



## Aggregates levy: suspension of exemptions

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### Who is likely to be affected?

Businesses which commercially exploit:

- coal, lignite, slate or shale, or the spoil from the separation of these materials from other rock;
- clay;
- certain industrial minerals, namely: anhydrite; ball clay; barites; china clay; feldspar; fireclay; fluorspar; fuller's earth; gems and semi-precious stones; gypsum; any metal or the ore of any metal; muscovite; perlite; potash; pumice; rock phosphates; sodium chloride; talc and vermiculite;
- the spoil, waste or other by-products from the extraction or separation of the industrial minerals set out in the previous bullet from other rock; and
- the spoil, waste or by-products from industrial combustion or the smelting or refining of metal.

### General description of the measure

The measure will suspend those exemptions, exclusions and reliefs from the aggregates levy which are the subject of a State aid investigation by the European Commission.

### Policy objective

This measure fulfils the government's obligation under European law to suspend the application of those elements of the aggregates levy which are the subject of a formal Commission investigation.

### Background to the measure

On 7 March 2012 the European General Court annulled a 2002 decision by the European Commission not to raise objections against the aggregates levy. As a result of that judgment, the Commission carried out a preliminary assessment of the levy in order to determine whether to raise objections against the tax on the grounds that it potentially gave rise to State aid. On 31 July 2013 the Commission notified its decision to open a formal State aid investigation which would examine whether certain exemptions, exclusions and reliefs ('the exemptions') from the levy are in line with the logic and nature of the tax.

The government is strongly of the view that the exemptions in question do not give rise to State aid, and is providing information to the Commission to support that view as part of the formal investigation process. However, while this process continues, the government is obliged to suspend the exemptions in question under Article 108(3) of the Treaty on the Functioning of the European Union.

Revenue & Customs Brief 31/13, published on 11 October 2013, invited anyone who wished to comment on the suspension before the publication of the draft legislation to register their interest. All those that registered an interest were sent questionnaires with a deadline of 15 November 2013 for responses. Officials from HM Treasury and HM Revenue & Customs (HMRC) also held a number of meetings with interested businesses, their professional advisers and industry representative bodies.

Draft primary and secondary legislation for this measure was published on 18 December 2013 for consultation that closed on 12 February 2014. A Tax Information and Impact Note (TIIN) summarising the legislative changes was published alongside the draft legislation.

This TIIN updates the one published on 18 December 2013 to include minor changes to the two new exempt processes which have been made as a result of the consultation. These are explained in the 'Proposed revisions' section below.

## **Detailed proposal**

### **Operative date**

The measure will have effect on and after 1 April 2014.

### **Current law**

Finance Act 2001 (the Act) (sections 16 to 48 and schedules 4 to 10) contains the primary legislation for the aggregates levy:

- section 17 defines aggregate and taxable aggregate and exempts materials that constitute rock, sand or gravel in geological terms but are not extracted for use as aggregate;
- section 18 deals with exempt processes and excludes from the levy a wide range of industrial minerals, none of which are quarried or mined in the UK for use as aggregate;
- section 19 defines commercial exploitation;
- section 22 determines who is responsible for the exploitation of aggregate;
- section 24 requires any person who carries out taxable activities and is not exempt from registration to be registered for the purposes of aggregates levy; and enables HMRC to make provision, through regulations, for certain persons to be exempt from the requirement to register; and
- section 30 empowers HMRC to make regulations providing for tax credits to be claimed in certain circumstances, including where levy has already been accounted for on aggregate that is subjected to an exempt process, including the separation of that aggregate from the industrial minerals listed in section 18 of the Act.

The Aggregates Levy (Registration and Miscellaneous Provisions) Regulations 2001 (the 2001 Regulations) deal with the requirements to register for aggregates levy. Regulation 3 deals with exemption from registration.

### **Proposed revisions**

Legislation will be introduced in Finance Bill 2014 to amend the Act to make the following materials taxable:

- material that consists wholly of the spoil from any process by which coal, lignite, slate or shale has been separated from other rock after being extracted or won with that other rock;
- material consisting wholly of the spoil, waste or other by-products resulting from the extraction or other separation from any quantity of aggregate of any china clay or ball clay;
- material that is wholly the spoil from the separation of any of the industrial minerals listed in section 18(3) of the Act from other rock with which the mineral was extracted or won;
- material that is wholly or mainly clay, coal, lignite, slate or shale;

- other industrial minerals, namely; anhydrite; ball clay; barites; china clay; feldspar; fireclay; fluorspar; fuller's earth; gems and semi-precious stones; gypsum; any metal or the ore of any metal; muscovite; perlite; potash; pumice; rock phosphates; sodium chloride; talc and vermiculite; and
- material that is mainly but not wholly the spoil, waste or other by-product of any industrial combustion process or the smelting or refining of metal.

