HM Revenue & Customs

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

Summary of Responses
December 2015

Contents

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1. Executive Summary

1.1. The consultation 'Vapour recovery scheme: options for replacing the Extra-Statutory Concession (ESC)' was published in July 2015 to invite views from stakeholders involved throughout the oils supply chain on two options aimed at putting the 'vapour recovery scheme' on a legal footing:

- Option 1 - legislate for a relief similar to the current vapour recovery scheme;
- Option 2 - make use of existing legislation to achieve the effect of the ESC credit through Holding and Movement provisions.

1.2. The government is grateful for industry's constructive engagement during the consultation period. All responses to the consultation, including consideration of concerns raised, have been analysed and assessed. This document sets out the government's response. Responses are summarised in Section 3.

1.3. Supplying terminals are legally obliged to prevent petrol vapour displaced during loading from escaping into the atmosphere. The captured product must be condensed using a vapour recovery unit (VRU) and returned to a large volume of fuel at the supplying terminal. At duty point terminals, returning product to the supplying storage tank is the practical and logical solution.

1.4. Wherever the process of vapour recovery occurs, the captured product has already had duty paid on it. It is therefore important to ensure that this fuel is not taxed again when it leaves storage facilities at duty paid terminals.

1.5. HMRC is concerned with collecting the correct amount of tax chargeable on the total volume of fuel released for consumption. The fuel duty tax regime is simple and cost-effective to administer and the cost of collection for each £1 of fuel duty collected is negligible. It is important that any scheme remains simple to administer, to avoid higher costs with no potential benefit to the Exchequer.

1.6. Overall, the proposal to legislate for a relief had the broadest support across the range of respondents, many of whom stressed that the resulting scheme should be fair and transparent.

1.7. While there was consensus that the taxpayer should be entitled to claim the relief, there were disparate views on whether regulations should include conditions to ensure that the amount of tax credited or repaid is not charged to customers. Supplying businesses felt that this is a commercial matter for the market, whereas businesses that buy fuel, in particular petrol retailers, suggested that the benefit must pass to them and that this would be best achieved through adjustment of delivery notes and invoices to accurately reflect the volume of fuel actually delivered to them.

1.8. The government has considered the responses and sees a number of difficulties with implementing and enforcing any condition of this type. The government also does not consider that such a condition would assist HMRC in assuring the correct amount of fuel duty is collected at the duty point, nor

that it would resolve the issues reportedly experienced by independent petrol retailers.

1.9. The government does not consider that it is necessary or appropriate to make the fuel duty relief for vapour recovery subject to additional conditions, besides those required to establish entitlement to the relief and the amount to be accounted for in claiming the relief. A more complex scheme that requires HMRC to police conditions on the relief, particularly where these relate to matters occurring after the duty point, would involve considerable additional resource costs for HMRC with no potential benefits in terms of tax collected.

1.10. The consultation responses did not make a compelling case for the introduction of a revised formula. All respondents agreed that the method of measurement should apply equally to all businesses. The oils industry favoured retaining the existing formula for calculating the duty claim, which they consider continues to be fit for purpose.

1.11. Other respondents felt that the formula is too complicated and suggested the process should be simplified and made more transparent, so that the amounts involved are verifiable and accurately reported.

Summary of measures that will be taken forward

1.12. The government intends to replace the existing ESC by legislating for a simple relief scheme which allows vapour to be captured and processed, but ensures the correct amount of fuel duty is collected by avoiding double taxation of any product through adjustment of the monthly duty account.

1.13. Government does not intend to legislate for any additional conditions or requirements, other than those necessary to confirm entitlement to the relief and the amount to be claimed.

2. Introduction

2.1. HMRC allows vapour captured during the loading of fuel 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.

2.2. 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.

2.3. This consultation sought views on two proposals aimed at placing the 'vapour recovery scheme' as operated under the ESC on a legal footing. The policy objective was to continue to facilitate the recycling of captured vapour while ensuring the correct amount of fuel duty is collected. The consultation also sought 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 consultation process

2.4. On 17 June 2015, HMRC issued a consultation document "Vapour recovery scheme: options for replacing the Extra-Statutory Concession (ESC)". The consultation ended on 9 September 2015. This document summarises the responses received and provides the government's response.

