

# SLfT Forum: 1 July 2016

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Revenue Scotland: RS  
Elaine Lorimer: EL  
Chris Myerscough: CM  
Robert Buchan: RB

## **Welcome and introduction**

(Elaine Lorimer, Chief Executive)

EL welcomed everyone to the meeting and summarised her new role within Revenue Scotland as Chief Executive. She highlighted that the collaborative approach everyone has taken to make SLfT a success is recognised and praised outside Scotland and asked attendees to continue to get involved and give feedback.

## **Loss on Ignition Consultation**

(Robert Buchan, Senior Principal Tax Specialist)

RB explained that Revenue Scotland currently has an open consultation on its new guidance for the treatment of waste fines, which includes testing waste fines using a LOI test. He gave a brief summary of the background to this (see presentation diagram):

- As of 1<sup>st</sup> October 2016 there will be a legislative requirement to test waste fines using an LOI test as part of the evidence that the fines are qualifying materials taxable at the lower rate of SLfT
- RS have reviewed our guidance and already updated it twice in 2015 in response to industry feedback. Where our legislation and approach is the same as HMRC's we have tried to minimise the differences between our requirements and HMRC's.
- The previous Scottish Government LOI consultation concerned the policy and legislation. The current Revenue Scotland consultation is about how RS implements the new legislation and the guidance we provide on the treatment of waste fines.
- We held a small focus group meeting early June involving waste industry reps to do an initial review of the draft guidance before publishing it for consultation.
- RS are committed to publishing the final guidance on the 15<sup>th</sup> August, 6 weeks before the legislation takes effect on the 1<sup>st</sup> October.

RB urged all attendees to respond to the consultation, highlighting the closing date of 29<sup>th</sup> July.

RB invited questions from attendees about the consultation, however none were asked.

## Experience so far and recent changes

(Chris Myerscough, Director of Operations)

CM explained that RS publishes SLfT statistics on its website on a quarterly basis and also publishes the current Register of landfill operators (LFOs) there. She highlighted the following key statistics from year 1 of SLfT:

- 35 LFOs with 53 sites currently on the register – This has changed only slightly during the year
- £147m tax declared on returns submitted to RS
- Self-declared contributions to SLCF - £9m
- Not on the website but also of interest is that RS has opened 10 enquiries in year one

CM then went on to highlight some common errors and misconceptions identified by RS compliance staff:

- **Total tax due and payable:** Where the calculated tax due and payable includes pence, this total is automatically rounded down to the nearest pound on the online tax return. We only require you to pay the round sum of whole pounds and not the pennies
- **Credit for contributions to the SLCF:** This is an area where we are seeing a lot of errors in return entries. Key points to be aware of are:
  - For a credit claim to be valid the contribution must be paid to an Approved Body (AB) **on or before** the day on which the SLfT return (in which credit is claimed) is submitted. RS interprets 'paid' as 'received' in this context and does not accept claims made in returns submitted before a contribution has been paid. ABs are required to report the date of receipt of all contributions and this enables us to check credit claims made in returns. Whilst we might accept a difference of a few days caused by bank delay, we are seeing claims for contributions apparently weeks and in some cases months after the return was submitted.
  - If you do not make your contribution until after the end of an accounting period and want to claim credit for it in the previous accounting period, the latest date you can make the contribution is the earlier of the filing date (44 days) and the date that you submit your return to us. The principle here is that all contributions must be made on or before the date you submit the return and on or before the latest filing date for that return.
  - We are seeing a significant number of discrepancies between the amounts and timing of credit claims in tax returns and contributions reported by ABs so we plan to contact LFOs and ask for evidence of dates and amounts of contributions paid to enable us to check and verify these.
- **Pre-liability rulings:** We provided transitional guidance and application processes to enable you to apply to us for agreement of water discounts, designation of non-disposal areas, use of alternative weighing methods and restoration when

SLfT first came into effect. We have also published guidance for making new applications for each of these agreements on our website.

