



Treasury Chambers, Parliament Street, SW1P 3AG  
01-233 3000

David Norgrove Esq  
10 Downing Street

21 March 1986

Dear David,

ML

Prime Minister 2

To write.

ALS  
21/3.

ICI CASE

The Chancellor thinks the Prime Minister should know how we propose to handle the recent Court of Appeal judgement in this case.

The Prime Minister will recall that before the Mossmorran ethylene project went ahead four years ago, Esso and Shell sought Government assistance. On the tax side, they wanted a PRT exemption for ethane used for petrochemical purposes, failing which a change in the way such gas is valued for PRT when - as for Mossmorran - companies take it on a long term basis from their own field. Ministers told them they could not have exemption but agreed that the existing rules were inappropriate for valuing gas of a kind normally sold on a long-term basis. They said they would introduce legislation to secure that interaffiliate transfers should be treated on a similar basis to long term arm's length contracts: and that they understood the Revenue had agreed a particular price formula for the Mossmorran ethane should the proposed legislation become law. The legislation was passed in the 1982 Finance Act.

ICI, with an existing ethylene plant but a different feedstock (naphtha), suspected this was giving Shell/Esso a subsidy. By process of judicial review they challenged both the law itself and the way the Revenue said they would apply it in assessing a price formula. (Shell/Esso's actual tax affairs were not exposed to the Courts, but the general context of the legislation was known.) ICI are not now pursuing the first point; but on 24 February the Court of Appeal gave judgement in their favour on the second, and refused leave to appeal against this to the Lords.

There are some very complicated legal and tax issues here both for the companies and for the Government. And it raises some wider policy considerations - including the possibility, at some stage, of amending legislation. One way forward is to petition the House of Lords for leave to appeal to them, and if leave is





granted, to appeal. Whether in the event an appeal will be the best course of action cannot yet be decided, but it would be unwise to close off this option. The Revenue therefore intend to keep it open by petitioning within the time limit. This expires on 24 March.

We shall not initiate any publicity, but ICI (who will receive notice of the petition) or the press (who could easily find out) may.

Until now, the respondent in the case has been the Attorney General: since the legal issue is now one of Inland Revenue administration we are considering with the Attorney General's office in whose name the petition should be made.

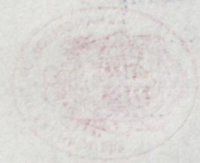
Yours sincerely,

Philip Wynn Jones

PP

A W KUCZYS







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ba BG

10 DOWNING STREET

*From the Private Secretary*

24 March 1986

**ICI CASE**

The Prime Minister has seen your letter to me of 21 March which described how the Revenue proposes to handle the recent Court of Appeal judgement in the ICI case. The Prime Minister read this without comment.

(David Norgrove)

Tony Kuczys, Esq.,  
H.M. Treasury.

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*CF*



Treasury Chambers, Parliament Street, SW1P 3AG

Mark Addison Esq  
10 Downing Street  
LONDON SW1

21 February 1986

*cc Nict Jones (Proc Office)*

*Dear Mr Addison*

**ICI CASE**

*see Pt 14*

Following Vivien Life's letter of *✓* May, I enclose a further note from Inland Revenue on recent developments on the ICI case.

*yours sincerely*  
*C. H. Mankelow*

**MISS C H MANKELOW**





From M A Hill

Date 21 February 1986

PS/FINANCIAL SECRETARY

ICI CASE

1. The purpose of this note is to confirm what we told the Financial Secretary about progress on the ICI case at Wednesday's meeting to discuss Budget Starter 157.

2. The Court of Appeal will deliver their judgment at 10 a.m. next Monday, 24 February. If the decision is adverse to the Government on any issue, Counsel has been asked - following the Revenue's normal practice in Court of Appeal cases - to make a formal application for leave to appeal to the House of Lords. This does not indicate a positive decision to appeal; it merely keeps the option open in the event that, in the light of detailed consideration of the terms of the judgment, the Government decides that an appeal would be appropriate.

3. The judgment will be delivered in open court, and it is possible that there will be enquiries from the press or public. We shall in fact be providing briefing for the Revenue Press Office in advance of Monday's judgment and would suggest that, if specific tax questions do arise, these are referred to our Press Office.

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cc PS/Chancellor  
Mr Robson  
Miss Sinclair  
Mr Ricks (Treasury Solicitor)  
Mr Evans (IDT)

Mr Battishill  
Mr Pitts  
Mr Cleave  
Mr Thornhill  
Mr Elliss  
Mr Johnson  
Miss Hill  
Miss Hay  
Ms Tyrrell - Press  
Secretary

PS:llr



4. Your office has copied previous notes on the ICI case to the Number 10 Press Office, and you may wish to let them have a copy of this note too.

all

M A HILL



ECON POL: Budget: PLS

