
HM Revenue and Customs

Energy Products Directive – expiry of the derogation for private pleasure flying

Consultation on the options for change
1 August 2007



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1. Introduction

Background

- 1.1. The UK derogation from the Energy Products Directive (EPD) that allowed the UK to apply a reduced rate of excise duty on aviation gasoline (Avgas) and exempt aviation turbine fuel (Avtur) from excise duty used in private pleasure-flying lapsed on 31 December 2006. The derogations had in fact been time-limited since the predecessor to the EPD was agreed and signed in 1992. In 2001, the Government negotiated an extension to the derogation to 31 December 2006. 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 the derogation expired on 31 December 2006.
- 1.2. The Commission argued that since the fuel had been taxable in principle since 1993, member states had had enough time to adapt to the requirements of community law. They stated that they did not accept the UK's argument that there would be additional administrative burdens or compliance costs resulting in the expiry of the derogations, and that if such arguments were to be accepted then the derogations would need to be maintained indefinitely, contradicting the principle that derogations are time limited and intended to assist with overcoming any initial difficulties encountered with the introduction of new regimes.
- 1.3. The Chancellor of the Exchequer announced at Budget 2007 that from the 1 November 2008 fuel used for these purposes would no longer benefit from these reduced rates. 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 legal action by the Commission.
- 1.4. Avtur is used mainly in commercial jet and turbo-prop aircraft and private pleasure use is considered to be minimal. Avgas is used in small piston-engined aircraft within the general aviation sector and is used both commercially and for pleasure-flying. The reduced rate of excise duty on Avgas is currently charged at half the leaded petrol rate (28.84ppl), whether used for private or commercial purposes, and private use of Avtur is exempt from duty. Ministers have said that we would look for ways of implementing the new regimes which would both minimise the impact, and ensure that any additional compliance burden was as small as possible. Ministers also recognised the importance of allowing a suitable period of transition to implement the changes.
- 1.5. A similar consultation exercise is being carried out simultaneously on the implementation of new procedures following the expiry of the

derogation that permitted the use of rebated fuel for private pleasure boating.

Purpose of this consultation

1.6. The purpose of this consultation is to seek views regarding:

- the proposed schemes for charging and collecting duty on Avgas and Avtur in order to comply with the terms of the Directive.

In particular views are sought of Registered Dealers in Controlled Oils (RDCOs) regarding the proposed scheme for collecting duty on Avtur, and Avgas producers on the criteria for defining Avgas.

- a definition of 'private pleasure flying'.

1.7. Further copies of this consultation paper can be obtained from HMRC at the address given in paragraph 1.9 below, or via the HMRC website (www.hmrc.gov.uk)

How to respond

1.8. The areas where views are sought are highlighted in bold throughout this document, but a summary is at Annex A. Views on other relevant issues would be welcomed.

1.9. In accordance with Cabinet Office guidelines, the consultation will run for 90 days. Comments should be received by **31 October 2007** and should be sent:

by e-mail: envirotax.bst@hmrc.gsi.gov.uk

or by post to: **Transport Tax Team**
HM Revenue and Customs
3E/01 100, Parliament Street
London SW1A 2BQ

or by fax to: **0207 147 0391**

1.10. All responses will be acknowledged but it will not be possible to give substantive replies to individual representations.

Publication of responses

1.11. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

- 1.12. If you want 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 confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 1.13. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Legislative timetable

- 1.14. Any consequential legislative changes, apart from changes that can take place to existing secondary legislation, will be part of the Finance Bill process, and therefore subject to the Budget process.

Impact Assessment

- 1.15. An impact assessment has been produced to accompany this consultation document. Copies of which can be obtained from the HMRC website (www.hmrc.gov.uk.)
- 1.16. This consultation is being conducted in accordance with the Cabinet Office Code of Practice on consultation. The consultation criteria from the Code are reproduced at Annex B.
- 1.17. For any comments or complaints regarding the consultation process, please contact the following consultation coordinator:

Duncan Calloway
Better Regulation Unit
3/37, 100 Parliament Street
London SW1A 2BQ
tel: 020 7147 2389
e-mail: duncan.calloway1@hmrc.gsi.gov.uk

2. Issues for consultation

Avgas

Current Position

- 2.1. The derogation permitted the UK to apply a reduced rate of duty on Avgas, currently charged at half the leaded petrol rate (Avgas rate 28.84ppl, full leaded rate 57.68ppl), whether it is used for commercial or private pleasure flying (see the Hydrocarbon Oil Duties Act 1979 (HODA), section 6(3)).
- 2.2. These proposals have been drawn up following informal discussion with a number of aviation organisations. They take into account Ministers' commitment to look for ways of implementing the new regimes which would minimise both the impact and any additional compliance burden.
- 2.3. The proposals should be considered taking into account the fact that Avgas is an expensive fuel to produce and the industry is currently researching alternative, more efficient and less expensive replacement fuels. The use of Avgas is currently in decline and its eventual demise is expected within about 10 years.