2.5. HMRC received 13 responses to the formal consultation. A list of respondents is contained in Annex A.

3. Responses

3.1. This chapter draws out the key messages from the consultation responses. Questions 3 and 4 have been grouped together, as most respondents provided a combined response to these questions.

Vapour recovery – general comments

3.2. The majority of respondents agreed that petrol vapour must be captured and that a relief is required to prevent double taxation of product returned to duty suspended stocks. There were no calls for HMRC to prevent this process, or for the existing ESC to be withdrawn and not replaced.

3.3. Responses received from the independent retail sector were very similar in content, stating that the development of a new scheme must recognise the need for transparency in the UK retail fuel industry which, they argued, must start with wholesale cost methodology and delivery/invoice accuracy.

3.4. Retailers believe that the existing process is unfair, arguing that the duty credit unjustly enriches the producers, and disadvantages retailers who are charged for fuel they do not receive, the price of which includes an amount equal to the rate of fuel duty.

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?

3.5. Overall, the proposal to legislate for a relief had the broadest support across the range of respondents. However, producers did not consider that legislation was necessary. Fuel retailers were in favour of legislation, but stressed the importance to them that the resulting scheme should be fair and transparent and take consideration of the retailer.

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?

3.6. All of those respondents that answered the question agreed that the eligible claimant for a relief should be the taxpayer responsible for capturing vapour and returning it to duty suspended storage at the terminal.

3.7. Retailers said that the oil suppliers should not be the only party entitled to the relief scheme and that retailers should also benefit, or "at least be protected from harm caused by double accounting by the taxpayers".

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.

3.8. Respondents from different sectors had divergent opinions on the need to include in the legislation a condition requiring that the amount of tax credited or repaid must not be charged to customers.

3.9. Refiners and supplying businesses felt that this is a commercial matter for the market and that allocating recovered volumes to individual, specific deliveries would be very difficult.

3.10. Refiners also argued that the companies who have made the investments for vapour recovery systems should continue to receive the benefit of the relief. The cost of the Vapour Recovery Unit operation is part of the overall costs involved in operating a specific distribution terminal. Such costs include capital costs, depreciation, operating expense and maintenance and are offset by the value of the returned vapour. Therefore, they argue, should operators no longer receive the value of any vapour recovered then their terminal operating costs will increase by that component.

3.11. Producers have also indicated that the value of the product captured and the benefit of duty credit to prevent double taxation is already factored into the price of the fuel they supply. Representatives of companies engaged in the UK downstream oil industry suggested that any condition that removes the benefit from the suppliers may lead to terminal operators increasing fuel prices or charging a fee for capturing and processing recovered vapour in order to reclaim the capital and operating costs associated with the vapour recovery units.

3.12. Representatives of the producers also stated that without the benefit of the duty credit, terminal operators would have less incentive to maintain and maximise vapour recovery and that UK air quality may be adversely impacted as a result.

3.13. Fuel buyers, particularly independent petrol retailers, support the inclusion of such a requirement, although in most cases they felt this would be best achieved by insisting that delivery notes and invoices were adjusted to accurately account for the volume of fuel actually delivered to the customer, rather than any form of payment, refund or pricing adjustment between the relief claimant and their customer.

3.14. One respondent referred to widespread inaccuracies in the production of invoices for duty paid fuel and considered that a lack of enforcement of measurement by HMRC has led to flawed record keeping, and that this would

need to be addressed to properly enforce any future refund mechanism and to ensure accuracy, certainty and fairness.

3.15. Retailers called for the legislation to force suppliers to be totally transparent about the benefit they receive and to ensure the amount claimed is passed on to buyers without deduction.

3.16. Retailers also called for the legislation to ensure that suppliers only charge for what they deliver. They claimed there is currently no incentive for the suppliers to accurately measure stocks that are distributed and that the ESC has created a process where duty can be charged twice on the same product. One petrol retailer suggested that “the simplest way to deal with the matter would be to ensure suppliers only charge for what they deliver. In other words, the net amount loaded after deducting the amount returned to storage as a result of the loading process.”

3.17. Independent retailers also argued that as the retailers have already paid the supplier for the product and duty, any repaid duty should be transparently passed back to them and that, in implementing any change to the vapour recovery system, it is essential that HMRC must ensure that retailers are protected from unfair pricing in light of suppliers suggesting they would increase prices to offset any additional costs, including loss of the duty credits arising from a different system.

