HM TREASURY

Decommissioning Relief Deeds:

summary of responses

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ISBN 978-1-909096-36-3
PU1421

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Foreword

Oil and gas is one of the UK's greatest industrial success stories, and the Government is committed to making the most of this valuable natural asset. That is why the Government announced earlier this year, as part of an ambitious package of oil and gas measures, that it would provide further certainty over tax relief for decommissioning. In July, we published a consultation document setting out proposals for Decommissioning Relief Deeds and inviting responses from industry and other interested parties.

I have been very encouraged by the high level of engagement throughout the consultation process, both through written responses and in the working groups. The Government has considered the views of all those who responded to the consultation, and is today publishing a draft Decommissioning Relief Deed and accompanying draft legislation for Finance Bill 2013.

This is a multi-faceted and innovative policy, and the publication of this document and relevant draft clauses offer a further opportunity for interested parties to provide views on the detail of our proposed approach. I am confident that this input will enable us to ensure that the final policy is implemented in a way that achieves our core objectives, protects the taxpayer, and ensures that the UK Continental Shelf continues to be a world-class investment destination for years to come.

Sajid Javid

Economic Secretary to the Treasury

1 Introduction and background

1.1 This document summarises the responses received during the consultation carried out by the Government between July and October 2012 on its proposals for introducing Decommissioning Relief Deeds[1]. It also sets out the Government's initial responses to the outcomes of the consultation, and the next steps in the policy-making process.

1.2 This work follows the Government's announcement at Budget 2012 that it would introduce legislation in 2013 giving the Government statutory authority to sign contracts with companies operating in the UK and UK Continental Shelf (UKCS), to provide assurance on the tax relief they will receive when decommissioning assets.

1.3 As set out in the consultation document, the Government seeks to encourage investment in and production from the UKCS; and to strike a balance between oil producers and consumers and ensure fairness to taxpayers. The proposals in the consultation are part of the action the Government announced in Budget 2012 to support growth, attract investment in energy, ensure energy security and make the best use of the nation's natural resources.

1.4 To achieve this, the consultation document set out the Government's proposals for a contractual approach to provide certainty on decommissioning relief through a Decommissioning Relief Deed ('the Deed').

1.5 In responding to the consultation, respondents were asked to consider the extent to which the Government's proposed approach would achieve the overall objectives of the policy, as well as to provide detailed comments on the individual proposals.

1.6 Having considered responses to this consultation, the Government has published a draft Deed at Annex B and has also published draft clauses for Finance Bill 2013 alongside this document. The Government will undertake a further stage of consultation and invite views on these draft documents: Further details on the next stage of the consultation process are set out in Chapter 9.

The consultation process

1.7 The Government is grateful to all respondents who took the time to provide comments on the proposals in the consultation document. Thirty-one responses to the consultation were received in total, all from oil and gas companies, representative bodies, and professional services firms. A list of all respondents is set out at Annex D.

1.8 As part of the consultation process, the Government also established four working groups chaired by HM Treasury officials to discuss the proposals for a Deed and issues raised by the consultation. These working groups proved a very effective forum for discussing the detail of many of the proposals in the consultation, and many respondents to the consultation have reflected these discussions in their responses. Terms of reference and summaries of the working groups are set out at Annex E.

[1] A copy of the consultation document can be found here: http://www.hm-treasury.gov.uk/d/consult_decommissioning_relief_deeds_090712.pdf

2 Summary of questions for consultation

2.1 The views of respondents in relation to the proposals in the consultation document are summarised in the following chapters and the questions for consultation are summarised below.

The Government's objectives and proposed approach (Chapter 3)

Question 3.1: Do respondents believe that providing greater certainty on decommissioning tax relief will enable the achievement of the outcomes set out at paragraph 3.10 [of the consultation document]?

The reference amount in the Deed (Chapter 4)

Question 4.1: Do the proposed reference amounts in respect of Ring Fence Corporation Tax (RFCT), Supplementary Charge (SC) and Petroleum Revenue Tax (PRT) achieve the objectives as set out in Chapter 3?

Question 4.2: Do respondents have views on how the certification process for PRT history should work in practice, and how frequently it should occur?

Question 4.3: Do respondents have views on how commercial arrangements such as Sale and Purchase Agreements (SPAs) could be used to complement the approach being taken in the Deed in the event of a default in a PRT field?

Deed eligibility and definitions (Chapter 5)

Question 5.1: Does the Government's approach to eligibility for the Deed achieve the objectives as set out in Chapter 3?

Question 5.2: Do the proposed definitions of decommissioning expenditure achieve the objectives as set out in Chapter 3?

Protecting the taxpayer (Chapter 6)

Question 6.1: Do respondents have views on how the Government should seek to define the exclusions within the reference amount for those situations where the potential to secure more beneficial treatment under the Deed than would be available under the tax regime has been a factor in an insolvency or default?

Question 6.2: Do respondents have views on how to ensure that the Deed cannot be used to gain a timing advantage in comparison with relief achieved through the tax code?

Question 6.3: Can respondents suggest further ways to prevent inappropriate claims under the Deed so the taxpayer is protected?

Question 6.4: Can respondents suggest further ways to prevent abuse of the Decommissioning Relief Deeds and ensure that they remain effective?

Taxation of decommissioning security agreement trusts (Chapter 7)

Question 7.1: The Government has not seen strong evidence that Income Tax is a consideration in determining securitisation requirements. Can respondents provide evidence on what effect, if any, the potential Income Tax liability has on securitisation in DSA trusts, including any evidence on the domicile of DSA trusts?

Technical amendments and other considerations (Chapter 8)

Question 8.1: Do respondents agree that switching off the subsidy rules in the targeted instances listed in paragraph 8.4 [of the consultation document] is necessary to enable companies to accept security on a post-tax basis?

Question 8.2: Do respondents have views on how the tax rules in respect of Petroleum Revenue Tax (PRT) relief could be amended in relation to offsetting provisions and Unrelieved Field Losses (UFL) rules to provide greater accessibility to relief in a default scenario?

Question 8.3: Can respondents provide any evidence that the current operation of the field allowance legislation could run counter to the aim of providing certainty in respect of decommissioning relief?

Question 8.4: Are there any matters aside from those listed in paragraph 8.11 [of the consultation document] where respondents believe that the availability of relief in respect of decommissioning expenditure under the existing tax regime is currently in doubt?

Question 8.5: Can respondents provide any evidence of additional changes to the fiscal regime in respect of decommissioning relief that they believe would be beneficial to meet the Government's objectives as set out in Chapter 3?

3 Achievement of Government policy objectives

3.1 The consultation document outlined that the Government will adopt an approach to Decommissioning Relief Deeds which seeks to ensure that:

- Companies are able to adopt post-tax securitisation arrangements for the costs of decommissioning, in particular by providing certainty that companies will be able to access appropriate tax relief where they are assuming the liability of a defaulting party;
- Financiers are able to use post-tax estimates of decommissioning costs when making liability assessments;
- Companies are better able to model the rate and availability of decommissioning tax relief when making investment decisions; and
- All investors can easily understand potential decommissioning liabilities.

3.2 The Government will also:

- Avoid action that would increase the forecast Exchequer cost of decommissioning;
- Ensure companies continue to make their investments for commercial rather than tax reasons;
- Consider changes with due regard to the fairness and integrity of the tax system;
- Prevent unintended advantages being gained through the Deed; and
- Allow the Deed to function as a mechanism of 'last resort', by minimising the number of situations where an appropriate level of relief is not available through the tax code.

Question 3.1: Do respondents believe that providing greater certainty on decommissioning tax relief will enable the achievement of the outcomes set out at paragraph 3.10 [of the consultation document i.e. the outcomes outlined above]?

3.3 All respondents welcome the Government's objective of providing greater certainty on decommissioning tax relief and agree that it should help encourage and sustain investment in the UKCS. Respondents who considered this question feel that these changes will have a positive effect on transaction activity and investment in late-life assets.

3.4 Many respondents highlight the ability to move from pre-tax to post-tax decommissioning securitisation arrangements as a key factor in freeing up capital for re-investment in the UKCS and easing the process of commercial negotiations. Some companies note that they currently have significant funds tied up in pre-tax securitisation arrangements.

3.5 Overall, respondents believe that the Government's proposed approach should facilitate a move to post-tax securitisation, though several note that this will depend on the detail of how the Deeds are structured and implemented, including the design of the reference amount (see Chapter 4) and anti-abuse provisions (see Chapter 6).

3.6 Some companies express concern that the benefits of releasing capital could be undermined if security-holders prove to be cautious about moving to post-tax securitisation, especially in the case of existing decommissioning security agreements. A few argue that this could be mitigated if the Government were to consider measures to require post-tax security arrangements and prevent companies inflating security requirements through other routes such as higher risk factors – for example, issuing guidelines similar to those currently included in the Infrastructure Code of Practice. Others make clear that they do not believe it is the Government's place to mandate the basis on which commercial securitisation arrangements are agreed.

3.7 Some respondents note that further discussions will be needed with financiers to establish how they are likely to view the Deed. However, many believe that banks and other financial institutions should be able to use post-tax estimates of decommissioning liabilities in their assessments.

3.8 Several respondents note that providing certainty over decommissioning relief should enable companies to eliminate tax relief as a variable when modelling investment decisions.

Box 3.A: Government response

- The Government welcomes industry's overall support for the objectives of this work, and the fact that the proposed approach is expected to facilitate a move to post-tax securitisation.
- The Government recognises the importance of ensuring that the provisions of the Deed strike a balance between giving Deed-holders sufficient certainty over the decommissioning relief they will receive, while protecting the Exchequer and upholding the fairness and integrity of the tax system. The Government has sought to draft the terms of the Deed, including the reference amount and anti-abuse provisions, to achieve this, and will continue to engage with industry on the likely implications of its proposed approach, including the anticipated effects on companies' securitisation arrangements.
- The Government recognises that decommissioning security agreements will operate in a range of different circumstances, and that the terms of such agreements are generally a commercial matter. However, the Government will continue to consider whether further steps might be appropriate to ensure that the objective of reducing securitisation requirements across the basin can be realised.
- The Government will continue to take forward discussions with the financial community following the publication of draft legislation and the draft Deed.

4 Reference amount

4.1 As set out in the consultation document, the reference amount is a comparator amount of relief which Deed holders will use to assess whether the provisions of the Deed are engaged and whether they are entitled to make a claim under the Deed for relief on their decommissioning expenditure.

4.2 The reference amount largely mirrors the tax code, while protecting companies in the event of a default and ensuring Deed holders can obtain any benefit from future tax changes.

4.3 If the relief a Deed holder receives in respect of its costs at the time of decommissioning expenditure is less than the reference amount, the Deed holder will be entitled to claim a shortfall payment from the Government.

4.4 The consultation asked:

Question 4.1: Do the proposed reference amounts in respect of Ring Fence Corporation Tax (RFCT), Supplementary Charge (SC) and Petroleum Revenue Tax (PRT) achieve the objectives as set out in Chapter 3 [of the consultation document]?

Question 4.2: Do respondents have views on how the certification process for PRT history should work in practice, and how frequently it should occur?

Question 4.3: Do respondents have views on how commercial arrangements such as Sale and Purchase Agreements (SPAs) could be used to complement the approach being taken in the Deed in the event of a default in a PRT field?

RFCT and SC default reference amount

4.5 Respondents welcome the Government's proposed approach to the default reference amount for RFCT and SC and the additional certainty this provides when calculating security arrangements.

4.6 Several respondents support the principle that a company should not be left worse off in respect of its own tax history as a result of incurring a defaulter's decommissioning costs, with some noting that any necessary restoration of tax history should apply to all expenditure (rather than being limited to future decommissioning costs).

RFCT and SC non-default reference amount

4.7 Most respondents feel that the restriction to decommissioning relief for SC purposes which was introduced in Finance Act 2012 adds complexity to the reference amount and may mean that the benefits of decommissioning certainty, other than in relation to securitisation, are not maximised. Some believe that the introduction of decommissioning certainty will mean that the restriction is no longer necessary to ensure that companies have no incentive to decommission prematurely, and many claim that it is inconsistent with the basic principles in the tax system. Some respondents also use this consultation as an opportunity to reiterate their objection to the increase to the rate of SC introduced at Budget 2011.

4.8 Most respondents call for the SC cap to be repealed, or for the differential between the rate of SC and the rate of SC relief on decommissioning expenditure to be capped at 12 per cent in the Deed.

4.9 Some respondents also note that the interaction between the RFCT and SC reference amounts could mean that – in an extreme example - the rate of relief guaranteed under the Deed might drop to 20 per cent even if the combined marginal rate of RFCT and SC remained at 62 per cent. Respondents note that this could jeopardise the achievement of certainty in a non-default scenario and some allude to the potential solutions to this issue that were discussed in the working groups.

4.10 Some respondents express concern that the inability of companies without tax history to achieve full relief in a non-default scenario could act as a disincentive for new companies (such as late-life, change of use or decommissioning specialists) to enter the UKCS, potentially inhibiting the future development of the basin. However, it is acknowledged that this replicates the existing situation under the tax code. In some cases, respondents call for a 'flat' non-default reference amount equivalent to that achieved in the default scenario.

4.11 Some respondents raise technical points about the operation of the non-default reference amount. These include noting that, to achieve parity with the level of relief that is currently achievable through the tax code, any shortfall payments in respect of RFCT and SC should not be subject to tax or other withholding/set-off (or that the reference amount should be adjusted accordingly), and that the Deed should explicitly preserve the effect of the loss carry-back rules and existing group relief provisions.

PRT reference amount (default and non-default)

4.12 Several respondents make clear that they believe the full benefits of the Deed can only be realised if the reference amount covers RFCT, SC and PRT, noting that they would not support a partial solution and that the infrastructure that PRT fields provide is often significant.

4.13 Most respondents believe that a PRT default reference amount guaranteeing the greater of the claimant's tax history and the tax history of the predecessors in the claimant's licence interest, or of the defaulter's tax history and the tax history of the predecessors in the defaulter's licence interest, would be effective in achieving the stated policy objectives. This approach was discussed in some detail in the working groups. However, a few respondents would prefer the reference amount for PRT to be simplified, advocating a 'flat rate' approach.

4.14 Several respondents highlight the importance of ensuring that there is clarity on parties' PRT histories, which is likely to depend on the efficacy of the proposed PRT certification process. Some companies advocate a yearly process (possibly tied to the timetable for renewal of decommissioning security agreements), while others would prefer certification every six months. A few respondents also note the importance of ensuring that there is a mechanism for 'out of cycle' certification in response to particular events that would result in a reduction in PRT capacity. A minority of respondents raise concerns about potential administrative burdens if the process is overly complex.

4.15 Some respondents note that commercial sensitivities around the release of such data will need to be overcome, while others do not see an issue provided the data is high-level and field-related. A number of companies state a preference for a statutory approach to waiving confidentiality, provided any such legislative override is appropriately targeted.

4.16 A number of respondents highlight the importance of companies knowing that they can rely on these certificates, and several call for them to be binding on HMRC. Those respondents

who mention the idea of a central register listing the companies that hold certificates/Deeds say that they would be happy to be included on such a register.

4.17 Most companies do not believe that SPAs are likely to be effective in default situations and support a targeted switch off of Schedule 17 to the Finance Act 1980 (FA80). However, respondents are less consistent over the treatment of Schedule 17 in non-default cases – some believe that Schedule 17 should be upheld and that the non-default reference amount should protect loss carry-back arrangements, whereas others would like Schedule 17 to be switched off in non-default cases too (with the benefit transferred directly to the party incurring the decommissioning expenditure). Some respondents note that it would be helpful for the enforcement of SPAs if Deed payments in respect of PRT could be classed as payments of PRT for Schedule 17 purposes.

4.18 A minority of respondents express disappointment that PRT repayment interest is not included in the reference amount calculation.

Box 4.A: Government response

RFCT/SC reference amount

- The Government is aware of companies' objections to the cap on decommissioning relief for SC purposes (and to the increase to the rate of SC which accompanied it). However, as the Government has committed that the rate of SC will reduce when the oil price falls below an established trigger price, the Government continues to believe that the restriction to relief is appropriate and that the reference amount should reflect the current legislation, where the restriction is framed as a 20 per cent cap.
- The Government has also considered the potential effects of the interaction between RFCT and SC highlighted by a number of respondents. To reflect this concern, the Government has sought to frame the reference amount in the Deed so that, where the combined marginal rate of RFCT and SC is 50 per cent or above, the combined rate of relief in respect of RFCT and SC cannot be lower than 50 per cent.
- The Government understands that some companies with limited tax capacity may not be able to achieve full relief on their decommissioning costs through the Deed in a non-default situation. However, this reflects the existing principles of the tax code, and is in line with the broader principle that the Deed should not pay out in a non-default situation unless there were to be a future reduction in the rates of relief beyond the rates as at Royal Assent to Finance Bill 2013, without any equivalent reduction in the rates of tax.
- The Government recognises that the reference amount depends not only on the rates of relief available, but also on the operation of the existing relief and loss carry-back provisions. By linking the reference amount to the operation of the tax regime as at Royal Assent to Finance Bill 2013, the Deed will inherently reflect these other aspects of the tax code.
- The Deed includes a provision which ensures that, to the extent that a Deed-holder has exhausted its tax capacity as a result of incurring another party's decommissioning liabilities, it will be able to access SC and RFCT payments from the Deed in respect of subsequent non-default expenditure (both decommissioning and other costs).
- To ensure that payments in respect of the RFCT and SC reference amounts have an equivalent value to the tax relief which they are designed to complement or supplement, the Government is publishing a draft clause for Finance Bill 2013 exempting such payments from further taxation.

PRT reference amount

- Like many respondents, the Government recognises that the reference amount for PRT is essential to ensuring that the overall objectives of the Deed can be met.
- While the Government recognises the desirability of minimising complexity as far as possible, it believes that a flat PRT reference amount could unacceptably increase the forecast cost of decommissioning relief. The draft Deed therefore continues to reflect an approach based on the PRT history of the field.
- In a non-default situation, it is proposed that the reference amount for PRT will reflect the level of PRT paid by the participator in the field for which decommissioning expenditure is incurred. The Deed also includes a clause

enabling a 'predecessor' for the purposes of Schedule 17 FA80 to make a claim under the Deed in respect of relief for losses carried back to it under paragraph 15 of that Schedule, subject to the provision that it cannot be left in a better position than it would have been if it had incurred the expenditure itself.

- In a default situation, it is proposed that a Deed-holder will have the option of applying a reference amount based on its own tax history and that of its predecessors in the licence interest, or the tax history of the defaulting party and the predecessors in the defaulter's licence interest. The Government is publishing draft legislation providing that the effect of Schedule 17 FA80 will effectively be disapplied where claims in respect of default expenditure are made under the Deed.
- The Deed includes a provision which ensures that, to the extent that a Deed-holder has exhausted its tax capacity as a result of incurring another party's decommissioning liabilities, it will be able to access PRT payments from the Deed in respect of subsequent non-default expenditure (both decommissioning and other costs).
- In the event of the abolition of PRT, the draft Deed provides that the reference amount shall be determined by reference to the level of relief that the Deed-holder would have achieved if the decommissioning expenditure had been incurred in the last tax period for which PRT was chargeable.
- The Government will continue to engage on its proposed approach to the PRT reference amount, acknowledging that this is likely to be one of the more complex aspects of the Deed. The Government will need to satisfy itself that the approach to PRT finally set out in the Deed meets the policy objectives, while protecting the Exchequer and upholding the broader principles governing the Deed (such as the primacy of the tax code and the need to avoid 'double dipping').
- The Government also recognises the importance of a clear and transparent certification process to facilitate calculation of a Deed-holder's reference amount for PRT purposes. The Government is publishing draft legislation which ensures that HMRC is able to provide companies with certificates to be used for calculating the PRT reference amount, and will continue to work with industry on the PRT certification process as part of the next stage of the consultation.

5 Deed eligibility and definitions

5.1 The consultation document proposed that:

- An appropriate Secretary of State or Lords Commissioner is likely to act as the Government signatory; and
- All companies that are or have been subject to the UK's oil and gas fiscal regime and their associates should be eligible to be a counter party to a Deed.

Question 5.1: Does the Government's approach to eligibility for the Deed achieve the objectives as set out in Chapter 3 [of the consultation document]?

5.2 Most respondents support the eligibility criteria proposed in the consultation document, with several companies highlighting the importance of ensuring that overseas parents are included in the definition of 'associated companies'. Some respondents also state a preference for the definition of associated companies to be based on the definition in the Petroleum Act 1998, as that is the basis on which decommissioning obligations are imposed by DECC.

5.3 Some respondents feel that eligibility should be extended to any company that might be required to undertake or provide funds for decommissioning, including decommissioning specialists.

Box 5.A: Government response

- The Government has considered the views on eligibility expressed in response to the consultation, and the Deed and draft clauses for Finance Bill 2013 which establish qualifying criteria for the Deed will use the definition of associated parties in the Petroleum Act (which includes non-UK parents). To be eligible for a Deed as an associated party, a company must have been associated with a ring-fence company when the latter was undertaking its ring-fence trade.
- The third party rights provisions of the Deed will enable such companies to claim a shortfall payment through an associate's Deed.
- The Government will continue to consider whether, where a company is claiming under the Deed as an associated party of a ring-fence company (or a company previously involved in the ring fence), any decommissioning expenditure for which it makes a claim should be related to the ring-fence company's activity in the UKCS.
- The Government has yet to see evidence that the proposed eligibility criteria would hamper investment in the basin, and believes that the approach set out in the consultation document remains appropriately targeted to the types of companies potentially exposed to decommissioning liabilities at the moment, and avoids exposing the Exchequer to unnecessary risk.
- However, the Government understands that different business models may emerge as the UKCS matures, and may wish to consider extending the eligibility criteria for the Deed if evidence is presented in the future.
- The Government is proposing that a Lords Commissioner to the Treasury should be the Government counter-signatory to the Deed, though it will continue to consider how the claim and payment process for the Deed should operate in practice.

5.4 In the consultation, the Government proposed that decommissioning expenditure would be defined in accordance with the tax regime as at Royal Assent to Finance Bill 2013.

5.5 This is consistent with the Government's general approach that the Deed should as far as possible be aligned with the fiscal regime.

Question 5.2: Do the proposed definitions of decommissioning expenditure achieve the objectives as set out in Chapter 3 [of the consultation document]?

5.6 A number of respondents believe that the starting point for the Deed should be that any decommissioning costs should be eligible for 100 per cent tax relief and extended loss carry-back. There is also a view among some companies that the current definition of allowable decommissioning expenditure should be more flexible, including all costs that are incurred as a result of an agreed abandonment programme or legally imposed on a company undertaking decommissioning. They believe that this would offer greater scope for the definition to cater for the possibility for new categories of expenditure to be allowable in future.

5.7 Several companies allude to the ongoing discussions between HMRC and industry looking at potential amendments to the tax regime for decommissioning expenditure, noting the importance of eliminating anomalies and addressing 'tax nothings'. Industry representative bodies have made HMRC aware of several aspects of decommissioning expenditure where they believe that further clarity on the tax treatment is necessary or desirable. The extension of relief for the decommissioning of onshore terminals or infrastructure used in offshore production is a specific issue highlighted in several responses, while a few responses go further and call for full relief to be extended to all onshore oil and gas decommissioning.

5.8 A minority of respondents highlight areas that should not be included in the definition of decommissioning expenditure. These included exploration and appraisal wells, and expenditure on reputation protection or on clearing up waste.

Box 5.B: Government response

- The Government has considered the categories of expenditure where industry felt there was uncertainty over the availability of relief and has concluded that the only decommissioning expenditure which does not qualify for plant and machinery allowances is expenditure in respect of the removal of drill cuttings and any other site restoration. The Government is publishing draft clauses for Finance Bill 2013 which extend the availability of decommissioning relief to such expenditure.
- The draft clauses also extend the availability of UKCS decommissioning relief to onshore infrastructure which is used for the purposes of offshore production, to ensure that there are no barriers to post-tax securitisation where such infrastructure is reflected in decommissioning security arrangements.
- The Government remains willing to receive evidence of other areas where companies believe that there may be a lack of clarity on the availability of relief, and will also continue to consider the appropriate tax relief treatment when decommissioning onshore fields.

6 Protecting the taxpayer

6.1 In the consultation document, the Government set out proposals to protect the Exchequer against two potential areas of concern in respect of abuse of the Deed:

- Artificially inflated claims for relief: The consultation document proposed restricting claims under the Deed to cases where the claimant is not paying a connected party to undertake decommissioning on its behalf; and
- Inappropriate claims: The consultation document proposed to remove the scope for any inappropriate claims under the Deed, for example where the claimant or its relevant associate has not been subject to the upstream tax regime; where relief in respect of the expenditure has already been achieved by the claimant or another party; where an insolvency or default has been triggered with the purpose of securing more beneficial treatment under the Deed than would be available under the tax regime; or where the Deed is called to secure a timing advantage in comparison with relief achieved through the tax regime.

Question 6.1: Do respondents have views on how the Government should seek to define the exclusions within the reference amount for those situations where the potential to secure more beneficial treatment under the Deed than would be available under the tax regime has been a factor in an insolvency or default?

Question 6.2: Do respondents have views on how to ensure that the Deed cannot be used to gain a timing advantage in comparison with relief achieved through the tax code?

Question 6.3: Can respondents suggest further ways to prevent inappropriate claims under the Deed so the taxpayer is protected?

Question 6.4: Can respondents suggest further ways to prevent abuse of the Deed and ensure it remains effective?

6.2 Several respondents express concern that anti-abuse provisions in the Deed should not be overly onerous or introduce unnecessary uncertainty into the Deed process, with a few companies commenting that they cannot see how abuse of the Deed would arise in their particular circumstances.

6.3 Respondents are not consistent on the interaction between the Deed and the General Anti-Abuse Rule (GAAR), with some advocating that the Deed should be excluded from the GAAR, and others arguing that a link to the GAAR within the Deed, or provision to defer to the GAAR, would obviate the need for other anti-abuse measures.

