



## **GUIDANCE NOTE ON THE USE OF "RED" DIESEL FOR PROPELLING PRIVATE PLEASURE CRAFT**

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### **Legal Background**

Pursuant to the EU Energy Products Directive 2003/96, EU member states are free to impose their own rate of duty on motor fuel and heating fuel subject to minimum levels specified in the Directive. The Directive also provides that, except in very limited circumstances, member states are not permitted to levy different rates of duty on equivalent fuels. In the Directive, express provision is made for motor fuel used for "the purposes of navigation within Community waters (including fishing), other than private pleasure craft", heating fuel and fuel used for generating electricity on board a craft to be levied a reduced rate of duty.

The UK secured a derogation from this Directive to permit the UK to continue to levy a reduced rate of duty on motor fuel to be used for propulsion in private pleasure craft but that derogation expired on 31 December 2006 and the UK Government's application for the derogation to be extended was rejected by the European Commission. With the end of the derogation, the UK is now obliged to levy the same level of duty on motor fuel used for propelling private pleasure vessels as it does for equivalent motor fuel used in other applications (such as road vehicles).

### **Rates of Duty**

Although recreational boaters need to pay the standard rate of duty on diesel used for propelling private pleasure craft, recreational boaters are still entitled to buy diesel at the reduced rate of duty for use in non-propulsion purposes, such as heating, lighting, electricity generation, refrigeration, air-conditioning or providing domestic hot water.

This clearly presents difficulties for some private pleasure craft, such as those that are fitted with a generator or heater that runs on fuel supplied from the same fuel tank as the engine, those that use the engine alternator to charge domestic batteries or those in which the domestic hot water system or refrigerator compressor is driven by the engine. Similar problems may also arise for craft propelled by diesel-electric systems.

## How will it work?

1. When recreational boaters buy diesel for their craft, they will need to make a declaration to the supplier (a Registered Dealer in Controlled Oils or RDCO) 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).
3. The wording prescribed by HMR&C for this declaration is:-

“I declare that [ ]% of the fuel purchased will be used for propelling a private pleasure craft”

and the declarant will be asked to pay the full rate of duty on the declared proportion of the fuel purchased.

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

HMR&C has understood the potential 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.

HMR&C has therefore confirmed to the RYA that HMR&C’s 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 HMR&C 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 HMR&C 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.”**

### **What is a “private pleasure craft”?**

The definition of “private pleasure craft” for the purposes of the Energy Products Directive and the purchase of red diesel in the UK is defined in the Directive as:-

“Any craft used by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities”

This definition has been inserted into to the Hydrocarbon Oil Duties Act 1979 (the primary legislation that governs the levying of duty on fuel oil in the UK) by the Finance Act 2008.

The definition of “private pleasure craft” is different from the definition of “pleasure vessel” used in UK legislation such as regulations made under the Merchant Shipping Act 1995, including

the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998.

The definition of "pleasure vessel" is narrower than that of "private pleasure craft" so it is likely that some craft that are not "pleasure vessels" for the purposes of the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998 and therefore have to comply with the relevant Code of Practice will nevertheless still be "private pleasure craft" for the purpose of purchasing fuel.

Conversely, a yacht that is not certificated to operate commercially is unlikely to be able to claim that it is not a "private pleasure yacht".

How the definition of "private pleasure craft" will be interpreted and how it will interrelate with the definition of "pleasure vessel" will be a matter for the Courts to determine in due course. We set out below, however, our understanding of how the definition of "private pleasure craft" might be applied in certain circumstances.

Bareboat Charter:	Likely to be regarded as a private pleasure craft, whether or not the charter is "commercial" and whatever the means of payment, if any
Skipped Charter	Unlikely to be regarded as a private pleasure craft if the owner/charter company provides a skipper, as this may equate to the carriage of passengers for consideration
Training Courses	Unlikely to be a private pleasure craft, as this may equate to the supply of services for consideration
Yacht Delivery	Unlikely to be a private pleasure craft if the delivery is by professional crew on behalf of a yacht manufacturer, distributor or charter company; otherwise, likely to be a private pleasure craft

Club yacht used by members*	Likely to be a private pleasure craft
Club committee boat*	Likely to be a private pleasure craft
Club safety boat*	Likely to be a private pleasure craft, although a coastal club may be entitled to reclaim the duty in accordance with HMR&C Notice 263 'Marine Voyages – Excise Duty Relief for Mineral (Hydrocarbon) Oil'
Club launch*	Likely to be a private pleasure craft

\* Many of these craft fall within the definition of "pleasure vessel" for the purposes of the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998 and do not need to comply with the applicable Codes of Practice. As such, it is likely that they would also be regarded as "private pleasure craft" for the purposes of buying fuel.

### **What about taking my yacht abroad?**

The EU Directorate-General for Taxation and Customs has confirmed that:-

- "1. According to the Community excise legislation and the jurisprudence of the European Court of Justice, in case of fuel transported in the normal fuel storage tank, the excise duty is chargeable in the Member State of acquisition according to the national rules. It falls upon the Commission to enforce the compliance of national legislation with Community law; and
2. People can acquire red diesel in the UK and use it legally in another member state of the European Union, if transported in the normal fuel storage tank."

The EU Directorate-General for Communication has indicated that the onus of proving that full duty has been paid remains strictly with the purchaser.

We therefore recommend that recreational boaters visiting other EU member states:-

1. keep receipts for diesel purchased in the UK, to prove that it was bought in the UK, and ideally log the date of refuelling and engine hours to reinforce these records;
2. do not carry red diesel anywhere other than in their craft's main fuel storage tanks; and
3. do not purchase red diesel in a country where the purchasing of rebated fuel by leisure craft is prohibited by law

### **What about clubs that buy diesel on behalf of their members?**

It is likely that oil suppliers supplying diesel to a club or recognised training centre will apply the full rate of duty to that fuel, unless the club or training centre is a Registered Dealer in Controlled Oils (RDCO) (see HMR&C Notice 192 for more information).

Clubs or recognised training centres that are RDCOs should be entitled to receive deliveries of diesel at the rebated rate but they will then be responsible for obtaining a declaration from those to whom the fuel is supplied and will need to account to HMR&C 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 and any clubs or training centres that are RDCOs should contact HMR&C directly for additional information.

### **Further Information**

Further information, including regarding registration as a Registered Dealer in Controlled Oils, is available from HM Revenue & Customs on 0845 010 9000 or [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

Alternatively, please contact the RYA Legal Department on 0845 345 0373 or [legal@rya.org.uk](mailto:legal@rya.org.uk)

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