The use of clay or shale in the production of ceramic construction products, and the use of gypsum or anhydrite in the production of plaster, plasterboard or related products, will become exempt processes. The legislation published in draft will be amended following consultation on it to include 'related products' and 'anhydrite' in the second exempt process; and the wording for both exempt processes will be changed slightly to improve clarity.

The following will not be subject to commercial exploitation where they are not for use for construction purposes:

- material that is wholly or mainly clay, coal, lignite, slate or shale;
- other industrial minerals, namely; anhydrite; ball clay; barites; china clay; feldspar; fireclay; fluorspar; fuller's earth; gems and semi-precious stones; gypsum; any metal or the ore of any metal; muscovite; perlite; potash; pumice; rock phosphates; sodium chloride; talc and vermiculite; and
- material that is mainly but not wholly the spoil, waste or other by-product of any industrial combustion process or the smelting or refining of metal.

This legislation will provide for secondary legislation to restore any suspended exemption and for the restoration to take effect earlier than the date on which the secondary legislation is made. This will mean that tax paid as a result of the suspension of an exemption can be repaid to the person who accounted for it, following the conclusion of the Commission's investigation, should the terms of the Commission's final decision allow. HMRC would need to be satisfied that the taxpayer would not be unjustly enriched as a result of receiving the repayment. Businesses may therefore wish to keep records to demonstrate that they would not gain financially from this repayment; for example, by including a commitment in contracts to repay any amounts charged to their customers to cover all or part of the cost of the levy in the event that the taxpayer is repaid the tax.

The Aggregates Levy (Registration and Miscellaneous Provisions) (Amendment) Regulations 2014 will amend the 2001 Regulations so that anyone commercially exploiting material that becomes taxable from 1 April 2014 will be required to register for the levy.

## Summary of impacts

| Exchequer impact (£m)                                           | 2014-15                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|---------|---------|---------|
|                                                                 | + 20                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | nil     | nil     | nil     | nil     |
|                                                                 | These figures are set out in Table 2.2 of Budget 2014 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside Autumn Statement 2013.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |         |         |         |         |
| <b>Economic impact</b>                                          | The measure is not expected to have any significant economic impacts.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |         |         |         |         |
| <b>Impact on individuals and households</b>                     | There is no impact on individuals or households because the changes affect businesses which commercially exploit aggregate.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |         |         |         |         |
| <b>Equalities impacts</b>                                       | The changes are not expected to have any effect on any equalities group.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |         |         |         |         |
| <b>Impact on business including civil society organisations</b> | <p>This measure affects approximately 200 businesses. The administrative and compliance costs to businesses exploiting materials affected by these changes are expected to be negligible. There may be some cost associated with registering and accounting for the tax and extra record-keeping.</p> <p>Businesses may incur a significant financial burden if the cost of the levy cannot be passed on fully to their customers.</p> <p>The measure is expected to have no impact on civil society organisations.</p>                                                                                                                                                                                                                                                                                                                |         |         |         |         |
| <b>Operational impact (£m) (HMRC or other)</b>                  | The additional costs for HMRC in implementing this change are expected to be negligible.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |         |         |         |         |
| <b>Other impacts</b>                                            | <p><u>Rural proofing:</u> reduced demand for waste materials for aggregate use from quarries may increase spoil heaps. This will apply particularly to south west England where there are a large number of china clay and ball clay quarries; and to north west Wales, where there are a large number of slate mines. This could impact slightly on wildlife and habitat in those areas.</p> <p><u>Small and micro business assessment:</u> the impact on small and micro sized firms has been considered. The majority of businesses affected will be small or micro businesses – quarries are quite often family-run businesses – although the impact will be negligible. Administration changes will also be felt more by small and micro businesses.</p> <p>Other impacts have been considered and none have been identified.</p> |         |         |         |         |

## Monitoring and evaluation

Compliance with this measure will be monitored and reviewed as part of HMRC's normal assurance process.

## Further advice

If you have any questions about this measure, please contact the Environmental Taxes Unit of Expertise on 03000 557496 (email: [environmentaltaxesuofe@hmrc.gsi.gov.uk](mailto:environmentaltaxesuofe@hmrc.gsi.gov.uk)).