

Tax Policy and Legislation Division
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Tuesday, 19 May 2015

Dear Sir or Madam

Response to the Consultation on Landfill Disposals tax (Number: WG24170)

We have received a copy of the above draft for comment as part of your consultation process.

The Chartered Institution of Wastes Management (CIWM) is the professional body which represents over 6,300 waste and resources management professionals, predominantly in the UK but also overseas. The CIWM sets the professional standards for individuals working in the waste and resources management industry and has various grades of membership determined by education, qualification and experience.

CIWM is recognised as the foremost professional body representing the complete spectrum of the waste and resources management industry. This gives the Institution the widest possible view and, perhaps more pertinently, an objective rather than partial view, given that our goal is for improvement in the management of all wastes and resources.

The Cymru Wales Centre Council of the Chartered Institution of Wastes Management welcomes the opportunity of contributing to the Consultation on proposals for Landfill Disposals Tax.

In relation to the current Consultation document, our points are provided as responses to the specific questions raised, in relation to the information received, as follows below and in the next pages.

Question 1: How important is it that the Welsh Government maintains consistency with the UK Government and Scottish Government on Landfill Tax rates and why?

It is of significant importance that Welsh Government (WG) maintains consistency with the UK Government and Scottish Government on Landfill Tax rates to ensure that there is a level playing field for the waste management industry within the UK. It is important to ensure that differential devolved landfill tax rates between Westminster and the devolved administration does not create a cross border distortion of waste movement/disposal between the various administrations resulting in beaches of WG and EU Waste policies specifically relation to the Proximity Principle' and 'Regional Self Sufficiency'. However, WG could explore increasing the tax level for certain waste types to increase the incentive to reduce, recover or recycle these waste types, this could be done using European Waste Catalogue (EWC) codes for these waste types and CIWM Wales would recommend that WG reviews the EWC list to identify the waste types which they consider would be best managed further up the waste hierarchy.



Question 2: Are the current standard and lower tax rates (explained in paragraph 2.2) set at an appropriate level for Wales? Please explain your response.

The current levels of landfill tax at a minimum should be indexed linked and increase at the rate of inflation. Given the extremely high recycling rates for construction waste reported it is likely that the majority of inert waste at landfills is likely to be SME building contractors where the waste is not homogeneous and can contain mixed material including potentially active or polluting elements. It may be beneficial to set a tax rate for mixed construction wastes at a higher level than is currently the case to encourage the separation of the materials through a treatment facility rather than just landfilling the mixed construction wastes this would apply to the following EWC codes;

17 01 07 mixtures of concrete, bricks, tiles and ceramics other than those mentioned in 17 01 06

17 09 04 mixed construction and demolition wastes other than those mentioned in 17 09 01, 17 09 02 and 17 09 03.

Excepting that the LOI test will be considered later, irrespective of this there is still a strong argument that where the inert materials are either re-unsalable or recyclable that such hard-core, river dredging, top-soil or incinerator bottom ash (IBA) that they should be taxed above the lower tax rates to encourage their use in the construction industry in a more sustainable way than simply landfilling them.

Question 3: Is there value in the Welsh Government having the ability to set different lower rates of tax (explained in paragraph 2.10 - 2.11) and why?

While landfill exists in the Wales, landfill tax has a role to play, in achieving WG's environmental goals and WG need to consider their objectives very carefully if it is to continue to promote good behaviour of landfill operators while utilising the tax as an additional lever to support its policies. Clearly having the ability to set different lower or higher rates of tax would assist it in achievement of this

Having the ability to create more rate bands to reflect better the relative impact of different types of waste would also be of value to WG. As there is presently a huge differential between the two existing it in itself creates problems and the introduction of a banding tax charge may address these matter together with realigning landfill tax rates to the polluter pays principle

Landfill tax is due to rise with inflation from £80 per tonne to £82.60, Her Majesty's Revenue & Customs (HMRC) confirmed. On 1 April 2015 landfill tax increased in England, Wales and Northern Ireland from £80 to £82.60 per tonne as a result of a change in Finance Act 2014. This will again increase to £84.40 per tonne for disposals made, or treated as made, in England, Wales and Northern Ireland on or after 1 April 2016, according to a HMRC briefing note.

The lower rate of tax, which applies to less-polluting wastes listed in the Landfill Tax (Qualifying Material) Order 2011, is currently £2.50 per tonne, having increased from £2 per tonne on 1 April 2008. This will increase to £2.60 per tonne in England, Wales and Northern Ireland from 1 April 2015 as a result of a change in Finance Act 2014. This will increase again to £2.65 per tonne for disposals of waste made, or treated as made, in England, Wales and Northern Ireland on or after 1 April 2016.

