HMRC - OT19200 - PRT: Appendices - Deferral Of PRT Returns

Introduction & Board’s powers

The following paper was issued to UKOITC, BRINDEX and OTAC 19 May 1999. It provides guidance as to how OTO will operate the deferral of returns legislation in practice. The legislation was enacted in FA99.

DEFERRAL OF RETURNS UNDER PARAGRAPHS 2 AND 5 OF SCHEDULE 2 OIL TAXATION ACT 1975

All statutory references are to the Oil Taxation Act 1975, unless otherwise stated.

Introduction & Board’s powers

This guidance is based on the assumption that the legislation to allow the Board to agree that returns made under Paragraphs 2 and 5 of Schedule 2 OTA 1975 may be deferred either for a specified time or indefinitely. The legislation also includes consequential measures to:

adjust the time limits for making claims and assessments, and

maintain the existing flow of information under Section 62(4) FA 1987.

Some companies may wish to continue delivering returns even when the likelihood of paying PRT is extremely remote. To maximise the deregulatory benefit for companies deferral will therefore be available to individual participators.

The Board’s powers will be devolved to the Director and Assistant Directors of OTO.

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Returns from participators (Paragraph 2 Schedule 2 OTA 75)

At present participators’ returns are required within two months after the end of each chargeable period. The new legislation provides that the Board may allow a longer period for the delivery of the return and that the extension of the time limit may be indefinite. This power will enable any participator to request deferral of one or more returns either for a specified time of indefinitely.

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Conditions for agreeing to deferral of returns

An application to defer returns will be accepted if OTO is satisfied that:

the participator will not be liable to pay any PRT for the chargeable period for which the return will be deferred (but see 2.3 below); and

where returns are to be deferred for a specified time, the deferred returns will be received and claims will be made in time to allow OTO to bring the assessing position up to date before the date on which assessments would be made for the first chargeable period to which deferral did not apply; and

in a case of indefinite deferral, that the participator has a sufficiently good record keeping system in place to allow him to deliver all returns at a later date should a notice be served on him to do so; and

the participator has put in place, and agreed with OTO, procedures to notify full details of all non arm’s length sales of oil and gas each year at or before the latest time for delivery of the corporation tax return for the year, and

in the case of royalty-paying fields, deferral has no impact on the flow of royalty receipts and has no adverse impact on the administration of royalty. Indefinite deferral will not be an option for such fields but there may be scope to agree deferral for a specified time if all other conditions are met.

The fact that not all of the participators in the field are in a position to apply for deferral will not normally prevent applications from others being approved. It should however be noted that OTO expect the overall tax consequences of a deferral to be the same as if the RP and all participators had made returns and claims. If this not the case then OTO will require returns from each participant [for example this might apply when the deferral of returns has an effect on the allocation of oil allowance. A participator is only entitled to his share of the allowance as if all participators had made returns and this share may depend on the expenditure position of another participator]. OTO does not consider that this will be a problem in most instances but will monitor the position in practice. The Responsible Person [RP] and participators should draw any problems in this area to the attention of OTO.

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Additional returns: Section 62(4), FA 1987

To ensure the continuing integrity of the OTO valuation databases and the accuracy and completeness of the values calculated for the purposes of PRT, corporation tax and royalty, additional returns under Section 62(4) FA 1987 will continue to be required to be made within two months of the end of the chargeable period. This requirement will continue in all cases, including where a return under Paragraph 2 Schedule 2 is being deferred. OTO will be happy to discuss with participators the circumstances of particular fields and to come to arrangements as to the most efficient way in which this data can be supplied.

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Returns from the Responsible Person (Paragraph 5 Schedule 2 OTA 75)

At present the RP’s returns are required within one month after the end of each chargeable period. The new legislation provides that the Board may allow a longer period for delivery of the return and that the extension of the time limit may be indefinite. As with participators’ returns this will enable deferral of one or more of the RP’s returns, either for a specified time of indefinitely.

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Conditions for agreeing to deferral of returns by up to one month

OTO currently accepts up to a one month delay in the delivery of the RP’s return provided that all the participators in the field consent. This will continue under the new rules.

