

Yesterday, the Dutch Minister of Economic Affairs (MEA) published the long-awaited legislative proposal to amend the Mining Act in respect of the financial incentive for the development of marginal gas fields offshore. In this newsletter, we outline the main aspects of the financial incentive. Furthermore, we address a legislative proposal regarding the statutory gas purchase and transport guarantee, which may be relevant to the development of marginal gas fields.

In addition to the amendments to the Netherlands' Small Field Policy, we summarise particular changes to the Dutch corporation tax regime, which form part of a package of measures to improve the liquidity position of Dutch taxpayers. These measures were announced by the Dutch government as part of the proposals to counter the economic crisis. For oil and gas companies that are active in the Netherlands, the loss carry-back provisions may be especially relevant. Furthermore, oil and gas companies may benefit from the depreciation-at-will regime, which was reintroduced as of the beginning of 2009, in accordance with the announcement in late 2008.

Finally, we touch on the developments in respect of the proposed amendment to the Dutch tax treatment of group loans and participations, as well as on specific announcements that were made in respect of the UK North Sea tax regime. Although the latter do not have a direct impact on Dutch taxpayers, they may contribute to a general understanding of current trends in the E&P industry.

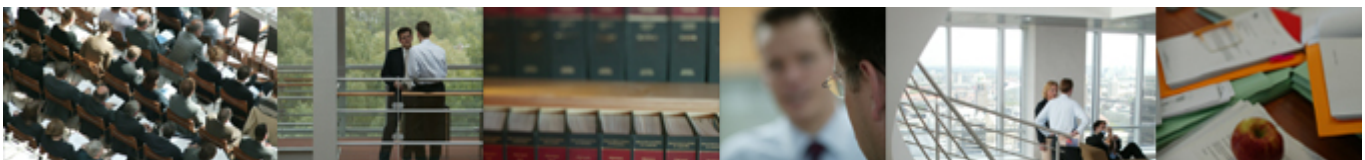
Amendments to Small Field Policy

Financial incentive for development of marginal gas fields offshore

The main objective of the Netherlands' Small Field Policy is to fully exploit the existing infrastructure to efficiently and effectively develop and produce the remaining gas reserves in the Netherlands and on the Dutch part of the continental shelf to the maximum extent. In this respect, as mentioned in our December 2008 newsletter, the MEA announced a financial incentive. Yesterday, a legislative proposal was published to implement the financial measures in the Mining Act.

The legislative proposal introduces a provision which allows offshore gas licence holders to deduct, for state profit share purposes, an additional amount of 25% of their capital expenditures in respect of qualifying offshore gas fields. This deduction will be allowed in addition to the regular depreciation charges upon request of the licence holder. Whether a gas field qualifies for this facility will be determined on the basis of (i) the distance to the existing infrastructure, (ii) the expected size of the gas field and, (iii) the expected productivity.

According to the proposal, the financial incentive will apply to both the costs of acquisition or construction of newly manufactured assets, and to the acquisition of 'second-hand' assets. The explanatory notes to the legislative proposal state that qualifying assets include pipelines, wells and platforms, as well as installations connected thereto. The proposed statutory regulation explicitly states that exploration wells and appraisal wells are considered qualifying assets.



If the asset is not put into use in the year in which it is acquired or constructed, the amount of additional deduction in the relevant tax year is capped at the amount paid in such a year. Any excess additional deduction may be rolled over to the next year, subject to the same limitation (i.e. the amount actually paid in such year, until the asset is put into use).

The possibility to claim the additional deduction does not appear to depend on the application by the licence holder of the depreciation-at-will regime (see also below). It should be noted, however, that the additional deduction does not form part of the cost basis for computing the uplift for state profit share purposes.

