



HM Revenue
& Customs

Aggregates Levy: Proposals on the treatment of aggregate removed during construction works

Consultation

Publication date: 23 March 2021

Closing date for comments: 15 June 2021

Summary

Subject of this consultation

Proposals to amend Aggregates Levy legislation concerning certain aggregate from construction and infrastructure works.

Scope of this consultation

This consultation seeks views on changing the Aggregates Levy treatment of “borrow pit” aggregate used in construction. Additionally, it seeks views on whether there should be a general exemption for aggregate arising unavoidably when laying underground utility pipes.

Who should read this

Aggregate producers, construction companies, utility providers and their pipe laying contractors, farmers, forest management organisations, planning authorities. Representative bodies of these.

Duration

The consultation will run for 12 weeks, starting on 23 March 2021 and ending on 15 June 2021.

Lead official

Claire Hardy, HM Revenue and Customs (HMRC).

How to respond or enquire about this consultation

Email responses and enquiries to: aggregateslevyconsultation@hmrc.gov.uk

Additional ways to be involved

HMRC welcomes meetings with representative bodies to discuss these proposals. If you would like to discuss your response before the consultation closing date, please send an email to the above address.

After the consultation

HMRC will publish a summary of responses, together with any draft legislation as soon as possible after the end of the consultation period.

Getting to this stage

This consultation follows the 2019 review of the Aggregates Levy¹, during which stakeholders from the aggregates industry and the water and waste water industries raised concerns on specific impacts of the levy on their industries.

Previous engagement

In 2016 the government consulted on whether to introduce a new exemption for aggregate unavoidably removed when laying underground utility pipes. It decided the case was not strong enough at that time².

¹ <https://www.gov.uk/government/publications/review-of-the-aggregates-levy>

² <https://www.gov.uk/government/consultations/aggregates-levy-whether-to-exempt-aggregate-extracted-when-laying-underground-utility-pipes>

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1. Introduction

The Aggregates Levy

- 1.1 The Aggregates Levy is a UK tax on the commercial exploitation of primary virgin aggregate used for its bulk properties in construction. Introduced in 2002 as an environmental tax, it aims to encourage more efficient extraction and use of aggregate and encourage the use of alternatives to virgin aggregate.
- 1.2 Under the levy, “aggregate” is rock, gravel or sand, but there are exemptions and reliefs for non-construction uses and non-aggregate and incidental extraction of these materials.
- 1.3 Anyone responsible for commercially exploiting taxable aggregate in the UK must register with HMRC and pay Aggregates Levy each quarter. The levy is currently charged at £2 per tonne of aggregate. “Commercially exploiting” aggregate under the levy means: removing it from its originating site; supplying it to another person; using it in construction; or mixing it with anything other than water. Whichever of these happens first is when the levy applies. Most of the levy is paid by quarrying companies and marine aggregate producers, but others including local authorities, importers of aggregate and construction companies may also need to register and pay.
- 1.4 UK legislation has devolved the Aggregates Levy to the Scottish Parliament from a date to be set. The Scottish Government is currently designing its own replacement tax and will agree a date to commence devolution with the UK government. Devolution to Wales is being kept under review with the intention to devolve, subject to the agreement of both governments and cross-border impacts being worked through in full. There are no proposals to devolve the levy to Northern Ireland.

Exemptions and exclusions

- 1.5 Material which is not deliberately extracted for use as aggregate is generally exempt from the levy, or subject to relief so that a credit can be claimed. Some of these exemptions are for secondary aggregate that arises as an unavoidable by-product of certain construction works. They are intended to encourage the use of the material that arises unavoidably, rather than its disposal as waste, which may also reduce the amount of primary virgin aggregate needed.

