



Revenue Scotland guidance on how to determine the rate of Scottish Landfill Tax chargeable on contaminated soils.

A Consultation Paper

We (Revenue Scotland) wish to establish and maintain positive relationships with taxpayers and ensure that compliance with the legislation is as easy for taxpayers as possible. One of the ways in which we can do this is through the legislative guidance available from our website www.revenue.scot

This consultation paper seeks your views on two options for improving our guidance, to enable taxpayers (principally landfill site operators) to determine the correct rate of Scottish Landfill Tax (SLfT) chargeable on contaminated soils.

Although this will be of particular relevance to landfill site operators, we are keen to hear views from the wider waste sector, including businesses that collect, sort and treat waste, and from local authorities, waste producers, planners, developers and the construction industry, all of whom are likely to be impacted by these proposals.

Views are invited by 15 July 2015¹. We will consider all responses with the intention of publishing a summary of the responses by 12 August 2015 and the final outcome of the consultation no later than 31 August 2015.

Please note: Any new guidance that we publish as a result of this consultation will not come into effect before the date of its publication.

Background

Revenue Scotland, established by the Revenue Scotland and Tax Powers Act 2014, began administering SLfT from 1 April 2015. The legal responsibilities of both Revenue Scotland and taxpayers in relation to this tax are set out in the [Landfill Tax \(Scotland\) Act 2014](#) (the LT(S)A 2014) and the associated secondary legislation.

In Scotland, SLfT replaced the UK Landfill Tax; an environmental tax introduced to encourage local authorities and businesses to operate in a more environmentally friendly

¹ This is a shorter period than the standard 12 weeks as we have already had a certain amount of discussion with interested parties to help us frame the consultation.

way by reducing the amount of waste they produce or, if they can't reduce it, reuse, recycle or recover it. SLfT has been designed to support Scotland's Zero Waste Plan which aims to maximise the resource value of materials in our economy and ensure that landfilling is an option of last resort for materials that can be reused, recycled or recovered.

SLfT is chargeable by weight and there are currently two rates for taxable disposals:

- a lower rate of £2.60 per tonne that applies to less polluting (or damaging) wastes
- a standard rate of £82.60 per tonne that applies to all other taxable waste disposals

The materials that qualify for the lower rate of tax are listed in the [Scottish Landfill Tax \(Qualifying Material\) Order 2015](#) ("SLfT QMO"). These are referred to as 'Qualifying Materials'.

The lower rate of tax recognises that there is a relatively low level of environmental impact associated with the landfilling of wastes which are less active or polluting in the landfill environment. These wastes do not biodegrade, they do not produce landfill gas and there is a low risk of pollution to groundwater or surface water. Landfill sites handling this material can be subject to a much shorter period of aftercare and be returned more readily to other productive use.

The materials listed in the SLfT QMO reflect criteria that Scottish Ministers have set in relation to determining what can be listed as qualifying material. These criteria are reproduced at Appendix 1

Whilst all material listed in the SLfT QMO meets these criteria, not all material that meets these criteria is listed in the QMO. An example of this is asbestos which is taxable at the standard rate of SLfT.

Determining the rate of tax chargeable on waste disposed of to landfill.

It is the responsibility of the landfill operator to ensure the correct rate of SLfT is applied and the right amount of SLfT is paid to Revenue Scotland for each load disposed of at their site(s). This judgment is based on the description on the waste transfer note that accompanies the movement of most waste in the UK, a visual inspection of the waste and any other documentary evidence required by the operator to support their decision.

The lower rate of tax applies to waste that consists *entirely* of qualifying material and the standard rate of tax applies to waste that consists entirely of non-qualifying material. The standard rate of tax also applies to waste that consists of both qualifying material and non-qualifying material unless we direct that the amount of non-qualifying material is "small" and the waste may be taxed at the lower rate.

We have published guidance that assists operators in determining whether the amount of non-qualifying material in what would otherwise be qualifying material is "small". This guidance is at [SLfT2006](#) of the SLfT guidance, available from our website. It is reproduced at Appendix 2.

