeal but in deference to the able arguments addressed to your Lordships from both sides of the Bar I refer to two further statutory provisions to which submissions were addressed.

Mr. Whiteman submitted that s 9(1) must be read subject to the provisions of s 9(6) and of paras 1 and 2 of Sch 3 and that s 9(6)(*b*) clearly related qualifying receipts to the individual asset whose use had produced them. I cannot accept this submission. Section 9(6)(*a*) defines qualifying tariff receipts as being tariff receipts attributable to the use of any asset for one of four specified operations in relation to oil won otherwise than from the principal field. Section 9(6)(*b*) then goes on to apply that definition to those receipts received from a user field in relation to oil won therefrom. The paragraphs distinguish between payments to a participator in a principal field from a participator in a user field in respect of oil won from that user field and in respect of oil won elsewhere than from the principal and user fields. Thus if in the present case Marathon had passed from the Brae Field and paid for oil therefrom and from the Heimdal Field to BP for onward transportation to the mainland, the proportion of the sums payable by Marathon in respect of Heimdal oil would not be qualifying tariff receipts in the hands of BP. However there is nothing in the subsection to qualify the clear meaning of the words "an amount of qualifying tariff receipts" in subs 1. Mr. Whiteman also relied on para 1(2) of Sch 3 as demonstrating that qualifying tariff receipts were related to individual assets. That sub-paragraph defines for the purposes of the Schedule oil to which any qualifying tariff receipts relate as being oil which is processed by means of the asset to which the qualifying tariff receipts are referable. That definition is also applicable to "C" in the formula in para 2(1) from which it follows that "C" applies to receipts derived from a single asset. Once again there is no justification for reading the word "asset" as confined to the singular and in any event this suggested construction is quite inconsistent with "A" in the formula covering all the relevant qualifying tariff receipts. It would of course make a nonsense of the formula if "A" related to all the qualifying tariff receipts from whatsoever assets derived but "C" only related to those derived from the use of a single asset.

At the end of the day the arguments for BP involve writing into the unambiguous provisions of s 9 and paras 1 and 2 of Sch 3 of the Act of 1983 words designed to limit references to qualifying tariff receipts to those derived from the use of individual qualifying assets. There is no justification for such an implication and as those provisions are unambiguous it does not avail BP to show that their application can in certain circumstances produce anomalies.

My Lords, for all these reasons and in agreement with my noble and learned friend, Lord Keith of Kinkel I consider that the appeal should be dismissed and the Order of the Court of Appeal confirmed.

A **Lord Browne-Wilkinson**:—My Lords, I have read the speeches of my noble and learned friends Lord Keith of Kinkel and Lord Jauncey of Tullichettle. For the reasons which they give, I too would dismiss this appeal. A

Appeal dismissed, with costs.

B [Solicitors:—Ms. L.O. Buckle (The British Petroleum Co. plc for the Company in the High Court); K.J.M. Walder Esq. (Group Legal Adviser, B.P., for the Company in the Court of Appeal and House of Lords); Solicitor of Inland Revenue.] B

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