

## Foreword

This is a new notice.

### Further help and advice

If you need general advice or more copies of HM Revenue & Customs notices, please ring the **National Advice Service** on **0845 010 9000**. You can call between **8.00 am and 8.00 pm, Monday to Friday**.

If you have **hearing difficulties**, please ring the **Textphone** service on **0845 000 0200**.

If you would like to speak to someone in **Welsh**, please ring **0845 010 0300**, between **8.00 am and 6.00 pm, Monday to Friday**.

All calls are charged at the local rate within the UK. Charges may differ for mobile phones.

## Other notices on this or related subjects

[179 Mineral \(Hydrocarbon\) Oils: Duty and VAT: Warehousing and related procedures](#)

[179E Biofuels and other fuel substitutes](#)

[CCL1/2 Combined heat and power schemes](#)

## 1. Introduction

### 1.1 What is this notice about?

This is a new notice giving details of the relief from excise duty available for users of fuel used to generate electricity. It also explains the roles and responsibilities of qualified claimants.

You can access details of any changes to this Notice since January 2006 either on our Internet site at [www.hmrc.gov.uk](http://www.hmrc.gov.uk) or by telephoning our National Advice Service on 0845 010 9000.

This notice and others mentioned are available both on paper and on our website.

### 1.2 Who should read this notice?

You should read this notice if you operate:

- an electricity generating station;

- a fully exempt combined heat and power station; or
- a partly exempt combined heat and power station.

## 1.3 Other notices you may find useful

179 - Mineral (Hydrocarbon) Oils: Duty and VAT: Warehousing and related procedures

179E - Biofuels and Other Fuel Substitutes

CCL 1/2 - Combined heat and power schemes

206 - Revenue Traders Records

208 - Excise Assessments

209 - Civil Penalties

989 - Visits by Customs and Excise Officers (likely to change to refer to HM Revenue & Customs)

990 - Excise and Customs Appeals (also liable to change)

## 1.4 What law covers this notice?

Law	
Primary	Customs and Excise Management Act 1979 The Hydrocarbon Oil Duties Act 1979
Secondary	The Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005 (SI 2005/ )

## 1.5 Health and Safety

You must comply with all the legal provisions relating to health and safety such as the Health and Safety at Work Act 1974. These provisions may include the need to display warning notices and to issue health and safety instructions to both staff and visitors.

If you issue special equipment or protective clothing to your staff when they are undertaking activities such as handling, inspecting or sampling fuel then you must provide similar clothing and equipment to us when we undertake the same activities.

## **2. Relief Scheme**

### **2.1 Background**

Electricity generators using rebated heavy oil, in particular gas oil and fuel oil, as part of the generating process pay hydrocarbon oil duty. As climate change levy (CCL) is chargeable on taxable supplies of electricity made by electricity utilities, or those treated as such under the CCL legislation, most generators using coal or natural gas do not have to pay any form of tax on their input fuel. Therefore, electricity generated from oil could be subject to double taxation – on the input fuel (under hydrocarbon oil duty) and on the electricity output (under CCL).

The Government has consequently introduced a relief from duty for oil used in electricity generation. This will take effect from 1 January 2006 and relief cannot be claimed for periods prior to that date. The relief aims to prevent double taxation and ensures the tax treatment of oil is consistent with other energy products used for the same purpose.

Council Directive 2003/96/EC, commonly known as 'the Energy Products Directive' or 'EPD' applies in relation to excise duties on mineral oils and other products that might be substitutes for them. The relief implements Article 14(1)(a) which relates to energy products (including hydrocarbon oil) used to produce electricity or to maintain the ability to produce electricity. It also implements Article 15(1)(c) which relates to energy products and electricity used for combined heat and power stations.

### **2.2 Who can claim relief?**

Relief must be claimed by a qualified claimant. A qualified claimant is a person who causes qualifying oil to be used to produce electricity in a generating station or in a combined heat and power station (CHP).

### **2.3 Which oils qualify for relief?**

Qualifying oil is heavy oil on whose delivery for home use a rebate has been allowed under Section 11(1) of the Hydrocarbon Oil Duties Act 1979. Examples of rebated heavy oils include fuel oil, gas oil, kerosene and other heavy oils such as lubricants and recovered fuel oil.

If in doubt on whether the oil used to produce electricity qualifies for relief, please contact the National Advice Service on 0845 010 9000.

Biofuels used to generate electricity are also subject to a relief of duty. This is provided for by Part 7 of the Biofuels and Other Fuel Substitutes (Payment of Excise Duties etc) Regulations 2004. Please refer to Notice 179E for guidance on how to claim relief on biofuels used to generate electricity.

