



HM Revenue
& Customs

Proposals on the treatment of aggregate removed during construction works

Summary of responses

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1. Introduction

- 1.1 In 2019 the government carried out a review of Aggregates Levy, publishing a [summary of responses and government next steps](#) in July 2020. In response to stakeholder concerns raised during the review, the government announced a consultation on [Proposals on the treatment of aggregate removed during construction works](#), which ran from 23 March until 15 June 2021.
- 1.2 The consultation invited views on six exemptions and exclusions from Aggregates Levy which relate to aggregate removed during construction works. It also proposed changes to two of these to address the concerns raised by stakeholders during the Aggregates Levy review.

Background

- 1.3 Introduced in 2002, Aggregates Levy is a UK wide environmental tax on primary virgin rock, sand and gravel extracted for use as bulk fill in construction. It aims to encourage more efficient extraction and use of aggregate, and to incentivise the use of recycled and by-product aggregate. Following the introduction of the levy, and along with other measures and factors, the trend for increasing rates of aggregate recycling in the UK has continued. The levy is currently charged at a rate of £2 per tonne when aggregate is “commercially exploited” - extracted, sold or used in construction - and is paid mainly by quarrying and sand and gravel extraction businesses. Importers and some construction companies may also have to pay.

The consultation proposals

- 1.4 The consultation invited views on a number of Aggregates Levy exemptions and exclusions relating to construction works. In addition, it asked for views on two specific proposals:

Aggregate returned to the land at the site where it was won (including from borrow pits)

The first proposal addressed an issue raised by aggregate industry stakeholders around the taxation of aggregate from “borrow pits”. These are temporary extraction pits dug by construction companies to provide material for a specific project, such as a new road. Borrow pit aggregate extracted and used in an unmixed state on a nearby construction site is not subject to the levy in certain

circumstances, but this has been difficult for industry to interpret and subject to regular queries and disputes. Commercially produced aggregate used for the same purpose would be subject to the levy when it left the extraction site. Aggregate industry stakeholders saw this as unfair, while construction industry stakeholders said they would welcome clearer guidance on the issue.

- 1.5 The consultation proposed an amendment to the provision in question. Currently, it allows any aggregate which is returned, unmixed, to the land at the site where it was won to be excluded from the definition of “commercial exploitation”, which is when the tax applies. This exclusion can apply to borrow pit aggregate used on a construction site when both the borrow pit and the area of construction are considered to be a single, large site. In those circumstances, the borrow pit aggregate is seen as not leaving the site where it was won.
- 1.6 The consultation proposed amending the exclusion so that it reflected the policy intention of taxing all primary virgin aggregate extracted for use in construction. Under the proposal, the exclusion would apply only when aggregate was returned to the land at the site where it was won *for a purpose connected to the winning of the aggregate*. The intention would be to limit the circumstances when it applied, to on-site operational practices connected to aggregate extraction, such as constructing bunds, haul roads and backfilling. Under this proposal, the exclusion would no longer apply to aggregate used to construct roads, railways and other infrastructure.

Street works and laying utility pipes: proposed new exemption

- 1.7 The second proposal addressed an issue raised during the Aggregates Levy review by a stakeholder representing water and wastewater companies. They renewed previous calls for a new general exemption for all by-product aggregate arising unavoidably when laying underground utility pipes, in line with other exemptions for by-product aggregate. Currently, only some of this is exempt.
- 1.8 Although the government decided in 2017 not to introduce this new exemption at that time, in the context of the wider consultation, it again invited views on the proposal.

Overview of responses

- 1.9 Annexe A lists the respondents to this consultation. The government is grateful to all those who took time to respond. A total of nine responses were received, of which:
 - four were from representative bodies in the mineral extraction sector
 - one was from a representative body in the utilities sector

- one was from a representative body in the tax advisory sector
- one was from a tax advisor
- one was from a non-departmental public body in the construction sector
- one was from an individual.

The government also met with one of the representative bodies from the minerals extraction sector to discuss its response.

2. Responses

- 2.1 Responses to the consultation were broadly divided between those from the aggregates and minerals sector, and those from, or advising, the construction and utilities sector. This section summarises the responses received.

