HMRC - OT17300 - PRT: Oil Allowance - Reallocation Of Oil Allowance In Final Periods

OTA75\S8(6) and FA87\S66 provide for the reallocation of oil allowance in the last two periods for which it is given. Final Period, OTA75\S8(6)

Oil allowance is given for a field (e.g. 500,000 metric tonnes per chargeable period up to a maximum five million tonnes for the oldest fields, see OT17100) and allocated between participators on an equity basis (although it may be allocated on a liftings basis if that basis is consistently applied). Since for each chargeable period there is only an entitlement to the allowance if it can be utilised, utilisation can be out of line with equity entitlement.

OTA75\S8(6) contains provisions which apply in the period when the amount of oil allowance otherwise available for that period, together with the aggregate oil allowance utilised by the participators in all previous periods, exceeds the statutory limit. OTA75\S8(6)(b) states that the Responsible Person may notify the Board as to the apportionment between the participators of the ‘necessary restriction’, i.e. the amount by which the oil allowance for the period needs to be capped so that it does not exceed the maximum. If no such notification is given the Board will determine the apportionment.

Although the necessary restriction may be allocated as the Responsible Person chooses, companies tend to expect the restriction to be applied in such a way as to reduce the discrepancy between utilisation and equity entitlement. Given that in the final period there may only be a few tonnes of oil to allocate, or alternatively the restriction itself may be very small, OTA75\S8(6)(b) may not have a significant effect.

The Responsible Person should notify the apportionment of the restriction to oil allowance under FA87\S66(2). As oil allowance can only be given to participators who are able to make use of it, the notifications raise the issue of confidentiality. The information available to the Responsible Person may differ from that held by LB Oil & Gas. To ensure that information can be shared without breaching confidentiality, LB Oil & Gas will ask the Responsible Person to forward the authority of all field participators past and present to disclose the oil allowance utilised in each period as may be required.

The time limit for submitting such a notice is not later than six months after the end of the final allocation period, FA87\S66(3)(a).

Penultimate Period, FA87\S66

FA87\S66 was introduced to permit a further adjustment so that the oil allowance received could be brought more closely in line with equity entitlement. However its scope is limited, given that it can only apply to the period immediately preceding the final period discussed above. If in that period, for example, all the participators are loss-making, it will not permit any further reallocation. And the Responsible Person does not have the freedom, available under OTA75\S8(6)(b) for the final period, to reallocate without limitation.

Subject to these considerations, the section allows specific participators’ oil allowance of both the final and the penultimate period to be reallocated between them in line with their oil won and saved over a specified period.

Not all the participators need to be specified in the calculation. Only those companies that are participators in one or both of the two final periods can be specified. Those not specified retain their entitlement under OTA75\S8(5) for the penultimate period and the amount arising after the OTA75\S8(6)(b) restriction in the final period. The oil allowance subject to the reallocation is that utilised in the final two periods by the participators specified in the notice. A participator may not have held an interest in the licence for the whole of either of the two periods specified in FA87\S66(3), in which case its calculation will only include its own oil allowance and oil won and saved; it cannot be aggregated with a predecessor’s.

FA87\s66(4) prescribes two periods for the purpose of the calculation:

the period in which the oil allowance specified in the notice is utilised and

the period in which the participators’ share of oil as specified in the notice is won and saved.

The second of these periods should be the same as or longer than the first period. The periods selected must consist of complete consecutive chargeable periods and include the final chargeable period, and unless oil allowance for the final chargeable period only is being reallocated, the penultimate chargeable period. The adjustment to an allowance has to be made in the final period in priority to the penultimate period.

A FA87\S66 notice is not mandatory, but if it is made the Responsible Person must give notice to the Board not later than

six months after the final allocation period (the period when OTA75\S8(6)(b) applies, FA87\S66(3)(a))

and not later than the date of the notice under OTA75\S8(6)(b), FA87\S66(3)(b).

Alterations to the Penultimate and\or Final Periods

Assessments may alter in one or both of the final two periods changing the use of oil allowance. Alterations may as a consequence render the OTA75\S8(6)(b) restriction or the FA87\S66 notice arithmetically incorrect. They may also cause the final period of oil allowance to move forwards or backwards.

Where the final period does not alter, but the OTA75\S8(6)(b) notice restriction changes, the Responsible Person will be asked to revise the notice. In the absence of such a revision, the Board will issue a revised notice. If a FA87\S66 notice is similarly rendered incorrect, the Responsible Person will be invited to revise it. If a revised notice is not received and agreed by the Board, the Board will consider formally refusing the previous notice.

If the alteration does change the final period, a OTA75\S8(6)(b) notice will be required in respect of the new final period and any previous notice for another period will be invalid. Similarly, a FA87\S66 notice may be submitted in respect of the new two final periods within three months of being notified by the Inspector that the periods have changed and any notice for any other periods will be invalid.

Rights of Appeal

If the Board are not satisfied with an apportionment notice they shall give a notice of rejection to the Responsible Person. The Responsible Person may appeal to the First-tier Tribunal against the rejection by giving the Board notice in writing within 30 days of the date of the notice of rejection, FA87\S66(6)-(8).

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