



HM Revenue
& Customs

Landfill Tax: improving clarity and certainty for taxpayers

Consultation document

Publication date: 26 May 2016

Closing date for comments: 18 August 2016

Subject of this consultation:	Landfill Tax: improving clarity and certainty for taxpayers.
Scope of this consultation:	<p>Following the announcement in Budget 2016 this consultation seeks views on proposals to amend the definition of a taxable disposal of waste at a landfill site, with the aim of clarifying the scope of the tax.</p> <p>The consultation also calls for information and views on the limited circumstances where hazardous waste falls within the scope of The Landfill Tax (Qualifying Material) Order 2011.</p>
Who should read this:	Operators of landfill sites and other waste sector interests in England, Wales and Northern Ireland; other producers of waste including energy generators and representative bodies.
Duration:	The consultation will run for 12 weeks from 26 May 2016 to 18 August 2016.
Lead official:	Daniel Taylor, HM Revenue & Customs
How to respond or enquire about this consultation:	<p>Responses or enquires should be sent by e-mail to - landfill-tax.consultation@hmrc.gsi.gov.uk</p> <p>Or by post to – Caroline Arrowsmith HM Revenue & Customs 3rd Floor West, Ralli Quays 3 Stanley Street Salford M60 9LA</p>
Additional ways to be involved:	HMRC welcomes meetings with representative groups to discuss these proposals. Please contact Daniel Taylor on 03000 585973 if you would like to discuss your response.
After the consultation:	We will publish a summary of responses towards the end of 2016. If the government decides to make legislative changes there will be a further consultation on draft legislation.
Previous engagement:	This issue has not been the subject of any recent formal consultation.

Contents

1	Introduction	4
2	What constitutes a taxable disposal	6
3	Hazardous waste	8
4	Table of impacts	10
5	Summary of consultation questions	11
6	The consultation process	12
7	Annex A: Prescribed landfill activities table	14

On request this document can be produced in Welsh and alternate formats including large print, audio and Braille formats

1. Introduction

Landfill Tax

- 1.1 Landfill Tax was introduced on 1 October 1996 as a disincentive to landfilling waste and to encourage the switch to more sustainable alternatives for disposing of waste. The tax has been very successful in reducing the amount of waste sent to landfill by over 50% since the tax was introduced, and increasing household recycling by 70% in the UK.
- 1.2 Landfill Tax is due on waste disposed of at a permitted landfill site in England, Wales and Northern Ireland. The tax is collected from operators or controllers of a landfill site based upon the weight and type of waste material. The cost of the tax is borne by waste producers and the waste industry, as well as local authorities disposing of municipal waste.
- 1.3 There are two rates of tax:
 - a standard rate (currently £84.40 per tonne); and
 - a lower rate (currently £2.65 per tonne) for the least polluting material.
- 1.4 Landfill Tax was devolved to Scotland in April 2015. As such, the proposals set out in this consultation do not apply in Scotland.

Drivers for change

Legal challenges

- 1.5 Over the last few years the industry has challenged the interpretation of a taxable disposal following the case of *Commissioners for Her Majesty's Revenue and Customs v Waste Recycling Group Limited* [2008] EWCA Civ 849 (the WRG case). In this case, the Court of Appeal found that material put to use on a landfill site as daily cover or to construct roads within a landfill site was not taxable.
- 1.6 Since then the legislation has been changed to clarify the liability of certain activities, including those covered by the WRG case. However, there continues to be considerable challenge by parts of the industry over what constitutes a taxable disposal. This has led to uncertainty and increased complexity in the Landfill Tax system.
- 1.7 Consequently, in Budget 2016 the government announced it would consult on proposals to reform Landfill Tax legislation with the aim of clarifying the areas of uncertainty that have led to litigation.
- 1.8 HMRC is committed to providing clarity and certainty to promote compliance and create a level playing field for business.

