

Summary of Responses and findings: Energy Products Directive - expiry of the derogation for private pleasure boating

Background

The UK derogation to the Energy Products Directive (EPD) which allowed the UK to apply a reduced rate of excise duty on fuel used in private pleasure boating lapsed on 31 December 2006.

The Chancellor of the Exchequer announced at the Budget 2007 that from the 1 November 2008 fuel used for such purpose would no longer benefit from the reduced rate. The Budget also announced that the Government would consult on the proposed changes and new procedures. The Government is obliged to introduce changes as failure to implement European legislation would leave the UK liable to infraction proceedings by the Commission.

The derogation allowed the use of partially rebated gas oil (red diesel) in private pleasure craft. The expiry of the derogation does not affect commercial craft which will continue to use red diesel. The consultation sought views on a number of options for change:

- continued use of red diesel for private pleasure boating but at the full rate of duty with the supplier collecting the duty on the sales. This would extend the current obligations of Registered Dealers in Controlled Oils (RDCOs)
- continued use of red diesel for private pleasure boating but at the full rate of duty with the user paying the duty direct to HM Revenue & Customs (HMRC)
- switch to unmarked fully paid Ultra Low Sulphur Diesel (ULSD) for private pleasure boating

Views were also sought on the possibility of a certification scheme for house boats which use red diesel for domestic but not propulsion purposes.

Summary of responses

In all 515 responses were received.

The largest number of individual responses was received from private boat owners, although some of the organisations which responded represent large numbers. These organisations also represent a broad spectrum of interests in the marine and inland waterways industry, both commercial and private, including residential boat owners, continuous cruisers, historical boats, marinas, charities and boating publications.

Amongst all categories of respondents there was overwhelming support for the continued use of red diesel. The main reason was that of supply. Typically suppliers of fuel to the boat industry supply red diesel for both commercial and private use so a supply infrastructure already exists. There were concerns at the potential cost if a second supply systems for an alternative fuel was needed, and concerns at availability if suppliers chose only to continue to supply red diesel for commercial purposes. The supply and availability of red diesel is particularly important in remote areas for safety reasons.

Although many respondents recognised the extra burden on suppliers if they were to be liable for charging and accounting for the additional duty, the majority of respondents, including the majority of suppliers themselves recognised that this was the most acceptable solution.

There was very little support for a switch to ULSD. The cost to suppliers of installing a second fuel system was raised as well as the cost and effectiveness of cleaning tanks to remove traces of red diesel and the fact that red diesel could continue to be bought legitimately, for example, in the Channel Islands. Safety and environmental issues were raised if fuel was not readily available and boaters were forced to purchase fuel in containers and transfer to boats in marinas. Respondents also pointed out that ULSD is unsuitable for some older engines.

Many respondents acknowledged that there was no ideal solution but that it was important to minimise inconvenience and not restrict growth for marine trade.

Status	Numbers
Representative bodies, and businesses other than suppliers	30
Suppliers	12
Individuals	473

Issues raised in responses

Suppliers' ability to distinguish between pleasure and commercial sales

There was overwhelming support for continued use of use of red diesel and for the supplier to be liable for charging and collecting the additional duty. However, suppliers (RDCOs) were concerned not only at the additional record keeping that would be required and the obligation to collect and account for the duty, but were also concerned at their ability in practice to distinguish commercial from private pleasure users, and their liability for errors which they might consider outside their control.

Comment

The Government recognises that suppliers do have a legitimate concern about their ability to distinguish commercial from private pleasure users, and their liability for errors which they might consider outside their control. The Government proposes that a solution would be to require boat owners to self certify the status of their vessel, as commercial or private. The presumption would be that supplies would be for private use, and the onus would be on the operator to prove their commercial status if the RDCO was unsure of the use to which the fuel was to be put. RDCOs would therefore exercise their 'duty of care' as at present and retain the self certificate for subsequent verification checks by HMRC assurance staff. Where errors were discovered during assurance audits, provided the duty of care was properly exercised by the RDCO (eg there was no evidence of collusion with the user to misdeclare the vessel as commercial), HMRC would seek recovery of duty and appropriate penalties from the user, not the RDCO.

Allowance for fuel used for heating and lighting

There was an almost unanimous response from all respondents that fuel used for heating and lighting should not be taxed at the full duty rate under the new arrangements, given that there is no requirement to do so under the EPD. Respondents considered that it was not just houseboats that should benefit from such an allowance and drew attention to the fact that there are many residential boaters, who live on their boats but who rarely move moorings. The percentage of fuel used for propulsion as opposed to domestic purposes can vary considerably; one respondent claimed that as much as 60 per cent, another 25 per cent, of residential boaters' fuel might be used for domestic purposes.

Respondents rejected the possibility of separating fuel used for domestic purposes from that used for propulsion by installing a separate tank as too costly and impractical; most boats lack sufficient space.

A number of respondents suggested introduction of a refund scheme whereby users would submit periodic claims to HMRC in order to claim back the additional duty (the difference between the rebated and full duty rate) on fuel used for domestic purposes.

Comment

The Government recognises that there is no requirement under the EPD to tax fuel used for heating and lighting at the full rate and that, fuel used for these purposes could form a significant part of total consumption. It recognises that there is reasonable case for allowing the rebated rate to apply to fuel used in private boats other than for propulsion.

HMRC will work with key stakeholder groups to agree a scheme whereby boat users would also be asked to certify the proportion of fuel which they intended to use other than for propulsion. HMRC will explore with representative organisations the scope for agreeing indicative proportions for different classes of users. The scheme will build on the self certificate system proposed above to enable RDCOs to distinguish commercial from private use, and the allowance will be made at the time the fuel is purchased.

Again, RDCOs would be expected to exercise their duty of care, but HMRC audits would focus any necessary remedial action against the user.

HMRC does not favour introduction of a refund scheme because of the cost both to claimants and HMRC and the fact that all refund schemes are subject to abuse and difficult to enforce. A registration scheme of users could involve registration of 350,000+ boat owners and the cost to HMRC would be in the region of £7 million with administrative burdens for claimants of £8 million.

Rate of duty

A number of respondents suggested that the duty rate on fuel for private pleasure use should be set at the minimum rate required under the EPD.

Comment

Under the terms of the EPD, Member States are permitted to set their own tax rates as long as they respect the minimum rates agreed and laid down in that Directive. However, once a Member State has set its tax rates it cannot introduce different rates for different purposes, except- in a few specified circumstances, such as commercial and non-commercial use of gas oil as a propellant so long as the rate does not fall below the national rate in force on 1 January 2003; and for particular uses, such as local passenger transport, waste collection, armed forces and public administration, disabled people, and ambulances. The EPD does permit a reduced rate for use 'off-road', but this applies only to industrial and commercial purposes. This represents a legal obstacle to charging different rates of duty on fuel for private pleasure boating as opposed to road fuel.