Aggregate returned to the land at the site where it was won (including from borrow pits)

Question 1:

- a) **Do you think the proposed change to the exclusion for aggregate returned to the land at the site where it was won will clarify the taxable status of borrow pit aggregate on construction sites?**
- b) **Is there a better way to achieve the policy intention?**

Question 2: Are you aware of any circumstances when the exclusion for aggregate returned to the land at the site where it was won applies in circumstances which have not been discussed above, and which may be affected by the proposed change?

- 2.2 The four respondents representing mineral extraction companies had differing views on the proposal.
- 2.3 Two of these - a large group representing the interests of most companies involved in mineral extraction, and a trade association representing most of the ceramic manufacturing industry - supported it and believed it would clarify the taxable status of borrow pit aggregate on construction sites. The former said all aggregate extracted deliberately for, and used in, construction should be taxed under the levy, while aggregate extracted as a result of, and incidental to, ground engineering activities should be exempt. It said the current position disadvantaged aggregate producers and did not encourage the substitution of recycled aggregate, contrary to the levy's objective. It made the point that, although using borrow pit aggregate might reduce the distance materials travel, it might not necessarily reduce the overall environmental impact given that alternative supply would be from established sources of aggregate extraction. The respondent representing ceramic manufacturing companies supported the exclusion remaining in place for aggregate used at a quarry for structures like bunds and haul roads, as it said these were temporary in nature, and should not fall into the Aggregates Levy definition of "commercial exploitation" of aggregate.
- 2.4 Another representative body in this sector representing the majority of UK mineral products operating companies welcomed the intention to tighten the rules around borrow pits, which it said was an issue frequently raised by its members. But it was concerned it might still be possible to design and plan projects to

optimise access to borrow pits under the proposal. It suggested an alternative idea, which was to make HMRC a statutory consultee on planning applications for developments likely to generate demand for significant amounts of aggregate. This could be as well as, or instead of, the proposal. It said this would enable HMRC to intervene proactively to prevent abuse, and to flag projects at risk early on, encouraging a change in behaviour.

- 2.5 Another association representing around 100 mostly SME aggregate producers in the UK said aggregate dug from a borrow pit on a motorway or rail line construction site had minimal effect on the aggregate market in comparison to exempt aggregate from other sources. This respondent said the proposal would not achieve the policy intention because it did not define “borrow pit”. It said a better way to achieve the policy intention would be to tax all aggregates used in construction, whether dug for that purpose or not.
- 2.6 Those respondents from, or advising, the construction and utilities sectors, did not support the proposal. This was primarily because they viewed the use of borrow pits as based on good environmental principles to use material close at hand and reduce road haulage of aggregate. Some said the proposal would merely add to the cost of a project, while one respondent said it might make it cheaper to purchase aggregate from a more distant quarry, which it considered was the wrong outcome.
- 2.7 Two respondents in these sectors agreed the proposal would provide more clarity over the taxable status of borrow pit aggregate. But a respondent from the utilities sector said it could make matters more complicated, adding an additional condition to the interpretation of this exclusion. A tax advisor thought a better way to achieve the intention would be a narrower definition of “site” in the provision, keeping on-site borrow pits exempt. A respondent in the infrastructure sector also thought a fairer way would be to define “site”, taking account of factors such as closeness to point of use, land ownership, planning consent boundaries or common geology (similar to the current position). This respondent did not agree that commercial aggregate producers should be the only beneficiaries of this exclusion.
- 2.8 Two respondents representing utilities and tax advisors commented that aggregate is sometimes discovered unexpectedly on a site during construction when there is no plan for its use. In these cases, it is sensible to use it in the project if possible. But they said under the proposal Aggregates Levy would be due on it.
- 2.9 In response to question 2 (other circumstances which might be affected by the proposed change) respondents mentioned wind farms, dams and aggregate returned to the land at connected sites operated by the same company.

