

EXPLANATORY MEMORANDUM TO

THE HYDROCARBON OIL (SUPPLY OF REBATED HEAVY OIL) (PAYMENT OF REBATE) REGULATIONS 2008

2008 No. 2600

1. This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument, which comes into force on 1st November 2008, provides for how payments for the purposes of section 13ZB(2) of the Hydrocarbon Oil Duties Act 1979 (“the Act”) must be made in order to be effective (see section 4 below for the background to section 13ZB (and 13ZA) of the Act).

2.2 It provides the mechanism for paying excise duty on waste heavy oil that has not been reprocessed into new oil but is supplied for heating or for use as fuel for an engine (except where such use would amount to use as fuel for a road vehicle). Suppliers of such waste oil are required to pay the amount specified in section 13ZB(3) of the Act in accordance with these Regulations.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Background

4.1. Sections 13ZA and 13ZB of the Hydrocarbon Oil Duties Act 1979 (“the Act”) are inserted by the Finance Act 2008 (c.9) with effect from 1st November 2008¹. Section 24(1) and (2) of the Act is also amended with effect from the same date to enable the Commissioners to make Regulations for any of the purposes of section 13ZB².

4.2. This is the first exercise of the powers contained in section 24(1) and (2) of the Act, as amended by the Finance Act 2008.

4.3. Section 13ZA provides for a partial rebate of excise duty, rather than a full rebate, on the delivery of heavy oil (other than kerosene) on which a full rebate would otherwise be allowed if it is intended to use the heavy oil for heating or as fuel for an engine.

4.4. Section 13ZB(1) provides that if a person supplies heavy oil, other than kerosene, on which a full rebate of excise duty has been allowed, having reason to believe that it will be used for heating or as fuel for an engine, the Commissioners may assess that person on that quantity of heavy oil at a rate that is equal to the full rate of duty charged on heavy oil under section 6(1A)(c) of the Act less the rate of rebate allowable under section 11(1)(a) of the Act. The supply of the oil is also conduct that attracts a civil penalty under section 9 of the Finance Act 1994.

4.5. However, section 13ZB(2) provides that subsection (1) does not apply if, before the time of supply, the amount referred to in paragraph 4.4 is paid to the Commissioners in accordance with

¹ See Schedule 6, paragraph 28.

² See the Finance Act 2008 (c.9), Schedule 6, paragraph 31. Section 24(1) was also amended with effect from 1st April 2008 by the Finance Act 2008, Schedule 5, paragraph 20.

regulations under section 24(1) made for the purposes of the section. This instrument provides how such a payment must be made in order to be effective.

4.6. It is necessary to exercise the powers in the amended section 24(1) and (2) before section 13ZB, and the amendments, come into force for the purposes of giving full effect to that provision at the time it comes into force³.

4.7. The amendments to the Act and this instrument are being made so as, in effect, to charge excise duty on waste oil used for heating or as fuel for an engine. The UK is obliged to do this under Council Directive 2003/96/EC⁴ on restructuring the Community framework for the taxation of energy products and electricity (commonly referred to as the Energy Products Directive) following the expiry of a derogation from that Directive that the UK enjoyed relating to waste oils which are reused as fuel, either directly after recovery or following a recycling process (see section 7).

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 Council Directive 2003/96/EC (the EU Energy Tax framework, referred to as the Energy Products Directive (EPD)) sets out which energy products shall be eligible to tax, relief or exemption, the uses that make these products liable to tax and the minimum rates of taxation.

7.2 The EPD also sets out in its annexes a number of derogations which allow Member States to apply reduced rates or exemptions from energy tax for various products and purposes. The UK held three derogations from the EPD on

- Fuel used in navigation in private pleasure craft, which allowed the use of partially rebated gas oil (red diesel);
- Fuel used for private pleasure-flying, which allowed the UK to exempt aviation turbine fuel (avtur) from excise duty and also to apply a reduced rate on aviation gasoline (avgas); and
- Waste oils reused as fuel, which were exempt from excise duty.

7.3 In October 2006 the UK submitted a request for the derogations to be renewed. However, the European Commission did not approve that request and the derogations expired on 31 December 2006. The Government made a commitment to introduce the changes needed to implement the requirements of the EPD with effect from 1st November 2008.