If WG is committed to reducing landfill and moving waste higher up the waste hierarchy then there must be merit in it setting a higher rate for re-unsalable or recyclable waste sent to landfill. CIWM Wales would therefore support WG having the ability to set different lower rates of tax.



CIWM Wales feels WG needs to ensure that landfill waste disposal is properly priced in order to promote greater efficiency in the waste management market and the economy as a whole; and to apply the 'polluter pays' principle to promote a more sustainable approach to waste management reducing waste production and recycling or recovering more from it. However, if WG were to do this it must be mindful of the need to have some consistency between administrations.

Question 4: Are there any changes to the list of materials qualifying for the lower tax rate (Appendix 1) that should be considered, and on what basis?

There are a number of materials in the list given in appendix 1 for which there are potentially uses for these higher up the hierarchy and the availability of the lower rate of landfill tax does not provide sufficient disincentive to landfill. If WG wants to achieve a higher level of recycling or recovery of these materials either the lower rate needs to be significantly increased or some of the materials should be removed from the list.

Question 5: What would be the practical implications of introducing a threshold to define 'a small quantity' of non-qualifying waste in a load of qualifying material?

If thresholds are to be specified then they need to be quantifiable and measurable. If this can't be achieved then there is little point in considering setting a threshold to define any level for 'small quantity' of non-qualifying waste in a load of qualifying material.

Non-homogeneous waste will be very difficult to sample and define whether the threshold has been exceeded or not. Introducing such a definition as 'a small quantity' will add costs to landfill operators and a further regulatory burden on both the operator and regulator. Therefore, any non-qualifying material in a load of material accepted for the lower rate should not be allowed and the higher rate apply, this would increase the incentive to properly sort wastes prior to disposal.

Question 6: Would you support the introduction of a Welsh Loss on Ignition (LoI) test when Landfill Tax is devolved? Please explain your reasons.

Loss on ignition is a well-established laboratory test used in inorganic analytical chemistry, particularly in the analysis of minerals has already been implemented, from the 1st April 2015. It would be an easy test for producers of fines from waste treatment processes to conduct and to supply the necessary test results to enable such materials to be disposed of at the lower rate if applicable. It is unlikely that many of the fines materials produced from waste processing would then qualify for the lower rate and would close the door to abuses of the current system.

Question 7: Are there any problems with the existing arrangements for defining the area in which a taxable disposal takes place, and if so, how might these be resolved?

Where there is a separate area within the site for sorting materials to remove items for recycling or recovery from the wastes delivered into a landfill the current arrangements would appear to be workable through separate recoding of wastes deposited in these areas. It would be sensible to ensure that the permits for these sites include this arrangement and that the sites provide separate returns to the regulator for materials entering and leaving this part of the facility and that it is designated as a sorting and transfer activity within the permit. This might require the regulator (Natural Resources Wales) to review



the permit in order to do so. The benefit of this would be that the landfill tax records would be comparable with the permit records and could provide an audit mechanism.

Question 8: In your view, are there any issues with the current arrangements for credit for landfill material permanently removed from a landfill site and if so, how might these be addressed?

CIWM Wales is not aware of any issue with the current arrangements. There is merit in having a degree of flexibility, for example extend the time period to allow for removal of materials if an innovative process is developed which can use material previously hard to recycle, to make new products.

Question 9: What would be the practical implications of legislating on the basis that all material entering a landfill site (other than that which is specifically exempt) is subject to tax?

Subject to the response to question 7 above all waste materials entering the landfill site other than that which is specifically exempt should be subject to tax. This would be workable provided that the exemptions are fully specified.

Question 10: What activities would you expect to be exempt (not subject to tax) and why?

The receipt of suitable inert waste materials for lining the landfill, construction of drainage layers, constructing site roads, daily cover and site capping and suitable material for restoration layers including compost should be exempt, but no other material. The material for landfill site lining and drainage layers has to be of specific engineering characteristics.

Question 11: Do you have any other suggestions for how we might clarify the taxable and non-taxable activities on a landfill site and what would be the practical implications of these?

Restricting the non-taxable activities to those listed above would clarify the position significantly.

Question 12: Do you think that any of the current exemptions should be removed or modified? Please explain your response.

The listed exemptions as listed need further clarification in respect of filling of quarries, there now is a category of facilities referred to as deposit for recovery which defines the activity of stabilising of quarry walls for stabilisation where the original planning permission for the mineral extraction requires this. However, there may be quarries where the original planning application for mineral extraction requires the quarry to be reinstated to original levels and this should be regarded as a landfill and not deposit for recovery. For avoidance of doubt this should be defined within the landfill tax legislation for Wales.

Question 13: Is there a case for removing or modifying the water discount relief? Please explain your response.

