

Landfill Tax – improving clarity and certainty for taxpayers

Summary of responses
December 2016

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1. Introduction

- 1.1 At Budget 2016, the government announced its intention to consult on the definition of a taxable disposal for Landfill Tax purposes. The consultation ‘Landfill Tax – improving clarity and certainty for taxpayers’ was published on 26 May 2016 and closed on 18 August 2016.
- 1.2 In the consultation, the government invited views on proposed changes to the definition of a taxable disposal, without altering the scope of the tax.
- 1.3 Following careful consideration of the responses to the consultation, the government has refined its approach to address issues raised about the proposed exemptions. This document summarises respondents’ views, and the government’s response.
- 1.4 HM Revenue and Customs (HMRC) also requested information and views on the nature and volumes of hazardous material listed in the Landfill Tax (Qualifying Material) Order 2011, which attract the lower rate of Landfill Tax. HMRC is grateful for the information and views provided, as these will help to inform future policy thinking.

2. Background

- 2.1 Landfill Tax was introduced on 1 October 1996 to support the UK's waste policy. There are two rates of tax – a standard rate and a lower rate for less polluting material. Landfill Tax currently applies to waste disposed of at permitted landfill sites across England, Wales and Northern Ireland.
- 2.2 In 2008, the Court of Appeal ruled to the effect that material received on a landfill site which is put to a use on the site is not taxable. Legislative changes were introduced in The Landfill Tax (Prescribed Site Activities Order) 2009 which brought certain activities at a landfill site back into the scope of the tax.
- 2.3 Since then, some landfill operators have claimed for new uses not listed in the 2009 Order. HMRC rejects these claims, which are subject to on-going litigation. As this has created uncertainty for taxpayers on the tax liability of certain materials disposed of at landfill sites, the government decided to consult on changes that would put the matter beyond doubt.
- 2.4 The consultation set out proposals to amend the criteria for determining when Landfill Tax is due, whilst maintaining the current scope of the tax. The questions were designed to canvas views on whether greater clarity and certainty would be achieved through the proposed amendments and what, if any, practical difficulties may result.
- 2.5 There were 25 written responses to the consultation. During the consultation period, HMRC also met with a number of interested parties to discuss the proposed amendments. We are grateful for all those who have attended meetings and responded to the consultation. A list of all the respondents is set out at Annex A.

3. Summary of responses

- 3.1 The views of respondents are summarised below, along with the government's response.

Summary of responses by question

Providing greater certainty

Question 1: Do you agree that the proposed changes will provide greater certainty than the current legislative approach?

- 3.2 The majority of respondents were supportive of changes to the definition of a taxable disposal to provide greater clarity and certainty.
- 3.3 A small minority of respondents thought the proposed changes would not provide greater clarity and could introduce further complexity, with one respondent suggesting that HMRC considers making small amendments to the existing legislation instead.
- 3.4 Many respondents commented on the need for the drafting of the exemptions to be clear and non-subjective to eliminate further misinterpretation. Respondents recommended continued engagement with industry to ensure the proposed list of exemptions was unambiguous.
- 3.5 Some respondents raised concern about inadvertently extending the scope of the tax, and removing the waste criterion would require a list of exemptions that would be overly long.
- 3.6 Three respondents suggested aligning definitions with environmental definitions and generally accepted waste sector terminology.
- 3.7 A small number of respondents expressed the need to ensure that the timing of a deposit, or tax point, is clear following any change.

Question 2: Are any of the non-taxable activities in Annex A unclear, or open to interpretation? Please specify, along with any suggestions that would provide greater clarity.

- 3.8 There were mixed views on whether the current list of taxable activities is clear. Three respondents thought the current list is clear, whereas the remaining six respondents who provided comments to this question felt

that some of the non-taxable activities are either unclear, open to interpretation, or would benefit from further definition.

