HMRC - OT05125 - PRT: Computation - Excluded Oil

OTA75\S10(1) excludes from the computation of the gross profit, the sale proceeds or value of:

any gas sold to British Gas (BG) under a contract made before 30 June 1975, and

any other oil or gas (usually condensate) not sold to BG if at the end of the chargeable period the cumulative amount of such oil or gas is less than 5% of the cumulative amount of gas sold to BG.

The purpose of this exemption was to recognise that, prior to the introduction of PRT, the gas from a number of fields had been sold to the former British Gas Corporation under long term contracts for the life of those fields, at prices which had not kept up with oil prices in general.

The 5% de minimis for other production was introduced to obviate the need for complex apportionments of costs between exempt or non-exempt production that would not be justified by the amounts involved. This normally covers the condensate although gas not sold to BG could also fall under this exemption.

Amendment of a Section 10 exempt contract

Most of the OTA75\S10 exempt contracts have been subject to numerous amendments since they were made. In each case this has raised the question of whether the gas continues to be sold under a contract made before 30 June 1975, i.e. whether the “amendment” constitutes a new contract.

Each such case needs to be examined on its own facts but in general, where the legal relationship between the parties continues to be governed, in substantial part, by the original agreement, the amendment is not likely to constitute a new contract. A minor amendment will not therefore normally lead to a loss of the exemption. This is not the case where the cumulative effect of amendments is to alter fundamentally the legal relationship as set out in the original agreement thereby rendering that agreement redundant (see Shell UK Ltd v the Commissioners for Her Majesty’s Revenue and Customs, SpC 00624).

Sale or transfer of an interest in a field subject to a Section 10 exempt contract

If a participator sells or otherwise disposes of its interest in a field subject to a long term OTA75\S10 exempt gas sales contract, the agreement of BGT must normally be sought and the sales agreement novated to the new participator. Thus a new legal relationship is created between the new participator and BG and where such a transaction takes place after 30 June 1975, the gas cannot be considered to have been sold under a contract entered into before that date.

Prior to FA 1999, the legislation was silent on whether the exemption should continue in such circumstances, although LB Oil & Gas practice was to take the view that it did if there had been no fundamental changes in the terms of the contract with BGT. FA99\S94 gave this practice statutory authority, by treating the new contract between the new participator and BGT as the original contract for the purposes of s10 consideration, as long as again there were no fundamental changes in the terms.

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