Oil and Gas Industry Direct Tax Forum:
Draft Minutes of meeting held on Monday 09 June 2016

Attendee	Company	Attendee	Company
C Garner	Dong Energy	C Angell	KPMG
J Lagrue	HMRC	R Webber	Deloitte
N Garrod	HMRC	Z Leung-Hubbard	HMRC
B Meggitt	HMRC	M Stacey	Chevron
S Jenkins	OGIA	T Oyelola	HMRC
S Lee	Deloitte	K Allen	Baker & McKenzie
A Willis	HMT	R Daly	HMRC
N Strathdee	EY	S Radlett	Exxon Mobil
P Greatrex	CW Energy	R Clark	OMV UK
P Howarth	Marathon	K Anderson	Cairn Energy
A Hoar	HMRC	A Hurdman	HMRC
L Cunningham	HMRC	D Leith	EY
Prof. A Kemp	University of Aberdeen	A Levine	BP
A Mather	Talisman Sinopec	S Kelsey	CNR
M Earp	OGA	L Richie	Maersk
J Smith	Shell	A Douglas	Total

1) Minutes of Last Meeting, Apologies, Matters Arising and Action Points

1.1) Andrew Hoar (AMH) opened the meeting and introductions made. AMH thanked OGUK for hosting the meeting in London and Aberdeen

1.2) Minutes of previous meeting were accepted as correct.

2) Updates and Going Forward

i) Roles and responsibilities within Oil & Gas Sector

2.1) A Enever was unable to attend, so this was postponed to the next meeting

ii) **Roles and Responsibilities within Oil & Gas Sector (HMG)**

2.2) Alan Tume has moved on to a new role within HMRC. He has been replaced as Deputy Director of LB London by Sara O'Byrne. AMH will be the new sector lead. This is the normal structure within HMRC Large Business; Deputy Directors took on a larger responsibility when we increased in size and their sector lead roles moved to other members of the SCS within their region. However if companies have any particular concerns about their specific treatment or relationship with LB London they still can be forwarded to Sara.

2.3) AMH confirmed that his new role was in addition to his existing responsibilities.

2.4) L Cunningham (LC) introduced herself as being in charge of the HMRC Mid-size oil and gas stream. Midsize deals with companies with a £10 million to £200 million turnover or greater than 20 employees. Mid-size does not have the CRM model, rather they work on a risk based approach with a small assurance and demand led work team as well. They continue to work closely with LB.

iii) How best to use the Direct Tax Forum

2.5) AMH understood that there were concerns as to the purpose of the Direct Tax Forum. He advised that the issues raised at the last forum were all cases where HMRC had taken a view and that view had been given to at least one company. His intention in the spirit or real time working had been to open up that position for wider consideration. It was discussed and agreed by both London and Aberdeen that it would be beneficial to discuss both operational and policy work. To assist discussion, the agenda will be distributed two weeks prior to the next meeting with sufficient level of detail to enable fair and useful discussion. If there are any issues with the agenda, please email AMH.

iv) Publication of DTF Minutes

2.6) The minutes of the meetings were uploaded online up until 2014. This is intended to be the case again going forwards, as well as publishing the historical minutes.

3) Oil & Gas Tax Policy

i) Policy Update

3.1) Andrew Willis (AW) gave an update on policy. It is the intention to hold discussions over the summer with industry in regards to the extension of the Investment and Cluster Area Allowances to tariff income. This will involve research into the commercial arrangements to which this would apply, and will inform the drafting of secondary legislation. A paper will be submitted through OGUK and circulated around this group.

3.2) In parallel to the OGA's work on reducing overall decommissioning costs, HMT would be interested in further information from industry on decommissioning relief. The principle remained that taxation should not block commerciality. However, there were risks of wholesale changes to the existing system of relief. A paper will be circulated, setting out the evidence HMT would like to see on the nature of the problem and industry's proposals for changes.

i) Interest Consultation

3.3) Zoe Leung Hubbard (ZLH) said that the Interest Restriction Consultation had now been published, with specific oil and gas options detailed at Chapter 8. Both the options respect the commitment given at Budget that commercial arrangements within the ring fence would not be adversely affected. In brief: option 1 excludes the ring fence from the interest restriction calculations altogether. Option 2 requires two calculations - one excluding the ring fence, one including the ring fence. Whichever results in the lower interest capacity is taken forward, although any

resulting restriction would only apply outside the ring fence. ZLH encouraged responses to the consultation and confirmed that HMRC would be willing to have meetings if helpful.

ii) Investment Allowance

3.4) ZLH stated that HMRC are on course to lay the secondary legislation which expands the definition of qualifying expenditure for the purposes of Investment and Cluster Area Allowances before Parliament after summer recess. NG confirmed that following the technical consultation, the scope has not been extended, nor are there significant changes to the previous drafts published.

