HMRC - OT19225 - PRT: Appendices - Deferral Of Returns (Alternative Method - Informal Returns)

Deferral of Returns from Participators and from the Responsible Person

Introduction

Introduction

Under certain circumstances HMRC will allow the deferral of returns for specified or indefinite periods. This is in accordance with legislation at S102, FA99. There has been a limited take up of this deferral scheme, the main reason being the potential requirement to deliver all deferred returns at some later date should, for example, the field become liable to PRT in respect of one or more participators. This uncertainty combined with the record keeping requirement to reconstruct records from previous periods has made companies reluctant to take up the deferral scheme. It is with this in mind that the new scheme has been devised jointly by HMRC and industry.

The essential feature of the new scheme is that, except for the most exceptional of circumstances, there is no retrospective requirement for a company to submit returns for earlier periods. It is felt that this relaxation of the existing requirements for the old scheme will encourage more companies to apply for deferral.

The new scheme is for indefinite deferral only.

The first chargeable period for which this new scheme will operate is IH07 but see (iii) “Application for Deferral” below on time limits for applying for deferral under the scheme.

Conditions for agreeing the indefinite deferral of returns (“new’’ method based on an informal return)

For an introduction to the relevant legislation and an analysis of the Board’s powers refer to OT19200.

An application to defer returns (under Paragraph 2 Schedule 2 OTA 75, Paragraph 5 Schedule 2 OTA 75 and Section 1 PRTA 1980) under the new method will be accepted if HMRC is satisfied that:

no participator in the field will be liable to pay any PRT for the chargeable period for which the return will be deferred or for any future period; and

no Unrelievable Field Loss (“UFL”) is anticipated to arise for any participator in the field; and

all participators in the field wish to defer - the operator under the new method and each other participator under either the new method or the old method; and

all participators have put in place, and agreed with HMRC, procedures to notify any S493 adjustments required as a result of all non arm’s length sales of equity oil and gas from the field each year at or before the latest time for delivery of the corporation tax return for the year; and

each participator (apart from those who are adopting the “old” method) has agreed to complete a standardised spreadsheet to be submitted annually in March providing details sufficient to determine Oil Allowance usage during each period of deferral. The spreadsheet will cover the period of 12 months (or 6 months, in the case of the first submission for a field that comes within these rules from 1 July of a particular year) to the December of the year prior to submission.

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Additional returns: Section 62(4), FA 1987

To ensure the continuing integrity of the HMRC valuation databases and the accuracy and completeness of the values calculated for the purposes of PRT and corporation tax, additional returns under Section 62(4) FA 1987 (form PRT1A) will continue to be required to be made within two months of the end of each chargeable period. HMRC 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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Application for deferral

The responsible person will need to specify the field for which the deferral is requested and first chargeable period (beginning 1 January or 1 July) for which deferral is sought.

Each participator will confirm that an informal return consisting of an agreed standardised spreadsheet will be prepared and submitted each March covering the two (or one for an initial period) chargeable periods ending on the previous 31 December in order that Oil Allowance usage may be determined for each chargeable period of deferral.

As part of the application process each participator will need to agree an amount as proxy for its Schedule 6 costs (likely to be a fixed percentage of the billing or Schedule 5 costs). Unless there is a significant change in circumstances it is not anticipated that this agreed percentage will change. It is anticipated that the fixed percentage of billing costs will be the same for each participator thus each participator will take its own (license request) share of this amount and this is anticipated in the “cost” section of the informal return template.

A request to defer returns will be made in sufficient time to allow HMRC to consider the request before the normal time limit for the submission of the return. HMRC 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.

Each participator must provide sufficient information to show that he will not be liable to pay PRT for the first chargeable period for which the returns are to be deferred or for any subsequent period. HMRC will as a minimum require the operator to provide production forecasts for a field demonstrating that production volume is well below the OA volume, both for the remaining life of the field and for each chargeable period. This will include projected cumulative OA utilisation figures with comparisons to the current unused OA balance. HMRC may ask for further information such as oil price assumptions, the $:£ exchange rate etc if the case for deferral is not to clear cut.

Specifically in connection with UFLs each participator should provide a current estimate of its share of any anticipated decommissioning costs demonstrating that this will not lead to any future UFL claims. In this or any other respect HMRC will be happy to discuss the information required in respect of specific fields with individual companies.

HMRC will be happy to consider an application made by the RP on behalf of all the participators providing that each participator is in similar circumstances (including, for fields where the case for deferral is less clear cut, that each participator receives a similar price for the oil disposed of). Where the RP makes such an application on behalf of others it would facilitate the application process if all participators could sign up to this and the application to include all the necessary signatures.

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Annual declaration

In addition to the spreadsheet the informal return must include a signed declaration stating that, based on present circumstances, no liability to PRT or potential UFLs are anticipated for that or any subsequent chargeable period. In the case of multiple deferrals by a company a composite declaration may be made.

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Review following deferral

HMRC will review the spreadsheets submitted annually by each participator. Unless the spreadsheets indicate that a PRT liability arises for a deferred period no further action will be necessary. HMRC will respond in writing confirming receipt of the informal return and either indicating acceptance or making any necessary enquiries as a result, say, of any significant change in circumstances (see below). HMRC undertake to respond no later than when the assessments are normally issued in May following the period covered by the informal return.

