



HM Revenue
& Customs

Aggregates Levy - whether to exempt aggregate extracted when laying underground utility pipes

Consultation document

Publication date: 9 August 2016

Closing date for comments: 18 October 2016

Subject of this consultation:	Aggregates Levy – whether to exempt aggregate extracted when laying underground utility pipes.
Scope of this consultation:	This consultation considers whether to exempt from the Aggregates Levy all of the aggregate that is extracted as a result of utility companies laying underground pipes. Much of the aggregate extracted in these processes is already exempt. The consultation sets out two proposals. The first would extend the scope of the existing Aggregates Levy exemptions for aggregate removed from work carried out by utility operators under specified legislation and from the site of a building in the process of erecting or modifying the building, or for laying pipes or cables on the site. The second would introduce a new exemption for aggregate extracted when laying any utility pipes.
Who should read this:	Quarry operators, quarry representative bodies, tax advisers, utility providers and operators carrying out work on their behalf, environmental protection groups.
Duration:	9 August 2016 to 18 October 2016
Lead official:	Catherine Osborne, HM Revenue and Customs (HMRC).
How to respond or enquire about this consultation:	Responses should be sent by email to consultation.utilitiesexemption@hmrc.gsi.gov.uk or by post to: Catherine Osborne Room 3C/14 100 Parliament Street, London, SW1A 2BQ
Additional ways to be involved:	Please contact Catherine Osborne on 03000 536 971 if you would like to discuss your response. HMRC can meet with interested parties to discuss these proposals.
After the consultation:	We will publish a summary of the consultation responses, including any draft legislation, towards the end of 2016.
Getting to this stage:	The current legislation makes aggregate won as a by-product of work done laying most utility pipes under roads or public highways exempt from the Aggregates Levy. Broader exemptions are in place for aggregate extracted when building roads and railways.
Previous engagement:	Representations have been received from the water industry asking for an exemption from Aggregates Levy when laying water pipes, drainage and sewers.

Contents

1	Introduction	4
2	The case for exemption	6
3	The options under consideration	7
4	Summary of impacts	10
5	Summary of consultation questions	11
6	The consultation process	12
	Annex – relevant legislation	14

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1. Introduction

The Aggregates Levy

- 1.1 The Aggregates Levy is a UK wide environmental tax on the commercial exploitation of virgin aggregate including rock, sand and gravel. It was introduced in 2002. The government has legislated in the Scotland Act 2016 to devolve the Levy to Scotland, following resolution of the legal challenges against it. These challenges are continuing and no date for devolution has yet been set.
- 1.2 The person who commercially exploits the aggregate is responsible for registering with HMRC and paying the appropriate amount over to HMRC by the due date. The Levy is currently charged at a rate of £2 per tonne of aggregate.
- 1.3 The Levy aims to encourage more efficient extraction and use of aggregates by reflecting in the price paid for aggregate the cost of some of the environmental damage associated with the quarrying of rock, sand and gravel. It seeks to shift demand towards alternative sources of aggregate, such as recycled aggregates and aggregates not extracted for the purpose of their use in construction.

Exemptions and reliefs

- 1.4 Exemptions have been made where aggregate is an unavoidable by-product of some necessary construction works such as the construction or repair of a proposed highway or railway.
- 1.5 There is no general exemption covering aggregate extracted when carrying out major engineering works to extend and improve the infrastructure. However, aggregate is exempt where it is removed:
 - as a result of work carried out by utilities operators under specified legislation, including the laying or repairing of utility pipes under streets and roads, and
 - from the site of a building in the process of erecting or modifying the building, or for laying pipes or cables on the site.
- 1.6 Aggregate can be extracted by utility providers laying pipes where the majority of the aggregate is exempt but other aggregate is subject to the Levy, being neither won from under a road or street or from the site of a building being built or modified. This can occur when the path of the pipe stretches beyond the street before reaching the boundary of the building.
- 1.7 Where there is a liability to the Levy, the operator or builder must register for Aggregates Levy and account for the tax on the taxable aggregate extracted.

