

1. A list of Qualifying Waste

This is included in Appendix 1 of the Landfill Disposals Tax consultation document. I have attached the English and Welsh versions.

2. A list of Local Authority Landfill Sites

There are 2 Local Authorities that have and operate a landfill site. These are:

- **Cardiff County Council** – Lamby Way, operated by Cardiff County Council
- **Newport City Council** – Docks Way Disposal Site, operated by Newport City Council

However, there are Local Authorities that have landfill sites that are operated by another body. WLGA and NRW do not have a readily available and up to date list of which local authorities are involved in such arrangements and each individual authority would need to be contacted to confirm the current position.

3. A list of 191 Environmental Bodies

These are all provided on the Landfill Communities Fund regulator's website, Entrust. A link is provided below

<http://www.entrust.org.uk/environmental-bodies/eb-search/>

Number: WG24170



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Welsh Government

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Consultation Document

Landfill Disposals Tax

Date of issue: **24 February 2015**

Action required: Responses by **19 May 2015**



Overview

This consultation seeks views on proposals for Landfill Disposals Tax.

How to respond

Responses to this consultation should be submitted to arrive by **19 May 2015** at the latest. Responses can be submitted either: electronically via the online form: <http://wales.gov.uk/consultations/finance/landfill-disposals-tax/?lang=en>

E-mailed to:
FinancialReformMailbox@wales.gsi.gov.uk
(please enter 'Landfill Disposals Tax' in the subject matter box).

Or, posted to:
Tax Policy and Legislation Division
2nd Floor East
Welsh Government
Cathays Park
Cardiff, CF10 3NQ

Further information and related documents

Large print, Braille and alternate language versions of this document are available on request.

The consultation documents can be accessed from the Welsh Government's website at: www.wales.gov.uk/consultations

The consultation on a Land Transaction Tax can be accessed from the Welsh Government's website at: www.wales.gov.uk/consultations

The consultation and analysis of responses on the Collection and Management of Devolved Taxes White Paper can be accessed from the Welsh Government's website at: www.wales.gov.uk/consultations

Details of the Commission on Devolution in Wales (Silk Commission) first report, the UK Government's response to the first report and the Wales Bill can be accessed from the Welsh Government's website at: <http://wales.gov.uk/funding/financereform/?lang=en>

Contact details

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Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Landfill Disposals Tax

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Appendix 3: Glossary of terms

Appendix 4: Initial Regulatory Impact Assessment



Ministerial Foreword

The passage of the Wales Act 2014 means that the way Welsh public services are funded will be changing over the next few years. One of the most important developments is that the National Assembly has been given new powers to develop its own devolved taxes, beginning with replacements for the UK Government's Landfill Tax and Stamp Duty Land Tax. This means that for the first time in almost 800 years we are able to design and deliver taxes that suit the particular circumstances of Wales.

The Welsh taxes are due to be introduced from April 2018, and in the meantime there is much to prepare. Underlying all the Welsh Government's initial development work have been my four tax principles: I am seeking to introduce taxes which are fair to the businesses and individuals who pay them; which are simple, with clear rules which minimise compliance and administration costs; which provide stability and certainty for taxpayers; and which support growth and jobs, which will in turn help to tackle poverty.

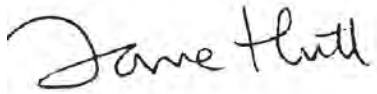
This consultation on a Landfill Disposals Tax is the last of three that I am issuing to gain your views on the new powers. The existing Landfill Tax is a significant driver of environmental behaviour, encouraging greater prevention, re-use, recycling and recovery of waste. Its devolution therefore provides us with a useful additional lever to support Welsh Government policies, including the pursuit of our ambitious goal of zero waste.

Through this consultation, I am keen to identify opportunities to address aspects of the existing tax which may be confusing or cause uncertainties, and I wish to consider whether and how a proportion of the tax revenue might be used to enhance community wellbeing. I am also seeking to modernise the administration of the tax, enabling it to operate more efficiently, minimising the burdens on business. However, I am not looking to introduce changes where they are not warranted. Indeed, I recognise that there may be areas where it will be preferable to maintain consistency with England and Scotland.

