HMRC - OT05385 - PRT: Valuation Of Non-Arm's Gas - Valuation Of Light Gases From 1 January 1994 - Procedures

There is no statutory procedure and a participator is under no legal obligation to tell LB Oil & Gas about gas sales until it makes its PRT returns or, in the case of a non-taxable field, until the company submits the relevant accounts. Companies should however be encouraged to notify LB Oil & Gas of decisions to dispose of gas otherwise than at arm’s length as soon as they are made. Companies should then be asked to send LB Oil & Gas the inter-affiliate contract with any notes of explanation it wishes to add. Notes on the timing of the sale and the basis of the pricing terms would obviously be helpful. LB Oil & Gas will then request such further information as it feels necessary.

In examining inter-affiliate agreements regard should be had, not only to the pricing terms but to all the terms of the contract and to the absence of normal arm’s length terms. Contracts should ideally be clear and comprehensive and should not contain terms which would not normally appear in an arm’s length contract. LB Oil & Gas cannot dictate to companies what they put in their contracts but any terms (or absence of terms) apparently disadvantageous to the seller should lead to a corresponding increase in the price.

Once agreement has been reached the participator should be asked to confirm that

it proposes that the prices in the inter-affiliate contract (with any amendments agreed with LB Oil & Gas) should be adopted as the basis of valuation for the purposes of OTA75\SCH3\PARA3A for the gas in question for the period of the contract, and

that it will notify LB Oil & Gas of any changes to the contract or of any supply of gas outside the terms of the contract (and in particular any such changes or supply which may affect the value of the gas).

Subject to a satisfactory reply, LB Oil & Gas will confirm that it accepts the proposal. LB Oil & Gas will then be committed to the valuation agreed unless, for example, the information supplied by the company was materially incomplete or incorrect or unless the parties do not adhere to the terms of the inter-affiliate contract (e.g. if the seller grants enhanced swing facilities without adequate consideration). The circumstances in which an agreement between a company and LB Oil & Gas may be reopened in the event of a change in commercial circumstances are dealt with in OT05412.

If LB Oil & Gas and the participator cannot reach an agreement then a review by an HMRC officer who has not been involved in the case will be offered prior to the matter being referred to the First-tier Tribunal by way of an appeal against an assessment or loss determination. The First-tier Tribunal’s decision will only determine the periods under appeal but LB Oil & Gas will attempt to arrive at a longer term agreement with the company in the light of the decision.

See OT05422 for cases where there is no inter-affiliate contract.

Previous page

Next page