HMRC - OT18785 - PRT: Penalties - Amount Of Penalty: Participator

Where a participator in an oil field negligently makes an error within OTA75\SCH2\PARA8, the maximum amount of the penalty is £50 plus the difference between:

the tax payable by him for the period given below if the information had been correct, and

the tax payable by him had the error not been made

the tax payable by him for the period given below if the information had been correct, and

Where a participator in an oil field fraudulently makes an error within OTA75\SCH2\PARA8, the maximum amount of the penalty is £50 plus twice the difference between:

the tax payable by him for the period given above if the information had been correct, and

the tax payable by him had the error not been made.

Where a penalty arises from an incorrect statement or declaration in connection with any claim, the penalty remains the same whether or not a decision was given on the claim. If no decision was given, the chargeable period is that in which the incorrectly claimed expenditure or relief would have appeared had it been allowed immediately on being claimed.

The penalty provisions for claims apply to any claims, including those under OTA75\SCH5, OTA75\SCH6, OTA75\SCH7, and OTA75\SCH8. The penalty provisions for returns include returns where an incorrect amount of tariff or disposal receipts, or an incorrect calculation of tariff receipts allowance or oil allowance is included in the return.

It has been argued that a literal reading of OTA75\SCH2\PARA8(2)(a)(ii) is that the period taken is that which next ends after the allowance of the claim, and that therefore, for the majority of claims, no penalty can ever arise, because the claim would have a tax effect in the chargeable period which is next assessed after the allowance. This view is not accepted by HMRC, and has never been tested in Court: it conflicts with the comments on construction given in a line of tax cases, from Sir John Wilberforce in W T Ramsay Ltd v CIR at 54TC184;

“What are ‘clear words’ is to be ascertained upon normal principles: these do not confine the courts to literal interpretation. There may, indeed should, be considered the context and scheme of the relevant Act as a whole, and its purpose may, indeed should, be regarded.”

There may be cases where

“to achieve the obvious intention and produce a reasonable result (the Court) must do some violence to the words” (Lord Reid in Luke v CIR 40TC630); or,

“without doing violence to the words used, the court may be able to avoid an unreasonable result by the importation of an implied restriction covering the scope of a particular provision” (as in O’Rourke v Binks TL3331).

Reviewing these judgements, Sir John Vinelott in CIR v Chevron Petroleum (UK) Ltd (TL 3442) said

“it would be a very rare case when the court would feel compelled to conclude that although the legislative purpose was clear the legislation had ‘missed fire”.

HMRC’s view is that the legislation clearly aims to provide for a penalty where certain errors are made in claims, and that it does not misfire.

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