## 2.4 What form does the relief take?

Relief is given in the form of a repayment by HM Revenue & Customs to the qualified claimant.

## 2.5 What amount of duty can be claimed?

The amount of relief which can be claimed is the amount of duty that has been charged and paid on the qualifying oil used to produce electricity.

Please note that different rules apply to CHPs; see Section 3 of this Notice for further details.

## 2.6 When is relief allowed?

Relief is allowed on quantities of qualifying oil which has been used to generate electricity in one of the following:

- a generating station;
- a fully exempt combined heat and power station; or
- a partly exempt combined heat and power station

subject to the limitations set out in Section 3.

Relief is allowed only once the oil has been used to produce the electricity. Unused oil held as stock is therefore not allowed relief.

### 2.6.1 Auto-generators and exempt unlicensed electricity suppliers.

No relief is allowed on qualifying oil which has been used to produce electricity by an auto-generator or by an exempt unlicensed electricity supplier.

An 'auto-generator' is a person who produces electricity primarily for his own use. Electricity will be treated as primarily for own use where both of the following requirements are fulfilled:

(a) it must not be produced by an electricity utility or a person treated as such for the purposes of any supplies of electricity he makes;

(b) it must not be produced by a person who has consumed, in the preceding 3 months, less than 75 per cent of the electricity produced in that period.

An exempt unlicensed electricity supplier means a person-

(a) to whom an exemption from Section 4(1)(c) of the Electricity Act 1989 (persons supplying electricity to premises) has been granted by an order under Section 5 of that Act, or

(b) to whom an exemption from Article 8(1)(c) of the Electricity Supply (Northern Ireland) Order 1992 has been granted by an order under Article 9 of that Order

except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the exemption.

However, relief is allowed where electricity produced by an auto-generator or an exempt unlicensed electricity supplier is supplied to a licensed electricity supplier (or a person treated as such under the CCL legislation).

## **2.7 How do I claim relief?**

Qualified claimants should submit all claims, including for CHPs, in writing. We have provided form EX55 for this purpose. This form is available from our website: <http://www.hmrc.gov.uk/> or from our National Advice Service on 0845 010 9000, should you wish to use it.

The claim should then be sent, together with any supporting documentation, to the following address:

HM Revenue & Customs  
Mineral Oil Reliefs Centre  
Dobson House  
Regent Centre  
Newcastle  
NE3 3PF

## **2.8 When should I claim?**

Claims must be for a period of at least one month, but not longer than three years and must be made no later than three months after the period to which it relates. Claims cannot be made for amounts less than £50.

Please note that different rules apply to CHPs; see Section 3 of this Notice for further details.

## **2.9 What evidence do I need to submit with my claim?**

You will not normally need to include any supporting documentation with your claim. However, when processing your claim we may ask you to provide evidence to demonstrate that:

- (a) the oil has been used to produce electricity; and
- (b) the duty has been paid and is not subject of any other application or claim for repayment, remission or drawback.

Examples of the sort of evidence we may require include purchase orders, delivery notes or sales invoice, although other forms of evidence may also be accepted.

## **3. Combined Heat and Power Stations (CHPs)**

### **3.1 Background**

This section only applies to CHPs that are assessed and certified under the CHP Quality Assurance (CHPQA) programme administered on behalf of the Department for Environment, Food and Rural Affairs and are in possession of a Secretary of State Climate Change Levy Exemption Certificate. A CHP station that is not within the Quality Assurance programme is normally treated, as regards electricity, as a form of electricity generation. CHP stations within this category may be able to obtain a refund of Hydrocarbon Oils duty in circumstances where double taxation could occur.

Self-assessment and certification under CHPQA is based on a methodology designed to assess the quality of a CHP station and its qualification as Good Quality CHP. This then determines the extent to which it is eligible to receive fiscal and other benefits. For climate change levy for example, it will determine the extent to which both the input fuel used in the CHP and the corresponding outputs are relieved of CCL. For relief on input fuel, a station needs to achieve, or better, the efficiency percentage threshold of 20 per cent.

Where this criterion is not met relief from CCL is scaled back. This is calculated by applying the 'relevant fraction', the ratio between a station's efficiency percentage and the threshold efficiency percentage, to supplies made to the station. A CHP is able to claim relief on oil used to generate electricity in respect of an annual operation scaled back to the same relevant fraction as entitlement to relief from CCL.

### **3.2 How are supplies of heat and power treated under this relief scheme?**

Qualifying oil used to produce:

- heat and electricity; or
- heat, mechanical power and electricity

are treated as if it were used to produce electricity (but see 3.3 below).

