HMRC - OT14060 - PRT: Non-Field Expenditure - Exploration And Appraisal Expenditure: Transitional Provisions: Supplementary Relief

FA93\S189

FA93\S189 supplements the provisions discussed at OT14050 as a means of providing relief for exploration and appraisal expenditure incurred after 15 March 1993. It was introduced at Committee Stage, following industry representations that the changes made by FA93\S188 provided inadequate relief because of the ‘break clause’ provisions.

Relief to a claimant company in respect of expenditure incurred by the claimant or by an associate is subject to an overriding limit of £10m in aggregate, FA93\S189(3) (see below). If the claimant is a member of a group, any transitional relief claims made by other group members are to be included in arriving at the £10m figure. The terms ‘associate’ and ‘group’ are considered below.

To be allowable under this section, expenditure

(a) must be incurred by a participator in a field (the claimant) or by an ‘associate’ of such a participator in the period 16 March 1993 to 31 December 1994 (inclusive),

(b) must not be allowable under OTA75\S5A as amended by FA93\S188, see OT14050,

(c) must be allowable under OTA75\S5A but for the FA93\S188 amendments and

(d) must relate to an area in respect of which the participator or associate was a licensee on 16 March 1993.

Associate of a participator, FA93\S189(4)

An ‘associate’ of a participator company is defined as a company which on 16 March 1993 was a member of the same ‘group’ of companies as the participator and with which the participator is associated in respect of expenditure incurred by that company.

The provisions of OTA75\S5(7)-(8) relating to companies, connected persons and associates are applied here, see OT13810.

Group, FA93\S189(5)-(6)

A ‘group’ means

a group on 16 March 1993 and

a company which is not a 51% subsidiary of any other company, together with each company which is its 51% subsidiary (‘subsidiary’ is as defined by ICTA88\S838).

Effectively, the £10m aggregate is available to groups as comprised on 16 March 1993.

£10m aggregate, FA93\S189(3)

If companies have incurred more than £10m expenditure potentially within FA93\S189 there is no limit to the amount that may be claimed. The limit in FA93\S189(3) is on the amount allowable. A company may have, say, £30m potentially allowable. It can choose to claim the £10m of which it is most confident, or it can claim the whole £30m, and ask the inspector to pick out items totalling £10m with which he or she is content.

If, on the other hand the company claims exactly £10m, and part is disallowed, or ‘reserved’, it can make a further claim as it wishes. That would simply be a further claim, not a supplementary.

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