Liability of hazardous waste

- 1.9 The criteria for waste material to be liable to the lower rate of Landfill Tax are set by the Treasury and published in HMRC guidance. One of the criteria is that the waste material must not be hazardous. This is consistent with the environmental logic of the tax.
- 1.10 We have identified that some types of waste material are listed in The Landfill Tax (Qualifying Material) Order 2011 (Qualifying Material Order) and liable to the lower rate of Landfill Tax, regardless of their hazardous classification. This contradicts the Treasury criteria and the principle that the more polluting the waste, the more the tax paid.
- 1.11 The government is therefore taking this opportunity to gather information and receive views on any hazardous waste that falls within the Qualifying Material Order and attracts the lower rate of Landfill Tax.

Objective of this consultation

1.12 The purpose of this consultation is:

- to seek views on the proposals to put the definition of a taxable disposal for Landfill Tax purposes beyond doubt, without altering the scope of the tax; and
- to gather information and receive views on hazardous waste falling within the scope of the Qualifying Material Order.

1.13 We would particularly like to hear from operators of landfill sites, waste producers including energy generators, and other waste industry interested groups, including representative bodies in England, Wales and Northern Ireland.

2. What constitutes a taxable disposal

- 2.1 This chapter considers how the legislation currently defines a taxable disposal of waste at a landfill site. It then outlines proposals for change, and seeks views on the criteria for a taxable disposal to address the ongoing uncertainties around the scope of the tax.
- 2.2 This proposal is not intended to change the tax status of waste material that is not currently taxable.

Background

- 2.3 A disposal is taxable if it is:
- a disposal of material as waste;
 - made by way of landfill;
 - made at a landfill site; and
 - made on or after 1 October 1996.
- 2.4 In 2008, the Court of Appeal found in the WRG case that Landfill Tax was not due on material which was used to provide the daily cover (a layer of material used to suppress vermin and odours) or to construct roads at a landfill site. This was on the basis that it was not a taxable disposal.
- 2.5 In response to the WRG case The Landfill Tax (Prescribed Landfill Site Activities) Order 2009 (Prescribed Activities Order) was introduced. This specified a number of activities that would always be taxable at a landfill site.
- 2.6 However, some landfill site operators have continued to challenge the definition of a taxable disposal, suggesting a number of other landfill site activities are not taxable.

Proposed amendment

- 2.7 The government is proposing to amend the criteria for determining when Landfill Tax is due so that all material disposed of at a permitted landfill site is taxable, subject to certain exceptions. A set of narrowly defined exceptions will be included, consistent with the activities that are not currently taxable.
- 2.8 Specified activities which are currently not taxable are listed within the [Excise Notice Landfill Tax LFT1: a general guide to landfill tax](#) and replicated at Annex A. We propose to exempt these activities so that they remain not taxable.
- 2.9 This proposal will differ from the approach adopted in the Prescribed Activities Order which specifies the activities that are subject to the tax. The government believes this will simplify the definition of a taxable disposal and bring any uncertainty to an end, and ensure that new activities are not introduced to undermine the tax.

Timing

2.10 The government envisages including the proposed changes in Finance Bill 2017 for implementation from 1 April 2017, although this is subject to the outcome of this consultation. We do not propose to make any changes that would affect the Landfill Tax position prior to these changes coming into force.

Q1: Do you agree that the proposed changes will provide greater certainty than the current legislative approach?

Q2: 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.

Q3: Do you foresee any practical difficulties with the proposed changes? If so, what are they and how could they be overcome?

3. Hazardous Waste

3.1 This chapter examines the current legislative position on loads containing hazardous waste. The government is interested in gathering information and receiving views from industry on the limited circumstances where hazardous waste falls within the scope of the Qualifying Material Order and attracts the lower rate of Landfill Tax.

Background

3.2 Legislation requires certain criteria to be considered when determining the materials that are subject to the lower rate of Landfill Tax. These are that the waste should:

- be non-hazardous;
- have a low potential for greenhouse gas emissions; and
- have a low polluting potential in the landfill environment.

3.3 Accordingly, our policy has always been that hazardous waste should be charged at the standard rate of tax. This is consistent with the environmental logic of the tax – the more polluting the waste, the more tax should be paid.