Current Revenue Scotland guidance for determining the tax rate chargeable on qualifying materials containing a small amount of non-qualifying material:

The current guidance at [SLfT2006](#) contains a 'General guidance' section that applies for SLfT purposes to all waste loads which wholly consist of qualifying material apart from a small amount of non-qualifying material. This section of the guidance specifies the following criteria, **all** of which must be met, for waste that consists of qualifying material apart from a small amount of non-qualifying material to be chargeable at the lower rate of SLfT:

- apart from a small amount of non-qualifying material, the waste consists of material that is listed in and meets the conditions set out in the [SLfT QMO²](#)
- the materials are not hazardous as defined by [Directive 2008/98/EC](#)
- the non-qualifying material has not been deliberately or artificially added to or blended with the qualifying materials after or in connection with removal from its original site (unless this was a pre-requisite to waste treatment, containment or transportation)
- it is unreasonable to have prevented this contamination at source
- it is subsequently unreasonable, or there is no practical way, for these contaminants to be removed

If the waste load contains fine material then the guidance at [SLfT2006](#) under the 'Qualifying fines' heading also applies. Qualifying fines are defined in the guidance but broadly they comprise fines produced by a waste treatment process that involves an element of mechanical treatment. These are sometimes referred to as 'Trommel fines' by the waste industry. This section includes a flowchart with 3 steps, each of which must be followed to determine whether a waste load containing fine material is chargeable at the standard or lower rate. Please note that this section of the guidance does not apply to contaminated soils unless they are qualifying fines.

Whilst welcoming our guidance for waste fines, industry stakeholders have told us that there is considerable uncertainty and lack of uniformity about the evidential requirements for demonstrating that the lower rate of SLfT applies to contaminated soils. They have suggested two tests that are already used by the waste and recycling industry and the purpose of this consultation is to determine whether Landfill Operators, their advisors, waste producers and the wider waste management industry would find it helpful if we added one or both of these tests to our guidance.

² Group 1 of the SLfT QMO comprises rocks and soils that are naturally occurring.

We would like you to consider and comment on the following two options for additional guidance to enable taxpayers (principally landfill site operators) to determine the correct rate of Scottish Landfill Tax (‘SLfT’) chargeable on contaminated soils. In framing your response, please consider which of the options will best deliver greater certainty to the tax implications of your operations.

Option 1:

The addition of an objective test (WM2) for determining whether material is non-hazardous.

Under this option we would specify [WM2](#) in addition to the criteria already specified at SLfT2006, as the method for determining whether contaminated soils are hazardous or non-hazardous. WM2 gives detailed technical guidance on waste classification. From July 2015 WM2 will be replaced by WM3 so any references here to WM2 should be taken to include its successor, WM3.

Under this proposal, only waste that is deemed non-hazardous by WM2 would be liable for tax at the lower rate of SLfT. Any waste deemed hazardous by WM2 would be wholly chargeable at the standard rate of SLfT. As there are currently no hazardous materials listed in the SLfT QMO this aligns with the policy intention.

Under this proposal we expect that a greater proportion of waste soil arising would qualify for the lower rate of tax.

Option 2:

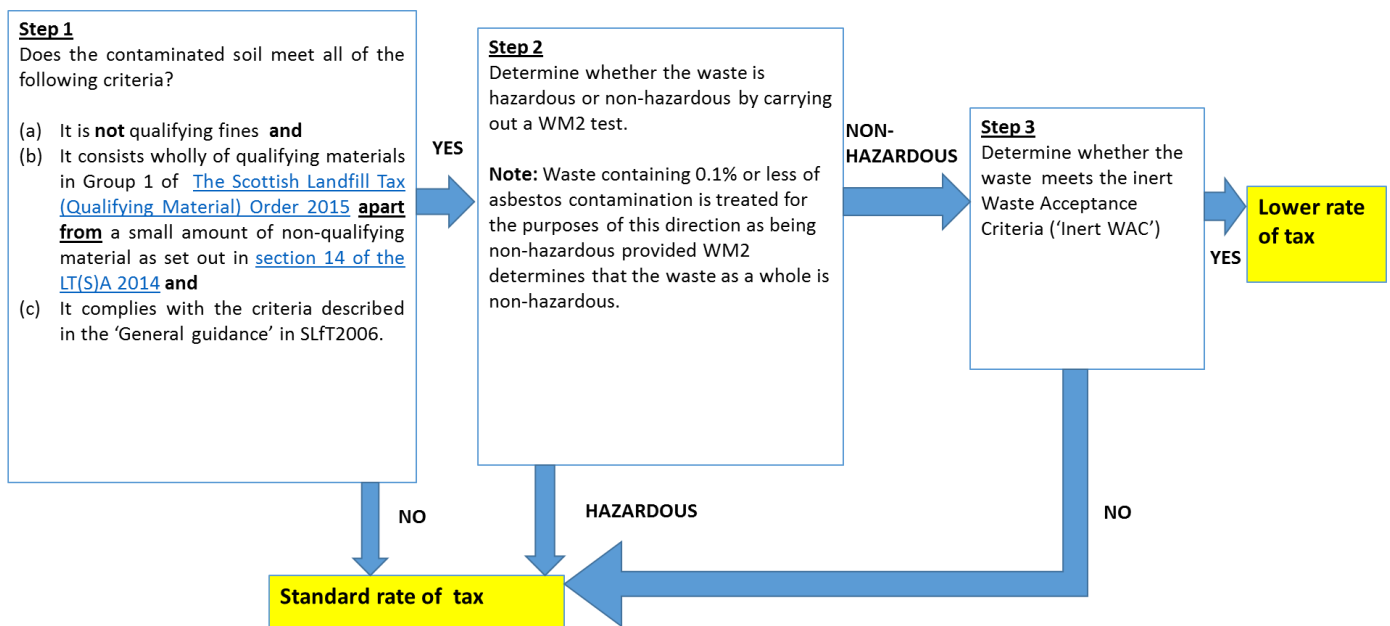
The addition of a further objective test (Inert WAC) for soils.

The use of waste acceptance criteria (WAC) to determine what wastes may be accepted for disposal in landfills is mandatory. To test for inert WAC, non-hazardous soils are tested in a laboratory to determine their leaching potential. If the leachability characteristics are below the limits for inert WAC, the soils are deemed suitable for disposal at an ‘inert’ landfill site.

Under this option only soils that meet the criteria set out in [SLfT2006](#) **and** that are deemed non-hazardous by WM2 **and** that meet the inert WAC criteria would be liable for tax at the lower rate of SLfT. All other contaminated soils would either be wholly chargeable at the standard rate of SLfT or need to be treated in order to meet these criteria before qualifying for the lower rate of tax.

The inclusion of Inert WAC makes this a more stringent test than option 1 and under this proposal we expect that a relatively small proportion of waste soil would qualify for the lower rate of tax without further treatment.

Option 2 could be represented in a flowchart similar to the one shown below:



Scope of consultation

This consultation offers an opportunity to comment on and help improve the direction and guidance we provide to help landfill operators, waste producers, their advisors and the wider waste management industry determine what rate of Scottish Landfill tax is payable in respect of the waste that is disposed of by way of landfill in Scotland. It is also likely to be of interest and significance to the construction and development sector which uses the services of the waste management industry. It does not apply to and has no implications for UK Landfill Tax which is administered by HMRC and is subject to their legislation, direction and guidance.

The role of Revenue Scotland is to administer the collection of the taxes devolved to Scotland - it does not have powers to set tax policy. The development of tax policy, including decisions about tax rates and the list of qualifying materials remains with Scottish Government through the Scottish Parliament. For this reason, the consultation does not ask for views on the policy behind the legislation. There is also no scope within this consultation to reconsider any aspects of the Landfill Tax (Scotland) Act 2014 or any other legislation.

