



HM Revenue
& Customs

**AGGREGATES LEVY: SUSPENSION OF CERTAIN EXEMPTIONS,
EXCLUSIONS AND RELIEFS**

INTERIM GUIDANCE

(UPDATED FOR BUDGET 2014)

Interim guidance
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Introduction

HM Revenue & Customs (HMRC) Notices [AGL1 Aggregates Levy](#) and [AGL2 Industrial and Agricultural Processes Relief](#) are the main sources of guidance for quarry operators and other extractors of rock, sand and gravel, and others who commercially exploit aggregates. These notices will be reviewed and updated for 1 April 2014, when the suspension of certain aggregates levy exemptions, exclusions and reliefs comes into effect.

This interim guidance supplements the content of the notices and is provided in a Question and Answer format to enable businesses that will be affected by the suspension to understand the circumstances in which they will be affected, and to answer the kinds of questions that have been raised with HMRC since the suspension was announced.

The first version of this interim guidance was published on 18 December 2013 alongside draft legislation to implement the changes. The technical consultation on the draft legislation was open until 12 February 2014. This second version of the interim guidance updates the first, incorporating minor changes which have resulted from the consultation (see Question 7), and other minor changes to improve clarity.

Liability

Q1 What is aggregate for the purposes of the levy?

A1 For the purposes of the levy, aggregate is rock, gravel or sand, together with whatever substances are incorporated in the rock, gravel or sand or naturally occur mixed with it.

The spoil, waste, offcuts and other by-products of an exempt process are also aggregate.

Q2 Are slag and ash within the scope of the aggregates levy before the changes come into effect on 1 April 2014?

A2 Yes, they are aggregate for the purposes of the levy. However, slag and ash are currently exempt from aggregates levy as the waste or other by-product of any industrial combustion process or the smelting or refining of metal (section 17(4)(c) of Finance Act 2001).

Q3 Are cement, concrete and asphalt aggregates for the purposes of the levy?

A3 No. These materials are not aggregates in themselves for the purposes of the levy, although aggregates are used in their production.

Q4 Which additional materials will become taxable from 1 April 2014?

A4 The following materials will become taxable from 1 April 2014:

- (a) spoil resulting from the separation of coal, lignite, slate or shale from other rock after it has been extracted or won with that other rock
- (b) spoil, waste or other by-products resulting from the extraction or separation from aggregate of china clay or ball clay
- (c) spoil from the separation of any of the industrial minerals listed in section 18(3) of Finance Act 2001 (see bullet (e) below for list) from other rock with which the mineral was extracted or won
- (d) material which is more than half clay, coal, lignite, slate or shale
- (e) the industrial minerals listed in section 18(3) of Finance Act 2001, namely:
anhydrite; ball clay; barytes; 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
- (f) material which is more than half, but not exclusively, the spoil, waste or other by-product of any industrial combustion process or the smelting or refining of metal.

However, the use of clay and shale in the production of ceramic construction products, and the use of gypsum and anhydrite in the production of plaster, plasterboard or related products will become exempt processes from 1 April 2014.

Furthermore, the following will not be subject to commercial exploitation (and, therefore, continue not to be charged with levy after 1 April 2014) where they are not intended to be used for construction purposes:

- material that is more than half clay, coal, lignite, slate or shale
- certain industrial minerals, namely: anhydrite; ball clay; barytes; 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 more than half, but not exclusively, the spoil, waste or other by-product of any industrial combustion process or the smelting or refining of metal.

Material that is **exclusively** the spoil, waste or other by-product of any industrial combustion process or the smelting or refining of metal will continue to be exempt after 1 April 2014.

Anhydrite, slag and ash used in the manufacture of cement are covered by an existing exempt process (at section 18(2)(c) of Finance Act 2001) as is slate that is cut to produce stone with one or more flat surfaces (at section 18(2)(a) of Finance Act 2001). These will therefore continue not to be taxable.

Q5 Which activities count as use for construction purposes? Will this change after 1 April 2014?

A5 The meaning of the term 'use for construction purposes' is already established in aggregates levy and will not change after 1 April 2014. It covers:

- use as material or support in the construction or improvement of any structure, or
- mixing with anything as part of a process of producing mortar, concrete, tarmacadam, coated roadstone or any similar construction material.

It includes material used for:

- lining ponds and lagoons
- landfill engineering
- railway ballast
- construction of embankments, bunds, flood defences, paths, temporary haulage roads, dams
- walling, hedging, gabion and rockery stone
- scouring protection for off-shore wind turbines and foundations for on-shore wind-turbines, and
- landscaping and restoration.

However, it does **not** include:

- use where there is no structure being constructed or improved (for example, quarry restoration where the activity involves nothing more than filling a void)

- use in an exempt process, and
- clay that is not mixed with anything else and used, because of its cohesive and impermeable nature, to repair (but not to improve or build new) flood defences.