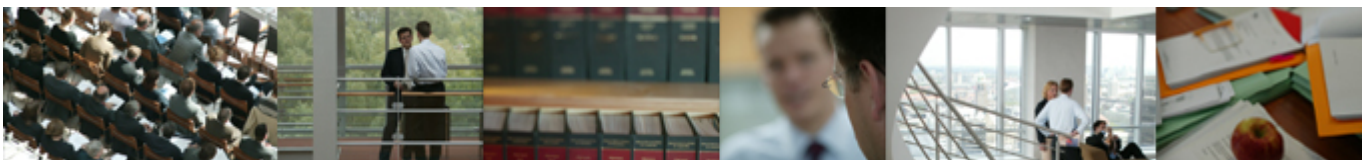
The financial incentive will only enter into force if confirmation is received from the European Committee that the incentive does not constitute illegal state aid. Furthermore, the introduction of the incentive is subject to the conclusion of a covenant between the Dutch authorities and the industry, which will ensure an active use of licences. This covenant should provide procedural arrangements whereby licence holders undertake to engage in activities, individually or with third parties, in those segments of the licence area in which no significant activity has hitherto taken place.

Once these conditions have been satisfied, the incentive should enter into force by Royal Decree, in which the effective date will be specified. In this respect it is relevant to know that the additional deduction is considered to form part of the losses that may be available for carry-over. For state profit share purposes losses may be carried back for three years and carried forward indefinitely. In this respect, the loss carry-over rules for state profit share purposes deviate from those for corporation tax purposes, whereby the carry-back is restricted to one year and the carry-forward to nine years (see also below).

Limitation to gas purchase and transport guarantee

In the meantime, however, a Bill to amend the Gas Act and the Electricity Act 1998 that inter alia provides for an amendment of the Netherlands' Small Field Policy was sent to Parliament. To implement the objective of the Small Field Policy, the Gas Act provides for two important articles. Article 54 of the Gas Act obliges GasTerra to buy all gas offered to it and produced from the marginal fields (in practice: almost every field except the Groningen field) at market-based prices and under reasonable conditions. Article 54a stipulates that the Transmission System Operator of the high pressure gas transportation network, GastransportServices (GTS), must transport the gas produced from the marginal fields and that it must provide the necessary infrastructure. These two articles provide sufficient security for investors in gas production in the Netherlands to market the gas. GTS is allowed to pass the costs of the investments in the infrastructure that are necessary to comply with this statutory task in the tariffs on to users. GTS can be relieved of its statutory obligation to transport the gas (and to provide for the necessary infrastructure) only if it would encounter serious economic and financial difficulties in the fulfilment of this obligation.

The Bill enlarges this exemption ground. The MEA considers that there is a risk that, in the near future, specifications of natural gas produced from marginal fields may deviate from the specifications of the transportation network to such an extent that additional investments will be necessary to allow for transportation of this gas.



In this light, the MEA considers that these investments may not be socially feasible as the costs are to be passed on to the users of the grid.

The Bill therefore states that GTS will have to report to the MEA any planned investments in the grid in order to comply with its statutory obligation pursuant to Article 54a of the Gas Act. In cases in which the MEA is of the opinion (after consultation with the Dutch Competition Authority and the 100% state-owned gas production participation company EBN) that the necessary investment costs are too high in comparison to the objective of the Small Field Policy, GTS may be relieved from its obligation to transport such gas.

The Bill states that if GTS is relieved of its transportation obligation by the MEA, GasTerra will also be relieved from its statutory obligation to purchase the gas from the producers. In such an event, the producer has no option other than to try to sell its gas to a purchaser that is willing to pay (part of) the transportation (and transformation) costs.