Consultation Questions

1. Revenue Scotland seeks to operate to Adam Smith's principle of certainty for the taxpayer about their tax liability. Compared to the current guidance, how easy will it be to be sure of the tax due on each load of soil disposed of to landfill under:
 - (a) Option 1 (Current guidance plus WM2)
 - (b) Option 2 (Current guidance plus WM2 plus Inert WAC)

2. Compared to the current guidance, how would the volume and type of material being disposed of to landfill change under:
 - (a) Option 1 (Current guidance plus WM2)
 - (b) Option 2 (Current guidance plus WM2 plus Inert WAC)

3. How will the two options impact on you administratively and in terms of your day to day operations? Do you see any advantages or disadvantages from either of the options? If so, please explain these.

4. Do you have any other comments you would like to make about our guidance on this particular area?

Please note that you are also welcome to give feedback on any other aspect of our SLfT guidance but this does not form part of this consultation exercise and should be sent to slft@revenue.scot

Responding To This Consultation

Responses to this consultation are welcome from any individual or organisation with an interest.

To respond, please download and complete the response form available at <https://www.revenue.scot/scottish-landfill-tax/consultations> and email or post it to Revenue Scotland at the address shown on the form by **15 July 2015**.

We need to know how you wish to your response to be handled and, in particular, whether you are happy for your response to be made public. Answering the first few questions in the response form will ensure that we treat your response appropriately. If you ask for your

response not to be published, we will regard it as confidential and treat it accordingly. All respondents should be aware that Revenue Scotland are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act, for information relating to responses made to this consultation exercise.

We will analyse your responses to the consultation questions and use them as part of the decision making process, along with a range of other available information and evidence. Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence. While details of particular circumstances described in a response to a consultation exercise may usefully inform the operational process, consultation exercises cannot address individual concerns and comments.

If you have any queries about how to reply, or require a copy of this paper in an alternative format, please e-mail info@revenue.scot.

Appendix 1:

Criteria used by Scottish Ministers when setting the list of Qualifying Materials

(Source: <http://www.scotland.gov.uk/Topics/Government/Finance/scottishapproach/landfilltax/qualifyingmaterialorders>)

Non-hazardous:

Wastes which are not 'hazardous' within the meaning of [article 3.2 of the revised Waste Framework Directive \(2008/98/EC\)](#), unless the material has no practical alternative waste management option and must be disposed of to landfill.

Low potential for greenhouse gas emissions:

Wastes which are not biodegradable have a low organic content or do not break down under the anaerobic conditions that prevail in landfill sites to produce methane. These include inert waste within meaning of [article 2\(e\) of the Landfill Directive \(1999/31/EC\)](#); and waste with little or no organic content such as inorganic residues or completely combusted residues from the incineration of biodegradable/organic wastes.

Low polluting potential in the landfill environment:

- *waste where the contaminants are unlikely to become mobile in the landfill and any leachate produced has little or no pollution potential;*
- *where the pollution potential of the waste is reduced if deposited alone in mono-fill landfill sites or within separate cells (not mixed with other wastes) within a landfill site;*
- *the engineering requirements for the landfill are lower than would be the case for a non-hazardous landfill (as laid out in the Landfill Directive) by virtue of a risk assessment agreed with the regulator; and*
- *the aftercare period and requirements are significantly lower than would normally be required for a non-hazardous waste landfill, based on a risk assessment agreed with the regulator.*

Appendix 2:

Current Revenue Scotland SLfT Guidance

SLfT2006: Qualifying materials containing a small amount of non-qualifying material

Note: the following 'General guidance' applies for SLfT purposes to **all** waste loads which wholly consist of qualifying material apart from a small amount of non-qualifying material.

In this context:

- 'qualifying material' means material which is listed in and meets the conditions set out in [The Scottish Landfill Tax \(Qualifying Material\) Order 2015](#); and
- ['non-qualifying material' means material which is not listed \(and does not meet the conditions set out\) in that Order and which is, therefore, chargeable at the standard rate.](#)

If the waste load contains **fine material** then the guidance under the 'Qualifying fines' heading also applies.