Government response

- 2.10 The government notes that the borrow pits proposal is broadly supported by respondents in the minerals extraction sector while being opposed by respondents in, or advising, the construction sector.
- 2.11 Although some respondents argued that the proposal might encourage road haulage of aggregate and worsen the environmental impacts of a project overall, the government believes planning authorities will continue to scrutinise these impacts as part of the planning application process and make appropriate decisions in each case.
- 2.12 The government has considered the suggestion to make HMRC a statutory consultee for planning applications involving significant amounts of aggregate, but does not believe this is an appropriate role for HMRC as a tax authority.
- 2.13 The suggestion to tax all aggregates used in construction, whether dug deliberately or not, would be contrary to the objectives of the levy, which is structured to exclude recycled and secondary aggregates to encourage their use over primary virgin aggregate. Alternative suggestions to amend the definition of “site” in the exclusion would not of themselves achieve the policy objective to tax borrow pit aggregate dug to be used in construction, and it is not clear how the definition could be amended so as to provide the required clarity.
- 2.14 Aggregate discovered unexpectedly during a development would be exempt if it was incidental by-product aggregate covered by other exemptions, so using it in the project would not give rise to a charge to the levy. If it was not incidental by-product aggregate and was used in the project, the government believes it should be subject to the levy.
- 2.15 Minerals such as rock, gravel and sand are a finite resource, the extraction of which is planned and managed. Borrow pits are a source of mineral extraction in the same way as quarries, and the government believes Aggregates Levy should apply to taxable aggregate from both of these sources equally. The government has, therefore, decided to proceed with the proposal to amend section 19(3)(e) of Finance Act 2001 so that the exclusion only applies when aggregate is returned to the land at the site where it was won for a purpose connected to the winning of the aggregate. This will restrict the exclusion to any aggregate used for operational purposes at a quarry, borrow pit or other extraction site.
- 2.16 The government response in paragraphs 2.48 and 2.49 below is relevant to consequential effects of this change, such as the construction of wind farms.

Aggregate returned to the land for farming or forestry purposes

Question 3:

- a) **Do you have any comments on the continuing need for the farming and forestry exclusion?**
- b) **Are there similar uses of aggregate unrelated to farming and forestry which should also benefit from an exclusion?**

- 2.17 Only two respondents commented on this question. One said this exclusion should continue as currently applied. The other respondent commented indirectly that abuse of it can have serious consequences for small, rural quarries.
- 2.18 Suggestions for similar uses of aggregate that should also benefit from an exclusion were: walling stone; ditching stone; rip rap for riverbank protection; armour rock for sea defences; offcuts from natural paving stones; haul roads and/or infrastructure for renewable energy projects, such as wind farms; and mining (non-aggregate) and quarrying schemes, especially in remote locations.

Government response

- 2.19 In amending the above legislation in paragraph 2.15, the government will ensure the effect of this exclusion for farming and forestry purposes remains unchanged, but does not intend to extend it further. The government believes it is correct that farmers and foresters using their own aggregate unmixed for purposes such as building tracks and dry-stone walls on their land should not have to register for Aggregates Levy. This aggregate is not in competition with commercial aggregate. However, the government does not consider the general use of walling stone, ditching stone, armour rock and suchlike to be in the same position. The government response in paragraphs 2.48 and 2.49 is relevant to haul roads and infrastructure for renewable energy projects.

Highways

Question 4: Do you think the legislation setting out the highways exemption correctly reflects the intention to exempt only material that arises unavoidably along the line of the highway? If not, please explain why.

Question 5: Is there any more HMRC could do to make it clear how the highways exemption applies in practice? Please give details.

- 2.20 Respondents representing the construction sector did not reply directly to question 4 but instead said they thought the highways exemption should be widened to include available aggregate adjacent to the route and within the planning consent boundary.
- 2.21 One respondent representing mineral product operators believed the highways exemption legislation correctly reflected the intention. Another in the sector

thought there might be scope to manipulate planning consent boundaries so that more extraction was considered 'unavoidable'. A third in the sector said the legislation was unworkable and mentioned, as an example, aggregate removed either side of the highway (but not on the line of the highway) for safety reasons.

- 2.22 In terms of the guidance for this exemption, one respondent said it should define 'highway', for example, making it clear whether it included tunnels. Another said the guidance should explicitly state that borrow pits were not included in the exemption.

Government response

- 2.23 The government concludes that this legislation correctly reflects the intention to exempt only aggregate arising unavoidably along the line of the highway. Widening this exemption to include nearby aggregate extracted solely to use in the construction of the highway would be contrary to the purpose of the levy. The legislation does not refer to planning consent boundaries but only to "the line of the highway" which the government believes is correct. The government's response at paragraphs 2.48 and 2.49 is relevant to this exemption.
- 2.24 In developing the next steps outlined in this summary of responses, HMRC will review the guidance, taking on board the responses to this consultation.

