



HM Revenue
& Customs

Vapour recovery scheme: consultation on the options for replacing the Extra-Statutory Concession (ESC)

Consultation document

Publication date: 17 June 2015

Closing date for comments: 9 September 2015

Subject of this consultation:	Consultation on the future of the Extra Statutory Concession (ESC) on recovered petrol vapour – the ‘vapour recovery scheme’.
Scope of this consultation:	<p>HMRC is considering the future of the ESC on recovered petrol vapour. This consultation is seeking views on two options:</p> <ul style="list-style-type: none"> • legislation to place the existing ‘vapour recovery scheme’ on a legal footing; and • an alternative option to address the issue within existing warehousing approval terms and conditions.
Who should read this:	Oil producers, other fuel duty payers and their advisers, and also any other businesses in the fuel supply chain who are affected by, or are interested in, the vapour recovery scheme.
Duration:	17 June 2015 – 9 September 2015.
Lead official:	Steve Clarke, HMRC Excise Oils Policy
How to respond or enquire about this consultation:	<p>Vapour Recovery Consultation HMRC Excise Oils Policy 3rd Floor West Ralli Quays 3 Stanley Street Salford M60 9LA</p> <p>Telephone: 03000 587921</p> <p>e-mail: oils.policymail@hmrc.gsi.gov.uk</p>
Additional ways to be involved:	This is a largely technical issue and so will mainly be a written exercise, but meetings with representative bodies will be considered. To request a meeting, please contact us by email or in writing as soon as possible.
After the consultation:	HMRC will publish a summary of responses in October 2015, and will advise of the outcome, setting out next steps, including the approach to any potential legislation.
Getting to this stage:	Following the House of Lords judgement in the Wilkinson case, HMRC began reviewing all of its concessions with a view to retaining the effect of as many as possible, either because they fell within the Commissioners’ discretionary powers, or because they could be legislated.
Previous engagement:	HMRC has already engaged in correspondence and held meetings with some trade representatives on this issue.

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On request this document can be produced in Welsh and alternate formats including large print, audio and Braille formats

1. Introduction

Background

- 1.1 When petrol is loaded and unloaded, some of it is displaced in the form of vapour. EU law requires terminals to adopt measures to recover this vapour to prevent emissions of volatile organic compounds (VOCs) into the atmosphere.
- 1.2 The volume of fuel vapour recovered depends on several complex and variable factors, but it is estimated that for each delivery, between 0.1% and 0.2% is captured as vapour.
- 1.3 In the UK the amount of fuel duty to be paid is assessed when petrol is released for home consumption from a refinery or import terminal (the duty point). Therefore by the time the petrol vapour is released and captured it has already become liable for fuel duty.
- 1.4 This captured and condensed product must be mixed with a sufficiently large volume of product to convert it to be suitable for use as road fuel. At refineries, such volumes are normally found only in storage tanks containing product on which fuel duty has not yet been paid.
- 1.5 HMRC allows the captured product to be returned to stocks at the refinery, before the duty point, and mixed with fuel on which duty has not been paid. To avoid double taxation, producers may then claim a credit of duty already paid on the recovered product, calculated using a specific formula. They do this by adjusting their duty account to arrive at a net amount of fuel duty payable. This process, known as the 'vapour recovery scheme', is intended to facilitate the storage of the captured product and its subsequent resale for road use.
- 1.6 There is no UK legislation to support the 'vapour recovery scheme', which is provided for by an Extra Statutory Concession (ESC). The ESC has been confirmed as 'ultra-vires' and should be withdrawn or legislated as part of the work HMRC is doing to review all of its concessions following the Wilkinson case.
- 1.7 This consultation seeks views on two proposals to replace the 'vapour recovery scheme' as operated under the ESC. The objective of both proposals is to place the 'scheme' on a legal footing to continue to facilitate the recycling of captured vapour while ensuring the correct amount of fuel duty is collected. The consultation also seeks to identify possibilities for simplifying and improving the existing scheme; any concerns or technical issues to be taken into account, such as the appropriate and most accurate measurement methodology; and the impacts the proposed changes would have on businesses affected by them.