### **3.3 What amount of relief can be claimed?**

The amount of relief which can be claimed is the amount of duty that has been charged and paid on the qualifying oil used to produce electricity in a good quality CHP in the annual operation to which the claim relates.

However, where the efficiency percentage of the station is less than the threshold efficiency percentage, the amount that can be claimed is the relevant fraction of the duty that has been charged and paid.

By way of example:

In annual operation (1 January to 31 December) the threshold efficiency percentage for a station under the CHP Quality Assurance Standard is 20 per cent

- Where in annual operation a station achieves an efficiency percentage equal to, or exceeding the threshold efficiency percentage, it can claim a full refund of the duty paid on qualifying oil used in the generation process.
- Where in annual operation a station achieves an efficiency percentage of 15 per cent, it can claim a refund of 75 per cent of the duty paid on qualifying oil used in the generation process.

### **3.4 What is the efficiency percentage?**

A station's efficiency percentage is its power efficiency, as stated on its CHPQA certificate.

### **3.5 What additional information do CHPs need to supply?**

CHPs need to supply a copy of their CHPQA certificate and Secretary of State certificate together with their claim. Failure to supply the certificates may delay processing of claims.

### **3.6 When should CHPs make a claim?**

Applications for relief must be in respect of an annual operation and must be made no later than nine months after the annual operation to which it relates.

Claims cannot be made for amounts less than £50. Nor can claims be made based on the previous year's operation. This means that duty can only be claimed after the actual performance for the year is known and certified.

## **4. Dealing with HM Revenue & Customs**

### **4.1 Visits by Revenue & Customs**

We may wish to inspect any generating station or CHP in which qualified claimants has used oil to produce electricity. We will normally make an appointment to see you and we will try to make our visit with as little disruption to your business as possible.

When we make our appointment we will tell you:

- who we want to see;
- what records we want to see; and
- how long we think that the visit will take.

You can find out more detailed information about visits by our officers in Notice 989 Visits by Customs and Excise Officers.

## 4.2 Officers' Powers

Action	Law
Inspect any generating station or CHP in which qualifying oil has been used to produce electricity	The Hydrocarbon Oil Duties (Reliefs for Electricity Generation) Regulations 2005
Require the production of your business records and remove or take copies of those records	CEMA 1979 s.118B. See also Revenue Traders (Accounts and Records) Regulations 1992

## 4.3 Penalties

If you make a false declaration or claim in relation to oils used to produce electricity then you could be liable to a financial penalty.

## 4.4 Appeals

If you disagree with a decision made by one of our officers you may be able to appeal to the VAT and Duties Tribunal. More information is given in Notice 990 Excise and Customs Appeals.

## 5. Glossary

**Annual operation:** A period commencing on 1st January and ending on 31st December.

**Auto-generator:** Generator of electricity primarily for own use where the owner of the generating plant has title to the input and output fuel. (Primarily = 75% of the generated output).

**CCL/levy:** Climate Change Levy. A levy on specific forms of energy supplied to industrial and commercial users.

**CEMA 1979:** The Customs and Excise Management Act 1979.

**Combined heat and power (CHP) station:** A station producing electricity or motive power that is (or may be) operated for purposes including the supply to any premises of:(a) heat produced in association with electricity or motive power; or(b) steam produced from, or air or water heated by, such heat.

**CHPQA:** The Combined Heat and Power Quality Assurance Standard Issue 1, November 2000 originally published by the Department for the Environment, Transport and the Regions (including version Final 1.0 of each relevant CHPQA Guidance Note).

**CHPQA certificate:** A certificate issued in respect of a CHP station following assessment of the station against criteria set out in the CHPQA.

**Electricity utility:** The holder of:

- (a) a licence under Section 6(1)(d) of the Electricity Act 1989 (supply licences) or
- (b) a licence under Article 10(1)(c) or (2) of the Electricity Supply (Northern Ireland) Order 1992. Except where the holder is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence.

**Exempt unlicensed electricity supplier:** A person to whom an exemption from:

- (a) Section 4(1)(c) of the Electricity Act 1989 (persons supplying electricity to premises) has been granted by an order under Section 5 of that Act, or
- (b) Article 8(1)(c) of the Electricity Supply (Northern Ireland) Order 1992 has been granted by an order under Article 9 of that Order. Except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the exemption.

**Fully exempt CHP:** A fully exempt combined heat and power station as defined in Finance Act 2000, Schedule 6 paragraph 148(2).

**Generating station:** A station producing electricity.

**Heavy oil:** Hydrocarbon oil other than light oil.

**HODA 1979:** Hydrocarbon Oils Duties Act 1979.

**Licensed supplier:** The holder of:

- (a) a licence under Section (1)(d) of the Electricity Act 1989 (supply licences); or
- (b) a licence under Article 10(1)(c) or (2) of the Electricity Supply (Northern Ireland) Order 1992. Except where the holder is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence.

