



HM Revenue
& Customs

Landfill tax – liability of waste ‘fines’

Summary of Responses
December 2014

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1. Executive summary

- 1.1 In Budget 2014, following proposals developed by a government-industry working group, the government announced its intention to introduce a Loss on Ignition (LOI) testing regime by April 2015 to assist in making judgments on the landfill tax liability of fines produced from the processing of waste at mechanical treatment plants. It specified that fines with an LOI of no more than 10% would be eligible for the lower rate of tax (amended in the consultation paper to 10% or less).
- 1.2 In June 2014 HM Revenue and Customs (HMRC) published a consultation paper setting out the government's detailed proposals for the testing regime. It highlighted that in addition to the document, HMRC officials would attend two trade exhibitions to allow interested parties to discuss the proposals and put forward their views first hand.
- 1.3 The aim of the consultation was to invite views on the proposals developed by the working group on the operation of the testing regime. As a result of the responses, both in writing and at the trade exhibitions, a number of changes will be made to improve the testing regime:
 - HMRC will provide best practice guidance and standard documentation where appropriate, to promote compliance and ensure consistency in terms of application of the regime;
 - Where a second LOI test is undertaken because of doubts over the results achieved on the first, the landfill operator may accept the lower of the two results as the basis for calculating the tax liability;
 - The government will reduce the length of time a sample needs to be retained from at least 6 months to 3 months;
 - The government will introduce a 12 month transitional period during which time the LOI threshold will be set at 15%;

- The government will amend the scope of the testing regime to include fines that predominantly comprise materials included in Groups 1 and 2 of the Landfill Tax (Qualifying Materials) Order 2011 with a small amount of non-qualifying material.
- 1.4 Thank you to all those who took the time and effort to respond to the consultation, including those who attended the trade exhibitions and allowed HMRC officials to visit their sites to see the potential impacts first hand. The contributions represent a good range of views and provide very helpful suggestions on the way forward.
- 1.5 HMRC looks forward to taking forward the proposal with the assistance and support of the government-industry working group which will continue to meet regularly in the run up to its introduction and beyond.
- 1.6 An announcement was made in Autumn Statement 2014 that the LOI test will be introduced on 1 April 2015 and draft legislation will be published in December 2014 for consultation. Guidance will be produced in association with the working group ahead of implementation.

2. Introduction

- 2.1 Landfill tax was introduced on 1 October 1996 in support of the UK's waste policy. There are two rates of tax – a lower rate and a standard rate. Landfill tax currently applies to waste disposed of at permitted landfill sites across the UK but from April 2015 it will no longer apply in Scotland following the decision to devolve the tax. The Scottish Parliament plans to introduce its own landfill tax from this date.
- 2.2 It is the responsibility of landfill site operators to ensure the correct tax liability of waste is identified and charged. Less polluting materials are subject to the lower rate of tax and are specified in the Landfill Tax (Qualifying Material) Order 2011. Other materials are subject to the standard rate of tax.
- 2.3 Concerns were raised by landfill site operators about the fact that the lower rate of tax was not being applied equitably and requested more certainty on which to base their decisions on liability.
- 2.4 The government responded to these concerns with HMRC setting up a government-industry working group to consider the issues and develop proposals. In Budget 2014 it was announced that, to assist landfill operators to determine the correct landfill tax liability of fines produced from the processing of waste a mechanical treatment plants, the government would introduce an LOI test by April 2015. The lower rate of landfill tax would apply where fines met an LOI threshold of 10% or less.
- 2.5 Those involved in the waste industry were invited to contribute their views on the proposals during a consultation carried out by HMRC between 30 June and 19 September 2014. The consultation set out proposals for how the testing regime would operate, including processes for the testing of samples, in order to protect the integrity of the tax.
- 2.6 The consultation asked a range of questions designed to seek views on the proposed processes and to identify the potential impact on business. The consultation questions were grouped around a number of themes –
 - Scope of the testing regime

- Requirements for waste transfer notes
- Pre-acceptance checking of waste
- Visual inspections of waste
- Standard LOI test
- Frequency of testing
- Selection of representative samples for testing
- Keeping samples and records
- Implications of LOI tests of more than 10%
- HMRC powers
- Transitional arrangements.