The 'vapour recovery scheme' ESC

- 1.8 The ESC is published in HMRC Notice 48, paragraph 6.3: Excise – hydrocarbon oil duty: relief of duty on recovered motor spirit vapour. The wording of this paragraph is as follows:
- From 15 April 1993 duty relief may be allowed on motor spirit vapour recovered, during duty paid deliveries of motor spirit from bonded mineral oil installations to service stations, and returned to bonded installations for conversion to liquid motor spirit.*
- 1.9 The ESC recognises that during any delivery from a duty suspended terminal, petrol vapour will be displaced and, by law, must be captured. To process the vapour it must be placed into large stocks of fuel and at such terminals the practical solution has been to return the fuel to tanks containing duty suspended product (fuel that has not yet passed the duty point.) This effectively results in a net delivery of product liable to tax.
- 1.10 The ‘vapour recovery scheme’ facilitates the handling of the captured and recovered vapour without the need for producers to invest in additional storage facilities and prevents double taxation. The scheme is simple for HMRC to administer and not onerous to assure.
- 1.11 Repayment or credit of duty is made to the taxpayers. In this case, it is the producer that takes the product across the duty point, is responsible for measuring the volume on which excise duty is due to HMRC, and is ultimately liable for the excise duty payable on all product leaving their premises.
- 1.12 It is not possible to measure continuously and precisely the volume captured and returned to duty suspended stocks. The amount of fuel duty to be credited under the ESC is calculated using an agreed formula that takes into account variable factors to arrive at an acceptable average for the site over a given period. The formula was agreed between industry and HMRC and approved by the Energy Institute (formerly the Institute of Petroleum) in 1998. Claims under the ESC began in 1999.
- 1.13 The producer’s monthly duty account provides a simple mechanism for claiming the credit without placing additional burdens on the businesses or HMRC and the very small number of taxpayers involved means that HMRC is able to control the amounts being claimed with minimal risk of fraud.

Stakeholder involvement

- 1.14 There are approximately 60 businesses responsible for accounting for the duty on fuel released for consumption in the UK, including refineries and import warehouses. These businesses and their customers may be directly or indirectly affected by any proposed changes to the ESC.
- 1.15 Some businesses within the upstream oils industry have expressed concern over the complexity and accuracy of the duty calculation formula. In 2006, HMRC invited suggestions for simplifying the formula, but no proposals were adopted.

1.16 Representatives of the Petrol Retailers Association (PRA) have regularly entered into correspondence about this issue, and have also met with HMRC officials and Treasury ministers.

2. Option 1: Legislating to continue the ‘vapour recovery scheme’

- 2.1 The Hydrocarbon Oil Duties Act 1979 (HODA) gives HMRC the power to make regulations to allow reliefs in respect of excise duty charged on hydrocarbon oil.
- 2.2 Under this option, HMRC proposes to place the ‘vapour recovery scheme’ as operated under the ESC on a legal footing by making regulations that provide for relief from fuel duty for captured vapour that is returned to duty suspended stocks. We are seeking the views of businesses that currently claim credit under the ESC and other stakeholders on this and other aspects of the proposal.

Q1: Do you agree that HMRC should legislate for a relief, in the form of a credit or repayment of fuel duty, when captured vapour is returned to duty suspended stocks? Please explain your answer.

- 2.3 In making these regulations, the Commissioners may include such provision as they think fit in connection with allowing the relief. These may include:
- the extent to which relief is to be allowed;
 - conditions for allowing relief;
 - provision for the administration of the relief;
 - provision for checks to verify that the relief should be allowed;
 - provision for civil penalties for non-compliance with the regulations.
- 2.4 HMRC considers that it is within the logic and design of the tax that any repayment or credit of fuel duty should continue to be made to the taxpayer responsible for taking the product across the duty point and for accounting for fuel duty due to HMRC.
- 2.5 HMRC proposes that, if regulations were to be introduced under this option, the entitlement to repayment would remain with the taxpayer that returns the captured product to duty suspended stocks. Credits would be claimed by ‘netting off’ the amount in the monthly fuel duty account (form HO10).

