

PRIME MINISTER

Amend

much prefer
action by the Chancellor
not

Prime Minister

(1)

Agree that we rely on
fiscal action taken by the
Chancellor, rather than on
administrative action by S/S Energy?


The Attorney General has now given me his advice on the possible use of my ^{MS 9/9} powers to refuse consent to the assignment of North Sea production licences to prevent sales of licence interests which have undesirable tax consequences. I attach a copy of that advice. I am grateful to the Attorney for the speed with which he has provided it.

I would like to urge very strongly that action we all agree ought to be taken to prevent large tax losses be taken openly and specifically as a matter of tax policy, with legislation as necessary in due course to back it; and not covertly and with doubtful vires as a matter of North Sea oil production policy. Companies would obviously press me very hard to define what transactions I would permit on tax grounds and what transactions I would prevent, and they would be entitled to do so. A failure to define my intentions would expose me to charges of arbitrariness. It would create the worst possible atmosphere for the North Sea licensing process which now works smoothly and must continue to do so on every ground of national interest.

Moreover a system of administrative taxation of this kind would be quite alien to the principles of a Conservative Government.

But if a declaration about what is or is not to be taxed is to be made, it clearly ought to be made by the Chancellor of the Exchequer. I believe this is the course we ought now to follow.

The ground which such a declaration would cover would of course be a matter for the Chancellor. However, from the standpoint of North Sea oil development policy the form of new tax rule I would like to see would disallow relief for past appraisal and exploration expenditure against PRT liability arising from the assignment of a licence interest in a "mature" production field (ie one where capital allowances were exhausted and PRT was being paid). This would discourage companies whose purpose in farming-in was to obtain PRT relief for past exploration and appraisal costs - such as those who would be particularly attracted by the BP deal - but would not disallow new, future exploration expenditure in such circumstances. That distinction would be in line with the development objectives of the Budget North Sea tax relief package.



I realise that it might be more difficult to cover Corporation Tax aspects, but they account for a relatively small part of the potential tax loss. We would have removed most of the risk by a relatively moderate and readily explicable restriction.

The Attorney's advice suggests that we might have an arguable case in Court if I used my licensing consent powers for these tax purposes and were challenged as a result. But for the reasons I have given the risks are unacceptable. Oil companies are very capable of litigating where large sums are at stake - indeed ICI is now doing so in a related field. We do not want the North Sea licensing regime brought into the Courts. Furthermore, the litigation might not be concluded quickly. If a case were to be taken to the House of Lords, it could perhaps take two years or more to secure finality, by which time a succession of other applications to assign might have been refused on the same grounds. If ultimately we were to lose the case, apart from the deep embarrassment to the Government which this would cause, we might have to reopen all these transactions and perhaps face claims for substantial damages.

Copies of this minute go to the Chancellor of the Exchequer, the Attorney General and the Lord Advocate.



SECRETARY OF STATE FOR ENERGY
(Approved by the Secretary of
State and signed in his
absence)



BP FORTIES - CONSENT TO LICENCE ASSIGNMENT

Attorney General's Advice, Communicated by telephone by the Law Officers
Department on 8 September 1983

In the Attorney General's view, whether or not the Secretary of State is entitled to take into account revenue considerations in deciding whether or not to grant consent to the assignment of a petroleum production licence is open to argument. He recognises that if the Secretary of State were to refuse consent on this basis the applicant could, and might well, take Court proceedings against the Secretary of State for improper exercise of his discretion. The Attorney believes that not only would HMG have a respectable argument, it would have a good case which on balance should succeed.

In the light of that advice, HMG must decide what line they actually want to take because there must be a reference to HMG's attitude to the proposed sale by BP of part of its interest in the Forties field in the document by which the shares in BP are offered to the public. If the Secretary of State decides that he will take revenue implications into account in considering an application for consent, then there should be something in that document on the lines of:-

"Amongst the considerations the Secretary of State will take into account are the revenue implications".