Proposed scheme: New separate duty rate for Avgas

- 2.4. Under Article 5 of the EPD, a different duty rate may be introduced for fuel on the basis of product quality as long as it is above the minimum rates laid down in the directive.
- 2.5. The industry has made representations to the effect that Avgas is a very different fuel from motor fuels; the Department for Transport agrees. Avgas is a specialised fuel which undergoes a more complex and more expensive distillation process than for other fuels to meet the special demands of aviation and as such has a number of unique characteristics. These include a tightly controlled Reid Vapour Pressure and a far higher octane rating, both for safety reasons.
- 2.6. The lead content is higher than in road fuels (also for safety reasons), which means Avgas cannot be used legally as a road fuel in the UK.
- 2.7. Most aircraft (other than, for example, some microlight aircraft) cannot fly on petrol as it does not meet the required aviation standards and can be dangerous if used for flying. The differences between road fuels and Avgas are growing, with the increasing use of biofuel mixes; biofuels cannot be added to Avgas for safety reasons.
- 2.8. Under this scheme a new free standing duty rate for Avgas would be introduced that would respect the minimum rates as set down in the EPD. The new duty rate would be set at Budget 2008.

- 2.9. A new fiscal definition of Avgas would be introduced in HODA. We envisage that it would include the following criteria:
- that it was specifically produced, and delivered for use, solely as fuel for aircraft;
 - that it had a Reid Vapour Pressure at 37.8°C of not less than 38.0 kPa and not more than 49.0 kPa; and
 - that it had a Lean Mixture Octane rating of not less than 99.5 and a Rich Mixture Octane rating of not less than 130.
- 2.10. The new rate would apply to all Avgas, whether used for commercial or private pleasure flying, in the same way that the current reduced rate is applied.
- 2.11. There are a number of advantages to this proposal:
- There would be no change to the current procedures - no additional burdens on the industry, and no effect on the supply chain
 - There would be no need to distinguish between commercial and private use.
- 2.12. The proposal has received the support of the aviation organisations who have been involved with informal discussions.
- 2.13. This also has the benefit of no other change for HMRC, other than legislative changes referred to above.

Q1 Do you agree that this a pragmatic way forward ?

Q2 Do you consider that the definition of Avgas captures its significant differences from road fuel?

Q3 If you are a user of Avgas, do you foresee any problems?

Q4 If you are a supplier of Avgas do you foresee any problems?

Q5 Can you suggest an alternative scheme for implementing the requirement to tax private-pleasure flying?

Avtur

Current position

- 2.14. All Avtur currently has a nil rate of duty by virtue of being fully rebated under HODA section 11(1)(c). Most supplies are to large airlines or for corporate/business use and clearly commercial. Private use is considered to be negligible. Taxing Avtur and allowing a refund for commercial/business use is not an option, as this would be contrary to

international conventions. Under the proposed scheme Avtur would remain fully rebated, but duty paid on private pleasure flying. We would need to agree a definition of 'private pleasure flying'.

Proposed scheme: Purchaser/user liable for payment of duty on Avtur used for private pleasure flying

- 2.15. The preferred option is that the responsibility for paying the duty due would lie with the purchaser and/or the user of the fuel, who would be required to make a declaration and pay duty to HMRC if the fuel were used for private pleasure flying. Avtur used for private flying would be taxed at the same rate as kerosene: currently 54.68 ppl.
- 2.16. All suppliers of Avtur are Registered Dealers in Controlled Oils (RDCO). As such, they have a duty of care when selling or delivering Avtur to ensure that they only make supplies to customers who have a legitimate use for the oil. Under this proposal the RDCO's general duty of care would be extended slightly so that if he thought that the fuel might be used for private pleasure flying, then under his general duty of care, he would draw attention to the purchaser of the obligation to contact HMRC and pay the duty due. The RDCO would note his records accordingly.
- 2.17. There would be a small increased compliance burden on RDCOs to inform the purchaser of the duty liability and note his records accordingly.
- 2.18. There would be some additional HMRC administrative costs in devising and administering the payment scheme. There would also be increased assurance costs in following up payments for sales of possible private-use fuel as noted in RDCOs' records.