Railways, tramways and monorails

Question 6: Do you think the legislation setting out the railways, tramways and monorails exemption correctly reflects the intention to exempt only material that arises unavoidably along the line of the railway, tramway or monorail? If not, please explain why.

Question 7: Is there any more HMRC could do to make it clear how the railways, tramways and monorails exemption applies in practice? Please give details.

- 2.25 This exemption mirrors the previous one for highways in both the legislation and guidance. Most respondents who commented on the highways exemption made the same points for this exemption.
- 2.26 A respondent in the construction sector said that this exemption should be widened to include the land take approved by the planning authority, since all the aggregate won in a railway building project was for the purpose of creating the railway, not winning the aggregate. They believed this would reflect the environmental objectives of the tax and provide taxpayers with certainty. Their view was that the whole of the railway infrastructure, including ancillary buildings,

constituted “the line of the railway”, and the best definition of this was the approved land take.

Government response

- 2.27 The government notes the representations to widen this exemption but concludes that, as with the previous exemption, including aggregate deliberately won to be used in construction would be contrary to the purpose of the levy. The government also notes the respondent’s viewpoint that railway infrastructure includes other elements such as ancillary buildings. The government’s response at paragraphs 2.48 and 2.49 is relevant to this point and to the exemption in general.
- 2.28 In developing the next steps outlined in this summary of responses, HMRC will also review the guidance, taking on board the responses to this consultation.

Foundations, pipes and cables for a building

Question 8: Are you aware of any problems with the exemption for aggregate removed for laying foundations, pipes and cables for a building? If so, please explain what they are and, if possible, how you think they could be resolved.

- 2.29 Four respondents commented on this exemption. Two said they were not aware of any problems with it.
- 2.30 One respondent commented that untaxed aggregate from foundations should not be allowed to be sold on the market, as it distorts competition, and unless this becomes the case there should be no change to the position on aggregate from utility trenches (see next exemption).
- 2.31 One respondent representing utility providers said that this exemption covers aggregate from digging foundations for a “building”, but pointed out that some other structures that are part of a water and sewerage network also have foundations. They suggested that either the term is redefined, or that HMRC provides more guidance on what is covered by the term “building”.

Government response

- 2.32 The government reaffirms that the purpose of this exemption is to encourage the use of any aggregate unavoidably extracted when laying foundations, pipes and cables for a building.
- 2.33 The government notes the comment in relation to the term “building”. Paragraphs 2.48 and 2.49 below are relevant to this point and to this exemption.

Street works and laying utility pipes: proposed new exemption

Question 9: If you replied to the 2016 consultation, please tell us if your views on a general exemption for aggregate necessarily removed when laying all underground utility pipes are the same, or if there is anything different or new you wish to add. Alternatively, if you did not reply to the 2016 consultation, please comment on the proposed new exemption if you would like to.

Question 10: Can you provide any evidence to quantify the volumes of material that would be exempted under the proposal, and how much of it would be in competition with other aggregate?

Question 11: Are you aware of any activity currently exempted under the street works exemption which would not be covered under a new exemption for aggregate unavoidably removed for the purpose of laying underground utility pipes?

2.34 Five respondents replied to question 9.

2.35 Two respondents representing mineral extraction operators were against a new exemption. Both argued that exempt aggregate entering the market was in unfair competition with commercially produced aggregate on which producers had to pay Aggregates Levy. They said this could be damaging to local quarries in the area where exempt aggregate was extracted, as markets were usually very localised. Concerns were also that further exemptions might provide an incentive to maximise material extraction, and that this would be difficult for HMRC to police.

2.36 The other three respondents, two from the tax advisory sector and one from the utilities sector, supported the proposed new exemption. All said the new exemption was logical, aligned with the environmental objective of the levy and would bring these works into parity with highways and railways. One respondent said in the case of water companies that there would be no incentive to locate works strategically, or to extract more aggregate than necessary, because the Water Industry Act 1991 prevented them from profiting from minerals discovered during pipe-laying. They also said the new exemption would reduce onerous administration for water companies caused by the current partial exemption.