- 1.6 Aggregate removed from the ground to build or repair roads and railways is exempt from Aggregates Levy, as is aggregate removed to lay foundations, pipes and cables for a building. There is also an exemption for aggregate removed by utility operators carrying out works below the street under specified legislation. In 2016, the government consulted on options for a wider exemption that would have exempted more of the aggregate removed during pipe-laying for utilities. It decided not to introduce a new exemption at that time.
- 1.7 In addition to exemptions for material arising unavoidably from construction works, there is an exclusion from the levy for aggregate that is returned, unmixed with anything except water, to the land at the site where it was won. Under the levy, this aggregate is not commercially exploited, so no tax applies. This exclusion is intended to prevent levy being due on aggregate used for some purposes within a quarry or other commercial extraction site. The exclusion is extended for farming and forestry organisations, who can return unmixed aggregate to the land at the site where it was won, and also at other sites that they occupy, for the purposes of their business. This means they can use dry aggregate from their own land to construct forest tracks and dry-stone walls, for example.

The consultation

- 1.8 The government recently completed the first comprehensive review of the Aggregates Levy since its introduction, following the withdrawal of litigation against the tax. A summary of responses and government next steps to the review³ was published in July 2020.
- 1.9 During the review, aggregate industry stakeholders raised concerns over the volumes of exempt aggregate arising from construction sites. While they accepted the principle of aggregate removed as an unavoidable by-product from a construction site being exempt, they had concerns over the interpretation and enforcement of these exemptions and the effects on local aggregate markets. In particular, they felt that aggregate extracted from “borrow pits” close to construction sites which is used unmixed

3

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902351/2020.07.20_Review_of_the_Aggregates_Levy_summary_of_responses_to_the_discussion_paper_and_government_next_steps.pdf

on those sites was avoiding the levy unfairly. Borrow pits are temporary sites used to extract aggregate for a specific purpose. They are restored when no longer needed.

- 1.10 Construction companies were concerned that making a judgement on the location of borrow pits with levy liability in mind is a recurring problem for them, and said they would welcome clearer guidance.
- 1.11 The water and waste water industries requested reconsideration of the decision following the 2016 consultation not to introduce a new exemption for aggregate removed to lay underground utility pipes. They argued that exempting this aggregate would correct an anomaly in the law and put the treatment of such works on a similar footing to the construction of buildings, roads and railways.
- 1.12 The government, therefore, announced in its response to the review that it would consult on borrow pits and exemptions under the levy for aggregate arising from activities that are not for the purpose of extracting aggregate or other minerals, in response to the concerns raised.

2. Proposals on exemptions and exclusions from Aggregates Levy for construction works

2.1 The main Aggregates Levy legislation is in Finance Act 2001 (“FA01”). The exemptions from Aggregates Levy are contained in section 17. Exclusions from the definition of commercial exploitation are in section 19 (see Appendix A for the relevant legislation). The HMRC guidance on Aggregates Levy is now published in a collection of guides on GOV.UK⁴ which have recently replaced Excise Notices AGL1 and AGL2.

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

(FA01 s19(3)(e))

2.2 Aggregate is not commercially exploited, and therefore no levy is due, when it is returned unmixed with anything except water to the land at the site where it was originally won. “Winning” aggregate is usually done either by extracting it from the ground or dredging it from the seabed. This exclusion originally recognised that commercial extractors of aggregate use lower quality aggregate won from their sites for certain temporary or restoration purposes on the site itself. This could be for constructing noise or screening bunds around the site, haul roads within the site, or backfilling (restoring) once extraction is complete. Bunds and haul roads in these cases are temporary in nature and are removed when no longer needed and when restoration of the site occurs. These activities are not seen as “commercial exploitation” of aggregate in the usual sense of the term. The exclusion, therefore, ensures that they do not fall within the Aggregates Levy definition of commercial exploitation. However, the aggregate remains taxable and if any of it were to be removed from the site in the future, levy would be due on it in the normal way.

2.3 In recent years, a series of tax tribunal decisions has widened the interpretation of this exclusion so that it can also apply to some construction works, often large infrastructure projects such as road building schemes. Case law has established that aggregate extracted from a borrow pit and used, unmixed, on a nearby construction site can

⁴ <https://www.gov.uk/topic/business-tax/aggregates-levy>

sometimes fall within the exclusion. When the construction project is very large and the borrow pit is relatively close to it, this can be seen as a single, large site rather than two separate sites. Borrow pit aggregate used unmixed on the construction site for purposes such as building embankments can therefore be regarded as being returned to the land at the site where it was won. It is, therefore, not commercially exploited under the levy so no tax is due on it.

