HMRC - OT26770 - Production Sharing Contracts - Anti-Avoidance Provisions And “Carry” Arrangements

There is a requirement in CAA01\S168(1)(c) & CAA01\S169(1)(d) that the expenditure on the provision of plant and machinery must be commensurate with the value of the interest held in the PSC.

This condition is designed primarily to prevent the manipulation of allowances through the use of illustrative agreements, under which the right to the future income stream would be hived off by the UK company to an offshore affiliate, while the obligation to incur the expenditure remained with the UK company (and there was an existing and continuing petroliferous trade in the UK company by reference to some other production source).

If the hive-off involved little or no capital consideration at a time when no proven reserves were apparent, then the UK company might argue that open market value was nil or negligible, and the Exchequer could be exposed.

The impact, if any, of this test on “carry” arrangements will depend on the structure of the specific arrangements and the rights and obligations that the “carrier” actually acquires. Each arrangement, whether arms length or inter-affiliate, will be considered on its own merits. But relief under these sections will not automatically be denied simply because a “carry” arrangement is involved.

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