

**Oil and Gas Industry Direct Tax Forum:  
Minutes of meeting held on Monday 29<sup>th</sup> February 2016**

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

- 1.1 Alan Tume (AT) welcomed everyone to the meeting.
- 1.2 There were no matters arising from the last meeting on 28 September 2015.

**2. Oil and Gas Tax Policy**

**i) Policy update**

- 2.1 Andrew Willis (HMT) explained that it would not be possible to comment on policy issues so close to the Budget. They were grateful for representations from Industry and that these would be considered in the usual way.
- 2.2 The workstreams on exploration, access to infrastructure, and barriers to utilising late life assets had gone ahead at the end of last year and the consultations were very helpful.

**ii) UKOITC Budget Representation Letter**

- 2.3 Andrew Enever reviewed the headline messages contained in the UKOITC letter to the Chancellor and emphasised the importance of continuing dialogue in relation to both policy development and legislative changes.

**iii) EITI**

- 2.4 AT stated that Industry and HMRC were working very effectively with the Independent Administrator and that good progress was being made on reconciling tax payments. He stated that an EITI Report would be issued in mid April 2016. AE confirmed that the report would contain a Contextual Chapter and that Industry had contributed to this extensively. He also said that companies would see any data that was to be published in advance. AT reminded industry that it would be their own figures that would be published and that if these did not reconcile with Government figures that they would have been told this by the Independent Administrator.

**3. Oil and Gas Technical issues**

**i) SC apportionment of profits**

- 3.1 Anne Hurdman stated that HMRC had not changed their view on the intention and interpretation of the legislation as a whole but had refocused their efforts to include consideration of the effects of alternatives proposed to try and bring matters to an early settlement. She stated that they are working with individual businesses and progress was being made on a case by case basis as the issues were very fact

dependent. Good progress was being made and it was stated that many cases had been settled. HMRC were hopeful that this issue would now be resolved satisfactorily.

**ii) Update on Diverted Profits Tax (DPT)**

3.2 AT stated that good progress was being made on the initial reviews for DPT and referred to the meeting that had taken place with Industry on DPT and thought that good progress had been made. He confirmed that captive Insurance companies remained a risk and that HMRC were contacting the relevant businesses where this may be an issue.

**iii) Other Technical Matters**

3.3 Andrew Hoar wanted to raise a number of issues where HMRC thinking was currently developing and which we wanted to share with industry now rather than when (if) it became an issue:

**Service Companies**

3.4 HMRC has been looking at a number of circumstances where all the activities of an operator are taken on by a service company. The legislation (at section 272 CTA2010) defines oil activities to include those carried out by associates of the holder of the licence interests. It therefore seems to HMRC that where all the operator activities are transferred to an associate, that associate's connected party income is also within the ring fence. HMRC acknowledged that this was not always how these provisions had been interpreted, and agreed that this view would only be applied prospectively to the extent that it represents either a change of interpretation or a change of practice on behalf of HMRC. HMRC also noted that they had particular concerns where service companies are currently "over remunerated" and that transfer pricing risk would not arise if both operator and service company were within the ring fence.

3.5 Industry attendees indicated surprise at the interpretation presented by HMRC and raised concerns, especially in relation to duty holders for facilities who would be caught by this new interpretation who have not in the past been within the UK tax net. Industry highlighted that they were aware of cases where HMRC had previously argued that costs related to operator activity undertaken by an E&P company did not fall within the ambit of that company's IRF trade.

**APRT**

3.6 HMRC have been looking at APRT in the context of DRDs and PRT certificates. APRT existed in the 1980s (1983 to 1986). It was paid using a formula based on turnover and set off against PRT that became due. Any APRT not used was repaid after 6 periods but no repayment interest arises on APRT. It seems to HMRC that whilst

APRT is a type of PRT, the legislation clearly differentiates between the two taxes. HMRC's view was that if APRT used in a PRT assessment were to be displaced by losses carried back it would be repayable as APRT and not PRT. However it is not necessary to make assessments to recover CT going back to the 1980's because the legislation for CT looks at APRT "used to meet" a PRT liability. The consequential CT recovery charge would follow normal procedures and relate to the period in which the loss arose.