More information about use for construction purposes can be found in section 2.3 of [Notice AGL1](#).

Q6 From 1 April 2014, certain materials will only be chargeable with levy when they are intended to be used for construction purposes. Why do you use the term “intended to be used” rather than “used”?

A6 The original design of the tax ensured that any charge to the levy generally became payable at the head of the supply chain rather than its end. In order to preserve that design as far as possible it is necessary to consider the intended use of those materials.

Q7 Have you made any changes since the publication of the draft legislation for consultation on 18 December 2013?

A7 Minor changes have been made to the legislation so that:

- anhydrite (in addition to gypsum) will be included in the new exempt process for producing plaster, plasterboard and related products
- 'related products' (in addition to plaster and plasterboard) will also be included in this new exempt process
- the wording of both new exempt processes has been changed slightly to improve clarity.

Q8 What does "exclusively" mean in the context of the additional materials that will become taxable from 1 April 2014 (Q4)? Does it provide for incidental amounts of unavoidable contamination?

A8 "Exclusively" means 100 per cent. However, some businesses have asked us about incidental amounts of unavoidable contamination. If this affects your business, please contact our Environmental Taxes Unit of Expertise to discuss your particular circumstances. (Telephone 03000 557496 or email environmentaltaxesuofe@hmrc.gsi.gov.uk)

Q9 What will be the liability of perlite powder used for filtration (removing solids from liquids) in the food industry after 1 April 2014?

A9 Perlite powder used in this way is not used for construction purposes; therefore, it will not be liable to aggregates levy after 1 April 2014.

Q10 What will be the liability of clay used to make bricks and other ceramic products used in construction after 1 April 2014?

A10 Clay used to make bricks and other ceramic products used in construction will not be liable to aggregates levy after 1 April 2014. Clay is a raw material that undergoes a chemical change when used in the manufacture of these products so this process will become an exempt process from 1 April 2014.

Q11 I've heard we're going to have to pay levy on exempt materials commercially exploited before 1 April 2014. Is that true?

A11 No. The levy will be chargeable on the newly taxable materials only when they are commercially exploited on or after 1 April 2014.

Commercial exploitation

Q12 When does exploitation take place?

A12 A quantity of aggregate is subjected to exploitation if any one of the following applies:

- it is removed from:
 - its originating site
 - a connected site which is registered under the same name as the originating site
 - a site where it had been intended to apply an exempt process to it, but this process was not applied
- it is subject to an agreement to supply (for example, when a contract is made or when goods change hands and a document is raised)
- it is used for construction purposes
- it is mixed with anything other than water except in permitted circumstances.

See [Notice AGL 1](#) section 2.2.

Q13 What is commercial exploitation for the purposes of aggregates levy?

A13 Aggregate is regarded as being subject to commercial exploitation if it is exploited in the course or furtherance of a business.

Q14 Are any changes to the definition of commercial exploitation taking place from 1 April 2014?

A14 Yes. From 1 April 2014 the definition of commercial exploitation will change for the following materials only:

- material that is more than half clay, coal, lignite, slate or shale
- other industrial minerals, namely; anhydrite; ball clay; barytes; 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 more than half, but not exclusively, the spoil, waste or other by-product of any industrial combustion process or the smelting or refining of metal.

A quantity of any of these materials will be subject to commercial exploitation if any one of the following applies:

- it is removed from:
 - its originating site

- a connected site which is registered under the same name as the originating site
 - a site where it had been intended to have an exempt process applied to it, but this process was not applied
- and the person removing it intends it to be used for construction purposes**
- it is subject to an agreement to supply it (for example, when a contract is made or when goods change hands and a document is raised) to a person **who intends it to be used for construction purposes**
 - it is used for construction purposes
 - it is mixed with anything other than water, except in permitted circumstances, for the purpose of its use **for construction purposes**.

Aggregates levy is not chargeable on material which is not subject to commercial exploitation.

Q15 Why are you introducing special rules governing commercial exploitation for some but not all of the materials being affected by the suspension of certain exemptions?

A15 The government has taken steps to suspend the exemptions, exclusions and reliefs from the aggregates levy which are being investigated by the European Commission, as set out in its [letter of 31 July 2013](#). In some cases (for example, the exemption for spoil or waste from the separation of china or ball clay from other rock) the Commission questioned the exemption in its entirety. In other cases (such as the exemption for clay), the Commission partially accepted the government's reason for the exemption, but questioned whether it should also apply when the material was used as aggregate (that is, in construction). So the measures taken by the government to suspend or limit certain exemptions from 1 April 2014 reflect exactly the concerns expressed by the Commission, but do not go any further than that.

Q16 Will clay used to make ceramic construction products be commercially exploited after 1 April 2014?