- 3.9 The majority of respondents suggested technical terms needed to be defined, with a small number also wanting to see definitions for 'permanent' and 'temporary' defined in the context of the current legislation.
- 3.10 Many respondents thought that a prescriptive list of exemptions could be open to interpretation in the same way that the current list of taxable activities are being challenged now. They also felt the list of exemptions could fail to keep pace with changes in the waste management industry, suggesting this could impact the environmental objective of the tax.
- 3.11 Three respondents suggested the guidance is not clear on the tax liability of material used in drainage or regulating layers, as part of the lining and/or capping.
- 3.12 One respondent wanted clarification on the non-taxable activities that are associated with the material placed against drainage layers and the storage of ash, as there is currently no guidance on what constitutes a non-taxable activity in these circumstances.
- 3.13 Although not part of the consultation, a few respondents would like to see clearer guidance on pipework, leachate and gas management activities. Such activities are non-taxable, but are not included in any of the non-taxable activities listed in the Excise Notice LFT1: a general guide to Landfill Tax. One respondent felt that site restoration activities should always be non-taxable regardless of whether HMRC is notified or not.

Question 3: Do you foresee any practical difficulties with the proposed changes? If so, what are they and how could they be overcome?

- 3.14 A large majority of respondents were supportive of the proposed changes and did not foresee any particular practical difficulties, provided the list of exemptions was clear and unambiguous.

- 3.15 One respondent suggested that having a fixed list of exemptions might stifle innovation of more environmentally friendly processes, and that current non-taxable activities are out of step with waste industry practices. Two respondents also felt strongly that any list of exemptions would require regular review to stay relevant to the waste sector.
- 3.16 Two trade bodies and two large businesses thought that an inconsistent approach across the devolved nations could cause confusion, particularly for landfill operators operating across the borders, and potentially cause waste tourism.

Government response

The government thanks everyone who responded to this consultation. The responses have proven useful when considering key changes to the proposed amendments to legislation.

The government notes the broad support from respondents for greater clarity on the definition of a taxable disposal and will therefore continue with plans to amend the legislation.

There were two main concerns raised by respondents: firstly, the need for a potentially long list of exemptions to avoid inadvertently taxing material that is not currently within the scope of the tax; and secondly the need for clear, unambiguous terminology. In light of these concerns, the proposed changes will be amended so that:

- the waste criterion is removed;
- there is an exemption for material deposited outside of the landfill cell; (subject to retaining a charge to tax materials within the current scope, and materials that should be deposited in the landfill cell); and
- there is an exemption for the drainage layer and any pipes etc inserted into the landfill cell for the purposes of extracting surplus liquid or gas.

These changes will significantly reduce the number of exemptions needed, and remove the need for some of the terminology that respondents felt was unclear. HMRC will continue to liaise with interested parties on any remaining terminology that respondents indicated was open to interpretation, and publish details in revised guidance.

The changes will also remove the requirement for landfill site operators to notify HMRC of activities taking place in site information areas and the carrying out of site restoration. This will simplify the tax and have a negligible positive impact on burdens on business whilst continuing to incentivise recycling and the reduction of waste going to landfill.

The government notes the comments on the consistency of approach across the rest of the UK and potential for waste tourism. However, the majority of respondents were supportive of the need for greater clarity, and as the changes do not alter the scope or administration of the tax they will have no practical effect on legitimate operators, nor will they financially incentivise waste tourism. As the industry continues to push the

boundaries and challenge the legal interpretation of a taxable disposal, the government is introducing these changes to put the matter beyond doubt and provide certainty for landfill operators and their customers on the landfill tax costs.

As Landfill Tax is devolved to Scotland and is intended to be devolved to Wales in 2018, it is the responsibility of the devolved administrations to determine the structure of their taxes. HMRC officials will work closely with officials in the devolved administrations to support landfill operators who operate sites across the devolved nations, and operators in Wales who will be affected until the tax is devolved.

Hazardous waste

Question 4: We have identified incinerator bottom ash and furnace ash as potentially hazardous and yet they may be subject to the lower rate of tax. Are you aware of any other circumstances where you believe that hazardous waste falls within the scope of the Qualifying Material Order and is liable for the lower rate of tax?

3.17 Two respondents stated that hazardous qualifying materials should be taxed at the higher rate of tax and one respondent stated that hazardous qualifying material, such as hazardous incinerator bottom ash should be lower rated. Although many agreed that the logic of standard rating hazardous waste was sound and supported it in principle, the majority of respondents identified issues with adopting such an approach.

3.18 Six respondents identified there was the potential for hazardous wastes falling into all of the qualifying material groups except Group 6 (low activity inorganic compounds).