An essential aspect of the tax development work covers compliance. This means I want to ensure that all those who have waste to dispose of comply with the tax fully and properly. Tax avoiders and evaders will be treated equitably in Wales and challenged robustly, regardless of circumstances – seeking to avoid payment is simply unacceptable. The consultation therefore asks for your views on how we can encourage compliance, and on the steps we should take in response to non-compliance.

Landfill Disposals Tax

Landfill Disposals Tax will affect a broad range of interests - businesses, regulators, communities and the Third Sector. I am seeking to consider the fullest range of options through this consultation, so I encourage you to share your ideas on how we can design this tax so that it works well for Wales. I look forward to reading your proposals.

A handwritten signature in black ink that reads "Jane Hutt". The signature is written in a cursive, flowing style.

Jane Hutt
Minister for Finance and Government Business
February 2015

Chapter 1: Introduction and Policy Background

Devolution of tax powers

- 1.1 In November 2012 the Commission on Devolution in Wales (the Silk Commission), published its first report on the financial and constitutional arrangements in Wales. The Welsh Government welcomed the report and subsequently the UK Government set out a package of tax and borrowing powers for Wales.
- 1.2 The Wales Act 2014 passed recently by Parliament sets out these new fiscal powers for Wales including the devolution of Landfill Tax, Stamp Duty Land Tax and an element of Income Tax subject to a referendum. *The Wales Bill: Financial Empowerment and Accountability Command Paper* sets out the UK Government's intention that Landfill Tax and Stamp Duty Land Tax will cease to apply in Wales from April 2018.
- 1.3 In preparation, last autumn the Welsh Government published a consultation on the collection and management arrangements for devolved taxes¹ and this summer it intends to bring forward an Assembly Bill setting out its proposals. This will provide a clear and strong tax governance framework, starting with the establishment of the Welsh Revenue Authority/Awdurdod Cyllid Cymru. The Authority will have the responsibility for tax collection and management of Welsh devolved taxes.
- 1.4 The operational priorities and processes of a tax collection and management system can only be understood, and indeed be developed, with some clarity about the taxes that they are seeking to collect. This consultation therefore seeks views on the development of a Landfill Disposals Tax. Alongside this, the Welsh Government is also currently consulting on proposals for a Land Transaction Tax to replace Stamp Duty Land Tax in Wales.² The responses to these consultations will inform the development of policy and legislation. This will enable the next Welsh Government to introduce legislation on these taxes soon after the next election (5 May 2016).

Landfill Disposals Tax Consultation

- 1.5 The Wales Act 2014 clearly limits the scope of the National Assembly's powers to legislate for a tax on disposals to landfill made in Wales; the replacement tax must therefore relate to this method of waste management.

¹ The consultation and analysis of responses on the Collection and Management of Devolved Taxes White Paper can be accessed from the Welsh Government's website at:

www.wales.gov.uk/consultations

² The consultation on a Land Transaction Tax closes on 6 May 2015 and can be accessed from the Welsh Government's website at: www.wales.gov.uk/consultations

Landfill Disposals Tax

- 1.6 Landfill Tax is complex. The Welsh Government is aware of the interdependencies between differential tax rates across borders, the challenges of compliance and enforcement, and the dis-amenity impact of landfill sites and illegal waste activity on communities.
- 1.7 The interdependencies between these different aspects means that changing one aspect of the tax has the potential to cause disproportionate adverse impacts as well as positive outcomes on another aspect of the tax; the Welsh Government needs to be alert to these.
- 1.8 This consultation and the initial Regulatory Impact Assessment at Appendix 4 begin to consider these issues. Your views are particularly welcome on the practical implications of the proposed options and any supporting evidence you are able to provide in your responses.