A16 No. Clay will only be commercially exploited after 1 April 2014 when it is removed, supplied, mixed or used for construction purposes (see Q14 for exact definitions). 'Use for construction purposes' does not include the application of an exempt process. So clay which is subject to the exempt process of being used to make ceramic construction products will not be for use for construction purposes, and so will not be commercially exploited.

Q17 If I mix taxable aggregate with material that continues to be exempt after 1 April 2014, must I account for levy on the whole quantity of mixed material?

A17 No. Mixing a quantity of taxable aggregate with an amount of exempt material means that the levy is due only on the taxable aggregate at the time of mixing (or at the time of mixing for use for construction purposes if the taxable aggregate is one of the materials listed in the first part of the answer to Q14).

Q18 Does commercial exploitation occur only once?

A18 No. Commercial exploitation can occur more than once: for example, when a material leaves its originating site and is then used for construction purposes. However, aggregates levy is only charged once on the same material.

Q19 If, before 1 April 2014, I commercially exploit material that is going to become taxable from that date, will I have to account for levy if it is commercially exploited again after that date?

A19 Yes. Levy is not chargeable on a material which has previously borne the levy (and has not been subsequently relieved) even if it is commercially exploited again; however, if no aggregates levy has been paid on the commercial exploitation of a material which becomes taxable on 1 April 2014, any further commercial exploitation of that material after that date will be liable to the levy.

Q20 What if I use the material I produce on its originating site?

A20 If you use taxable material on its originating site it is liable to the levy unless it is returned to the land at that site in the same state that it was won. Returning to the land includes using unmixed, dry aggregate to make tracks or paths within the boundary of the registered site.

Responsible person

Q21 Who is liable to pay the levy? Are any changes taking place from 1 April 2014?

A21 The person who is responsible for commercially exploiting aggregate in the UK will need to register for aggregates levy and account for and pay the levy to HMRC. From 1 April 2014, the liability to aggregates levy for some materials will depend on whether or not they are commercially exploited for use for construction purposes (see Q4). To support any claim that materials will not be used for construction purposes, the quarry operator will be required to hold evidence confirming the use to which the material is intended to be put. If that involves obtaining evidence from a customer and that evidence is later found to be incorrect, then depending on the circumstances, the customer or the operator may be liable to register for the levy (if not already registered) and pay the under-declared levy (plus inaccuracy penalties and interest where appropriate).

Q22 What if I rely on evidence from my customer that the material is not to be used for construction purposes, but the evidence from my customer is incorrect?

A22 If you could not reasonably have known or established that the evidence given to you by your customer was incorrect you would not be liable to pay the under-declared tax or penalties. However, if, for example, documentation provided to you was unclear or lacking in key information, it is reasonable that you should challenge that evidence. Failure to do so might leave you open to having to pay the under-declared levy (plus inaccuracy penalties and interest where appropriate).

Q23 Will the evidence be acceptable if the customer simply writes that the material they receive is not to be used for construction purposes?

A23 No. You should ensure that the customer states clearly what they intend to use the material for. If the customer is not willing to do that it must be assumed that the material is for use for construction purposes and we will expect you to account for the levy due.

Registration

Q24 I deal with one or more of the materials being brought into tax after 1 April 2014. Do I need to register for the levy?

A24 If you commercially exploit, or intend to commercially exploit, materials that become taxable from 1 April 2014 you must register for the levy if you are not already registered. Unlike VAT, there is no minimum turnover of taxable product below which registration is not necessary.

Q25 How do I register for the levy?

A25 You need to fill in form AL1: Aggregates Levy and form AL1A: Site Details. These forms can be downloaded from our website (go to the 'Forms' link on our homepage). There are also notes to help with the completion of form AL1 - these are currently being updated to reflect the changes from 1 April.

You may have to fill in other forms, depending on your status. The different forms are listed in section 22 of [Notice AGL 1](#).

You can get further information and copies of other forms from:

HM Revenue & Customs
Central Collection Unit (AL)
Alexander House
21 Victoria Avenue
Southend-on-Sea
SS99 1AS

Tel 03000 592688
Fax 03000 594273.

Q26 When do I need to register for the levy?

A26 You must tell us of your liability to register within 30 days of commercially exploiting aggregate, or of forming the intention to commercially exploit aggregate. If you fail to tell us on time you may be liable to a penalty.

Q27 The amount of material that I commercially exploit is minimal – do I need to register?

A27 Yes. There is no minimum turnover of taxable product below which registration is not necessary.

Q28 I used to be registered for the levy and will need to become registered again from 1 April – can I simply resurrect my old registration?

A28 No. You must apply for a new registration.

Q29 I am already registered for the levy but I also commercially exploit materials that will become taxable from 1 April 2014. Do I need to register again?

