

**Oil and Gas Industry Direct Tax Forum:
Draft Minutes of meeting held on 30th March 2017**

- **London attendees: Dan Espie (Total), Andrew Hoar (HMRC), Simon Paler (Maersk), Andrew Willis (HMT), Stephen Radlett (ExxonMobil), Phil Greatrex (CW Energy), Carolyn Garner (Dong Energy), Martyn Rounding (HMRC), Martin Kirkham (Chevron), Morgan Finlayson (HMRC), Zoe Leung-Hubbard (HMRC), James Marshall (HMRC), Tom Carter (Deloitte), Ray Daly (HMRC), Anne Hurdman (HMRC), Jenny Doak (Vinson & Elkins), Anul Shirva (Tullow Oil), Neil Strathdee (EY), Claire Angell (KPMG), Kathryn Anderson (Cairn Energy plc), Rod Sayers (Premier Oil) Mike Earp (OGA)**
- **Aberdeen attendees: Prof. Alex Kemp (University of Aberdeen), Craig Hendry (TAQA), Thomas McKnight (Repsol Sinopec), Derek Leith (EY), Alistair Blain (ConocoPhillips), Jo Bullen (Maersk), Patrick Burnett (ConocoPhillips), Romina Mele-Cornish (OGUK), Sandy Inglis (CNR), Linda Ritchie (Maersk), Jennifer Smith (Shell), Zahid Ismail (HMRC), Claire Drummond (Apache), Christine Yuill (Pinsent Masons)**

1. Introduction and minutes of last meeting:

- SP and AH welcomed the group; AH remarked on the value of UKOITC meetings and flagged that while previous meetings had focused more on technical topics, this was not the sole purpose of the meetings. It was not the case that detailed technical discussions would take place in the forum but each side could bring issues to flag up potential areas of uncertainty that would have wider implications. **Action: AH also flagged a correction to the last set of minutes, correcting 'Glasgow' to 'Scotland and Northern Ireland'. Cases moving to Scotland would be worked in Belfast or Glasgow or Edinburgh**

2. Updates and going forward

2.1 Capital allowances (5 year rule):

- HMRC thanked UKOITC for their letter; on capital allowances and the five-year rule, HMRC commented that if industry was dissatisfied with the pragmatic approach to determining whether an asset was in use, each asset would need to be looked at individually. The Front End Engineering Design (FEED) cost issue was primarily around timing of any capital allowance claim. AH noted that the response from HMRC would make these points in more detail.
- Industry questioned whether the law was working as intended, and whether this should mean a subsequent change in the law and whether this would need to be looked at immediately.
- Industry asked whether in particular the five-year rule should be reviewed in light of the current industry context and whether it could be simplified; there was some discussion with HMRC over the purpose of the five year rule, and the original policy context for including this. **Action: SP suggested that the response from HMRC be sent as soon as possible, and that the group would review and discuss in more detail at the next UKOITC meeting.**

- 2.II Whole field operator service companies:
 - AH noted that few cases of which he was aware remained open so it may not be a good use of the whole of the Direct Tax Forum's time to continue the discussions.

AH did want to emphasise again that this was not about management expenses or catering or other 'contractor' like functions which had been raised by UKOITC. HMRC's concern related to planning arrangements where substantially all the activities of a field operator were moved into an associate, often without the knowledge of the other field participators. AH did note the suggestion from UKOITC that Diverted Profits tax would apply if these were the circumstances that concerned HMRC and confirmed that having spoken with DPT specialists this was indeed the case. These points would be covered in a written response from HMRC, and the group agreed to wait for the letter to be issued for discussion at the next meeting, as before. **Action: UKOITC to consider how to take the issue forward having reviewed HMRC's response** □
 - RD commented that, having investigated further, it was still felt that there were sufficient legislative measures to distinguish between PRT and APRT, and that this was also detailed in a separate letter.
- 2.IV HMRC Organisational update:
 - AH updated the group on HMRC organisational changes, including Jennie Granger's departure and the arrival of Brian Redford and Andrew Page. He also flagged the combination of the London based Large Business regions into LB London, which would be headed by Andrew Page. AH would continue as sector lead and would also take on organisational responsibility for a group of cases including all the Oil and gas cases still in LB London. If it becomes necessary to escalate any concerns on these cases AH would be the first port of call.
 - AH asked the group to include CRM names on clearances, or to use Zahid Ismail's for midsize cases to ensure that applications came to the right places.