- 2.4 The exclusion can only be claimed when the borrow pit aggregate is used unmixed; if it is mixed into concrete or another product, levy will be due on it.
- 2.5 Whether the exclusion can apply to such projects depends on whether the borrow pit and the construction area can reasonably be deemed to be part of a single site. This has to take account of a number of factors, such as the size and scale of the project and whether the whole area is included in the planning consent.
- 2.6 The government's view is that this interpretation of the exclusion, as far as it relates to borrow pits, is not in line with the objective of the levy. Borrow pit aggregate is deliberately extracted for use in construction and is, therefore, no different from quarried aggregate on which levy has to be paid. We do not think this use is analogous to using aggregate to construct bunds or haul roads, or backfilling at commercial extraction sites. While using borrow pits may be convenient and reduce traffic movements of aggregate from further afield, aggregate is usually sourced locally, and the government does not believe the purpose of the exclusion was to encourage the use of borrow pits over commercially produced aggregate. A further issue is that the application of this exclusion to projects on the ground following the precedents set by case law has become complicated for both HMRC and construction companies to interpret, as cases have to be considered on their individual facts.
- 2.7 For the reasons set out above, we propose to amend the legislative basis of the exclusion so that it reflects the original policy intention. We believe the best way to achieve this would be to make the exclusion for aggregate returned to the land at the site where it was won apply only for a purpose connected to the winning of the aggregate.
- 2.8 So using unmixed aggregate from a quarry to construct bunds and haul roads at that quarry, for example, would not attract the levy as these are purposes connected to the winning of the aggregate. But using unmixed aggregate from a borrow pit to construct roads, railways and other infrastructure is not using it for a purpose connected to the

winning of aggregate. In this case, the aggregate would be commercially exploited in the normal way and levy would be due. Aggregate from a borrow pit on a construction site would only benefit from the exclusion when it was used for a purpose connected to the actual extraction, such as building a bund around the borrow pit.

2.9 This would restore the original intention of the exclusion and have no adverse impact on competition, since those in the business of winning aggregate would never buy in aggregate where they have suitable material of their own to hand.

2.10 We would welcome comments from all interested parties on this proposal.

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?

Aggregate returned to the land for farming or forestry purposes

(FA01 s19(4))

2.11 The above exclusion is specifically extended for farming and forestry purposes. Aggregate won from a site and used, unmixed, on another site is not commercially exploited if

- i. both sites are occupied by the same entity, *and*
- ii. they are occupied for the purposes of running an agricultural or forestry business, or otherwise for forestry purposes.

2.12 This exclusion enables farmers and foresters to carry out certain activities connected with the running of their business without having to register for Aggregates Levy. These include building paths, tracks and dry-stone walls from unmixed aggregate sourced from their own land. This exclusion recognises that this use of aggregate is not in competition with the commercial production of aggregate and is an administrative measure to

prevent large numbers of businesses needing to register for the levy when digging small borrow pits for their own use. Any aggregate sold or delivered to a third party, or mixed with anything other than water, is not included in this exclusion and is liable to Aggregates Levy in the normal way.

2.13 We believe the farming and forestry exclusion is still necessary for the purposes it was originally intended for. We are not aware of any particular problems with it and have no proposals to change the effect of it. But if the above proposal for the change to the main exclusion for aggregate returned to the land at the site where it was won was implemented, this provision would also have to be redrafted to keep the same effect.

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?**

Highways

(FA01 s17(3)(d))

2.14 Aggregate is exempt from the levy when it consists entirely of material removed from the ground along the line of an existing or proposed highway. This must be

- i. to improve or maintain the highway, or to build the proposed highway, *and*
- ii. not for the purpose of extracting that aggregate.

2.15 HMRC's view of this exemption is that it is intended to exempt aggregate material which is unavoidably removed from the ground along the line of the highway to make way for something connected with the building or improvement of the highway to be put in its place. This may be the highway itself, or an embankment or a pavement, for example. The exempt aggregate which arises may be used in the construction or in any other way. But aggregate extracted solely for the purpose of using it for the building or improvement of the highway – for example, from borrow pits - is not included in this exemption.