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Effect of the nomination scheme

Under the new nomination scheme rules introduced in FA2006 a nomination excess will occur on a cargo by cargo basis and, under the new attribution of blended crude oil rules (OTA75\S2(5B-D) and SI2006\3312), some of this excess may be attributed to a deferred field. However during a deferral period HMRC will not attempt to compute nomination excesses for a deferred field and therefore, if they choose to do so, non excluded companies will be able to ignore the provisions of the scheme as they apply to those fields where deferral is agreed.

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Effect of the attribution of blended crude oil rules

We can see no impact of these rules on indefinitely deferred fields, other than the possible impact if a Nomination Excess occurs and part of it is attributed to such a field, referred to above.

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Significant change in circumstances

A participator should notify HMRC immediately if there is a significant change in circumstances such that the information originally supplied to HMRC can no longer be considered a reasonable approximation of the facts. To allow HMRC to take an independent view, this should be done even if, in the participator’s view, there is no likelihood of any PRT liability or UFL arising.

If HMRC is notified of a change during a chargeable period it will consider the situation and, where it appears probable that a PRT liability will arise for that or any subsequent chargeable period will, if appropriate, serve a notice requiring the delivery of returns for that chargeable period and all subsequent chargeable periods. The notice will give a new time limit by which any outstanding returns should be delivered. A similar notice will also be served if it is anticipated that a UFL will arise on permanent cessation of winning oil.

If a participator is required to send in returns because of a change of circumstances as outlined in (ii) above the RP’s returns and those of the other participators will also be required for the chargeable periods mentioned in (ii) above.

In addition, it should be noted that retrospective submission might be required for any returns, including any RP returns, that have been deferred under the old regime (see OT19200).

The legislation allows the Board to issue a notice requiring delivery of a return at any time notwithstanding any earlier agreement to extend the time limit. This right will be exercised when continued deferral is inappropriate following a change of circumstances. This right will also be exercised if HMRC believes that PRT or corporation tax is being lost or might be lost in the absence of the return. The persons concerned will however be given the opportunity to satisfy HMRC that all the conditions are still met and that the original agreement should be continued before any notice is issued. To avoid any undue revisiting of previous periods HMRC will endeavour to ensure that such a notice is issued without undue delay.

If HMRC 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, exceptionally, the outstanding returns may be required earlier in which case the notice will specify a shorter period.

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Retrospection

As already stated the main benefit of the new deferral scheme is the assurance afforded to participators that once the informal return has been agreed there will be no requirement to revisit earlier agreed periods. However HMRC reserves the right to revisit earlier periods if it becomes evident that a company has provided materially inaccurate information, either on application to join the scheme or later, or if the company has failed to inform HMRC of a significant change in circumstances.

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Interaction with old deferral scheme

It is possible that participators in a field will want to apply for deferral under the new scheme whilst at the same time other participators in same field will have deferred under the old scheme. It is not anticipated that this will present any insurmountable problems and it is likely that the unused Oil Allowance balance for the whole of the field (which is required for completion of the informal annual return) can be extrapolated from the formal returns filed by those participators who had not previously opted to defer.

If a participator in a field who has adopted the old method of deferral subsequently chooses to submit previously deferred returns, it will be necessary to create that participator’s PRT history. For periods for which other participators in that field have opted to defer under the new method, the oil allowance usage and share of joint costs of the participator now submitting returns will be derived from the annual spreadsheets for those periods submitted by the operator under the new deferral method. HMRC will need to be satisfied that there is sufficient information to make an informed decision about allowing a participator formerly under the old scheme to come into the new scheme. For example, if all the participators in the field had deferred under the old scheme there might not be sufficient information available to recreate the new values. However HMRC will be happy to consider any such case on its own merits.

In using information from other participators’ informal returns there may be issues of tax payer confidentiality. In such circumstances HMRC will require consent from the various participators in using the information in this way.

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Licence transfers

Transfers during deferral

A transfer of a field interest by a participator who has opted to defer under the new method will not, of itself, affect that deferral.

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Notice under Paragraph 3 of Schedule 17, FA 1980

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 the notification is made as soon as possible as HMRC will need to ensure that notices to make returns are issued for all participators for the relevant return period.

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 participator transferring part of an interest to the new participator is covered in the Annex to OT19200.

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Change of RP

Following a change of operator it is normal for the Board to appoint the new operator as RP. The new RP will need to confirm that deferral is to continue and that the standardised deferral spreadsheet will continue to be submitted. If the new RP does not wish to continue to defer, returns must be made by all participators for the period during which the new RP was appointed and for all subsequent periods.

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Cessation of production

If any participator claims a UFL in respect of a field for which formal returns have not been made, returns necessary to determine the amount of the loss will be required. This is covered at (ii) “Significant Changes in Circumstances” above and only applies to periods on or after such time that the likelihood of UFLs first arises. However, retrospective submission might be required for any returns, including any RP returns that have been deferred under the old regime (see OT19200).

Once a field has permanently ceased production the RP or any participator will be able to seek confirmation from HMRC that no returns will ever be required from him in respect of that field. Confirmation will be subject to HMRC 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.

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Standardised Spreadsheet

A link to a copy of the standardised spreadsheet is provided.

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