

## **Oil and Gas Industry Direct Tax Forum**

### **Minutes of meeting held on 19 June 2018**

#### **London:**

Marie Baird (HMRC – Sector Lead), Ray Daly (HMRC), Hugh Dorey (HMRC), Mike Earp (OGA), Phil Greatrex (CW Energy), Craig Hill (ExxonMobil), Anne Hurdman (HMRC), Donald MacAskill (HMT), James Marshall (HMRC), Romina Mele-Cornish (OGUK), Neil Strathdee (EY), Thomas Thornton-Kemsley (HMT), Tanzana Uddin (HMRC), Andrew Willis (HMT)

#### **Aberdeen:**

Simon Kelsey (CNR – UKOITC Chair), Charley Allen (Apache), Paul Bostock (Enquest) Bob Cardno (EY), Gordon Cormack (Shell), Padrig Davies (HMRC), Zahid Ismail (HMRC), Professor Alex Kemp (University of Aberdeen), Martin Kirkham (Chevron), Mairi Massey (PWC), Thomas McKnight (Repsol- Sinopec), Linda Ritchie (Total), Heather Stuart (Taqa), Philip Wood (CNR)

### **1. Introduction and minutes of last meeting**

- MB and SK welcomed the group.
- The minutes for the previous meeting in March were agreed & will be published shortly.

### **2. Policy update**

- HMT addressed industry's letter on s84 Finance Act 2013 from 16 November 2017. HMT's position has not changed and they consider the current enabling legislation for the DRD is adequate. HMT are happy to discuss this in more detail with individual companies but feel the discussion with UKOITC has run its course and do not intend to formally reply to the UKOITC letter.
- HMT gave an update on Transferable Tax History (TTH) and the PRT retention of decommissioning liability.
- Draft legislation is to be shared informally on both topics on 20 June 2018. Alongside the draft legislation, draft guidance will be published where this is necessary to understand how the legislation will operate. HMT requested that the legislation and guidance is kept confidential at this stage – it will be shared to UKOITC, OGUK, BRINDEX and OTAC who can pass on to relevant working groups but no further without speaking to HMT.
- The drafts will be formally published, alongside Explanatory Notes, on 6 July.
- The TTH legislation is not quite as long as previously expected, due to some aspects of the operation of the policy being included in guidance.
- After formal publication, there will be a number of consultations with industry, first at a high-level in an event aimed at non-tax specialists and then in more detail on each aspect in tax technical sessions.
- Not all the guidance is being published at the same time, as some of it is not necessary to understand how the TTH mechanism will function. The further guidance will be published in due course.
- The draft SI for Tariff Income will also be published in the next few weeks.

### **3. Decommissioning**

- MB began the discussion by stating there had been a productive conversation at the last Forum, and JM had followed up with a letter on some of the issues discussed. HMRC asked

whether there was still more to be discussed at a high-level or whether work should move to being on a case-by-case basis.