2.16 We think the legislation for this exemption, which is set out in Appendix A, is clear and correctly reflects the policy intention as described above. However, we believe our guidance on this exemption, which remained as it had originally been published until recently, had become misleading.

2.17 HMRC's main Aggregates Levy guidance was, until recently, contained in Excise Notice AGL1. This stated that the exemption was for

“aggregate necessarily arising from the ground in the course of excavations to improve, maintain or construct a highway or a proposed highway. (It must be won from the ground along the line or proposed line of the highway. **This includes the land take approved by the planning authority**, but not borrow pits nearby)”. (Emphasis added.)

2.18 There is evidence to suggest that planning consents have changed since this guidance was written and are now more likely to include a wider area around the actual highway itself. We understand that planning authorities are likely to favour sourcing aggregate from as close as possible to the site of the construction to reduce the environmental impact of transporting it from further afield. We believe that this guidance, so far as it relates to the inclusion of “the land take approved by the planning authority”, no longer reflects the intention of the legislation, because the land take may extend much wider than the line of the highway.

2.19 For this reason, we have removed this phrase from the new guidance, which now states that material is exempt from the levy if it is entirely

“aggregate dug unavoidably along the line of a highway to construct, improve or maintain it, and not to obtain the aggregate itself”.

We believe this clarifies the extent of the exemption.

2.20 We have no current proposals to change the legislation for this exemption. However, we believe that this clarification, taken together with the proposed change to the exclusion for aggregate returned to the land from which it is won, will remove any confusion as to when aggregate extracted in connection with highway works becomes taxable.

2.21 The legislation is set out in Appendix A.

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.

Railways, tramways and monorails

(FA01 s17(3)(da))

2.22 Aggregate is exempt from the levy when it consists entirely of material removed from the ground along the line of an existing or proposed railway, tramway or monorail. This must be

- i. to improve, maintain or build the railway, tramway or monorail, *and*
- ii. not for the purpose of extracting that aggregate.

2.23 This exemption mirrors the previous one for highways and the wording in both the legislation and the former HMRC guidance is very similar. HMRC's view of this exemption is that it is intended to apply to aggregate that is unavoidably extracted from the ground along the line of the railway, tramway or monorail to make way for something connected to the building or improvement of one of these to be put in its place. This would usually be the track or rail, but may also be embankments. We would not see aggregate removed to build station buildings or train sheds being included under this exemption, but the exemption for foundations (paragraphs 2.28 to 2.31) would be likely to apply to those. As with the previous exemption for highways, aggregate extracted for the sole purpose of using it in the construction or improvement of the railway, tramway or monorail is not included in this exemption.

2.24 HMRC's former guidance in Excise Notice AGL1 stated that this exemption was for

“aggregate necessarily arising from the ground in the course of excavations to improve, maintain or construct a railway, monorail or tramway. (It must be won from the ground along the line or proposed line of the railway, monorail or tramway. **This includes the land take approved by the planning authority**, but not borrow pits nearby)”. (Emphasis added.)

2.25 As with the previous exemption for highways, and for the same reasons, we believe the inclusion of the reference to “the land take approved by the planning authority” is no longer correct in interpreting this exemption. Our new guidance now states that material is exempt from the levy if it is entirely

“aggregate dug unavoidably along the line of a railway, monorail or tramway to construct, improve or maintain them, and not to obtain the aggregate itself”.

We believe this clarifies the extent of the exemption.

2.26 We have no current proposals to change the legislation for this exemption. However, we believe that this clarification, taken together with the proposed change to the exclusion for aggregate returned to the land from which it is won, will remove any confusion as to when aggregate extracted in connection with railway, tramway or monorail work becomes taxable.

2.27 The legislation is set out in Appendix A.

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.

Foundations, pipes and cables for a building

(FA01 s17(3)(b))

2.28 Aggregate is exempt from the levy when it consists entirely of material removed from the ground on the site of a building, or proposed building, during excavations lawfully carried out

- i. for the modification or erection of the building, *and*
- ii. only for laying foundations or laying any pipes or cables.

