

## Oil and Gas Industry Direct Tax Forum: Quarterly meeting Wednesday 25 May 2011

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### Industry

Tim Murrills (TM)	UKOITC (Chair)/ExxonMobil
Michael Quinton (MQ)	UKOITC (Secretary)/ExxonMobil
Andy Bishop (AB)	BG Group
Sally Carroll (SC)	Petrofac
Jac D'Silva (JD)	Chevron
Gordon Dennis (GD)	ConocoPhillips
Derek Elcock (DE)	EK Consulting
Phil Greatrex (PG)	CW Energy (Brindex)
Peter Gunn (PtG)	OGIA
Mike Manderson (MM)	Talisman
Catriona Manzi (CtrM)	Premier Oil (via conference call)
Campbell Murdoch (CM)	Total
Graham Metcalf (GM)	Shell
Stewart Norman (StN)	CW Energy (OTAC)
Carolyn Sarrau (CS)	Fairfield
Neil Strathdee (NS)	E&Y
Chris Waterton (CW)	Centrica
Roman Webber (RW)	Deloitte

### HMG

Jo Wakeman (JW)	HMRC: LBS Oil & Gas
Imran Shafi (IS)	HM Treasury
Susan New (SN)	HMRC: LBS Oil & Gas
Trevor Small (TS)	HMRC: LBS Oil & Gas
Diane Williams (DW)	HMRC: LBS Oil & Gas
Tony Chanter (TC)	HMRC: LBS Oil & Gas
Hugh Hedges (HH)	HMRC: LBS Oil & Gas
Paul Philip (PP)	HMRC: LBS Oil & Gas

### Apologies

Russell Malloch (RM)	HMRC: LBS Oil & Gas
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### Agenda items

#### 1. Minutes of last meeting, matters arising and action points (JW)

The minutes of the meeting held on 2 February 2011 were agreed and action points reviewed.

**AP1 (FA 2009):** UKOITC to contact PP to set up a meeting to discuss outstanding Field Allowance issues.

**Status:** Subsequent to the meeting it was agreed that this work will now be incorporated in the broader consideration of potential new field allowances following the budget.

**AP 2 (AOB - Change to lease accounting rules):** HMRC to follow up.

**Status:** Ongoing. The issue is whether HMRC will follow the proposed changes to the lease accounting rules. HMRC intends that the interim measure introduced for leasing accounting changes on or after 1 January 2011 will stay in place at least until the relevant accounting uncertainties have been resolved.

**Action point 2 (Change to lease accounting rules):** HMRC will provide updates when they are available and the item will be included in the agenda for the next meeting.

**AP 3 (DSAs and CoU):** PP agreed to take forward the further work that was needed to progress the Decommissioning Security Agreements (DSAs) and Change of Use (CoU) issues.

**Status:** Ongoing.

**Action Point 3 (DSAs and CoU):** PP will provide updates on the progress made by HMRC regarding these issues.

**AP 4 (EU ETS):** RW will write to HH confirming and providing more details.

**Status:** Completed: TM wrote to HH on 7 February.

**AP 5 (Decommissioning and retention of papers):** To ensure this item remains on the agenda for future meetings.

**Status:** Completed.

**AP 6 (iXBRL):** JW will send a link to the guidance on which taxonomy and taxonomy version to use.

**Status:** Completed.

**AP 7 (iXBRL):** It was agreed to maintain this issue as an agenda item.

**Status:** Ongoing. See agenda item 3.iv.

**Action Point 4 (iXBRL):** Agenda item for future meetings.

**AP 8 (2010 Conference feedback):** JW agreed to arrange for a summary of feedback from the conference to be sent to UKOITC.

**Status:** Completed.

**AP 9 (CIS):** Graham Metcalf to write providing details of industry concerns.

**Status:** Completed.

## 2. Oil and Gas: Tax Policy

### i. Budget 2011 (IS)

Before looking at the work being taken forward as a result of some of the announcements made at Budget TM wanted to make a number of points about the impact the Budget announcements have had on industry.

He explained that UKOITC is extremely concerned about the increase in the rate of the Supplementary Charge (SC) and the restriction of SC tax relief on

decommissioning expenditure to 20 per cent. Their view is that these measures are counter-productive, anti-competitive and unsustainable. The measures came as a complete surprise and followed a sustained period where Government had worked with and consulted with industry on proposed changes to the UK's oil and gas fiscal regime. It is UKOITC's view that the measures will have an adverse impact on investment in the UKCS and that industry will now have to factor in increased fiscal risk when considering future investment.

IS responded that Ministers and the Chancellor were very aware of the points that had been made. They were also well aware before the Budget that the measures would not be welcomed and that they would be difficult for industry. That was why Government was keen to ensure that the work on decommissioning tax certainty was underway before the Budget, to emphasise Government's commitment to working with industry as collaboratively as possible, once the Budget was out of the way.

