



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

Consultation Response Form

Please complete this form and email to the address below no later than 15 July 2015.

info@revenue.scot

If you wish to submit your response in PDF format please also provide a version in Word. This will help us with collating and analysing all responses.

Alternatively, you can request a hard copy of this form by writing to us at the address below or phoning 0300 0200 310. Hard copy responses should be sent to:

SLfT Guidance Consultation
Revenue Scotland
PO Box 24068
Victoria Quay
EDINBURGH EH6 9BR

1. Name/Organisation

Organisation Name (Leave blank if responding as an individual)

Whitemoss Landfill Limited

Main business activities of organisation

Hazardous Waste Landfill Operator

Title Mr Ms Mrs Miss Dr other

Surname

Routledge

Forename

Robert

2. Postal Address

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3. Permissions - I am responding as...

<input type="checkbox"/> Individual	/	Group/Organisation
<input type="checkbox"/>	Please tick	<input checked="" type="checkbox"/>

(a) Do you agree to your response being made available to the public (on the Revenue Scotland website)?

Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

Yes, make my response available, but not my name and address

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (on the Revenue Scotland website).

Are you content for your **response** to be made available?

Yes No

(d) Are you content for Revenue Scotland to contact you again in relation to this or any similar consultation exercises?

Yes No

4. 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)

The use of WM2 is not straightforward and is poorly understood by many waste management companies.

This was clearly illustrated when in 2011 the Environment Agency carried out a Transfer Station Fines Campaign in Yorkshire the results of which were shared with HMRC.

The project looked at the production and disposal of waste fines by waste management facilities throughout Yorkshire. A total of 55 transfer stations and 14 landfills were visited.

These are some of the key findings:

1. Lots of different EWC codes were used to describe fines, but few sites were using the correct code and a description that adequately described the composition of the waste.
2. Some sites were blending fines with soils/excavation waste to dilute the non-inert content. These wastes tended to be misdescribed, leading to waste being used as landfill top cover and treated as inert (for tax purposes) that might otherwise be rejected for this purpose. Other sites were found to be deliberately increasing the amount of fines they produce, for example by shredding waste after, and sometimes even before sorting.
3. In most cases waste fines should be tested to determine that they are non-hazardous. Levels of testing varied and no site tested every batch of fines produced, as legislation requires.
4. This testing is the responsibility of waste producers, but most transfer stations were unaware of this requirement, believing that landfills did this.
5. The Loss on Ignition (LOI) of the samples was determined, which is an indicator of the presence of non-leachable organic content (such as wood, paper and cardboard). 51 out of 55 sites had a loss on ignition (LOI) greater than 10%.
6. A screening threshold of 10% LOI was chosen as this is the level above which

hazardous waste would be deemed to contain too much organic material to be disposed of in a hazardous waste landfill.

7. The site with the highest biodegradable content in fines had 19,920 mg/kg DOC value and a LOI of 47.4%. (Hazardous waste landfill limits are 1,000 mg/kg DOC and LOI of 10% and inert waste landfill DOC limit is 500 mg/kg).
8. Most transfer stations were unaware of the need to test waste destined for landfill as part of Basic Characterisation.

(b) Option 2 (Current guidance plus WM2 plus Inert WAC)

Waste producers are likely to respond to this by screening soils and then treating them as trommel fines which are only subject to LOI test.

5. 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 + WM2)

This option would produce a greater volume of lower rated soils than Option 2.

(b) Option 2 (Current guidance + WM2 + Inert WAC)

A large proportion of soils would fail this and Waste producers are likely to respond to this by screening soils and then treating them as trommel fines.

6. How would each option 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.

(a) Option 1 (Current guidance plus WM2)

Option 1 would place less administrative and cost burdens on operators but there remains the problem that the tax is levied on the landfill operator not the waste

producer which gives waste producer incentive to selectively sample and test in order to have the soil lower rated.

(b) Option 2 (Current guidance + WM2 + Inert WAC)

Option 2 would mean that most soils would fail and have to be treated by washing/screening. This would have significant additional costs for remediation of brownfield land.

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

Yes No

If you ticked 'yes', please provide your comments or suggestions:

We feel that there is a fundamental problem with the proposed Revenue Scotland consultation paper with regard to hazardous wastes which says:

"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."

This statement is incorrect, there are many wastes in the SLfT QMO that could potentially be classed as hazardous wastes, for example bottom ash from waste incinerators (even hazardous waste incinerators) are lower rated regardless of their classification for disposal purposes.

Revenue Scotland's position that "hazardous = standard rate landfill tax" is potentially very damaging in relation to remediation of contaminated land and potentially for other waste streams such as bottom ash from waste incinerators.

With regard to contaminated soils the third edition of the Environment Agency (EA) classification guidance WM2 published in 2013 provided an example about how soil containing or contaminated with asbestos should be assessed.

Example 17 on page A59 of WM2 (r3) said that:

"If the waste contains, in addition to any dispersed fibres, any asbestos in identifiable pieces they must be assessed as set out below. This would also apply to any dispersed fibres produced by deliberately breaking up such identifiable pieces.

Where the waste contains identifiable pieces of asbestos (i.e. any particle of a size that can be identified as potentially being asbestos by a competent person if examined by the naked eye), then the asbestos must be assessed separately. The waste is hazardous if the concentration of asbestos in the pieces alone is 0.1%. The waste is regarded as a mixed waste (see example 1) and classified accordingly. The following codes should be assigned to the asbestos waste as appropriate:

- 17 06 05* Construction material containing asbestos MH
- 17 06 01* Insulation material containing asbestos MH

17 06 05 would normally be used in preference to 17 06 01* for the asbestos in asbestos contaminated soil and stones."*

Example 1 on page A37 says that:

"If more than one separately identifiable waste is present then more than one list of waste code will be required. The general principle is that if 3 items of waste (one each of types A, B and C) are placed in a single container, then that container contains 3 wastes. Each of which must be separately assessed, described and coded."