Artificial default

6.4 A few respondents note that the definition of default should be broad enough to cover scenarios other than insolvency where a company may legitimately default, such as commercial disputes or forfeiture (though only where the excess of the decommissioning costs exceeds any return from the forfeited interest, as discussed in the working groups on this issue).

6.5 Some respondents believe that contract law provisions and laws against fraudulent behaviour should already provide some safeguards against artificially engineered default claims. Others call for a more specific provision, such as a 'main benefit' test or a targeted provision excluding payments that arise from artificially created situations.

6.6 A few respondents call for any specific provision protecting the Exchequer against artificial default claims to be restricted to cases where there is collusion or where it is clear that the claimant has had a role in engineering the default.

Connected parties

6.7 Almost all respondents argue that the proposal in the consultation document to exclude payments to connected parties from the reference amount is disproportionate and could act as an obstacle to legitimate commercial practices. For example, several companies cite the relatively common practice of companies undertaking work in-house, or the use of different companies within a group.

6.8 Many respondents also note that these practices are likely to become more common as the basin matures, and that any excessively stringent connected party restriction could mean that the benefits such practices may offer in terms of efficiency and cost-effectiveness cannot be fully realised.

6.9 Some respondents also note that the risk in practice is low, as in many joint-venture arrangements commercial tensions and auditing requirements will prevent companies from artificially inflating their decommissioning costs.

6.10 Instead, many respondents advocate an approach based on transfer pricing principles, on the grounds that such principles are internationally recognised and understood, and would offer a proportionate solution that is consistent with other areas of the tax code.

6.11 A few respondents feel that an approach based on the lower of cost or market value, a targeted anti-abuse rule, or mandatory disclosure requirements, would also offer workable solutions to the risk posed by connected party payments.

Box 6.A: Government response

- The Government is committed to protecting the Exchequer and ensuring that there is no potential for the Deed to become a tool for abuse or manipulation. However it also recognises that it is important to ensure that any anti-abuse provisions are proportionate and suitably targeted.
- With this in mind, the Deed includes a targeted anti-abuse provision. The provision is designed to counteract transactions or arrangements entered into with a main purpose of securing a payment (or greater payment) under the Deed. It also prevents a claimant accessing a greater payment under the Deed as a result of any arrangements that it or an associated party enters into which fall within the Disclosure of Tax Avoidance Schemes (DOTAS) provisions.
- The Deed also includes provisions framing the definition of an 'imposition' in a way that seeks to counter any risk of companies 'engineering' a default or forfeiture in order to claim a payment (or greater payment) under the Deed. The Deed therefore excludes payments from the scope of the 'imposition' reference amount where the defaulting party controls, is controlled by or is under common control with the claimant. It also excludes payments where the claimant has entered into any arrangement with the defaulting party with a main purpose of achieving a payment (or greater payment) under the Deed, or where the claimant's and defaulting party's respective associates have entered into such arrangements. It is envisaged that the non-default reference amount would still be accessible in such circumstances.
- The Government has considered companies' concerns about the potential effect of the exclusion of any payments to connected parties from the reference amount in the Deed. As discussed in the working groups, the Government now believes that it is appropriate for any provisions protecting the Exchequer against artificial inflation of decommissioning costs to be introduced in legislation, on the basis that any such provisions would also restrict payments under the Deed.
- The Government is therefore publishing draft clauses which provide for the targeted application of transfer pricing principles in some circumstances involving connected party payments, with such payments restricted to cost in other circumstances.
- The Government remains willing to engage with industry on the anti-abuse provisions included in the Deed and draft clauses, and on the interaction of the Deed with the GAAR. These issues are likely to be discussed in the next stage of working groups and the Government would welcome further input and evidence in advance of the finalisation of the Deed and clauses.
- To protect the Exchequer and guard against double relief, the Deed also includes a 'clawback' mechanism. This provides that if any payments relating to decommissioning expenditure are recovered from third parties, and to the extent that those payments would, when combined with payments received under the DRD in respect of the same expenditure and any tax relief thereon, result in a Deed-holder being better off than they would have been had they not incurred the relevant decommissioning costs, an equivalent repayment must be made to Government.
- To complement this mechanism, the Government is also publishing a draft clause which provides that, in cases where the Deed is not engaged and a company's

receipts from securitisation arrangements and tax relief outweigh its decommissioning costs, any profit arising is taxable to RFCT and SC. This seeks to ensure that the amendments to the subsidy and contribution rules outlined in Chapter 8 do not create perverse incentives in respect of securitisation arrangements.

Timing of payments

6.12 Some respondents argue that they do not believe that the Deed could be used to gain a timing advantage over the tax code given the limited set of circumstances in which a shortfall payment will occur.

6.13 However, a number of respondents also say that they believe that the timing of payments should be structured so as to ensure that the Deed pays out quickly and within a tightly defined time period. In some cases, companies believe that the Deed should pay out at the same time as a tax repayment would have been due through the tax code, while others argue that a Deed payment should be available before the full tax calculation and enquiry process has been undertaken.

6.14 Several respondents argue that any potential time lag between the point at which a company is required to meet decommissioning expenditure and the point at which it receives a Deed payment – particularly in a default scenario – could negatively impact on security requirements. To address this, some companies call for a system of reduced instalment payments by companies or payments on account by Government, with any shortfall or overpayment being redressed subsequently. This was an issue discussed during the working groups.

6.15 One respondent asks Government to consider a standard 'effective date' provision within the Deed to ensure that taxpayers are able to reap the advantages of certainty at the same time.

Box 6.B: Government response

- The Government will continue to consider issues in relation to the timing of payments under the Deed as part of wider considerations around the process of making claims and payments under the Deed. The Government would like to discuss these matters with stakeholders in more depth following the publication of the Deed and draft clauses, and will include further detail on these issues in the final Deed.
- As part of these discussions, the Government would also welcome further input on an appropriate and proportionate enquiry and dispute resolution process for the Deed.

7 Taxation of decommissioning security agreement trusts

7.1 Decommissioning security agreements (DSAs) are commercial agreements put in place to ensure that the necessary funds will be available when the time comes to decommission an asset. They may be entered into between existing licensees, or between current and past licensees.

7.2 The consultation document noted that these trusts are potentially subject to inheritance tax (IHT) charges, and that the income (such as interest) received by these trusts is taxable on the trustees.

7.3 IHT is targeted at the transfer of assets at the end of a natural person's life or on lifetime transfers. The consultation document made clear that the Government would consider whether to remove the IHT charges in the context of DSA trusts in the UKCS, taking into account the potential for avoidance and consistency with broader IHT and trust policy. It also sought evidence on the impact of the potential income tax (IT) liability.

Question 7.1: Can respondents provide evidence on what effect, if any, the potential Income Tax liability has on securitisation in DSA trusts, including any evidence on the domicile of DSA trusts?

7.4 A number of respondents argue that potential liability to IHT and IT will increase the initial decommissioning security provision. Some argue that this is an anomalous situation that can drive inefficient behaviour or discourage good practice, and that removing or reducing such liabilities could reduce the security provision required and encourage the widespread and earlier use of such trusts.

7.A: Government response

- The Government accepts that there is a case for removing DSA trusts from the charge to IHT. As set out in the consultation document, the Government recognises that provisioning for such charges can require companies to set aside more security than they would otherwise provide, eroding the availability of capital in the UKCS. The Government has also taken the view that DSA trusts are trusts of a unique nature which only exist because of the specific requirements of the UK oil and gas regulatory regime, and therefore fall outside the core policy objectives governing the application of IHT charges to trusts (which remains an important principle of the UK tax regime).
- The Government is therefore publishing draft clauses for Finance Bill 2013 which remove IHT charges on property held in decommissioning security settlements.
- At present, the Government does not believe it is appropriate to adjust the rate of income tax applicable to income from such trusts, as it does not see a clear principled case for doing so, and considers that any such adjustment could expose the Exchequer to unnecessary risk without unlocking significant additional capital.

8 Technical amendments and other considerations

8.1 In the consultation document, the Government addressed a number of technical issues that it considered might be necessary or beneficial to ensure the effectiveness of its overall approach to decommissioning relief. These included:

- Switching off the subsidy rules in targeted circumstances where decommissioning security has been provided on a post-tax basis, to ensure companies can obtain relief under the tax code in default scenarios;
- Considering amendment of the tax rules in respect of PRT to facilitate the achievement of relief in a default scenario, including potential changes to the Unrelieved Field Losses (UFL) rules;
- Considering whether any potential changes to the tax code in relation to the interaction of field allowances and decommissioning expenditure are necessary to achieve the objectives of the consultation; and
- Undertaking further work on other amendments to the tax code to address situations where it may be unclear whether the existing tax regime currently provides relief for decommissioning expenditure.

Question 8.1: Do respondents agree that switching off the subsidy rules in the targeted instances listed in paragraph 8.4 [of the consultation document] is necessary to enable companies to accept security on a post-tax basis?

8.2 All respondents either agree that switching off the subsidy rules in the manner outlined in the consultation document is necessary to achieve sufficient certainty to enable companies to securitise on a post-tax basis, or are silent on the issue. However, during the working groups, a number of companies noted that a switch-off only in cases where post-tax security is in place is unlikely to be an effective policy lever in encouraging moves to post-tax securitisation (as it would target those who already have the biggest incentive to move to post-tax arrangements).

Question 8.2: Do respondents have views on how the tax rules in respect of PRT relief could be amended in relation to offsetting provisions and UFL rules to provide greater accessibility to relief in a default scenario?

8.3 Few respondents provide strong views on UFLs, though one company states that the PRT reference amount should reflect a company's ability to use UFLs.

Question 8.3: Can respondents provide any evidence that the current operation of the field allowance legislation could run counter to the aim of providing certainty in respect of decommissioning relief?

8.4 Several respondents note that they do not think that decommissioning relief should neutralise or displace the benefit of allowances that have been introduced to benefit marginal fields. However, many also note that this is an issue which they feel would more appropriately be taken forward outside the scope of this consultation.

Question 8.4: Are there any matters aside from those listed in paragraph 8.11 [of the consultation document] where respondents believe that the availability of relief in respect of decommissioning expenditure is currently in doubt?

8.5 As addressed in Chapter 5, companies raise several areas where they believe that the availability of decommissioning expenditure should be clarified or widened, reflecting ongoing discussions between industry and HMRC.

8.6 These include (but are not confined to) the costs of monitoring derogated items under an abandonment plan; the cost of navigation aids; and the cost of decommissioning onshore terminals or other facilities required for offshore production and – in some cases – onshore fields.

8.7 One respondent also raises a concern as to whether a person who contributes a capital sum to meet decommissioning expenditure is able to obtain contribution allowances under s538 of the Capital Allowances Act 2001 (CAA2001), though notes that this would not be an issue in a default scenario if the subsidy rules were switched off.

Box 8.A: Government response

- The Government acknowledges the views expressed in response to Question 8.1 of the consultation and is publishing draft clauses for Finance Bill 2013 which 'switch off' the RFCT/PRT subsidy rules[1] as well as the rules that provide relief for reimbursement expenditure[2].
- The Government recognises that UFLs will only be a concern for a minority of companies. As currently drafted, the PRT reference amounts in the Deed will take account of any UFLs already exercised in a field. The PRT reference amounts will only reflect tax capacity in the field, and not the possible use of UFLs against profits of a company's other fields. The Government is introducing a draft clause to ensure that UFLs cannot be used against tax capacity that has been used to generate a payment under the Deed. Any excess losses that exist in respect of a licence interest after relief has been achieved under the tax code and/or a Deed will remain available to generate UFLs. The Government believes that this approach is consistent with its objective of ensuring that there is no 'double dipping' of tax history (i.e. that companies are only able to offset losses against each set of profits once).
- The Government will continue to consider any evidence in relation to the interaction of field allowances and decommissioning relief but agrees that it is most appropriate for any such discussions to be conducted separately to this consultation process.
- As set out in Chapter 5, the Government is publishing draft clauses which amend the availability of decommissioning relief.

[1] RFCT: Section 292 (3) and (4) Corporation Tax Act 2010 (CTA 2010)
PRT: Schedule 3, Paragraph 8 Oil Taxation Act 1975 (OTA 1975)
PRT: Section 105, Finance Act 1991 (FA 1991)

[2] RFCT: Sections 293 and 298 Corporation Tax Act 2010 (CTA 2010)
PRT: Sections 106 and 108 Finance Act 1991 (FA 1991)

Other considerations

Question 8.5: Can respondents provide evidence of additional changes to the fiscal regime that they believe would be beneficial to meet the Government's objectives?

8.8 One respondent calls for the abolition of Section 34 of the Petroleum Act 1998.

8.9 Another respondent calls for the creation of a new technology fund to facilitate the development of technology at a lower cost for smaller producers.

Box 8.B: Government response

- The Government considers that these issues fall outside the scope of this consultation. However, HM Treasury, HMRC and the Department of Energy and Climate Change will continue to work together to ensure that the regulatory and fiscal regimes for oil and gas decommissioning interact smoothly.

9 Further consultation and next steps

Further consultation and how to respond

9.1 Following publication of clauses and a draft Deed on 11 December, the Government is undertaking a further stage of consultation and inviting views on these draft documents. This stage of the consultation will last for eight weeks, with a closing date of 6 February 2013.

9.2 Responses to the consultation should be sent to:

Stuart Gregory and Rachel Joseph
Oil and Gas Decommissioning Consultation
Business and International Tax
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Email: decommissioning.certainty@hmtreasury.gsi.gov.uk

Phone: 020 7270 6029

9.3 When responding, please state whether you are responding as an individual or as part of an organisation. If responding on behalf of a large organisation, please make it clear who the organisation represents and, where applicable, how the members' views were assembled.

9.4 The Government will also establish three further working groups to discuss the following issues:

- Timing and process
- Anti Abuse
- Reaction to the draft Deed and impact on commercial practices

9.5 These working groups will operate with officials during the consultation period and meet when necessary. If you would like to be a working group member, please send a nomination, identifying which group you would like to be a member of and your current position, using the correspondence details above.

9.6 The first working group meetings will take place in the week commencing 7 January 2013.

9.7 The Government will also be engaging with the broader oil and gas community, including financiers, to discuss the likely implications of the Deed on commercial practices within the industry.

Confidentiality disclosure

9.8 All written responses may be made public on the Treasury's website unless the author specifically requests otherwise in writing.

9.9 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regime. These are

primarily the Freedom of Information Act (FOIA), the Data Protection Act (DPA) and the Environmental Information Regulations 2004.

9.10 If you would like the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as being confidential. If we receive a request for disclosure of information we will take full account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances.

9.11 In the case of electronic responses, general confidentiality disclaimers that often appear at the bottom of emails will be disregarded for the purpose of publishing responses unless an explicit request for confidentiality is made in the body of the response.

9.12 Subject to the previous two paragraphs, if you wish part (but not all) of your response to remain confidential, please supply two versions – one for publication on the website with the confidential information deleted, and another confidential version for use by the Treasury.

9.13 Any FOIA queries should be sent by email to:

Public.enquiries@hmtreasury.gsi.gov.uk

Or by post to:

Correspondence and Enquiry Unit
Freedom of Information Section
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

Next steps

9.14 The Government will consider all further responses to the consultation in advance of confirmation of the publication of final legislation and a final version of the Deed in spring 2013.

9.15 The Government's assessment of the overall impacts of the policy has not changed since the summary published at Annex D of the consultation document published in July. However, the Government will publish a full Tax Information and Impact Note alongside the final Deed and legislation in spring 2013.

A Explanatory table to Deed

Provision	Description
Clause 1	Sets out the meaning of defined terms and the construction of certain expressions used in the draft DRD.
Clause 2	Provides that the DRD will commence on the date on which it is executed and shall continue in effect until terminated by mutual written agreement.
Clause 3.1	Provides that the DRD applies in relation to Decommissioning Expenditure incurred by the Counterparty or an Associated Entity.
Clause 3.2	Ensures that a Counterparty utilising losses carried back to it as a predecessor in title to the party incurring Decommissioning Expenditure (under Schedule 17 Finance Act 1980) is entitled to claim under the DRD notwithstanding that it will not itself have incurred such expenditure.
Clause 4	Contains standard representations and warranties ensuring that the parties are legally capable of entering into the DRD and will be bound by its terms.
Clauses 5.1-5.2	Provide that Difference Payments shall be to due to a Claimant where the amount of Decommissioning Relief it obtains falls short of the relevant Reference Amount.
Clause 5.3	Requires that a Claim in relation to PRT specify the HMRC Certificate containing the tax history that the Claimant wishes to utilise.
Clause 5.4	Limits the amount relievable under the tax code and recoverable under the DRD in relation to PRT by reference to the greater of the Claimant's and the defaulting party's chains of PRT histories.
Clause 5.5-5.6	Provides that no Difference Payment relating to non-default Decommissioning Expenditure is allowed except to the extent that it would not have arisen but for a change in law since Finance Act 2013 having the effect of reducing the amount of relief under the tax code.
Clause 5.7	Provides that no Difference Payment shall be due to the extent that it arises as a result of a change in law which reduces the profits which are taken into account for Tax.
Clause 5.8	Provides that Clause 5 survives the termination of the DRD.
Clause 6.1	Sets out the conditions and form of a claim statement.
Clause 6.2	Sets out the basis for the mechanics of payments.
Clause 6.3-6.5	[Will be specified following the next stage of the consultation]
Clause 6.6	Ensures payments from the Deed are not subject to further deduction or withholding. References to [UK] tax in Clause 6.6.3 are intended to exclude from the gross up cases where tax has been charged by non-UK governments (e.g. where a claim is made by a company resident outside the UK).
Clause 6.7	Provides that Clause 6 survives the termination of the DRD.
Clause 6.8	Ensures that amounts received from third parties that would result in the company being in profit when added to DRD payments and tax relief require equivalent repayments to Government of DRD payments.
Clause 7	[Blank – to be deleted].
Clause 8.1-8.2	A "targeted anti-abuse rule", which prevents a Claimant from benefitting under the DRD to the extent that such benefit is referable to a transaction or arrangement (or any feature in a transaction or arrangement) that has as one of its main purposes the obtaining of an increased entitlement under

	the DRD.
Clause 8.3	Where a Counterparty or Associated Entity has previously entered into tax avoidance arrangements notifiable to HMRC under the DOTAS regime which have (whether or not intentionally) given rise to an increased entitlement under the DRD, prevents such increased entitlement from arising.
Clause 9	Imposes confidentiality obligations upon the Secretary of State.
Clause 10	Restricts the third parties that may assert rights under the DRD to Associated Entities of the Counterparty.
Clause 11	Provides that rights and obligations under the DRD shall not be assigned or transferred save in specified circumstances (including assignment by the [Government Counterparty] to a successor entity, and by the Counterparty to a bank or financial institution by way of security).
Clause 12	Provides for the means by which notices relating to the DRD are to be given.
Clause 13	Preserves the rights of the parties in the event that they delay or fail to exercise them, provides that the exercise of certain rights does not preclude the exercise of others, and provides that any waiver in relation to a breach of contract is confined in its effect to that breach and does not extend to any future breaches.
Clause 14	Provides that the DRD may be amended by written deed only.
Clause 15	Provides that the contents of the DRD (and any document incorporated by reference) represent the entirety of the agreement between the parties, to the exclusion of any other representations, and that no other representations or undertakings are being relied on in entering into it.
Clause 16	Provides that the provisions of the DRD have effect over any contrary provision in any schedule to it.
Clause 17	Provides that the DRD may be executed in several counterparts rather than as a single physical document.
Clause 18	Provides that the DRD and any rights and obligations arising out of or in connection with it are to be governed by English law and subject to the English courts.
<u>Schedule 1</u>	
Para 1	Sets out the meaning of defined terms and the construction of certain expressions used in Schedule 1.
Para 2	Provides that where a Counterparty has inherited an Interest or part of an Interest as a result of a forfeiture, to the extent that its increased Net Costs exceed its increased Net Revenues, an equivalent amount of Decommissioning Expenditure may be treated as incurred as a result of an Imposition. Permits an Estimated Claim on the basis of a calculation of expected Net Costs and Net Revenues and requires an adjustment following decommissioning where such excess was less than expected (or where there was no such excess).
Para 3.1	Provides that the non-default RFCT Reference Amount shall equate to the Decommissioning Relief as would have been available under the tax code as at Finance Act 2013.
Para 3.2	Provides that Decommissioning Expenditure for the purposes of determining Decommissioning Relief is that incurred by the Claimant during the relevant Tax Period.
Para 3.3	Provides that, where the tax capacity of a Claimant has been used up by Decommissioning Expenditure incurred as a result of an Imposition, there shall be a corresponding increase in the RFCT Reference Amount, including in respect of non-decommissioning expenditure.
Para 4.1	Provides that the non-default SC Reference Amount shall equate to the Decommissioning Relief as would have been available under the tax code as at Finance Act 2013.

Para 4.2	Provides that Decommissioning Expenditure for the purposes of determining Decommissioning Relief is that incurred by the Claimant during the relevant Tax Period.
Para 4.3	Limits the rate at which Decommissioning Relief from SC is treated as given to 20 per cent, but with the possibility of increasing if RFCT is reduced below 30 per cent.
Para 4.4	Provides that, where the tax capacity of a Claimant has been used up by Decommissioning Expenditure incurred as a result of an Imposition, there shall be a corresponding increase in the SC Reference Amount, including in respect of non-decommissioning expenditure.
Para 5.1	Provides that the non-default PRT Reference Amount shall equate to the Decommissioning Relief as would have been available under the tax code as at Finance Act 2013.
Para 5.2	Reduces the PRT Reference Amount to account for RFCT and SC that would be charged on an equivalent refund of PRT.
Para 5.3	Preserves the effect of the DRD in the event that PRT is abolished.
Para 5.4	Provides that Decommissioning Expenditure for the purposes of determining Decommissioning Relief is that incurred by the Claimant during the relevant Tax Period.
Para 5.5	Treats the tax history of the defaulting party as that of the Claimant where the two are connected for the purposes of Para 5.1.
Para 5.6-5.7	Provides that, where the tax capacity of a Claimant has been used up by Decommissioning Expenditure incurred as a result of an Imposition, there shall be a corresponding increase in the PRT Reference Amount, including in respect of non-decommissioning expenditure, but limited to the relief that could have been obtained against the Claimant's "unadulterated" tax capacity (i.e., its tax capacity had it incurred no Imposition-related expenditure).
Para 6.1	Fixes the rate of relief from RFCT on default expenditure at 30 per cent for the purposes of the RFCT Reference Amount.
Para 6.2	Provides that Decommissioning Expenditure for the purposes of determining Decommissioning Relief is that incurred by the Claimant as a result of the Imposition during the relevant Tax Period.
Para 7.1	Fixes the rate of relief from SC on default expenditure at 20 per cent for the purposes of the SC Reference Amount.
Para 7.2	Provides that Decommissioning Expenditure for the purposes of determining Decommissioning Relief is that incurred by the Claimant as a result of the Imposition during the relevant Tax Period.
Para 8.1	Provides that the PRT Reference Amount for Imposition expenditure is to be calculated by reference to the relevant tax history set out in the specified HMRC Certificate, provided that it has not already been taken into account (under that deed or another) or made subject to a claim for relief.
Para 8.2	Reduces the PRT Reference Amount to account for RFCT and SC that would be charged on an equivalent refund of PRT.
Para 8.3	Provides that, if PRT has been abolished, the PRT Reference Amount is to be calculated by reference to the relief that the Claimant / Defaulting Party and its chain of predecessors would have achieved in the final tax period in which PRT remained in effect.
Para 8.4	Provides that Decommissioning Expenditure for the purposes of determining Decommissioning Relief is that incurred by the Claimant as a result of the Imposition during the relevant Tax Period.
Para 8.5	Provides that the Claimant is not required to have claimed any unrelieved field losses before claiming under the DRD.
Para 8.6	Limits the purposes for which the tax history of the Counterparty is deemed

	to be that of an Associated Entity making a claim under the DRD.
Para 8.7-8.8	Provides for competing Claims under different DRDs for the same tax history to be satisfied so that each Claimant shares pro rata in the benefit.
Para 9.1	Provides that Decommissioning Expenditure is not allowable for the purposes of Schedule 1 to the extent that tax relief has been claimed in respect of it or a Difference Payment has been made in respect of it.
Schedule 2	
Contact Details –[Blank]	
Schedule 3	
Claim Statement –[Blank]	
Schedule 4	
[Blank]	
Schedule 5	
Sets out the process by which HMRC will issue HMRC Certificates validating tax histories for the purposes of ascertaining a PRT Reference Amount.	
Schedule 6	
Sets out the methodology for calculating Net Costs and Net Revenues for the purposes described in relation to Para 2 of Schedule 1. The methodology is extracted from that found in Appendix 5 to the standard form DSA (which is itself designed to estimate future decommissioning costs and calculate the amounts of security required to be posted).	

B Deed

B.1 The following pages contain the Decommissioning Relief Deed.

DECOMMISSIONING RELIEF DEED

Between

[THE LORDS COMMISSIONERS OF HER MAJESTY'S TREASURY]

And

[COMPANY]

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THIS DECOMMISSIONING TAX RELIEF DEED is made on the ___ day of _____ 20[xx]

BETWEEN:

(1) [**THE LORDS COMMISSIONERS OF HER MAJESTY'S TREASURY]** ("**[Government Counterparty]**"); and

(2) [**COMPANY**], a company registered in [England and Wales] with company number [NUMBER], and whose registered office is at [ADDRESS] ("**Company**").

RECITALS:

(A) The Company is currently liable to carry out, or may in the future be made subject to a duty to carry out, decommissioning.

(B) In order to meet the cost of such liabilities, the Company is making or may in the future make provision in its accounts and/or provide security to, or receive security from, third parties. As tax relief on expenditure in relation to decommissioning is only granted when the decommissioning is carried out, such provision and/or security is made or given or received without allowance being made for such tax relief.