**Light oil:** Hydrocarbon oil:

- (a) of which not less than 90% by volume distils at a temperature not exceeding 210°C, or

(b) which gives off an inflammable vapour at a temperature of less than 23°C when tested in a manner prescribed by the Acts relating to petroleum.

**Partly exempt CHP:** A partly exempt combined heat and power station as defined in Finance Act 2000, Schedule 6 paragraph 148(3).

**Qualified claimant:** A person who causes qualifying oil to be used to produce electricity in a generating station or combined heat and power station.

**Qualifying oil:** Heavy oil on whose delivery for home use a rebate has been allowed under Section 11(1) of HODA 1979.

**Relevant duty:** The duty charged on qualifying oil by Section 6(1) of HODA 1979 less any rebate that has been allowed by Section 11(1) of HODA 1979.

**Secretary of State certificate:** A certificate given by the Secretary of State under paragraph 148(4) or (5) of Schedule 6 to the Finance Act 2000.

## Do you have any comments?

We would be pleased to receive any comments or suggestions you may have about this notice. Please write to:

**HM Revenue & Customs  
Environment and Transport Taxes – Oils Team  
3rd Floor West, Ralli Quays  
3 Stanley Street  
Salford M60 9LA**

Please note this address is **not for general enquiries**. You should ring our National Advice Service about those.

## If you have a complaint or suggestion

If you have a complaint please try to resolve it on the spot with our officer. If you are unable to do so, or have a suggestion about how we can improve our service, you should contact one of our Regional Complaints Units. You will find the telephone number under 'Revenue & Customs' or under 'Customs and Excise' in your local telephone book. Ask for a copy of our code of practice 'Complaints and putting things right' ([Notice 1000](#)). You will find further information on our website at <http://www.hmrc.gov.uk>.

If we are unable to resolve your complaint to your satisfaction you can ask the Adjudicator to look into it. The Adjudicator, whose services are free, is a fair and unbiased referee whose recommendations are independent of Revenue & Customs.

You can contact the Adjudicator at:

**The Adjudicator's Office**  
**Haymarket House**  
**28 Haymarket**  
**LONDON**  
**SW1Y 4SP**

**Phone: (020) 7930 2292**

Fax: (020) 7930 2298

Email: [adjudicators@gtnet.gov.uk](mailto:adjudicators@gtnet.gov.uk)

Internet: <http://www.adjudicatorsoffice.gov.uk/>

## **Update 1 issued September 2007**

There are several amendments to the notice, as follows:

Section 1.1 - What is this notice about? **Add** a new 2nd paragraph at the end of the 1st paragraph and before Section 1.2:

This notice has been updated to reflect the changes introduced by The Hydrocarbon Oil Duties (Reliefs for Electricity Generation) (Amendment) Regulations 2007.

Section 1.4 - What law covers this notice? **Add** a new 2nd paragraph to the 2nd column to the right of the title 'Secondary':

The Hydrocarbon Oil Duties (Reliefs for Electricity Generation) (Amendment) Regulations 2007.

Section 2.1, 1st paragraph, 1st line **should** now read:

Electricity generators using rebated heavy or light oil, in particular gas oil and fuel oil, as part of the generating process pay hydrocarbon oil duty.

Section 2.3, 1st paragraph **should** now read:

Qualifying oil is heavy or light oil on whose delivery for home use a rebate has been allowed under section 11(1) or 14(1) of the Hydrocarbon Oil Duties Act 1979.

Examples of rebated heavy oils include fuel oil, gas oil, kerosene and other heavy oils such as lubricants and recovered fuel oil. Examples of rebated light oils include naphtha or condensate.

Section 2.6 **add** a new paragraph at the end of this section and before 2.7:

Auto-generators or exempt unlicensed electricity suppliers using combined heat and power stations should refer to section 3 of this Notice.

Section 5 - Glossary, page 12, 2nd column, to the right of the heading 'Qualifying oil' the paragraph **should** now read:

Heavy or light oil on whose delivery for home use a rebate has been allowed under section 11(1) or 14(1) of HODA 1979.

Notice 175 Motor and heating fuels: relief from excise duty on oils used to generate electricity  
January 2006

Section 5 - Glossary, page 12, 2nd column, to the right of the heading 'Relevant duty'  
the paragraph **should** now read:

The duty charged on qualifying oil by section 6(1) of HODA 1979 less any rebate that  
has been allowed by section 11(1) or 14(1) of HODA 1979.