2.7 This document summarises the responses received. It also sets out the government's response to the outcome of the consultation and the next steps in the process.

The consultation process

2.8 There were 24 written responses to the consultation. A list of all the respondents is set out at Annex A.

2.9 In addition, as part of the consultation process, in July and September 2014, HMRC attended two trade exhibitions at which seminars were held to allow feedback to be given by interested parties directly to HMRC and for HMRC to clarify the proposal and answer questions. Over 150 people attended these events and a large number of comments were received from participants. These have been considered alongside the written responses received and included in the analysis set out in section 3 of this paper below.

2.10 HMRC supplemented information from the written responses and the exhibitions with site visits to help it assess the potential impact of the proposals.

3. Responses

- 3.1 The views of respondents in relation to the questions raised in the consultation document are summarised below.
- 3.2 In general, respondents to the consultation agreed with many of the detailed proposals although some suggestions were made on specific issues that some considered would improve the process and make it more acceptable to those affected. There was particular concern over the level of the 10% threshold and, in particular, that more time was needed for businesses to make adjustments to ensure they met the threshold.

Summary of responses by question

Question 1 (scope) - does the proposed scope of the testing regime provide a workable basis? If not what changes would you like to see made?

- 3.3 About a quarter of written responses expressed some concern about the fact that mixed waste inputs were to be excluded from the scope of the testing regime. This was also reflected in feedback at the trade exhibitions.
- 3.4 It was suggested that fines to be tested should not be limited solely to qualifying materials (those liable for the lower rate of tax) from Groups 1 and 2 of the Landfill Tax (Qualifying Material) Order 2011. This is because most Material Recovery Facilities are designed to accept a mix of construction, demolition, commercial and industrial waste streams, making it likely that materials other than those in Groups 1 and 2 are included in fines.

Government response

The arguments about allowing mixed waste inputs have been discussed by the government-industry working group. It has been agreed that qualifying fines must comprise **predominantly** materials listed in Group 1 and 2 of the Landfill Tax (Qualifying Material) Order 2011, although there may be a small amount of non-qualifying standard-rated material.

The interpretation of 'small' will mirror existing HMRC policy on mixed loads, i.e. it must be incidental. This means that it must not have been deliberately or artificially blended or added to the qualifying material(s) after or in connection with removal from its originating site. This is consistent with the current policy on mixed waste inputs.

Material comprising wholly Group 1 and 2 material will not be subject to the LOI testing regime, even if has been subjected to some mechanical screening.

Question 2 (pre-acceptance checking of waste) –

(a) Do you foresee any problem with this pre-acceptance process and in providing this information? Do you think there might be a better or different way of establishing the potential content of fines? If so, please provide details.

(b) Should landfill operators be seeking any additional information or are some of the above requirements unnecessary (if so, which and why)?

3.5 Ten of the respondents had no issue or comment on this process and, overall, a standardised questionnaire was welcomed. It was suggested, however, that HMRC should provide guidance on standard questions to be asked but that landfill operators should be able to request further information as required.

3.6 One of the representative bodies suggested the frequency of the questionnaire should be no more than quarterly, unless a mechanical operator changes its waste type inputs or processes at which point it should be a requirement for the mechanical operator to inform the landfill operator accordingly.

Government response

HMRC will produce best practice guidance on the minimum information to be included in the pre-acceptance questionnaire.

The questionnaire will be reviewed at appropriate intervals to ensure that the information provided reflects current practice. The landfill site operator will be best placed to know how often this needs to be done but, as a minimum, there should be an annual review. HMRC will expect more frequent reviews to take place if, for example, there is any reason to doubt the veracity of the information provided by the treatment plant operator or if a load from a particular plant fails an LOI test.

