



Red Diesel update

12 September 2008

The BMF, RYA and IWA are pleased to provide an update on how the end of the derogation will be implemented as of 1 November 2008.

Introduction

We have been working closely with HMRC since early 2007 to produce a pragmatic and sensible solution to the implementation of the end of the derogation. Prior to that, from 2003, we successfully lobbied Government to seek the retention of the derogation but this was rejected by the European Commission in favour of its tax harmonisation agenda.

Once it was confirmed that the derogation had to come to an end, our key concerns were to:

- Secure the continued availability of diesel at the waterside
- Minimise the impact on the boater and industry
- Avoid safety and environmental implications of transporting fuel by hand

In February of this year when HMRC published its outline proposals we were pleased to see that our efforts had succeeded and that all of these concerns had been taken into account, particularly by allowing recreational boaters to continue to use red diesel. Since then, we have been endeavouring to ensure that the detail of HMRC's proposals is as simple and effective as possible.

Successful Co-operation

The BMF, RYA, IWA and HMRC all agree that it was disappointing that the derogation was not renewed by the European Commission, despite what we all considered to be a very strong case. We also all agreed that the end of the derogation presented considerable difficulties in terms of implementation. We are very pleased, however, that the BMF, RYA, IWA and HMRC have been able to work together successfully on behalf of the industry and recreational boaters. HMRC has been very receptive to the concerns of suppliers and users and has managed the consultation process well.

HMRC Conclusions

- HMRC accepted the overwhelming wish of both suppliers and users that red diesel should continue to be available to recreational boaters.
- The loss of the derogation will only affect fuel used for propulsion, which will be subject to the full rate of duty.
- Red diesel at the rebated rate will continue to be available for domestic purposes, such as heating and lighting.

How will it work?

1. When recreational boaters buy diesel for their craft, they will need to make a declaration to the supplier if they intend the fuel to be used for propelling a private pleasure craft.
2. The recreational boater will also declare what percentage of the fuel will be used for propulsion (as opposed to domestic purposes such as heating and lighting).

How will the boater work out what percentage of fuel they intend to use for propulsion?

HMRC has understood our arguments about the potential difficulties for fuel suppliers in calculating duty and VAT – in particular for the smaller operators – when faced with customers claiming different percentages of fuel used for propulsion. HMRC also appreciates the concerns of users about the difficulty of calculating and apportioning their own intended usage accurately and their worries about unintentionally making an inaccurate declaration. However, the EU Energy Products Directive specifically refers to ‘fuel for the purposes of navigation’ (which is reflected in UK law as ‘fuel for propelling’), so there is no legal basis for imposing a single standard apportionment to be applied universally that pays no regard to actual usage for propulsion.

HMRC has therefore confirmed to the BMF, RYA, and IWA that their advice on this issue is as follows:

“Q. What will be the allowance for fuel used on boats for heating and lighting?

A. There is no fixed allowance. It is for the purchaser to declare the percentage of fuel used for propulsion. However, analysis by both the industry and HMRC suggests that a split of 60% for propulsion and 40% for domestic use (heating, cooking etc) probably reflects most people’s use and it is therefore likely that many users will declare such an apportionment. This will make it easier for suppliers (RDCOs) to work out additional duty and VAT. However, where a purchaser knows that their propulsion use may be more or less than the above apportionment split or a craft clearly has no domestic use, then they must declare their actual intended usage.

Q. What about residential boat owners where nearly all fuel is for domestic purposes – what can they declare?

A. We have recognised the status of residential boat owners whose primary residence is their boat. Some of these will be at fixed moorings or move just a very short distance along the tow path from permanent moorings. If they live aboard the craft permanently and hold certain documentation, such as a Houseboat Licence, Residential Mooring Licence, Council Tax Bill in respect of the mooring, or other peripheral documentation, invoices or bills which provides proof of permanent residency, they may purchase all their fuel at the rebated rate (as if they were a commercial vessel). They will still be required to make and sign a declaration saying that 0% of the fuel is for propelling purposes. It will be the responsibility of the declarant to ensure that they hold the requisite documentation should HMRC wish to check the validity of the declaration made in these circumstances. **Continuous cruisers may not declare 0% under these arrangements, even if they reside permanently on their craft, they must declare their actual intended usage for propulsion.”**

Registered Dealers in Controlled Oils (RDCO) will need to account to HMRC for the additional duty received from recreational boaters. RDCOs already owe a general duty of care to ensure that they only make supplies of controlled oil for legitimate uses.

Further Information

We will continue to work with HMRC to provide support to suppliers and users over the next few months. RYA and IWA will provide guidance to their members and the BMF will offer an information service for industry. HMRC has confirmed that it will provide supplementary guidance to RDCOs and that its emphasis as the new measures bed in will be to help and advise suppliers and users to get things right.