Waste Management in Wales

- 1.9 The Welsh Government will be seeking to use the development of Landfill Disposals Tax as an additional lever to support its policies, particularly on waste.
- 1.10 The European Regulatory landscape has changed considerably since the introduction of Landfill Tax in 1996 and is a significant influence on the way that waste is managed in Wales. Notable changes have included the introduction of the EU Landfill Directive in 1999 which particularly focused on the handling of waste landfilled: setting out requirements for pre-treatment of waste and the materials that may be landfilled. The EU Council Decision on Waste Acceptance Criteria in 2002 also set out the standards that wastes must meet to be accepted at different types of landfill.
- 1.11 The Welsh Government's *Towards Zero Waste Strategy* sets out how we will deal with waste in Wales to produce benefits for the environment, economy and social wellbeing. It seeks to achieve the sustainable use of resources by reducing waste and managing any waste that is produced in a way that ensures valuable materials are kept within the Welsh economy and are protected for future generations. It sets goals of significant waste reduction by at least 27% (from a 2007 baseline) and a recycling rate of at least 70% with as close to zero (<5%) landfill as possible by 2025 with an ambition of zero waste (100% recycling) by 2050.
- 1.12 These goals support the delivery of the Welsh Government's *Climate Change Strategy for Wales* which sets out its commitment to reduce the greenhouse gas emissions that Wales produces. The 2006 *Stern Review* on climate change pointed to landfill sites as one of the primary causes of climate change-causing emissions from waste. Food and other biodegradable wastes when landfilled produce methane, a powerful climate change-causing gas.

Landfill Disposals Tax

- 1.13** In autumn 2013 the Welsh Government consulted on the Environment Bill White Paper³ which, amongst other things, set out actions to ensure Wales' natural resources are used to best effect and that waste is recycled. To help drive investment towards sustainable waste management solutions it included specific proposals in relation to waste segregation, collection and bans on certain materials going to energy from waste and landfill. Following the Welsh Government's consideration of responses to the White Paper, a Bill is expected to be introduced in spring 2015.
- 1.14** In 2014 the Welsh Government launched *Green Growth Wales: Investing in the Future*. *Green Growth Wales* aims to increase and accelerate projects to deliver green investment in Wales. It focuses primarily, though not exclusively, on encouraging investment in resource efficiency, renewable energy generation and sustainable waste management projects. £5 million has been allocated from the Welsh Government's Budget in 2015-16 to the development of *Green Growth Wales*. Green growth is a fundamental aspect of the Welsh Government's commitment to sustainable development in Wales.
- 1.15** For the last 15 years Wales has been recognised as leading the way in respect of sustainable development, which has been at the heart of Welsh Government policy from the very start of devolution. Sustainable development is the best way to help us plan better for the future, so that the big problems facing people and communities across Wales such as climate change, poverty, jobs and growth, and making people safer, can be addressed.
- 1.16** The Welsh Government's long-term vision for Wales by 2050 is to be the best place to live, learn, work, and do business, with an environment that is respected and enjoyed. We want a strong economy for businesses, people and communities in Wales. We want to strengthen the conditions that will enable businesses to create jobs and sustainable economic growth. These sentiments are at the heart of The Well-being of Future Generations (Wales) Bill⁴, which is currently progressing through the National Assembly for Wales. This legislation will help us make this a reality by putting into law a set of clear, integrated, wellbeing goals for Wales. They provide a shared vision of the Wales we want to see now and in the future, and ensure that present needs are met without compromising the ability of future generations to meet their own needs.

Landfill Tax

- 1.17** Landfill Tax is currently a UK tax on the disposal of material as waste by way of landfill at landfill sites which are permitted under environmental legislation, unless specifically exempted.

³ <http://wales.gov.uk/consultations/environmentandcountryside/environment-bill-white-paper/?lang=en>

⁴ <http://wales.gov.uk/legislation/programme/assemblybills/future-generations/?lang=en>

Landfill Disposals Tax

1.18 Landfill Tax was introduced in 1996 as a key environmental behavioural driver:

‘...to ensure that landfill costs reflect environmental impact thereby encouraging business and consumers, in a cost effective and non-regulatory manner, to produce less waste; to recover value from more of the waste that is produced; and to dispose of less waste in landfill sites’⁵.

1.19 Since the tax was introduced it has contributed to a significant reduction in the proportion of waste sent to landfill and an increase in recycling. In Wales, the total tonnage of waste landfilled fell by 52% between 2001 and 2013⁶.

1.20 There are currently 28 landfill sites and 23 landfill site operators in Wales. Landfill Tax is currently administered by HM Revenue and Customs (HMRC) and collected from landfill site operators. A lower tax rate applies to materials listed in the Landfill Tax (Qualifying Material) Order 2011. A standard tax rate applies to all other taxable disposals.