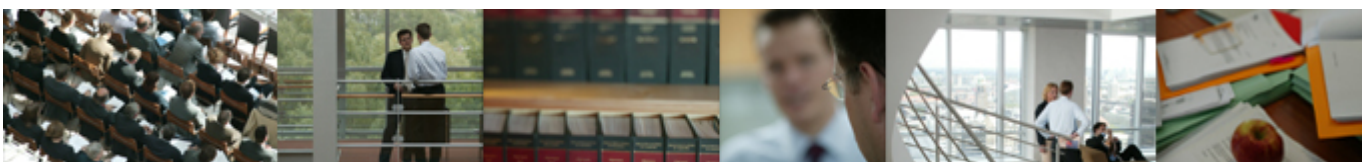
As the Bill allows for a limitation of the guaranteed transportation obligation by GTS, it allows for a limitation of the guaranteed purchase obligation by GasTerra and, therefore, for a limitation of the Small Field Policy. Currently the Gas Act only allows for an exemption of the transportation obligation if GTS encounters serious economic and financial difficulties. In view of the economic and financial position of GTS, this is unlikely to occur. If the Bill is accepted, the test will be lighter for GTS as it will involve a 'social feasibility' study that is likely to include an assessment of the profitability of the gas and the transportation costs by the MEA. The advantage of the current Small Field Policy is that such assessment by the MEA does not exist in practice. This effectively leaves the decision on the economic feasibility of gas production in the Netherlands in the hands of the producers, who can base their decision on the price of the gas offered by GasTerra. In their future exploration activities, however, producers will have to make sure that the gas in the reserves meets the specifications of the GTS transmission system otherwise they may encounter difficulties selling it.

This amendment is subject to a transitory regime as a result of which these new provisions do not apply to any gas reserve that is already the subject of a gas sales agreement entered into by the holder of a production licence for that gas reserve.

Relaxation of loss carry-back rules

Pursuant to the Dutch loss carry-over rules, for corporation tax purposes tax losses can be carried forward for nine years and carried back for one year. In principle, a repayment of corporation tax that results from the carry-back of a tax loss incurred in 2008 is only made if and when the 2008 corporation tax return has been filed by the taxpayer, and the 2007 tax assessment has been finally issued. In order to expedite the possibilities for companies to benefit from the carry-back of losses, these formalities have been relaxed.

The Underminister of Finance has issued a resolution whereby it is approved that a tax loss that is incurred by a company in 2008 can be carried back to 2007, and that an advance repayment of corporation tax will be made, if the following conditions are satisfied:



- (i) The taxpayer provides information to the tax inspector – e.g. draft annual accounts – which support that a tax loss was incurred in 2008; and
- (ii) A preliminary tax assessment has been issued in respect of the year 2007.

If the taxpayer has requested an advance repayment of corporation tax that exceeds the amount to which the taxpayer turns out to be entitled, the taxpayer will have to remit such excess, increased with interest, to the tax authorities without delay. The interest rate charged by tax authorities varies per quarter, and is currently 3.50% (over the last year it ranged from 4.75% to 5.45%).

It should be noted that the tax inspector is not required to grant an advance repayment of corporation tax if (a) the 2007 tax assessment is scheduled to be issued shortly, and (b) the 2008 tax return has been submitted. Therefore, if advance repayment is desired, it is recommended to request the repayment prior to filing the 2008 tax return.

Reintroduction of depreciation-at-will regime

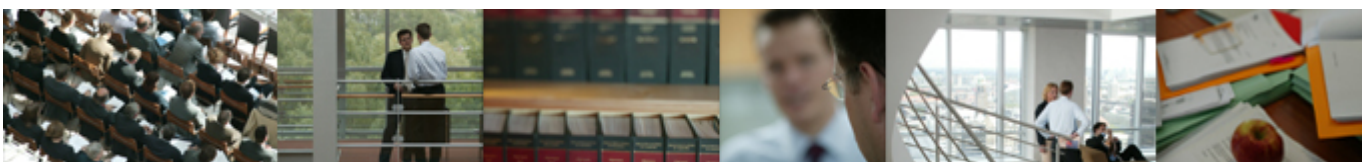
As of 1 January 2009, the depreciation-at-will (DAW) regime was enacted for investments made between 1 January 2009 and 31 December 2009. Qualifying investments may be depreciated over two years, up to a maximum of 50% in both 2009 and 2010.

Certain investments, such as intangible assets and office buildings, are excluded from the DAW regime. However, E&P-related assets are generally eligible for the DAW regime.

