HMRC - OT04450 - Responsible Person Claims - Confidentiality

OTA75\SCH5

Claim

If one or more of the participators has already passed its net profit period and is therefore not entitled to supplement, it is still nevertheless the case that the Responsible Person, who will not be aware of other participators’ net profit period positions, is entitled by virtue of FA81\S111(6) to include in a Schedule 5 claim supplement on all of the expenditure that would have qualified for uplift had the net profit period not been reached. A decision on the Schedule 5 claim giving the total supplement due by reference to the provisions of OTA75\S3(5) should then be made in the normal way without regard to the question of the net profit period. This avoids any possible breach of confidentiality. Each participators share will then be subject to the provisions of FA81\S111 at the time that the assessment for the relevant chargeable period is made. FA81\S111(1) operates by withholding supplement otherwise due under OTA75\S2(9)(b)(ii) and OTA75\S2(9)(c)(ii) from a participator that has passed its net profit period. It is in arriving at the assessable profits or allowable losses for the purpose of the participator’s assessment to PRT that its share of supplement is denied.

Disallowance

Following a detailed review of expenditure claimed under OTA75\SCH5, part or all of various categories of expenditure may be identified for disallowance, often in relation to remote or non-incurred overheads or restrictions under OTA75\SCH4\PARA2. It is usually, but not invariably, the share of expenditure relating to the Responsible Person as Participator which is most affected.

Such disallowances can be commercially sensitive in certain circumstances by inferring the nature of costs/arrangements of the Participator concerned. LB Oil & Gas recognises these difficulties and seeks to preserve confidentiality in different ways according to the circumstances of each case. The methods adopted have been as follows:

No claim under Schedule 5 for the relevant Participator’s share of expenditure under the category affected; the Participator submits a Schedule 6 claim for the allowable elements of that expenditure only.

Disallowance in full of the relevant Participator’s share of expenditure in the Schedule 5 claim under the category affected; the Participator then submits a Schedule 6 claim for the allowable elements only.

The issue of a separate notice of decision disallowing the appropriate part of the Participator’s share of expenditure.

Submission of negative Schedule 6 claims corresponding with the amounts agreed to be disallowable; the expenditure concerned is then allowed in full in the Schedule 5 claim - see OT04720.

Where it is known at the time of a claim by the RP that his share of the expenditure as Participator will be disallowable, in full or part, there are potential culpability consequences in his signing the claim declaration and therefore Method 1 above may be the most appropriate and statutorily correct method. However, if there are good reasons for believing such an approach may highlight to other Participators areas of commercial confidence (e.g. indirect control of a contractor used in field development work), the alternative methods may need to be considered.

If the issue which leads to the disallowance does not involve the RP, or at the time the Schedule 5 claim is made is either not settled or at a stage where it is clear expenditure will be disallowed, Methods 2 or 3 may be appropriate but both involve certain draw-backs/risks statutorily. Under Method 2, if the decision is taken after the disallowance is agreed, LB Oil & Gas would be disallowing an element of expenditure which it knew to be allowable, though in practice the prospects of challenge are remote. Method 3 is appropriate only if the disallowance affects the RP as Participator and involves an assumption that only the Participator affected by the disallowance is entitled to see the relevant decision notice. As a disallowance is not attributed to a specified Participator in the notice, it is not clear that this assumption is valid but, since the legislation does not require the Board to show how much expenditure is disallowed, the notice itself could be said to be non-statutory.

In either of the situations above, Method 4 is probably the one most preferred by Participators since it can be effected in complete secrecy, but it also causes most difficulty from a statutory and administrative view point. Firstly, it operates from the premise that a negative claim is competent under the legislation which, in principle, LB Oil & Gas does not necessarily accept. Furthermore, unless the corresponding Schedule 6 claim is submitted with the Schedule 5 claim or before a decision is taken on the latter claim in respect of the relevant expenditure, the Participator may gain a timing advantage for relief not due and, in certain circumstances, this could defer the Net Profit Period and so extend the Safeguard period. If the Schedule 5 decision was taken but the Schedule 6 claims were not submitted in consequence, LB Oil & Gas’s only recourse ultimately would be to vary the Schedule 5 decision. For these reasons, Method 4 would only be considered:

where there were no timing benefits or NPP/Safeguard consequences or

on a without prejudice basis where the participator agrees to submit the relevant negative Schedule 6 claims in time for decisions to be included in the same assessment as that in which the corresponding Schedule 5 expenditure is allowed.

See also OT04395 and see OT13790 regarding the disallowance in Schedule 5 claims of expenditure claimed under Schedule 7.

Previous page

Next page