(C) To give the Company certainty as to the amount of tax relief which will be available, and therefore to enable such provision and/or security to be made or given or received net of tax relief, the [Government Counterparty] and the Company have agreed to enter into this Deed. In reliance on the undertakings given by the [Government Counterparty] in this Deed, the Company may reduce the provision made in its accounts for decommissioning and/or provide security to, or agree to receive security from, third parties net of tax relief, and/or may make additional investments in oil and gas assets on the United Kingdom Continental Shelf.

AGREEMENT:

1. Definitions and Interpretation

1.1 Words and phrases used in this Deed (including the Recitals) have the following meanings, unless the context requires otherwise:

"Act"	means the Petroleum Act 1998;
"Associated Entity"	any company which is associated with the Company within the terms of sections 30(8) and 30(9) of the Act and is a "qualifying company" for the purposes of section [● of the Finance Act 2013];
"Available Profits"	means the amount of profits identified as such in a HMRC Certificate;
"Business Day"	means a day (other than a Saturday or Sunday) which is not a public holiday or bank holiday in London;
"Change in Law"	means any change in the legal regime for the computation of profits for the purposes of the Tax in question (including the amount of any loss, relief or allowance but not, for the avoidance of doubt, the rate at which

	such Tax is charged), or of any related published guidance or practice of HMRC, from the position under Existing Legislation;
"Claim"	means a claim for a Difference Payment made by the Company or an Associated Entity under this Deed;
"Claimant"	means the Company or Associated Entity making a Claim;
"Claim Statement"	has the meaning given to it in Clause 6;
"Communication"	has the meaning given to it in Clause 12.1;
"Confidential Information"	has the meaning given to it in Clause 9;
"control"	has the meaning given to it in section 1124 of the Corporation Tax Act 2010 and cognate terms such as "**controlling**" and "**controlled**" shall be interpreted accordingly;
"Decommissioning Expenditure"	means:— (a) for Claims made in respect of Ring Fence Corporation Tax and Supplementary Charge, "general decommissioning expenditure" as defined in sections 163 of the Capital Allowances Act 2001 and qualifying expenditure incurred under section 416ZA of that Act, in each case as amended from time to time; and (b) for Claims made in respect of Petroleum Revenue Tax, that expenditure specified in section 3(1) (i) & (j) of Oil Taxation Act 1975 as amended from time to time;
"Decommissioning Relief"	means any reduction in Tax liability, or any Tax repayment, which results from incurring Decommissioning Expenditure but excluding any unrelieved field losses;
"Deductible Expenditure"	means any expenditure, other than Decommissioning Expenditure, that is deductible or otherwise allowable for the purposes of a particular Tax and that arises otherwise than as a result of or in connection with an Imposition;
"Deed"	means this Decommissioning Tax Relief Deed, including all of its Schedules;
"Defaulting Party"	means the party whose failure to meet its obligations, or the forfeiture of whose Interest, has given rise to an Imposition;
"Difference Payment"	has the meaning given to it in Clause 5.2;
"Due Date"	has the meaning given to it in Clause 6.2.1;
"Effective Date"	means the date first above written;
"Existing Legislation"	means the legal regime for the computation of profits for the purposes of the Tax in question (including the amount of any loss, relief or allowance but not, for the avoidance of doubt, the rate at which such Tax is charged) and all related published guidance or practice of HMRC as at

	the date of Royal Assent to the Finance Act 2013, as the same may be interpreted by the UK courts from time to time;
"Field"	means an oil field determined in accordance with Schedule 1 of the Oil Taxation Act 1975;
"[Government Counterparty]"	means [the Lords Commissioners of Her Majesty's Treasury/ ***Departmental process to be confirmed following next stage of consultation***];
"HMRC"	means Her Majesty's Revenue and Customs;
"HMRC Certificate"	means a certificate issued by HMRC in accordance with the process set out in Schedule 5;
"Imposition"	means any circumstance where:— (a) the Claimant incurs Decommissioning Expenditure due to the failure of another party to meet its obligations to incur Decommissioning Expenditure under (i) a joint operating agreement, unitisation agreement or any agreement entered into between some or all of the parties to such a joint operating agreement or unitisation agreement (whether or not the Claimant is a party to any such agreement) or (ii) an abandonment programme; or (b) the Claimant incurs Decommissioning Expenditure in respect of an Interest which it acquired as the result of forfeiture under a joint operating agreement, unitisation agreement or similar agreement, but shall exclude:— (i) any such circumstance where the Claimant incurs Decommissioning Expenditure (whether due to the failure of another party to meet its obligations as set out in paragraph (a) above or as a result of the forfeiture of an Interest as set out in paragraph (b) above) where the Defaulting Party controls, is controlled by or is under common control with the Claimant; and (ii) any such circumstance as set out in paragraphs (a) or (b) above to the extent that it arises as a result of the Claimant (or a person which controls, is controlled by or is under common control with the Claimant) entering into any arrangement or understanding with the Defaulting Party (or with a person which controls, is controlled by or is under common control with the Defaulting Party) the main purpose or one of the main purposes of which is that any person should receive or become entitled to any right or benefit or increased right or benefit under this Deed in respect of Decommissioning Expenditure incurred as the result of an Imposition (or what would, apart from this paragraph (ii) or paragraph (i), constitute an Imposition);
"Imposition Decommissioning Expenditure"	means Decommissioning Expenditure incurred in the circumstances described in paragraphs (a) or (b) (subject to paragraphs (i) and (ii)) of the definition of Imposition and Paragraph 2.3 of Schedule 1;

"Interest"	means an undivided legal interest under a petroleum production licence and/or an interest under a joint operating agreement, unitisation agreement or similar agreement relating to a Field or pipeline;
"Month"	means a period beginning at 00:00 hours on the first day of a calendar month and ending immediately before 00:00 hours on the first day of the following calendar month and "Monthly" shall be construed accordingly;
"Oil & Gas UK"	means the United Kingdom Offshore Oil and Gas Industry Association Limited (trading as Oil & Gas UK) or such other association or corporation as may from time to time represent those companies which are licensees under petroleum production licences on the United Kingdom Continental Shelf;
"Ordinary Decommissioning Expenditure"	means Decommissioning Expenditure other than Imposition Decommissioning Expenditure ;
"Party"	means a party to this Deed and its respective legal and/or statutory successors and permitted assigns and "Parties" means both of them;
"Petroleum Revenue Tax" or "PRT"	means petroleum revenue tax charged under the Oil Taxation Act 1975;
"Pounds Sterling", "Sterling" and "£"	means the lawful currency of the United Kingdom;
"PRT Reference Amount"	means an amount calculated in accordance with Paragraph 5.1 of Schedule 1, or in the case of Imposition Decommissioning Expenditure, in accordance with Paragraph 8.1 of Schedule 1;
"Reference Amount"	means an RFCT Reference Amount, an SC Reference Amount or a PRT Reference Amount, as the case may be;
"Relevant Property"	means any property associated with an Interest;
"RFCT Reference Amount"	means an amount calculated in accordance with Paragraph 3.1 of Schedule 1, or in the case of Imposition Decommissioning Expenditure, in accordance with Paragraph 6.1 of Schedule 1;
"Ring Fence Corporation Tax"	means corporation tax charged under the Corporation Tax Act 2009 and the Corporation Tax Act 2010 in respect of ring fence trades or any other tax on profits which is introduced in addition to or as a replacement for such corporation tax but excluding Supplementary Charge;
"SC Reference Amount"	means an amount calculated in accordance with Paragraph 4.1 of Schedule 1, or in the case of Imposition Decommissioning Expenditure, in accordance with Paragraph 7.1 of Schedule 1;
"Specified Certificate"	means the HMRC Certificate specified in a Claim Statement in accordance with Clause 5.3;
"Supplementary	means that charge in respect of ring fence trades under Part 8, Chapter 6

Charge"	of the Corporation Tax Act 2010;
"Tax Capacity"	means profits in any Tax Period against which the Decommissioning Relief in question may be utilised so as to reduce or eliminate such profits for the purposes of the Tax in question (whether or not such profits would otherwise be relieved from Tax by virtue of any oil allowance or other relief or allowance);
"Tax Period"	(i) for Petroleum Revenue Tax, shall mean a period of six months ending at the end of June or December in any year, and (ii) for corporation tax (including Ring Fence Corporation Tax) and Supplementary Charge shall mean an accounting period of the Claimant for the purposes of corporation tax as determined in accordance with Existing Legislation, including the notional accounting period provided for in section 165 of the Capital Allowances Act 2001 if appropriate, or if the Claimant is not within the charge to corporation tax and does not have such a notional accounting period, shall mean a calendar year;
"Tax Return"	means (i) in respect of Ring Fence Corporation Tax and Supplementary Charge, a Corporation Tax Self-Assessment or other return as required by Tax legislation, and (ii) in respect of Petroleum Revenue Tax, an expenditure claim;
"Term"	has the meaning given to it in Clause 2.1;

1.2 Unless the context requires otherwise:

1.2.1 the singular includes the plural and vice versa;

1.2.2 **"persons"** includes individuals, firms, corporations, unincorporated associations and statutory authorities, and all references to persons shall include their successors and permitted assignees;

1.2.3 a reference to any enactment, order, regulation, directive, code, licence or similar instrument includes all enactments or instruments made under it and any amendment, re-enactment or replacement of it;

1.2.4 a reference to a **"Clause",** "**Schedule**", "**Paragraph**" or part thereof is a reference to a clause or schedule in this Deed or to a paragraph of such a schedule;

1.2.5 references to any expenditure (including Decommissioning Expenditure) being "**incurred**" shall be construed as references to the same being recognised as incurred for the purposes of the relevant Tax (regardless of when payment was actually made in respect of such expenditure);

1.2.6 **"includes"** and its variations are to be construed without limitation;

1.2.7 clause headings, clause descriptions and examples are for convenience only and do not affect the interpretation of this Deed; and

1.2.8 in this Deed any amount expressed in Pounds Sterling shall to the extent that it requires in whole or in part to be expressed in any other currency in order to give due effect to this Deed, be deemed for that purpose to have been converted into the relevant currency immediately before the close of business on the date of this Deed (or, if that is not a Business Day, the Business Day immediately before it). Subject to

any applicable legal requirements governing conversions into that currency, the rate of exchange shall be the Bank of England's spot rate for the purchase of that currency with Sterling at the time of the deemed conversion.

2. Commencement and Term

2.1 This Deed shall take effect and commence on the Effective Date.

2.2 The Parties hereby agree that this Deed is irrevocable and shall endure without limit of time, unless and until mutually terminated by both Parties by written agreement (the "**Term**").

3. Scope of Deed

3.1 Subject to Clause 3.2, this Deed shall apply in relation to Decommissioning Expenditure incurred by the Company or any Associated Entity.

3.2 Where for the purposes of paragraph 15 of Schedule 17 to the Finance Act 1980 a loss is treated as an allowable loss falling to be relieved against assessable profits of the Company or an Associated Entity as an old participator (a "**Predecessor**"), then subject to Paragraph 9 of Schedule 1 to this Deed, insofar as this Deed applies in relation to Petroleum Revenue Tax:—

3.2.1 references to Decommissioning Expenditure being incurred by the Company or an Associated Entity shall be construed as references to so much of the Decommissioning Expenditure incurred by the new participator in relation to which the Predecessor is the old participator as gives rise to that loss;

3.2.2 references to Decommissioning Relief arising to or being obtained by the Company or an Associated Entity shall be construed as including references to that loss; and

3.2.3 the other provisions of this Deed shall apply so as to give full effect to the foregoing,

provided that the Predecessor shall have no greater right or entitlement under this Deed than it would have had if it had incurred the relevant part of the Decommissioning Expenditure itself.

4. Representations and Warranties

4.1 Each Party represents and warrants to the other Party, as at the Effective Date and as at the date on which any Difference Payment becomes due:—

4.1.1 that it has the power and capacity (a) to execute this Deed and any other documentation relating to this Deed to which it is a party, (b) to deliver this Deed and any other documentation relating to this Deed that it is required by this Deed to deliver, and (c) to perform its obligations under this Deed and has taken or will take all necessary action to authorise that execution, delivery and performance, including, in the case of the [Government Counterparty], by procuring the necessary appropriation of funds;

4.1.2 that the execution, delivery and performance referred to in Clause 4.1.1. do not violate or conflict with any law applicable to it, any order or judgment of any court or other agency of government applicable to it or any contractual restriction binding on it;

4.1.3 that its obligations under this Deed constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (regardless of whether enforcement is sought in a proceeding in equity or at law).

5. Payment Obligations

5.1 In respect of each Tax Period during the Term, the [Government Counterparty] shall, subject to and in accordance with this Clause 5 and Clause 6, pay:—

5.1.1 to the Company any Difference Payment due in respect of Decommissioning Expenditure incurred by the Company in that Tax Period; and

5.1.2 to any Associated Entity any Difference Payment due in respect of Decommissioning Expenditure incurred by such Associated Entity in that Tax Period.

5.2 A payment (a "**Difference Payment**") shall be due to a Claimant if:—

(a) the amount of Decommissioning Relief in respect of Ring Fence Corporation Tax obtained in that Tax Period or any earlier Tax Period by the Claimant in respect of the Decommissioning Expenditure incurred in that Tax Period by the Claimant shall be less than the RFCT Reference Amount; or

(b) the amount of Decommissioning Relief in respect of Supplementary Charge obtained in that Tax Period or any earlier Tax Period by the Claimant in respect of the Decommissioning Expenditure incurred in that Tax Period by the Claimant shall be less than the SC Reference Amount; or

(c) the amount of Decommissioning Relief in respect of Petroleum Revenue Tax obtained in that Tax Period or any earlier Tax Period by the Claimant in respect of the Decommissioning Expenditure incurred in that Tax Period by the Claimant shall be less than the PRT Reference Amount,

and in each case the amount of the Difference Payment shall be the amount by which the relevant Reference Amount exceeds the amount of Decommissioning Relief so allowed.

5.3 To the extent that any Claim relates to Imposition Decommissioning Expenditure for the purposes of Petroleum Revenue Tax, the Claim Statement shall specify the relevant HMRC Certificate in respect of which the Claim is made, being a certificate showing Available Profits of the Company (or a predecessor in title), or of the Defaulting Party (or a predecessor in title), in each case in relation to the relevant Interest (the "**Specified Certificate**").

5.4 No Difference Payment under Clause 5.2(c) shall be due to the extent that:—

5.4.1 the aggregate of all Difference Payments paid to, together with the aggregate amount of Decommissioning Relief obtained by the Company and/or any Associated Entities in respect of relief from Petroleum Revenue Tax in connection with Decommissioning Expenditure incurred by the Company and/or any Associated Entities in relation to the Interest in question,

would exceed

5.4.2 in relation to that Interest the greater of:—

(a) the aggregate amount of Decommissioning Relief that could have been obtained by the Company and any predecessors in title; and

(b) the aggregate amount of Decommissioning Relief that could have been obtained by the Company and such proportion of Decommissioning Relief that could have been obtained by any Defaulting Party and any predecessors in title as corresponds to the amount of Decommissioning Expenditure incurred by the Claimant as a result of a related Imposition.

5.5 The Difference Payment due to a Claimant under Clause 5.2 in the case of a Claim relating to Ordinary Decommissioning Expenditure shall not exceed the amount determined under Clause 5.6.

5.6 The amount referred to in Clause 5.5 is so much of any difference between the two amounts referred to in Clause 5.2(a), 5.2(b) or 5.2(c) (as the case may be) as would not have arisen but for a Change in Law having the effect of reducing the amount of Decommissioning Relief obtained in respect of Ordinary Decommissioning Expenditure incurred in the Tax Period to which the Claim relates.

5.7 No Difference Payment shall be due to the extent that the difference between the two amounts referred to in Clause 5.2(a), 5.2(b) or 5.2(c) (as the case may be) arises because a Change in Law has reduced the profits taken into account for the purposes of any Tax.

5.8 This Clause 5 shall survive termination of this Deed in relation to Tax Periods any part of which fell prior to the date of such termination.

6. Billing and Payment

6.1 Claim Statement

6.1.1 On or within [X] years of submitting a Tax Return in respect of any Tax Period during the Term in which any Difference Payment arises (or where the Claimant was not subject to Tax in the Tax Period, within [X] years of the end of any such Tax Period), the Company or Associated Entity may send to the [Government Counterparty] a written statement in substantially the same form as that attached at Schedule 3 (**"Claim Statement"**) showing any Difference Payment(s) it considers to be owed by the [Government Counterparty] under Clause 5 for such Tax Period, calculated in accordance with Clause 5.2 and Schedule 1.

6.1.2 Each Claim Statement shall be accompanied by the supporting documentation referred to in Schedule 3.

6.1.3 Each Claim Statement shall constitute a valid claim issued by the Company or an Associated Entity (as the case may be) to the [Government Counterparty] requesting payment of the Difference Payment(s) set out in it to the extent that the Claim Statement is correct and complete and all necessary supporting evidence has been provided.

6.2 Payment Mechanics

6.2.1 Following receipt of a Claim Statement in accordance with this Deed, subject to Clause 6.3, the [Government Counterparty] shall pay to the Claimant a sum equal to the Difference Payment(s) claimed in such Claim Statement within [XX] Business Days (such date being the **"Due Date"**).

6.2.2 ***[Method of payment to be specified]***.

6.3 Disputed Payments

6.3.1 ***[Dispute resolution mechanism to be specified]***.

6.4 Interest

6.4.1 ***[Interest payments to be specified]***.

6.5 Amended Information

6.5.1 ***[Mechanism for amending Claim Statement to be specified]***.

6.6 Tax Gross Up

6.6.1 Any sum payable by the [Government Counterparty] to the Company or the Associated Entity (as the case may be) under this Deed shall be paid free and clear of any deduction or withholding whatsoever, save only as may be required by law.

6.6.2 If any deduction or withholding is required by law to be made from any payment by the [Government Counterparty] under this Deed (other than a payment of interest made pursuant to Clause 6.4), the [Government Counterparty] shall increase the amount of the payment by such additional amount as is necessary to ensure that the net amount received and retained by the Company or the Associated Entity (as the case may be) (after taking account of any deduction or withholding) is equal to the amount which it would have received and retained had the payment in question not been subject to any deduction or withholding.

6.6.3 If the Company or the Associated Entity (as the case may be) is subject to [UK] Tax in respect of any payment by the [Government Counterparty] under this Deed (other than a payment of interest made pursuant to Clause 6.4) or if the Company or the Associated Entity (as the case may be) would have been subject to [UK] Tax but for the availability to the Company or the Associated Entity (as the case may be) of any [UK] Tax relief, the [Government Counterparty] shall increase the amount of the payment by such additional amount as is necessary to ensure that the net amount received and retained by the Company or the Associated Entity (as the case may be), (after taking account of all [UK] Tax) (or the net amount that would have been received and retained but for the availability of the [UK] Tax relief) is equal to the amount which it would have received and retained had the payment in question not been subject to [UK] Tax.

6.7 This Clause 6 shall survive termination of this Deed.

6.8 Clawback where amounts recovered from third parties etc.

6.8.1 Where a Difference Payment has been made under this Deed and the recipient (or any entity which controls, is controlled by or under common control with the recipient) receives a Compensating Payment which relates wholly or partly to the same subject-matter as the Difference Payment, such recipient shall receive and hold such Compensating Payment (save for any Retainable Amount) on bare trust for the [Government Counterparty] and shall promptly notify the [Government Counterparty] of the same.

6.8.2 A "**Compensating Payment**" is any payment made by or recoverable from any person (the "**Compensating Party**") to or by another (the "**Compensated Party**") by way of compensation, or under any agreement, commitment, indemnity or covenant to pay, and which arises as a result of or in connection with:—

(a) the Compensated Party (or an Associated Entity thereof) having incurred or become liable to incur any Imposition Decommissioning Expenditure; or

(b) the Compensating Party having benefitted from the carry-back of relief for the purposes of Petroleum Revenue Tax because the Compensated Party (or an Associated Entity) incurred Decommissioning Expenditure.

The "**Retainable Amount**" is so much of a Compensating Payment as must be retained by the Compensated Party in order to secure that it is in no better and no worse a position (after Tax) than it would have been had the Decommissioning Expenditure to which the Compensating Payment relates been met by another person at the time it was originally incurred.

6.8.3 The Company shall, and shall procure that any Associated Entity shall:—

(a) use reasonable endeavours to seek and recover any Compensating Payment to which it is or becomes entitled; and

(b) procure that any recipient that is not bound by this Deed complies with Clause 6.8.1 in respect of any Compensating Payment it receives.

6.8.4 To the extent that Decommissioning Expenditure of any person corresponds to a Compensating Payment not dealt with under Clause 6.8.1, it shall not for the purposes of this Deed be regarded as Decommissioning Expenditure of that person or any Associated Entity thereof. To the extent that it has been so regarded and not dealt with under Clause 6.8.1, such adjustments shall be made to any calculation, amount or payment as are necessary to secure that it is effectively disregarded.

7. [Blank clause – to be deleted]

8. Anti-Abuse

8.1 Clause 8.2 applies (subject to clause 8.3) if the Company or any Associated Entity enters into any transaction or arrangement, or includes a feature in a transaction or arrangement, the main purpose or one of the main purposes of which is to secure an Enhanced Entitlement.

8.2 If this Clause 8.2 applies, the entitlement of any Claimant to payment under this Deed shall be no greater than it would have been if the transaction or arrangement had not been entered into or, as the case may be, the feature had not been included.

8.3 If the Company or any Associated Entity enters into any DOTAS Arrangements after [9 July 2012] which would in the absence of this Clause 8.3 have secured an Enhanced Entitlement, the entitlement of any Claimant to payment under this Deed shall be no greater than it would have been if the DOTAS Arrangements had not been entered into.

8.4 In this Clause 8:—

"DOTAS Arrangements" means any arrangements required to be disclosed pursuant to Part 7 of the Finance Act 2004 or any regulations made thereunder, as the same may be amended from time to time (or which would have been required to be so disclosed but for any disclosure by any other person);

"Enhanced Entitlement" means an entitlement to a Difference Payment or to an increased Difference Payment under Clause 5 of this Deed.

9. Confidentiality of Information

9.1 The [Government Counterparty] shall treat all information provided by the Company or any Associated Entity under or in connection with this Deed including Claim Statements (together the **"Confidential Information"**) as confidential and shall not disclose the Confidential

Information without the prior written consent of the Company or the Associated Entity (as the case may be), save that consent shall not be required for disclosure:

9.1.1 to HMRC;

9.1.2 to the extent required by any applicable laws or judicial process, provided that the Company or the Associated Entity (as the case may be), has been notified of the intended disclosure at least five Business Days before it is made;

9.1.3 to the extent that the Confidential Information is in or lawfully comes into the public domain other than by breach of this Clause 9.

9.2 [Confidentiality clause for Company Counterparty to be specified]

10. Third Parties

10.1 Except as set out in Clause 10.2, the Parties intend that no provision of this Deed shall confer any benefit on, nor be enforceable by, any person who is not a Party by virtue of the Contracts (Rights of Third Parties) Act 1999 ("**1999 Act**").

10.2 Subject to the remaining provisions of this Clause 10, this Deed is intended to be enforceable by an Associated Entity by virtue of the 1999 Act.

10.3 Notwithstanding Clause 10.2, this Deed may be rescinded, amended or varied by the Parties without notice to or the consent of any Associated Entity even if, as a result, that person's right to enforce a term of this Deed may be varied or extinguished.

10.4 The rights of any Associated Entity under Clause 10.2 shall be subject to the Associated Entity's written agreement to the provisions of Clause 18 in respect of all matters relating to such rights.

11. Assignment

11.1 Subject to the remaining provisions of this Clause 11, neither Party shall assign or transfer to any person any of its rights or obligations in respect of this Deed.

11.2 The Company may assign its rights under this Deed by way of security to or in favour of any bank or financial institution in relation to the financing of its business activities.

11.3 The [Government Counterparty] may assign or transfer his rights and obligations under this Deed to any successor in relation to his rights and responsibilities.

11.4 As a separate and independent stipulation the [Government Counterparty] undertakes that if any such assignment or transfer as is referred to in Clause 11.3 is made and as a result any right of the Company or any Associated Entity in respect of this Deed is rendered unenforceable, or the performance of any obligation by either Party in respect of this Deed is rendered illegal or the Company's or any Associated Entity's rights under this Deed are adversely affected, then the [Government Counterparty] shall be liable to pay such compensation to the Company or such Associated Entity as is necessary to restore the Company or such Associated Entity to the position it would have been in had such assignment or transfer not taken place.

12. Notices

12.1 Except where expressly provided otherwise in this Deed, any notice or other written communication authorised or required by this Deed to be given or sent by either Party to the

other (a **"Communication"**) shall be in writing and signed by an authorised representative of the sender.

12.2 All Communications given by one Party to the other Party pursuant to this Deed may be delivered by hand, by facsimile, by commercial courier, or within the United Kingdom, by first class pre-paid recorded or special delivery post.

12.3 Communications shall be sent to the address or facsimile number specified for the receiving Party in Schedule 2 and shall be marked to the attention of the person named in Schedule 2. Either Party may, by written notice to the other, change its contact details given in Schedule 2.

12.4 Communications delivered in accordance with this Clause 12 are taken to have been effective as follows:

12.4.1 if delivered by hand, on the Business Day of delivery or on the 1st Business Day after the date of delivery if delivered on a day other than a Business Day;

12.4.2 if sent by first class pre-paid or special delivery post in the United Kingdom, on the 2nd Business Day after the day of posting or, if sent from one country to another, on the 5th Business Day after the day of posting;

12.4.3 if sent by facsimile transmission and a valid transmission report confirming good receipt is generated, on the day of transmission if transmitted before 1800 hours on a Business Day or otherwise on the 1st Business Day after transmission.

12.5 In proving service of the Communication, it shall be sufficient to show that delivery by hand was made or that the envelope containing the Communication was properly addressed and posted by pre-paid registered post or that the facsimile was despatched and a confirmatory transmission report received.

13. Waiver

13.1 No delay by or omission of either Party or any Associated Entity in exercising any right, power, privilege or remedy under this Deed shall operate to impair such right, power, privilege or remedy or be construed as a waiver of that right, power, privilege or remedy.