- We have become aware that some of you may have had agreements with HMRC in the past for other activities or waste materials which will have lapsed when UK Landfill Tax ceased to apply when SLfT came into effect and which will not apply to SLfT. If you had any such agreements with HMRC and want a similar agreement to apply for SLfT, you must let us know as soon as possible. Without our explicit agreement you will not be able to rely on these for SLfT purposes.
- **Non-disposal areas (NDA):** Only Revenue Scotland can designate a NDA. There is nothing in legislation that requires of permits an LFO to do so. Similarly, only RS can give notice removing an NDA designation.
  - Revenue Scotland is permitted and is likely to designate a NDA where it considers there is a risk of loss of tax.
  - In practice, having a designated NDA allows waste brought on site that is not going to be immediately disposed of or recycled to be taxed at the time it is finally disposed of to landfill, rather than as the waste enters the site. NDA designation may therefore be required for temporary storage of waste prior to treatment or recycling on or off site. An NDA would not be appropriate for permanent storage of materials or for non-taxable activities such as restoration, which require separate agreements from us.
  - LFOs must keep and be able to produce records including the types and volumes of material going to and from the NDA. There is a penalty of up to £3000 for failing to do so.
  - Although it is for RS to designate the NDA, we have adopted HMRC's approach of allowing LFOs to apply to us for a non-disposal area if they want to use one.
- **Restoration** – we must be notified before restoration commences and confirm our agreement that it is a non-taxable activity.
  - To agree this with you we will need to see the authorisation and/or planning approval which determines what type and volume of materials will be used, what they are to be used for, where they will be deposited and over what timescale.
- **Waste Fines** – we agree with the industry that it is possible to create qualifying fines from mixed waste sources provided appropriate treatment and sorting has been carried out either prior to the fines production process or as a secondary treatment. Our position on this is explained further in the draft new guidance on treatment of waste fines currently out for consultation. If in doubt about whether a treatment method is sufficient, please contact us as we are willing to discuss this with you and if necessary, come out on site to view the process and confirm the position.

- **SLfT Supplementary Spread sheet**– This is a required part of the SLfT return and without it a submitted return is incomplete. It is therefore essential that you send us this with your tax return form and that you send us the correct supplementary spreadsheet . We are still seeing instances of LFOs attaching something other than the RS spread sheet to their return.
  - We have recently revised the supplementary spread sheet by splitting the column in which to report exempt and non-taxable tonnages into three separate columns so you can separately report tonnages of waste sent to NDAs, used in restoration and for other exempt or non-taxable activities.
  - We have also added some new codes to the column for management method to make it easier to identify data that has come from table C4 of the SEPA environmental return (waste landfilled after treatment) and to account for waste that is classed as recycled on site e.g. restoration material.
  - The purpose of the amendments is to make it easier for LFOs who treat waste on site prior to disposal to report both the original destination of waste arriving on site and the taxable tonnages when waste is subsequently disposed of.
  - Attendees were shown a sample of the new spread sheet and CM talked them through the entries that would be required for a variety of waste types and management methods. These examples will be added to RS published guidance in the near future.
  - Attendees were invited to use the new form for the current reporting period and provide feedback on whether it is an improvement on the old form.

Q. CM asked attendees if they needed any further management methods added to the form.

A. Yes – one attendee asked if soil and stones used for restoration could be given an ‘RN’ code for restoration rather than an ‘RC’ code for recycling. ‘RC’ is the code used for restoration materials on the SEPA environmental return and for consistency Revenue Scotland would like operators to use the same code on their tax return supplementary sheet. The new version of the supplementary sheet has a separate column to enter tonnages of material used in restoration so it will be clear from this when waste has been used as such without the need for an additional code in the ‘management method’ column.

Attendees did not raise any particular concerns about the new form.