- BC considered the letter settled a few areas, and left a few for further discussion.
- It was agreed there was not to be a detailed technical discussion now, but it may be useful to form sub-groups at a later date, with a summary of agreements drawn up at the end.
- BC questions whether the process for getting approval from OPRED created an unnecessary burden on businesses.
- JM stated that it was expected that these conversations with OPRED were already being undertaken well in advance of decommissioning. This was not an additional step, but it formalised the process so that companies could more easily evidence that they met the requirements. HMRC are not decommissioning experts, so the approval process provides some protection that expenditure claimed is in line with the spirit of the legislation. It isn't intended that any process should be too substantial or burdensome a process. Where there are no agreements or conversations with the regulatory bodies, it is hard to see how the legislative tests can be met, but HMRC are happy to receive suggestions for better readings of the legislation which would suggest a different view.
- MB clarified that these processes ensure a consistent approach is taken by case teams in assessing claims.
- AH gave some background that the requirements for approval had partially arisen out of concerns over timing of expenditure being claimed, far in advance of work being approved or carried out.
- Industry were concerned that this could be prescriptive and create a "cliff-edge" where expenditure incurred on substantially the same thing, for substantially the same purpose, might be allowable for one company and not allowable for another (or at one time), depending on whether agreement had been received. Industry wondered whether some kind of transition would be needed if a new process was being introduced.
- JM understood that typically conversations have been ongoing, so usually there should not be a problem – the process is not new, merely providing some formalisation on what already happens. There is a legislative test to be met, so it may be that even though expenditure meets the test in one company, similar expenditure in different circumstances (i.e. without approval or agreement) does not meet the test. This is no different than elsewhere in the legislation where there are multiple tests to be met.
- MB confirmed the aim is to facilitate relief by making it easier for HMRC to check the conditions in the legislation apply and agree expenditure can be allowed. It is not a narrowing of availability of relief.
- AW suggested that more detail on the suggested processes could be obtained from OGA and OPRED and then applied to case studies.
- Industry pointed out that the legislation only requires expenditure to be incurred in "substantially" complying with the relevant approval, condition or agreement. This was thought to allow for some unapproved expenditure to meet the conditions.
- JM considered that "wholly or substantially" was included in the legislation to allow for circumstances where expenditure was incurred on slight variations to an approved abandonment programme, rather than providing a route for expenditure wholly outside any agreement to be allowed.
- Industry asked whether HMRC could consider whether expenditure would have been approved, rather than whether it had been. HMRC considered that this is not what is in the legislation.
- Industry wondered whether these conversations were linked to enquiries coming out, where previously claims not been questioned. AH clarified that HMRC takes a resource-to-risk approach, and while previously decommissioning amounts had been smaller and focussed

on well plugging and abandonment (P&A), now claims were larger and no longer focussed on P&A, so more likely to be enquired into.

- Industry wondered why there was need for the “approval” conditions, as opposed to the normal self-assessment with HMRC right to enquire. Industry asked whether there were other areas in the tax legislative with explicit references to regulators.
- JM suggested there were various references to regulators elsewhere, for example in the financial sector. HMRC did not consider this to be a departure from the self-assessment approach – it was simply a further test for relief to be granted, similar to other legislative tests. It was for companies to self-assess whether they met this test, as with any other.
- Industry were pleased that JM’s paper considers that the relief is intended to be broad and generous, but are concerned about the narrowness of approval requirements. An example of rig-reactivation was given – it wasn’t clear how this would fit in with the approval requirements.
- JM states that while the legislation is broad, it is not unlimitedly so. It could have been written without the conditions s163(3A), but it was not, so those conditions have to be applied.
- Some in industry thought JM’s paper focussed too heavily on the s163(3A)(a) condition of “approved abandonment programme”, rather than subsections (b) and (c) which consider agreements with and conditions imposed by the Secretary of State. It was suggested that as the acting in accordance with a licence was sufficient to meet the criterion that the decommissioning expenditure be incurred in complying with a condition imposed by the Secretary of State.
- JM confirmed that HMRC’s view is that “condition imposed” cannot simply refer to the conditions of the licence, as then it would not be clear why the conditions in s163(3A) need to be there at all, or even why Part 4 of the Petroleum Act is required. This is based on what HMRC consider to be the best reading of the legislation. HMRC will not necessarily be able to agree to a wider reading, but may be able to consider a better reading if industry can suggest one. HMRC highlighted though that this was not about changing the legislation, but interpreting it and applying it as written.
- Industry suggested that the (3A) conditions could still make sense even where they were met simply by complying with the license. It could be that (3A) is only intended to restrict relief where a company incurs expenditure which does not comply with the conditions contained in the license.
- MB suggested this was something which could be taken away to think about more. SK agreed to provide a few bullet points on the topics warranting further consideration by HMRC and send these to JM.
- Industry noted that it was hard to comment without knowing how any process to obtain agreements from OPRED would function in practice.
- MB acknowledged this uncertainty. It would never be possible for HMRC to provide a full checklist of what was required given it is always going to be dependent on the facts and circumstances. However, the aim was to narrow the areas of uncertainty.
- Industry considered it would mostly be about how to categorise expenditure for relief, and there would normally be other avenues for relief such as elsewhere in the Capital Allowances Act or even as operating expenditure. HMRC agreed this and did not think “tax nothings” would be common but asked for any potential examples to be provided.
- BC asked when more information would be available from OPRED – JM hoped sometime in the summer. BC also asked when more clarity would be available from the HMRC specialists on the repairs and maintenance vs capital point. JM is due to meet with specialists on 21 June.