13.2 Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise of that right, power, privilege or remedy or the exercise of any other right, power, privilege or remedy.

13.3 No waiver of any breach of this Deed shall (unless expressly agreed in writing) be construed as a waiver of a future breach of the same term or as authorising the continuation of the particular breach. No waiver of any breach of this Deed shall operate unless expressly made in writing.

14. Amendments

This Deed can be amended only by written Deed between the Parties signed by their duly authorised representatives.

15. Entire Agreement

15.1 This Deed together with any other document expressed to be incorporated herein constitutes the entire Deed and understanding of the Parties with respect to its subject matter and supersedes and extinguishes any representations previously given or made other than those included in this Deed and any other document expressed to be incorporated herein.

15.2 Each Party acknowledges and agrees that on entering into this Deed it does not rely on, and shall have no remedy in respect of, any warranty, representation, undertaking or assurance (whether negligently or innocently made) of any person other than as expressly set out in this Deed as a representation, and that liability in respect of any such warranty, representation, undertaking or assurance is expressly excluded.

15.3 Nothing in this Clause 15 limits or excludes any liability for fraud in relation to any such representation, warranty, undertaking or assurance.

16. Conflict

If there is any inconsistency between a provision in this Deed (for this purpose excluding the Schedules) and a provision in a Schedule, the provision in this Deed prevails to the extent of the inconsistency.

17. Execution in Counterparts

This Deed may be executed in any number of counterparts and by different parties in separate counterparts, any of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Deed.

18. Governing Law

18.1 This Deed, and any non-contractual rights or obligations arising out of or in connection with it or its subject matter, shall be governed by and construed in accordance with English law. Any claim, dispute or difference of whatsoever nature arising out of or in connection with this Deed and any non-contractual rights or obligations arising out of or in connection with it or its subject matter shall be referred to the exclusive jurisdiction of the courts of England.

IN WITNESS WHEREOF the Parties have caused this Decommissioning Relief Deed to be executed as a deed on the date first above written.

Executed as a Deed by
[THE LORDS COMMISSIONERS TO HER MAJESTY'S TREASURY]

_____ _____
Signature Full Name

In the presence of:

_____ _____
Witness Signature Witness Full Name

_____ _____
Witness Address Witness Occupation

_____

Executed as a Deed by
[COMPANY]

_____ _____

Director Signature

Director Full Name

In the presence of:

_____
Witness Signature

_____
Witness Full Name

_____
Witness Address

_____
Witness Occupation

Schedule 1
Reference Amount

1. Definitions

1.1 Definitions used in the body of this Deed shall have the same meanings when used in this Schedule and unless otherwise stated references in this Schedule to Paragraphs are to paragraphs of this Schedule. In addition, the following terms and expressions shall bear the following meanings:—

"Decommissioning End Date" means the date on which the final Decommissioning Expenditure in relation to the relevant decommissioning activity has been incurred.

"Net Cost" means the aggregate of the Claimant's share of Decommissioning Expenditure calculated on the basis set out in Schedule 6;

"Net Revenues" means the aggregate of the Claimant's share of:

(a) the sales value of petroleum produced and delivered from the Field; and

(b) the proceeds of sale of any surplus Relevant Property sold prior to the Decommissioning End Date; and

(c) the value of any tariffs or other income received from the owners of other fields arising out of the provision of services utilising the Relevant Property under transportation, processing and other agreements,

in each case calculated on the basis set out in Schedule 6;

2. Calculation of the Reference Amount

2.1 Save as specifically set out in this Schedule, a Reference Amount shall be calculated by reference to Existing Legislation**.**

2.2 Where the Claimant incurs Decommissioning Expenditure in respect of an Interest which it acquired as the result of forfeiture under a joint operating agreement, unitisation agreement or similar agreement, Decommissioning Expenditure shall be treated as Imposition Decommissioning Expenditure only to the extent that the Net Cost the Claimant has incurred or reasonably expects to incur in future in respect of such Interest exceeds the Net Revenues it has received or reasonably expects to receive in respect of such Interest, and for the purposes of these calculations the assumptions in Schedule 6 shall be applied. To the extent that such Net Cost does not exceed such Net Revenues, the Decommissioning Expenditure so incurred shall be treated as Ordinary Decommissioning Expenditure.

2.3 If a Claimant makes a Claim in respect of any Tax Period in respect of an Interest which it has acquired as the result of forfeiture under a joint operating agreement, unitisation agreement or similar agreement on the basis that Net Cost is reasonably expected to exceed Net Revenue (an "**Estimated Claim**"), then promptly following the Decommissioning End Date for the relevant Interest the Claimant shall be required to calculate whether Net Cost in fact exceeded Net Revenues.

2.4 If the Claimant has made an Estimated Claim but Net Cost did not in fact exceed Net Revenue or did not do so to the extent expected, then the Claimant shall be obliged to make a

reconciliation payment to the [Government Counterparty] together with interest ***[interest to be specified]***.

3. Calculation of Reference Amount for Ring Fence Corporation Tax where there is no Imposition

3.1 The RFCT Reference Amount in any Tax Period for Ordinary Decommissioning Expenditure shall be equal to the amount of Decommissioning Relief from Ring Fence Corporation Tax that would arise in respect of allowable Decommissioning Expenditure under Existing Legislation. For the avoidance of doubt, in applying this Paragraph 3.1 relief shall not be treated as being given against profits previously treated as relieved in applying this Paragraph 3.1, so that in aggregate relief shall not be treated as being given more than once in respect of the same profits.

3.2 Allowable Decommissioning Expenditure for the purpose of this Paragraph 3 means Ordinary Decommissioning Expenditure incurred by the Claimant during the relevant Tax Period.

3.3 To the extent that in determining the amount of Decommissioning Relief that would arise under Paragraph 3.1 a Claimant has insufficient Tax Capacity to treat as relievable all of its allowable Decommissioning Expenditure because that Tax Capacity has already been reduced as a result of incurring Imposition Decommissioning Expenditure, the RFCT Reference Amount for the Tax Period in which the Decommissioning Expenditure has been incurred shall be increased by the amount of additional Decommissioning Relief that the Claimant would have received in respect of allowable Decommissioning Expenditure under this Paragraph had it not previously (or in the same Tax Period) incurred such Imposition Decommissioning Expenditure. In that event, the RFCT Reference Amount shall be further increased by an amount (if any) equal to that for which the Claimant is unable to obtain relief from Tax for any Deductible Expenditure incurred in respect of the Tax Period to which the Claim relates as a result of such insufficiency of Tax Capacity to the extent not already taken into account under this Paragraph 3.3.

4. Calculation of Reference Amount for Supplementary Charge where there is no Imposition

4.1 Subject to Paragraph 4.3, the SC Reference Amount in any Tax Period for Ordinary Decommissioning Expenditure shall be equal to the amount of Decommissioning Relief from Supplementary Charge that would arise in respect of allowable Decommissioning Expenditure under Existing Legislation. For the avoidance of doubt, in applying this Paragraph 4.1 relief shall not be treated as being given against profits previously treated as relieved in applying this Paragraph 4.1, so that in aggregate relief shall not be treated as being given more than once in respect of the same profits.

4.2 Allowable Decommissioning Expenditure for the purpose of this Paragraph 4 means Ordinary Decommissioning Expenditure incurred by the Claimant during the relevant Tax Period.

4.3 Paragraphs 4.3.1 and 4.3.2 apply for the purposes of calculating the amount of Supplementary Charge treated as relieved by Decommissioning Relief for the purposes of Paragraph 4.1.

4.3.1 Where the profits to which the Decommissioning Relief is applied were subject to a rate of Supplementary Charge greater than 20%, such profits shall be treated as having been relieved at a rate equal to the lower of:—

(a) the rate of Supplementary Charge to which they were subject; and

(b) a rate of 20% plus (i) in cases where the rate of Ring Fence Corporation Tax to which such profits were subject was less than 30%, the number of percentage points by which that rate was less than 30%, or (ii) in other cases, nil.

4.3.2 Where such profits were subject to a rate of Supplementary Charge at or less than 20%, such profits shall be treated as having been relieved at that rate.

4.4 To the extent that in determining the amount of Decommissioning Relief that would arise under Paragraph 4.1 a Claimant has insufficient Tax Capacity to treat as relievable all of its allowable Decommissioning Expenditure because that Tax Capacity has already been reduced as a result of incurring Imposition Decommissioning Expenditure, the SC Reference Amount for the Tax Period in which the Decommissioning Expenditure has been incurred shall be increased by the amount of additional Decommissioning Relief that the Claimant would have received in respect of allowable Decommissioning Expenditure under this Paragraph had it not previously (or in the same Tax Period) incurred such Imposition Decommissioning Expenditure. In that event, the SC Reference Amount shall be further increased by an amount (if any) equal to that for which the Claimant is unable to obtain relief from Tax for any Deductible Expenditure incurred in respect of the Tax Period to which the Claim relates as a result of such insufficiency of Tax Capacity to the extent not already taken into account under this Paragraph 4.4.

5. Calculation of Reference Amount for Petroleum Revenue Tax where there is no Imposition

5.1 The PRT Reference Amount in any Tax Period (including any Tax Period after the abolition of Petroleum Revenue Tax) for Ordinary Decommissioning Expenditure shall be equal to the amount of Decommissioning Relief from Petroleum Revenue Tax that would arise in respect of allowable Decommissioning Expenditure in respect of the Field under Existing Legislation. For the avoidance of doubt, in applying this Paragraph 5.1 relief shall not be treated as being given against profits previously treated as relieved in applying this Paragraph 5.1, so that in aggregate relief shall not be treated as being given more than once in respect of the same profits.

5.2 The PRT Reference Amount shall then be reduced to reflect Ring Fence Corporation Tax and Supplementary Charge that would be chargeable thereon if it were a repayment or series of repayments of Petroleum Revenue Tax subject to the rates of Ring Fence Corporation Tax and Supplementary Charge which have been applied or would have been applied to calculate an RFCT Reference Amount or an SC Reference Amount under this Deed in respect of the allowable Decommissioning Expenditure.

5.3 If Petroleum Revenue Tax shall have been abolished, then the last Tax Period for which Petroleum Revenue Tax was chargeable shall be taken as being the most recent Tax Period for the purposes of applying Paragraphs 5.1 and 5.2 and the PRT Reference Amount shall be determined by reference to the level of relief that the Claimant would have achieved if the Decommissioning Expenditure had been incurred in that Tax Period.

5.4 Allowable Decommissioning Expenditure for the purpose of this Paragraph 5 means Ordinary Decommissioning Expenditure incurred by the Claimant during the relevant Tax Period.

5.5 Where the Claimant controls, is controlled by or under common control with a Defaulting Party and as a result the payment of Decommissioning Expenditure by the Claimant is not treated as an Imposition, the tax history of the Defaulting Party shall be deemed to be the tax history of the Claimant for the purposes of the calculation in Paragraph 5.1.

5.6 Subject to Paragraph 5.7, to the extent that in determining the amount of Decommissioning Relief that would arise under Paragraph 5.1 a Claimant has insufficient Tax Capacity to treat as relievable all of its allowable Decommissioning Expenditure because that Tax Capacity has already been reduced as a result of incurring Imposition Decommissioning Expenditure, the PRT Reference Amount for the Tax Period in which the Decommissioning Expenditure has been incurred shall be increased by the amount of additional Decommissioning Relief that the Claimant would have received in respect of allowable Decommissioning Expenditure under this Paragraph had it not in that or any previous Tax Period incurred such Imposition

Decommissioning Expenditure. In that event, the PRT Reference Amount shall be further increased by an amount (if any) equal to that for which the Claimant is unable to obtain relief from Tax for any Deductible Expenditure incurred in respect of the Tax Period to which the Claim relates as a result of such insufficiency of Tax Capacity to the extent not already taken into account under this Paragraph 5.6.

5.7 The PRT Reference Amount as increased in accordance with Paragraph 5.6 shall not exceed the amount of Decommissioning Relief from Petroleum Revenue Tax as would have arisen in respect of allowable Decommissioning Expenditure in respect of the Field under Existing Legislation as applied to the Tax Capacity of the Claimant, disregarding for such purpose any reduction in such Tax Capacity to the extent attributable to the Claimant having incurred Imposition Decommissioning Expenditure.

6. Calculation of Reference Amount for Ring Fence Corporation Tax in an Imposition

6.1 The RFCT Reference Amount in respect of any Imposition Decommissioning Expenditure incurred by the Claimant in any Tax Period shall be calculated by multiplying allowable Decommissioning Expenditure by thirty per cent (30%).

6.2 Allowable Decommissioning Expenditure for the purpose of this Paragraph 6 means Decommissioning Expenditure incurred by the Claimant during the relevant Tax Period as a result of such Imposition after deduction of the aggregate of any relief from PRT received by the Claimant in respect of such Decommissioning Expenditure and any PRT Reference Amount received by the Claimant in such Tax Period.

7. Calculation of Reference Amount for Supplementary Charge in an Imposition

7.1 The SC Reference Amount in respect of any Imposition Decommissioning Expenditure incurred by the Claimant in any Tax Period shall be calculated by multiplying allowable Decommissioning Expenditure by twenty per cent (20%).

7.2 Allowable Decommissioning Expenditure for the purpose of Paragraph 7.1 means Decommissioning Expenditure incurred by the Claimant during the relevant Tax Period as a result of such Imposition after deduction of the aggregate of any relief from PRT received by the Claimant in respect of such Decommissioning Expenditure and any PRT Reference Amount received by the Claimant in such Tax Period.

8. Calculation of Reference Amount for Petroleum Revenue Tax in an Imposition

8.1 Subject in particular to the provisions of this Paragraph 8, the PRT Reference Amount in respect of any Imposition Decommissioning Expenditure incurred by the Claimant in any Tax Period shall be equal to such amount of Decommissioning Relief in respect of Petroleum Revenue Tax that is referable to allowable Decommissioning Expenditure as may be set against so much of the Available Profits shown in the Specified Certificate as (i) have not been previously taken into account in accordance with this Paragraph 8.1, (ii) are and have not been taken into account otherwise under the like provision in any deed made on similar terms to this Deed, and (iii) are not and have not been the subject of a claim for relief by any person.

8.2 The amount determined under Paragraph 8.1 shall then be reduced to reflect Ring Fence Corporation Tax and Supplementary Charge, which reduction shall be effected at the rates of Ring Fence Corporation Tax and Supplementary Charge which have been applied or would have been applied to calculate an RFCT Reference Amount or an SC Reference Amount for the Company under this Deed in respect of the allowable Decommissioning Expenditure.

8.3 For the purposes of this Paragraph 8, if Petroleum Revenue Tax shall have been abolished, the PRT Reference Amount shall be the level of relief that the Defaulting Party and its predecessors in title or the Claimant and its predecessors in title, as the case may be, would have achieved in the last Tax Period in which Petroleum Revenue Tax remained in existence if the Decommissioning Expenditure had been incurred in that Tax Period.

8.4 Allowable Decommissioning Expenditure for the purpose of this Paragraph 8 means Decommissioning Expenditure incurred by the Claimant during the relevant Tax Period as a result of the Imposition in question.

8.5 For the purposes of calculating the Decommissioning Relief allowed against Petroleum Revenue Tax in any Tax Period where Imposition Decommissioning Expenditure has been incurred in respect of any Field, the Claimant shall not be required in respect of such Decommissioning Expenditure to make use of any ability to set off an unrelieved field loss against the profits earned in respect of any other Field before making a claim under this Deed.

8.6 Paragraph 8.7 shall apply where (i)the Claimant makes a Claim which relies on the tax history of a Defaulting Party, (ii)one or more claimants under deeds similar to this Deed make claims which also rely on the tax history of the same Defaulting Party and (iii) the tax history of the Defaulting Party and its predecessors is not sufficient to meet such Claim and those other claims in full.

8.7 Where this Paragraph 8.7 applies, the relevant tax history shall be apportioned between the Claim and those other claims so that the aggregate entitlement available under this Deed and the other deeds referred to in Paragraph 8.6 (taken together) is shared between the Claimant and such other claimants pro rata according to the amount of the Decommissioning Expenditure attributable to such Defaulting Party that is borne by them.

9. Other Issues

9.1 Decommissioning Expenditure shall not be allowable Decommissioning Expenditure for the purposes of this Schedule if and to the extent that the same person or any other person shall have claimed any relief from Tax in respect of, treated as deductible for the purposes of any Tax, or obtained a payment under a deed in substantially the same terms as this Deed in respect of, such Decommissioning Expenditure.

Schedule 2
Contact Details

Schedule 3
Claim Statement

Schedule 4
[BLANK]

Schedule 5
HMRC Certification Process

1.1 The [Government Counterparty] shall procure that HMRC shall:

1.1.1 on the request of the Company or any Associated Entity which is a participator in a Field provide a certificate in the form set out in Paragraph [X] ***[form to be specified]*** of this Schedule showing the rate of relief which would be applied to such level of Decommissioning Expenditure as may be specified by the participator making the request if such Decommissioning Expenditure were to be carried back against the tax history of the participator and its predecessors in title in respect of all or part of its Interest in such Field;

1.1.2 on the request of any Associated Entity where the Company or another Associated Entity is a participator in a Field provide a certificate in the form set out in Paragraph 2 of this Schedule showing the rate of relief which would be applied to such level of Decommissioning Expenditure as may be specified by the Associated Entity making the request if such Decommissioning Expenditure were to be carried back against the tax history of the participator and its predecessors in title in respect of all or part of its Interest in such Field;

1.1.3 on the request of the Company or any Associated Entity which has incurred or reasonably expects that it may incur Imposition Decommissioning Expenditure provide a certificate in the form set out in Paragraph 2 of this Schedule showing the rate of relief which would be applied to such level of Decommissioning Expenditure as may be specified by the Company or the Associated Entity, as the case may be, if such Decommissioning Expenditure were to be carried back against the tax history of the Defaulting Party and its predecessors in title in respect of all or part of its Interest in such Field.

Such certificate shall bear the date of its issue and shall also indicate the most recent Tax Period for the relevant participator which has been closed by HMRC. In relation to open periods the rate of relief shall be based upon the tax return or returns submitted by the participator or the Defaulting Party, as the case may be.

1.2 ***[Process for issuing/reissuing certificates to be specified]***

1.3 A certificate issued under Paragraph 1 shall take account of any unrelieved field losses in any other Field already carried back and set off against the profits earned by the relevant participator in the Field which is the subject of the certificate but shall not take account of the ability of the participator to carry back any unrelieved field losses in the Field which is the subject of the certificate against the profits earned by the relevant participator in any other Field.

1.4 In preparing a certificate for the purposes of Paragraph 1 above, HMRC shall take no account of the fact that a participator or its predecessor in title may have been dissolved.

Schedule 6
Calculation of Net Cost and Net Revenue

[The content of this section should be treated as a basis for further discussion and the Government will wish to consider these issues further before publication of the final Deed].

Unless otherwise agreed by the Claimant and the [Government Counterparty], the following assumptions shall, where applicable, be used in any calculation of Net Cost or Net Revenue:

1. General

1.1 In calculating Net Cost and Net Revenue each cost and receipt shall be inflated from the end of the calendar year in which the Tax Period in respect of which the Claim is made ends (the "Relevant Year") to the dates when such costs and receipts are expected to arise at a rate equal to one third of the sum of the annual percentage increases in the Producer Price Index over the three (3) year period ending on the 31 March in the Relevant Year and then discounted at the Discount Rate from such dates back to the end of the Relevant Year.

1.2 In calculating Net Revenues, allowance shall be made for:

1.2.1 the costs attributable to the Net Revenues, including but not limited to operating and capital costs (other than Decommissioning Expenditure) and sales costs;

1.2.2 Tax, but taking account of Tax allowances and any Government grants, allowances or other assistance given in relation to the Relevant Property or the operation of the Relevant Property other than any Tax allowances available to any person in respect of Decommissioning Expenditure or any payments due under this Deed.

1.3 In calculating Net Cost:

1.3.1 allowance shall be made for anticipated receipts from decommissioning including any actual salvage value;

1.3.2 allowance shall be made for Tax allowances available to the Claimant in respect of Decommissioning Expenditure or any payments due under this Deed (on the assumption that such Decommissioning Expenditure is not treated as arising as a result of an Imposition).

1.4 The “Producer Price Index” for these purposes shall mean the index called "Net Sector - Output of manufactured products (JVZ7) in the table "Price indices of United Kingdom output: All manufacturing and selected industries SIC 2007" as published by the UK Office for National Statistics or, if such index ceases to be published, such index as shall most closely resemble it.

1.5 The “Discount Rate” shall be the annual post-tax redemption yield (at the rate at which the income held under a decommissioning trust deed would be taxed) of a fixed interest security which is issued or unconditionally guaranteed by the UK government having a final maturity during the three year period commencing on January 1 of the calendar year in which decommissioning is to commence plus 100 basis points (that is, one percentage point), such redemption yield being as reported by a reputable source of financial data on [31 March] in such year (or if not available on such date, on the first date thereafter on which it is available).

2. Currency

2.1 Net Cost and Net Revenue shall be expressed in Pounds.

2.2 The currency conversion rates to be applied to convert into Pounds any income, expenditure or liability which is reasonably expected to be denominated other than in Pounds shall be those published by [the spot prices published in the Financial Times] on [31st May] in the year of calculation.

3. Cash Flows

3.1 Cash flows shall be treated as occurring at the mid point of the year in which they are forecast to arise and shall be deemed to have borne applicable tax (including but not limited to royalty, corporation tax, supplementary charge to corporation tax, petroleum revenue tax and other profit or petroleum-based taxes) as at such mid point.

4. No Double Counting

4.1 On no account shall any item be taken into account as an allowance in the calculation of Net Cost if it has already been taken into account in the calculation of Net Revenue and vice versa.

5. Tax Assumptions

5.1 All references to taxes and other Government take (either combined or independently) in this Deed shall be those computed using the following assumptions:

5.1.1 The applicable law shall be the legislation in existence at the time of the completion of the calculation under this Schedule 6.

5.1.2 The Claimant shall be deemed to own only the Interest and no other Interest.

5.1.3 The income and expenditures shall be limited to those which are determined or computed under this Agreement.

5.1.4 There shall be no recognition of any income, expenditure, reliefs or allowances that do not flow from the information in this Agreement.

5.1.5 The Claimant shall be assumed to benefit from all available reliefs and allowances under law based on the assumptions in this Schedule 6.

5.1.6 The Claimant shall be assumed not to have any unrelieved expenditures or capital allowance pools at the beginning of the review period.

5.1.7 Losses shall be relieved within the review period only and no credit shall be computed for any excess losses.

5.1.8 For the purposes of this Paragraph 5, “review period” shall mean the period from after the end of the Relevant Year but prior to the last date on which decommissioning expenditure is incurred. [***Definition of Relevant Year to be specified***]

6. Operating Assumptions

6.1 It shall be assumed that offshore sea-bed Relevant Property (other than pipelines) will be required to be removed, and that pipelines will be required to be flooded (unless guidelines issued by the [Government Counterparty] or applicable law require otherwise).

6.2 In particular, it shall be assumed that a derogation from the terms of OSPAR Decision 98/3 in respect of the [ ] will not be granted [unless the [Government Counterparty] has issued a permit allowing derogation from the terms of OSPAR Decision 98/3 or it is reasonably likely based on the previous history of derogations for similar structures that a derogation will be granted.

6.3 The costs charged under the joint operating agreement, unitisation agreement or other similar agreement of insuring Relevant Property against loss or damage and third party liability insurance shall be treated as operating costs for the purposes of calculating Net Revenue[; in the event no such costs are so charged, an amount calculated by reference to one (1) per cent of the original capital cost of Relevant Property increased in line with inflation, shall be added to the relevant operating costs]. [***To be subject of further consultation***]

6.4 The assumptions to be used for future market prices of crude oil shall be those published by ***[source to be specified]***.

6.5 The assumptions to be used for the future market price of natural gas shall be those published by ***[source to be specified]***.

6.6 [Where any contract for the sale of natural gas has been entered into by the Claimant, the Claimant shall apply the price under such contract to calculate the price of any volumes of natural gas under such contract to which send or pay applies.] [***To be subject of further consultation***]

6.7 For the purposes of this Schedule 6, if any publisher of forecast future prices or currency conversion rates ceases to exist or ceases to publish any forecast future prices or currency conversion rates as referred to in this Schedule 6, the Claimant and the [Government Counterparty] shall agree replacement assumptions.

6.8 Subject to Paragraph 6.6, if any publisher of forecast future prices does not, or ceases to, publish forecast future prices that extend to the estimated date of completion of decommissioning, then the relevant forecast figure that relates to the time nearest to the estimated date of completion of decommissioning shall be deemed to continue from such time until the estimated date of completion of decommissioning.

6.9 The production profiles for petroleum utilised for calculations of Net Revenue under this Schedule shall be those contained in the life of Field production estimates (covering all reservoirs within the Field) as set out in the latest annual programme and budget approved pursuant to the joint operating agreement, unitisation agreement or similar agreement (or, if no such production estimates have been approved at such time, or there is no such agreement, the Claimant's best estimates of proven and probable reserves).

6.10 The operating costs and capital expenditures utilised for calculations of Net Cost and Net Revenue under this Agreement shall be those approved at the time of such calculation by the operating committee under the joint operating agreement, unitisation agreement or similar agreement (or, if, with respect to operating costs, no such costs have been approved at such time, or if there is no such agreement, the Claimant's best estimates thereof, consistent with the life of Field production estimates referred to above).

6.12 ***[Basis of cost estimates to be specified]***

6.11 References in the foregoing provisions of this Schedule 6 to the "time of calculation" shall be construed as the latest time by which the Operator is required to submit, as the case may be, its estimate of the Net Cost and the Net Revenue.

6.12 In calculating Net Cost and Net Revenue, the Claimant shall act to the standard of a "Reasonable and Prudent Operator" meaning a person seeking in good faith to perform its

contractual obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking in the UK Continental Shelf under the same or similar circumstances or conditions.