7.4 No formal consultation has been held. HMRC officials have held meetings with the representative trade organisation (the Oil Recycling Association) and a number of individual companies that will be affected by this change.

7.5 The requirement to pay excise duty on waste oil intended for heating use or as fuel for an engine will raise in the region of £10 million for the exchequer.

³ in reliance on section 13 of the Interpretation Act 1978.

⁴ OJ: L283, 31.10.2003, p.51.

7.6 For the use of fuel in private pleasure craft and for private pleasure flying, the corresponding instrument is The Hydrocarbon Oil and Bioblend (Private Pleasure-flying and Private Pleasure Craft) (Payment of Rebate etc.) Regulations 2008 (SI 2008 No 2599)

8. Impact

8.1 A full and final Impact Assessment prepared for the amendments made to the Act by the Finance Act 2008 is attached to this memorandum. It is confirmed that the figures are still up to date.

8.2 The impact on the public sector is likely to be insignificant.

9. Contact

Beverley Blood at HM Revenue and Customs Tel: 0207 147 0164 or e-mail: Beverley.Blood@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: HM Revenue and Customs	Title: Impact Assessment of the implementation of the Energy Products Directive (EPD) on the use of waste oils reused as fuel	
Stage: Final Proposal	Version: 1	Date: 14 February 2008
Related Publications:		

Available to view or download at:

<http://www.hmrc.gov>

Contact for enquiries: Tim Smith

Telephone: 0207 147 0573

What is the problem under consideration? Why is government intervention necessary?

The derogation from the EPD which allowed the UK to exempt waste oils re-used as fuel, either directly or after a recycling process, from excise duty expired on 31 December 2006. The UK submitted an application for renewal in October 2006 but this was turned down by the European Commission in December 2007. The UK is in breach of European legislation and as such is liable to infraction proceedings by the European Commission.

What are the policy objectives and the intended effects?

To implement the terms of the EPD by making waste oil reused as fuel for heating subject to excise duty.

The Government is minded to introduce the changes with effect from 1 November 2008, at the same time as other changes introduced to implement the requirements of the EPD following the expiry of derogations permitting a reduced rate of duty on fuel used for private pleasure-flying and pleasure boating.

What policy options have been considered? Please justify any preferred option.

The preferred option is to treat waste oils recoverers as oil producers and to impose a positive rate of duty on 'other heavy oil', which would encompass waste oil, but only if supplied as fuel. This approach is considered less burdensome than the alternative approach of imposing a positive rate of duty on all 'other heavy oil' regardless of use and requiring lubricants and other oils not intended for use as fuel to be supplied under the Tied Oils scheme.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Compliance costs will be reviewed after 3 years

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

Angela Eagle 20th February 2008

Summary: Analysis & Evidence

Policy Option:	Description: HM
-----------------------	------------------------

COSTS	ANNUAL COSTS	Yrs	Description and scale of key monetised costs by 'main affected groups' HMRC - One-off set up costs for registering/approving producers and ongoing costs processing HO10 returns and duty payments Waste oil producers - Upfront costs setting up systems and ongoing costs making monthly HO10 returns and duty payments	
	One-off (Transition)			
	£ Negligible			
	Average Annual Cost (excluding one-off)			
	£ Negligible		Total Cost (PV)	£ Ongoing
Other key non-monetised costs by 'main affected groups' HMRC's extra enforcement costs have not been estimated. There may be additional compliance costs for certain users of waste oils (e.g. blast furnaces, electricity generators) whose end use will continue to be exempt from duty. This will depend on how such an exemption is administered.				

BENEFITS	ANNUAL BENEFITS	Yrs	Description and scale of key monetised benefits by 'main affected groups' Avoids infraction proceedings by the European Commission. There may be a small effect on carbon emissions resulting from the new tax treatment of waste oils re-used as fuel and/or some possible fuel switching but this is not expected to be significant or quantifiable.	
	One-off			
	£			
	Average Annual Benefit (excluding one-off)			
	£ Negligible		Total Benefit (PV)	£

Key Assumptions/Sensitivities/Risks Estimates of compliance costs depend on the time taken to keep records and submit duty returns and payments and any systems changes that may be required. The Exchequer impact is estimated at around + £10 million in a full year. It is estimated that approximately 30 to 40 waste oil producers will be affected.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
--------------------	----------------------	-------------------------------------	---