1.21 A fund to support local community and environment projects within the vicinity of a landfill site is also provided for through Landfill Tax. The Landfill Communities Fund (LCF) is a tax credit scheme that enables landfill site operators to contribute a proportion of their tax liability to eligible projects.

Recent developments

1.22 In recent years HMRC has sought to provide greater clarity regarding how the tax is applied. This has included updating guidance and introducing revised legislation: the Landfill Tax (Prescribed Landfill Site Activities) Order 2009 and the Landfill Tax (Qualifying Material) Order 2011. HMRC has also announced its intention to introduce a Loss on Ignition (LoI) test from April 2015 to determine the tax rate applicable to *finés* (the small fragments of waste which remain after waste has been processed). The basis for the LoI test is explained in Chapter 2.

1.23 There has been a notable string of litigation related to whether some material sent to landfill is being ‘used’ (rather than discarded⁷) and should not therefore be treated as a taxable disposal. The values of the claims currently before the courts mean that a significant proportion of the Landfill Tax revenue is at risk. The Welsh Government is keen to explore ways of designing a Landfill Disposals Tax that takes account of the issues raised in these cases and which provides as much clarity to both the taxpayer and the Welsh Revenue Authority as possible.

⁵ UK Waste Strategy (DoE and WO 1995:cited in ECOTEC, 2001)

⁶ <http://naturalresourceswales.gov.uk/content/docs/pdfs/our-work/Policy-advice-and-guidance/87161/wales-waste-information-eng?lang=en>

⁷ For there to be a taxable disposal there has to be a disposal of material as waste, which the legislation defines as occurring when “the person making the disposal does so with the intention of discarding the material.”

Landfill Disposals Tax

- 1.24 In other developments, HMRC has increased its focus on the issue of waste crime including addressing Landfill Tax evasion. In 2014, the UK Government gave £5m to the Environment Agency (money that would otherwise have gone into the LCF) to ensure effective compliance and enforcement of waste law in England. HMRC is also currently reviewing the administration of the LCF in light of concerns that a significant proportion of funds remain unspent.
- 1.25 Landfill Tax will be devolved to Scotland from April 2015. Scottish Landfill Tax will remain broadly similar to Landfill Tax but makes some changes with regard to how the tax is administered, including the scope of the tax (to extend the definition of landfill sites to illegal deposits of waste) and the delivery of the LCF. The Welsh Government has looked closely at Scotland's proposals and will continue to watch with interest as they are implemented. This consultation considers the main changes being implemented in Scotland.

Landfill Tax Revenues

- 1.26 The standard tax rate has increased over time to incentivise diversion of waste from landfill towards prevention, re-use, recycling and recovery. The standard tax rate has risen from £7/tonne in 1996-97 to £80/tonne in 2014-15. The lower tax rate has steadily declined in real terms since the introduction of the tax (it has not kept pace with inflation). The lower tax rate was £2/tonne when the tax was introduced and is currently £2.50/tonne.
- 1.27 In the 2014 UK Budget Statement it was announced that future Landfill Tax rates will be maintained in real terms (by the rate of inflation as measured by the Retail Price Index) until at least 2019/20. The Scottish Government has recently announced that it is setting the same tax rates as HMRC for 2015-16⁸.
- 1.28 Landfill Tax revenues in the UK and estimates for Wales over the last ten years are shown in Table 1. Recently, revenues have been around £1.1 billion in the UK and an estimate of around £50 million in Wales. Revenues for both the UK and Wales have followed a similar trend over the last decade, increasing rapidly until 2010-11 and remaining fairly stable since then. Figures for the UK represent actual revenues received by HMRC. However, figures for Wales produced by HMRC are an estimate based on regulatory data on landfill tonnages, rather than Landfill Tax returns.