- 3.7 HMRC advised that the importance of the distinction is that, unlike PRT, APRT does not accrue interest. HMRC are therefore keen to ensure it is being identified appropriately.

#### **Unrelievable Field Losses**

- 3.8 In PRT, if a field has been an overall net loss maker, it is possible to get sideways relief against other fields. The procedure for this is that a notice is issued confirming that production has ceased, following which claims can be made (under section 6 OTA1975) for losses which qualify as UFL. The law was changed in Finance Act 2007 to provide a clearer definition of when winning oil has ceased. That definition was derived from extensive discussion with industry and now requires that the winning of oil from an oil field shall not be regarded as having permanently ceased until all the oil wells in the field have been permanently abandoned. HMRC was asked at the time about the situation where notices of cessation had been issued before the change but the claims came in after. Our view was that UFL claims could continue to be made using the old definition of permanent cessation. We now realise that this was wrong. The Finance Act changed the requirements for each UFL claim to qualify for all claims received on or after 1 July 2007. It would be wrong to attempt to issue notices of variation for past claims erroneously allowed, given the statement made to some participators at the time. However it is our view for claims made from now on that the test brought in by FA2007 must be met.

#### **Capital Allowances**

- 3.9 The rules that allow 100% Capital Allowances for upstream P&M expenditure (section 45G CAA2001) contain a provision that the assets must be used in the ring-fence trade within 5 years otherwise these must be retrospectively replaced with WDAs. Martin Kirkham of Chevron pointed out that the term "used in a ring-fence trade" did not necessarily require the asset to be used in the production phase for example it was long held that the trade commenced with establishing a commercial discovery. Martin's view was that the rule is unlikely to impact genuine RF spend.
- 3.10 Claire Ralph raised the question as to whether consideration should be given to the appropriateness of the 5 year rule for the future given there had been significant changes in the industry since the rule was first introduced in 2002 (and whether the possible drafting source, the Northern Irish capital allowance rules, were really analogous to an offshore hydrocarbon province). Industry also questioned the impact this would have on Group Relief if figures were changed.
- 3.11 Mike Earp questioned whether a potential change in the 5 year rule (rather than its interpretation) would have an impact on the rules for assets in the change of use

rules leaving the ringfence. It was pointed out by Andrew Lister that specific asset disposal rules mean that circumstance is already separately catered for.

#### **Advanced Pricing Agreements**

- 3.12 CTIS would register applications for Unilateral APAs although any work would still be undertaken in the Oil & Gas Sector.

#### **BEPS & Interest Deductibility**

- 3.13 Industry had asked for this to go on the agenda.

### **4. Other**

#### **i) Roles and responsibilities within the Oil & Gas Sector**

- 4.1 AT explained that that there had been little change since the last meeting. He still headed up the Oil & Gas Sector. Andrew Hoar is the assistant director for upstream matters, Susan New is the assistant director for downstream matters and Tolu Oyelola is the assistant director with responsibility for governance matters. Martyn Rounding confirmed that after Budget, Zoe Leung-Hubbard would be joining to head up the HMRC policy team.

#### **ii) Location changes**

- 4.2 AT explained that planned location changes were still some way in the future. They should have no impact on the industry's relationship with HMRC and changes were unlikely to affect Bush House before 2019.

### **5. AOB**

- i) Industry noted that many of these issues did not appear on the agenda that was distributed in advance of the meeting and it was suggested that as a matter of good governance, every attempt should be made in future to ensure that the agenda that was distributed was as comprehensive as possible.

#### **ii) Next meeting**

- 5.1. The next meeting will take place on 9<sup>th</sup> June in Room G28 in Bush House at 11.00. Dial in facilities will once again exist for those in Aberdeen.
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