The consultation

- 1.8 Representations have been received from the water industry, asking for all aggregate to be exempt from the Aggregates Levy when removed in the process of laying water pipes, drainage and sewers.
- 1.9 No representations have been received from other utility providers but the principles applying to the water industry would appear to apply equally to aggregate extracted as an unavoidable by-product when laying all underground utility connections, including for power, gas and telecommunications cables.
- 1.10 Budget 2016 announced that the government would consult during 2016 on a possible exemption covering taxable aggregate removed when laying all underground utility connections. Through this consultation, therefore, HMRC is seeking information to help inform the government's decision about an exemption. As well as a no-change option, it sets out two options for change:
- extending the scope of the existing Aggregates Levy exemptions summarised at paragraph 1.5 above, or
 - introducing a new exemption for aggregate extracted when laying all utility pipes.
- 1.11 The consultation also considers:
- the economic and market implications of each option, and
 - the environmental implications of the options.

2. The case for exemption

2.1 The government believes that an exemption:

- would support improvements to the infrastructure of public benefit, such as new drains and sewers
- would be consistent with other Levy exemptions e.g.
 - those that seek to shift demand away from additional aggregates quarrying towards the use of recycled material, or
 - material which arises unavoidably and unintentionally from non-aggregate extraction, such as aggregate won when removed from the construction or repair of a proposed highway or railway
- would contribute to the Levy's environmental objectives, because the aggregate is an unavoidable by-product of necessary construction works
- would be inexpensive because no significant Aggregates Levy revenue is currently raised by the utility companies' activities
- should be relatively straightforward to deliver through a change in primary legislation along with minor consequential amendments to secondary legislation – if it decided to introduce an exemption, the government would release the legislation in draft towards the end of 2016.

2.2 On the other hand, there are risks that an exemption:

- may introduce market distortions by encouraging more Levy-free high quality aggregate to compete with Levy-paid aggregate extracted by the quarrying industry – the government believes this should be very limited but invites views through this consultation
- may provide a benefit to any large-scale excavators of aggregate for utility works who can sell the aggregate won from their excavations, even though they are not actively seeking to commercially exploit aggregate as a primary aim
- could create a new tax avoidance opportunity as it would be difficult to distinguish between aggregate which is necessarily and unavoidably obtained, and that which is commercially exploited in its own right.

2.3 The government believes that there is a good case for an exemption but will undertake further work to consider the potential for avoidance, seeking views on the risks outlined above and taking a view following the consultation.

3. The options under consideration

Option 1 - no change to the existing exemptions

3.1 As set out in the previous chapter, the government is interested in gathering evidence and receiving views on the case for exemption, and how an exemption could be best achieved. The responses to this consultation will inform whether to introduce a new or extended exemption.

Option 2 – a limited extension to existing exemptions

3.2 Aggregate is exempt from the Levy where it is removed:

- from the site of a building in the process of erecting or modifying it, or for laying pipes or cables on the site (*Finance Act 2001 section 17(3)(b)*),
- as a result of work carried out under either the New Roads and Streets Works Act 1991 (NRSWA) or, in Northern Ireland, the Roads (Northern Ireland) Order 1993 or the Street Works (Northern Ireland) Order 1995. These pieces of legislation authorise utility providers and their operators to carry out specified works, such as laying or repairing utility pipes, under streets and roads (*Finance Act 2001 section 17(4)(e)*).

3.3 When underground pipes or cables are laid that run from a building site to the main supply which is beneath a street, the aggregate extracted in this process is taxable, as it is not exempt under the two Finance Act provisions.

3.4 Option 2 considers extending the section 17(4)(e) exemption to include work which continues beyond the footprint of the street or road when that work is carried out alongside work under streets as a single operation under a single contract. Under this option an amendment could also be necessary to section 17(3)(b) to exempt all aggregate extracted in laying pipes and cables between buildings to the main supply pipes of these utilities.

3.5 This option would simplify the tax system for utility providers and their operators who currently have to distinguish between aggregate extracted from beneath a street, and aggregate extracted from beyond the street footprint. It would also simplify the tax system for builders, negating the need to register and account for the Levy when they extract taxable aggregate arising from laying connection pipes from beyond the site of the building to the main utility supplies under the street.

