

Legislative reform of the Terminal Markets Order:

Summary of Responses

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Contents

Chapter 1 Introduction	6
Chapter 2 Summary of Responses	7
Chapter 3 Government Response and Next Steps	13
Annex A List of Respondents	15

Chapter 1

Introduction

1.1 The VAT Terminal Markets Order (TMO)¹ provides a VAT zero rate for certain wholesale commodity transactions made by members on named commodity exchanges or market associations. These markets are listed by name in the legislation and are defined as “terminal markets”. This serves to reduce VAT administration burdens for commodities traded on these markets.

1.2 On 27 April 2023, as part of the Tax Administration and Maintenance Day, the previous Government announced its intention to update the TMO legislation and to formally include trading in UK Emissions Trading Scheme allowances within the Order.

1.3 On 18 July 2023, the previous Government published a consultation on the legislative reform. This set out proposals to modernise the TMO legislation, whilst maintaining the current scope of the relief. The proposals included moving to a principle-based legislative framework, making it more responsive to market changes and bringing greater certainty to stakeholders.

1.4 This document summarises responses to that consultation and outlines the Government’s response.

1.5 The consultation invited stakeholder views on the following six areas:

- Defining a recognised TMO commodity exchange or a recognised market association;
- Defining a member of the market;
- Defining qualifying transactions;
- Specifying commodities traded on terminal markets;
- The interaction between the TMO and investment gold; and
- Future changes to the TMO.

1.6 The consultation ran for 8 weeks closing on 12 September 2023. It was a joint consultation between His Majesty’s Revenue and Customs (HMRC) and His Majesty’s Treasury. The Government would like to thank the 9 respondents who shared their views. These included accountancy firms, market associations, and professional bodies.

¹ ([Section 50 of the Value Added Tax Act](#) and [The Value Added Tax \(Terminal Markets\) Order 1973](#))

Chapter 2

Summary of Responses

2.1 Overall, respondents commented that the TMO is valuable to businesses trading in commodities, helping to smooth the operation of these markets, and they were pleased that it will be retained. They highlighted that the TMO zero-rate ensures liquidity in the market and eases the administrative burdens of accounting for VAT. It is also recognised as a measure that can help prevent VAT fraud.

2.2 Respondents generally agreed with the Government's ambition to modernise the legislation and agreed on the need for greater certainty and clarity.

Principle-based approach vs list-based approach

2.3 As part of the consultation, the Government sought stakeholder views on a move towards a more principle-based approach in the legislation, rather than a list-based approach.

2.4 The general observations are covered at paragraphs 2.5 to 2.9 and more detailed comments on definitions can be found in the summary of the responses received to the specific consultation questions.

2.5 Most responses to the proposals broadly welcomed the Government's intention of moving towards a principle-based approach.

2.6 Respondents highlighted the importance of safeguarding the current scope of the TMO, whilst providing flexibility to enable it to evolve with the markets, without the need of continually changing the legislation and guidance. They highlighted the need to ensure that any defining conditions and criteria do not hinder market liquidity or investment opportunities, and do not compromise the United Kingdom's standing as the leading global centre for these markets.

2.7 Many respondents emphasised that clear definitions of the terms used in the principles would be essential to minimise differing interpretations and to provide businesses with certainty. More specific comments from respondents on the proposed criteria can be found under the relevant sections below.

2.8 Most respondents considered that lists alone, while providing an element of certainty, risked becoming quickly outdated. However, some respondents preferred the list-based approach. There were also concerns that certain markets and new commodities may not fit within a principle-based approach.

2.9 Respondents suggested that the principles could be supported by regularly updated lists, such as in-scope markets and commodities, as well as clear and updated guidance. Some respondents suggested establishing a

government-industry forum to discuss trends regarding the trading of new commodities with the Government.

2.10 Below is a summary of the responses received to the specific consultation questions:

A. Defining a recognised TMO commodity exchange or a recognised market association:

2.11 Currently, the in-scope terminal markets, which take the form of commodity exchanges or market associations, are specified in the Order. To make the legislative framework more responsive to future market changes, the Government proposed using a principle-based approach based on six criteria to define a TMO commodity exchange or a recognised market association.

Question 1: What are your views on removing the list of named markets which are in the current TMO legislation and replacing it with a definition of a recognised TMO commodity exchange or a recognised market association based on the suggested criteria?

Question 2: Are there any other criteria that could be used to define a recognised commodity exchange or a recognised market association for the purpose of the TMO?

Question 3: What are your views on the alternative approach, where the Government would maintain a list of exchanges/market associations in a VAT notice?

2.12 Whilst respondents were broadly supportive of the Government's proposals to enable a more responsive TMO legislative framework, several respondents were concerned that there might be differing interpretations of the criteria. As such, respondents supported retaining a list of the terminal markets, in addition to any principle-based approach.