What is the geographic coverage of the policy/option?	UK				
On what date will the policy be implemented?					
Which organisation(s) will enforce the policy?	HMRC				
What is the total annual cost of enforcement for these organisations?	£ Negligible				
Does enforcement comply with Hampton principles?	Yes/No				
Will implementation go beyond minimum EU requirements?	Yes/No				
What is the value of the proposed offsetting measure per year?	£				
What is the value of changes in greenhouse gas emissions?	£ Negligible				
Will the proposal have a significant impact on competition?	No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Micro < £2,500</td> <td style="width: 25%; text-align: center;">Small < £2,500</td> <td style="width: 25%; text-align: center;">Medium < £2,500</td> <td style="width: 25%; text-align: center;">Large < £2,500</td> </tr> </table>	Micro < £2,500	Small < £2,500	Medium < £2,500	Large < £2,500
Micro < £2,500	Small < £2,500	Medium < £2,500	Large < £2,500		
Are any of these organisations exempt?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;">N/A</td> </tr> </table>	No	No	N/A	N/A
No	No	N/A	N/A		

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of	£ Negligible	Decrease of £ 0
Net Impact		£ Negligible

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Background

UK legislation on oils taxation is contained in the Hydrocarbon Oil Duties Act 1979 (HODA). The EU legislation governing mineral oils structure and rates was contained in two directives (92/81/EEC, and 92/82/EEC) which sought to harmonise the treatment of mineral oils for taxation purposes. Some aspects of HODA were incompatible with the directives; however, derogations were negotiated to cover these inconsistencies.

The mineral oils directives were repealed by the introduction of the Energy Products Directive (2003/96/EC) (EPD) in 2004. This removed the need for some of the derogations; the remaining ones retained their expiry date of 31 December 2006. One of these derogations concerned the treatment of waste oil and allowed the UK to exempt such oil from excise duty when reused as fuel.

Although the UK submitted a request in October 2006 for the derogation to be renewed the European Commission did not accept the UK's arguments and formally notified its refusal to renew in December 2007. The derogation therefore expired on the 31 December 2006.

The UK is in breach of the EPD and as such is liable to infringement proceedings. The Government is minded to introduce the changes required to charge excise duty on waste oil reused as fuel with effect from 1 November 2008. This will be at the same time as changes will be introduced to implement the requirements of the EPD following the expiry of derogations permitting reduced rate fuel for private pleasure-flying and pleasure boating.

Under the EPD waste oil is subject to duty at the rate that applies to the fuel for which it is substituting. The rate of duty that will apply will be the same as that for fuel oil, currently 9.29 pence per litre (ppl).

We have held informal discussions with the waste oils industry and the Department for the Environment, Food and Rural Affairs (Defra) to discuss the implications of the loss of the derogation and HMRC's proposed approach. They accept that the proposal put forward by HMRC is a feasible one, but that further thought regarding the practicalities of implementation is required. HMRC will hold more detailed discussion with the trade in due course to ensure that the impact of implementation is minimised as much as possible.

Draft primary legislation is being published and we welcome comments.

Waste oil

Heavy oil intended for use other than as road fuel qualifies for a rebated rate of duty. The heavy oils commonly used for industrial and heating purposes are 'fuel oil', 'gas oil' and 'kerosene', all of which are clearly defined for fiscal purposes in HODA and rebated rates are set. Heavy oils that fall outside these descriptions are classified as 'other heavy oil' and are fully rebated. This includes lubricants and similar industrial oils that are not normally used as fuel in their virgin state.

Once these lubricants and industrial oils are no longer fit for purpose, they are collected as **waste oil**, cleaned up and sold to industrial users as Recovered Fuel Oil (RFO) or Clean Fuel Oil (CFO).

Existing legislation allows for the recovery process of waste oils to be treated as the production of new oil. In principle this makes waste oil recoverers liable to duty. However, under current provisions the processed waste oil would continue to qualify for the nil duty rate for rebated other heavy oil, and this is allowed under the terms of the EPD derogation. So at present to avoid imposing a compliance burden where there is no revenue benefit, waste oil recoverers are not currently treated as oil producers.