4) Oil & Gas Technical Issues

i) EITI

4.1) Martyn Rounding (MR) has taken over from AT in being responsible for EITI. ZLH thanked all of the EITI contributors for their work, and encouraged all of industry to take part in the 2015 round which is currently in progress.

ii) PRT Administration under 0% Rule

4.2) Benjamin Meggitt (BM) is leading on the Strategic Review of PRT Administration. At Budget 2016 Government announced a £1 billion package of support which included reducing the rate of PRT to 0%. Building on a useful meeting with UKOITC, the HMRC led Review will create a Government-Industry working group and discuss potential changes to the PRT administration through a series of themed meetings. From these discussions, recommendations will follow. Any proposals for legislative change will require Ministerial consideration. The Review's focus is on changes to administration within the framework of PRT permanently at 0%. The first meeting will be held in late June to July, with more information to follow in reference documents after purdah. If stakeholders wish to take part, please contact BM by using the following details:

benjamin.meggitt@hmrc.gsi.gov.uk
03000 551893

iii) Capital Allowances (5 year rule)

4.1) No discussion was had on this as HMRC has only just received industry's views on the matter. AMH did note the UKOITC papers focus on the meaning of use which HMRC though was the key area, and confirmed that commencement of production was not seen by HMRC as an absolute requirement.

iv) **Whole Field Operator Service Companies**

4.1) UKOITC have also recently submitted their views on this issue to HMRC. Industry noted that more time is required for HMRC to review them and service companies affected, so a proper discussion was not expected. Anne Hurdman (AH) noted that typically, operating service companies operated on a cost basis, with no profit or loss, and not within the ring fence. As there are now instances of mark up on service company (with some attempts at boundary pushing), HMRC are looking closer. AH

stated that to the best of HMRC's knowledge, all affected companies have been written to, and the concern is that there could potentially exploit differences from inside and out of the ring fence. Derek Leith (DL) is happy to discuss this submission at later date.

v) APRT

4.5) Letter from industry has been received yesterday, and it is industry's opinion that APRT is PRT and interest should apply. Ray Daly (RD) explained that it is not HMRC's position that it has discretion between the two, the focus is purely on applying the law which governs what these tax(es) are. AMH thanked industry for their submission, and requested that if in future, despite the intention of early notification via the agenda, HMRC's argument appears unclear, then it would be better to check first to avoid debating the wrong arguments.

vi) **UFL**

4.6) UFL claims currently can only be used from the period after that in which the expenditure has been claimed. Paul Haworth (PH) explained that there is a desire to remove this delay so as to aid cash flow on agreed amounts. RD explained that there is currently not enough resources to do this, as the PRT team still need to risk review all the claims and so it is not practical. Even though PRT is now zero rated, this has not as of yet reduced any of the administrative burden. In the long term, things may change. Industry commented that they hoped it would be possible to devote sufficient resources to this going forward, given the reduced PRT rate and the likelihood that very few of these claims would be made. AMH stated that this may be something for policy to look at as part of the PRT review, as it may require a different statutory approach. Also, it appears that this may be a large issue for a small amount of companies, but this may not be widespread, albeit this may change in the future.

vii) **PRT Remaining as an obstacle to MERUK**

4.7) PH identified a number of issues which industry felt were acting as a break on Maximising Economic Recovery.

4.8) s84 FA13 switches off the terminal loss carry back rules when a company picks up a defaulter's costs, for the participator's own expenditure, as well as the default costs. This issue had already been identified by Industry and CTIS and previously discussed in consultation before the legislation was enacted. It was decided to discuss this offline with ZLH.

4.9) PH raised a concern in regards to the apportionment of decommissioning costs, specifically with TETRs. Using the "safe harbour" apportionment of 50% (which was based on OPEX considerations) would mean loss of PRT decommissioning relief would have to be built into TETRA quotes making TETRA fields less likely to be developed. Decommissioning should be made on a just and reasonable basis and industry felt allocating decommission costs to TETR fields failed that test in many cases. AMH requested anonymised examples. PH to provide from PRT sub group.

4.10) Even though PRT is now zero rated, and no tax will ever be received on disposals receipts can still soak up loss carry backs.

4.11) An issue with carrying back of Decommissioning losses has resulted due to commercial agreements possibly not being fit for purpose, particularly where previous companies no longer exist, making such assets less attractive to potential new owners. PH requested for repayments to be made directly to the current participator instead. AMH recognised that this could be a problem, although completely overhauling the legislative framework to address commercial arrangements to which the government was not a party would be very difficult. It seemed to AMH that this was the sort of adversarial legal problem highlighted in the Wood Review as being detrimental to MER. Simon Kelsey (SK) commented that some SPAs had been drafted 20 years or so ago and it was only now coming to light that they were not working in the way intended, and that all SPAs were unique**.** Further discussion to be had offline. ZLH reiterated that it was unlikely for legislation to be the answer, and that commercial solutions should be looked at first. However, HMRC are prepared to look at this issue within the PRT review. Examples where such issues were prevalent across industry were requested. PH to create a sub group.

4.12) The PRT subsidy rules currently do not allow for a company to access tax relief on decommission expenditure if they retain decommissioning liability but are not a licensee. AMH could not comment within the meeting as he could not see what would be achieved commercially as the 1998 Petroleum Act meant liability was always retained. DL to provide more detail.

viii) Hybrid Mismatch Arrangements, Finance Bill 2016 – Permanent Establishment Provisions

4.12) Industry are aware of a potential issue where a UK company invest internationally through a branch and are denied relief within the UK. This is a wider issue than just affecting Oil and Gas, a paper would be sent to the policy team responsible.

5) **AOB**

i) Joint Conference

5.1) A potential date for the Joint Conference is on the 1st December 2016, but need UKOIT agreement. AMH expressed his thanks for HMT for arranging the venue.

ii) Next Meeting

5.2) Next meeting for the Direct Tax Forum will be on 8th September 2016. Location as of yet not decided; the aspiration is to have the meeting with video conferencing. Any other business for the next meeting, please contact AMH.