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Conditions for agreeing to deferral of returns by more than one month

An application to defer returns will be accepted if:

all current participators have received agreement to deferring their returns for at least the same periods as those requested by the RP; and

where returns will be deferred for a specified time, OTO are satisfied that the deferred returns will be received in sufficient time to allow the participators to complete their returns - see 2.2(b) above; and;

in the case of indefinite deferrals, OTO are satisfied that the RP has a sufficiently good record keeping system in place to allow him to deliver all returns at a later date should a notice be served on him to do so.

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Application for deferral

i. There is no prescribed form of application for deferral. A participator will need to specify the field for which the deferral is requested, the chargeable periods for which deferral is sought, the length of the deferral and the reasons why the deferral is appropriate, and provide confirmation that the necessary records will be kept to enable the participator to submit returns when required. Supporting information should be sent to OTO with the application.

ii. An RP will need to specify the field for which the deferral is requested, the periods for which deferral is sought, and the length of the deferral and provide confirmation that the necessary records will be kept to enable the RP to submit returns when required.

iii. A request to defer returns will need to be made in sufficient time to allow OTO to consider the request before the normal time for the submission of the return. OTO cannot guarantee to give a response when applications are made less than 28 days before the time limit expires. It is recommended that requests are made as early as possible to allow time for any discussion of the application which may be required.

iv. A participator must provide sufficient information to show that he will not be liable to pay PRT for the chargeable periods for which the returns are to be deferred. The information required will depend on the circumstances of the participator in a particular field and the type of deferral requested. For example where a request is for a short term deferral of the return for a single period a simple PRT computation showing that gross income is covered by losses brought forward or oil allowance etc will be sufficient. Where however deferral is requested for more than one period OTO will normally need to see production and cash flow forecasts for the field covering the whole period from which deferral is sought. These should include the oil price assumption [and some oil price sensitivities], details of other assumptions such as the apportionment of expenditure and the $:£ exchange rate. PRT computations based on the projected figures should also be supplied [oil allowance utilisation should be stated in tonnes as well as the cash equivalent]. OTO will be happy to discuss the information required in respect of specific fields with individual companies.

v. In the case of small onshore fields where it is common ground that no PRT liability will ever arise, a formal request for indefinite deferral without the submission of cash flow forecasts will normally be sufficient. The previous practice of accepting short returns for small onshore funds will cease and full returns will be required for any small onshore fields which do not opt for indefinite deferral.

vi. OTO will be happy to consider an application made by the RP on behalf of all the participators providing that each are in similar circumstances, including receiving a similar price for the oil disposed of.

vii. In some circumstances where deferral has been agreed, OTO may need additional information concerning the field, for example to reconcile tariffs or apportionments. OTO will continue to request specific information where necessary.

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Reviews following deferral

OTO will review whether continued deferral remains appropriate. It is likely that reviews will take place every 5 years unless there has been a significant change in circumstances.

EFFECT OF THE NOMINATION SCHEME

i. Exclusion from the Nomination scheme will not be a condition of allowing deferral of returns. During a deferral period OTO will not undertake nomination reconciliations or attempt to compute nomination excesses and therefore if they chose to do so, non excluded companies will be able to ignore the provisions of the scheme for those fields where deferral is agreed.

ii. If assessments start to be made, OTO will however make these computations and will compute and include in those assessments any liabilities under Section 2(5)(e). Where deferrals are not indefinite companies will probably wish to continue to fulfil all the requirements of the scheme.

iii. Exclusion from the scheme will still be available and should be sought by companies even where returns are being deferred.

iv. In addition, and as is the case with non taxable fields, where blend nominations are made and they include in the contributing fields some that are deferred and some that are making returns, OTO will require to see details of the deliveries into each cargo from the deferred fields in order to complete the reconciliation for the fields making returns.

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Changes in circumstances

i. The participator must notify OTO immediately if there is a significant change in circumstances such that the information originally supplied to OTO can no longer be considered a reasonable approximation of the facts. To allow OTO to take an independent view, this will have to be done even if, in the participator’s view, there is no likelihood of any PRT liability in the deferral period.

ii. If OTO is notified of a change it will consider the situation and, if appropriate, serve a notice requiring the delivery of the deferred returns. The notice will give a new time limit by which the outstanding returns should be delivered.

iii. The primary condition for deferring the RP’s returns is the deferral of the participator’s returns. If a participator sends in a deferred return before the extended time limit expires either because of a change of circumstances or for any other reason the outstanding RP’s returns will be required.