The DAW regime is subject to the following conditions and limitations:

- (i) As mentioned above, the regime applies to investments made in 2009. It was clarified that this implies that the asset must be acquired or ordered in 2009;
- (ii) The asset must be put into use by 31 December 2011 at the latest. An exception to this general rule may apply if its first use is delayed due to circumstances that cannot be controlled by the taxpayer (e.g. bankruptcy of the manufacturer);
- (iii) The asset must be newly manufactured. Assets that have been used before do not qualify for the DAW regime;
- (iv) If the asset has a residual value, the maximum amount that may be depreciated over the years 2009 and 2010 is the difference between the amount of the investment and the residual value; and
- (v) Prior to the first use of the asset, the depreciation that can be taken into account is capped at the amount that has actually been paid by the taxpayer.

It should be noted that the DAW regime does not apply to assets that are made available by the taxpayer to third parties or group companies.



To determine the amount of depreciation for state profit share purposes in the Mining Act, reference is made to the relevant articles of the Dutch 1969 Corporation Tax Act. As a result, the DAW regime is also applicable for state profit share purposes.

Amendments to tax treatment of group loans and participations

In our December 2008 newsletter, we mentioned the contemplated amendments to the tax treatment of interest on group loans and interest relating to the acquisition of qualifying participations, as well as particular accompanying amendments. Various alternatives have already been investigated by the Ministry of Finance (MoF).

Since the announcement of the amendments by the MoF, the market has speculated on the exact content of the amendments and there have been rumours regarding the alternatives that will be introduced. However, the alternatives are still under review by the MoF. Therefore, up to now there is little certainty in respect of the exact contents of the amendments. Recently, however, the MoF has expressed its intention to publish a legislative proposal before summer. We will provide you with more details as soon as the proposal is available.

UK North Sea tax regime

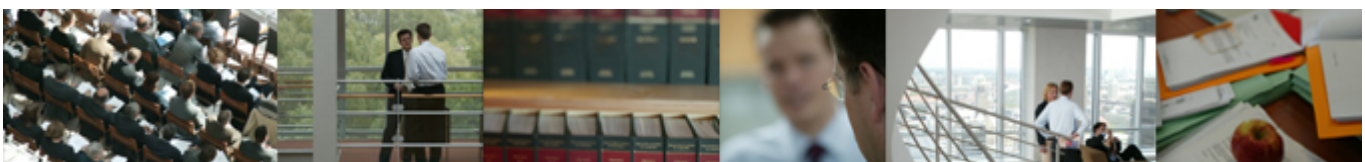
Recently, the UK authorities announced certain changes to the UK North Sea tax regime (as part of the UK Budget Statement 2009 and otherwise). Although these measures do not have a direct impact on Dutch taxpayers, in view of the similarities between the UK North Sea tax regime and the Dutch oil and gas tax regime, some of the measures may indirectly be of relevance to the industry. In this light, we would like to mention the following.

Treatment of cushion gas for underground gas storage

In the UK, the fiscal treatment of cushion gas injected into an underground gas storage reservoir to maintain pressure has been the topic of discussions between taxpayers and tax authorities. Recently, the UK tax authorities announced that they accept that cushion gas qualifies for plant and machinery allowances under current UK tax law. The announced interpretation is consistent with the treatment that was already agreed upon in practice in respect of at least one project. The position taken by the UK tax authorities may very well add to discussions on the same topic in other countries.

Field allowance

As part of the UK Budget, the introduction of a so-called 'field allowance' was announced. This allowance will reduce the taxpayer's profit that is subject to the UK supplementary charge once the field starts producing. The amount of the allowance will depend on the type of the field, whereby the allowance for large fields will be proportionally lower than the allowance for small fields.



Other measures

In addition to the above, the UK Budget inter alia announced the following measures:

- The tax relief for the swap of undeveloped licences will be extended to developed licences and a new capital gain exemption will be introduced for gains that are realised on qualifying ring-fenced assets, provided that these are reinvested in new qualifying assets.
- Legislation will be introduced to counter the claims for relief in respect of decommissioning costs in situations where the relief has been claimed on the basis of payments under contracts while the actual decommissioning may take place much later on.
- The definition of the term 'consortium' for consortium relief in respect of ring-fenced profits is to be amended, in that it no longer requires the consortium members to be UK residents.

For further information with respect to the above, please feel free to contact any of the members of the Loyens & Loeff Energy Team.

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Amsterdam/Rotterdam
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