C Overview of draft legislation

C.1 Oil and gas: decommissioning certainty – As announced at Budget 2012, and following consultation, the Government will introduce a new contractual approach (through Decommissioning Relief Deeds) to provide certainty over decommissioning tax relief for companies in the UK Continental Shelf. To support this, legislation will be introduced to:

- provide the ability to make payments to satisfy any liabilities arising under the Deeds;
- provide a statutory exception to the general duty of confidentiality imposed on HMRC officials. This will allow the limited disclosure of certain confidential information regarding Petroleum Revenue Tax to enable companies to calculate the amount potentially payable under a Deed;
- restrict allowances for certain decommissioning expenditure, to counter any artificial inflation of claims for decommissioning tax relief;
- ensure relief is available for the costs of decommissioning onshore oil and gas assets which are used for the purposes of offshore production;
- remove inheritance tax (IHT) charges on property held in decommissioning security settlements; and
- make various technical amendments.

C.2 The proposed changes to the IHT rules in relation to decommissioning security settlements will have retrospective effect from a date which will be 20 years before the date of Budget 2013. The remaining provisions will have effect from Royal Assent to Finance Bill 2013.

D List of respondents

BG Group	Maersk Oil
BP	Marathon Oil
Brindex	Nexen
Centrica	Oil & Gas UK
Chevron	Oilfield Innovations
CNR International	OTAC
ConocoPhillips	Premier Oil
Dana Petroleum	Shell
Deloitte	Suncor Energy
ENI UK	Talisman Energy
Ernst & Young	TAQA
ExxonMobil	Total E&P UK
Fairfield Energy Limited	UKOITC
GL Noble Denton	URS
Herbert Smith Freehills LLP	Westlord
JX Nippon	

E Summary of working groups

Decommissioning Relief Deeds: working groups design

Background

E.1 At Budget 2012, the Government announced a package of measures on oil and gas taxation to support investment. This package includes the introduction of legislation in 2013 giving the Government statutory authority to sign contracts with companies operating in the UK and UK Continental Shelf (UKCS), to provide assurance on the tax relief they will receive when decommissioning assets.

E.2 Between 9 July and 1October 2012 the Government will be consulting on proposals to provide certainty on decommissioning relief through a Decommissioning Relief Deed ('the Deed'). Views on this approach are invited from a wide range of stakeholders including individuals, companies, and representative and professional bodies. In particular, the Government invites comments from companies involved in upstream oil and gas production in the UK and UKCS and connected activities, including the provision of financial and legal services. *The Government considered all responses before finalising the policy design and publishing a draft Deed and legislation for consultation on 11 December 2012*

Membership and frequency of meetings

E.3 The views given by participants in meetings will not be considered as the formal view of their organisation unless expressly stated. By joining a working group any participant is welcome to speak openly without prejudice, these views will be suitably anonymised in any readouts or papers to prevent commercial sensitivities arising.

E.4 A list of nominees for the working groups can be found in Annex A. Each participating party is able to nominate a deputy to attend meetings; however, only one representative from an organisation may be present at any session.

E.5 The working groups will meet for initial meetings in the week commencing 6 August, at the first meeting the group should discuss the terms of reference provided in this document and agree a forward time line, with meetings to be scheduled between London and Aberdeen.

Commercial aspects working group: terms of reference

Aim:

To build a shared understanding of how DRDs can contribute to the Government's overall objective of maximising economic production from the UKCS while ensuring a fair return for the taxpayer.

This will be achieved by:

- Ensuring there is a clear understanding of the Government and Industry objectives and ;
- Considering what outcomes DRDs need to deliver to ensure the policy objectives are achieved;
- Building a shared understanding of how the policy design will influence the success of those outcomes;
- Considering what other conditions (e.g. commercial arrangements) need to be in place to ensure the policy objectives are achieved;
- Understanding the risks that could jeopardise achievement of the policy objectives and how they may be mitigated.

Key Questions:

Questions to be addressed across the group	Linkages
What are the key details in the Government's proposed approach to ensure that companies can move to post-tax securitisation?	ALL
What are the key details in the Government's proposed approach to ensure that companies have sufficient certainty to commit to ongoing incremental investment?	ALL
Are there any other steps that Government can take to encourage companies to move to post-tax securitisation – including previous owners?	-
Could Sale and Purchase Agreements (SPAs) have a role alongside the DRD in ensuring that relief for decommissioning PRT fields is accessed by the party actually incurring the costs, including in a default scenario?	REFERENCE AMOUNT PRT
What are the implications for the basin of the eligibility requirements being restricted to those who have paid upstream tax?	REFERENCE AMOUNT / ANTI-AVOIDANCE
Are industry likely to deploy standard 'triggers' for reversion to pre-tax securitisation arrangements? If so, what are these likely to be?	-
How can companies work with financiers to move the decommissioning "value" of assets to post-tax?	

Reference amounts: terms of reference

Aim:

To build a shared understanding of the issues around how the reference amount mechanisms are structured.

This will be achieved by:

- Ensuring there is a shared understanding of the policy objectives;
- Achieving a shared understanding of the structure of the separate RFCT and SC reference amounts;
- Achieving a shared understanding of how the structure of the PRT reference amount;
- Considering the practicalities around how the reference amounts could operate in practice, including the PRT certification process.

Key Questions:

Questions to be addressed across the group	Linkages
Scenario testing of the reference amounts	COMMERCIAL
Are there any details of the reference amount formula that need to be fleshed out to ensure that companies can move to post-tax securitisation? If so, what are they? Do they primarily relate to SC/RFCT/PRT (or the relationship between the three)?	COMMERCIAL
How would companies want the PRT certification process to operate in practice? How often should it take place?	COMMERCIAL TECHNICAL
How would companies obtain access to other parties' PRT history when determining securitisation requirements? Could/should Government have a role here?	COMMERCIAL
What impact would concerns about potential changes to the PRT history (e.g. through UFLs) of the party providing securitisation have, and how might these be mitigated?	TECHNICAL / ANTI AVOIDANCE

Legal design: terms of reference

Aim:

To build a shared understanding of what material the DRDs and legislative surroundings need to cover (and how) to meet the desired policy outcomes.

This will be achieved by:

- Ensuring there is a shared understanding of the policy objectives;
- Considering how the specific form/terms of the DRDs and legislation can be used to achieve these objectives;
- Considering any potential legal risks to achievement of the policy objectives and how they may be mitigated.

Key Questions:

Questions to be addressed across the group	Linkages
Enabling legislation: What is the form of the proposed powers the Government is taking? What is required in the enabling power? How does the proposed legislation interact with industry's previous opinion from Counsel?	-
The Decommissioning Relief Deed: What details does the Deed need to be explicit about in order for the policy objectives to be achieved? Comments from previous (industry) draft How to define key terms?	COMMERCIAL - ALL

Technical and anti-avoidance: terms of reference

Aim:

To build a shared understanding of the issues around ensuring companies access relief appropriately under both the tax code and the DRDs.

This will be achieved by:

- Ensuring there is a shared understanding of the policy objectives;
- Identifying situations where there may be a lack of clarity around whether/how decommissioning relief can be accessed appropriately through the tax code and considering how these could be addressed;
- Considering how the design and operation of DRDs could help balance the need to protect the taxpayer with the need to achieve the policy objectives;
- Identifying potential risks to the taxpayer from the operation of DRDs and how they may be mitigated.

Key Questions:

Questions to be addressed across the group	Linkages
Is the 'connected parties' provision proposed in the consultation document appropriate? What alternatives might be feasible to ensure that the taxpayer is protected against potential misuse of the Deed?	COMMERCIAL LEGAL
How could 'artificial insolvency' situations be identified?	COMMERCIAL LEGAL
Are there other safeguards against abuse that should be included? What would be the implications be of a broader, more purposive anti-avoidance provision in the Deed?	COMMERCIAL LEGAL
What elements of the current tax code in respect of decommissioning tax relief need to be looked at?	REFERENCE AMOUNT
Are there changes that could usefully be made to cement the DRD's position as a mechanism of 'last resort' – e.g. to the way that UFL provisions function?	REFERENCE AMOUNT

Decommissioning Relief Deeds: Legal Working Group

Meeting date: 7 August 2012

Meeting time: 10.00am to 1.00pm

Location: HM Treasury

Agenda item	Summary	Actions:
Introductions		
Terms of reference	The group discussed the proposed terms of reference and key questions. It was agreed that the draft terms should stand for the legal working group. HMT confirmed that participation in the working group does not replace the right of an organisation or individual to provide a formal response to the consultation (and that the Government would welcome such responses from individual companies as well as representative bodies). The formal consultation period runs until 1 October, HMT also clarified that if needed the working groups can meet after this date, but if this occurred the Government would make additional efforts to ensure nomination to the working groups remained open. Companies were also invited to meet with officials on a one-on-one basis to discuss confidential issues, if this was deemed to be helpful. It was noted that there is likely to be some overlap between the discussions in the different working groups, and that HMT would circulate materials and readouts across the four groups to seek to minimise duplication while ensuring all the discussions are as comprehensive as possible. Readouts will be suitably anonymised.	**HMT:** Following confirmation from other groups the final ToR will be circulated.
Policy Objectives	HMT and HMRC officials provided a short presentation covering: • Why certainty matters; • Specific policy aims and proposed outcomes; • Government "red lines"; • The reference amount; • Eligibility and Definitions; and • Protecting the taxpayer *These slides are attached in annex A.* The group briefly discussed some of the key areas to come out of the consultation stressing the importance of a proportional anti-avoidance approach and the connected nature of the topics discussed in the working groups.	
Legislative Power	Treasury Legal Advisers (TLA) set out the legal framework to the delivery of DRDs. It is envisaged that: • DRDs will be an agreement between the Government and the counterparty companies and will set separate benchmark amounts in relation to RFCT, SC and PRT (the "Reference Amounts"). The	**Working group:** Following appropriate drafting and consideration

Agenda item	Summary	Actions:
	formula for the calculation of the Reference Amounts will be different depending on whether the company counter-party incurs the decommissioning obligations on its own account or because of a default on the part of another company. • The agreements will provide that if, the total amount of decommissioning tax relief available in total in respect of RFCT, SC and PRT at the time the conditions for the availability of the decommissioning tax relief are satisfied is less than the total of the Reference Amounts for RFCT, SC and PRT then the company counterparties will be entitled to receive from the Government an amount equal to the difference. • The right created under this agreement will be a property right for the purposes of Article 1 of the First Protocol to the European Convention on Human Rights ("A1P1 ECHR"). Consequently, Government's ability to unilaterally extinguish this right without providing compensation, equal to the value of the right, to the company counterparties is subject to the limitations imposed by A1P1 ECHR. • Accordingly, by entering into this agreement, the Government will have effectively fixed the amount that the counterparty companies will be able to claim from Government, as either tax relief or contractual entitlement, in relation to the decommissioning. • It is anticipated that, to enable proper Parliamentary scrutiny of the proposal, Government will include an express power to make these agreements in Finance Bill 2013. The group discussed the enabling power and commented on its conformity with the advice that industry had sought from Lord Pannick QC that "Although legislation granting the Minister authority to enter into contracts for difference would be a constitutional novelty …, there is no reason why contracts based on such a power should not be enforceable". It was discussed that it is not anticipated that the enabling legislation would include a sunset or review clause.	the group will discuss the draft Finance Bill 2013 clauses.
Deed Drafting	The Group then turned to the question of the draft Deed. Industry lawyers introduced the current draft of the Decommissioning Relief Deed (DRD) and drew the group's attention to various aspects of the DRD: **Eligibility** There was some discussion around the restriction of the DRD to (past and present) upstream taxpayers and their associates. HMT explained that from the Government's perspective the purpose of the DRD is to provide certainty over decommissioning tax relief and, as such, should be restricted to groups that have been subject to the ring fence regime. Industry raised concerns about potential disparity between the definition of "associated companies" used under the tax code and under the Petroleum Act. HMT explained that, as the DRD is a tax issue, the presumption in the consultation document was that the tax definition would be used. The working group will consider this further at the next meeting. There might also be practical issues about conferring rights to claim under the Deed on parents and subsidiaries without imposing excessive administrative burden. One suggestion was that this could be achieved by including a 3rd party rights provision in the DRD that would complement the proposed definition of associated companies.	**Working group:** Industry agreed to draft a paper for consideration comparing and contrasting the definition of "associated company" under tax legislation and under the Petroleum Act. **Working group:** Industry to

Agenda item	Summary	Actions:
	Decommissioning expenditure It was noted that there could be some gaps or ambiguities between the expenditure for which relief is guaranteed by the DRD (mirroring the tax code) and what counts as decommissioning spend under DSAs. It was suggested that this should in part be addressed by the ongoing work on "tax nothings" being looked at by the Technical and Anti-Avoidance working group. **Mechanics of payment** There was discussion of the practical issues relating to payments under the DRD. This included consideration of what the trigger for making a payment should be (should it mirror the tax definition i.e. that decommissioning expenditure is incurred and decommissioning is carried out?) and what the claim period should be. It was recognised that industry may need to take account of the need for bridge financing to cover any period between expenditure and claiming under the DRD – but that the existence of a DRD should help with the cost of such financing. The group discussed that the technical and anti-avoidance and reference amount groups may wish to consider further operational issues around the timing of payments under the tax code and the DRD. **Duration of the DRD** It was discussed that it is expected the DRD would continue to apply even when a company has exited the basin **Assignment** It was noted that the DRD is likely to provide for assignment by a Secretary of State but not by the industry counter-party. Industry noted that an assignment provision might be relevant in the context of any future Departmental or constitutional change. **Interaction of fiscal and regulatory regimes** There was some discussion in relation to the application of DECC's powers under s29/s34, which industry believes may extend more widely than the provision of the DRD. There was also some discussion around DECC guidance and practice on security requirements. HMT emphasised that the regulatory system was primarily a matter for DECC (which had an important role in protecting the taxpayer in the event of a default). However, Government would continue to work together on these issues.	identify any potential disparities between the definition of decommissioning spend in a DSA and under the tax code (to feed into technical and anti-avoidance working group consideration of possible amendments to the tax code) **Working group:** Industry to provide more detail on experiences of timing of achieving relief **HMT:** To continue to consider with DECC the interaction between regulatory and fiscal regimes
Next Meeting	The next meeting will take place in Aberdeen in September (probably the second week). Dates for this and subsequent meetings will be circulated as soon as possible.	

Decommissioning Relief Deeds: Commercial Aspects Working Group

Meeting date: 8 August 2012

Meeting time: 2pm – 5pm

Location: HM Treasury

Agenda item	Summary	Actions:
Introductions		
Terms of reference	The group discussed the proposed terms of reference and key questions. It was agreed that the draft terms should stand for the commercial aspects working group. HMT confirmed that participation in the working group does not replace the right of an organisation or individual to provide a formal response to the consultation (and that the Government would welcome such responses from individual companies as well as representative bodies). The formal consultation period runs until 1 October, HMT also clarified that if needed the working groups can meet after this date, but if this occurred the Government would make additional efforts to ensure nomination to the working groups remained open. Companies were also invited to meet with officials on a one-on-one basis to discuss confidential issues, if this was deemed to be helpful. It was noted that there is likely to be some overlap between the discussions in the different working groups, and that HMT would circulate materials and readouts across the four groups to seek to minimise duplication while ensuring all the discussions are as comprehensive as possible. Readouts will be suitably anonymised.	**HMT:** To circulate final ToR subject to agreement by other working groups.
Policy Objectives	HMT and HMRC officials provided a short presentation covering: • Why certainty matters; • Specific policy aims and proposed outcomes; • Government "red lines"; • Protecting the taxpayer *These slides are attached in annex A.* The slides also cover the Government's proposed policy approach as set out in the consultation document, but it was agreed that these topics would be covered in detail in the forthcoming discussion.	
Scenarios and round-table discussion	HMT ran through the 'default' and 'non-default' scenarios and set out the expected implications in terms of securitisation arrangements and incremental investment. *A revised version of the handout is attached – the only change is to clarify the wording on PRT in a default scenario.* The group was broadly comfortable that, subject to the detail of implementation, the default scenario should provide sufficient certainty	**Working group:** To consider what commercial sensitivities there might be around sharing PRT history, what information would

	for companies to move to post-tax securitisation. Particular areas of discussion then focused around: • **The interaction between RFCT and SCT in a non-default scenario.** HMT explained that the approach of separating the different taxes in the consultation document reflects the existing tax regime. Industry raised concerns that the approach proposed in the consultation document means that the marginal rate could remain the same but, if the split between SC and RFCT were readjusted, the overall rate of relief guaranteed by the DRD could reduce (to 20% in the most extreme scenario). Industry believes that this ongoing uncertainty could continue to have a negative impact on incremental investment and asset transfers and thus the policy aims of the consultation would not be realised. HMT agreed to consider this further. However, they emphasised that Ministers wanted to ensure they retained flexibility within the tax regime, including the option of reducing the tax rate in the future. *The reference amount group has since agreed to consider this issue in more detail with a view to putting forward an alternative proposal to HMT*. • **PRT history in a default scenario.** HMT confirmed that the intention in the consultation document was that, in a default scenario, a company would be able to access its own PRT history (through the tax code) and, where there would be a benefit from doing so (i.e. to make up a shortfall), the PRT history of the defaulting party via the DRD. It was not the intention that a company's ability to claim relief should ever be reduced by accessing the defaulting party's PRT history. • It was recognised that in a default scenario it may be necessary not just to access the tax history of the defaulting party but also the tax history of the previous owners of that licence interest. HMT questioned whether SPAs could have a role here, but it was felt that they would not achieve the necessary outcomes as they tend only to guarantee payment to the immediate purchaser of an asset. HMT recognised that there may be a solution whereby the DRD guarantees that, in a default scenario, a payment would be made to the party incurring the decommissioning costs. However, this might require amendment to the existing tax code to ensure that relief was not paid out twice, and a better understanding of the implications that this might have for existing commercial arrangements. • The group identified two groups of PRT fields: those where the tax history is likely to be relatively straightforward (e.g. fields with a small number of owners with significant (or no) PRT history), and those where the tax history is much more complex or dynamic (e.g. a large number of ownership chains; complex allowance structures; UFLs). • In the complex fields, it would be necessary to consider the practicalities of sharing PRT history – including frequency of tax history certification; confidentiality and practical issues around sharing PRT histories (particularly with previous licensees who are no longer party to a DSA); and the potential impact of UFLs on securitisation requirements. It was discussed that, in fields where PRT history is likely to be dynamic or complex, 6-monthly or yearly reporting requirements on the PRT history might be linked to the setting of the security requirement as part of the DSA process.	need to be shared for companies to be able to move to post-tax securitisation, and how the process might work in practice. To consider whether there would be commercial sensitivities to switching off the ability of previous parties to access PRT relief on decommissioning expenditure in a default scenario by subsequent owners if this facilitated payments under the DRD
Other issues discussed	• **The DRD as a mechanism of last resort.** HMT explained that Ministers' strong preference was to ensure that the tax code remained the primary route through which companies achieve relief. • **Eligibility for the DRD.** HMT explained that the current intention is that the DRD would be limited to those subject to the upstream tax	

	regime and their associates. Industry emphasised that this should encompass both parents and subsidiaries who could be on the hook for decommissioning. There might be some questions around the ability of companies with different business models to access relief in the future (infrastructure owner specialists was one example cited), but the group recognised that these may need to be addressed separately or at a later date.
	• **Connected parties.** Industry expressed concerns that the approach outlined in the consultation document would be unnecessarily restrictive. It was recognised that the risk of artificially inflated costs could be a risk for relief achieved through the tax code as well as through the DRD. However, HMT and HMRC stressed the particular importance of addressing such risks effectively in the DRD as it would be much harder to put in place a legislative remedy should a risk to the Exchequer materialise. *The technical and anti-avoidance group will consider this issue further.*
	• **Definition of default:** It was agreed that the reference amounts group would need to consider further how forfeiture situations would be treated for the purposes of the DRD. *The reference amount group will consider this issue further.*
	• **Encouraging the move to post-tax securitisation arrangements.** The group agreed that providing standard clauses for model DSAs would be a helpful starting point in encouraging the move to post-tax securitisation. However, it was acknowledged that many DSAs are not standard, and it is likely that if companies were to reopen a DSA, issues beyond the shift from pre- to post-tax securitisation could be seen as up for renegotiation. The group felt that, provided the Government fulfils its role in ensuring the DRD provides sufficient certainty to enable a move to post-tax securitisation, this was largely a commercially-driven issue. Industry did not support any proposal to allow the removal of IHT on DSA trusts only where post tax security was present, noting that it would be the company posting security that would suffer the impact of having cover the impact of IHT.
	• **Reversion to pre-tax security.** Industry explained that the model DSA is likely to identify some scenarios which would immediately trigger a 'flip-back' to a pre-tax securitisation arrangement. For example:
	  • Government passing an Act of Parliament saying it would not honour the DRD, or purporting to amend the DRD unilaterally;
	  • The initiation of litigation proceedings to challenge the underlying effects of the DRD;
	  • A default or failure to pay out on the DRD by Government;
	  • New constitutional arrangements which did not provide explicit/sufficient assurance that the DRD would be honoured.
	• **Accessing PRT relief under the tax code when a company has been liquidated.** It was agreed that this could be considered as part of the ongoing technical work.	

Next Meeting	The next meeting will take place in Aberdeen in September (probably the second week). Dates for this and subsequent meetings will be circulated as soon as possible.	**HMT:** To circulate dates for future meetings

Decommissioning Relief Deeds: Reference Amounts Working Group

Meeting date: 9 August 2012

Meeting time: 1pm – 4pm

Location: HM Treasury

Agenda item	Summary	Actions:
Introductions		
Terms of reference	The group discussed the proposed terms of reference and key questions. It was agreed that the draft terms should stand for the reference amounts working group. HMT confirmed that participation in the working group does not replace the right of an organisation or individual to provide a formal response to the consultation (and that the Government would welcome such responses from individual companies as well as representative bodies). The formal consultation period runs until 1 October, HMT also clarified that if needed the working groups can meet after this date, but if this occurred the Government would make additional efforts to ensure nomination to the working groups remained open. Companies were also invited to meet with officials on a one-on-one basis to discuss confidential issues, if this was deemed to be helpful. It was noted that there is likely to be some overlap between the discussions in the different working groups, and that HMT would circulate materials and readouts across the four groups to seek to minimise duplication while ensuring all the discussions are as comprehensive as possible. Readouts will be suitably anonymised.	**HMT:** To circulate final ToR subject to agreement by other working groups.
Policy Objectives	HMT and HMRC officials provided a short presentation covering: • Why certainty matters; • Specific policy aims and proposed outcomes; • Government "red lines"; • Protecting the taxpayer *These slides are attached in annex A.* The slides also cover the Government's proposed policy approach as set out in the consultation document, but it was agreed that these topics would be covered in detail in the forthcoming discussion.	
Default scenario	• HMT set out the expected functioning of a default scenario. Provided issues of detail are worked through (particularly on PRT – see below), the group was optimistic that the proposed approach should enable a move to post-tax securitisation arrangements. It was agreed that an ongoing process of information-sharing would be required to ensure that companies understand the effects of the proposed approach.	**Working group:** To propose potential alternative approach to SC/RFCT reference amount in non-

	Default reference amount – RFCT/SC • On RFCT/SC, the group was broadly happy with the proposition that in a default scenario, the reference amount is 20% in respect of SC and 30% in respect of RFCT, regardless of tax history. It was clarified that the intention was that this would be the case even if SC or RFCT were to be abolished. **Default reference amount - PRT** • There was more detailed discussion around PRT. The group discussed the principle that the DRD should pay out where the contributor gets less than the PRT repayment that the defaulter would have achieved (including what the defaulter's predecessors would have been repaid if there is an ownership chain). • This would mean that, in a default scenario, the person incurring the expenditure accesses the PRT repayment in respect of that expenditure. Although this theoretically increases the chance of a payment through the DRD rather than through the tax code, this might be a more proportionate response than making significant changes to the tax code to cater for default scenarios - which should very rarely occur. Apportionment would also need to be considered as part of the reference amount calculation. • In discussion it was agreed that the technical and anti-avoidance working group could further explore and expand this approach. [One issue subsequently discussed in the technical group was whether this approach could be extended to ensure the default reference amount was the larger of the contributor's PRT repayment assuming that any loss carryback in the contributor's interest in the field is repaid to the contributor, and the PRT repayment that would have been made to the defaulter (and any chain of ownership preceding them)]. • For this approach to be effective, without exposing the Exchequer to the risk of a 'double dip' scenario (i.e. paying out under the DRD and under the tax code), it might require changes to the tax code to turn off the Sch17 loss carry-back in relation to a loss created by the default. In doing so, the Technical working group would need to look at any potential interaction with the existing UFL rules. • HMT noted that the commercial aspects working group had been asked to consider whether turning off the loss carry-back rules in this scenario was likely to pose any difficulties for existing commercial arrangements. • There was some discussion as to whether accessing the defaulter's PRT history under the DRD should include the potential to make UFL claims in other fields. It was agreed that to do so would be very complex and could have commercially undesirable consequences. The DRD would therefore set the reference amount in relation to the defaulter's (and its predecessors') PRT history in that field. However, this would need to reflect where UFLs had already been used to reduce the tax capacity in the field. This principle would also be reflected in any tax history for a field certified by HMRC. Consideration would also need to be given to cases where UFLs had been created and utilised as a consequence of a default scenario. **Definition of default** • It was recognised that the potential for the reference amount to be higher in a default scenario means that the definition of a default would require careful consideration. • It was considered that the definition of a default under a DSA was relevant. On its own this definition would be too broad since it	default scenario to address concerns over loss of relief if Government were to adjust the balance between the two taxes without changing the overall marginal rate.

	would include scenarios where no decommissioning expenditure was actually incurred (e.g. a technical default as defined under the DSA because of a change in credit rating of an LoC provider) – though this might not be a problem if it could be linked to only situations where expenditure was incurred. • The default scenario needed to be based around someone defaulting on a contractual claim obligation for decommissioning – the legal obligation to decommission is joint and several and therefore is not affected by a default. • It was recognised that, in most situations, material default will arise as a result of insolvency. However, it would not be advisable to restrict the definition to these cases as there can be other scenarios where the person with primary liability for decommissioning does not meet the costs e.g. a major commercial dispute. • A further complexity is where there is forfeiture and how the default reference amount should apply to various potential scenarios where assets are reallocated to a party as a result of forfeiture. • The definition would need to ensure that defaults were commercially genuine, and guard against 'artificial' or 'manufactured' defaults; for example where companies colluded to benefit from the DRD default provisions. It was agreed to discuss this in more detail in the technical and anti-avoidance working group.	
Non-default scenario	• HMT explained that Ministers' current view is that the DRD should reflect tax history, and the fact that SC and RFCT (and PRT) are separate taxes in the tax code. HMT also emphasised that the proposal should give companies certainty that the rate of relief will reflect the rate of tax paid and will only be reduced if the rate of tax is reduced to the same extent (subject to the SC restriction) • Industry raised concerns that the approach proposed in the consultation document means that the marginal tax rate could remain the same but, if the split between SC and RFCT were readjusted, the overall rate of relief guaranteed by the Deed could reduce (to 20% in the most extreme scenario). Therefore, as it stands industry believes that the DRD would not reduce the uncertainty that the rate of relief for RFCT & SC could reduce to 20%. Industry felt that this could mean that the policy aims set out in paragraph 3.8 of the consultation document would not be realised because uncertainty over decommissioning relief would continue to be used as a sensitivity when screening projects and discourage potential purchasers of late-life assets. • HMT agreed to consider industry proposals for a solution that would address these concerns. However, they emphasised that Ministers wanted to ensure they retained flexibility within the tax regime, including the option of reducing the tax rate in the future and emphasised the need to maintain the link with tax history in a non-default scenario. • Industry believe that the principle in paragraphs 4.22 and 4.29 of the consultation document (where the DRD will compensate companies that have insufficient tax history to cover their own decommissioning expenditure because they have used it in meeting decommissioning costs arising from a previous default) should be expanded to cover all expenditure (e.g. exploration, appraisal and development costs) – though it was recognised that in practice this was likely to only have an effect at the margins.	