Q2: Do you agree that taxpayers capturing and returning product to duty suspended stocks should continue to be entitled to the relief under the proposed legislation? Please explain your answer.

Q3: Do you think it would be appropriate for HMRC to include in the regulations a requirement that the amount of any tax credited or repaid in respect of recovered vapour must not be charged to customers? What impact would such a condition have for your business?

- 2.6 Approval for the scheme and claims to credit or repayment of duty would be dependent on satisfactory systems being in place to measure product volumes and to verify all duty payments and repayments.

Q4: Do you have any views or suggestions regarding additional provisions or conditions that HMRC could include in regulations to improve on the existing vapour recovery scheme? Please give details of these and how you envisage they would work in practice.

- 2.7 HMRC would require claimants to have access to the data needed to apply the duty reclaim formula developed by the Institute of Petroleum and agreed by (then) HM Customs & Excise and the UK Petroleum Industry Association, or any measurement methodology introduced as part of the legislated-for relief (see Section 4: Measurement).

Q5: Do you have any views on the potential impact of a legislated-for relief on your business and/or other businesses affected, including potential costs, burdens and pricing impacts, or any potential wider implications of vapour recovery that we have not identified here?

Q6: Are there any equality issues raised by the proposal to legislate for a relief scheme for vapour recovery, such as disproportionate impact on any particular part of the population such as ethnic groups or disabled people? If 'yes', please give details.

3. Option 2: Provide for vapour recovery within terms and conditions of warehousing approvals

- 3.1 HMRC has considered whether it could end the ESC practice of allowing recovered vapour to be returned to duty-suspension after condensation for a credit of fuel duty, but achieve the intended effect of the existing relief by permitting the common storage of duty paid and duty suspended stocks.
- 3.2 This option would not require any new legislation. It would operate within existing legal provisions in the Customs and Excise Management Act (CEMA) 1979 and the Excise Warehousing Regulations 1988.
- 3.3 Current HMRC policy is that only tanks dedicated to the storage of duty suspended oils will be approved and that complete segregation of duty paid and suspended stock is usually required. However, HMRC may allow common storage of oils of the same description where a warehousekeeper can demonstrate that separate storage is operationally impractical and that accounting procedures are in place to accurately identify the respective duty suspended and duty paid volumes held.
- 3.4 Under existing provisions, if a warehousekeeper is approved for common storage, when product is released for consumption from the combined stocks, duty is paid only on proportion of the delivered fuel that is duty suspended.
- 3.5 If HMRC were to extend this provision to allow duty paid captured vapour to be stored with duty suspended product, this would have the same effect as the existing 'vapour recovery scheme', with excise duty being paid only on the net volume of product released for consumption after deduction of the volume that has already been taxed.
- 3.6 This option would allow HMRC to continue to facilitate, subject to conditions, the return of captured vapour to sufficiently large stocks to enable it to be recycled, while avoiding double taxation on subsequent deliveries from the common storage.
- Q7: Do you consider that dealing with the issue of vapour recovery through warehouse approval terms and conditions would be preferable to a legislated-for relief? Please explain your answer.**
- 3.7 Under this option, warehousekeepers wanting to direct captured product into storage used for duty suspended fuel would apply to HMRC for permission to store duty suspended and duty paid product together. In doing so, they will need to demonstrate:
- that it is not operationally practical for them to store duty suspended and the captured, duty paid product separately;

- that they can accurately measure the volume of duty paid product placed into common storage tanks – or, alternatively the methodology to be used to assess these volumes, to be agreed by HMRC;
- that they have sufficient accounts and stock records to readily identify the respective volumes of duty suspended and duty paid product held; and
- that they can evidence movements of duty paid product in and out of storage and confirm the net volume released for consumption in their monthly duty account.

Q8: What would be the impact on your business of these administrative requirements, in particular the measurement and identification of respective stocks that this option would place on warehousekeepers?