2.29 HMRC's original view was that this exemption covered only aggregate removed from the footprint of a building and the pipes and cables leading to it. However, a tribunal case in 2003 determined that this was too narrow an interpretation and that the exemption needed to have a sensible and workable meaning. As a result, this exemption is now taken to include all the aggregate removed for the specific purpose of laying foundations, pipes and cables on the whole of the area on which the builders are working - the "building site".

2.30 The tribunal also said that "building" should include structures with a functional link to a building, such as a car park.

2.31 We believe this interpretation of the exemption is reasonable are not aware of any problems with it. We, therefore, have no current proposals to change the legislation or guidance for this exemption. However, please tell us if you disagree with this.

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.

Street works and laying utility pipes: proposed new exemption

(FA01 s17(4)(e))

- 2.32 There is currently an exemption from Aggregates Levy for aggregate wholly or mainly resulting from works carried out under the: *New Roads and Street Works Act 1991*; the *Roads (Northern Ireland) Order 1993*; or the *Street Works (Northern Ireland) Order 1995*.
- 2.33 This exemption is intended to remove from the scope of the levy aggregate unavoidably extracted in the course of works carried out under streets, such as laying gas, electricity or water pipes or cables. Taken together with the exemption for foundations, pipes and cables for a building, this means that much of the aggregate unavoidably removed when laying utility connections will not be subject to the levy. However, where pipes are laid between a road and a construction site, or across agricultural land or parkland, there is no general exemption for aggregate removed during this process.
- 2.34 In previous years, water companies requested the government to extend the street works exemption to cover works extending beyond the street. In 2016 the government consulted on such proposals. The 2016 consultation proposed three options: no change; extend existing exemptions so that aggregate arising from pipe laying between the road and another location is also exempt; or introduce a wider exemption for all unavoidable aggregate extracted when laying underground pipes.
- 2.35 Responses were generally split between those associated with utility providers, who favoured an exemption; and the aggregate industry, who opposed it. Among those in favour of an exemption, few supported the narrower one, which they saw as being too complicated for operators to administer and providing minimal benefit. The vast majority of those supporting an exemption preferred the wider one covering all aggregate necessarily removed when laying underground utility pipes. They argued it would support the objectives of the levy while not imposing a compliance burden on utility providers.
- 2.36 Those opposing a new exemption believed that the wider the exemptions from Aggregates Levy the greater the uncertainty over liability to the tax; and that, therefore,

opportunities for avoidance and evasion increased. This was particularly in the context of what they saw as the lack of enforcement of other exemptions for incidental by-product aggregate and the lack of clarity on the liability of borrow pit aggregate on construction sites. They were concerned that a new exemption for pipe laying would provide an incentive for utility operators to extract more aggregate than was necessary, and it would be difficult for HMRC to police this.

2.37 The government concluded that the case to introduce a new exemption was not strong enough at that time.

2.38 During the recent review of the Aggregates Levy, the water and waste water industry asked for the case to be reconsidered. They argued that during review discussions all sides had accepted the principle that incidental by-product aggregate should be exempt from the levy. They reiterated their view that the current situation was inequitable because by-product aggregate arising from other types of infrastructure works is exempt.

2.39 In the summary of responses to the Aggregates Levy review, the government stated it believed that a distinction can and should be drawn between the deliberate extraction of primary aggregates and extraction of secondary aggregates as an unavoidable incidental consequence of other works⁵.

2.40 Much of this consultation is intended to address concerns over the application of existing exemptions and exclusions from Aggregates Levy, as far as they relate to aggregate arising on construction sites. In this context, we believe it is the right time to re-examine the proposal for a new general exemption for aggregate necessarily arising when laying all underground utility pipes. The aggregate removed as a by-product of these activities is unavoidable. Therefore, an exemption would be consistent with the environmental objectives of the tax, as recently set out by the government in its response to the Aggregates Levy review. We believe such an exemption may also mean the existing exemption for street works would no longer be required, but would welcome comments on that.

2.41 We are interested to hear views from all sides on this proposal, particularly if there is any new information to inform the discussion. We would particularly like to understand

⁵ Para 2.70

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902351/2020.07.20_Review_of_the_Aggregates_Levy_summary_of_responses_to_the_discussion_paper_and_government_next_steps.pdf

the potential effect of such an exemption on local aggregate markets, and whether it could result in more aggregate being extracted than is necessary for the work itself.

