HMRC - OT16500 - Losses - Unrelievable Field Losses: Licence Transfers: Anti-Avoidance - Background

OTA75\S6(1D) and FA01\Sch32

These provisions block a loophole in the PRT rules which enabled companies to create (or inflate) unrelievable field losses (UFLs) by transferring their licence interests and electing, together with the other party to the transfer, to opt out of the normal FA80\Sch17 transfer rules via an application under FA80\Sch17\Para4. See OT18030 for more information on opt outs.

The loophole could be exploited as follows. A participator in a profitable field nearing decommissioning has paid little or no PRT because of safeguard and oil allowance. It transfers its interest in the field to a new participator, both parties agreeing to opt out of the FA80\SCH17 provisions. The new participator then incurs a substantial loss on decommissioning. Were the normal transfer rules to apply, FA80\Sch17\Para15 (see OT18130) would operate. The decommissioning loss would be offset first against the profits of the old participator (and then any predecessor company) before any balance remaining could be determined as a UFL. If oil allowance had fully covered those profits, no repayment would be due.

But by electing to disapply the transfer rules under FA80\Sch17\Para4, the new participator’s loss would not have to offset previous profits arising from the relevant field interest. It could therefore claim the loss as a UFL in another field in which it had paid PRT and thereby secure a repayment.

The loophole could also be exploited by a similar opt out transfer earlier in field life before a participator had broken even in the field. The opt out would enable it to crystallise its unused loss and claim it as a UFL when the field permanently ceased production. Had the normal transfer rules applied however, the loss would have been absorbed by future profits arising from the relevant field interest in accordance with FA80\Sch17\Para7 (see OT18050). Assuming that at the time of transfer the field was not expected to be a ‘PRT-payer’ because of projected oil allowance, it would make no difference to the new participator whether the loss was transferred or not.

FA80\Sch17\Para4 applications can be refused by the Board if they consider that the opt out will materially affect the total tax chargeable in the field. However, in both cases the opt out results in a material tax difference in another field, the field in which the consequential UFL is claimed.

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