Next Meeting	The next meeting will spend half the time on industry's proposal for an alternative approach to RFCT/SC in a non-default scenario, and half the time on PRT. It will take place in Aberdeen in September (probably the second week). Dates for this and subsequent meetings will be circulated as soon as possible.	HMT: To circulate dates for future meetings

Decommissioning Relief Deeds: Technical and Anti-Avoidance Working Group

Meeting date: 10 August 2012

Meeting time: 10am – 1pm

Location: HM Treasury

Agenda item	Summary	Action Points
Introductions		
Terms of reference	The group discussed the proposed terms of reference and key questions. It was agreed that the draft terms should stand for the technical and anti-avoidance working group. HMT confirmed that participation in the working group does not replace the right of an organisation or individual to provide a formal response to the consultation (and that the Government would welcome such responses from individual companies as well as representative bodies). The formal consultation period runs until 1 October, HMT also clarified that if needed the working groups can meet after this date, but if this occurred the Government would make additional efforts to ensure nomination to the working groups remained open. Companies were also invited to meet with officials on a one-on-one basis to discuss confidential issues, if this was deemed to be helpful. It was noted that there is likely to be some overlap between the discussions in the different working groups, and that HMT would circulate materials and readouts across the four groups to seek to minimise duplication while ensuring all the discussions are as comprehensive as possible. Readouts will be suitably anonymised.	**HMT:** To circulate final ToR subject to agreement by other working groups.
Policy Objectives	HMT and HMRC officials provided a short presentation covering: • Why certainty matters; • Specific policy aims and proposed outcomes; • Government "red lines"; • Protecting the taxpayer The slides also cover the Government's proposed policy approach as set out in the consultation document, but it was agreed that these topics would be covered in detail in the forthcoming discussion.	
Technical	**Technical issues:** *Areas where relief is currently unavailable/clarification required* These issues have already been discussed in detail between UKOITC and HMRC. Industry has pressed for changes in respect of: • Decommissioning studies • Well abandonment – setting cement plugs • Removal of drill cuttings • Onshore decommissioning – materiality • Change of Use • Any other areas where availability of relief is in doubt.	**Working group:** To identify any additional "tax nothings" or areas where changes/ clarifications to the existing operation of decommissioning relief may be

Agenda item	Summary	Action Points
	HMRC will continue to liaise with UKOITC to ensure that it can provide full advice to Ministers on these issues. HMRC asked industry to ensure it was aware of any other "tax nothings" or aspects of the decommissioning relief regime where industry believes changes/clarifications may be required. Industry remarked that without these changes, any move to post-tax securitisation could be partial/ more complex. *Changes to minimise the need for claims under the DRD rather than under the tax code* **The subsidy rules.** • The consultation document covers a possible "switch off" of the capital allowances and PRT subsidy rules in respect of DSA trusts • HMRC flagged that, if companies are confident that they can claim under the DRD in a default scenario, a change to the subsidy rules would not necessarily be a pre-requisite to ensure a move to post-tax securitisation. • However, without such a change companies may not be able to claim relief under the tax code in a default scenario, which could undermine the Government's objective of ensuring the DRD functions as a mechanism of last resort. • To take this work forward, HMRC wants to better understand how the provision of cash and alternative provision (e.g. letters of credit) operates in practice. For example, collateralisation of the LoC, the flows of money between the interested parties, and as a result the application of existing statute including CT/PRT rules to the various transactions involved. • This will help ensure that any potential amendment to the tax code is appropriately targeted. HMRC will also want to remove any opportunity for "double dipping" (i.e. achieving relief through the tax code and the DRD). **PRT aspects:** • These issues are also being discussed in the Reference Amounts Working Group. • It was recognised that, while changes could potentially be made to the tax code to ensure relief is achieved in a default scenario; this might be disproportionately complex when such scenarios will be the exception. • The proposal being considered is that, in a default scenario, the company carrying out the decommissioning will obtain relief under the tax code, but if this is less than the relief the defaulting company or its predecessors would have obtained, then the DRD will pay out the difference. • The Government would want to ensure there was no scope for participators to obtain double relief (i.e. under the tax code and under the DRD). Consideration will therefore need to be given to turning off the Schedule 17 loss carry back provisions that provide repayment to previous participators. • There was discussion as to whether this principle could be extended so that the reference amount would be the greater of the defaulter's tax history and that of its predecessors, or the tax history of the participator *and its predecessors in the field.* • In both cases, it was discussed that companies would probably need to do a mock calculation of the amount that would have been payable under Schedule 17 to determine the reference amount. • The consultation asked about the potential scope to use the Sale and Purchase Agreement (SPA) in providing relief to the appropriate	required **Working group:** Industry to draft a paper, based on a document already sent to HMRC, elaborating on their understanding of how the provision of cash/alternative provision operates and how money flows between the interested parties. **Working group:** To consider implications of approach to PRT and loss carry-back in default scenario

Agenda item	Summary	Action Points
	party – however, industry felt this was unlikely to be effective in most cases. • HMRC/HMT also asked whether amending the order in which decommissioning losses are set off in a default scenario, and/or the Unrelievable Field Losses (UFL) rules could help to minimise further the need for claims under the DRD rather than the tax code. • Industry noted that PRT interest was not included in the reference amount proposed in the consultation document. **Section 164(1B) CAA 2001** • This stipulates that the plant and machinery has been brought into use for the purposes of **the** ring fence trade as opposed to **a** ring fence trade - if the decommissioning is carried out by another company. HMRC asked industry to provide details of any other areas where the tax code could possibly be amended to avoid a call under the DRD *Other technical changes:* **Field allowances:** • It was recognised that in some cases decommissioning losses may displace the field allowance • This may be more of an issue with the field allowance mechanism than the decommissioning relief mechanism per se. It would be helpful to understand from companies the extent to which this is likely to be an issue in practice. **Inheritance Tax (IHT)/Income Tax (IT)** • These will be policy decisions for Ministers. It was noted that the consultation has called for further evidence on the impact that the application of Income Tax is having on the industry – this may be a topic that could be discussed in the commercial aspects working group. **Other technical issues not raised in the consultation:** • Application of the Supplementary Charge restriction of decommissioning relief to 20% and the PRT counter balance to ensure PRT relief remains at 75% and not 69%; • Consideration of the alignment of MEAs with s163 to 165 CAA 2001.	**Working group:** Industry to consider further the impact of interaction between field allowances and decommissioning relief, and provide specific evidence where appropriate
Anti-Avoidance	**Anti-avoidance issues:** There are two areas of concern for the Government: • Artificially inflated claims for relief • Inappropriate claims The Government recognises that work being undertaken as part of the consultation is being carried out in good faith. However, the Government also recognises that following the introduction of statute some will inevitably consider the advantages that the legislation may offer. *Artificially inflated claims* Arms length relationships provide commercial tension which protects Exchequer interests: • HMRC has reservations about relying only on the existing transfer pricing (TP) rules in respect of the DRD. Industry view is that any wider issues around the TP rules should be addressed in legislation and not through terms in the DRD. • HMRC would like to understand better commercial structures and the resulting impact the connected party rules proposed in the DRD	**Working group:** Industry to provide examples of the likely practical implications of the approach to connected parties proposed in the

Agenda item	Summary	Action Points
	might have. We would also welcome suggestions of alternative solutions to protect the Exchequer from the risk of artificially inflated claims. *Inappropriate claims* The consultation identified a number of potential types of inappropriate claims (though HMT clarified that the intention of paragraph 6.6a in the consultation document was not that parents or subsidiaries of upstream taxpayers should be unable to claim under the DRD). The discussion focused primarily on the risk of artificial default, for example stemming from collusion between two participators in a licence. It was considered that one option might be for the DRD not to pay out where the default was triggered wholly or mainly in order to secure a tax advantage. In both cases, it was considered that some kind of 'good faith' clause in the contract might help mitigate HMRC concerns about potential misuse of the DRD and – provided it was drafted carefully – should not undermine the policy objectives. Industry indicated that the implications of a default are quite broad and unattractive, it also pointed to the need to ensure that the definition not be undermined by anti-avoidance legislation.	consultation **Working group:** To consider further how the contractual and commercial terms within the DRD might be developed to address concerns about artificially inflated and inappropriate claims.
Next Meeting	The next meeting will take place in Aberdeen in September (probably the second week). Dates for this and subsequent meetings will be circulated as soon as possible.	**HMT:** To circulate dates for future meetings

Decommissioning Relief Deeds: Technical & Anti-Avoidance Working Group

Meeting date: 11 September 2012

Meeting time: 10.00am to 1.00pm

Location: Oil and Gas UK, Aberdeen

Agenda item	Summary	Actions:
Introductions		
Previous meeting	The group agreed the minutes of the last meeting	
PRT reference amount in a default scenario – issues that are settled	Following the previous working groups and further discussions internally and with industry, HMRC and HMT set out some principles on the PRT default reference amount that officials believed are broadly settled – though these would still be subject to Ministerial decision: • **Order of set-off:** Non-default expenditure will be deemed to have been utilised before default expenditure. If a party incurs non-default expenditure, any prior use of its own tax history for default expenditure will be ignored for the purposes of the Deed. • **Schedule 17 switch off:** When incurring default expenditure, the payer [i.e. the party meeting the expenditure] will, as far as possible, set the expenditure against its own PRT history to achieve relief under the tax code. The payer will also be required to make use of any UFLs to which it has access. However, schedule 17 will be turned off in the default scenario, meaning that previous participators in the field cannot achieve relief in respect of that default expenditure through the tax code. This will ensure that any repayment due beyond the payer's own history will be paid through the DRD rather than through the tax code. • **Reference amount:** The PRT reference amount in a default scenario will be the greater of: o The combined relief that the payer and its predecessors in its own 'chain' would have achieved, or o The combined relief that the defaulter and its predecessors in the defaulter's chain would have achieved. This will require a notional calculation of the relief that would have been achieved be both the payer's and defaulter's predecessors under schedule 17 had it not been turned off. • **Abolition:** If PRT were to be abolished, the decommissioning expenditure is deemed to have been incurred in the last period of account prior to abolition. • **PRT repayment:** Any PRT element of a payment under the Deed will be treated as a PRT repayment in respect of s299 and 300 CTA (2010) [i.e. will be subject to RFCT and SCT] • **Striking out expenditure:** Where there is a payment under the Deed in respect of default expenditure, Government believes that an equivalent amount of PRT history should be "struck out", to prevent the risk of relief being paid out against the same profits twice. However, there is a question about whose profits should be struck out (the payer's/the	**Working group:** To consider further issues around striking out PRT history where there is a payment under the DRD

Agenda item	Summary	Actions:
	defaulter's/both?) and on what basis (LIFO/something else?) – and this may be something to which industry wishes to give further thought. • **Contributions:** Consideration will need to be given to the interaction between default expenditure and the contribution rules (s106 FA91) to prevent any "double dipping" risk. • **UFLs:** UFLs will be treated differently depending on the circumstances (these principles will also apply to other non-field costs): - A payer must use any potential UFLs to which it has access before calling upon the DRD - Any UFLs already used in a field will be taken into account when calculating the tax history, which will be reduced accordingly - Potential UFLs to which the payer, defaulter or their predecessors might have had access will not be taken into account when calculating the reference amount.	
PRT reference amount <u>in a default scenario</u> – issues that require further thought	Following the discussion on UFLs, industry raised a concern that a reference amount would not offer protection against a future Government abolishing UFLs. However, it was unclear whether this was likely to be an issue in practice. HMRC and HMT also set out some issues where discussions with industry had pointed to a need for further consideration: • **Unjust enrichment:** Officials expressed concerns that companies should not benefit from "unjust enrichment" as a result of using the DRD i.e. that the combination of tax relief, the DRD payment and the LOC money should not be greater than the cost of decommissioning. Industry made clear that they did not believe the reference amount should be affected by the amount of security posted. In most cases, it was felt that any excess security would simply be returned to the party posting it, but it was discussed that HMT/HMRC is likely to want to avoid any "windfall" to the payer (i.e. where the combination of tax relief, the DRD payment and the LOC money exceeds decommissioning costs and the payer keeps any excess). This may simply be achieved by taxing any such 'windfall' as profit – this issue will require further consideration. • **PRT repayments:** It was agreed that further consideration was needed of the detailed application of s299 and 300 CTA (2010) to payments under the DRD. Industry flagged that they would also wish to protect themselves against Government changing the treatment of PRT repayments to reduce the value of the Deed.	**Working group:** Industry to consider further whether exclusion of potential UFLs from reference amount will affect policy objectives **Working group:** To consider further how any surplus might arise (i.e. in excess of decommissioning costs) and what would happen to it, including tax treatment **Working group:** To consider treatment of DRD payments for s299 and 300 **Legal group:** To look at protection in DRD against changes to treatment of PRT repayments
	Liquidated companies: It was discussed that the reference amount should ignore liquidation in a default scenario (i.e. the tax history would be treated as being intact for both the payer's and defaulter's chains) but that liquidation would be respected for the non-default scenario (with the reference amount reduced accordingly where necessary). While it was flagged that some companies were keen that the tax treatment of liquidated companies should be looked at more broadly, it was recognised that this was an issue for the tax code rather than the Deed.	

Agenda item	Summary	Actions:
Technical	**"Tax nothings"** HMRC updated the group on their latest thinking regarding some of the technical issues under discussion with UKOITC. Decommissioning studies, and well abandonment (setting and cement plugs) are within P&M. However, drill cuttings are not currently within P&M. **MEA code** HMRC flagged that further work is likely to be needed on the MEA code. **Subsidy rules** It may be necessary to turn off the contribution rules so that if relief is being given under the DRD, relief is not also being given to another party through another part of the tax code. HMRC will consider this further. However, industry also flagged that the wording of the contribution rules may mean that they don't actually give relief at the moment in respect of decommissioning, which could lead to a "tax nothing" in a non-default situation. It was discussed that making any switch-off of the subsidy rules conditional on post-tax securitisation being in place required a robust definition of what post-tax securitisation means. **S330B(2)** The legislation may need amendment in FB13 **S164(1B)** HMRC may prefer to leave the DRD to provide relief where necessary for some payments in respect of default expenditure. **Onshore and Change of Use** HMT believe that these are now policy issues which require further consideration **Mechanics of DRD payments** It was discussed that payments could be conditional on CTSA returns having been filed and the relevant liabilities agreed. Because the DRD makes up any shortfall, no claim can be made until it is known what relief will be achieved under the tax code. However, there may be some companies (e.g. parents) that are not within the upstream regime and will not complete a tax return. Bridge financing may be required to address any timing issues between incurring expenditure and receiving a DRD payment. Industry would like HMT/HMRC to consider the idea of payments on account, with any overpayment subsequently being returned. HMT/HMRC flagged that this would need further consideration, as there were a number of potential issues.	**HMRC:** To address these points in forthcoming letter to UKOITC. **Industry:** To provide further detail on issues with contributions rules. **HMRC:** To consider S330B (2) further and circulate detail **Working group:** To consider the payments process further – this will also be discussed at the commercial WG.
Anti-avoidance	**Artificially inflated claims** Although the previous suggestion was that transfer pricing rules should be used to protect the Government against artificially inflated claims, it was now understood that transfer pricing rules do not	**Working group:** To consider use of S218 CAA01 (i.e. restricting payments

Agenda item	Summary	Actions:
	operate for decommissioning expenditure. Nonetheless, HMRC recognises that industry has serious concerns about the blanket "connected parties" approach proposed in the consultation document. There is currently an anti-avoidance provision in S218 CAA01 which stipulates that payments to connected parties must be limited to the lower of market value or cost. Although this currently applies to the provision of P&M, it could be amended to apply to decommissioning expenditure. Industry suggested that another option might be to use the safeguard against artificially inflated claims for First Year Allowances (S416E CAA01) as a model for the DRD. It was also discussed that this is only likely to be an issue in practice where there are no commercial tensions to mitigate the risk of artificially inflated claims, and industry suggested that could be reflected in any anti-avoidance provision. **Good faith clause** It was discussed that a good faith clause would require the spirit or intent of the Deed to be defined in the document.	to connected parties to cost) in the DRD **Working group:** To consider how the spirit/intent of the DRD would be defined in respect of any good faith clause.
Next meeting	To be held in London (at CMS Cameron McKenna) on Wednesday 26th September, 9.30am – 12.30pm. Please could any industry papers arising from this meeting's action points be sent to HMT by **close of play Thursday 20th September**.	

Decommissioning Relief Deeds: Reference Amount Working Group

Meeting date: 11 September 2012

Meeting time: 2.00pm to 5.00pm

Location: Oil and Gas UK, Aberdeen

Agenda item	Summary	Actions:
Introductions		
Previous meeting	The group agreed the minutes of the last meeting	
PRT reference amount in a default scenario	Following the previous working groups and further discussions internally and with industry, HMRC and HMT set out some principles on the PRT default reference amount that officials believed are broadly settled – though these would still be subject to Ministerial decision: • **Order of set-off:** Non-default expenditure will be deemed to have been utilised before default expenditure. If a party incurs non-default expenditure, any prior use of its own tax history for default expenditure will be ignored for the purposes of the Deed. • **Schedule 17 switch off:** When incurring default expenditure, the payer [i.e. the party meeting the expenditure] will, as far as possible, set the expenditure against its own PRT history to achieve relief under the tax code. The payer will also be required to make use of any UFLs to which it has access. However, schedule 17 will be turned off in the default scenario, meaning that previous participators in the field cannot achieve relief in respect of that default expenditure through the tax code. This will ensure that any repayment due beyond the payer's own history will be paid through the DRD rather than through the tax code. • **Reference amount:** The PRT reference amount in a default scenario will be the greater of: o The combined relief that the payer and its predecessors in its own 'chain' would have achieved, or o The combined relief that the defaulter and its predecessors in the defaulter's chain would have achieved. This will require a notional calculation of the relief that would have been achieved be both the payer's and defaulter's predecessors under schedule 17 had it not been turned off. • **Abolition:** If PRT were to be abolished, the decommissioning expenditure is deemed to have been incurred in the last period of account prior to abolition. • **PRT repayment:** Any PRT element of a payment under the Deed will be treated as a PRT repayment in respect of s299 and 300 CTA (2010) [i.e. will be subject to RFCT and SCT] • **Striking out expenditure:** Where there is a payment under the Deed in respect of default expenditure, Government believes that an equivalent amount of PRT history should be "struck out", to prevent the risk of relief being paid out against the same profits twice. However, there is a question about whose profits should be struck out (the payer's/the	

Agenda item	Summary	Actions:
	defaulter's/both?) and on what basis (LIFO/something else?) – this may be something to which industry wishes to give further thought. • **Contributions:** Consideration will need to be given to the interaction between default expenditure and the contribution rules (s106 FA91) to prevent any "double dipping" risk. • **UFLs:** UFLs will be treated differently depending on the circumstances (these principles will also apply to other non-field costs): - A payer must use any potential UFLs to which it has access before calling upon the DRD - Any UFLs already used in a field will be taken into account when calculating the tax history, which will be reduced accordingly - Potential UFLs to which the payer, defaulter or their predecessors might have had access will not be taken into account when calculating the reference amount.	
PRT history: practicalities of certification and what information is required	It was discussed that, to understand the reference amount to which they can expect to be entitled, a Deed-holder will need to know: - Their own tax history - The tax history of their predecessors - The tax history of companies from whom they are demanding security and their predecessors HMRC explained that taxpayer confidentiality is likely to prevent them from releasing this data unless explicit consent has been given for them to do so. Moreover, they may not even be able to make payments in respect of tax history where the 'owner' of that history has not consented to its disclosure. It was discussed that consideration needs to be given to the potential for "reverse engineering" i.e. using tax history information to deduce commercially sensitive information. This could be more of a risk where histories are being updated on a 6-monthly basis. If this were possible, there could be potential anti-trust issues arising from any uniform disclosure of tax history. One option might be a "black box" approach, whereby HMRC would provide details of tranches of profits taxed at different rates (e.g. the first £x of cost would be relieved at a%, the next £y of cost would be relieved at b%, and the next £z of cost would be relieved at c%). However, even this is likely to require a waiver of confidentiality. One option discussed was that companies could be required to waive confidentiality in respect of any licence interests that they *own or have previously owned*. However, HMT/HMRC would need to check the legal implications of this, and would want to be sure that industry was comfortable with this approach. In practice, this may only be an issue for a limited number of fields where: - Decommissioning costs are expected to outweigh future profits - The PRT history is complex - The ownership chain is complex Given that history can only be carried back to a single participator prior to 2004, it may be possible to identify these problematic fields	**Working group:** Industry to – as a priority - mock up a certificate identifying what tax history information would actually need to be shared for companies to have sufficient certainty to move to post-tax securitisation Industry to consider whether there would be sensitivities around releasing that level of information Industry to consider whether eligibility for the DRD could be conditional on agreeing to waive confidentiality for these purposes Industry to identify how many 'complex cases' there are likely to be in practice **HMRC:** To consider what (if any) aggregated information they could release without an explicit waiver of confidentiality To consider legal implications of

Agenda item	Summary	Actions:
	and work through them on a case by case basis. It was also suggested that the use of some sort of intermediary might help address sensitivities on the industry side (though this is unlikely to make any difference to HMRC confidentiality constraints)	making eligibility for the DRD conditional on agreeing to waive confidentiality for these purposes NB – Read-across to commercial working group
RFCT/SC reference amount in a non-default scenario	Industry reiterated their concern that the approach proposed in the consultation document could allow a future Government to maintain the marginal rate of tax while reducing the rate of relief to 20% by adjusting the balance between RFCT and SC. Industry has proposed two potential solutions: **Abolishing the 20% cap entirely.** Industry made clear that they still feel the 20% restriction is unfair and inconsistent with the new approach to certainty. **Committing to a maximum 12% gap between the rate of SC and the rate of SC relief.** If the SC rate is over 20%, the rate of relief would therefore be guaranteed at the higher of 20% and the prevailing rate less 12%. Officials made clear that they and Ministers understood industry's position on the cap to relief. However, in the current fiscal climate, it is very unlikely that the cap would be removed. Officials will consider whether there is some mechanism for linking the two taxes which could offer industry greater protection against a future Government adjusting the balance between the taxes without reducing the marginal rate of tax. However, any such mechanism would need to preserve the distinction between the two taxes, and ensure that there was no disincentive to change tax rates or introduce new allowances. One option might be a 'good faith' clause – though it was unclear whether this would give industry the certainty they are seeking. While officials will consider potential alternative options, these will all be pending further Ministerial steer.	HMT: To consider options for alternative approaches to non-default reference amount that Ministers might wish to consider.
Definition of default	It was discussed that the notion of "imposition" used in the recent industry papers was helpful in making clear that the "default" reference amount was targeted at situations where a party is meeting decommissioning expenditure imposed on them as a result of someone else's failure to meet their liabilities. Industry has proposed that default be defined as a situation where another party fails to meet its contractual obligation to pay for decommissioning. Where a party is incurring decommissioning expenditure in relation to an interest acquired through forfeiture, any decommissioning costs which exceed the net revenues from the asset should be treated as default expenditure. It was discussed that further consideration was still needed around how to carve out "wilful" defaults. For example, the idea of a motive	Working group: To consider risks around definition of default further in conjunction with technical & anti-avoidance and legal groups.

Agenda item	Summary	Actions:
	test had been discussed, but it may also be the case that something more explicit is required. One scenario discussed was a parent picking up decommissioning costs where the subsidiary has defaulted. It was recognised that, while in some cases it might be legitimate for a parent to let its subsidiary default, there could be a risk of manipulation in some instances. The group considered that a solution might be to stipulate that, where a parent is picking up the expenditure of its own subsidiary, it can only access the "non-default" reference amount.	
Next meeting	To be held in London (at OGUK) on Tuesday 25th September, 10am – 1pm. Please could any industry papers arising from this meeting's action points be sent to HMT by close of play Thursday 20th September.	