2.13 Several respondents highlighted that commodity exchanges and market associations operate on different bases, and therefore the definitions that form the principled-based approach will need to be sufficiently broad to cover both types of commodity markets. Concerns were raised that the criteria seemed too commodity exchange focused and did not fully reflect the transactions undertaken by market association members. Similarly, while noting that the proposed six criteria used the language of regulated markets, respondents cautioned against applying a very strict regulatory definition to avoid unintentionally excluding certain markets, such as the precious metals markets.

2.14 It was suggested by one respondent that the Government could require exchanges and market associations that met the criteria to apply for TMO status. The Government could then maintain a register of in-scope exchanges and market associations, and this could be accessed through the TMO VAT Notice, for instance.

2.15 Some respondents expressed interest in including foreign commodity exchanges within the scope of the TMO.

B. Defining a member of the market:

2.16 The TMO defines a member of a market as including any ‘persons ordinarily engaged in dealings on the market’. The Government proposed to update the definition by underpinning it with two principles. These are that: (i) only trades between members or between members and non-members (that do not go to physical delivery) are covered by the TMO, and (ii) the right to trade on a terminal market underpins the definition of ‘member’ for TMO purposes.

Question 4: Do you agree that it would be helpful to define ‘persons ordinarily engaged with dealings on the market’?

Question 5: Do you agree with the principles set out at paragraphs 2.15 and 2.16 [of the consultation]? If not are there any additional or different principles which the Government should consider?

Question 6: What are your views on the alternative approach, where the Government would maintain a list of member classes entitled to trade under the TMO in a VAT Notice that would have the force of law?

2.17 Respondents were supportive of defining ‘persons ordinarily engaged with dealings on the market’.

2.18 However, responses were mixed regarding the proposed defining principles. While some agreed that the principles would be reasonable and useful, others considered that they may lead to unintended consequences, particularly as they seemed to align more closely to commodity exchanges than market associations.

2.19 For market associations, respondents emphasised that an objective definition that worked in the context of precious metals trading would be needed. This would ensure that transactions currently in scope of the TMO are not inadvertently removed. Some respondents highlighted the terms within the 2013 Memorandum of Understanding (MOU) between HMRC, the London Bullion Market Association (LBMA) and the London Platinum & Palladium Market (LPPM) should be considered when defining a member of a market.

2.20 More generally, it was also highlighted that the principles do not explicitly address intermediaries within the market. Some respondents also suggested that clearing houses that clear and settle contracts listed on a recognised commodity exchange should also be treated as a member of the exchange for TMO purposes.

2.21 One respondent suggested that if commodity exchanges and market associations were required to apply for TMO status, the Government could, at the same time, require them to notify the member classes considered to fall within the TMO.

C. Defining qualifying transactions that fall under the scope of the TMO:

2.22 The Government proposed criteria to define transactions that would qualify for the TMO relief. The definition would include futures, forwards, options, and spot contracts. These should be exercisable at a date later than when granted, wholesale in nature, capable of physical delivery, and traded on a TMO commodity exchange or market associations by a member of the market.

Question 7: What are your views on the proposal to define the qualifying transactions that would fall under the scope of the TMO?

Question 8: What are your thoughts on the proposed criteria that could be used as a basis for the definition of the qualifying transactions that would fall under the scope of the TMO?

Question 9: Do you think any other criteria should be included in such a definition?

2.23 Most respondents supported the Government's proposed approach and broadly agreed that the proposed qualifying principle-based criteria would provide markets with greater certainty on the types of transaction that fall within the TMO relief.

2.24 However, some respondents highlighted the need to ensure that the criteria would not inadvertently narrow the scope of the relief. Some respondents were concerned that the proposed criteria would create issues for market association members, who would prefer to rely on a defined list of qualifying transactions. Respondents noted that, when setting the criteria, the operational differences between commodity exchanges and market associations should be duly considered.

2.25 Some respondents considered that the proposed criteria needed further clarification, such as the reference to 'exercisable at a date later than that on which it is granted', to avoid potentially different interpretations by TMO participants.

D. Specifying the commodities traded on terminal markets:

2.26 The Government proposed qualifying principles regarding the traded commodities. These were that the traded commodities:

- Would be taxable supplies, if they were made under the normal operation of VAT law;
- Meet specific internationally recognised standards; and
- Be of sufficiently high value and volumes to warrant simplification and/or to prevent VAT fraud.

The Government proposed that the legislative framework would include these principles as well as specifying the commodities in scope of the TMO.

Question 10: Do you foresee any issues with the intention to specify commodities within the legislative framework of the TMO?

Question 11: Do you agree with the principles that commodities should meet for the purposes of the TMO and that they are sufficient to prevent VAT fraud?

2.27 Most respondents broadly agreed with the proposed principles that new commodities should meet in order for the Government to decide whether they are suitable for inclusion within the TMO relief. It was also felt that the proposed principles were sufficient in their aim of preventing fraud, although further measures might also be needed, such as increased monitoring of transactions.