Q6 If you are an RDCO do you foresee any problem with the proposed scheme?

Q7 Would the extension of the duty of care cause a significant increased burden and what would the cost, if any, be to your business?

Q8 Is there an alternative procedure which you can suggest and which you think would be simpler to operate?

'Private pleasure flying' – definition

- 2.19. We propose to follow the definition as in article 14 1(b) of the EPD in HODA. That definition states:

“Private pleasure flying shall mean the use of an aircraft by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than the commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities.”

2.20. We believe that it would be helpful to issue further guidance within a public notice on the interpretation of this definition.

2.21. There are a number of definitions of commercial and business use which have been agreed for other purposes. The following interpretation is based on these:

“For these purposes ‘private pleasure flying’ means other than in the following circumstances:

- *Commercial operation or use of aircraft by companies for the carriage of passenger or goods as an aid to the conduct of their business and the availability of the aircraft for whole aircraft charter, flown by a professional pilot(s) employed to fly the aircraft*
- *The non-commercial operation or use of aircraft by a company, for the carriage of passengers or goods as an aid to the conduct of company business, flown by a professional pilot(s) employed to fly the aircraft.*
- *The non-commercial operation or use of aircraft by an individual for the carriage of passengers or goods as an aid to the conduct of his/her business.*

This includes the following (the list is not exhaustive) :

- *Flying in support of emergency services such as police, air ambulance and medical repatriation*
- *Air taxis*
- *Corporate operations where a company owns and operates its own aircraft using professional pilots*
- *Training, if provided through an approved training school, and the trainee pilot is under the supervision of an instructor whether or not that instructor accompanies the student;*
- *Mail services and freight services*
- *Agricultural, aerial survey, aerial photography, support for coast guards duties*

Private pleasure flying includes the following (the list is not exhaustive):

- *flying for recreational purposes, whether alone or carrying passengers unless they are fee paying.*
- *Includes flying to and from your normal place of work.”*

2.22. We would welcome views on the suggested definition.

Q9 Does the definition of 'Private pleasure-flying' make clear what is included as 'private pleasure-flying' and conversely what is considered as business and commercial?

Q10 Are there any flying activities which you could not classify from the definition?

Q11 If the definition is unclear, can you suggest how it might be made clearer?

Annexes

Annex A - Questionnaire

Note: HMRC would be happy to receive consolidated responses from relevant trade associations and from interested individuals. However, if individual businesses would like to respond on their own behalf, it would be helpful if you could state the following where applicable:

- Company name, address and VAT registration number;
- Annual turnover; and
- Nature of the business and the scope of the activities.

Avgas

Q1 Do you agree that this a pragmatic way forward?

Q2 Do you consider that the definition of Avgas captures its significant differences from road fuel?

Q3 If you are a user of Avgas, do you foresee any problems?

Q4 If you are a supplier of Avgas do you foresee any problems?

Q5 Can you suggest an alternative scheme for implementing the requirement to tax private-pleasure flying?

Avtur

Q6 If you are an RDCO do you foresee any problem with the proposed scheme?

Q7 Would the extension of the duty of care cause a significant increased burden and what would the cost, if any, be to your business?

Q8 Is there an alternative procedure which you can suggest and which you think would be simpler to operate?

Private pleasure flying

Q9 Does the definition of 'Private pleasure-flying' make clear what is included as 'private pleasure-flying' and conversely what is considered as business and commercial?

Q10 Are there any flying activities which you could not classify from the definition?

Q11 If the definition is unclear, can you suggest how it might be made clearer?

Annex B – Consultation criteria

The consultation criteria are listed in the Cabinet Office Code of Practice. If you wish to access the full version of the Code, you can obtain it at:

www.cabinet-office.gov.uk/regulation/Consultation/Code.htm

The regulatory implications, which will be informed by responses to this consultation, will be an important factor in any decision. If Ministers decide to proceed with any changes, a full regulatory impact assessment will be published.

THE CONSULTATION CRITERIA

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about who may be affected, what questions are being asked, and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

If you feel that the consultation does not satisfy these criteria, or if you have any complaints about the process, please contact –

Duncan Calloway
Better Regulation Unit
020 7147 2389 or duncan.calloway1@hmrc.gsi.gov.uk