⁸ <http://www.scotland.gov.uk/Publications/2014/10/2706/4>

Landfill Disposals Tax

Table 1 – Landfill Tax Revenue

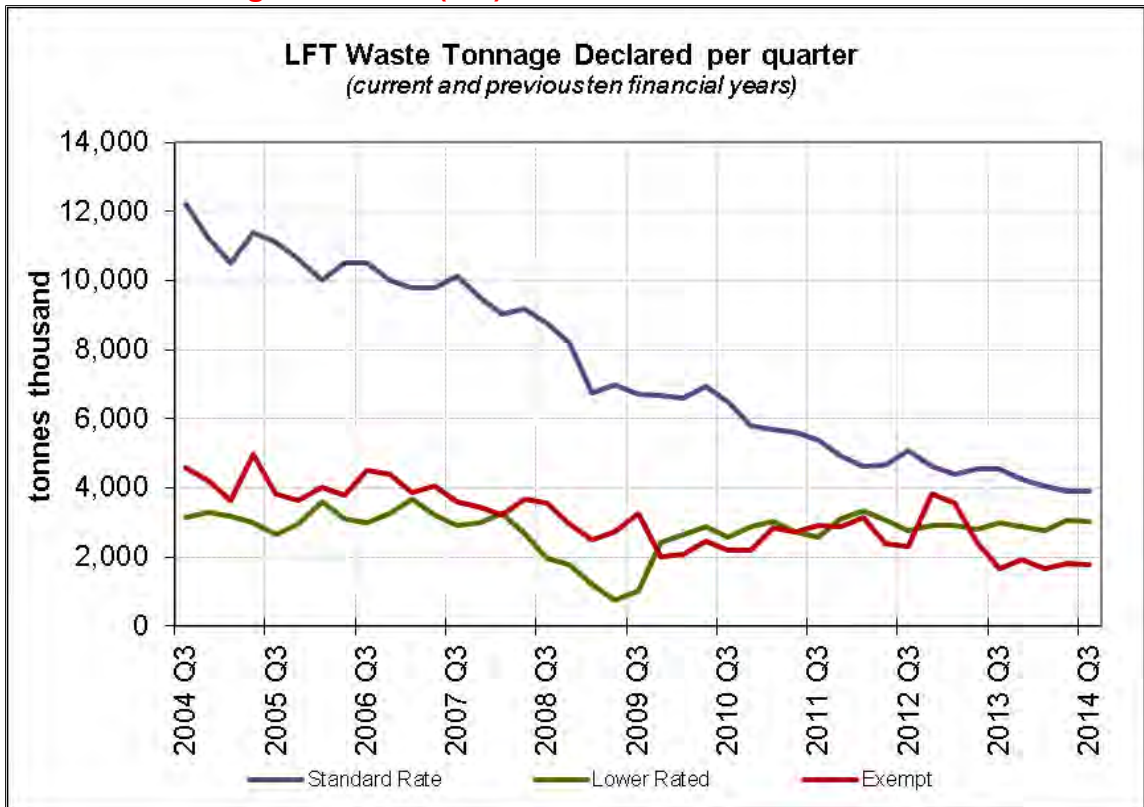
Year	Revenue (£ Million)		
	UK	Wales (estimate)	Wales (% of UK)
2003-04	607	30	4.9
2004-05	672	33	4.9
2005-06	733	36	4.9
2006-07	804	40	4.9
2007-08	877	38	4.4
2008-09	954	43	4.5
2009-10	842	40	4.7
2010-11	1,065	46	4.4
2011-12	1,090	46	4.2
2012-13	1,092	46	4.2
2013-14	1,189	50	4.2

Source: HMRC

- 1.29** Revenues received are the result of the tonnages landfilled and the rate of tax paid. For most of the last decade, a rapidly increasing standard tax rate outweighed the effect of falling tonnages of standard rate material being landfilled, and therefore revenues rose. Falling tonnages of standard rate material are illustrative of the success of Landfill Tax as a policy instrument. This trend can be clearly seen in Chart 1 below, which shows tonnage declared per quarter for the UK by the different tax rates.
- 1.30** Data are not available for Landfill Tax returns specifically relating to Wales, largely because some operators are present across the UK and only submit one return. However, Natural Resources Wales (NRW) does publish data on waste management trends in Wales. These data show a similar trend in the tonnage of material being landfilled, as shown in Chart 2. This shift away from landfill towards other means of waste management represents policy successes. In the Welsh context, Landfill Tax, European waste regulation and Welsh Government policy including statutory recycling targets for local authorities (along with other initiatives) are instruments designed to achieve this outcome.