Small Waste Oil Burners

As outlined above, most waste oil undergoes a recovery process. However, some ends up in small waste oil burners (SWOBs), which are non technical units used mainly for space heating in service and repair garages where they dispose of the operators' own waste oil. No provisions are being introduced to capture the burning of operators' own waste oil in SWOBs.

Options

Two possible options to comply with the terms of the EPD have been considered. Under both these options waste oil producers would be treated as oil recoverers.

Option 1

Under the 'Tied Oils scheme' oil delivered for home use for certain industrial purposes may be supplied without payment of duty, which only becomes due once it ceases to be used for a qualifying purpose. One option would be to charge duty on waste oil by introducing a positive rate of duty for heavy oil that is not gas oil nor fuel oil nor kerosene, and for this to be supplied under the Tied Oil Scheme, with duty becoming due only once it ceases to be used for qualifying purposes. However, the volume of lubricating oils released to home consumption is high, and to bring them into the scheme would be administratively burdensome.

Option 2

This is the preferred option for which legislation has been drafted.

Under this option heavy oil, which includes waste oil, which is neither fuel oil, gas oil nor kerosene, would be subject to a positive rate of duty, at the fuel oil rate, currently 9.29ppl but only if supplied for use as fuel. Producers manufacturing lubricants would continue to be allowed a full rebate but producers who were fuel recoverers would have to charge duty.

Impact

Compliance costs for business

The preferred option will impose a number of burdens on waste oil recoverers who will be treated as oil producers. Their premises will need to be approved ('entered') by HMRC and they will be obliged to meet HMRC's requirements for record keeping and account for duty. HMRC estimates that around 30 to 40 (mainly small) companies may be affected.

One-off compliance costs for these businesses will mainly involve some time spent familiarising themselves with the changes, registering with HMRC and ensuring that a suitable records/payment system is in operation. Such awareness, IT and/or other system costs are not expected to exceed an average of £2,500 per business.

Ongoing compliance costs will result from the need for waste oil recoverers to keep records and submit monthly HO10 tax returns and pay duty to HMRC. HMRC estimates that submitting a HO10 return and the associated record keeping requirements for these businesses should take a maximum of one day's work (and in most cases less). Based on up to 40 businesses making monthly returns and using hourly wage rates from HMRC's admin burdens database, ongoing compliance costs for business are estimated to be less than £100,000.

There may also be compliance costs for certain consumers of reprocessed waste oils (e.g. blast furnaces and electricity generators) whose end use will continue to be exempt from duty. This will depend on how the exemption is administered, which will be determined after further discussions with the affected businesses, and these costs have not been estimated.

HMRC costs

There will be increased administrative costs for HMRC to approve producers, process returns and payments alongside some increased assurance costs and legislative changes. However, the intention is to use existing HMRC systems and processes wherever possible so any costs are unlikely to be significant in relation to the revenues collected.

Competition assessment

The businesses likely to be affected are mainly small businesses. For the following reasons, the preferred option is not expected to give rise to any adverse competition effects:

- It will not directly limit the number or range of waste oil producers;
- It does not significantly raise the costs of new suppliers relative to existing waste oil producers or the costs of entering or exiting the sector; and
- It does not limit the ability of or incentive for waste oil producers to compete vigorously.

Moreover, even after the duty change, waste oil is likely to remain competitive with other fuels.

Exchequer impact

The main dutiable use for waste oil is in the roadstone coating industry, drying stone chippings used in road surfacing, (use in blast furnaces and for electricity generation are both exempt from duty). The implementation of duty on waste oils will therefore increase costs for the aggregates industry. It is estimated that the aggregates industry uses approximately 100,000 tonnes of waste oils per annum. Imposing duty will yield approximately £10 million in a full year.

Carbon impact

There may be a small effect on carbon emissions resulting from the new tax treatment of waste oils re-used as fuel. Other things equal, an increase in the price of reprocessed waste oil through taxation will reduce demand from dutiable end users (e.g. aggregates producers) with a knock-on impact on carbon emissions. There may also be some fuel switching as the duty changes the relative prices of different fuels but this is expected to be limited mainly because even after the duty change waste oil is likely to remain competitive with other fuels. The overall carbon effect is likely to be small and is extremely difficult to quantify with any certainty.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	Yes	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No