

**Oil and Gas Industry Direct Tax Forum:  
Minutes of meeting held on 3<sup>rd</sup> October 2017**

**London:**

Andrew Hoar (HMRC), Anne Hurdman (HMRC), Ray Daly (HMRC), Ian Hack (CW Energy), Claire Angell (KPMG), Mike Stacey (Chevron), James Leek (Deloitte), Stephen Radlett (ExxonMobil), Kathryn Anderson (Cairn Energy), Mike Earp (OGA), Andrew Willis (HMT), Alistair Dunbar (HMT), Zoe Leung-Hubbard (HMRC), James Marshall (HMRC), Nicola Garrod (HMRC), Hugh Grainger (HMRC), Romina Mele-Cornish (OGUK), Neil Strathdee (EY), Paul Haworth (Marathon), Jacqui Akinlosotu (Eni UK)

**Aberdeen:**

Thomas McKnight (Repsol Sinopec), Jennifer Smith (Shell), Bob Cardno (EY), Linda Ritchie (Maersk), Zahid Ismail (HMRC), Jo Bullen (Maersk), Professor Alex Kemp (University of Aberdeen), Ian Munro (Ithaca Energy), Graeme Callum (Total E&P UK)

**1. Introduction, apologies and minutes of last meeting:**

- AH welcomed the group.
- Apologies were sent on behalf of Simon Paler (UKOITC Chair), Marie Baird (HMRC) and Martyn Rounding (HMRC).
- The minutes for June were agreed.

**2. Updates and going forward**

**2.1 Continuing HMRC organisational changes**

- AH provided an update on the moving of company cases to NI and Scotland, and noted that half of the cases have now been moved.
- He stated that Marie Baird is taking over as sector lead and therefore this will be the last time he chairs this Direct Tax Forum.

**3. Oil & Gas Tax Policy**

**3.1 Policy Update (HMT)**

- AW provided a brief update on what has happened since the last meeting, he stated that Andrew Jones MP (Exchequer Secretary to the Treasury) had been confirmed as HMT Minister responsible for oil and gas. He mentioned that Andrew Jones MP had delivered a speech at Offshore Europe in Aberdeen at the start of September on the potential for UK business from decommissioning. He said that the Chancellor has also visited Aberdeen in recent weeks to see the Oil and Gas Technology Centre and announced £5m of new funding for exploration projects.
- AW stated that HMT was grateful for UKOITC's letter ahead of the Autumn Budget. He said the letter included a call for stability and predictability, which Ministers recognised was an important component of the fiscal regime - particularly given that the UK now had some of the most competitive fiscal terms for oil and gas in the world.

- AW also commented that HMT was disappointed to see UKOITC's views that uncertainty has been created by industry-government dialogue. He stated that HMT and HMRC recognised the importance of open discussions with external stakeholders, to better inform guidance and policy-making. He added that both departments would be keen to understand where this perception came from and how it could be addressed.
- He also said that HMT had been examining responses to its discussion paper on transferable tax history (along with the deliberations of the Expert Panel) and the government had committed to report back at Autumn Budget, at which point it would consider the case for any policy changes in the issues covered by the discussion paper.

### **3.II Policy Update (HMRC)**

- ZLH commented on S673 CTA 2010, which was discussed at the final expert panel for TTH. She said that it was agreed that some further guidance from HMRC in the Oil Taxation Manual would be helpful.
- She said that HMRC recognises that the CT Manual says that clearances are generally not given in respect of S673, because there has historically been significant avoidance in this area. However, for prospective clearances regarding genuinely contemplated transactions that would benefit MER, HMRC are prepared to consider these. She concluded that HMRC will keep this policy under review and expect that industry will be sensible, and not use the process to try to determine hard boundaries in the abstract. The clearances are likely to contain caveats but industry can treat this as something more akin to personalised guidance.
- ZLH gave an update of FB17 and commented that the post-election bill has successfully completed its first and second reading. Public Bill Committee will consider the remaining clauses in the order in which they appear in the bill. PBC debates will take place on the 17, 19, 24 and 26 October, PRT opt out is clause 44.
- ZLH apologised for the incorrect PRT 1 form online which has now been rectified.
- NG gave an update on RFCT treatment of tariffs; it was stated that HMRC had not received any more written responses but have had helpful conversations with industry and had found archive papers of correspondence in 2009 when the 'change of use' provisions were being consulted on.
- She said that it is clear there is uncertainty and ambiguity in the interpretation of legislation, one of which draws on the distinction between assets pre and post 1993 fields and an alternative interpretation which does not. However, no evidence has been found that the distinction between PRT and non-PRT assets is intentional and the current thinking is that there is no logic to this distinction which is reflected in the conversations with industry too.
- She discussed the way forward for both ring fence treatment of tariff receipts and the new SI expanding the cluster area and investment allowances and noted that there will be updates in due course. NG stated that there are no plans to target any enquiries into this area
- UKOITC confirmed that they were going to send a letter with their perspective on this issue in the coming week.

