HMRC - OT30045 - Undeveloped Areas - Three Dimensional Co-Ordinates

While there is generally no difficulty regarding TCGA92\S194 and swaps involving Two Dimensional areas (i.e. swaps based on surface area co-ordinates) there have in the past been concerns as to whether the legislation would automatically include vertical Three Dimensional areas (i.e. area definitions also including depth co-ordinates).

Typically, a field is defined as a surface area, and extends down to the Earth’s core - usually there is no 3D cut-off at a given depth co-ordinate. While there are some fields for which this is not the case (e.g. Britannia) these are exceptions rather than the norm.

The same is technically true for Development Consents. However, a Development Consent references a Development Plan document and this specify well depths and refer to the particular geological structure for which consent has been received. The Development Consent should provide sufficient delineation of a ‘development area’ for Capital Gains Tax purposes.

The basic test remains unchanged: the areas swapped must be undeveloped within the meaning of the act and principle this can include swaps of areas defined in Three Dimensional co- ordinates, but which are not otherwise within the Three Dimensional co-ordinates of a Development Consent as set out in the relevant Development Plan.

In licence areas with no development consents in place HMRC will normally accept that swaps are within TCGA92\S194 - This will include areas outside of a field area delineated in Three Dimensions.

Difficulty may arise when swaps involve areas within a field area (whether 2D or 3D) that include, or are vertically or horizontally adjacent to, or over/under lap areas, which have Development Consents in place.

In these situations HMRC will need to look closely at the information available in the existing Development Plans to determine whether these include part or all of the areas being swapped and apply the legislation accordingly and where necessary, seek assistance from DECC in determining the facts.

If they are otherwise within TCGA92\S196(1A), swaps involving overseas areas should receive similar treatment.

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