#### 4. Oil Taxation Manual

- PD explained that HMRC were beginning a project to refresh the Oil Taxation Manual (OTM). This was to ensure it was up-to-date, correct and clear, and covered the areas it should. As part of this process, HMRC would welcome comments from industry where any areas needing updated are identified.
- PD clarified that this would not include areas where HMRC takes a different interpretation to industry, as there are more appropriate forums for raising such disagreements (including the Direct Tax Forum). However, if industry did identify areas which were out of date (for example, legislation which no longer applies, or even simply references to addresses and contacts), incorrect, or particularly unclear, PD requested that this was sent to him at [padrig.davies@hmrc.gsi.gov.uk](mailto:padrig.davies@hmrc.gsi.gov.uk), so they could be factored into the update project.
- Also of interest was anywhere where the OTM did not cover a topic which industry felt would be helpful. For new changes to legislation (e.g. Tariffs), these may be in the process of being written, but it is still helpful for areas to be identified. The Investment Allowance guidance is in progress, and the Field Allowance pages have been updated with a note on the periods this applies.
- PD confirmed that this project covered the entire manual, not just upstream sections. So comments on contractors' guidance including non-residents working on the continental shelf and the contractors' ring fence were also welcome.
- Industry asked whether some kind of "tracked changes" could be highlighted to show where areas have changed. PD stated that where there were substantial changes these could be discussed at the DTFs, but most changes were expected to be minor. For minor changes it may be possible to provide a summary of changes in the last quarter as an update at each DTF. PD would take this away and consider the best approach to sharing changes. It would not be workable to have tracked changes in the actual published manual.

#### 5. PRT computer system

- RD was looking for volunteers to test the new system before it goes live.
- MB stated she had been involved in similar testing in a different role, and it was a helpful way to ensure the system was fit for purpose, not just what HMRC imagine would be fit for purpose. Testing ideally would be done at the business with the operators who will actually be inputting data.
- RD could not give commitments on timings, but hoped that testing would take place at the end of this year, and the system would go live at the end of next year.
- Volunteers were asked to contact RD directly at [ray.daly@hmrc.gsi.gov.uk](mailto:ray.daly@hmrc.gsi.gov.uk).

#### 6. Other technical Issues

- MB asked whether there were any other technical issues to be discussed. There were none.

## 7. AOB

### 7.1 Customs Information Paper 33 – End Use

- MB raised the Customs End Use concerns, as although it is not a direct tax issue it has a large substantial impact on the industry. Movement has been made towards resolution and some concessions have been made. MB had a productive meeting with UKOITC Indirect on this topic.

### 7.2 EU Exit

- MB also asked for any input and concerns around the EU Exit. HMRC is looking to obtain the views of customers to ensure all areas are considered. This does not only apply to customs, it may have wider impacts.
- Industry commented that it was difficult to know the issues until they happened, and MB acknowledged this but asked that the more shared the better.

### 7.3 s673 guidance

- JM thanked industry for the comments on the draft s673 guidance, and this was in the process of being reviewed. Revised guidance will be shared shortly.

### 7.4 Personnel changes

- AW noted that James Robertson, the Deputy Director in the Energy & Transport Taxes team in HMT, is to move on and his replacement Ann-Therese Farmer will start in mid-July.
- AW himself is also to move on after next week, with the replacement in the process of being recruited. In the meantime Thomas Thornton-Kemsley and Donald MacAskill are the HMT contacts.
- RD noted that the new Edinburgh PRT team are beginning to be involved in work – it will be one team across the two locations.

## 8. Close

- MB and SK thanked all for attending, and agreed it was another constructive forum for discussion.
- Draft minutes will be shared following the meeting.