Q9: Do you have any views on the potential impact of this option on your business and/or other businesses affected, including costs, burdens and pricing impacts, or any potential wider implications that we have not identified here?

Q10: Are there any equality issues raised by this option, such as disproportionate impact on any particular part of the population such as ethnic groups or disabled people? If 'yes', please give details.

4. Measurement of recovered product

- 4.1 The formula for calculating the volume of fuel captured as vapour and returned to duty suspended stocks is very complex. It is possible that with changes in technology, some of the elements of the formula have become obsolete. If so, this may impact on the accuracy of the calculated volumes. Please see Annex B for the formula agreed between HMRC and the industry in 1999.
- 4.2 As the formula is the basis for determining the amount of fuel duty to be credited, it is crucial both for industry and for HMRC that the volumes are accurate.
- 4.3 In implementing any replacement of the existing scheme, HMRC would also seek to simplify the process, including measurement, and to reduce administrative burdens on business and for HMRC. HMRC would like to know your views on whether a change to how the volumes subject to repayment are currently measured or calculated would be necessary or desirable. For example, other EU countries have introduced a flat percentage rate, which removes the need for a complex calculation. Alternatively, it may be possible to develop a simpler formula, or for HMRC to agree with individual claimants the method that provides the most accurate calculation in their specific circumstances.

Measurement: Consultation questions

Q11: Do you think that the existing formula remains fit for purpose or do you think it should be simplified or replaced with an alternative method of measuring the captured product? Please explain your answer and give details of any alternative suggestion you may have.

Q12: Do you think the same measurement method should apply to all claimants or should HMRC allow the method to vary between claimants, depending on their individual circumstances? Please explain your answer.

5. Next Steps

- 5.1 HMRC will publish a summary of the responses to this consultation. We will also explain our chosen option and set out next steps, which will include, if necessary, the drafting of legislation, and liaising with industry on the practical arrangements for implementation.

6. Assessment of Impacts

Summary of impacts

- 6.1 As part of the consultation, HMRC would welcome views on the overall impact of each of the proposed options. The information provided as part of the consultation process will help HMRC in understanding the potential impact of each option. A Tax Information and Impact Note setting out the final assessment of the impacts will be published alongside any draft legislation.

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
	This measure is not expected to have any Exchequer impact. Any impact will be subject to scrutiny by the Office for Budget Responsibility.					
Economic impact	This measure is not expected to have any significant economic impact.					
Impact on individuals, households and families	Minimal direct impacts expected. Depending on the outcome there may be an effect on the price of fuel. This will be investigated as part of this consultation.					
Equalities impacts	None anticipated, and will be confirmed through this consultation.					
Impact on business including civil society organisations	<p>This measure is expected to have a negligible impact on businesses and civil society organisations.</p> <p>The new 'scheme' will build on existing industry practice wherever possible, minimising the impact on businesses.</p> <p>Depending on the preferred option, some businesses may need to be approved by HMRC and to keep additional records or documentation. A full assessment of the impact on business will be carried out following consultation.</p>					
Operational impact (£m) (HMRC or other)	<p>This measure is not expected to have any significant impact on HMRC. HMRC will administer the 'vapour recovery scheme' and ensure compliance. Only a small number of approvals are expected, and the new system will aim to simplify HMRC's role of ensuring that the correct amount of fuel duty is paid when due.</p>					
Other impacts	<p><u>Small and micro business assessment</u>: a full assessment of the impact on small and micro businesses will be carried out following consultation.</p> <p>Other impacts have been considered and none have been identified.</p>					

7. Summary of Consultation Questions

Option 1: Legislating to continue the 'vapour recovery scheme'

Q1: Do you agree that HMRC should legislate for a relief, in the form of a credit or repayment of fuel duty, when captured vapour is returned to duty suspended stocks? Please explain your answer.

Q2: Do you agree that taxpayers capturing and returning product to duty suspended stocks should continue to be entitled to the relief under the proposed legislation? Please explain your answer.

Q3: Do you think it would be appropriate for HMRC to include in the regulations a requirement that the amount of any tax credited or repaid in respect of recovered vapour must not be charged to customers? What impact would such a condition have for your business?