General guidance

We may direct that material disposed of can be treated as qualifying material if it would so qualify but for the presence of a small amount of non-qualifying material.

We are aware that some waste streams, which may otherwise be liable for tax at the lower rate, may arise with small amounts of non-qualifying (or standard-rated) materials contained within them as contaminants. This includes fines and contaminated soils, which generally contain a mixture of qualifying and non-qualifying materials, and which make the whole load liable for tax at the standard rate.

Where:

- It is unreasonable to have prevented this contamination at source; and
- it is subsequently unreasonable, or there is no practical way, for these contaminants to be removed,

then the whole load may be taxable at the lower rate. Any load which is hazardous waste as defined by [Directive 2008/98/EC](#) (see [SLfT2004](#)) must, however, be taxed at the standard rate.

Material of a standard taxable rate must not be added to material of a lower rate. For example, 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. Such an addition would make the entire load taxable at the standard rate. The only exceptions to this are when:

- standard-rated material needs to be used to contain the lower-rated waste; or

- standard and lower-rated materials at a Materials Recycling Facility are mixed prior to treatment to enable their treatment and segregation.

In cases of doubt the waste will be taxed at the standard rate unless you can demonstrate that the waste qualifies for the lower rate of tax and that all reasonable and practical measures have been taken to remove contaminants contained within the waste.

The lower rate of tax may only be applied to a load containing a small amount of standard-rated material if the standard rate material was formed with the lower-rated waste at the same time, or it is used as necessary packaging and all reasonable and practical measures have been taken to prevent, reduce and remove the standard-rated material from the lower-rated material.

For example, we would accept the following as qualifying for the lower rate:

- a load of bricks, stone and concrete from the demolition of a building that has small pieces of wood in it and small quantities of plaster attached to bricks as it would have not been feasible for a contractor to separate them. (Note: large pieces of wood or plaster which could be removed by hand or other means would make the entire load taxable at the standard rate);
- a load of sub-soil that contains small quantities of grass. (Note: turfs of grass which could have been removed prior to the load of sub-soil being created would make the entire load taxable at the standard rate);
- waste such as mineral dust packaged in polythene bags for disposal; and
- a load of sub-soil and stone from street works containing small amounts of tarmac (Note: large pieces of tarmac which could be removed by hand or other means would make the entire load taxable at the standard rate).

It is not possible for us to advise you on every disposal. It is your responsibility to decide whether a particular load disposed of at your site contains any standard-rated material.

If it does contain such waste you need to satisfy yourself that the load:

- is not hazardous waste; and
- contains only a small quantity of non-hazardous non-qualifying (or standard-rated) waste, which was formed with the lower-rated material and either could not be removed or is necessary for packaging reasons.

The difficulty in separating the standard-rated components from the lower-rated waste is a factor that you can take into account, but this cannot be used to justify applying the lower rate of tax if the standard-rated waste is hazardous or it is more than a small amount of the total load. You will need to justify your decisions to us.

[LT\(S\)A 2014 section 14](#)

Qualifying fines

Note: From 1 April 2015, and under a direction made under [section 14 of the LT\(S\)A 2014](#), we will require you to use the following flowchart in order to determine whether a waste load containing fine material is chargeable at the standard or lower rate.

For SLfT purposes, fines are particles produced by a waste treatment process that involves an element of mechanical treatment.

Qualifying fines are:

- a mixture that consists of:
 - fines that consist of materials listed in the Schedule to [The Scottish Landfill Tax \(Qualifying Material\) Order 2015](#); and
 - no more than a small amount of fines that consist of any other (i.e. non-qualifying) material,
- and where:
 - the qualifying fines must not result from any deliberate or artificial blending or mixing of any material prior to disposal at a landfill site; and
 - the qualifying fines must not be hazardous waste.

Flowchart to determine the Scottish Landfill Tax rate for waste loads containing fine material