Example 17 says that if the **concentration of asbestos in the pieces alone is > 0.1%** then the waste is hazardous.

All asbestos containing materials likely to be identifiable by the naked eye contain more than 0.1% of asbestos.

There is no threshold indicated for this so currently a single piece of asbestos would be sufficient to classify several hundred tonnes of soil as hazardous.

When we asked the EA what size the piece of asbestos would have to be we were told that a piece the size of a 5p would be large enough.

If there are visible pieces of asbestos then the waste **must** be classed as hazardous on that basis alone.

The waste would then have two EWC codes, one for the soil, probably 17 05 04 or 17 05 03 depending on any other contaminants in the material and one for the asbestos.

It is important to note that, even if laboratory results show less than 0.1% of asbestos in any soil samples, the soil should be classed as hazardous if there are any visible pieces on the site of asbestos containing material.

A laboratory can only look at the samples that are sent to them and therefore they cannot know if there are larger pieces of asbestos on a contaminated site.

In practice it is not practicable to pick over a soil to remove all pieces of asbestos containing material bigger than a 5p piece although based on considerations of occupational exposure it may well be advisable.

Mechanically screening a contaminated soil may deliberately break up such identifiable pieces and WM2 explicitly states that you would still have to classify the soil as hazardous.

This clarification by the EA is not widely known and many people are currently classifying wastes just based on the analysis carried out by a laboratory.

WM2 has now been replaced with WM3 but it basically says the same thing on page 21:

Asbestos does not occur naturally in the UK¹, if it is detected at less than 0.1% in the soil then it has had to come from a piece of asbestos bigger than a 5p piece.

There is no effective treatment process that I am aware of that can separate asbestos fibres and fragments from contaminated soil. All that washing or screening can do is break up pieces which the WM3 deals with by saying, "this would also apply to any dispersed fibres produced by deliberately breaking up such identifiable

pieces.”

The combination of Revenue Scotland’s stated position and the EA’s guidance is that most contaminated soils should be classified as hazardous and subject to landfill tax at £82.60 per tonne rather than £2.60 per tonne. This may render the majority of brownfield land uneconomic to remediate because the clean-up costs would exceed the value of the land.

The Environmental Services Association’s (ESA) submission (attached) to HMRC on 14th August 2014 following the “informal” consultation that HMRC had last summer in relation to their DRAFT Lower Rate Guidance puts the matter very clearly:

Current Legal and policy position - Mixed loads of qualifying and non-qualifying materials where the whole load is classified as hazardous.

6. ESA notes the guidance in section 6.3 that any load that is classified as hazardous will attract standard rate landfill tax. Whilst we understand that this distinction will provide a level of clarity for industry and encourage consistent interpretation, we do think that further consideration is required to ensure that the possible consequences of this distinction are fully understood.
7. As far as we are aware a specific distinction between hazardous and non-hazardous material, in terms of landfill tax rates, has not previously been made in the Landfill Tax legislation and guidance, and in this respect the draft guidance could have significant implications. It would therefore be helpful to understand more clearly the legal opinion that we understand has underpinned HMRC’s position on this issue.
8. We would welcome clarification that the draft guidance equating hazardous status to the standard rate of tax aligns with the purpose of the tax, does not conflict with the law and therefore has sufficient legal justification in all circumstances to ensure it is able to be properly enforced.
9. The section of the Finance Act 1996 which deals with Landfill Tax refers only to qualifying and non-qualifying material, the former being subject to lower rate tax and the latter, subject to standard rate tax. The Act does not make a distinction between hazardous and non-hazardous wastes in landfill tax terms.
10. The existing guidance in LFT1 on mixed loads makes no distinction between hazardous and non-hazardous wastes and has led to an inconsistent interpretation to date. We are aware that some landfill operators have interpreted the current guidance as allowing for a

small/incidental quantity of hazardous material to be present in a load of qualifying (i.e. low rated) material of rocks and soils, and for the load to continue to attract the low rate of tax. Indeed, some of ESA's members have previously received this same clarification from HMRC officers. Conversely, other operators have been taking the view, as reinforced by advice from HMRC officers, that any waste stream that is classified as 'hazardous' will attract the standard rate of tax, even if the level of contamination is very low. It is important that this inconsistent interpretation is reconciled.

11. Until 2008, there was an exemption from landfill tax for waste soils from contaminated sites. The purpose of this exemption was to boost the remediation of brownfield land. This exemption was finally phased out in 2012. The ability to apply for exemption certificates was removed in 2008, following a formal consultation and regulatory impact assessment which looked at both land remediation relief and the exemption to properly understand the implications and to ensure it delivered the correct outcomes (<http://www.hmrc.gov.uk/ria/11-partial-land-remediation-relief.pdf>).
12. The proposed change to the guidance will mean that contaminated soils which are classified as hazardous will be required to be charged at the standard rate in **all** cases which will have implications for developers of brownfield/contaminated land. This change ought to therefore be the subject of the same thorough review to ensure the implications are fully understood and to avoid unintended consequences. **If such a change is intended, it should arguably be dealt with by a change to the legislation and should be accompanied by a regulatory impact assessment.**
13. Many hazardous substances in waste cannot easily be recycled or recovered, and it is possible that one adverse outcome of the current proposed guidance is that such wastes will simply be effectively 'diluted' before being disposed of to landfill or worse sent to 'exempt' activities where no landfill tax will be paid at all and the environmental implications would be more significant.

I think Revenue Scotland should consider the implications more carefully before introducing guidance that has potentially such detrimental costs to the economy.