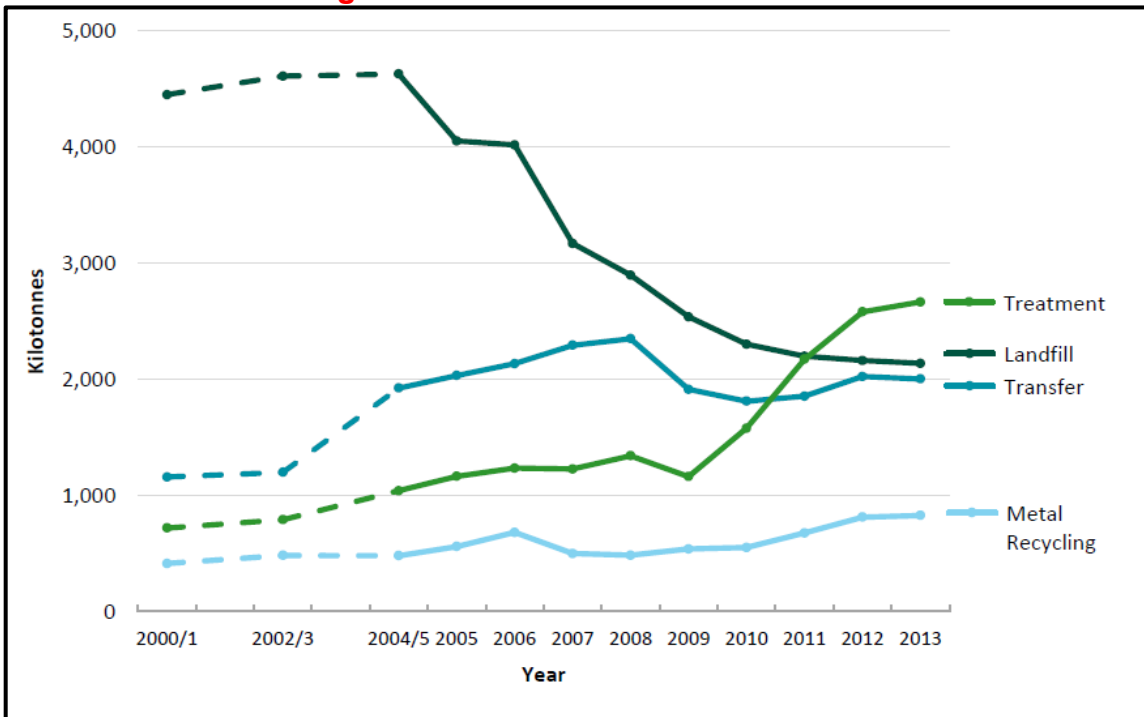
Landfill Disposals Tax

Chart 1 – Tonnage Declared (UK)



Source: HMRC

Chart 2 – Waste management trends 2000/1 - 2013



Source: Natural Resources Wales

<http://naturalresourceswales.gov.uk/content/docs/pdfs/our-work/Policy-advice-and-guidance/87161/wales-waste-information-eng?lang=en>

Landfill Disposals Tax

Landfill Tax Forecasts

- 1.31 The Office for Budget Responsibility (OBR) produces the UK fiscal forecasts, and in its December 2014 Economic and Fiscal Outlook published Welsh forecasts for the first time. The OBR forecasts for annual revenue until 2019/20 are shown in Table 2.
- 1.32 Revenues in the UK and Wales are forecast by the OBR to continue to exhibit similar trends over the next five years (as they have in the past). However, this may be largely driven by the forecast methodology which allocates a stable percentage of UK revenues to Wales.
- 1.33 While in the past revenues at the UK and Wales levels have followed similar trends, there are reasons to believe this may not continue to be the case. In particular, the Welsh Government's waste policy and statutory local authority recycling targets and its goal of as close to zero (<5%) landfill by 2025 are having a significant impact on waste management in Wales.
- 1.34 An example of this is the Energy from Waste facility in Cardiff which will be handling the residual waste from five local authorities in South East Wales by summer 2015, and a similar facility is in planning which would handle residual waste from five local authorities in North Wales. These developments, along with other investments in waste management, and the continued success of Welsh local authorities and households in meeting recycling targets, could see a significant fall in Welsh revenues over the forecast period. The number of operational landfill sites in Wales is falling and could quite possibly be less than 10 by 2020 (down from 28 in 2015). These developments could see a decoupling of the trends in revenues at the UK and Welsh levels.

