

Commodity trading: Summary of January 2010 European Sales List (ESL) requirements

Type of Trading/Products	ESL requirements	HMRC Comments/Explanations
1 Financial Contracts		
Financial Contracts that is contracts for exempt transactions (for example sales of securities) or contracts that are only capable of cash settlement (for example weather derivatives) or other contracts where there is no provision for delivery of the underlying commodity (for example contracts based on price indices)	None	No requirement, as these are treated as exempt supplies of financial services.
2 Physical Contracts (that is all other contracts not falling within the definition of 'Financial Contracts' above)		
<u>2.1 Spot, Forward and Futures Contracts</u>		
a) Commodities that are supplies of goods for example metals (inc. precious metals), foodstuffs, oil and coal	<p>A goods ESL is required if the contract involves the sale and despatch of the commodity to a VAT registered business in another Member State where the supply is subject to acquisition tax.</p> <p>No services ESL will be required</p>	<p>There is an EU wide exemption for investment gold so no ESL reporting is required.</p> <p>HMRC had previously agreed that, due to the nature of the precious metals markets, ESL reporting would not be</p>

<p>b) Commodities that are supplies of services for example EU emissions allowances and similar instruments</p> <p>c) Commodities that are supplies of goods but have special place of supply arrangements (similar to those for services), that is supplies of gas through the national gas distribution network and electricity (Article 38 of EC VAT Directive 2006/112/EC refers).</p>	<p>A services ESL will be required if the contract involves the sale (that is transfer of ownership) of the commodity to a VAT registered business in another Member State where the supply is subject to a reverse charge.</p> <p>None</p>	<p>required for unallocated supplies of precious metals. It is recognised that similar issues arise in relation to all futures/forward contracts and this agreement will be extended to include all commodities that are supplies of goods.</p> <p>ESLs are required for supplies of emissions allowances which are an identified high VAT fraud risk The EU is currently working on an EU wide solution to the fraud which could impact on the ESL treatment.</p> <p>ESLs for goods are not required for supplies of natural gas and electricity as per HMRC VAT Information Sheet 10/04. However, the liability to account for VAT on a wholesale supply of natural gas and electricity from a supplier in one Member State to a customer in another Member State rests with the customer (in much the same way as the customer is required to account for VAT on a new general rule supply of services or an acquisition of goods).</p> <p>It is possible that this issue will be raised at EC level in the future, in which case we will discuss with the industry. In the</p>
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		meantime no ESLs will be required.
<p><u>2.2 Options Contracts</u></p> <p>All physical (that is non-financial) commodities regardless of whether they are goods or services.</p>	<p>A services ESL is required for cross border supplies of options which are taxable in the country of receipt.</p>	<p>An option contract bestows the right to either purchase or sell a commodity at a set price on a future date but, unlike futures contracts, they do not lock the buyer in. For UK VAT purposes the premium paid under an option for a physical commodity is considered to be for a separate supply of taxable services.</p>
<p><u>2.3 Exchange and Clearing Services</u></p> <p>All supplies of exchange and clearing services provided in connection with physical commodity transactions.</p>	<p>A services ESL is required for cross border supplies of exchange and clearing services which are taxable in the country of receipt.</p>	<p>These services will fall within the new 'general rule' post 1 January 2010 and will be ESL reportable. Conversely, reverse charges must be accounted for on these services when received from outside the UK.</p>