There are cases where sludge may be deposited in a landfill in terms of definitions within the landfill regulations and the removal of the water discount relief would remove an area where argument may be the case, it would also encourage producers of such material to remove more water from their wastes within their treatment process and produce a dryer filter cake, thus saving the environmental costs of transporting more waste than is necessary. There should be flexibility built into this to look at how the Scottish approach is working and to allow for different techniques that maybe developed in the future.



Question 14: Do you think there is a case for introducing any new exemptions or reliefs, and if so, what should they be and why?

CIWM Wales has no suggestions to make here.

Question 15: What would be the practical implications of placing an obligation on landfill site operators to use a weighbridge where one is functional and available on the landfill site or within close proximity of the site, with a corresponding penalty for failure to do so?

This proposal would have significant benefits for record keeping at landfill sites, most large landfill sites have their own weighbridge but smaller inert landfill sites tend not to have such a facility, imposing a requirement for the wastes to be weighed at a weighbridge where there is one within close proximity would be beneficial but the definition of close proximity needs to be drawn by reference to the locations of public weighbridges in the environs of all landfill sites where they do not have their own weighbridge facility. This would enable small landfill sites that do not have their own facility to comply with this requirement. This move would need to be advertised to the relevant audience.

Question 16: What would be the practical implications of extending the definition of landfill sites to include illegal deposits of waste within the scope of the tax?

Where the perpetrators of illegal deposit of waste can be identified the landfill tax should be payable by them under the court justice provisions, in cases where the waste producer is identifiable but not the person that deposited the waste the landfill tax should also be recoverable through the courts. The potential ability to recover landfill tax prior to the court process would also be advantageous, observation of how this is working in practice in Scotland would be useful. This may be difficult where several deposits have been made in the same location and care would be needed to ensure that the correct wastes are identified in the investigatory processes.

Question 17: Are there any issues with the current penalty regime and if so, how might they be addressed?

CIWM Wales is not aware of any issues.

Question 18: Is there a need for increased compliance activity on the ground, rather than desk-based? If yes, please explain your view and provide evidence/explain the benefits where possible.

CIWM Wales feels that while carrying out desk-based checks into returns or other documents to make sure that customers pay the right amount of tax at the right time are important. On site 'compliance checks' are critical in determining that the correct information is being assessed. Where there appear to be issues then a full site audit of records relating to waste transfer notes would be appropriate to do. Provision of funding to Natural Resources Wales by diversion of moneys from the Landfill Tax Communities fund to ensure effective compliance and enforcement of waste law, in particular waste misclassification, illegal waste sites and illegal exports would be beneficial.



Question 19: Are there any further actions the Welsh Government might take to use its new tax powers to improve compliance and enforcement and minimise the impact of Landfill Disposals Tax evasion? If yes, please describe what those actions could be?

WG should consider the actions within its 'Fly-tipping Free Wales Our strategy for tackling fly-tipping'

Question 20: In your view, is there evidence of tax avoidance within the existing Landfill Tax, and what is the nature of this?

While unable to say that there is clear evidence it is likely that tax avoidance does occur under the existing landfill tax system

Question 21: Would you support aligning the tax return period with the financial year? Please explain your reasons.

Aligning the tax returns to the quarterly returns made to Natural Resources Wales permit returns would have benefits in terms of identifying the quantities and types of wastes accepted at landfill sites subject to the comments made in response to question 7 above and 22 below. This does not quite align to the financial year given that the returns are from the first day of the quarter and the financial tax year starts on the 6th April.

Question 22: What would be the practical implications of making it a requirement that European Waste Catalogue codes are used in completion of the tax return?

The European Waste Catalogue (EWC) codes should be well known and used when dealing with Site Returns and Waste Transfer Notes to larger landfill operators and there should therefore be very little practical implications making it a requirement that EWC codes are used in completion of the tax return?

Thence given that the waste received into the landfill will have contained EWC codes and the landfill operators are required to use these codes in their returns to Natural Resources Wales (NRW) under their environmental permits there should be no practical difficulty in a requirement for them to be used in completing their landfill tax return. In fact because the EWC codes are used throughout the waste receipt system from waste transfer notes accompanying the waste in the delivery of the waste it would make auditing the quantities and types of wastes received relatively easy if that was required.

Question 23: How might the Welsh Government simplify and modernise the filing of tax returns including improving electronic and online support?

Returns made to Natural Resources Wales for permit returns on quantities of wastes accepted under permits are commonly made through the e-mail of completed spreadsheets provided on the Natural Resources Wales' website, Natural Resources Wales are also going to provide an electronic portal for such returns in the near future. It would be relatively simple for WG to introduce a similar system to the existing spreadsheets e-mailing system that Natural Resources Wales currently provides.

