Oil and Gas Direct Tax Forum 27/08/2014

Attendees:	
Alan Tume (HMRC) Andrew Hoar (HMRC) Diane Williams (HMRC) Tony Chanter (HMRC) Natalie Reeder (HMT) Anne Hurdman (HMRC) Matt Ray (HMT)	Andrew Enever (Shell) Ksenia Kourbatova (Shell) Claire Ralph (OGUK) Mike Manderson (Talisman Synopec Energy UK Ltd.) Alistair Dunbar (PWC) Sally Carroll (Petrofac) Alastair Blain (ConocoPhillips) Phil Greatrex (CW Energy) Carolyn Garner (DONG energy) Jacqui Akinlosotu (ENI) Michael Thompson (V&E) Martin Kirkham (Chevron) Dan Espie (Total) Carolyn Sarrau (Fairfield) David Fletcher (Enquest) Roman Webber (Deloitte) Rob Hodges (EY) Simon Gell (JX Nippon) Bernard Logue (Centrica) Andrew Lister (KPMG)

1. Minutes of last meeting, apologies, matters arising and action points.

1.1. Notes from the last meeting were agreed. On Brown Field Allowance it was noted that the paper from industry was expected on the 29th and Gas valuation would be discussed at this meeting and was on the agenda.

Oil and Gas Tax Policy

1.1. <u>Fiscal Regime Review</u>

1.2. HMT gave an update on the progress so far on the call for evidence published mid July. It was noted that the deadline for responses is the 3rd of October and HMT are encouraging all major players to respond. HMT is encouraging industry to provide what evidence it can to support assertions, including information about the position of the UKCS in the global industry, hard data on the state of UKCS operations, and case studies / worked examples of barriers as companies perceive them.

1.3. An update was also given on the conversations being held within the working groups. The core working group has discussed how the economics of the basin are changing and industry is arguing that this needs to be reflected in the tax system to encourage investment. HMT acknowledges the issues but has challenged industry on what it can do on its cost base. The working group has noted the particular difficulties for

groups that are not in a taxpaying position to utilise many of the reliefs and allowances.

1.4. It was stated that working groups 2, 3 & 4 would meet next week (w/c 01/09) and working group 1 the following week (w/c 08/09) and industry was encouraged to engage with the working groups if they had not done so already. HMT again emphasised the importance of industry providing evidence and trying to reach consensus on priorities. The intention remains to publish a high level document with a roadmap for the future by Autumn Statement.

1.5. Industry asked whether HMT was speaking to other investors and companies outside of those represented at the meeting. HMT responded that this was the case with existing operators, newer entrants and those recently departing the UK all being spoken to in order to understand the reasons for their actions. HMT also confirmed conversations were taking place with interested parties in the financing industry.

1.6. <u>uHP/HT</u>

1.7. HMT gave an update on the progress of the uHP/HT consultation. Two working groups have been held so far, focusing on the tax aspects and cluster determination requirements. It was stated that there would be another working group in mid-September and industry were also encouraged to get involved in the separate industry meetings being coordinated by OGUK ahead of that. HMT invited industry to contact them with any areas which they felt should be covered by the next working group or, if they preferred, to raise issues bilaterally outside of the group.

1.8. Industry asked when the next working group would be and when the deadline for submissions would be. The closing date of the consultation was stated as being the 30th September and the next working group would take place some time in mid-September – HMT would circulate details shortly.

1.9. <u>EITI</u>

1.10. HMRC thanked Industry for their participation and noted that the UK had submitted its candidacy application already. It was stated that the reconciliation would be based on cash payments. The intention so far is for 2014 payments to be included in the first report and details of these would need to be sent in to the Independent Administrator in 2015 with the report likely to be published in 2016. The UK is expected to hear by mid-October whether its application has been successful.

1.11. Industry asked what solution had been decided for the issue of tax payer confidentiality and what would be required from them in order that HMRC could disclose to the reconciler.

1.12. HMRC responded that the UK would be pursuing the ‘waiver’ route and work is ongoing on the exact wording to be used, with examples having been received already. Suggested wordings will be put forward by HMRC to industry for comment prior to being finalised.

1.13. <u>PRT Certificates</u>

1.14. HMRC commented that a solution had been reached on this issue and that the PRT certificates would contain less detail than previously - enough that industry could meet requirements. More detailed certificates could be provided but HMRC requested that this is only asked for where absolutely necessary as the preparation required a great deal of time and resource.