### **Trigger price (IS)**

IS said there had been a number of discussions with companies about how the trigger mechanism would work and some had expressed concerns. The Chancellor said at the Budget that if the oil price falls below a set trigger price on a sustained basis, the Government will reduce the Supplementary Charge back towards 20 per cent on a staged and affordable basis while prices remain low.

IS explained that a letter would shortly be sent to industry seeking views on the final level at which the trigger would operate and the appropriate mechanism. IS made it clear that the link with fuel duty would need to be maintained and that Government will hold separate discussions with the oil industry and motoring associations.

TM responded by making the point that the consultation process had not yet formally started and that industry hoped that it would not be run on an ad hoc basis, which only involved discussions with individual companies. IS was happy to acknowledge the point and confirm that the process would not be on that basis.

UKOITC raised the question of when legislation for the trigger price mechanism would be issued. IS explained that it was not considered that legislation would be necessary and that a strong ministerial commitment would be sufficient.

TM referred to the separate discussions that were proposed and asked how happy motoring organisations would be about an increase in duty if the price of oil fell below the trigger price? They also wondered, in reality, how likely it would be that fuel duty on motorists would be increased so that the SC on oil and gas companies could be reduced.

Industry also felt that any claims that the Government was spreading the pain could not be right because the rest of the corporate sector was set to benefit from a reduction, not an increase, in the rate of corporate tax.

IS emphasised what the Chancellor had said and the wording that had been used in the Budget documentation. There was a clear statement that where the oil price falls below a set trigger price on a sustained basis, the Government will reduce the Supplementary Charge back towards 20 per cent on a staged and affordable basis while prices remain low – and that fuel duty will increase by RPI plus 1 penny per litre in each such year.

#### **New Field Allowances (IS)**

In his Budget statement the Chancellor had said that the importance of continued investment in the North Sea was recognised and that the Government would consider with industry the case for introducing a new category of field that would qualify for field allowance.

IS emphasised the need for compelling evidence from industry and highlighted the different modelling that was needed between taxpaying and non-taxpaying companies. He was concerned that in some of the modelling that had been seen the impact of Ring Fence Expenditure Supplement (RFES) had not been factored in. This was an important aspect, which could make a significant contribution to closing the gap in marginally commercial projects.

Industry noted the points made and was keen to move this work forward. They had meetings planned for the following week with five working groups looking at different types of field and field issues.

#### **Capital allowances deferral – First year allowances (IS)**

IS acknowledged that the option to defer capital allowances and to still obtain first year allowances (FYAs) at the last increase in the rate of Supplementary Charge in 2006 had not been made available in relation to the latest increase in the rate of the SC. He explained that, because the tax rate could fall in the future as part of the fair fuel stabiliser, the current situation was not analogous to the last tax increase.

TM queried whether this was a decision based on cost and made the point that, as a consequence of the decision not to allow deferral, there was a mismatch in tax rates. Expenditure on assets would be allowable at a lower rate compared to the income generated from those assets that would be taxed at a higher rate. Companies made decisions in the expectation of continuing stability so it was equitable to allow deferral.

On the point of stability, UKOITC requested a commitment from government not to increase taxes further during the lifetime of this Parliament.

IS agreed to take away the points that had been made for further consideration.

**Action point 5 (Capital allowances deferral and FYAs):** IS to consider the points made and provide a response at the next meeting.

ii. **Finance Bill 2011 (HH)**

The SC increase had been debated in the House of Commons in early May.

At the same time, a Government amendment was introduced in respect of the calculation of the apportionment of profits pre- and post-24 March. This amendment had been introduced following welcome input from industry, and was evidence that Government was listening.

The other oil measures scheduled for Public Bill Committee hearing in June were:

- Three pre-announced measures. Field allowances for previously decommissioned fields; tidying up PRT legislation for areas treated as continuing to be oil fields and chargeable gains changes to licence swaps and reinvestment relief.
- Intangible Fixed Assets (IFA) and oil licences. This measure had not been pre-announced and was introduced to put beyond doubt the Government's view that oil licences should remain outside the IFA regime. Government had acted because claims were being made by companies under the IFA regime for goodwill amortisation where the goodwill is connected with an oil licence. The potential Exchequer cost was considerable and swift action was needed.

iii. **Decommissioning Tax Relief (IS)**

This piece of work was initiated before the Budget and Ministers are keen to ensure it maintains its impetus. The Budget documentation had said that the Government was committed to working with industry with the aim of announcing further, longer term, certainty on decommissioning tax relief at Budget 2012.