The requirement for a visual inspection by the landfill site operator of each load prior to acceptance on to the landfill site will remain. This takes place at the weighbridge and when the waste is tipped for disposal. Landfill site operators may opt to send samples from particular loads for LOI testing based on their visual inspection.

Question 3 (standard LOI test) - Do you consider that adopting a standard LOI test is a reasonable approach? If so, what should that standard test be and why?

- 3.7 A third of respondents had no issue with this part of the proposal. Of those who did, including a number at the trade exhibitions, the main concerns were that HMRC needs to prescribe a single test to be used by all, and provide detailed sampling methodology.
- 3.8 This is because currently different laboratories use different methods which may lead to inconsistency in results. Respondents wanted HMRC to set out the details of a standard LOI test, including parameters such as sample size, particle size, sample preparation, drying time and temperature.
- 3.9 It was suggested by a number of businesses and by members of the working group that an acceptable temperature for testing samples would be around 440°/450° Celsius.

Government response

HMRC will set out in secondary legislation and a public notice details on specific elements of an LOI test to ensure consistency. These have been discussed and agreed with the government-industry working group and include information about the preparation and testing of samples. The working group has agreed that the LOI testing temperature under the LOI regime should be 440° Celsius. This is a published, recognised temperature for undertaking LOI tests on soils and other organic matter.

The secondary legislation will be published in draft to allow an eight week consultation period prior to commencement of the testing regime. Working drafts of the Public Notice will be shared and agreed with the government-industry working group from December 2014.

Question 4 (frequency of testing) –

(a) Are the steps outlined above reasonable and, if not, what concerns do you have and why? Are there any additional risk factors that landfill site operators should take into account in relation to identifying the level and frequency of testing?

(b) Is the proposed minimum level of testing workable/reasonable? If not what frequency of testing do you think would be reasonable and why? Is the proposed minimum level of testing adequate to ensure a level playing field between operators? Do you consider that adopting a standard LOI test is a reasonable approach? If so, what should that standard test be and why?

3.10 Ten respondents had no issue with this part of the proposal. Those issues that were raised by others, including a number at the trade exhibitions, were mainly over the frequency of testing based on risk profiles prepared by landfill site operators.

3.11 Other respondents asked for guidance to be provided on the frequency of testing for different risk profiles.

Government response

Landfill site operators will be subject to a prescribed minimum frequency of testing of 1 test per 1000 tonnes with more frequent testing based on specified risk criteria.

HMRC will provide guidance on the risk criteria that should be considered as a minimum by landfill site operators. These will be discussed and agreed with the working group.

Question 5 (selection of representative samples for testing) –

(a) Does this proposal appear reasonable and practical? If not, why not and what could be done to make it so?

(b) Are there any alternative approaches that could be taken to ensure the selection of a representative random sample?

3.12 One third of respondents raised no issue with this part of the proposal.

However, another third suggested that as the proposed method of sampling is not statistically based, the sample selected may not be 100% reflective of the load. This was also a concern raised at the trade exhibitions.

3.13 The main issue raised in this area was that, whatever process is followed, it should be a standard one and should be set out by HMRC.

Government response

To reduce bias, HMRC will prescribe a standard sampling methodology to be followed and it is likely that this will mirror the sampling process specified by the Environment Agency, with which the industry will be familiar.

Question 6 (keeping samples and records) –

(a) Does the 6 month period for the retention of samples seem reasonable and practical and, if not, what alternative would you suggest and why?

(b) Should there be any additional stipulations with regard to storage (for example, conditions in which samples should be retained)?

3.14 One third of respondents had no specific comment on this issue.

Concerns were expressed by others that, because of the volume of samples, it may not be practical to store these for 6 months, and that 3 months would be sufficient. It is also the case that material starts to deteriorate within weeks, meaning that if samples are kept for too long any LOI retest would not produce the same result as the original one.

Government response

Samples of material tested (master untested) will need to be stored for a minimum of 3 months. HMRC does not intend to prescribe conditions for retaining samples as this would add to the administrative burden.

Question 7 (implications of LOI tests more than 10%) –

(a) Is this a reasonable approach to dealing with loads that do not pass the 10% threshold?

