HMRC - OT26045 - The Purchase Of The Results Of Past Exploration Work

CAA01\S439

Qualifying expenditure is defined at CAA01\S439(1) as capital expenditure incurred by a person on research & development (R&D) directly undertaken by him or on his behalf.

RDA will therefore not be available to the purchaser of the results of past exploration work. The expenditure will either not have been undertaken on behalf of the purchaser or the purchaser is not incurring the expenditure for the purpose of the extension of knowledge.

HMRC takes the view that R&D expenditure incurred by an operator on behalf of a consortium under a joint operating agreement is undertaken on behalf of all the parties. It is not seen as necessary that all the parties have an interest in the licence concerned. In contrast where a licence interest changes hands, the original R&D expenditure was not undertaken on behalf of the purchaser of the interest and RDA will not be available to the purchaser. Such “second hand exploration expenditure” may however be relieved under the MEA code.

HMRC takes a similar view with payments under “bottom hole” agreements. This is an agreement where a non-licensee makes a payment to the licensees for information regarding the results of drilling an exploration well. These payments are usually made when the drilling reaches “total depth”. If the agreement is made before drilling commences HMRC accepts that the R&D expenditure is incurred on behalf of the “bottom hole” contributor. If the agreement is not made until after the well is completed HMRC does not accept that the R&D expenditure is incurred on behalf of the “bottom hole” contributor. The payment may qualify for MEA.

In all cases it should be noted that the provisions in CAA01\S439(2) mean that RDA is not available on the same expenditure in respect of more than one trade.

The meaning of the term “undertaken by him or on his behalf” was considered in the case of Gaspet Ltd v Elliss 60TC91. The case considered the meaning of the expressions “directly”, “undertaken” and “on behalf of”.

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