3. Oil & Gas Tax Policy

- 3.I Policy update (HMT):
 - AW gave a policy update on HMT, focusing on Budget 2017 and the discussion paper on tax issues for late life assets, issued on 20th March.. He asked the group to submit any written comments by 30 June and welcomed any face-to-face discussions on the paper as well. He also emphasised that no policy decisions had yet been taken and any case for change would be evaluated against the government's objectives, as set out in the discussion paper.
- 3.II Policy update (HMRC):
 - ZLH provided an update in relation to progress on the Investment Allowance Statutory Instrument expansion to tariff income. An issue had arisen over the definition of tariffing. She flagged that a letter had been sent the day before (29 March) to certain advisers. The letter would be circulated more widely following this meeting, requesting wider engagement to seek industry's views, particularly around common practice and the legal basis for this. (The letter was sent on 31 March to representative bodies). **Action: SP noted that they would wait for the letter and then circulate to members to seek their responses.**
- 3.III Statutory Instrument on Investment Allowance extension:
 - JM provided an update on the SI on Investment Allowance extension to qualifying expenditure, noting that the regulations came into force the day before the meeting (29 March) but apply to expenditure incurred on or after 8 October 2015. ○ He also

flagged that there were some changes to the regulations from the draft legislation previously published (ensuring that companies incurring leasing expenditure didn't generate allowance in excess of the genuine economic value of their investment), and noted that draft guidance had been issued.

- He flagged the two points that had been raised so far, specifically:
 1. Enquiries times: Normal enquiry time limits apply. If uncertain, the group was encouraged to discuss with HMRC and contact their CRM.
 2. Evidence and field development plans: JM noted that there was a need to demonstrate that the purpose of the expenditure was to increase any of conditions (a) to (e) – production etc. The comparison should be with what would have happened if expenditure was not incurred. ○ He noted that comments on the draft guidance would be taken by 31 March, and there were no further questions from industry at this time.

4. Oil & Gas Technical Issues

- 4.I Update on strategic review of PRT admin – next steps:
 - ZLH noted that PRT opt-out simplification was now in Finance Bill and progressing through Parliament. In terms of further changes, HMRC had identified a number of potential areas for change as a result of the strategic review of PRT admin in summer 2016 and was taking legal advice on whether these required legislative action. The numbers opting out had been lower than expected. **Action: ZLH to provide an update on this at the next DTF.** ○ She also noted that the wider change under PRT digitisation would potentially incorporate the wider changes requested.
 - Industry asked about the timeline for this; ZLH responded that the aim was for the new platform to be in place before PRT moves to Scotland at the end of 2020. □ 4.II/III Decommissioning working parties:
 - JM and Anne H commented that HMRC was supportive of the idea of working groups to discuss decommissioning costs / guidance, and the costs in advance of abandonment programmes. HMRC wanted to work towards an agreed structure, and there was interest from the group to engage with this.
 - **Action: HMRC to write to SP, who will ask for names of industry volunteers.** □
- 4.IV S673 CTA 2010 (Disallowance of losses on change of ownership):
 - ZLH thanked Brindex for their letter and their work in putting together potential draft guidance.
 - She flagged that the new legislation for loss reform also includes supplementation to S673, which will be included at new S676AA onwards. In terms of oil and gas, decommissioning losses will continue to be covered by the old timescales in S673; non-decommissioning and non ring-fence losses will be covered by the new 5 year rules.
 - She noted that this issue will form part of the work on tax issues for late life assets and asked that industry consider using the existing non-statutory clearance regime, which can provide a form of personalised guidance – she also noted that HMRC would ask the centralised team in Southend who deal with clearances to send all oil and gas clearances to the appropriate oil and gas teams and are copied to policy. ○ MR noted that the clearance section was not to be used for teasing out borderlines, and only to be used for genuine transactions. Industry asked if there were any areas where there was a broadly shared fact base. **Action: ZLH will respond to Brindex in writing and industry agreed to consider this issue in further depth before the next DTF.**

- 4.V S84 FA 2013 (Interaction between tax and DRD):
 - ZLH thanked UKOITC for their letter following the meeting with industry, HMRC and HMT the previous year.
 - Regarding the issue where Schedule 17 provisions which relate to terminal loss relief are switched off with respect to all losses, ZLH commented that HMRC needed to understand why the legislation was drafted in a way as to entirely switch off Sch17 and would be reluctant to re-open the whole package of changes, particularly if this led to a risk that potential consequences were not fully understood. Unfortunately, HMRC records did not hold complete decision trails; from speaking to predecessors, things were moving very quickly on a number of fronts, instructions to counsel were given over the phone on occasions, and that the request to switch off Schedule 17 had come from industry.
 - ZLH commented that whilst HMRC agreed that, at the time, not every circumstance would be foreseen, HMRC did not agree that the legislation needed to be changed in the manner suggested in UKOITC's letter.
 - AW supported this position, and commented that HMT would be open to representations on areas that had a significant impact. However, the government had consulted extensively with industry on the Decommissioning Relief Deed (the policy, and the Deed itself) in 2013, and therefore the threshold for any change would likely be high.
 - Derek Leith commented that he had been closely involved in this issue at the time and didn't recall industry requesting the Sch17 switch-off, but would investigate.
 - Industry commented that the issue was not with DRDs but with the associated legislation, and ZLH noted that this was intertwined.
 - ZLH flagged that Government's priorities would be on the "big asks" from industry i.e. TTH and SIs, and that there was less scope to turn attention to this and other more minor policy requests in light of resource constraint and other priorities.
 - The group requested a written response on S84. **Action: HMRC to provide a written response on S84.**

AOB

- The group agreed to meet next on 20 June, and OGUK confirmed to re-host.