HMRC - OT05330 - Crude Oils And Products - Category 1 Anti Avoidance

Introduction:

This provides for a rolling program of reviews, examining periods of 24 months beginning with 1st July 2006 or later. LB Oil & Gas will look at NAL disposals of equity\* oil of a particular kind (that is, grade or blend), by a company and any connected companies to see if that company is manipulating the rules to obtain a lower statutory value. The rule is applied on a blend by blend basis, and only in relation to types of category 1 oils.

\*Equity oil is defined in Reg 8(3) as oil forming part of the trading stock of a participator or person connected with him which has been won by that participator or person connected with him from a field in the UK sector of the North Sea.

Consequences of manipulation:

If that proves to be the case then the Notional Delivery Day, instead of being based upon the Loading Slot as described previously (see OT05310) will be either;

The Completion of Load for offshore loaded cargoes or

The Bill of Lading for cargoes carried by pipeline and shipped from a terminal.

(In accordance with paragraph OTA75\Sch3\Para1A(7))

Tests to prove manipulation has occurred:

Each of these four tests must be satisfied:

Category 1, NAL, Valuation, Anti-Avoidance To ensure that only significant avoidance is specifically subjected to this particular rule, there is a lower limit of 4 million barrels of crude of that kind disposed of by any particular participator and any connected persons (connected within the meaning of ICTA88\S839).

Practically this means that the 4 million barrels of NAL disposals in 24 months limit applies to sales of that kind of oil by the group to which the participator belongs. To avoid uncertainty, only NAL equity disposals are taken into account, and each NAL disposal is counted only once (that is. subsequent NAL non-equity disposals of the same cargo are ignored).

A lower price is taken into account for an NAL delivery than if it had been an AL delivery (by reference to the PRA values for the actual date of delivery),

because the NDD is different from the actual day of delivery and,

the whole or main benefit of selling the oil NAL or appropriating it when compared to selling it at arm’s length is a tax advantage within the meaning of ICTA88\S709 (see CTM36820 and TTM05510.

What LB Oil & Gas will do:

Once a pattern of sales satisfying these four tests has been observed, and in any event not before the first 6 months has elapsed (i.e. not before 31st December 2006);

A warning letter will be sent to the company saying that such a pattern has been observed.

LB Oil & Gas will seek an explanation from the company of the deals that have caused the concern to be raised.

Upon subsequent careful examination, LB Oil & Gas see a pattern of sales satisfying the four tests over the 18 month period immediately following the 6 month period which caused the warning letter to be sent.

If such a pattern is observed LB Oil & Gas will assess by making adjustments to NDDs in accordance with Regulation 8(2) in respect of NAL sales made after the date of the warning letter.

The company will have the right and opportunity to gather evidence to defend itself against the potential application of Reg 8 and against any adjustments to NDDs actually assessed by LB Oil & Gas should the company wish to appeal (see below) (although we would always hope that any company would not engage in behaviour specifically designed to circumvent the rules).

This will be a rolling program of reviews, touching separate but overlapping 24 month review periods. For each of these review periods, there will be an initial 6-month observation with, if necessary, a warning letter, followed by the rest of the statutory 24 month period to establish (or not, as the case may be) whether the NDD of deliveries can be changed by invoking Regulation 8.

For each warning letter, covering a particular 24 month period, if any changes to NDDs are made because a pattern has been established and proved in front of the First-tier Tribunal, only the NDDs for NAL sales made after the date of the warning letter may be changed. Such changes would not affect any other overlapping.

It might be that, for example, in the 6 months to 31st December 2006 a pattern of such NAL sales is seen which triggers a first warning letter (in relation to the 24 months period ended 30th June 2008). During the next 6 months to 30th June 2007 more such sales are seen. This would have two effects:

The pattern observed during the 12 months period ended 30th June 2008 would form the foundation for a later invocation of Reg 8 in relation to the 24 months period ended 30th June 2008 IF such a pattern is seen to persist in the following 12 months to 30th June 2008. Such a pattern must fulfil the criteria of the regulatory tests (a) to (d) above. Given the minimum volume of 4 million barrels, it will be highly unlikely that a further single cargo would trigger this later invocation of Reg 8.

The pattern observed in the 6 months period ended 31st December 2008 would trigger a second warning letter, as the foundation for a review of a separate 24 month period, i.e. that ending on 31st December 2008.

The onus of proof lies upon LB Oil & Gas to prove the existence of any pattern fulfilling all of the regulatory tests.

Should Reg 8 be invoked and assessments amended to reflect increased values as a consequence of changing any NDDs, companies will have the normal right of appeal. LB Oil & Gas would seek to resolve the issue by further discussion. If mutual agreement cannot be reached then the last resort following an independent review, if requested, by another LB Oil & Gas officer not involved with the case (ARTG1030 and ARTG4000 ) would be to the First-tier Tribunal.

Note a company may conceivably have a number of such warning letters for any given 6-month review period, depending upon the number of Category 1 crude oils it is involved in as a participator.

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