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?

3.18. In response to this question, a number of retailers gave an estimate of losses that they consider are a consequence of stock anomalies resulting from the vapour recovery process. They considered that it is “not unreasonable to expect to be charged only for the fuel that is actually delivered” to them.

3.19. Another respondent pointed to current commercial issues around the loss of vapour and that retailers consider that they are paying for an amount of fuel that they do not receive. While they were unsure that the consultation was aimed at resolving these commercial issues, they felt that a legislated-for relief should not exacerbate them.

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.

3.20. None were raised by any respondents.

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.

3.21. Although oil producers expressed support for this option, this was on the basis that they consider the delivery mechanism for this option, holding and movement regulations, could be used to implement the existing scheme thereby avoiding new legislation. Oil producers support the current system because it allows duty paid vapours to be returned to duty-suspended stock without the need for their IT accounting system to distinguish between duty-paid and duty-suspended petrol. They therefore requested that the replacement scheme should be implemented within the terms of their warehousing approvals with the continuation of the current procedure of calculating the volume of vapour returned once per month and claiming the credit of excise duty in the next monthly duty account.

3.22. One respondent concluded that the option would be very difficult to administer and open to abuse and mis-calculation. They also stated that the option would not meet the need for transparency in the warehousing and fuel supply industry. Other respondents also commented that such a scheme would be very complex, particularly in respect of accurate measurement of respective stocks held in combined storage.

3.23. Several respondents commented that option 2 would also rely on the delivery notes from the suppliers being accurate, which, they said, is seldom the case.

3.24. One trade body stated that, despite HMRC's view that there are current legal provisions that would allow for the arrangement in option 2, they believe such "co-storage" does not have a legislative basis in warehousing regulations and that HMRC's policy of allowing common storage of duty-paid and duty-suspended stocks is not lawful. As such, implementation of option 2 would also require a change to legislation.

3.25. One respondent expressed support for any solution, including option 2, providing that it was as clear as possible and properly legislated for, noting that this option does not propose to lay down the conditions in law.

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?

3.26. Industry representatives stated that for technical reasons, it is not possible to physically measure the volume of vapour returned on a daily basis as the volumes involved are so low. A tank gauging system cannot measure at this level with any degree of accuracy and the most effective way of gauging

the volume of vapour returned to storage is by applying the vapour recovery formula.

3.27. They added that “attempting to identify duty paid and duty suspended stocks at this level would be a futile exercise and would be burdensome and expensive to implement”. Changes to IT accounting systems would be required to allow ‘dual’ accounting for motor spirit to track receipts and sales. They said that processes would be over complicated with a higher risk of error in comparison to current process.

3.28. Retailers felt that while option 2 would be a simpler process than a legislated for reimbursement scheme, there would be a significant number of calculations that would need to be made by the warehousekeeper of supply, before an accurate net dutiable figure could be obtained.

3.29. They also stated that HMRC would need to ensure that suppliers’ delivery notes are accurate and that ‘netted off’ volumes for duty-paid products subject to vapour recovery, are subtracted from the figure on the suppliers’ delivery notes and invoices to retailers.

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?

3.30. Although oil producers expressed a preference for option 2, this was on the basis that they felt the existing vapour recovery scheme could be implemented simply via holding and movement regulations. However, refiners did not support option 2 as set out in the consultation document, because they believe the administrative costs of the option would be prohibitive, requiring major development of their IT systems.

3.31. Retailers expressed the view that option 2 would not address their concerns in respect of accuracy of accounting or being overcharged for short deliveries. Others considered it possible that suppliers would increase prices if the suppliers no longer receive the benefit of the fuel duty credit.

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.

3.32. None were raised by any respondents.

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.

3.33. The oil producers were of the view that the existing formula for calculating the duty claim remains fit for purpose. They also suggested that business systems are set up to incorporate the elements of the formula and the adoption of a different formula would have implications for the businesses involved.

3.34. Retailers confirmed that they have difficulty understanding the complex formula used for the calculation of recovered product, while some felt it is over complicated and may be outdated. Retailers also requested that the process be simplified and made more transparent, including that the amounts involved are verifiable and accurately reported.