Industry has been working very intensively on how certainty could be achieved and the meeting on 6 May was considered to have been very useful. IS acknowledged the need for Government to work closely with industry and recognised that a number of issues had been identified that would need to be addressed. He also recognised that no 'magic bullet' solution had emerged and there would need to be innovative and creative thinking to resolve the issue.

HH provided assurance that when draft legislation was issued restricting the SC rate on decommissioning expenditure to 20 per cent, the decommissioning relief on PRT fields would be at an effective rate of 75 per cent as opposed to an effective rate of 69 per cent.

#### iv. **Work prioritisation/resources (HH)**

This item was on the agenda because there are several ongoing pieces of work:

- gas project (discussion document issued, and separate agenda item)
- farm-ins
- EUETS
- work flowing from Budget
  - New category of qualifying field for field allowances
  - Decommissioning tax relief certainty
  - Trigger price
- decommissioning tax relief – application of existing statute
- field allowance: some technical points from FA09 legislation
- change of use tax issues

There was a great deal of work for all sides and LBS wanted to ensure there was, if possible, a shared view of priorities. Some of the issues were of particular importance to Government – ie work flowing from Budget and some other issues were also of particular importance to industry; such as farm ins.

LBS wanted to keep all of the work moving forward but given limited resources wanted to review how best to achieve this.

UKOITC explained it was happy to help where it could on the question of resources and would progress work as far as possible until they heard from HMRC that there was a problem. JW responded that potentially the question of resources was more of an issue for LBS than industry. She would consider the question of whether LBS needed to deploy additional resources in this area as work progressed.

It was also confirmed that the forum would be happy to invite Mike Earp from DECC to future meetings.

### 3. **Oil and gas: Operational issues**

#### i. **HMRC business planning and Organisational Design – update (JW)**

There were no substantive updates and the item will be carried forward to the next meeting.

#### ii. **Decommissioning – retention of papers and administration issues (HH)**

LBS reported that it had previously sent a paper to industry to facilitate joint industry/HMRC working and UKOITC had thought it would need to discuss this at its next meeting.

LBS believes that it may be for industry to come back to HMRC when industry has had an opportunity to think about the issues.

LBS wondered whether the view may be that the issue needed to be parked in the meantime given other more pressing concerns, but it was recognised it was an issue not to lose sight of.

**Action point 6 (Decommissioning – retention of papers and administration issues):** Agenda item for next meeting.

iii. **Local Compliance Issues (RM)**

There were no updates to report.

iv. **Online Filing and iXBRL (JW)**

It was felt another working group session sometime in the autumn, after groups had further time to make progress with implementing their systems' changes, would be useful.

It was agreed to keep this item on the agenda for future meetings and JW would discuss iXBRL progress internally. A couple of particular problems were mentioned:

- Tagging of items, and
- process for handling customer problems. DW advised that, should companies encounter difficulties in getting answers from the helpdesk, they contact their CRM who would be able to get further help from the HMRC online filing team. UKOITC commented that they had had problems getting through on the telephone to the online helpdesk.

**Action point 7 (Online filing and iXBRL) –** Agenda item for future meetings.

#### 4. **Oil and Gas: Technical Issues**

i. **Gas Project (TC)**

The discussion document was published on 10 May, and on 17 May a letter of invitation was sent to representative bodies, as well as some companies and advisers, to the opening meeting on 6 June to discuss and agree the process for the consultation.

It was agreed that a proposed agenda for the meeting would be circulated in advance.

It was also recognised that there were concerns about anti-trust issues and it was acknowledged that it would be important to ensure that the meeting did not stray into the wrong areas.

ii. **Farm-ins (HH)**

LBS had previously agreed that HH would put a note to industry setting out HMRC thoughts as a basis for taking forward with industry.

HH apologised for the delay, which had been caused by work for the Budget. He had however recently sent a note out to UKOITC and Brindex with a view to taking the work forward.

Nevertheless, UKOITC asked for clarity as to HMRC's current position and LBS agreed to give the matter further thought and to contact industry again.

When discussions between the representative bodies and HMRC had taken place HMRC would be in position to decide whether any action was needed on the policy front.

**Action point 8 (Farm-ins):** LBS to contact UKOITC with a view to providing further clarity around HMRC's position on this issue.

**Action point 9 (Farm-ins):** Agenda item for future meetings.

iii. **Schedule 15/S771 (SN)**

SN reported that the group looking at returns under Schedule 15 and section 771 was endeavouring to ensure that the returns captured necessary relevant information without imposing an unnecessary burden on industry.