Q4: Do you have any views or suggestions regarding additional provisions or conditions that HMRC could include in regulations to improve on the existing vapour recovery scheme? Please give details of these and how you envisage they would work in practice.

Q5: Do you have any views on the potential impact of a legislated-for relief on your business and/or other businesses affected, including potential costs, burdens and pricing impacts, or any potential wider implications of vapour recovery that we have not identified here?

Q6: Are there any equality issues raised by the proposal to legislate for a relief scheme for vapour recovery, such as disproportionate impact on any particular part of the population such as ethnic groups or disabled people? If 'yes', please give details.

Option 2: Provide for vapour recovery within terms and conditions of warehousing approvals

Q7: Do you consider that dealing with the issue of vapour recovery through warehouse approval terms and conditions would be preferable to a legislated-for relief? Please explain your answer.

Q8: What would be the impact on your business of these administrative requirements, in particular the measurement and identification of respective stocks that this option would place on warehousekeepers?

Q9: Do you have any views on the potential impact of this option on your business and/or other businesses affected, including costs, burdens and pricing impacts, or any potential wider implications that we have not identified here?

Q10: Are there any equality issues raised by this option, such as disproportionate impact on any particular part of the population such as ethnic groups or disabled people? If 'yes', please give details.

Measurement of recovered product

Q11: Do you think that the existing formula remains fit for purpose or do you think it should be simplified or replaced with an alternative method of measuring the captured product? Please explain your answer and give details of any alternative suggestion you may have.

Q12: Do you think the same measurement method should apply to all claimants or should HMRC allow the method to vary between claimants, depending on their individual circumstances? Please explain your answer.

8. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation combines stages 1 and 2 of the process. The purpose of the consultation is principally to seek views on the two options put forward in order to facilitate detailed policy design, before publishing a response later with a specific proposal for reform.

How to respond

A summary of the questions in this consultation is included at chapter 6.

Responses should be sent by 9 September 2015, by e-mail to:

oils.policymail@hmrc.gsi.gov.uk

or by post to:

Vapour Recovery Consultation
HMRC Excise Oils Policy
3rd Floor West
Ralli Quays
3 Stanley Street
Salford
M60 9LA

or by fax to 03000 588476.

Telephone enquiries to:

03000 587921 (from a text phone prefix this number with 18001)

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC Inside Government](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

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.

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 with, amongst other things, 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 HM Revenue and Customs (HMRC).

HMRC 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.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles. Please respond with any requests for meetings or alternative means for contributing your views as soon as possible to the above email or postal addresses, or by contacting us on the above telephone number.

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

Oliver Toop, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: List of stakeholders consulted

Downstream Fuel Association
Federation of Petroleum Suppliers
Garage Watch
Petrol Retailers Association
Tank Storage Association
UK Petroleum Industry Association (UKPIA)
Oil Recycling Association
United Kingdom Warehousing Association
Environment Agency

Annex B: Vapour recovery formula

The approved formula is:

$$\text{Duty reclaim} = P \times S \times H \times M \times 0.0000422 \times VT [(Ful \times Dul) + (Fsul \times Dsul) + (Fl \times Dl)] / D.$$

P = The VRU performance factor.

S = The VRU service of availability factor.

H = Average TOC (total organic compound) concentration of vapour collected.

M = Mean Molecular Weight of recovered liquids.

VT = For VRUs with a single sample point. Volume of all products loaded through bays connected to that sample point.

VT = For VRUs with multiple sample points. Volume of products loaded through bays connected to each sample point. (Where the sampled H value differs, a separate formula will be required.)

Ful = Fraction of VT comprising unleaded motor spirit.

Fsul = Fraction of VT comprising super unleaded motor spirit.

Fl = Fraction of VT comprising leaded motor spirit.

Dul = Duty rate on unleaded motor spirit.

Dsul = Duty rate on super unleaded motor spirit.

Dl = Duty rate on leaded motor spirit.

D = Density of recovered liquids.