### **Enquiry process**

(Robert Buchan)

RB explained the process RS follows, breaking it down into three parts;

- **Opening an enquiry** –RS can open an enquiry for a number of reasons and the opening of an enquiry doesn’t necessarily mean there is anything wrong with a return, The purpose of an enquiry is however to check the return and we will tell you when we open the return, what entries or aspects we wish to check. We will also tell you what information we require and this may include, for example, documents

or explanations. Although enquiries are opened into specific returns, we may need to ask for information from other periods to enable us to check entries in the return that is under enquiry.

- **During an enquiry** – Depending on the nature and complexity of the issues we are reviewing, we may conduct our enquiry wholly by correspondence or we may need to come and visit a site or meet with you to discuss matters. We may ask you for further documents or information and give a date by which we require you to provide this. If, you are unsure why we are asking for particular information you should ask us to explain this to you. Please also let us know as soon as possible if you think you may be unable to supply the information requested by the date we have asked for it.

If, during an enquiry, we think that more tax may be payable than has been declared in the return we are considering, we will give you a copy of our penalty factsheet. This does not mean that we are about to charge you a penalty. The purpose is to inform you at the earliest possible opportunity of what may happen if more tax is found to be due as a result of our enquiry and to make you aware of your rights and actions you can take that may reduce a penalty, should one become chargeable.

The SEPA Landfill Tax Team's role is to carry out compliance work including enquiries on RS's behalf and in partnership with RS staff. They have the same responsibilities and interests as RS and when they visit you they are there in connection with your SLfT and no other reason. SEPA Landfill Tax staff will almost always visit you along with a RS officer.

- **End of enquiry** – When we have completed our enquiry we will tell you our conclusions and seek your agreement to them.

To close an enquiry we must issue a closure notice setting out our conclusions. If we conclude that your return should be amended we can do during an enquiry or at the end of the enquiry. You may also amend your own tax return during an Enquiry if you agree with any conclusions we have reached and pay any additional tax owed.

If we haven't completed our enquiry by issuing a closure notice three years after the return filing date, the enquiry will automatically close. If the return was submitted late, closure will be three years after the submission date.

## Charter of Standards and Values

RB explained this is published on our website and includes the treatment you can expect from us and similarly, what we expect from you. It also explains your rights if you are unhappy with how we have conducted ourselves.

RB invited questions;

- Q. If an enquiry has been conducted and closed; will RS ever revisit that return?

A. RS cannot generally enquire into the same return once an enquiry has been completed and closed. If however the LFO amends that the return after the enquiry has closed, RS can enquire but only into the parts that have been amended.

## **Dispute resolution**

CM explained the appeals and review process if a taxpayer does not agree with a Revenue Scotland decision made at the end of an enquiry.

**Review:** Taxpayers can request a review of a RS decision, including one set out in a closure notice at the end of an enquiry. The review is carried out by an independent officer in RS who was not involved in the original enquiry or decision. A review officer may uphold or vary a Revenue Scotland decision and must write to you to tell you the outcome within certain time limits which are set out in legislation and explained in our published guidance.

**Mediation:** If a review officer upholds the RS decision and the taxpayer still wishes to dispute the decision, mediation by a third party mediator is possible, provided both parties agree that it could help resolve any part or all areas of disagreement.

**Appeal:** The final stage of dispute resolution is an appeal to the Scottish Courts Tax Tribunal to ask them to decide on the matter. We will always aim to reach agreement with you without recourse to the courts which we know can be costly and time consuming for all concerned. We would therefore invite you to consider requesting a review and/or mediation before submitting an appeal to the tribunal.

## **General Q&A session**

- Q. Will the new Lol guidance cover the issues of small, residual contaminants which arise in waste fines?

A. The guidance covers visible contaminants and waste that is classed as hazardous as a result of the contamination. If attendees think they need more guidance than this we would be grateful if they included this in their consultation feedback.

- Q. On what basis do you consider we have more certainty when statements in the guidance use language like 'could' and 'should'?

A. We do not wish to be too prescriptive or to limit our guidance to specific circumstances. Our aim is to give sufficient guidance and examples to explain the principles we expect you to follow.