3.35. A couple of respondents suggested that the amount should be a calculated annual average, which should be recalculated each year taking into account the previous year's data in respect of fuel temperatures, compositions and densities. This calculation should be verified by an independent body capable of capturing and analysing the data.

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.

3.36. All respondents agreed that the method of measurement should apply equally to all businesses.

4. Government Response

Legislation to replace the ESC (Option 1)

4.1. Government considers that a simple relief to replace the ESC will achieve the policy objective by ensuring that taxpayers pay fuel duty to HMRC only on the net volume of fuel released, after taking account of fuel returned to stock during the vapour recovery process. This relief will be claimed in the form of an allowance to be offset against fuel duty payable to HMRC.

4.2. The legislation will provide that the taxpayer's net liability to fuel duty for the monthly accounting period will be calculated by offsetting the fuel duty already paid on vapour returned to stock against the total excise duty payable for the volume metered across the duty point.

4.3. The relief will be efficient to administer and will meet the policy objective of continuing to allow vapour to be captured and processed, while ensuring the correct amount of fuel duty is collected by HMRC on the total volume of fuel passing the excise duty point.

4.4. For these reasons the government supports option 1.

Analysis of Option 2

4.5. The government considers that option 2 would be very complex to administer. As the proposed system is based on warehousing principles, it is dependent on exact measurements and stock accounting, and would involve additional resources for HMRC to verify the respective stocks held, which is not necessary under the ESC or option 1.

4.6. Oil industry representatives indicated that meeting the measurement conditions of option 2 as outlined in the consultation document is not technically possible and the stock accounting requirements would require costly and prohibitive changes to their IT systems. Therefore the government has concluded that this option is not desirable.

4.7. The government does not consider it possible for option 2 to be implemented without accurate accounting for respective duty-suspended and duty-paid stocks that is a requirement of warehousing regulations. Without these aspects, which would adhere to warehousing principles, the scheme would not operate within holding and movement regulations and would not have the necessary legislative foundations. Therefore the option put forward by oil producers is not feasible.

4.8. When commenting on this option a small number of respondents suggested HMRC's current policy of allowing duty paid excise goods and other goods not subject to excise duty to be stored within the premises approved as an excise warehouse was not supported in law. Such goods are not within the excise warehouse regime, but are permitted to be stored within the area approved as

an excise warehouse. HMRC requires the occupier of the warehouse to be able to distinguish between goods liable for excise duty and goods that have either had duty already paid on them, or that are not liable for duty, either by physical segregation or through a record system. Whatever the outcome, any goods permitted to be co-stored with goods liable to excise duty are at no time considered to be within the excise warehousing regime.

Eligibility for the relief

4.9. Oil producers are equipped with the technology required to comply with the EU legislation and process the captured product. The complex data necessary to calculate the volumes involved for duty purposes include measurements made by their equipment, such as the Vapour Recovery Unit, which has considerable maintenance costs and must be independently inspected to meet standards set by HMRC and environmental legislation.

4.10. The government intends to legislate that the relief claimant will be the taxpayer responsible for returning the petrol vapour to duty-suspended stocks, to be offset against the total liability for fuel duty on product metered as it passes the duty point.

4.11. The relief will maintain the simplicity of the tax regime, requiring only two elements to be taken into consideration in determining the amount of fuel duty to be collected:

- the total volume of fuel metered passing the duty point in the accounting period (one month); and
- the calculated volume of captured product returned to stock following the loading process.

4.12. This information will be sufficient to enable the taxpayer to calculate and account for the net volume of fuel released for consumption, and therefore the amount of excise duty payable for the accounting period. HMRC would not require any further information, nor reference to any additional documentation, to ensure the correct amount of tax is collected.

4.13. In circumstances where more than one entity is responsible for releasing product from the same entered premises, it will be the responsibility of the warehousekeeper to ensure that the total fuel volumes accounted for are correct and, where applicable, captured vapour is properly apportioned.

Additional requirements and conditions

4.14. The government recognises that the issues surrounding the existing vapour recovery scheme are both complex and sensitive, with concerns expressed by all sectors within the industry. Each of the options had some measure of opposition from different sectors within the supply chain.

4.15. Any requirement to pass the benefit of the relief, whether directly or indirectly, to retailers was firmly resisted by the producers, who argued that it is a commercial matter for the market.