Question 24: Should bad debt relief be offered and if so, in what circumstances is it appropriate?

WG should look at the Scottish proposals and possibly implement something similar, again a degree of flexibility would be advantageous.



Question 25: Have you any comments on the operation of the current internal reviews and appeals provisions in a Landfill Tax context, including in particular the people eligible to seek a review or appeal?

CIWM Wales has no comments to provide.

Question 26: In your view, are there any exceptional circumstances in which taxpayers might be able to postpone payment of Landfill Disposals Tax until the conclusion of their appeal?

CIWM Wales has no comments to provide.

Question 27: Should Welsh Government allocate a proportion of Landfill Disposals Tax revenue to enhance the wellbeing of communities?

As the tax should be explicitly linked to WG's environmental objectives revenue should encourage environmentally positive behavioural change. The challenge in using it to enhance community wellbeing is how WG will measure outcomes effectively? Landfill tax is structured in relation to environmental outcomes so that the more polluting the behaviour, the greater the tax levied.

Although this objective (the 'polluter pays' principle) appears fair and reasonable, the imposition of environmental taxes can have an uneven environmental impact (for example, standard-rated LFT is charged on the weight of waste irrespective of its potential environmental effect). Additionally, in order to reduce the impact on national competitiveness of burdensome carbon taxes, government has specifically legislated to relieve the burden for some businesses of these taxes through exemption or agreement, thus diluting the impact of the tax.

There are additional areas where landfill tax revenues could benefit communities through alleviating the issues associated with abandoned and orphaned waste management facilities. It would be beneficial to all parties if a fund to deal with these types of facilities could be established by Welsh Government utilising funds from landfill tax. Establishing a fund or scheme to cover the full costs of clearing and remediating abandoned or orphaned sites should be a function of government and could be a sensible use of the tax receipts from landfill tax and any other similar taxes levied by governments on waste management operations. The proportion of tax receipts from landfill tax and any other taxes levied on waste management that may be required to establish such a fund need to be proportionate to the level of costs anticipated to cover the necessary works at known orphaned sites and sites at risk of falling into this category.

These taxes were introduced to affect the decisions of waste producers and waste managers to drive wastes away from environmentally undesirable waste management options and have been effective in reducing the reliance on landfill in the UK. The use of a proportion of the receipts from these taxes to support a scheme to ensure the clean-up and remediation of orphaned or abandoned waste management facilities would in effect be scheme co-funded by governments and the waste industry and would be a suitable use for such tax receipts.

Decisions to draw on the scheme would need to be made through government or a government appointed body to manage such a scheme. Application to the scheme for funding remediation of abandoned or orphaned waste management facilities could be made by the landowner, local authority or regulator, but would need to be accompanied by a statement of the financial costs of the



remediation, the environmental benefits that would accrue from such works and the reasons why the body or person is not in a position to fund the works themselves.

Question 28: If the Welsh Government allocates a proportion of Landfill Disposals Tax revenue to enhance community wellbeing, which of the following activities should benefit from funding, and why?

- Supporting compliance and enforcement and minimising the impact of waste crime
- Supporting waste minimisation and the diversion of waste from landfill
- Biodiversity initiatives and wider environmental improvements
- Tackling poverty and deprivation in communities
- Other (please specify)

Supporting compliance and enforcement and minimising waste crime should be fundable through moneys from landfill tax as noted in response to question 18 above as should remediation of abandoned or orphaned waste facilities, this funding should not be limited to locations in the environs of landfill sites.

Supporting waste minimisation and diversion of wastes from landfill should also be fundable from landfill tax moneys, this funding should not be limited to locations in the environs of landfill sites.

Biodiversity initiatives in the environs of landfill sites should be fundable from landfill tax moneys as should initiatives to tackle poverty and deprivation in communities in the environs of landfill sites.

Question 29: Do you have any thoughts on the possible administrative model?

The landfill tax moneys in its entirety should be used to support sustainable development and green growth in Wales through the Wales wide initiatives of supporting compliance and enforcement and minimising waste crime, remediation of abandoned or orphaned waste facilities, and supporting waste minimisation and diversion of wastes from landfill. A proportion should be allocated to a distributive fund managed by the WG to support community initiatives in the environs of landfill sites in Wales as outlined in the response to question 28 above.

Question 30: Do you have any related issues which we have not specifically addressed or other comments that you would like to make?

CIWM Wales has no comments to provide.

Question 31: Do you have any comments on the initial Regulatory Impact Assessment?

CIWM Wales has no comments to provide.

Should you have any query with regards to our response, please do not hesitate to contact us.
Kind regards

Celine Anouilh
CIWM Regional Development Officer for Wales