### **3.III Transferrable Tax History (TTH)**

- AD commented that feedback and minutes from the final expert panel are being finalised then will be put online.
- AD stated that options on TTH have been presented to ministers, who are now assessing these and the decision will be reported at Budget.

- RMC asked if the feedback was sufficient and AD said that HMT has not received as many live examples of deals that TTH could affect as they had hoped, but general feedback was sufficient and no other feedback was needed.

### 3.IV Decommissioning

- ZLH commented on the Decommissioning working group which was held at the end of June. She stated that HMRC's intention for this meeting was to have an open discussion with industry about the types of expenditure that are being claimed as general decommissioning expenditure and understanding the process and level of expenditure currently being undertaken. However, it was noted that this was not the message that all in industry took away, so she clarified that Government's long-standing policy is to allow decommissioning expenditure to be deducted when it is incurred and there is no intention to restrict mid-life decommissioning.
- She stated that HMRC needs to apply the legislation as drafted; therefore HMRC want to have a common understanding with industry about how the legislation works and whether it works as intended, and that there are no process issues. She said that it is better to do this now than wait until the bulk of decommissioning is already underway in order to prevent unnecessary enquiries.
- She specified that HMRC want to identify whether there are any gaps in the legislation which prevent it working as intended: in particular the requirement to have approval, condition or agreement from the Secretary of State to the decommissioning. Since the meeting it is now understood that significant costs can be incurred before approval from BEIS or the OGA. HMRC is keen to ensure that companies get relief for their genuine decommissioning expenditure. As there can sometimes be a significant time gap between incurring expenditure and obtaining agreement, there is potentially a question about how such expenditure should be treated in the meantime. If issues such as this indicate a gap between policy intention and how the law is drafted, HMRC want to work with other government departments and industry to sort this out.
- She said that it's been suggested that HMRC should publish a policy statement or similar to set out HMRC's understanding of how the decommissioning legislation works, as a starting point for discussions with industry to continue. Then ZLH asked the group if there are any other suggestions from industry.
- RMC suggested if it would be worth OGUK facilitating discussions between BEIS, industry and operational people in order to get a full understanding of decommissioning.
- Industry said that it is difficult to give actual business examples in that type of discussion as it is information they don't want to share with everyone. Industry also suggested that the specific business information that HMRC are looking for may be held with BEIS and that HMRC should engage directly with them.
- JA commented that these problems have already been identified and shared by industry and BC agreed to find this information and share it again to enable discussion and restart the conversation.

## 4. Oil & Gas Technical Issues

### 4.1 Correspondence

- AH noted that HMRC had received industry letters regarding APRT, service companies, and S45G CAA 2001. He understood that the position of the DTF was that the technical exchange had got as far as it could in the forum and that cases on APRT and S45G CAA2001 would as required be

taken forward on a case by case basis. He was uncertain on the position re service companies and it was confirmed that there had been no common ground here and that cases would also proceed on a case by case basis.

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- Industry queried whether a letter on S84 FA 2013 from UKOITC had been responded to. [Confirmed post-meeting that a letter was sent to Simon Paler on 15 June 2017.]

## 5. AOB

### 5.1 PRT Repayments from Losses Carried Back

- Industry queried how the discussion around PRT repayments arising from losses carried back had concluded. Was there any scope for repayments to be made directly to the company incurring the decommissioning costs?
- ZLH commented that this issue had been considered during the strategic review of PRT administration in summer 2016. At the time, it was felt that this was an isolated issue affecting few companies, and HMRC were reluctant to consider legislative change as there were many existing commercial arrangements that government do not want to disturb. However, if this is now a systemic and significant issue for industry, HMRC is open to looking at this further.

### 5. II Next meetings

- AH commented that the joint conference would take place in the HMRC auditorium on 23 November and looked forward to meeting the industry there.
- AH thanked OGUK for hosting, and closed the meeting.