2.37 This respondent commented further, in relation to the water industry, that other structures integral to the water and sewerage network other than pipelines, such as underground pump chambers, manhole accesses, underground service reservoirs and treatment plants, also gave rise to unavoidable aggregate which should be exempt for the same reasons.

2.38 No respondents were able to provide any evidence of the amount of exempt material that might be in competition with other aggregate, but one respondent from the aggregates sector thought it would be relatively small volumes.

2.39 No respondents were aware of any activity currently exempted under the street works exemption which would not be covered under the proposed new exemption for unavoidable aggregate from laying utility pipes.

Government response

2.40 The government notes the concerns of the aggregates sector respondents to the proposed new exemption from Aggregates Levy, but also notes that the potential volumes of exempt aggregate in competition with taxed aggregate are likely to be relatively small, and that water companies would not have any incentive to exploit the exemption. The government recognises the current inconsistency of approach to these works, and the additional burdens on contractors as a result. It agrees that it would be consistent with the environmental purpose of the levy and supports the principle of exempting unavoidable by-product aggregate from laying underground utility pipes. In terms of implementing this change and considering further the suggested extension to other structures mentioned by a respondent, please see the government response at paragraphs 2.48 and 2.49 below.

Other construction and impacts

Question 12: Please tell us if there are any other types of construction not covered in this consultation for which incidental by-product aggregate is not currently exempt from the levy, and which you believe should be exempt. Please give as much detail as possible.

Question 13: Do you have any comments on the assessment of impacts in Section 3?

2.41 In response to question 12, respondents suggested canal construction, super sewers, work to floodplains and nature-based wastewater treatment solutions such as wetlands and lagoons, as types of construction for which incidental by-product aggregate should also be exempt.

2.42 On the assessment of impacts, two respondents said the borrow pits proposal would have significant cost implications for infrastructure projects.

Government response

2.43 The government response in relation to question 12 is in paragraphs 2.48 and 2.49 below.

2.44 The government is grateful for the comments on the assessment of impacts and will publish a Tax Information and Impact Note in due course.

General comments

2.45 One respondent commented that Aggregates Levy was a bad tax that had not achieved any of its objectives and was complex and confusing.

2.46 Another respondent commented that they considered all the exemptions to be unclear in scope and relying heavily on HMRC guidance, which was unfair to taxpayers. They suggested that specified exemptions could be replaced with a general exemption for aggregate incidentally extracted as part of a construction project. They said this would allow better flexibility and line up with evolving construction projects, such as super sewers.

Government response

2.47 The government carried out a comprehensive review of Aggregates Levy in 2019 and concluded that it continued to play a role in achieving the government's wider environmental and mineral planning objectives.

2.48 The government notes the comments that Aggregates Levy is complex and that the exemptions are unclear in scope. It has also considered the suggestion to replace specific exemptions with a general one for aggregate incidentally extracted as part of a construction project. The government considers there is merit in this idea, which has the potential to simplify the tax and provide more flexibility for evolving construction projects. Such an exemption would encompass and remove the need for the proposed new exemption for by-product aggregate from laying utility pipes. It would cover other water network structures as well as other types of infrastructure mentioned in this consultation, such as wind farms and canals.

2.49 HMRC will, therefore, carry out further work and consult informally to determine the feasibility and desirability of replacing certain exemptions with a single, general one for unavoidable by-product aggregate extracted as part of a construction project.

3. Next steps

- 3.1 The government will prepare legislation to implement the borrow pits proposal as described in paragraph 2.15. Draft legislation will be published for consultation ahead of its inclusion in a future Finance Bill.
- 3.2 HMRC will carry out further work and consult informally to determine the feasibility and desirability of replacing certain exemptions with a single, general one for unavoidable by-product aggregate extracted as part of a construction project. This would also cover by-product aggregate from laying underground utility pipes. If appropriate, draft legislation will also be published for consultation before a future Finance Bill.
- 3.3 HMRC will update guidance alongside the introduction of future legislation, taking on board respondents' comments to this consultation.
- 3.4 If you would like to contact HMRC in relation to these next steps, please email aggregateslevyconsultation@hmrc.gov.uk.

Annexe A: List of stakeholders consulted

British Aggregates Association

British Ceramic Confederation

CBI Minerals Group

Chartered Institute of Taxation

High Speed Two Limited

Mineral Products Association

Pinsent Masons LLP

Water UK

One response was received from an individual.