iv. The new legislation will allow the Board to issue a notice requiring delivery of a return at any time, notwithstanding any earlier requirement to extend the time limit for delivery beyond the time shown in the notice. This right will be exercised when continued deferral is appropriate following a change of circumstances. This right will also be exercised if OTO believes that PRT or corporation tax is being lost of might be lost in the absence of the return. The persons concerned will however be given the opportunity to satisfy OTO that all the conditions are still met and that the original agreement should be continued before any notice is issued.

v. If OTO serve a notice requiring the delivery of returns the time limit will usually be not less than 6 months from the date of the notice, but in some circumstances the outstanding returns may be required earlier in which case the notice may specify a shorter period, for example when a new participator wishes to be assessed on time.

vi. Where a participator is to be assessed it will usually be appropriate for the RP to make Schedule 5 claims. It will be for the participator to ensure that the RP does so.

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License transfers - Notice under Paragraph 3 of Schedule 17, FA 1980

i. Paragraph 3 of Schedule 17, FA 1980 requires participators to notify the transfer of field interests within two months of the end of the transfer period. In practice it is recommended that where a new participator wishes to make returns and be assessed on time notification is made as soon as possible as OTO may need to obtain the old participator’s and the RP’s returns before the assessment can be made on the new participator.

ii. Where the whole of the old participator’s interest is transferred the completion of form PRT80 should not pose any problems. The relatively unusual situation of an old participators transferring part of an interest to the new participator is covered by the Annex.

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Transfers during deferral

iii. In the case of royalty paying fields, where a license transfer takes place during definite deferral, the old participator will be required to make PRT1 returns as soon as possible after the transfer. This is to enable the royalty position, including any PCPA adjustments, to be brought up to date.

iv. For non royalty paying fields, the old participator will not normally be required to make the outstanding returns although it is recognised that in practice he may choose to do so for commercial reasons. Where however the new participator wishes to make returns and be assessed at the normal time OTO will require the old participator and the RP to deliver the outstanding returns.

v. Where a participator has deferred returns for a specified time his successor may want to do the same. OTO will be content to defer the new participator’s returns on the same basis as his predecessor’s, at least initially. This initial deferral will be subject to the new participator confirming that he is content with the assumptions used by the old participator. If the basis for deferral is that S10 exemption applies, the new participator will have to obtain confirmation from OTO that exemption is still applicable.

vi. In the case of an indefinite deferral OTO will consider whether continued deferral is appropriate. In particular OTO will need to be satisfied that if the history of the field ever needed to be created the old participator would be in a position to do so. Notwithstanding this requirement, OTO will not take any responsibility for failure by the old participator.

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Change of RP

vii. Following a change of operator it is normal for the Board to appoint the new operator as RP. The new RP may have difficulty in preparing returns and claims for periods prior to his appointment. OTO will seek confirmation that the new RP will be able to make such returns and claims. Failing such an assurance and if the companies still wish to continue the benefits of deferral OTO will, with the agreement of all concerned, consider deferring the appointment of the new operator as RP. This option will only be available if OTO is satisfied that both the old RP and new RP will be in a position to make the required returns regardless of the length of time that may have elapsed since the date of the change of operator.

viii. The same problem does not occur with changes in participators. Subject to the usual or extended time limits, a participator should always be able to make a Paragraph 2 return or a Schedule 6 claim for chargeable periods for which he was a participator.

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Assessing: Creating history

i. At the end of a period of deferral, or possibly earlier if there has been a change of circumstances, OTO will seek to bring the assessing position up to date.

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Delivery of deferred returns

ii. A participator or RP who has deferred returns will be able to make them at any time before the extended time limit expires. When returns are delivered OTO will issue assessments following the general principles set out in this guidance.

iii. If returns are deferred for a specified time, it is possible that because of changes in circumstances they will be required earlier than anticipated. This should not cause any particular problems because there should always be an expectation of the need to deliver returns.

iv. If returns are deferred indefinitely it will be done in the expectation that they will never be required. Nevertheless returns may be required at some time, for example

where a review shows that one or more participators would be liable to pay PRT, if assessed; or

where a participator or the RP sells his interest in the field in circumstances that make it unlikely that he would be in a position to deliver returns at a later date. An example of this would be when the company had no other UKCS field interests and it might be liquidated or leave the UK.

v. Where returns are required following an agreed deferral, in order to allow companies sufficient time to prepare returns, OTO will usually not require the delivery of a return within less than 6 months from the date of issue of the notice requiring delivery. It should however be noted that this may not be possible in all circumstances.

