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Communications on this subject should  
be addressed to  
THE LEGAL SECRETARY  
ATTORNEY GENERAL'S CHAMBERS

ATTORNEY GENERAL'S CHAMBERS,  
LAW OFFICERS' DEPARTMENT,  
ROYAL COURTS OF JUSTICE,  
LONDON, W.C.2.

9 September 1983

B J Ecclestone Esq  
Department of Energy  
Legal Advisers  
Thames House South  
Millbank  
London SE1

Dear Ecclestone,

PETROLEUM PRODUCTION LICENCES: ASSIGNMENT

Thank you for your letter to Henry Steel of 8 September <sup>will request is required.</sup> which the Attorney General considered as soon as it was received yesterday evening. The short point you raise is whether in exercising his discretion provided for in model clause 38(1) of petroleum production licences to grant his consent to the assignment of a licence your Secretary of State may take into account the tax implications.

This point is open to conflicting legal argument. The Attorney General recognises that if your Secretary of State were to refuse consent on the basis of the tax implications the applicant could and might well take proceedings in Court against him for the improper exercise of that discretion. In the Attorney General's view, in defending the Secretary of State's action in Court HMG would have not only a respectable argument but also a good case which on balance should succeed.

On the face of the statutory provision (which is incorporated as a clause of the licence) there is no fetter on the exercise of the discretion. The clause does not limit the grounds on which consent may be withheld. No doubt the classic principles enunciated in Wednesbury Corporation -v- Minister of Housing and Local Government [1965] 1 WLR 261 would be applied by the Courts to the exercise of the discretion. Thus the notion of reasonableness is imported insofar as the Secretary of State must not be perverse and reach a decision which no reasonable Secretary of State could reach. More importantly in coming to a decision he must not take into account extraneous matter. The Attorney General is not convinced from the legislative history and structure of petroleum production licences that the Courts would regard HMG's interest in the total revenue it will receive, including tax, as extraneous or irrelevant to the Secretary of State's decision. Amongst the factors the

ATTORNEY GENERAL'S CHAMBERS,  
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-2-

Attorney General envisages the Secretary of State can take into account both in deciding whether to grant and whether to assign a licence is the revenue the expected grantee or assignee will be expected to provide to the Exchequer.

You also refer to the proposed sale of shares in BP by the Treasury. It is necessary for your Secretary of State to decide what policy to adopt in relation to the grant of consent before the shares are offered to the public. The Attorney General agrees that a reference to HMG's attitude to the grant of consent should be included in the prospectus especially if the decision is that your Secretary of State will take the revenue implications into account. In this event the offer for sale documents should include reference to that fact.

I am copying this letter to Gerald Hosker.

Yours sincerely  
*Laurence Oates*

LAURENCE OATES

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Norman J. Adamson CB QC

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15th September, 1983

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Legal Advisers,  
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Millbank,  
London S.W.1.

NBPM

MO. 16/9

Assignment of Petroleum Production  
Licences

I received yesterday from the Private Secretary to your Secretary of State a copy of Oates' letter of 9 September to you (which was not copied to us) giving the reasons for the Attorney General's view set out in the annex to your Secretary of State's minute sent to the Prime Minister on that date. I have also seen the Chancellor of the Exchequer's minute of 12 September to the Prime Minister.

↳ About RP/Favher?

The Lord Advocate is out of the country but, having regard inter alia to the fact that many of these licences are subject to Scots Law, I have taken the views of the Solicitor General for Scotland.

The Solicitor General broadly agrees with the views expressed by the Attorney General, although he is inclined to take seriously the possibility that the courts might consider tax considerations as extraneous matter in relation to the exercise of the Secretary of State's discretion whether or not to consent to the assignment of a licence.

In the circumstances, the Solicitor General strongly agrees with the course which has now been adopted of announcing the intention to amend the tax laws so that future assignments will not result in the considerable tax losses which might ensue under the present rules.

Contd .....

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2

I am copying this letter to Oates, Hosker and  
Cunningham, and to the Private Secretaries to the Prime  
Minister and the Chancellor of the Exchequer.

N.J. ADAMSON

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Energy  
Future of Offshore  
Nuclear Licensing  
July 1979

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