4.16. Independent retailers argued that they are consistently overcharged by producers as invoice volumes do not take account of vapour recovery. They therefore strongly supported the relief including conditions to protect buyers from being charged an amount, including fuel duty, for fuel that is not actually delivered to them.

4.17. The government does not consider that such conditions would assist HMRC in verifying the correct amount of fuel duty is collected at the duty point, that it would be possible for HMRC to assure and enforce them, or that this would provide a solution to the issues reportedly experienced by independent petrol retailers.

4.18. Retailers argue that the current system, under the ESC, allows the refiners to sell petrol at the duty point, harvest the vapour, and then sell it again. However, vapour recovery is an integral and mandatory part of the petrol loading and unloading process. Product being recycled and delivered again is a consequence of the vapour recovery process, and would continue to occur with or without the relief.

4.19. Apart from creating the potential for double taxation at duty point terminals, the process has no bearing on the amount of tax collected by HMRC. The refiners do not receive a payment from HMRC, as retailers suggest. Rather, the relief prevents owners of fuel when it crosses the duty point from paying too much to HMRC, by allowing them to deduct the volume of tax-paid vapour returned to stock from the volume metered at the duty point. Not doing this would result in the recycled petrol being taxed twice.

4.20. It was generally agreed by respondents from all sectors that it would be very difficult to establish the precise volume of vapour captured during each loading process, or to attribute the volumes involved to specific deliveries or individual customers. Therefore, any adjustment to delivery notes produced at a duty-point terminal could only be a notional deduction rather than an accurate statement of the volume actually received at the customer's premises, as concerns the independent retailers. As such, it would not be possible for HMRC to verify, or to enforce, the accuracy of invoiced amounts.

4.21. According to the Department of Energy and Climate Change (DECC), almost half of UK petrol is supplied from duty-paid storage and distribution terminals. These transactions are potentially subject to the same issues as affect supplies from duty-point terminals, but it is important to note that any fuel captured as vapour at this stage would not be entitled to the proposed vapour recovery relief, nor would these transactions be covered by any conditions attached to the relief, or subject to verification by HMRC.

4.22. "Short deliveries" resulting from the displacement of fuel vapour are a consequence of the loading process, and the resulting measurement issues

affect fuel whenever it is loaded throughout the supply chain, all the way from the producer to the motorist. As conditions attached to the relief could apply only to supplies made from duty-point terminals, this would therefore not provide a complete solution to the potential for over-charging, which petrol retailers have reported applies equally to the significant proportion of deliveries they receive from duty-paid distribution terminals.

4.23. Conditions attached to the relief could only apply to duty point terminals entitled to claim it. As the terms of the relief would not apply at terminals that store and distribute duty-paid fuel, where the vapour recovery process can equally affect the volumes ultimately delivered, a condition that invoiced quantities must be adjusted could potentially disadvantage retailers that, because of their geographical location, are restricted to purchasing fuel from the duty-paid outlets.

4.24. The burden of fuel duty is passed down the supply chain as a component of the price of fuel as it is supplied to the distributor, to the retailer, and subsequently when sold to the motorist. The excise duty paid to HMRC can therefore only be passed down the supply chain within the price of fuel actually delivered from seller to buyer. If at any stage a customer is invoiced for more than the volume delivered, for whatever reason, the excess charge relates to fuel that was not delivered at all. As such, any over-stating of invoice volumes has no bearing on the accuracy of the amount of fuel accounted for at the duty point, or the amount of fuel duty paid to HMRC by the taxpayer. The government therefore considers this is not a matter for HMRC to regulate.

4.25. The government considers it would not be reasonable or proportionate to disallow vapour recovery fuel duty credits for any reason if HMRC is satisfied that the fuel duty relief has been correctly calculated and accounted for and the correct amount of tax has been declared and collected on the net volume released for consumption.

4.26. Any condition or requirement that delivery notes or commercial invoices must accurately reflect the volume received by the customer would have to be based on a measurement taken at the place of unloading. In most cases, no such measurement is taken or possible. Also, as this volume may vary from the volume of product metered on leaving the duty point terminal for various reasons, this would bring into consideration issues beyond the scope of the relief, and potentially arising after the relief has been claimed.