(b) Can you suggest any alternative workable proposals for dealing with failed tests that are both fair and encourage future compliance?

3.15 The main concern expressed in written responses and at the trade exhibitions was over the differential between the lower and standard tax rates not reflecting the difference in pollution potential.

3.16 A small number of comments were also made about the lack of an appeal process.

3.17 One issue raised, particularly at the trade exhibitions, was about variability between LOI tests currently undertaken on fines by laboratories. However, no evidence was produced to show that identical tests on samples from the same source produced different results and it appears the differences are caused by different tests being undertaken.

3.18 There were also requests for a transitional period to allow businesses to change their operating procedures. This would allow businesses to change their operating procedures to ensure fines met the LOI threshold, investing in new equipment where necessary.

3.19 It was suggested that the LOI threshold should be increased for an initial introductory period of at least 12 months to allow for appropriate changes to be made. The main suggestion made by many, including a representative body of those businesses affected, was that the LOI threshold should be increased to 15% for an initial period.

Government response

The government intends to adopt the process for dealing with loads that do not pass the threshold as set out in the consultation document. HMRC will include details in guidance.

On the question of waste operators being able to appeal against the result of an LOI test carried out by a landfill site operator, it is agreed that where a second test on the same composite sample is undertaken, the lower LOI rate achieved will be taken as the applicable result.

To address concerns expressed over the alleged discrepancies in the results produced by laboratories currently undertaking LOI tests, HMRC will specify a standard procedure to be followed in all cases and this should ensure the same test is undertaken irrespective of where it is being undertaken.

In respect of a transitional period, the government considers the industry has had a reasonable amount of time to prepare for the introduction of the LOI test. However, it recognises that there may be some concern over the technical specifications of the test and the results. In order to allow operators a reasonable amount of time to build up their confidence in the results and to make any adjustments to their processes to ensure they achieve the threshold, the government has agreed to a transitional period of 15%.

This means that for a period of 12 months from the date of introduction of the testing regime, the LOI threshold will be set at 15%. This will be amended to 10% from April 2016.

Question 8 (HMRC powers) – Are there any additional powers that would be useful to protect the revenue and/or make the testing regime more effective?

3.20 The majority response was that HMRC need to utilise the powers they already have and work closely with other organisations. It was also suggested that HMRC should undertake additional assurance activity on waste producers but the main concern was that HMRC dealt with businesses on a consistent basis.

Government response

As set out in the consultation document, HMRC will be given an additional power to direct landfill site operators to arrange for additional testing of materials in order to ensure the correct liability of fines is determined.

Impact assessment

Questions 9-15 were asked in relation to the impact assessment set out in the consultation paper.

Question 9 – What proportion of fines currently produced would fail the 10% LOI threshold?

3.21 Only one trade respondent provided any information and this was that samples had been tested recently and all had achieved the 10% threshold. There was also some anecdotal information provided at the trade exhibitions that the 10% threshold would be challenging to meet but no firm evidence was provided.

Government response

The government intends to leave the standard LOI threshold at 10% but, as outlined above, will introduce an increased threshold of 15% for a transitional 12 month period. The transitional period allows businesses time to adjust to enable them to achieve the lower threshold of 10%.

Question 10 – How much potential is there for this proportion to fall given changes in production or other processes?

3.22 Three respondents stated that this change will act as a financial driver for businesses to innovate in order to ensure their fines meet the 10% LOI threshold. It is envisaged by some respondents that there is potential for the amount of fines failing to achieve the 10% threshold to be reduced to the minimum if investment is made in conjunction with tightening up of waste inputs.

Government response

The government recognises the need to allow businesses time to adjust their processes to enable them to achieve the 10% threshold and therefore proposes to allow a 12 month transitional threshold of 15%.

Question 11 – What proportion of fines currently submitted to landfill operators is standard rated?

3.23 Two thirds of respondents provided no information. Only 1 respondent was able to provide a figure and that was that 1% of their fines in the past year had been subject to the standard rate of tax.