SN said that HMRC felt that some sort of return would be needed and that there was agreement that there was no desire to go down the route of a withholding tax, even if that were a possibility. She outlined the characteristics of a three-part return and the thinking about the frequency of its issue and time limits for the making of the return. In broad terms HMRC would like to move to an annual rather than a quarterly return, target better to current field operators rather than historical licensees and concentrate on Part 1 (contractors information) if a satisfactory alternative could be found to Parts 2 and 3. The joint working group with industry were exploring whether it would be possible to tie in with another information-gathering activity, Vantage.

SN went on to say the group proposed to outline its proposals in a written note to interested parties for comment. This would ensure that the group had taken everything of significance into account, and that the proposals being considered were feasible and that there was not, in fact, a better way to ensure the relevant information was reported to HMRC.

**Action point 10 (Schedule 15/S771):** HMRC to review whether it is possible to increase the time period for filing returns from 45 days at 90 days.

#### iv. **EU ETS** (HH)

Industry had written to HMRC to obtain confirmation that:

- treatment agreed for phases I and II would also apply to phase III
- HMRC's view of tax position re some other items
- position re CRC Energy Efficiency Scheme allowances

HH reported that he had sent a reply the previous week, confirming some points, asking questions on others and suggesting discussion regarding PRT. HH acknowledged that issues might arise because allowances apply to installations and tax applies to fields/companies.

LBS agreed it was happy to take forward discussions on these issues.

**Action point 11 (EU ETS):** UKOITC to respond to HH letter with a view to arrangements being made to take forward discussions as necessary.

#### 5. **2011 Conference Arrangements** (JW)

JW confirmed that LBS was in a position to host a conference, with timing expected to be in November to coincide with the UKOITC AGM/Dinner. Penny Bradshaw would be leading the work on organising the conference from the LBS side.

TM confirmed UKOITC's interest and said he would be seeking volunteers to help with arrangements from their side. UKOITC would also update LBS with the date of their AGM/Dinner as soon as possible.

**Action point 12 (2011 Conference arrangements):** UKOITC to provide contact details of their volunteers to Penny Bradshaw to assist preparation for the conference and also the date of the UKOITC AGM as reference point.

#### 6. **Any other business**

##### i. **Air Passenger Duty** (IS)

UKOITC had raised this issue because it could potentially lead to a significant charge per passenger on every offshore flight to oil platforms.

IS confirmed that this issue had fallen out of the consultation already underway regarding the reform of Air Passenger Duty (APD), and the Governments proposals to extend APD to passengers aboard 'business jets'. There was an issue about the definition of 'business jet' and whether this might include helicopters ferrying personnel to and from oil platforms. OGUK have already submitted their views to the consultation and UKOITC will be submitting theirs shortly.

IS understood industry's concerns and said Ministers will be made well aware of industry's concerns on this issue and the impact it may have on the oil and gas industry.

**Action point 13 (APD):** UKOITC to submit a written representation on APD and HMT to provide an update as necessary at the next meeting.

- ii. **Chargeable gains and the scope of the Supplementary Charge (PP)**  
TM raised this as an AOB item and LBS confirmed that the work it had underway would be taken forward in line with the Government's new approach to tax policy making.
- iii. **Next meeting**  
Next meeting subsequently agreed for Wednesday 21 September.

## 7. Summary of action points

- **AP1 (FA 2009):** UKOITC to contact PP to set up a meeting to discuss outstanding Field Allowance issues.  
**Status:** Subsequent to the meeting it was agreed that this work will now be incorporated in the broader consideration of potential new field allowances following the budget.
  - **Action point 2 (Change to lease accounting rules):** HMRC will provide updates when they are available and the item will be included in the agenda for the next meeting.
  - **Action point 3 (DSAs and CoU):** PP will provide updates on the progress made with the HMRC action points associated with this issue.
  - **Action point 4 (iXBRL):** Agenda item for future meetings.
  - **Action point 5 (Capital allowances deferral and FYAs):** IS to consider the points made and provide a response at the next meeting.
  - **Action point 6 (Decommissioning – retention of papers and administration issues):** Agenda item for next meeting.
  - **Action point 7 (Online filing and iXBRL) –** Agenda item for future meetings.
  - **Action point 8 (Farm-ins):** LBS to contact UKOITC with a view to providing further clarity around HMRC's position on this issue.
  - **Action point 9 (Farm-ins):** Agenda item for future meetings.
  - **Action point 10 (Schedule 15/S77I):** HMRC to review whether it is possible to increase the time period for filing returns from 45 days at 90 days
  - **Action point 11 (EU ETS):** UKOITC to respond to HH letter with a view to arrangements being made to take forward discussions as necessary.
  - **Action point 12 (2011 Conference arrangements):** UKOITC to provide contact details of their volunteers to Penny Bradshaw to assist preparation for the conference.
  - **Action point 13 (APD):** UKOITC to submit a written representation on APD and HMT to provide an update as necessary at the next meeting.
-