Mixed loads

3.4 Where a load contains a mixture of material that is predominantly lower rated, the legislation allows it to be treated as lower rated if the standard rated element is small. Although there is no definition of 'small' in legislation, we consider 'small' in terms of impact as well as volume, so that if a mixed load is hazardous for the purposes of environmental legislation, it is standard rated for Landfill Tax. In some cases, the amount of hazardous material required to render a load hazardous for environmental purposes can be less than 0.1%, as is the case with asbestos.

3.5 Following an informal consultation last year we amended our guidance to clarify the liability of mixed loads in respect of hazardous waste. This guidance is a formal direction to businesses and so legally binding.

Qualifying materials

3.6 There are some materials listed in the Qualifying Material Order that may nonetheless attract the lower rate of tax, regardless of their hazardous waste classification, such as bottom ash from incineration processes. As this is not consistent with the principles of the tax or published Treasury criteria, the government is interested in gathering information and seeking views on the circumstances where this applies.

Q4: We have identified incinerator bottom ash and furnace slag 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 Landfill Tax?

Q5: Are you able to provide any information which would assist us in quantifying how much hazardous waste falls within the Qualifying Material Order, and attracts the lower rate of Landfill Tax?

Q6: 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?

4. Table of Impacts

4.1 If we decide to make legislative changes a Tax Information and Impact Note will be published alongside the draft legislation and this will take on board comments on the impacts provided in response to this consultation.

4.2 A summary of HMRC's current assessment of impacts can be found below.

Exchequer impact (£m)	2015 -16	2016 -17	2017 -18	2018 -19	2019 - 2020
	+/-	+/-	+/-	+/-	+/-
Economic	These measures are not expected to have any significant economic impacts.				
Impact on individuals, households and families	The measures are not expected to have any direct impact on individuals, households and families as it is expected to impact on operators of landfill sites and other waste sector interests; producers of waste, representative bodies and non-governmental organisations They will not affect the number of children in poverty.				
Equalities impacts	The changes are not expected to have any impact here but this will be confirmed through consultation.				
Customer cost impact	The impact on burdens will be reviewed in light of consultation responses.				
Impact on businesses and Civil Society Organisations	We expect the impact on burdens to be minimal. However, the aim of this consultation is to fully explore the impact of the proposals on business and civil society organisations.				
Operational impact (£m) – [HMRC or other]	There will be nil additional operational cost to HMRC.				
Other impacts	These proposals are not expected to have any impact on small or micro businesses. Any other impacts will be reviewed in light of consultation responses.				

Q7: Do you have any information that could inform the Impact Assessment?

5. Summary of Consultation Questions

Q1: Do you agree that the proposed changes will provide greater certainty than the current legislative approach?

Q2: 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.

Q3: Do you foresee any practical difficulties with the proposed changes? If so, what are they and how could they be overcome?

Q4: We have identified incinerator bottom ash and furnace slag 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 Landfill Tax?

Q5: Are you able to provide any information which would assist us in quantifying how much hazardous waste falls within the Qualifying Material Order, and attracts the lower rate of Landfill Tax?

Q6: 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?

Q7: Do you have any information that could inform the Impact Assessment?

6. 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

Responses should be sent to landfill-tax.consultation@hmrc.gsi.gov.uk by 18 August 2016.

Please contact Caroline Arrowsmith on 03000 588379 if you have any queries.

A summary of the questions in this consultation is included at chapter 5. 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 inside government. 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

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 1998 (DPA) 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 (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: <http://cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

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

Annex A: Prescribed landfill site activities table (this is an extract from Excise Notice Landfill Tax LFT1)

The prescribed landfill sites activities are set out in column B of the following table. They are subject to tax on or after 1 September 2009. Column C provides further detail about the taxable activities and column D sets out related activities that are not taxable.