Government response

The government has noted this information and has decided to allow a 12 month transitional threshold of 15% to enable businesses to put in place the processes necessary to meet a lower threshold of 10%.

Question 12 – What are the necessary set-up costs (one-off costs) necessary within your business to comply with this measure?

3.24 Few respondents commented although those that did considered that potentially, large-scale investment would be needed for some waste fines to pass the LOI test, and be eligible for the lower rate of landfill tax. However, exact figures would depend on the scale of an operation but costs could be incurred in respect of storage facilities, training, fines clean-up plant and additional laboratory costs.

3.25 One respondent estimated costs could be as much as £400,000 whereas four others suggested costs in the region of £3,000 to £25,000.

Government response

The government has noted this information and has decided to allow a 12 month transitional threshold of 15% to enable businesses to put in place the processes necessary to meet a lower threshold of 10%.

Question 13 – What are the estimated continuing/annual costs of complying with this measure (e.g. time spent on pre-acceptance checks, storage costs for samples, costs of submitting samples for LOI test to laboratory)?

3.26 A range of estimates were provided of between £1,000 and £35,000. The increased costs will mainly be from the charging for LOI tests and the administrative burden associated with these.

Government response

The government has noted this information.

Question 14 – What impact would this measure have on prices for customers of landfill operators, mechanical treatment plants and other producers of fines?

3.27 The majority of respondents believe that prices will increase for customers. The LOI test will impact on operators who have not been classifying their waste at the appropriate rate of landfill tax. Operators who have been wrongly applying the lower rate will now have to apply the standard rate. Additionally, 3 of the respondents expect that fly-tipping will increase as some operators will not be willing to pay the higher tax burden if they fail the LOI test.

Government response

The government has noted this information and will introduce an increased threshold of 15% for a transitional 12 month period. The transitional period allows businesses time to adjust to enable them to achieve the lower threshold of 10%.

Question 15 – Do you expect this measure to have significantly larger impact on small businesses, and if so, why?

3.28 One third of respondents consider the proposal will impact on small businesses more than larger ones. This is because they are less likely to have made investment in equipment to remove high polluting waste material and ensure the fines meet the LOI threshold. It is also stated that some small businesses may have insufficient funds to pay the standard rate of tax whereas previously they might have only be paying the lower-rate.

Government response

The government has noted this information. However, this change does not impact on the scope of landfill tax and it is expected that fines that should currently be liable to landfill tax at the standard rate will continue to be so. On the question of previous investment, some businesses have already made the necessary investment and are producing fines below the 10% LOI threshold. The 12 month transitional threshold of 15% will give other businesses time to adjust and put in place processes which allow them to meet the lower threshold of 10%.

4. Next steps

- 4.1 HMRC will continue to discuss and agree the detail of the final proposals with the government-industry working group and will produce draft legislation for consultation during December 2014 (primary legislation) and January 2015 (secondary legislation).
- 4.2 Additionally, guidance will be produced on the new processes in consultation with the working group that will be issued in advance of the introduction of the LOI test on 1 April 2015.

Annex A: List of stakeholders consulted

The following businesses/trade associations submitted written responses:

- AB Waste
- ACS Group
- Axion Recycling
- B&E Transport (Witney) Ltd
- Biffa Group Ltd
- Environmental Services Association
- Fermanagh District Council
- Hanson UK
- Impetus Waste Management
- J Dickinson & Sons (Horwich) Ltd
- Mineral Products Association
- Powerday plc
- Price Waterhouse Coopers LLP
- Road Haulage Association Ltd
- SITA UK
- SWaMP 2008
- Tata Steel
- The Chartered Institute of Taxation (CIOT)
- The Chartered Institution of Wastes Management
- Uroc
- Veolia
- Waste Transition Ltd
- Wastecycle Ltd
- William Tracey Recycling & Resource Management Group

In addition, over 150 people representing a wide range of businesses across the waste management sector attended HMRC led seminars at two trade exhibitions. The views received at those exhibitions have been reflected in this document.