Decommissioning Relief Deeds: Commercial Working Group

Meeting date: 12 September 2012

Meeting time: 9.30am to 12.30pm

Location: Oil and Gas UK, Aberdeen

Agenda item	Summary	Actions:
Introductions		
Previous meeting	The group agreed the minutes of the last meeting	
PRT reference amount in a default scenario	Following the previous working groups and further discussions internally and with industry, HMRC and HMT set out some principles on the PRT default reference amount that officials believed are broadly settled – though these would still be subject to Ministerial decision: • **Order of set-off:** Non-default expenditure will be deemed to have been utilised before default expenditure. If a party incurs non-default expenditure, any prior use of its own tax history for default expenditure will be ignored for the purposes of the Deed. • **Schedule 17 switch off:** When incurring default expenditure, the payer [i.e. the party meeting the expenditure] will, as far as possible, set the expenditure against its own PRT history to achieve relief under the tax code. The payer will also be required to make use of any UFLs to which it has access. However, schedule 17 will be turned off in the default scenario, meaning that previous participators in the field cannot achieve relief in respect of that default expenditure through the tax code. This will ensure that any repayment due beyond the payer's own history will be paid through the DRD rather than through the tax code. • **Reference amount:** The PRT reference amount in a default scenario will be the greater of: o The combined relief that the payer and its predecessors in its own 'chain' would have achieved, or o The combined relief that the defaulter and its predecessors in the defaulter's chain would have achieved. This will require a notional calculation of the relief that would have been achieved be both the payer's and defaulter's predecessors under schedule 17 had it not been turned off. • **Abolition:** If PRT were to be abolished, the decommissioning expenditure is deemed to have been incurred in the last period of account prior to abolition. • **PRT repayment:** Any PRT element of a payment under the Deed will be treated as a PRT repayment in respect of s299 and 300 CTA (2010) [i.e. will be subject to RFCT and SCT]. • **Striking out expenditure:** Where there is a payment under the Deed in respect of default expenditure, Government believes that an equivalent amount of PRT history should be "struck out", to prevent the risk of relief being paid out against the same profits twice. However, there is a question about whose profits should be struck out (the payer's/the	

Agenda item	Summary	Actions:
	defaulter's/both?) and on what basis (LIFO/something else?) – and this may be something to which industry wishes to give further thought. • **Contributions:** Consideration will need to be given to the interaction between default expenditure and the contribution rules (s106 FA91) to prevent any "double dipping" risk. • **UFLs:** UFLs will be treated differently depending on the circumstances (these principles will also apply to other non-field costs): - A payer must use any potential UFLs to which it has access before calling upon the DRD - Any UFLs already used in a field will be taken into account when calculating the tax history, which will be reduced accordingly - Potential UFLs to which the payer, defaulter or their predecessors might have had access will not be taken into account when calculating the reference amount.	
PRT history: practicalities of certification and what information is required	Further to the discussion in the reference amount working group, it was recognised that certification will be key for the PRT reference amount. However, it was also acknowledged that the number of fields where the PRT history is dynamic or very complex may be fairly small, particularly as this is only likely to be an issue where decommissioning costs are expected to be greater than future profits. Reflecting and building on some of the points discussed in the reference amount working group, it was discussed that: • Industry needs to consider the minimum information they would need on post-tax securitisation and what the commercial sensitivities around releasing that information would be. • Industry needs to consider how frequent certification needs to be: 6-monthly certification is likely to place too great a burden on HMRC resources, so from a Government perspective annual certification is likely to be more feasible. It was also mentioned that DSAs do not all run to the same calendar date, which may mean that the tax certification process does not run to uniform timing. Any issues around in-year changes to the certification may therefore need to be addressed commercially e.g. through the terms of the DSA. This was discussed in more detail in the legal working group. • It needs to be considered whether the HMRC certification is binding i.e. whether the Deed would commit to paying out in line with the tax history that is certified (subject to in-year changes). • One option might be for eligibility for the DRD to be conditional on waiving confidentiality for these purposes. However, both industry and Government would need to give further thought to the implications of this. The question of apportionment of costs between PRT and non-PRT fields was raised. However, it was agreed that this was a commercial discussion (albeit in liaison with HMRC) that should take place outside the DRD – the DRD simply establishes a mechanism which can be applied to any quantum of decommissioning costs to specify a reference amount of relief.	**Working group:** Industry to – **as a priority** - mock up a certificate identifying what tax history information would actually need to be shared for companies to have sufficient certainty to move to post-tax securitisation Industry to consider whether there would be sensitivities around releasing that level of information Industry and Government to consider whether eligibility for the DRD could be conditional on agreeing to waive confidentiality for these purposes **NB – Read-across to reference amount working group**

Agenda item	Summary	Actions:
RFCT/SC reference amount in a non-default scenario	Further to the discussion in the reference amount group, industry reiterated their concern that the approach proposed in the consultation document could allow a future Government to maintain the marginal rate of tax while reducing the rate of relief to 20% by adjusting the balance between RFCT and SC. Industry has proposed two potential solutions: **Abolishing the 20% cap entirely.** Industry made clear that they still feel the 20% restriction is unfair and inconsistent with the new approach to certainty. **Committing to a maximum 12% gap between the rate of SC and the rate of SC relief.** If the SC rate is over 20%, the rate of relief would therefore be guaranteed at the higher of 20% and the prevailing rate less 12%. Officials made clear that they and Ministers understood industry's position on the cap to relief. However, in the current fiscal climate, it is very unlikely that the cap would be removed. One option might be a 'good faith' clause which could prevent Government from significantly reducing the rate of relief without changing the overall marginal tax rate. However, it was unclear whether this would give industry the certainty they are seeking. Officials will also consider whether there is some mechanism for linking the two taxes which could offer industry greater protection against a future Government adjusting the balance between the taxes without reducing the marginal rate of tax. However, any such mechanism would need to preserve the distinction between the two taxes, and ensure that there was no disincentive to change tax rates or introduce new allowances. While officials will consider potential alternative options, these will all be pending further Ministerial steer.	HMT: To consider options for alternative approaches to non-default reference amount that Ministers might wish to consider.
Connected parties	Further to the discussion in the technical and anti-avoidance group, HMRC set out that, although the previous suggestion was that transfer pricing rules should be used to protect the Government against artificially inflated claims, it was now understood that transfer pricing rules do not operate for decommissioning expenditure. Nonetheless, HMRC recognises that industry has serious concerns about the blanket "connected parties" approach proposed in the consultation document. For example industry felt that services such as environmental, procurement and engineering was often carried out by connected parties. Industry also felt that in most cases the JOA should ensure pricing was on arm's length terms – this was primarily likely to be an issue in cases of 100% ownership. There is currently an anti-avoidance provision in S218 CAA01 which stipulates that payments to connected parties must be limited to the lower of market value or cost. Although this currently applies to the provision of P&M, it could be amended to apply to decommissioning expenditure as well. The group felt that a restriction to cost would generally reflect existing industry practices in the North Sea. However, it was discussed that some companies may have an entirely separate commercial arm, which could be unfairly penalised by any restriction	Working group: To consider this solution further in conjunction with technical & anti-avoidance group – including any potential carve outs that might be necessary/appropriate

Agenda item	Summary	Actions:
	to cost. It was considered that it might be possible to create some carve-outs for these specific circumstances, e.g. in situations where there is a clear tender process.	
Timings of payments	It had previously been discussed that future securitisation calculations may need to cover the cost of bridge financing between incurring decommissioning costs and receiving tax relief/DRD payment. As discussed at the technical & anti-avoidance working group, HMRC suggested that payments could be conditional on CTSA returns having been filed and the relevant liabilities agreed. Because the DRD makes up any shortfall, no claim can be made until it is known what relief will be achieved under the tax code. However, there may be some companies (e.g. parents) that are not within the upstream regime and therefore will not complete a tax return. It was discussed that one option might be for such companies to submit a form stating that they are not a UK taxpayer. Industry would like HMT/HMRC to consider the idea of payments on account, with any overpayment subsequently being returned. HMT/HMRC flagged that this would need further consideration, as there were a number of potential issues (including possible state aid implications). Consideration also needs to be given to whether payments under the Deed will be aggregated or separated by tax head. The issue of liquidated companies was briefly discussed following the conversation in the technical working group. However, it was acknowledged that this is more of a commercial issue than an issue with the DRD specifically.	**Working group:** To explore how bridge financing would be treated/viewed by finance community **HMRC/HMT:** To consider potential implications of payments on account
AOB	Industry asked about the treatment of DSA trusts in respect of IHT and IT. HMT reiterated the call for evidence on IT, and flagged that consideration was being given to what conditionality might be put around any IHT exemption (e.g. making it conditional on post-tax securitisation being in place).	
Next meeting	To be held in London (at OGUK) on Thursday 27th September, 10am – 1pm. Please could any industry papers arising from this meeting's action points be sent to HMT by **close of play Thursday 20th September**.	

Decommissioning Relief Deeds: Legal Working Group

Meeting date: 12 September 2012

Meeting time: 1.30pm to 4.30pm

Location: Oil and Gas UK, Aberdeen

Agenda item	Summary	Actions:
Introductions		
Previous meeting	The group agreed the minutes of the last meeting	
Drafting of the reference amount	Following the previous working groups and further discussions internally and with industry, HMRC and HMT set out some principles on the PRT default reference amount that officials believed are broadly settled – though these would still be subject to Ministerial decision: • **Order of set-off:** Non-default expenditure will be deemed to have been utilised before default expenditure. If a party incurs non-default expenditure, any prior use of its own tax history for default expenditure will be ignored for the purposes of the Deed. • **Schedule 17 switch off:** When incurring default expenditure, the payer [i.e. the party meeting the expenditure] will, as far as possible, set the expenditure against its own PRT history to achieve relief under the tax code. The payer will also be required to make use of any UFLs to which it has access. However, schedule 17 will be turned off in the default scenario, meaning that previous participators in the field cannot achieve relief in respect of that default expenditure through the tax code. This will ensure that any repayment due beyond that will be paid through the DRD rather than through the tax code. • **Reference amount:** The PRT reference amount in a default scenario will be the greater of: o The combined relief that the payer and its predecessors in its own 'chain' would have achieved, or o The combined relief that the defaulter and its predecessors in the defaulter's chain would have achieved. This will require a notional calculation of the relief that would have been achieved be both the payer's and defaulter's predecessors under schedule 17 had it not been turned off. • **Abolition:** If PRT were to be abolished, the decommissioning expenditure is deemed to have been incurred in the last period of account prior to abolition. • **PRT repayment:** Any PRT element of a payment under the Deed will be treated as a PRT repayment in respect of s299 and 300 CTA (2010) [i.e. will be subject to RFCT and SCT] • **Striking out expenditure:** Where there is a payment under the Deed in respect of default expenditure, Government believes that an equivalent amount of PRT history should be "struck out", to prevent the risk of relief being paid out against the same profits twice. However, there is a question about whose profits should be struck out (the payer's/the	

Agenda item	Summary	Actions:
	defaulter's/both?) and on what basis (LIFO/something else?) – this may be something to which industry wishes to give further thought. • **Contributions:** Consideration will need to be given to the interaction between default expenditure and the contribution rules (s106 FA91) to prevent any "double dipping" risk. • **UFLs:** UFLs will be treated differently depending on the circumstances (these principles will also apply to other non-field costs): - A payer must use any potential UFLs to which it has access before calling upon the DRD - Any UFLs already used in a field will be taken into account when calculating the tax history, which will be reduced accordingly - Potential UFLs to which the payer, defaulter or their predecessors might have had access will not be taken into account when calculating the reference amount. **Certification procedure** It was discussed that the group could expect to be asked for advice on the legal implications of any confidentiality waiver (mandatory or voluntary) – though it was noted that this would have to await the analysis of the reference amount and commercial groups. Lawyers would want to work with their commercial and tax teams to understand what information can be extrapolated from the disclosure of tax history information, to understand any potential legal implications (e.g. data protection or anti-trust).	**Working group:** To await analysis from reference amount and commercial groups to inform understanding of legal issues around certification process
Definitions	**Default expenditure** The group will consider whether a failure to meet a "contractual obligation" works as a definition for a default scenario. Issues discussed included whether the drafting needed to specify which parties are subject to, and beneficiaries of, the contractual obligation, and whether expenditure could sometimes be incurred even where someone was not a direct party to a contract (e.g. because DECC had required someone else to meet the expenditure under S29/34). **Decommissioning expenditure** It was discussed that most issues around "tax nothings" should be addressed in HMRC's forthcoming letter to UKOITC. Once that has been circulated, further consideration would be needed as to whether there were any outstanding elements of expenditure that were covered in a DSA but would not qualify for tax relief. **Associated parties** The action point from the previous meeting to compare the tax and regulatory definitions of associated parties is still outstanding, and industry will circulate something on this shortly. It was noted that a company that was itself outside the ring fence but was claiming as an associated party would need to have its reference amount calculated with reference to the associated party through which it is claiming. Further to the discussion in the technical group, if a parent is picking up expenditure where its own subsidiary has defaulted, it was felt to	**Working group:** Treasury and Industry legal to consider definition of default (i.e. as failure to meet contractual obligation) **Working group:** HMRC to send letter to UKOITC updating position on tax nothings. Industry will then consider whether there are any remain disparities with DSA definition of decommissioning expenditure **Industry:** To circulate comparison of the tax and regulatory definitions of associated parties.

Agenda item	Summary	Actions:
	be appropriate that the parent would access the non-default reference amount.	
AOB	**Connected parties** HMRC reflected the discussion of the technical and commercial groups that an existing anti-avoidance provision (s218 CAA01) could be extended to limit payments to connected parties to cost. Further consideration may need to be given to whether any additional carve outs are appropriate where there is a genuine commercial arrangement in place.	Other working groups will consider this issue further
Next meeting	To be held in London (at OGUK) on Thursday 27th September, 2pm – 5pm. Please could any industry papers arising from this meeting's action points be sent to HMT by **close of play Thursday 20th September**.	

Decommissioning Relief Deeds: Reference Amount Working Group

Meeting date: 25 September 2012

Meeting time: 10am – 1pm

Location: Oil and Gas UK, London

Agenda item	Summary	Actions:
Introductions		
Previous meeting	The group agreed the minutes of the last meeting. *Note:* In subsequent groups, the treatment of UFLs in a default scenario was clarified following discussion with the technical and anti-avoidance group. It was agreed that, in a **default** scenario: • Once a payer has carried back losses against their own tax history, any remaining losses will not generate a UFL. Any remaining losses once their own tax history is exhausted will therefore push them into the DRD. • [As previously agreed], any UFLs already used in a field will be taken into account when calculating the tax history, which will be reduced accordingly. • [As previously agreed], potential UFLs to which the payer, defaulter or their predecessors might have had access will not be taken into account when calculating the reference amount. • Any remaining losses once the payer's own tax history and the DRD have been exhausted will not generate a UFL. However, it was noted than in the vast majority of cases the DRD should cover all remaining losses.	
Next steps and consultation end date	HMT explained that they expected the consultation date to be extended and would confirm this in due course. However, any early responses would be much appreciated. There will be one more set of working group discussions. These will be held on a single day and will not be separated into four groups. However, the day will be split into thematic sessions.	HMT has since confirmed that the consultation will be extended until **midday on Friday 12 October**. HMT has since confirmed that the working group will be on **Tuesday 9th October in London**.
RFCT/SC Reference Amount in a non-default scenario	HMT presented for discussion a potential alternative approach to the non-default reference amount for RFCT/SC to the one outlined in the consultation document. Industry agreed that this seemed to address the previous concern that a future Government might change the marginal rate of tax but adjust the balance between RFCT and SC in order to (in the most extreme scenario) restrict the overall rate of relief to 20%. However, industry expressed a concern that, if there were no change to the rate of SC and the rate of RFCT were to be increased above 30%, the approach would still restrict the rate of RFCT relief to 30% (and the overall rate of relief to 50%). Industry therefore felt that this approach could, in some circumstances, cap the rate of RFCT available in the DRD in addition to reflecting the legislative SC cap. HMT made clear that this would	**Industry:** To circulate worked examples of the effect of each option in different scenarios.

Agenda item	Summary	Actions:
	not prevent a future Government from increasing the rate of relief available in the tax code. An alternative option put forward by industry was discussed (though it was emphasised that companies' preference would still be to abolish the cap entirely or ensure any differential between the SC rate and rate of SC relief remains at no more than 12%). Industry believes the alternative solution achieves the same result with regard to the RFCT/SC relationship while retaining the link between the rate of RFCT relief in the DRD and the prevailing RFCT rate. HMT agreed to consider this further, but stressed that Ministers may want to consider a number of different options. For ease of reference, both options discussed are set out in the paper attached.	
PRT certification	HMRC confirmed that, under the terms of the Commissioners for Revenue & Customs Act 2005, they can disclose very little information without a waiver of confidentiality. Industry presented two types of certificate that could be used to provide sufficient information on tax history for the PRT reference amount. HMRC believes that both of these would require a confidentiality waiver. For ease of reference, these are included in Appendix A of the attached PDF. It was agreed that Alternative A, whereby HMRC would provide historical profits in tranches by tax rate, was preferred by industry and that the group would use this as a working assumption for what the certificate should look like. Other useful information would include the date of certification and the date of the most recent period for which allowable costs have been agreed. HMRC is confident that it has the necessary data and could set up the systems to provide such a certificate if confidentiality issues were overcome through a waiver. At the minimum, companies would want the amount of allowable costs to be certified to equal the pre-tax costs of decommissioning plus an appropriate risk factor. Assumptions over cost allocation will be the responsibility of the company asking for its reference amount certification (HMRC will simply provide a history of assessable profits up to a requested amount). The working assumption is that certificates from HMRC would be binding based on agreed assessable profits as of the date of certification. Any changes to tax history after the certification process would need to be addressed separately (this was considered in more detail in the commercial working group). It was also discussed that the waiver would need to define who could receive the disclosed information, and that HMRC would need protection against that information being shared subsequently with third parties. It was noted that the viability of this option depends on there being sufficient waivers around – not only can HMRC not disclose information without a certificate, but it is unclear whether they would even be able to pay out in respect of tax history where confidentiality had not been waived.	HMT: To consider implications of the proposed certificate, including what kind of waiver would be required Industry: To consider legal and commercial implications of the proposed certificate, including any necessary waiver Industry: To continue looking at tax histories of PRT fields to identify potentially 'complex' fields

Agenda item	Summary	Actions:
	The most feasible option is likely to be linking the waiver to the DRD – though any waiver should be separate from the DRD itself - partly in case the waiver needs to be amended, and partly because waivers might be required from companies that are not signatories to the DRD (e.g. because companies could probably not waive confidentiality on behalf of their associates). It was discussed that the work on identifying how many PRT fields have 'complex' histories will be important in establishing how many 'gaps' in history there might be as a result of companies not providing a waiver. Both industry and HMRC are looking at this. Some companies are interested in a more simplified PRT reference amount in a default scenario e.g. offering 50% to companies that had paid any PRT or doing a "sweep-up" of companies that will definitely get 50% relief. HMT noted that there could be a number of issues with that, including potential state aid considerations.	

Decommissioning Relief Deeds: Technical & Anti-Avoidance Working Group

Meeting date: 26 September 2012

Meeting time: 9.30am – 12.30pm

Location: CMS Cameron McKenna, London

Agenda item	Summary	Actions:
Introductions		
Previous meeting	The group agreed the minutes of the last meeting. However, it was felt that it would be helpful to clarify the position on UFLs – this was addressed later on in the discussion.	
Next steps and consultation end date	HMT explained that they expected the consultation date to be extended and would confirm this in due course. However, any early responses would be much appreciated. There will be one more set of working group discussions. These will be held on a single day and will not be separated into four groups. However, the day will be split into thematic sessions.	HMT has since confirmed that the consultation will be extended until **midday on Friday 12 October**. HMT has since confirmed that the working group will be on **Tuesday 9th October in London**.
Artificial inflation of costs	There was a lot of discussion of the relative merits of restricting transactions between connected parties to cost (HMRC's recent suggestion), or using a Transfer Pricing (TP) approach based on market value. The latter is industry's preference, but HMRC remains concerned that a TP approach on decommissioning could leave the Exchequer exposed. This is because companies may create a specialist in-house company outside the ring fence which would assume all the risk for decommissioning in a way that would be unlikely to be replicated in a commercial transaction. Government is already aware of a non-ring fence company having been set up. Industry emphasised that in many cases it may be legitimate for in-house companies to be making profits as they are providing an equivalent service to that which a third-party company would. Industry does not believe that connected companies should be disadvantaged compared to third parties. What a 'fair' price is deemed to be is likely to depend in part on whether a company is taking entrepreneurial/commercial risk. However, often price is not the only factor companies will take into account when deciding who to use for decommissioning services. Government believes that is another reason why TP may not offer the Government adequate protection in this instance (as it will be difficult to determine what the right arms length price really is), though industry emphasised that under TP rules the taxpayer has to be able to substantiate the arms length nature of the price. Given that TP rules do not currently apply to decommissioning, any mechanism for dealing with connected parties in the DRD will need to be reflected in tax law as at FA13. Both industry and Government agreed to give this issue further thought.	**HMRC:** To speak to TP specialists to clarify why TP approach is felt to be insufficient in this scenario **HMT/HMRC and Industry:** To continue to consider issues around connected parties

Agenda item	Summary	Actions:
Inappropriate claims	HMRC set out various options that had been considered to deal with the risk of inappropriate claims: - A motive test - A good faith clause - Some reference to the GAAR The group agreed with the principle previously discussed that where a parent is picking up the default of its own subsidiary, it should only be eligible for the non-default reference amount (based on the tax history of the subsidiary, if the parent is claiming as an associated party). The group felt that a good faith clause would be complex to achieve and would not necessarily be effective. A motive test was seen as a viable option to prevent people engineering a default situation, but it was agreed that the language would need to be carefully drafted to ensure that it did not create additional uncertainty by appearing to capture legitimate commercial activity. This could in part be achieved by ensuring that the test is tied only to the party claiming under the DRD (i.e. that companies will not be at risk of having their claims denied because of another party's behaviour). Industry believes that it might be appropriate for such a clause to include "to the extent that" phrasing, rather than taking an all or nothing approach, which they felt could be too harsh. Government raised the point that it may wish to consider excluding people from claiming under the DRD if the reason that they had not achieved relief through the tax code was because of avoidance activity. For example, this might include a provision that the DRD does not pay out in cases where a claimant has fallen foul of the GAAR. However, industry felt that inclusion of any reference to the GAAR (particularly in a default scenario) could create uncertainty and potentially jeopardise the project outcomes. It was discussed that any anti-avoidance case law reinterpreting the law as at FA2013 would automatically be reflected in the DRD. However, the DRD would not cater for future changes to the law after FA13, which is why Government needs to ensure it is adequately protected.	**Working group:** Industry lawyers to circulate some proposed language for the motive test
PRT reference amount in default-scenario	Schedule 17 The Government explained that the current assumption is that Schedule 17 loss carry back will be turned off in a default scenario, but that it will be treated as if it had not been turned off for all other purposes, i.e. where the notional tax history had been used to achieve a payment under the DRD, that tax history could not be used again. However, that could mean that the Deed-holder's predecessors found their tax history being struck out for reasons outside of their control. The legal implications of this would need to be considered (e.g. the question of legitimate expectation) and particular consideration would need to be given to foreign participators and the potential impact on Double Taxation Agreements. There might be a difference between 'striking out' the tax history and saying that the history is intact but can not be used to offset losses.	**HMT/HMRC and Industry:** To consider implications of 'striking out' tax history

Agenda item	Summary	Actions:
	The working groups had previously discussed the principle that a Deed-holder should not be adversely affected when meeting their own decommissioning costs because they had previously used up their tax history to meet the costs of a defaulting party. It is possible that could be extended so that the DRD protects any company that loses tax history because of another party's default. **UFLs** The treatment of UFLs in a default scenario was clarified following discussion with the technical and anti-avoidance group. It was agreed that, in a **default** scenario: • Once a payer has carried back losses against their own tax history, any remaining losses will not generate a UFL. Any remaining losses once their own tax history is exhausted will therefore push them into the DRD. • [As previously agreed], any UFLs already used in a field will be taken into account when calculating the tax history, which will be reduced accordingly. • [As previously agreed], potential UFLs to which the payer, defaulter or their predecessors might have had access will not be taken into account when calculating the reference amount. Any remaining losses once the payer's own tax history and the DRD have been exhausted will not generate a UFL. However, it was noted than in the vast majority of cases the DRD should cover all remaining losses. It was also noted that, in practice, the incidence of UFLs is likely to be a very rare occurrence. **Interaction with S299/300** HMRC proposes that the PRT repayment should be treated as taxable income for the accounting period of the decommissioning expenditure. **Unjust enrichment** Industry reiterated that any profit beyond the cost of decommissioning (i.e. where the level of security and amount of relief achieved exceeds the actual cost of decommissioning, and the excess does not revert to the party posting security) should be assessed to tax. However, further consideration is needed as to what rate of tax is appropriate, and whether that would still enable some companies to achieve a 'windfall'. **Contribution rules** The group acknowledged that the contribution rules can currently prevent parties achieving relief via contribution allowances, and that looking at s163 may provide a solution to this. Any solution would need to ensure the Exchequer was not exposed to 'double dipping'.	**Industry:** To consider whether this approach to S299/300 is acceptable **HMT/HMRC and Industry:** To consider issues around unjust enrichment