Table 2 – Landfill Tax Forecasts

	£ Million					
	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
UK Forecast	1226	1152	1077	1082	1134	1206
Welsh Forecast	54	51	48	48	50	53

Source: OBR

The case for introducing Landfill Disposals Tax

- 1.35 It is the Welsh Government's intention to introduce a replacement Landfill Tax in Wales because the negative financial and policy implications of not doing so would be significant.
- 1.36 The *Wales Bill: Financial Empowerment and Accountability* Command Paper confirmed the UK Government's intention that the process of devolving Landfill Tax will result in the Welsh Government's block grant being reduced. The exact adjustment method is yet to be determined. However, it is assumed that

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the amount of Landfill Tax would have been raised in Wales in 2018-19 (the first year of devolved taxes) will form the basis for the amount taken off the block grant.

- 1.37** As Table 2 shows, the OBR calculates that the Landfill Tax raised in Wales in 2018-19 will be £50m. The adjustment in subsequent years will need to take account of expected trends in revenue that would have occurred in the absence of tax devolution. The Welsh Government would not expect the adjustment to penalise Wales for any increased revenue arising from Welsh Government actions, such as investment to improve tax compliance.
- 1.38** If the Welsh Government chose not to implement a replacement Landfill Tax in Wales the Welsh Government would either need to operate with a reduced budget (which would be challenging given the prolonged period of budget austerity) or find alternative ways of raising such revenues to maintain existing resource levels.
- 1.39** Without a replacement Landfill Tax sending waste to landfill would become the cheapest waste management option. This would have impacts for the waste management system in Wales and may undermine efforts in Wales to promote the waste hierarchy (as set out in the EU Waste Framework Directive) which seeks to divert waste from landfill through greater prevention, re-use, recycling and recovery of waste.
- 1.40** This may affect the ability of the Welsh Government to meet its own ambitions and targets for the management of waste set out in its *Towards Zero Waste Strategy*. It would also impact on the Welsh Government's wider aims with regard to sustainable development, climate change and the environment.
- 1.41** As explained in Chapter 2, the Wales/England border is populous and has a range of waste management businesses including landfill sites along both its sides. Not introducing a replacement tax in Wales would likely trigger waste tourism with waste carriers in England and further afield travelling to Wales to dispose of their waste. There would also be wellbeing and environmental impacts for communities, for example, from increased disruption for residents near landfill sites and waste transfer stations and growing pressure on Wales' remaining landfill sites with potential calls for new landfill sites to be developed.

Developing Landfill Disposals Tax

Principles

- 1.42** The Minister for Finance and Government Business has identified key principles which will underlie the Welsh Government's approach to tax policy. These principles will ensure the Welsh Government's approach will be fair to businesses or individuals who pay taxes; be simple with clear rules which seek to minimise compliance and administration costs; support growth and jobs, which will in turn help tackle poverty; and provide stability and certainty to taxpayers.

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Key Factors

1.43 There are some additional key factors that will be an important feature of developing Landfill Disposals Tax. These include exploring how the tax might:

- support and further deliver the Welsh Government's aims with regard to Towards Zero Waste, climate change, the environment and sustainable development, without having a negative or undue impact on businesses
- reflect the developments within the waste sector over the past 20 years including modern waste management practices and technological advancements, along with changes to the European Regulatory landscape
- maintain consistency with the UK where appropriate for ease of administration or to prevent waste tourism and equally make changes where there is good reason, this might be to provide greater clarity, simplify administration and improve compliance
- develop an efficient and cost-effective administrative framework particularly given that the number of landfill sites is reducing and tax revenue is expected to decline
- maximise opportunities for the Welsh Revenue Authority, the Welsh Government, industry, regulators, local authorities and wider public services to work together to ensure that the tax is implemented effectively

1.44 Over the past few months, the Welsh Government has sought the preliminary views of stakeholders to inform its proposals set out in this consultation document. This has included establishing a Technical Expert Group with industry representation and hosting stakeholder workshops in North and South Wales.

