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Revenue Scotland Scottish Landfill Tax guidance on how to determine the rate of tax chargeable on waste fines – A Consultation Paper Response by the Chartered Institute of Taxation

1 Introduction

- 1.1 This is a response by the Chartered Institute of Taxation (CIOT) to Revenue Scotland's consultation paper, containing Scottish Landfill Tax (SLfT) guidance on how to determine the rate of tax chargeable on waste fines.
- 1.2 We welcome the opportunity to comment on the draft guidance and note that Revenue Scotland have sought industry input on an earlier draft of the guidance and also took on board comments at the recent Scottish Landfill Tax forum event.¹
- 1.3 The CIOT is an educational charity concerned with promoting the education and study of the administration and practice of taxation. For more details see the statement about us at section 7 below. The CIOT would like to assist in ensuring that the tax system in Scotland is effective and efficient for taxpayers, agents and the tax authorities.

Background

- 1.4 The guidance explains the treatment of waste that consists of materials that, but for a small amount of non-qualifying material, qualify for the lower rate of SLfT (£2.65 per tonne). It also explains how to determine whether or not waste fines qualify for the lower rate of SLfT. If waste does not qualify for the lower rate, the standard rate of SLfT applies (£84.40 per tonne). Waste fines are fractions of material produced by a waste treatment process that involves an element of mechanical treatment. In order to qualify for the lower rate of SLfT, waste fines must meet a number of conditions, including a Loss on Ignition (LoI) test, which determines the organic content of the material.

¹ A representative of the CIOT attended Revenue Scotland's Scottish Landfill Tax forum on 1 July 2016, see <https://www.revenue.scot/about-us/get-involved/slft-forum>.

2 Executive summary

2.1 The Scottish Government has committed itself to a tax system that has regard to Adam Smith's four principles: certainty; the burden proportionate to the ability to pay; convenience; efficiency of collection. We agree with these principles and welcome the statement by Revenue Scotland that they try to ensure certainty for the taxpayer in relation to their tax liability.

2.2 The CIOT objectives for a good tax system include:

- A legislative process which translates policy intentions into statute accurately and effectively, without unintended consequences;
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why;
- Greater certainty, so businesses and individuals can plan ahead with confidence;
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented);
- Responsive and competent tax administration, with a minimum of bureaucracy.

We recognise that Revenue Scotland are not responsible for the development of tax policy; nevertheless, they play a role in implementing the policy and developing guidance, and it is important that these principles are kept in mind when doing so.

2.3 In general, one of the best ways of increasing certainty for taxpayers is through clear legislation. While guidance should be helpful, and has a key role to play in making the legislation accessible to taxpayers, it is important that certainty and clarity for taxpayers have a clear basis in legislation.

2.4 In section 1 of the draft guidance, the treatment of waste fines is set out, in two groups – entirely qualifying and qualifying with a small amount of non-qualifying material. We suggest that the guidance might be made more user-friendly through the judicious use of bullet points. It might be helpful to add some cross-references to section 2 of the guidance in respect of the conditions for waste fines containing a small amount of non-qualifying material.

2.5 The flowchart at Appendix 2 appears to be simpler to follow than the one contained in the current guidance; its layout helps to demonstrate the need to meet all the conditions in order to qualify for the lower rate of SLfT.

2.6 Section 3 of the draft guidance sets out the evidence that taxpayers need to keep to support their decisions. The evidence listed might be more user-friendly if set out using bullet points. It is important that this section provides certainty, since there is a legislative requirement for evidence, and it is indicated in the legislation that this is specified in guidance. There are a couple of areas of uncertainty – firstly, the guidance states that the landfill site operator must retain “sufficient evidence”, but there is no definition of what constitutes “sufficient” evidence; secondly, there should be an indication as to whether the types of evidence listed are prescriptive or not.

2.7 The Frequency of Testing Table is set out in section 12 of the draft guidance. There is some uncertainty and the potential for inconsistency in application of this table. This is because some of the risk indicators are in themselves subjective and therefore open to different interpretation. One suggestion would be to include numerical or measurable requirements in all indicators.

3 Q. 1 Revenue Scotland tries to operate Adam Smith's principle of certainty for the taxpayer about their tax liability. How easy will it be to be sure of the tax due on each load of waste fines disposed of to landfill under the new guidance?

- 3.1 In general, it is the job of policy makers to ensure that Adam Smith's principles are met, through legislation. Guidance should be helpful, but ultimately, certainty depends on the quality of the underlying legislation. This is necessary to prevent situations arising where taxpayers are wholly reliant on interpretation of the law by Revenue Scotland as opposed to a clear and certain piece of legislation.
- 3.2 The legislation² specifies some of the conditions that must be met in order for qualifying waste fines to be treated as qualifying material, for example the need for a Lol test (including specification of the temperature and the percentage threshold).³ The conditions set out in legislation also include, however, the need for evidence "specified in guidance".⁴ In this instance, certainty is not provided by the legislation and must be provided by the guidance. It is particularly important that the section on evidence (section 3) provides certainty to the taxpayer.
- 3.3 In section 1 of the draft guidance, the treatment of waste fines is set out, in two groups – entirely qualifying and qualifying with a small amount of non-qualifying material.
- The first group (section 1.1) is covered in two paragraphs, which are fairly clear in indicating the need for an initial Lol test, an appropriate waste transfer note description and pre-acceptance questionnaire. It could perhaps be made even clearer by setting out the key three initial requirements in bullet points.
 - In terms of the second group (section 1.2), the first paragraph refers to the need to meet the conditions set out in the guidance. This is followed by several paragraphs discussing treatment processes. The other conditions are not mentioned again until section 2. It would be helpful to users to indicate that the conditions can be found at section 2, by referring to section 2 at the end of the first paragraph of section 1.2. It would also be helpful to set out the conditions briefly in bullet points, to mirror what happens in section 1.1. This could be something as simple as saying that the conditions encompass:
 - treatment prior to disposal;
 - WM3 classification;
 - treatment processes;
 - pre-acceptance checks;
 - Lol test.
- 3.4 The new flowchart set out at appendix 2 of the consultation appears to be simpler to follow than the one contained in the current guidance. This is because it contains all the necessary information in the chart, rather than directing the user elsewhere. In addition, the use of single questions, effectively setting out a series of steps to follow, is helpful. Its layout helps to demonstrate the need to meet all the conditions in order to qualify for the lower rate of SLfT.