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Claims

vi. When OTO needs to issue assessments following deferral it is expected that participators and the RP will deliver claims for all expenditure incurred to date.

vii. Where returns have been deferred the normal 6 year time limit for making claims may not be sufficient. The new legislation provides that, where the deferred delivery time is more than 4 years after the end of the claim period, claims can be made up to two years after the earlier of the deferred delivery date and that of delivery of the return.

viii. Some participators may still be deferring returns when the Schedule 5 claims are received. Their share of the expenditure will fall to be allowed in the assessments for the corresponding periods when those assessments are made (see xiii) below.

ix. Paragraph 11 of Schedule 3 may apply where claims are made more than 12 months after the claim period. Where however claims are made following a deferral period OTO will not consider applying Paragraph 11 unless claims are not made in sufficient time to allow OTO to make appropriate decisions before making the assessment for the period in which the costs were incurred.

x. It should noted that where claims are received following a period of deferral OTO can not guarantee to review these within the normal 28 day review period for claims.

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Assessing

xi. The normal time limit for raising assessments is 6 years after the end of the chargeable period. Where returns have been deferred by more than one year, the new legislation provides that assessments can be made up to 5 years after the earlier of the deferred delivery date and the date of delivery of the return. There is no need for a similar provision for loss determinations as these can be made at any time.

xii. OTO will, as far as possible, raise the assessments that would have been raised had returns not been deferred. If however it is necessary to raise tax bearing assessments on time this might not always be the case, particularly if any claims are made after deferred returns are delivered.

xiii. The provisions of Section 192, FA 1993 will ensure that allowed expenditure is not set against the income of a chargeable period earlier than the period in which the expenditure was incurred. It should therefore be noted that where claims for periods corresponding to the chargeable periods are subject to a decision before the assessment for the chargeable period is made the allowable expenditure will be allowed in the assessment for the corresponding chargeable period.

xiv. The interest provisions in Paragraph 15 Schedule 2 and in Paragraph 10 Schedule 19 FA 1982 remain unchanged.

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Cessation of production

i. If any participator claims an unrelievable field loss in respect of a field for which returns have not been made, all returns necessary to determine the amount of the loss will be required.

ii. Once a field has permanently ceased production the RP or any participator will be able to seek confirmation from OTO that no returns will ever be required from him in respect of that field. Confirmation will be subject to OTO being satisfied that no future UFL claims can be made by any person and that no future receipts will arise in respect of the field.

iii. Note: This paper usually refers only to assessments. Unless the context requires otherwise the same practices will apply to loss determinations as they will to assessments.

Oil Taxation Office, 19 May 1999

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Annex

Completion of form PRT80 following transfer of part interest

Where part of an interest in an oil field is transferred, Paragraph 5 of Schedule17, FA 1980 requires the notice under Paragraph 3 to state “what the old and new participators propose should be the corresponding part of” unused expenditure relief, unused losses, accumulated capital expenditure and (where there is excluded oil) oil won and saved. Normally OTO expects these to be agreed amounts but where the old participator has not made claims and has not had losses determined this will not be possible. OTO will therefore accept clear statements of intent.

Assume for example, that old participator ‘A’ sells his interest to new participators ‘B’ and ‘C’. The normal operation of PRT means that all expenditure incurred up to the end of the chargeable period immediately preceding the date of transfer will remain available to ‘A’, subject only to decisions not having been taken before the assessment for that period has been issued. So the statement of intent for the treatment of expenditure could be in terms that expenditure incurred after the end of the chargeable period ended on … plus any earlier expenditure on which no decision has been taken at the time the assessment for that chargeable period is made will be shared between ‘B’ and ‘C’ in the ratio X : Y.

Similarly, in respect of any accumulated loss as at the date of transfer (i.e. once all assessments and loss determinations have been made for all chargeable periods up to and including the one that includes the transfer date), ‘A’ could state that X% will be transferred to ‘B’ and Y% to ‘C’. The proposal for transferring accumulated capital expenditure could be couched in similar terms.

If any oil is excluded under Section 10 it would also be necessary to agree the proportion of the oil won and saved up to the date of transfer that will be treated as belonging to each of ‘A’ and ’B’.

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