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?

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.

2.42 Finally, we welcome comments on our assessment of impacts.

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

3. Assessment of impacts

Summary of impacts

Any exchequer impact will be estimated following consultation, final scope and design of the proposals and will be subject to scrutiny by the Office for Budget Responsibility.

Year	2021-22	2022-23	2023-24	2024-25	2025-26
Exchequer impact (£m)					

Impacts	Comment
Economic impact	The economic impacts will be identified following consultation and final design of the proposal.
Impact on individuals, households and families	<p>These proposals have no impact on individuals as they only affect businesses.</p> <p>There is not expected to be any impact on family formation, stability or breakdown.</p>
Equalities impacts	It is not anticipated that there will be impacts on groups sharing protected characteristics.
Impact on businesses and Civil Society Organisations	<p>Proposal on aggregate returned to the land at the site where it was won (including from borrow pits). This proposal is expected to impact construction businesses which source aggregate from nearby borrow pits to use unmixed in a construction project. These businesses would be required to pay Aggregates Levy on that aggregate. The impact would vary depending on the volumes of aggregate used. 1,000 tonnes of this aggregate would cost an additional £2,000 in levy at the current rate. One-off costs could include registration and familiarisation with the requirements of the levy. Continuing costs could include keeping records and filing returns for as long as the extraction of aggregate continues. This proposal is expected overall to have no impact on businesses' experience of dealing with HMRC for those businesses already required to register for the levy during the project. This is because the proposal does not change any processes or tax administration obligations. Businesses required to register as a result of the proposal are expected to be negatively affected in their business experience of dealing with HMRC. This is because they will have new administrative obligations to comply with the levy. HMRC has recently published new guidance to help customers understand their Aggregates Levy obligations.</p>

	<p>Laying utility pipes: proposed new exemption. This proposal will impact businesses undertaking pipe laying on behalf of utility companies which is neither below a street nor on a building construction site. One-off costs will include familiarisation with the change. There are not expected to be any continuing costs. One-off savings could include removal of the obligation to register for and pay Aggregates Levy. This proposal is expected overall to improve these businesses' experience of dealing with HMRC as they will not be required to account for this tax.</p> <p>These proposals are not expected to impact on civil society organisations.</p>
Impact on HMRC or other public sector delivery organisations	It is not anticipated that these proposals will incur any additional costs / savings for HMRC.
Other impacts	<p><u>Devolved administrations</u> – no differential impacts have been identified.</p> <p><u>Other impacts</u> have been considered and none have been identified. Any other impacts will be reviewed when the consultation is complete.</p>

4. Summary of consultation questions

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 to something which has not been mentioned above, and which may be affected by the proposed change?

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 which are unrelated to farming and forestry which should also benefit from an exclusion?

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.

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.

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.

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?

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?

5. The consultation process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

A summary of the questions in this consultation is included at chapter 4.

Responses should be sent by 15 June 2021, by email to:

aggregateslevyconsultation@hmrc.gov.uk

Enquiries to the above email address or by telephone to Claire Hardy on 03000 585958 (from a text phone prefix this number with 18001).

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

HMRC is committed to protecting the privacy and security of your personal information. This privacy notice describes how we collect and use personal information about you in accordance with data protection law, including the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act (DPA) 2018.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018, UK General Data Protection Regulation (UK GDPR) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs.

Consultation Privacy Notice

This notice sets out how we will use your personal data, and your rights. It is made under Articles 13 and/or 14 of the UK General Data Protection Regulation.

Your data

We will process the following personal data:

- Name
- Email address
- Postal address
- Phone number
- Job title

Purpose

The purpose(s) for which we are processing your personal data is: Aggregates Levy: Proposals on the treatment of aggregate removed during construction works.

Legal basis of processing

The legal basis for processing your personal data is that the processing is necessary for the exercise of a function of a government department.

Recipients

Your personal data will be shared by us with HM Treasury.

Retention

Your personal data will be kept by us for six years and will then be deleted.

