HMRC - OT10300 - PRT: Decommissioning - Allowable Expenditure: Abandonment Guarantees

OTA75\S3(1)(hh)

Basic Conditions

OTA75\S3(1)(hh) was introduced by FA91\S103(2) to provide relief for expenditure incurred on or after 19 March 1991 for the purpose of obtaining an ‘abandonment guarantee’. The term is defined in FA91\S104(1) as a contract under which the guarantor (e.g. a bank) undertakes to make good any shortfall by the participator in making its required contribution towards ‘field abandonment costs’. The contract is an abandonment guarantee regardless of the form of the guarantor’s undertaking. The undertaking may be expressed as a guarantee, but it may also arise under a letter of credit, a performance bond or any other instrument.

Expenditure is only allowable under paragraph (hh) if,

it consists of fees, commission or incidental costs that are incurred wholly and exclusively for the purpose of obtaining an abandonment guarantee, and

the abandonment guarantee is obtained in order to comply with a term of a ‘relevant agreement’ relating to the field which requires the participator to provide security to cover its liability to contribute to ‘field abandonment costs’, OTA75\S3(5B).

A relevant agreement is defined as a joint operating agreement, a unitisation agreement (see OT18270), or an agreement entered into by some or all of the parties to either of these agreements, FA91\S104(5)(a).

Field abandonment costs are costs incurred in closing down the field or any part of it, together with any directly resulting continuing costs, FA91\S104(5)(b).

The PRT treatment of payments under guarantees is covered at OT10350. The situation in which those payments are reimbursed to the guarantor by the defaulting participator is dealt with at OT10400.

PRT relief for decommissioning expenditure met on behalf of a defaulting co-participator and the treatment of reimbursement of such expenditure by the defaulter is covered at respectively OT10450 and OT10500.

Exclusions, FA91\S104(2)

FA91\S104(2) excludes the following from the definition of abandonment guarantees:

Contracts not entered into in good faith and on terms reasonably appropriate to the nature and extent of the guarantee. In particular a contract is not regarded as entered into in good faith if any arrangement exists for the liability to make good any default to be met directly or indirectly by a connected person (FA91\S104(4)).

Contracts in which the guarantor undertakes any liability beyond that of making good the defaults referred to in the above definition.

Contracts which can be revoked by the guarantor unless the revocation is the product of some fraud, misrepresentation or other fault on the part of the participator occurring prior to the making of the contract.

A contract in which the guarantor is, or is connected with, a participator in a field unless it is in the ordinary course of the guarantor’s main business to provide guarantees and the guarantor is not connected with the relevant participator (FA91\S104(3)).

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