4.27. The government considers that to deny credits where invoice inaccuracies relate to issues other than the accuracy of the vapour recovery relief claim would not be reasonable and would result in the double taxation of fuel that the relief is intended to prevent.

4.28. To reasonably disallow the credit or later assess the supplier for an amount equal to the relief claimed would therefore require a condition that is dependent on HMRC being able to confirm that any delivery discrepancy is attributable solely to a failure to account correctly for the vapour recovery

process. The government has concluded that this level of verification would not be possible, even if HMRC resources permitted.

4.29. Imposing more complex conditions that make entitlement to the vapour recovery relief subject to accurate invoicing, or pricing adjustments, would result in HMRC having to investigate and rule on claims of over-charging from individual retailers, and to take action or intervene, even where these issues would have no bearing on the accuracy of the relief claimed, or the total fuel duty paid to HMRC by the taxpayers.

4.30. 17.7 billion litres of petrol were released for consumption in 2014[1] with sales made at more than 8,500 retail sites[2], but the volumes involved in vapour recovered during deliveries directly to customers from duty point terminals are very small and do not present a significant revenue risk to the Exchequer. A requirement for HMRC to verify that invoiced volumes match the volumes actually received by customers, including distribution terminals and retail sites, would be disproportionately resource-intensive, potentially involving thousands of transactions, and would provide no benefit in terms of the amount of tax collected.

4.31. The measurement issues resulting from the vapour recovery process and the possibility of suppliers charging for more fuel than they actually deliver exist throughout the fuel supply chain. Discrepancies in respect of volumes received may be explained by factors other than vapour recovery, and would apply equally whether the fuel is sourced from a duty-suspended or duty-paid source. Where a customer at any stage of the supply chain believes they have been charged for a volume of fuel that, for whatever reason, is not delivered to them, this should be resolved between the contracting parties.

4.32. HMRC is responsible for the collection and management of excise duty which is charged on fuel at the time it is released for consumption. While some respondents called for transparency and consistency throughout the fuel supply chain, Government considers that to achieve this would require HMRC also to verify the volumes delivered to retailers from duty-paid distribution terminals and then to motorists from petrol retailers, all of which are also subject to vapour recovery and temperature variations.

4.33. The majority of petrol retailers invoice their customers for measured volumes that are not adjusted for temperature or to reflect vapour displaced and captured during the refuelling process. This is because, currently, very few petrol retailers have the necessary equipment installed at their sites.

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[1] Source: Hydrocarbon Oils Bulletin, HMRC, October 2015 (https://www.uktradeinfo.com/Statistics/Pages/TaxAndDutybulletins.aspx)

[2] There is not universal agreement on the number of retail sites. For example UKPIA Statistical Review 2015, Section 8, Page 31 claims there are 8,591 at the end of 2014 (http://www.ukpia.com/docs/default-source/default-document-library/ukpia-2015-statistical-review4f265c889f1367d7a07bff0000a71495.pdf?sfvrsn=0), whereas the Petrol Retailers Association claims data from Experian Catalist shows there are 8,611 (http://www.ukpra.co.uk/about-the-pra/facts-and-figures/). Therefore “more than 8,500” has been used in this report.

4.34. Buyers at any point in the supply chain have a potential civil remedy against the suppliers if they do not receive the quantity of fuel they have contracted and been charged for. Therefore it would not be a cost-effective use of HMRC's limited compliance resource to police independent commercial arrangements occurring after the tax has been secured, and which have no bearing on the amount of fuel duty to be collected.

Potential impact on the price of fuel

4.35. The government considers it is likely that if legislation includes a condition that claimants must pass the benefit of the relief to customers, producers would either simply opt not to claim the fuel duty relief, or would pass on the costs of equipment, technology etc. to their customers, either through an increase in the cost price or by terminal operators charging a fee for loading petrol to cover their capital and operating costs. Either situation would be likely to cancel out any benefit gained by retailers.

4.36. The government does not consider it would be appropriate for HMRC to intervene in the commercial issue of pricing.

Unjust Enrichment

4.37. The purpose of the relief is to prevent too much tax from being paid, by allowing volumes on which fuel duty has already been paid to be offset against the monthly duty liability. Consequently, there will be no overpayment of duty by taxpayers, no benefit to the Exchequer, and no repayment made by HMRC of excise duty that should not have been paid.