² The Scottish Landfill Tax (Qualifying Material) Order 2016 –

<http://www.legislation.gov.uk/ssi/2016/93/contents/made>.

³ Article 4(2)(c) of The Scottish Landfill Tax (Qualifying Material) Order 2016 –

<http://www.legislation.gov.uk/ssi/2016/93/contents/made>.

⁴ Article 4(2)(b) of The Scottish Landfill Tax (Qualifying Material) Order 2016 –

<http://www.legislation.gov.uk/ssi/2016/93/contents/made>.

- 3.5 At section 3 of the draft guidance, the question of supporting evidence is considered. The guidance states that site operators must “keep and provide sufficient evidence to substantiate applying the lower rate of SLfT to any particular disposal of waste fines”. Although the section does helpfully go on to set out some of the types of evidence that might be acceptable, there is no indication as to what “sufficient evidence” is or how this will be judged. This creates an area of uncertainty and means that site operators might be forced to retain more evidence than necessary, placing an additional burden on them.
- 3.6 As noted above, it is helpful that the guidance sets out some of the types of evidence considered helpful by Revenue Scotland. In terms of presentation, it might be more user-friendly to set the list out as bullet points. In addition, it would be helpful if the guidance indicated whether or not the list is exhaustive and/or prescriptive, or whether the items listed are simply examples of documents that might be helpful.
- 3.7 The list of evidence includes “visual inspections”. It would be helpful to indicate the type of evidence that will be viewed as acceptable in order to demonstrate that a visual inspection has taken place. This detail could be included at section 5.3 of the guidance, where visual inspections are considered.

4 Q. 2 Part 8 of the guidance on Lol test methodology includes instruction to use a sample size of 5g. This sample size has been chosen because a larger one could risk incomplete combustion and therefore affect the Lol result. Do you agree that specifying a sample size of 5g will lead to fair and consistent Lol test results?

- 4.1 We make no comment, as this is outside our area of expertise.

5 Q. 3 The frequency of testing table at part 12 of the guidance explains how certain indicators should be used to determine how frequently Lol tests should be carried out on waste fine streams. Do you agree that the table supports a fair and consistent approach to the classification of waste?

- 5.1 The way in which the table should be used according to the guidance appears to be consistent, in that in all cases, the highest risk rating should be adopted if there are indicators in more than one risk category.
- 5.2 There is nevertheless some uncertainty and the potential for inconsistency in application of the frequency of testing table. This is because some of the indicators are in themselves subjective and therefore open to different interpretation. For example, in terms of the pre-acceptance checks indicators within each risk category, how are the following terms to be interpreted:
- “clearly and consistently” (low risk),
 - “with some variability” (medium risk) and
 - “inconsistently” (high risk)?
- In terms of the visual inspection indicators within each risk category, how are the following terms to be interpreted:
- “small amount of non-qualifying material” (low risk),
 - “potentially more than a small amount” (medium risk) and
 - “more than a small amount” (high risk)?

Site operators will require comfort that they are interpreting these terms appropriately, otherwise there is uncertainty about the final tax liability, for example if a subsequent enquiry/site inspection results in the decision that more frequent testing should have been undertaken. Equally, if a site operator undertakes more testing than they needed to, because they have been overly cautious, this is an additional cost burden for their business.

- 5.3 It would therefore be helpful if the guidance could clarify how the terms identified above will be interpreted by Revenue Scotland, perhaps by reference to numerical and/or measurable requirements (as with the Lol indicators within each risk category).
- 5.4 A further comment on the table at section 12.3 is that it might be clearer to refer to “2 or more” (rather than “more than 1”) in the third bullet point of the indicators of high risk.

6 Q. 4 Do you have any other comments you would like to make about this guidance?

- 6.1 We note that the current guidance at SLfT 2006 contains an introductory section, ‘General guidance’.⁵ This section is omitted in the draft amended guidance. It would be helpful to have confirmation that this is intentional and that the section is no longer required.
- 6.2 The third bullet point of the explanation of sample preparation at section 8 of the draft guidance refers to Group 1 and Group 2 of the Scottish Landfill Tax (Qualifying Material) Order 2015. Should this refer to the 2016 order instead, as that will be the relevant legislation from 1 October 2016 onwards?
- 6.3 Under the heading of Lol Calculation in section 8 of the guidance, should the loss calculation also take into account any weight loss during the initial drying process? We note that this is the case in the current guidance at SLfT 2006.

⁵ SLfT2006 – Qualifying materials containing a small amount of non-qualifying material:
<https://www.revenue.scot/scottish-landfill-tax/guidance/slft-legislation-guidance/determining-tax/slft2006>.

7 The Chartered Institute of Taxation

- 7.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT’s comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT’s 17,500 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.

The Chartered Institute of Taxation
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