1.15. Industry stated that although good progress has been made, we have still not reached a final solution. Industry is developing a number of templates to share with HMRC that seek to deal with more complex situations. One specific situation which PRT certificates need to handle is that where two or more license interests were acquired by a (new) participator. In such cases unutilised tax losses can be carried back but need to be apportioned between the previous participators on a 'just and reasonable' basis under paragraph 15, Schedule 17, FA 1980. Where a just and reasonable apportionment such as this is required, the PRT certificate would need to provide sufficient information to allow the company to adopt an appropriate apportionment.

1.16. HMRC advised that, as far as they were aware, where certificates were needed they have been provided. If any companies do not think this is the case then they will need to contact HMRC as soon as possible.

1.17. <u>HMRC Guidance</u>

1.18. HMRC gave an update on draft guidance and stated that most of the guidance for FA 2014 had been sent out though there was a delay in the bareboat guidance regarding the identification of historic costs. The cut-off for representations regarding the draft guidance already circulated would be mid September and the final guidance published in October.

1.19. Industry stated that there had been a number of representations regarding FA 2014 and noted that there had been no change to the legislation. They queried why it had been decided to address the issues through guidance rather than the legislation. Industry advised that reinvestment relief was an example of where the industry has given feedback on legislation it feels isn't clear but this has been dismissed.

1.20. HMRC responded that, for the issues surrounding reinvestment relief, they considered that the legislation did what was required. HMRC therefore agreed that they would set out the position in guidance.

1.21. Industry stated that it would be appreciated if, in the future, the details of comments being relayed to parliamentary counsel and their view could be fed back to them so they could be sure that the comments had been addressed. Industry raised strong concerns over the trend of guidance being used to address shortcomings in the legislation as guidance could change without parliamentary scrutiny and previous versions of guidance might not be available.

1.22. HMRC commented that legislation is often changed in response to feedback but this was not such an occasion and guidance will reflect HMRC's view.

1.23. Industry also noted that they had had no response on their representations on bareboat charter provisions. Industry stated that the principal concern was over Section 285A and that the legislation is not targeted in the way the explanatory notes suggested it would be. HMRC stated that some changes had been made and industry was invited to respond should the guidance be unclear once released.

Oil and Gas technical Issues

2.1. Gas Valuation Project

2.2. HMRC commented that the results of the project had now been produced. During the project it was noted that the bulk of pricing methodologies for non arms length valuation of gas produced very similar results that largely mirrored commercial arrangements. Therefore in future methodologies that produced results outside an expected ‘range’ would be challenged but no specific methodology would be required. HMRC agreed to provide their written conclusions on their review to Industry

2.3. RDEC

2.4. HMRC gave an overview of what has occurred so far with a submission having been made by industry and put to CTIS. The response from CTIS was that each company should liaise with their CRM on the claims in advance of returns being submitted.

2.5. Industry stated that the main issue with RDEC is that ring-fenced companies receive no benefit from electing to RDEC and actually suffer a cash flow disadvantage as they are not able to claim tax credits on the instalments paid, only on the final amount. As it stands therefore ring fenced companies won’t elect.

2.6. HMRC advised that the RDEC guidance would be published shortly. Unfortunately HMRC would not be able to make changes in response to Industry’s concerns. CTIS colleagues have advised that the policy aim of introducing the RDEC is for it to be treated 'above the line' in a company's accounts. To deliver this change it is necessary for the RDEC to be treated like any other taxable grant and requires to be divorced from the tax computation. It therefore cannot be taken into account for Quarterly Instalment Payments.

2.7. S1313 and Shuttle tankers

2.8. HMRC advised that there may be an issue as to whether shuttle tankers dedicated to a field should fall within S1313 and welcomed views from industry on whether the activities of shuttle tankers (not owned by oil licensees), fall within the definition of ‘exploitation or activities associated with exploitation’ of the UKCS. At the request of Industry, HMRC agreed to provide a subsequent paper highlighting the potential issue.

2.9. Bareboat APA

2.10. HMRC advised that the legislation for bareboat charters was in place and normal transfer pricing guidelines would apply. In all bareboat cases (whether within the new hire cap or excluded) HMRC would continue to

look for a residual profit split methodology. However In the past HMRC have accepted a market value base when computing the return on capital element and sought a significant initial cost plus element. The basic cost plus to be applied now would be cost plus 10% and the return on capital would use historic costs for the rig owners rather than market value. HMRC would expect to see the residual profit split based on an apportionment of the costs and cost contributions by the two parties.

AOB

3.1. A brief update on the conference being prepared between HMRC and Industry was given and it was noted that there had been progress on both sides with a draft agenda completed.

3.2. It was noted that the next forum meeting would be after the conference (on 10 December 2014 at 3pm to 5pm).

3.3. There was no other business.

Rhys Hobbs 29/08/2013