Your rights

- You have the right to request information about how your personal data are processed, and to request a copy of that personal data.
- You have the right to request that any inaccuracies in your personal data are rectified without delay.
- You have the right to request that any incomplete personal data are completed, including by means of a supplementary statement.
- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.
- You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted.

Complaints

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow

Cheshire
SK9 5AF

0303 123 1113

casework@ico.org.uk

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact details

The data controller for your personal data is HM Revenue and Customs. The contact details for the data controller are:

HMRC
100 Parliament Street
Westminster
London SW1A 2BQ

The contact details for HMRC's Data Protection Officer are:

The Data Protection Officer
HM Revenue and Customs
14 Westfield Avenue
Stratford, London E20 1HZ

advice.dpa@hmrc.gsi.gov.uk

Consultation principles

This call for evidence is being run in accordance with the government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: [Consultation Principles Guidance](#)

If you have any comments or complaints about the consultation process, please contact the Consultation Coordinator using the following link:

[Submit a comment or complaint about HMRC consultations](#)

Please do not send responses to the consultation to this link.

Annex A: Relevant (current) Government Legislation

Aggregates Levy primary legislation is in Finance Act 2001, sections 16 to 49 and Schedules 4 to 10, as amended.

Relevant exemptions – section 17

17 Meanings of “aggregate” and “taxable aggregate”

(1) In this Part “aggregate” means (subject to section 18 below) any rock, gravel or sand, together with whatever substances are for the time being incorporated in the rock, gravel or sand or naturally occur mixed with it.

(2) For the purposes of this Part any quantity of aggregate is, in relation to any occasion on which it is subjected to commercial exploitation, a quantity of taxable aggregate except to the extent that—

(a) it is exempt under this section;

...

(3) For the purposes of this Part aggregate is exempt under this section if—

...

(b) it consists wholly of aggregate won by being removed from the ground on the site of any building or proposed building in the course of excavations lawfully carried out—

(i) in connection with the modification or erection of the building; and

(ii) exclusively for the purpose of laying foundations or of laying any pipe or cable;

...

(d) it consists wholly of aggregate won by being removed from the ground along the line or proposed line of any highway or proposed highway and in the course of excavations carried out—

(i) for the purpose of improving or maintaining the highway or of constructing the proposed highway; and

(ii) not for the purpose of extracting that aggregate;

(da) it consists wholly of aggregate won by being removed from the ground along the line or proposed line of any railway, tramway or monorail or proposed railway, tramway or monorail and in the course of excavations carried out—

(i) for the purpose of improving or maintaining the railway, tramway or monorail or of constructing the proposed railway, tramway or monorail; and

(ii) not for the purpose of extracting that aggregate;

...

(4) For the purposes of this Part a quantity of any aggregate shall be taken to be a quantity of aggregate that is exempt under this section if it consists wholly or mainly of any one or more of the following, or is part of anything so consisting, namely—

...

(e) anything resulting from works carried out in exercise of powers which are required to be exercised in accordance with, or are conferred by, provision made by or under the New Roads and Street Works Act 1991, the Roads (Northern Ireland) Order 1993 or the Street Works (Northern Ireland) Order 1995;

...

(7) In this section—

...

“highway” includes any road within the meaning of the Roads (Scotland) Act 1984 or the Road Traffic (Northern Ireland) Order 1995.

Relevant exclusions - section 19

19 Commercial exploitation

...

(3) For the purposes of this Part the exploitation to which a quantity of aggregate is subjected shall be taken to be commercial exploitation if, and only if—

...

(e) the exploitation to which it is subjected is not such that, as a result and without its being subjected to any process involving its being mixed with any other substance or

material (apart from water), it again becomes part of the land at the site from which it was won.

...

(4) Where, at the time when any aggregate is won from any site, the same person is in occupation of both—

(a) that site, and

(b) other land which is occupied, together with that site—

(i) for the purposes of the carrying on of any agricultural business, or

(ii) for the purposes of the carrying on of any forestry business or otherwise for the purposes of forestry,

subsection (3)(e) above shall have effect as if the reference to the land at the site from which the aggregate was won included the other land, so long as it and that site continue to be occupied by that person for such purposes.