

Statement on infraction proceedings on VAT treatment of certain commodity derivatives trading

News story

A statement from HM Treasury regarding the European Commission's notification of infraction proceedings on the UK's VAT treatment of certain commodity derivatives trading.



On 15 May the European Court of Justice issued its ruling in this case. We are reviewing the decision of the Court and will provide further details on next steps in due course. The decision does not require businesses to pay any VAT on historic transactions, and the law applying to derivatives trades today means no VAT is due. That will remain the case while the UK considers next steps in the light of the ruling.

The European Commission on 8 March 2018 provided notification of infraction proceedings against the UK in respect of VAT treatment of certain commodity derivatives, trading under the Terminal Markets Order (TMO). The TMO is a Statutory Instrument (SI) that allows a specific VAT zero rate for derivative transactions in spots, futures (and options on) commodity contracts, when traded on an exchange.

The UK received a "letter of formal notice" from the EU Commission pursuant to Article 258 of the Treaty on the Functioning of the European Union. This is the first stage of the infraction process. The letter sets out the Commission's initial views on the UK's VAT treatment of certain exchange traded commodity derivatives, and invites a response from the UK Government within two months.

The UK Government will consider the Commission's views and will respond in due course. The issuance of the letter does not have any immediate effect on UK tax law and the matter will be subject to the normal infraction process, which is open to challenge.

The tax treatment of commodity derivatives is unchanged. UK tax law stands unless and until such time as it is changed and therefore past and current trading activity under the Terminal Markets Order is not affected by the issuance of the Article 258 letter.

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1. 15 May 2020

Updated with information about European Court of Justice ruling.

2. 28 January 2019

Updated with information on the EU Commission referral to the European Court of Justice.

3. 19 July 2018

Updated with information on the EU Commission sending a Reasoned Opinion to the UK as part of the infraction process.

4. 9 March 2018

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