4.38. As such, there will be no circumstances in which taxpayers will claim back excise duty paid in error, as provided for in section 137A of the Customs and Excise Management Act 1979 (CEMA)[3]. This legislation provides for circumstances in which a taxpayer has paid more excise duty to HMRC than was correctly due on products passing the excise duty point. An example of this would be where an excise duty calculation was based on an incorrect alcohol by volume (A.B.V.) figure, resulting in overpayment of duty, but the error was discovered only after the products had already been supplied to a customer at a price including excise duty at the incorrect, higher amount of duty. In these circumstances, repayment of the overpaid excise duty by HMRC would unjustly enrich the supplier, because they have already charged their customer the higher amount when the goods were supplied to them.

4.39. In the case of vapour recovery, the credit claimed relates to a volume of fuel on which the correct amount of duty was paid at the duty point. As this volume has been returned to stock, the fuel and the excise duty paid on it has not been passed down the supply chain. Therefore s.137A of CEMA, and the defence to repayment of unjust enrichment does not apply.

Environmental impacts

[3] http://www.legislation.gov.uk/ukpga/1979/2/section/137A

4.40. UKPIA/UKOITC suggested that legislation that imposes additional conditions on the taxpayer may remove the incentive for some producers to prevent the release of harmful emissions, having an adverse impact on air quality.

4.41. However, the requirement to prevent the escape of VOCs is imposed under EU environmental law. While fuel duty relief for vapour recovery is necessary because the process gives rise to the potential for double taxation of the captured product, it is implausible to suggest that operators comply with the requirement to capture vapour only because of the fuel duty credit.

Delivery documentation

4.42. The legislation in respect of delivery note requirements - Regulation 12(2)(a) of the Hydrocarbon Oil Regulations 1973 (HOR)[4] - was enacted to ensure there is sufficient information available to enable HMRC officers to verify that the correct amount of excise duty is calculated. The regulation applies only to operators of 'entered premises' i.e. a refinery or a warehouse.

4.43. Where other records and documentation produced and retained by refineries provide HMRC with sufficient information to confirm that the right amount of fuel duty has been paid, HMRC does not rely on delivery notes to carry out its assurance work.

4.44. It is also the case that a significant proportion of fuel purchased by the retail sector is supplied from duty-paid distribution terminals. As well as not being entitled to a credit under the proposed legislated-for vapour recovery relief, supplies made from these duty-paid terminals are not covered by any specific HMRC requirements in respect of delivery notes.

Measurement

4.45. The government proposes that the fuel duty calculation formula should remain the basis for calculation of the amount of fuel duty to be offset in respect of vapour captured and returned to duty-suspended stocks. The government intends to include the formula in proposed legislation for the relief.

4.46. Use of the formula has until now been a recommendation. Mandating its use will ensure that the methodology used to calculate duty relieved is consistently applied by all claimants, while providing for variations between sites to be taken into account in the way that, for example, a flat rate applied to all transactions would not achieve. HMRC will ensure that its guidance explains the elements included in the formula and how these will be verified.

4.47. To date, HMRC has not been able to specifically report the amount of fuel duty claimed under the ESC, as deductions against the total liability have to be aggregated in the duty account (Form HO10). Government proposes to

[4] http://www.legislation.gov.uk/uksi/1973/1311/contents/made

introduce revised accounting methodology to enable HMRC to report the amount of relief claimed.

5. Next steps

5.1. HMRC will draft Regulations to provide for a relief under the powers contained in s20AA of the Hydrocarbon Oils Duties Act 1979 (HODA)[5] for Ministerial approval to implement Option 1.

5.2. The legislation will be published for a short technical consultation.

5.3. HMRC will publicise when the changes will come into effect.

[5] http://www.legislation.gov.uk/ukpga/1979/5/section/20AA

Annexe A: List of stakeholders consulted

Brobot Petroleum Ltd

Chartered Institute of Taxation

Cotgrave Service Station

ExxonMobil

Fairbanks Environmental

FairFuel UK

Garner Group

NJB Services

NuStar Energy L.P.

Petrol Retailers Association

St Michaels Garage

United Kingdom Petroleum Industry Association / United Kingdom Oil Industry Taxation Committee

United Kingdom Warehousing Association