Option 3 – a new exemption for aggregate removed when laying all utility pipes

3.6 Option 3 considers the introduction of a new exemption which removes from the Aggregates Levy all aggregate extracted when laying all utility pipes.

3.7 Utility pipes are laid in response to social need or as a social benefit. This option could support a wider range of infrastructure improvement projects than option 2.

3.8 The aggregate removed as a by-product of these activities is unavoidable. Therefore, an exemption would be consistent with the environmental objectives of the tax.

3.9 This option would be consistent with existing exemptions which apply where the work is not carried out for the purpose of extracting that aggregate. This includes the section 17(4)(e) exemption covering most aggregate from utility works and the exemption for aggregate won when removed from the line of a proposed highway.

3.10 Currently utility operators undertaking major engineering works providing utility pipes for services such as drains and sewers must register for the Aggregates Levy when they extract taxable aggregate and remove it from the site of the pipe. This proposed exemption would remove this liability to register and account for the tax.

Timing

3.11 The government envisages any change would be included in Finance Bill 2017 for implementation from 1 April 2017, subject to the outcome of this consultation and any delays that might arise from continuing litigation against the Levy.

Questions arising from the options

Q1: What do you think of the case for exempting all aggregate which is removed as an unavoidable by-product extracted when laying utility pipes? What do you consider the impact would be if the status quo was maintained?

Q2: Of the three options, which do you prefer and why? If you support an exemption, what are the main pros and cons of the two options for change? If you consider there is a better way of achieving an exemption, please specify.

Q3: What would be the economic/market impact of the three options? Are there significant projects on the horizon that could be captured by either option for change and if so what is the scale of the impact?

Q4: What would be the environmental impact of the three options?

Q5: Do you think the options for change would stimulate future projects that are not currently planned? Please specify the nature of your business and provide an estimate of the annual tonnages affected (all information will be treated in confidence).

Q6: Do you envisage any practical difficulties in applying either of the change options consistently and equitably?

Q7: Do you think the options for change are open to abuse? If so, how could we mitigate the risks? Please also indicate how we could distinguish between

aggregate necessarily and unavoidably extracted, and that extracted specifically to obtain the aggregate, and any impact this would have on the administrative burden on businesses?

Q8: Have you any other views or concerns which have not been identified elsewhere? If so, please outline them.

4. Summary of Impacts

Exchequer impact (£m)	Option	2016-17	2017-18	2018-19	2019-20	2020–21
	1	-	Nil	Nil	Nil	Nil
	2	-	Neg	Neg	Neg	Neg
	3	-	-5	-5	-5	-5
	These are indicative estimates and are costed on the basis of a new or extended exemption being introduced from April 2017. We will review the estimates in light of the responses received to this consultation.					
Economic impact	The economic impact and business impact will be established during the consultation process itself.					
Impact on individuals, households and families	The measure is not expected to impact on family formation, stability or breakdown.					
Equalities impacts	The measure is not expected to impact on equalities.					
Customer cost impact	The customer cost impact will be established during the consultation process itself.					
Operational impact (£m) – [HMRC]	HMRC would incur negligible costs in implementing this policy.					
Other impacts	<p>An exemption should simplify compliance for some utility operators. It could result in the sale of Levy-free aggregate in competition with taxable aggregate.</p> <p>No other impacts have been identified.</p>					

5. Summary of consultation questions

Q1: What do you think of the case for exempting all aggregate which is removed as an unavoidable by-product extracted when laying utility pipes? What do you consider the impact would be if the status quo was maintained?

Q2: Of the three options, which do you prefer and why? If you support an exemption, what are the main pros and cons of the two options for change? If you consider there is a better way of achieving an exemption, please specify.

Q3: What would be the economic/market impact of the three options? Are there significant projects on the horizon that could be captured by either option for change and if so what is the scale of the impact?