Please come and speak to us if you are in doubt. We are also willing to come out to the site and give more specific advice if you need that.

CM explained our preferred methods of communicating with taxpayers and their agents which aim to protect the information that we hold on them.

- secure messaging using SETS is our preferred options and the most secure way we have of sending and receiving information from LFOs
- Because we know that not everyone has access to or is able to use secure messaging through SETS, we are about to try using encrypted email (Egress Switch) to send correspondence to you if you want to communicate with us electronically.
- Post is our next option  
Unencrypted email through open networks is the least secure option and depending on the nature and/or content of the communication, it may not be possible for us to use this to send our response to you.
- Q. CM asked attendees what their preferences were for secure communications with RS  
Attendees confirmed that they prefer email
- Q. When RS sends a message via SETS secure messaging, will one person in the organisation receive the message?

A. Our Secure Messaging System works on an organisation to organisation basis, rather than person to person. Anyone within a Landfill Operator organisation who has been given SETS login details will be able to see messages from RS to their company, even if the message was not sent by or to them. This means that if someone is off for a long period of time, another person in the company can pick up the work easily.

No alert is sent automatically to inform users that a secure message has been sent but RS staff will send an email to the intended recipient using the email contact address they gave when they registered to use SETS to inform them that a message is waiting for them in SETS.

- Q. CM asked how many attendees use SETS?

A. The response suggested not many of those in the room do so.

- Q. CM asked if users had encountered any problems, particularly with passwords as this had been raised in other tax forums?

A. Problems encountered with passwords because users only need to access SETS once every 3 months to submit quarterly returns and passwords have expired and need to be renewed each time they do so.

One attendee said he had received multiple messages to inform him about a SETS message in his inbox. RS agreed to check this with IT and asked him to contact them if this happened again because it was not a known problem.

- Q. Can the LFO use the EWC code 19.12.12 on a waste transfer note as evidence that a load of waste fines are qualifying material?

A. A combination of the EWC code and sufficient description on the transfer note will help identify the waste as qualifying material but this is not sufficient evidence on its own, the guidance as laid out in the consultation explains the further evidence that is required.

- Q. If fines pass the LOI test – can they still be liable for the higher rate of tax?

A. A LOI test result that is 10% or below is indicative of the lower rate of tax, but is not the only evidence required to support applying the lower rate of SLFT to waste fines. Where fines have been produced from a mixed load of waste and have not been subjected to a process or treatment to sufficiently separate the lower rate material from the higher rate material, as described in the consultation guidance, even if they tested below the 10% LOI threshold, they would not qualify for the lower rate of SLFT.

- Q. Per previous question: What if LFO also has supporting evidence including the EWC code, LOI and WM3 test results?

A. If you have several different pieces of evidence, including a satisfactory visual check, WM3 testing that shows the waste is non-hazardous, an EWC code and a description attributable to qualifying fines and the information on the pre-disposal checklist confirms a process has been undertaken to effectively separate the non-qualifying material from the qualifying material, then application of the lower rate of tax is likely to be appropriate.

- Q. Are SEPA Officers working with RS up to date with RS guidance and do they know how RS want LFOs to be treated?

A. We work closely with SEPA tax officers and ensure there is always more than one person involved in any decision making, from both SEPA tax team and Revenue Scotland. When we carry out site visits we will usually send two or more officers on-site.

RB asked LFOs to please be patient and bear with us if you feel we are asking a lot of questions about things that you do. We are still at an early stage in our operations and we are learning more about your activities and industry all the time. We are keen to improve our understanding of industry wide practices practises fully.

CM asked if there were any conferences etc. where LFOs come together, which RS could attend or at which it would be helpful for us to speak at? Nothing specific was mentioned but attendees said they would have a think about this and let RS know.

An attendee complimented RS on their excellent efforts at engagement and attendees in general agreed that they found this forum and our engagement level with them to date helpful.

Attendees confirmed that they also found today's location convenient.



EL thanked everyone again for participating and wished everyone a safe journey home.