HMRC - OT21605 - Hire Of Relevant Assets - Scope Of Legislation

The hire cap applies to a producer where oil contractor activities are being carried out, or are about to be carried out, and a company carrying on a production ring fence trade makes payments under a lease for a relevant asset used in a relevant offshore service.

Oil contractor activities are defined by CTA2010\S356L and cover exploration or exploitation activities which include the use of a relevant asset in the territorial sea of UK continental Shelf OT50005. Exploration or exploitation activities which do not use a relevant asset are not within the scope of S285A.

A relevant asset is defined by CTA2010\S356LA OT50010

This new legislation will therefore apply to any situation where a drilling group or accommodation vessel group provide a service which utilises one of their vessels and instead of making a single charge for the service, there are separate charges to the oil producing group, one of which is made under a separate lease. It does not matter to whom that lease payment is made.

HMRC consider that a straight forward time charter; such as that created under a single contract for drilling; constitutes a service which uses an asset rather than a payment in respect of the use of a relevant asset. The provider of such a service would have a trading permanent establishment in the UK (as they fall outside Para 8 to the commentary on Article 5) and be within CTA2009/S1313. Such a payment for services would not constitute a payment under a lease of a relevant asset within the hire of relevant assets legislation.

Payment for a service in which an asset is used (for example, for the drilling of a well or the provision of accommodation) will not normally be a payment under a lease within the hire of relevant assets legislation, notwithstanding that the required asset is named in the relevant contract. However, this may not be the case if the provision of use of the asset, rather than the service, is the predominant purpose of the contract. Each case will need to be considered on its own facts.

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