Question 5: Are you able to provide any information which would assist us in quantifying how much hazardous waste falls within the Qualifying Material Order and is liable for the lower rate of Landfill Tax?

3.19 One respondent stated that they would be happy to provide tonnages on how much hazardous waste falls within the Qualifying Material Order upon request, and one respondent stated that this information had already supplied to HMRC previously.

3.20 Another respondent stated that 84,000 tonnes of slag waste was deposited at landfill during 2015 – 2016.

Question 6: What do you think of any waste material listed in the Qualifying Material Order that is also hazardous attracting the lower rate of Landfill Tax?

3.21 Many respondents felt that environmental factors should be taken into account when considering hazardous waste. Two respondents felt that

the published Treasury criteria were being incorrectly applied and that greater emphasis should be placed on the polluting potential of material rather than its hazardous nature. Three respondents felt that some hazardous waste has little or no pollution potential and produces no greenhouse gas. Five respondents stated that landfilling is often the best and sometimes only practicable environmental option for dealing with these types of waste, and that standard rating the material could be viewed as a punitive measure. Two respondents felt material should only be standard rated where there were appropriate measures and infrastructure in place to enable the material to be managed in a way that results in improvements in the waste hierarchy.

3.22 One respondent felt that the lower rate could encourage the landfilling of some hazardous wastes where viable recycling processes are available. It would be counter-productive if the tax acted as a disincentive to the development of more sustainable alternatives.

3.23 The financial and economic impacts of standard rating those hazardous qualifying materials which are currently subject to the lower rate of tax was a strong concern for many respondents. Five respondents stated that a change may have cost implications for the energy generation and steel industry, and may inadvertently affect gate fees for customers including local authorities and third party businesses. They felt that changes to non-hazardous incinerator bottom ash, for example, could deter any incentive to invest in energy from waste and biomass co-incineration and undermine the objective of minimising municipal and other waste streams being sent to landfill.

Additional views

3.24 A number of respondents volunteered additional views, outside the scope of the questions. In the main, they objected strongly to the standard rate being applied to asbestos waste materials, most notably asbestos contaminated soil. They felt that the lack of a current alternative to landfill meant that the tax could not lead to any behavioural change and acted as a barrier to economic activity in the construction trade.

3.25 The current dredging exemption was also a concern for two respondents who thought there is a risk that it could result in certain hazardous wastes being added to dredged materials.

Question 7: Do you have any information that could inform the Impact Assessment?

3.26 One respondent did not expect the proposals to have any impacts and one respondent stated that a thorough impact assessment can only be carried out once further detail on any proposed changes have been agreed.

4. Next steps

Hazardous Waste

- 4.1 HMRC is grateful to all respondents who gave information about hazardous materials which may fall within the lower rate of Landfill Tax. This information will be used to inform future policy thinking, and HMRC has no intention to make changes in this area at the moment.

Clarity of Landfill Tax taxable disposal

- 4.2 It is the government's intention that these amendments to the legislation will be introduced as part of the Finance Bill 2017, and will come into force as soon as is practicable thereafter.
- 4.3 The government will publish draft legislation on 5 December 2016 for technical consultation which will run for 8 weeks. We would welcome any comments you have on this draft legislation.
- 4.4 A Tax Information and Impact Note (TIIN) will be published on 5 December 2016.
- 4.5 If you have any comments on the draft legislation, please send them to Daniel Taylor preferably by email to: landfill-tax.consultation@hmrc.gsi.gov.uk
- 4.6 Alternatively, comments may be sent by post to the following address:

Caroline Arrowsmith
HM Revenue & Customs
3rd Floor West, Ralli Quays
3 Stanley Street
Salford M60 9LA

Annex A: List of respondents

The following businesses/trade associations submitted written responses:

Arc 21
Biffa
British Steel
Castle Environmental
Chartered Institute of Tax
Confederation of Paper Industries
John Curran
DS Smith
Richard Ebley
Environmental Industries Commission
Energy UK
E.ON UK
Environmental Services Association
FCC
Outokumpu
Price Waterhouse Cooper
RWE Generation
SSE
Suez
Tata Steel
The Association for Decentralised Energy
Veolia
Waste Transition
Western Riverside Waste Authority
Whitemoss