Column A	Column B	Column C	Column D
Activity number	Description	What is taxable	What is not taxable
1	The use of material to cover the disposal area during a short-term cessation in landfill disposal activity. The disposal area, usually the landfill void, is any area where disposals of material as waste and by way of landfill take place (see paragraphs 2.2 and 2.3).	The placing of any material on the disposal area for mainly health or environmental reasons (such as reducing nuisance and disturbance by vermin, birds or insects) as opposed to for engineering reasons (such as the exclusion of water). This placing of material may be described as 'daily cover'.	The use of mineral material, including clay: as a permanent cap or geological barrier on the bottom or sides of a disposal area, and as a permanent cap on the top of the disposal area on completion of landfilling operations (an engineered layer used to stop ingress of water into the finished landfill). The use of material that meets all the conditions of one of the Landfill Tax exemptions set out in Section 8.
2	The use of material to create or maintain a temporary haul road.	The use of material for the construction or maintenance of roads, either within the disposal area or adjacent to it. Such roads do not have engineered features (which may include kerbs or drains) and	The use of material for construction or maintenance of permanent site roads. These have engineered features (which may include kerbs or drains) and have a surface that is prepared and/or finished. Permanent site roads are likely to have been constructed prior to the start of tipping operations on the site.

		may be made from crushed or re-used materials, such as concrete or tarmac and may be eventually subsumed into the landfill site.	The use of material that meets all the conditions of one of the Landfill Tax exemptions set out in Section 8.
3	The use of material to create or maintain temporary hard standing.	The use of material for the construction or maintenance of a base on which activities such as waste recycling or treatment take place. Such bases do not have engineered features (which may include sealed drainage) and may be made from crushed or re-used materials, such as concrete or tarmac and may be eventually subsumed into the landfill site.	<p>The use of material for construction or maintenance of permanent hard standing. These have engineered features (which may include sealed drainage) and have a surface that is prepared and/or finished. Permanent hard standing is likely to have been constructed prior to the start of tipping operations on the site.</p> <p>The use of material that meets all the conditions of one of the Landfill Tax exemptions set out in Section 8.</p>
4	The use of material to create or maintain a cell bund.	The use of material to form a structure within the disposal area to separate units of waste, for example, to identify the operational area.	<p>The use of mineral material, including clay, to form separate cells on the edge of the landfill as part of the engineered containment.</p> <p>The use of material that meets all the conditions of one of the Landfill Tax exemptions set out in Section 8.</p>
5	The use of material to create or maintain a temporary screening bund.	The use of any material to create or maintain a structure, either below or above ground, with the purpose of reducing the visual or noise impact of discrete activities on a landfill site, where those activities will cease,	<p>The use of material to create or maintain a structure that performs a function in relation to the landfill site as a whole. It is likely that this will be in place during the entire period of operation of the site as a whole.</p> <p>Naturally occurring material derived from the site it is used at,</p>

		while the wider site continues to operate.	when used to create or maintain a temporary screening bund. The use of material that meets all the conditions of one of the Landfill Tax exemptions set out in Section 8.
6	The use of material placed against the drainage layer or liner of the disposal area to prevent damage to that layer or liner.	The placing of soft material, for example household waste, to prevent damage to the drainage layer/blanket or the liner. Such material may have been sorted/processed to remove sharp or hard objects.	The use of material that meets all the conditions of one of the Landfill Tax exemptions set out in Section 8.
7	The temporary storage of ashes (including pulverised fuel ash and furnace bottom ash).	The storage of ashes from power generation in a facility, such as a lagoon, designed so that the ashes can be retrieved for use or for permanent disposal.	The use of material that meets all the conditions of one of the Landfill Tax exemptions set out in Section 8.
8	The restoration of a landfill site.	The use of material (including site derived material) for site restoration purposes if you fail to notify us in writing of the intention to commence restoration or if the material is not deposited in the pre-notified area.	The use of material (including site derived material) for site restoration purposes if you notify us in writing of the intention to commence restoration (see paragraph 2.5.2) and the material is deposited in the pre-notified area (see paragraph 2.5.1 regarding what is restoration). The use of material that meets all the conditions of one of the Landfill Tax exemptions set out in Section 8.