2.28 Some concerns were raised regarding the references to “recognised internationally” and “sufficiently high value and volumes” in the proposed principles. Respondents felt these terms were subjective and could create uncertainty. For example, some contracts when initially launched are traded at low volumes, and this could limit the ability to launch new products.

2.29 Although respondents agreed that the Government’s proposal to specify commodities in the legislative framework would bring taxpayer certainty, there were also concerns that it risked creating delays when new contracts were launched. Respondents considered that the previously mentioned proposal of a government-industry forum, see paragraph 2.9 above, might help in this regard.

2.30 More broadly, respondents noted that base metals were excluded from the list of commodities in paragraph 2.25 of the consultation. Respondents suggested that the Government should also consider including rhodium sponge in the scope of the TMO and voluntary carbon credits (VCCs) if brought in the scope of VAT. See para 3.6 below for an update on VCCs.

E. TMO and investment gold (Articles 4-7 of The Value Added Tax (Terminal Markets) Order 1973 (SI 1973/173))

2.31 The Government did not propose any changes to these provisions under this legislative review of the TMO.

Question 12: Do you agree that Articles 4-7 of the TMO do not need revising? If you do not agree, please explain what changes may be required and why.

2.32 Overall, respondents considered that Articles 4 to 7 of the TMO do not need to be fundamentally revised. However, some respondents questioned the need for Article 7, which requires members of the LBMA to keep a record of supplies described in article 5 of the TMO and pay the ‘Commissioners of Customs and

Excise' the net amount of VAT on behalf of non-members in certain circumstances.

2.33 Separately, while Question 12 concerns investment gold, some respondents took the opportunity to suggest that the Government could consider publishing further guidance on trades of precious metals, to provide greater clarity and certainty in the application of the VAT rules.

F. Future changes to the TMO

Question 13: Do you think the proposed principle-based approach meets the objective of flexible legislation to incorporate future changes?

Question 14: Do you think there is an alternative method to make these changes?

Question 15: Does your business have any plans to change or consult on the operation of your commodity exchange or market association in the future? If so, can you provide an outline of these changes.

2.34 In addition to the previous comments regarding moving towards a principle-based approach for the TMO, respondents generally considered that the Government's proposals met the objectives of developing a flexible TMO legislative framework, responsive to future market changes.

2.35 One respondent suggested introducing a government-maintained register of markets in scope of the TMO, as mentioned at paragraph 2.14 above.

2.36 Separately, most respondents mentioned that they did not have any immediate plans, at present, to change or consult on the operation of their commodity exchange or market association.

Chapter 3

Government Response and Next Steps

3.1 The Government is grateful for these informative consultation responses. The main purpose of this consultation was to consider proposals to modernise the TMO legislation, so that it better reflects current and future market practices, whilst maintaining the current scope.

3.2 The respondents were overall content with the approach set out in the consultation. The responses have illustrated a range of views and suggestions for modernising the legislation that underpins the TMO.

3.3 The Government notes that several respondents had suggested areas where they consider TMO treatment could be applied more broadly. We note these comments and recognise that some respondents will be disappointed that suggestions such as these, that fall outside the scope of this consultation, will not be taken forward at this time.

3.4 While respondents were generally supportive of proposals to move to a principle-based legislative framework, as this would provide flexibility to keep pace with changes in the markets, responses highlighted that this approach needs to be balanced with providing certainty for businesses, such as a list-based approach achieves. Based on the responses received, the Government is considering how to improve the proposed principles with regards to providing greater clarity and certainty, whilst also considering the use of lists where appropriate. The Government will also consider the MoU throughout this process, particularly in terms of how the metals markets operate in practice.

3.5 To allow for more flexibility in the reform of the TMO, at Spring Budget 2024, the previous Government announced that it would amend primary legislation that underpins the TMO. This amendment was delivered through the Finance Act (No.2) 2024.

3.6 More broadly, on 9 May 2024, the previous Government issued a Revenue and Customs Brief² that set out that from 1 September 2024 trades in certain voluntary carbon credits will be subject to the standard rate of VAT. From this date, where taxable voluntary carbon credits are traded on specified terminal markets, they will be included in the TMO.

² [Revenue and Customs Brief — VAT treatment of voluntary carbon credits - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/revenue-and-customs-brief-vat-treatment-of-voluntary-carbon-credits)

3.7 As the Government continues to develop the reformed legislative framework, there will be continued engagement with industry stakeholders and representatives. This includes consulting on draft secondary legislation in due course.

Annex A

List of Respondents

List of respondents from organisations, businesses, and charities:

- Association for Financial Markets in Europe (AFME)
- Deloitte LLP
- The Institute of Chartered Accountants in England and Wales (ICAEW)
- InterContinental Exchange, Inc (ICE)
- London Bullion Market Association (LBMA)
- London Metal Exchange (LME)
- London Platinum & Palladium Market (LPPM)
- PricewaterhouseCoopers LLP (PwC)
- UK Finance Limited

HM Treasury contacts

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