Decommissioning Relief Deeds: Commercial Working Group

Meeting date: 27 September 2012

Meeting time: 10am – 1pm

Location: Oil and Gas UK, London

Agenda item	Summary	Actions:
Introductions		
Previous meeting	The group agreed the minutes of the last meeting. However, it was felt that it would be helpful to clarify the position on UFLs – this was addressed later on in the discussion. *Note:* In subsequent groups, the treatment of UFLs in a default scenario was clarified following discussion with the technical and anti-avoidance group. It was agreed that, in a **default** scenario: • Once a payer has carried back losses against their own tax history, any remaining losses will not generate a UFL. Any remaining losses once their own tax history is exhausted will therefore push them into the DRD. • [As previously agreed], any UFLs already used in a field will be taken into account when calculating the tax history, which will be reduced accordingly. • [As previously agreed], potential UFLs to which the payer, defaulter or their predecessors might have had access will not be taken into account when calculating the reference amount. Any remaining losses once the payer's own tax history and the DRD have been exhausted will not generate a UFL. However, it was noted than in the vast majority of cases the DRD should cover all remaining losses.	
Next steps and consultation end date	HMT explained that they expected the consultation date to be extended and would confirm this in due course. However, any early responses would be much appreciated. There will be one more set of working group discussions. These will be held on a single day and will not be separated into four groups. However, the day will be split into thematic sessions.	HMT has since confirmed that the consultation will be extended until **midday on Friday 12 October**. HMT has since confirmed that the working group will be on **Tuesday 9th October in London**.
Issues affecting securitisation	**Process for payments out of the DRD** Industry reiterated that they wish to press for DRD payments by instalment once costs have been validated by the operator/DSA trustees, with a mechanism for any over-payment to subsequently be clawed back. HMT remain cautious of this approach, and emphasised that there could well be legal/precedent issues to consider. Industry is still looking at the issue of bridge financing and considering whether payments out of the DSA should be made net or gross. Initial industry estimations suggest that this could add up to 5 - 10% to securitisation costs in some circumstances, but this is a very rough calculation which necessarily involves a number of assumptions.	**Industry:** To provide further detail on issues around bridge financing, including likely cost/impact on securitisation and to provide timeline of payments in decommissioning process **HMT/HMRC:** To consider issues around payments on

Agenda item	Summary	Actions:
	At the minimum, industry called for the trigger for a DRD calculation to be when the level of relief achievable under the tax code is *agreed* (rather than actually paid, as there can be a delay between the two). Consideration also needs to be given to whether the PRT element of the reference amount is treated as PRT repayment, or deemed as one (or whether the reference amount could be reduced to reflect the level of SC/RFCT that would be paid on it). Different wording could have different implications for SPA purposes. **In-year DSA changes** It was noted that a number of factors, such as any unplanned significant expenditure in a field (e.g. as a result of catastrophic loss) or a reduction in the PRT rate, could affect the tax history, which could lead to disparity between the tax history reflected in the most recent certification and the actual history. This could therefore leave holders of security open to the risk that a party upon whom it was relying for tax history under the DRD would materially change its tax history between certificates, which could mean that a lower reference amount would be achievable under the DRD. Industry had suggested that HMRC could help mitigate this risk by requiring companies to prove that they had notified DSA trustees before using their tax history to carry back losses. However, HMT/HMRC has concerns that this could be administratively complex and is placing an excessive and possibly inappropriate burden on HMRC. Industry is considering what provisions can be included in the model DSA to protect companies from in-year changes to tax history. For example, a DSA could require parties to disclose what UFLs they are thinking of using in the coming year. However, it was also noted that DSAs are really set up to deal with routine decommissioning costs, and not for catastrophic loss scenarios. It was also noted that this would be less of an issue in PRT fields where companies can rely on their own PRT history. However, most people in the group felt that a combination of more regular (possibly 6-monthly) certification in 'complex' PRT fields *and* safeguards in the DSA could go a long way to mitigate companies' exposure to in-year changes in practice, particularly if the certification process were timed to align with the tax cycle. It was also suggested that switching off Schedule 17 immediately after a default could help address this risk. **Confidentiality waiver** The group noted that previous groups had agreed that the "alternative A" approach to tax certification appeared to be the best, provided that a suitable waiver process could be established. For ease of reference, both alternatives put forward by industry are included in Appendix A of the attached PDF. However, companies felt that it might be easiest for the certificate to show all profits rather than just profits up to a specified amount	account **Industry:** To provide example of standard SPA language on repayment of PRT **HMT/HMRC:** To work up timeline of tax cycle and certification process **Industry:** To continue considering what safeguards against in-year changes to tax history can be included in DSA **HMT/HMRC:** To consider confidentiality issues and how waiver fits into DRD process **Industry:** To ensure that there are no commercial issues

Agenda item	Summary	Actions:
	(particularly given uncertainties and sensitivities around estimated decommissioning costs). It was also felt that it would be best for the waiver to be a standard document that would sit alongside the DRD. It was discussed that HMRC will need indemnity to protect it should the disclosed information subsequently be shared with a third party – so companies will need to be comfortable with that. This lead to some discussion (expanded further in the legal working group) of whether such a waiver could/should be irrevocable. Some in industry believe that a legislative carve-out of confidentiality for this purpose might be preferable. However, HMT felt that there could be wider precedent/presentational issues with that approach.	with such a waiver
RFCT/SC Reference Amount in non-default scenario	HMT presented for discussion the potential alternative approaches to the non-default reference amount for RFCT/SC discussed in the reference amount group. Industry will be circulating some worked examples of the two options, and it was noted that the group will wish to give these further consideration. However, HMT also noted that Ministers may want to consider a number of different options. For ease of reference, both options discussed are set out in the paper attached.	
Connected Parties	HMRC outlined the background to the connected parties issue: - The consultation document proposed excluding any connected party payment from the DRD - Industry felt this very disproportionate and raised concerns that it would exclude legitimate commercial activity. - Industry initially proposed using Transfer Pricing (TP), but it is now acknowledged that TP does not currently apply in the case of decommissioning expenditure. - HMRC then proposed that connected party payments could be restricted to the lower of market value or cost, reflecting provisions elsewhere in the capital allowances code. - Industry still feels that a TP approach would be better. Following discussion with HMRC TP specialists, HMRC remain concerned that a TP approach on decommissioning could leave the Exchequer exposed. This is because companies may create a specialist in-house company outside the ring fence which would assume all the risk for decommissioning in a way that would be unlikely to be replicated in a commercial transaction. HMRC had thought that one solution might be to restrict to cost only in cases where there is 100% (or near 100%) ownership in a licence – because in a more broadly owned joint venture the other parties are likely to prevent a connected party from artificially inflating costs. However, industry believes that this risked being ineffective or difficult to enforce (because the risk was probably as great with 99% ownership), while "near 100%" would be very difficult to define (it would be hard to know where to set the cliff edge).	HMT/HMRC and Industry: To continue to consider issues around connected parties

Agenda item	Summary	Actions:
	Another option might be to look at cost plus a reasonable mark-up (e.g. 5%). The group discussed that perhaps the real issue was not establishing the right price for a transaction (which industry believes can be achieved through transfer pricing) but addressing transactions which would not occur in a third-party context. It was discussed that this is now really a tax code issue - though whatever appropriate treatment is established in FA13 will also need to be reflected in the DRD. It may therefore be necessary for this to be discussed with a wider forum outside the DRD working groups. Both industry and Government agreed to give this issue further thought.	
Associated parties	Industry outlined that the two main groups covered by the Petroleum Act definition of Associated Parties but not the tax (CTA) definition are Limited Liability Partnerships (LLPs) and 50-50 joint ventures. LLPs are tax transparent. However, industry believes that there could be an issue if parents of LLPs would be liable for decommissioning costs under S29/34 but would not qualify for tax relief/DRD payments.	

Decommissioning Relief Deeds: Legal Working Group

Meeting date: 27 September 2012

Meeting time: 2pm – 5pm

Location: Oil and Gas UK, London

Agenda item	Summary	Actions:
Introductions		
Previous meeting	The group agreed the minutes of the last meeting. However, it was felt that it would be helpful to clarify the position on UFLs – this was addressed later on in the discussion. *Note:* In subsequent groups, the treatment of UFLs in a default scenario was clarified following discussion with the technical and anti-avoidance group. It was agreed that, in a **default** scenario: • Once a payer has carried back losses against their own tax history, any remaining losses will not generate a UFL. Any remaining losses once their own tax history is exhausted will therefore push them into the DRD. • [As previously agreed], any UFLs already used in a field will be taken into account when calculating the tax history, which will be reduced accordingly. • [As previously agreed], potential UFLs to which the payer, defaulter or their predecessors might have had access will not be taken into account when calculating the reference amount. Any remaining losses once the payer's own tax history and the DRD have been exhausted will not generate a UFL. However, it was noted than in the vast majority of cases the DRD should cover all remaining losses.	
Next steps and consultation end date	HMT explained that they expected the consultation date to be extended and would confirm this in due course. However, any early responses would be much appreciated. There will be one more set of working group discussions. These will be held on a single day and will not be separated into four groups. However, the day will be split into thematic sessions.	HMT has since confirmed that the consultation will be extended until **midday on Friday 12 October**. HMT has since confirmed that the working group will be on **Tuesday 9th October in London**.
Definition of default	The group considered the use of "imposition" to define default and the language circulated by industry. It was noted that not every default under a DSA will result in someone needing to pick up decommissioning liability and claim under a DRD, which is why the notion of "imposition" is seen to be helpful. The group discussed that it may be necessary to clarify that the person undertaking the decommissioning expenditure (and claiming under the DRD) may not be the one to whom there was a contractual obligation (e.g. if another party has been pulled in under S29/34). One suggestion was simply to delete the word 'contractual' to broaden the language to cover any obligation for decommissioning liabilities.	**HMT/HMRC and Industry:** To consider definition of default further, including how best to exclude artificial default claims

Agenda item	Summary	Actions:
	It was also suggested that the PRT language in OTA75 Sch 5 paras 2a-2c might offer a useful model. The suggested forfeiture provision provides that the default reference amount should only be available to the extent that the decommissioning costs of the forfeited interest exceed the revenue obtained from it after the forfeiture occurred. However, while the group agreed that the broad principle was right, there were some concerns over: - The potential for a company to cease production early to claim a more generous amount under the DRD - The situation where two assets are covered by one licence and one DSA or where there is a phased decommissioning programme Industry lawyers circulated some draft language on inappropriate default claims, noting that this had not yet been shared/agreed. It was discussed that Government might prefer the language to be less tightly defined as collusion with a defaulting party might not be the only type of inappropriate claim. However, industry stressed that there should still be some concept of wrongdoing in the clause, to avoid creating additional uncertainty. Government made clear that it does not want companies to be using tax planning to take advantage of a default scenario so pressed industry to consider how much uncertainty a broader clause would create provided that it were tied only to achieving the default (rather than non-default reference amount). The group agreed to consider this further.	
PRT Certification	Confidentiality For ease of reference, both alternatives put forward by industry for the structure of the tax history certificate are included in Appendix A of the attached PDF. HMT/TLA set out the working assumptions on how the confidentiality waiver would work: - It would be a separate legal instrument to the DRD, so that it is easier to amend (albeit that it is difficult to envisage a situation in which that would be necessary) and can be signed by parties not party to a DRD (e.g. associate parties) - There needs to be a lever to ensure that companies sign the waiver, as this is fundamental to the PRT reference amount. Signing the waiver could therefore be made a precondition both of being eligible for a DRD and making a claim under the DRD. Having both conditions in place should prevent companies signing the waiver and then cancelling it once they have received their DRD, or waiting until they actually need to make a claim before signing the waiver. Industry also discussed that another lever might be to exclude companies from being a 3rd party participant in a DSA unless they had signed the waiver. The group discussed that, to prevent companies being able to use the threat of withdrawing their waiver for tactical/commercial reasons, it might be best if the waivers were irrevocable. However, consideration would need to be given as to whether this might deter companies from signing up to the waiver.	HMT/HMRC: To take legal advice on the form of waiver it would require to disclose the information necessary for the proposed certificate. The legal group will then consider whether such a waiver would be acceptable from their perspective. Industry: To consider proposed certificate and double-check there are no anti-trust/other legal concerns

Agenda item	Summary	Actions:
	The options for the waiver are that it could be very specific or very wide i.e. allowing the information to be used in any way in order to effect certainty in relation to the DRD. It was discussed that the waiver would need to be drafted in a way that both satisfied HMRC and did not pose commercial/legal issues for industry. The group also discussed that HMRC would need assurance that it was protected should the information disclosed under the waiver subsequently be shared by a third party. One solution suggested was for the waiver to be accompanied by a confidentiality agreement prevent the recipient of a certificate to share it other than for the stated purpose. The group discussed that companies' lawyers would need to be comfortable that there were no anti-trust implications of the type of disclosure proposed by industry (see alternative A in the attached document). However, it was noted that nobody had raised any concerns to date, and that there could be an argument that any risks were outweighed by the likely benefits. It was also noted that the whole approach to the PRT default reference amount is dependent on such a waiver being made to work. Although legislation exempting HMRC from confidentiality constraints in these particular circumstances had been discussed in other groups, HMT noted that there were likely to be precedent/presentational issues with that approach. In-year tax history changes The group noted that the risk discussed in the previous legal group of in-year changes affecting a company's tax history (and thus reference amount) between certification periods had been considered in some depth in the commercial working group. It was felt that the risk could potentially be mitigated by a more regular certification process for complex fields and by aligning the timing of the certification process with tax periods. It was also noted that some in industry had pressed for HMRC to provide an additional safeguard by requiring companies wishing to carry back their losses to notify the relevant DSA trustee. However HMT/HMRC have concerns that this could place excessive burden on HMRC and require them to assume the risk in what is a primarily commercial issue.	
AOB	Industry pressed for a mechanism whereby the benefit of the DRD can be assigned directly to DSA trustees and/or tax repayment can be made directly on that basis. It was noted that this tied in with the broader industry consideration of issues around DSA payments and bridge financing.	HMT/HMRC: To consider further whether DRD payments/tax repayments could be assigned to another party

Decommissioning Relief Deeds: Wrap-up Working Group

Meeting date: 9 October 2012

Meeting time: 9.30am – 5.30pm

Location: Oil and Gas UK, London

Agenda item	Summary	Actions:
Introductions		
Consultation next steps	HMT thanked those who have already responded to the consultation, and reminded attendees that the deadline for responses is **midday on Friday 12th October.** A question was raised around whether the Government planned to publish consultation responses. HMT confirmed that it will publish a summary of responses, and reminded attendees that full responses can be subject to Freedom of Information requests. However, public authorities can take into account factors such as commercial confidentiality when determining whether information is suitable for disclosure. It is therefore helpful if respondents can explicitly note where their response (or parts of their response) are commercially confidential, and if a reason can be provided. When the consultation closes, HMT will consider responses and put further advice to Ministers. The draft Decommissioning Relief Deed (DRD) and relevant Finance Bill clauses are due to be published on 11 December. It is likely that HMT may establish further working groups once the draft DRD and legislation have been published. It is envisaged that these will cover reactions to the draft documents and further detail on the DRD process.	HMT has confirmed that the Government does not intend to publish individual responses to the DRD consultation on its website. However, information provided in response to the consultation may be published or disclosed in accordance with the access to information regime.
DRD process	<u>Timing of payments</u> Industry noted that holders of security will be in a different commercial space in a post-tax securitisation arrangement, because (unlike now) they will not have the full funds for decommissioning in place until relief has been paid. Government presented some slides (attached) setting out some thoughts on how the process for DRD claims and payments could work. Industry welcomed the establishment of a "backstop date" by which (subject to any ongoing enquiry process), companies could ensure that they would achieve relief/payment under the DRD. However, companies raised some potential concerns around: • **Some companies achieving effective relief more quickly than others.** Industry believes that companies with only one asset might achieve payment more slowly than those with other UKCS operations (because those with other operations can adjust their tax payments downwards to reflect the level of relief they anticipate receiving). HMT noted that this reflects the situation under the existing regime. • **The enquiry process.** Companies stressed that they would not want an enquiry on a small issue to hold up the entire claim process. HMT and HMRC thought that some recognition of materiality/proportionality could help mitigate this risk.	Industry to continue work on identifying fields with a 'complex' PRT history

Agenda item	Summary	Actions:
	• **Companies outside the ring fence regime being given an advantage.** Under the proposed process, such companies would have the right to apply for a DRD payment as soon as decommissioning expenditure is incurred. However, HMT and HMRC noted that they would still expect such a claim to be subject to a verification and potential enquiry process. It was suggested that a process whereby HMRC considered a DRD claim alongside the company's claim for relief through the tax code help companies achieve payment more quickly. HMRC/HMT agreed to look at this, but noted that this might be complicated by the fact that tax relief and DRD payments are expected to be treated differently for Government accounting purposes. Industry believes that the timescale set out in the slides would still require companies to reflect the costs of up to two years bridge finance in their securitisation arrangements. At a rough estimate, industry believes this could increase securitisation by approximately 10% (5% a year) in some cases. Industry pressed HMT to consider a system of payments on account (i.e. based on a notional DRD claim before the final relief under the tax code had been agreed), which industry believes would allow more capital to be freed up. The Government noted that there are a number of complexities around payments on account, and encouraged industry to continue to consider commercial solutions. One option discussed was the idea of 'ring-fencing' payments under the DRD for a DSA trust, to provide better leverage for bridge financing. Some companies also felt that paying the PRT element of the reference amount gross (i.e. without a deduction for SC/RFCT) would help with cash-flow issues, while others believed that the PRT element should be paid net. There was discussion around whether the discovery determination process used in the tax code was necessary given the contractual nature of the DRD. HMT and HMRC agreed to consider this further. <u>Confidentiality issues around PRT certification</u> HMT explained that, following further discussions with HMRC, it was felt that a (targeted) statutory confidentiality exemption might in some ways be a more straightforward option than a consent-based approach. Such exemptions have been introduced in the past, though there are no directly analogous examples. Industry highlighted that legislation might also be a preferable option from companies' perspective, provided that the scope and purpose of the exemption were very clearly outlined. However, it was noted that HMT/HMRC would need to consider this further internally (including the potential precedent and presentational issues) and that officials would continue to explore both options (legislation and consent) to ensure they can provide full advice to Ministers. Officials encouraged companies to make clear in their consultation responses if they have a strong view either way. It was noted that HMRC's taxpayer confidentiality requirements extend to liquidated companies, and that such companies would not be in a position to consent to their confidentiality being waived for the purposes of a DRD certificate (this would not be an issue in the case of a legislative exemption). However, industry did not see this	

Agenda item	Summary	Actions:
	as a significant issue, particularly as companies being liquidated will often assign their data to a successor company or another party. One issue requiring further consideration will be what restrictions attach to data in the certificate once it has been disclosed by HMRC. It is possible that any legislative exemption could be accompanied by a criminal sanction if the information is used for a purpose beyond the one specified. However, industry questioned whether this would be proportionate given the nature of the information being disclosed, which is not seen as commercially sensitive. It was discussed that an alternative approach might be a confidentiality requirement within the DRD or DSA. <u>Changes to PRT certification</u> It was noted that, although the PRT certification will be produced by HMRC, it will be used to determine a payment by the Government counter-party to the DRD. This means that the certificate cannot be binding on HMRC as such - the point at issue is whether the certificate can be relied upon by companies for the purposes of calculating the reference amount. It was agreed that HMRC should not be able to amend a certificate without notifying industry and reissuing a new certificate (i.e. a certificate will never be withdrawn unless it is replaced by a new one). In the unlikely event that HMRC becomes aware of an error in a certificate as a result of inaccuracy on Government's part, it will immediately reissue a new one. The reference amount will be calculated based on the information in the most recent certificate issued by HMRC. However, the final reference amount <u>will be adjusted for any changes made by industry to the tax history after that certificate was issued</u> (e.g. as a result of the subsequent use of UFLs or other costs). There is a potential risk that a company could find itself "under-securitised" as a result of changes to the tax history/certificate after security has been calculated and posted. However, the group discussed that in practice this risk is likely to be low in the majority of fields and could be mitigated in a number of ways: • A guarantee that, until a new certificate is issued, a certificate will be binding regardless of any Government error (though <u>not</u> in respect of subsequent changes as a result of action by companies); • A DSA requirement to inform other parties of intended/actual in-year changes to tax history and if necessary amend security accordingly; • The ability of accounting officers to recognise if the tax history calculated in a certificate is significantly different to the level of relief they expect; • Alignment between the certification and tax timetables so that new certificates are issued shortly after a tax return is filed; • It was discussed that it may be appropriate for the certificate to highlight where a tranche of profits is still subject to enquiry/revision. It was also noted that any such risk would only apply to a small subset of companies that may be uncertain about the level of PRT	

Agenda item	Summary	Actions:
	relief that they will be able to achieve (whereas many companies will know that they have a lot of PRT history or no PRT history). Finally, HMT and HMRC highlighted the importance of the process being manageable within HMRC resource constraints, and noted that this might need to be a consideration in the timing of the certification process. <u>Summary</u> HMT noted that good progress had been made on the PRT reference amount and that there would be further opportunity to address any remaining process issues following publication of the draft DRD and Finance Bill clauses.	
RFCT/SC Reference Amount in a non-default scenario	HMT noted that Ministers are likely to wish to consider a number of different options on the RFCT/SC non-default reference amount. Officials confirmed that advice on this issue would reflect industry's broader objections to the cap on decommissioning relief. Of the two options proposed to address the risk that a future Government could adjust the balance between SC and RFCT without changing the marginal rate of tax, industry felt that an approach which constrains RFCT risked sending the wrong signal. However, it was noted that neither option was likely to be fatal to the overall success of the DRD.	
Anti-avoidance	<u>Definition of default</u> The group noted that the definition of default (or "imposition") needed to cover two situations: • The failure of another party to carry out its (contractual or statutory) obligations to decommission • A case where a forfeiture has resulted in a party acquiring an obligation to decommission that it would not otherwise have had <u>and</u> where the remaining decommissioning liabilities exceed the remaining revenues from the asset Two issues had been raised in the course of previous discussions: the need to prevent any "artificial default" situation being engineered to achieve preferential treatment under the DRD <u>and</u> forfeiture situations where phased decommissioning might mean that it was not clear what revenues/value was left in the field. **Artificial default:** Government had previously expressed a concern that "colluding with the defaulting party" was too narrow a definition – industry felt that any broad definition risked capturing activity which might have a legitimate commercial purpose. Industry emphasised that it was difficult to envisage a situation other than collusion in which a company could engineer a default, and that there were a number of commercial reasons why companies would not want to incur default expenditure unless they had to. HMT/HMRC agreed to give this further thought, acknowledging that it was likely to be most fruitful to focus on the particular areas/types of activity that would give Government cause for concern. **Phased decommissioning in a forfeiture situation:** One solution might be to base any DRD claim on an assessment of future decommissioning costs against future expected revenues, with an appropriate claw-back mechanism in cases where the DRD payment was subsequently found to be too large. It was noted that a similar approach is currently taken in respect of UFLs.	

Agenda item	Summary	Actions:
	<u>Anti-avoidance</u> HMT/HMRC explained that they wished to avoid a situation whereby a company could make a claim under the DRD because it had not achieved relief under the tax code due to avoidance activity. However, Government also recognises that for the DRD to be effective, industry will need certainty over what relief/shortfall payment can be achieved in a given situation. One approach considered by Government was that, in a non-default situation, the DRD would not pay out where legislation had been introduced to prevent relief being achieved under a scheme notified under DOTAS. However, it was noted that DOTAS was not comprehensive (i.e. it is not understood to cover PRT) and may not target activity appropriately. Industry noted that it understands Government's objective and that it may be easier to frame appropriate anti-avoidance provisions once there is more clarity about the operation of the GAAR following the publication of the relevant draft Finance Bill clauses in December. HMRC highlighted that it might be appropriate for the approach previously considered where parents are meeting the costs of their subsidiaries (i.e. that this would always be treated as a 'non-default' situation) to be extended to any connected parties. However, industry felt that there would need to be some element of common control involved, and that this might in fact be a subset of the collusion risk that had already been addressed. <u>Connected parties</u> HMT/HMRC explained that it was still felt that a pure Transfer Pricing approach exposes the Exchequer to too great a risk in this scenario, and that Government would wish to be particularly cautious given the difficulty of amending the DRD once it is finalised. However, it was noted that the Government did not want to get in the way of legitimate commercial activity and is seeking industry's input in identifying the specific areas/types of commercial activity between connected parties that any solution should seek to cater for. One approach that Government had looked at was a "cost plus" approach, which would enable connected parties to charge a reasonable mark-up on their own costs but would not leave scope for the wholesale transfer of risk. Industry felt that such an approach might in itself lead companies to take decisions for tax rather than commercial reasons, and noted that the tax code is based on TP principles and that the DRD solution should reflect that. Some companies noted that a "cost plus" price might still be lower than the arms length profit associated with that activity. One alternative discussed was the idea of an "arms length with cap" type restriction, though it was noted that industry would probably want any such cap to be fairly loose.	Industry to consider providing HMRC with examples of legitimate commercial activity between connected parties that should be factored into Government's approach on artificial inflation of costs.

Agenda item	Summary	Actions:
Technical issues	<u>Decommissioning expenditure</u> HMRC noted that a response had been sent to UKOITC on various aspects of decommissioning expenditure. HMRC confirmed its view on some aspects of decommissioning relief (e.g. decommissioning studies) and noted that some additional technical changes may be required to the tax code (e.g. in respect of the MEA code and s.330B on the PRT aspects of the decommissioning relief restriction). HMT noted that Ministers will wish to consider whether to extend decommissioning relief to onshore – industry clarified that this issue related primarily to onshore terminals for offshore platforms, rather than onshore oil and gas production. It was noted that it would be helpful for Ministers to understand the effect this is likely to have on companies' securitisation requirements. It was emphasised that industry should flag whether there are any other areas where they are aware of decommissioning activity that does not currently achieve relief, as it will be much harder to make changes after Finance Bill 2013. It is anticipated that the definition of decommissioning expenditure used in the DRD will simply cross-reference the definition in Finance Act 2013. It was noted that once issues around the definition of decommissioning expenditure are resolved, it would be helpful for the latest understanding to be clarified/recording in guidelines to ensure consistency. <u>UFLs</u> Industry clarified that they had understood that a company would still be permitted to use a UFL before going to the DRD in cases where Schedule 17 was not relevant. HMT noted this, observing that consideration would need to be given to the potential for a "daisy chain" effect on other fields.	Industry to flag any other areas where companies are aware of decommissioning activity that does not currently achieve relief
Summary	HMT thanked all working group participants for their constructive engagement throughout the consultation process and noted that significant progress had been made.	

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ISBN 978-1-909096-36-3