A29 No, but you must include the newly taxable materials which you commercially exploit on or after 1 April 2014 in your aggregates levy returns after this date.

Record-keeping, submission of returns and payment

Q30 What records must registrable persons keep to evidence that material has not been commercially exploited for use for construction purposes?

A30 You must obtain evidence from your customers of the use to which they will put the material. This may be existing commercial documentation such as product specification or contracts, but it must also include a signed declaration from the customer describing the intended use, similar to the evidence that those who claim reliefs are already required to hold (see [Notice AGL1](#) Sections 6.7 to 6.10). For sales through intermediaries such as merchants, you still have a requirement to keep sufficient evidence to enable the material to be linked to its final customer and end use.

Q31 The legislation includes provision to enable levy paid as a result of the suspension of certain aggregates levy exemptions, exclusions and reliefs to be repaid once the Commission investigation has been concluded, if the Commission's final decision allows that. What records should I keep to evidence any future repayment claims?

A31 You should keep separate records (see [Notice AGL 1](#) section 15.1) in support of the levy you pay as a result of the suspension of the exemptions and reliefs to enable you to reclaim those amounts if the Commission's final decision allows that. Before making any repayment of the amounts claimed we would need to be satisfied that you would not be unjustly enriched as a result of receiving the repayment. You may, therefore, wish to keep records to demonstrate that you would not gain financially from this repayment; for example, by including a commitment in contracts to repay any amounts charged to your customers to cover all or part of the cost of the levy in the event that you are repaid the tax.

Q32 Will I have to account to HMRC separately for levy due on aggregate that is taxable before the exemptions are suspended and levy due on the materials that will become taxable from 1 April 2014?

A32 No. This can all be declared together on your aggregates levy return. However, you may wish to keep separate records of the levy payable as a result of the suspension of exemptions to support a claim for repayment in the event that the government decides to repay this revenue to businesses in the future.

Q33 How often must returns be submitted?

A33 A return will normally cover a three month period. If we consider that a risk to the revenue exists we may require you to submit monthly returns.

Q34 How do I pay HMRC the tax due? When must payments be made?

A34 Once you are registered for the levy we will send you your return (form AL100) a week or two before the end of each accounting period. You must complete the return with details of your taxable supplies during the period and pay the levy due by the due date,

which is the last working day of the month following the end of the return period. See [Notice AGL 1](#) Section 12.

Q35 Even though, in law, certain materials will become taxable from 1 April 2014, can't HMRC defer actually collecting the levy due on those materials until after the Commission has completed its State aid investigation and issued its decision?

A35 Failing to collect the tax would mean the UK was not meeting its obligations and make us vulnerable to legal action by the Commission.

Q36 The levy is calculated per tonne of material commercially exploited. What if I don't have a weighbridge?

A36 If you do not have a weighbridge you will need to contact us to agree an alternative method of calculating weight. If you are not sure which HMRC office to call, you can phone our Excise and Customs Helpline on 0300 200 3700.

Guidance

Q37 When will you be updating the aggregates levy public notices?

A37 [Notice AGL 1](#) and [Notice AGL 2](#) containing the guidance for businesses on aggregates levy will be updated to cover the changes by 1 April 2014.

Q38 What if I have queries that are not covered in this Q&A?

A38 For further help, please contact the Environmental Taxes Unit of Expertise on:
Tel. 03000 557496
or email environmentaltaxesuofe@hmrc.gsi.gov.uk

Commission investigation

Q39 When do you expect the Commission investigation to conclude?

A39 We do not know when the Commission will conclude its investigation.

Q40 What will you do if the Commission concludes that the exemptions are State aids?

or

What will happen if the Commission concludes that some but not all of the exemptions under investigation are State aids?

A40 At present, the government's priority is to respond to the investigation and satisfy the Commission that none of the exemptions or reliefs under investigation is a State aid. Once the investigation is concluded, the government will study the Commission's findings, and the terms of any directions they might contain, and will (if appropriate) issue further information to aggregates businesses at that time.

Suspension - general

Q41 How long do you expect the suspension to last?

A41 The suspension will operate for as long as the Commission's investigation continues. The government will then decide its course of action taking into account the outcome of the investigation.

Q42 Will the suspension of the exemptions become permanent?

A42 The government believes that none of the exemptions or reliefs within the aggregates levy being investigated by the Commission amount to State aid, and is providing evidence to the Commission to support this view as part of the formal investigation process. Provided that the Commission's decision allows, the government intends to reintroduce all of the exemptions and reliefs at the conclusion of the investigation.

Q43 Wouldn't it be simpler to abolish the levy while the Commission investigation continues?

A43 No. The Commission has made it clear that the legality of the aggregates levy in its entirety is not in question. Businesses commercially exploiting taxable aggregate in the UK have a continuing legal obligation to pay the levy due.