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Q7: Do you think the options for change are open to abuse? If so, how could we mitigate the risks? Please also indicate how we could distinguish between aggregate necessarily and unavoidably extracted, and that extracted specifically to obtain the aggregate, and any impact this would have on the administrative burden on businesses?

Q8: Have you any other views or concerns which have not been identified elsewhere? If so, please outline them.

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 1 of the process. The purpose of the consultation is to seek views on the policy design and any suitable possible alternatives, before consulting later on a specific proposal for reform.

How to respond

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

Responses should be sent by 18 October 2016, by e-mail to consultation.utilitiesexemption@hmrc.gsi.gov.uk or by post to:

Catherine Osborne
Room 3C/14
100 Parliament Street
London, SW1A 2BQ

Please contact Catherine Osborne on 03000 536971 if you have any queries.

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

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

Confidentiality

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 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. If, in addition to responding to the consultation you think it would be of value to discuss any issues raised in more detail, please mention this in your response.

The Consultation Principles are available on the Cabinet Office website:
<http://www.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: Relevant legislation

The Finance Act 2001

The relevant tax legislation can be found in the Finance Act 2001, section 17 as follows:

“17 Meanings of “aggregate” and “taxable aggregate”

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

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

- (a) it is exempt under this section;
- (b) ...

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

(a) [omitted by Finance Act 2001, section 131(1)];

(b) it consists wholly of aggregate won by being removed from the ground on the site of any building or proposed building in the course of excavations lawfully carried out—
(i) in connection with the modification or erection of the building; and
(ii) exclusively for the purpose of laying foundations or of laying any pipe or cable;

(c) it consists wholly of aggregate won—
(i) by being removed from the bed of any river, canal or watercourse (whether natural or artificial) or of any channel in or approach to any port or harbour (whether natural or artificial); and
(ii) in the course of the carrying out of any dredging undertaken exclusively for the purpose of creating, restoring, improving or maintaining that river, canal, watercourse, channel or approach;

(d) it consists wholly of aggregate won by being removed from the ground along the line or proposed line of any highway or proposed highway and in the course of excavations carried out—
(i) for the purpose of improving or maintaining the highway or of constructing the proposed highway; and
(ii) not for the purpose of extracting that aggregate; ...

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

- (i) for the purpose of improving or maintaining the railway, tramway or monorail or of constructing the proposed railway, tramway or monorail; and
- (ii) not for the purpose of extracting that aggregate;

(e) ...

(f) ...

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

(a) ...

(b) ...

(c) ...

(d) ...

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

Utility Acts

In addition to the Finance Act 2001, the following legislation has been considered.

- The Electricity Act 1989;
- The Water Industry Act 1991, and
- The Gas Act 1986

(together the “Utility Acts”)

“Street works” section 48 of NRSWA:

“(3) Street works means works of any of the following kinds...executed in a street in pursuance of a statutory right or a street works licence –

- a) placing apparatus, or
 - b) inspecting, maintaining, adjusting, repairing, altering or renewing apparatus, changing the position of apparatus or removing it,
- or works required for or incidental to any such works (including, in particular, breaking up or opening up the street, or any sewer, drain or tunnel underneath it, or tunnelling or boring under the street).”

Electricity Act 1989 Schedule 4 paragraph 1(1)... “a licence holder may execute ... any works requisite for [inspecting, maintaining, adjusting, repairing, altering, replacing or removing ... electrical lines or electrical plant ...} including for those purposes – opening or breaking up any street of any sewers, drains or tunnels within or under any

street; tunnelling or boring under any street' and removing or using all earth and materials in or under any street..”

Water Industries Act 1991

Section 158

“... every relevant undertaker shall ... have power-

To carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) or (b) above, including for those purposes the following kinds of works, that is to say

- (i) Breaking up or opening a street
- (ii) Tunnelling or boring under a street
- (iii) Breaking up or opening a sewer, drain or tunnel,
- (iv) Moving or removing earth and other materials.”

Taking the Utilities Acts and the NRSWA together, utilities providers have the right to dig up the streets to carry out their work. Finance Act 2001 section 17(4) allows that, if they are doing this, then they are exempt from the Levy on specified activities.