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Chapter 2: Tax Rates and Taxable Disposals

INTRODUCTION

2.1 This Chapter will explore the disposal of material including the tax rates that should be applied. In particular, it seeks views on:

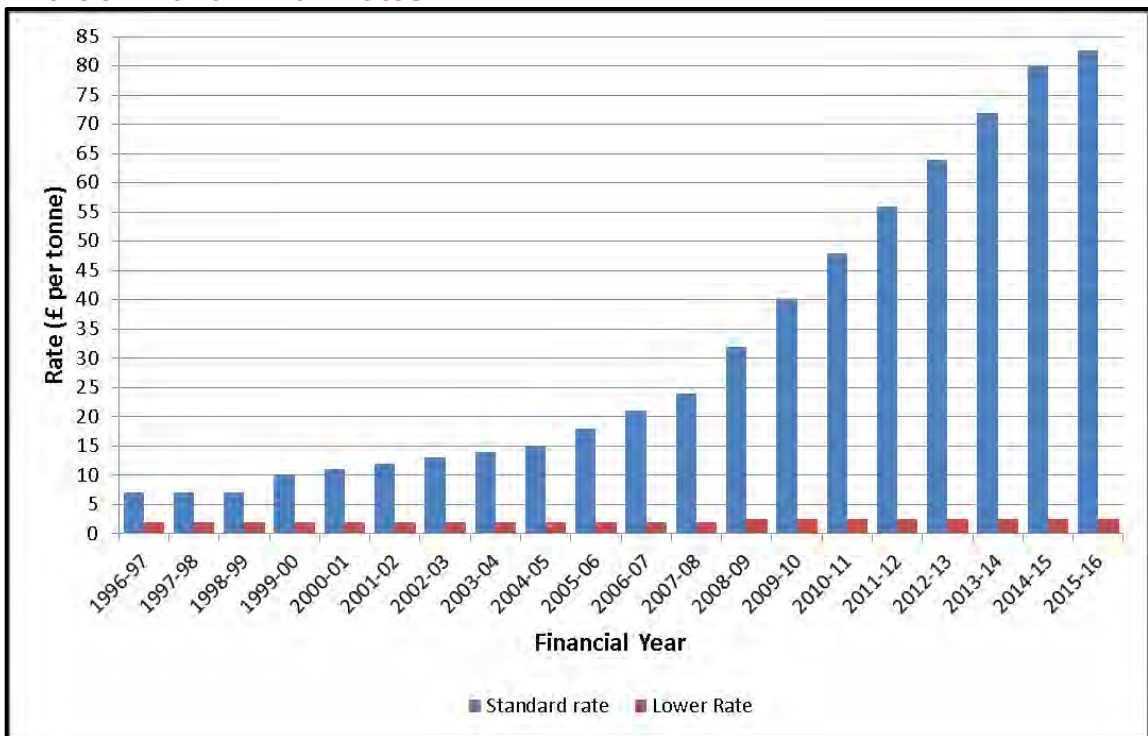
- tax rates
- taxable material
- the area in which a taxable disposal takes place
- credit for landfill waste removed
- landfill site activities to be treated as disposals
- exemptions and reliefs that should apply

PROPOSALS

Tax Rates

2.2 Landfill Tax is charged by weight on waste disposed at landfill. A lower tax rate applies to the materials listed in the Landfill Tax (Qualifying Material) Order 2011 set out in Appendix 1. The lower tax rate has steadily declined in real terms since the introduction of the tax (it has not kept pace with inflation). The lower tax rate was £2/tonne when the tax was introduced and is currently £2.50/tonne. A standard tax rate applies to all other taxable waste disposals. This has risen from £7/tonne in 1996-97 to £80/tonne in 2014-15.

Chart 3 – Landfill Tax Rates



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- 2.3 In the 2014 UK Budget Statement it was announced that future Landfill Tax rates will be maintained in real terms (by the rate of inflation as measured by the Retail Price Index) until at least 2019-20. The Scottish Government has announced that they will be setting the same tax rates as HMRC for 2015-16⁹.
- 2.4 In introducing their tax rates, the Scottish Government said that they would ensure that the taxes raised from Scottish Landfill Tax would be revenue neutral in comparison with the UK Government rate; it would address concerns over potential 'waste tourism' were there to be a material differential between the rates of tax charged in Scotland and the rest of the UK; and that this provided appropriate financial incentives to support delivery of their Zero Waste goal, which like the Welsh Government's, is that <5% per cent of total waste should go to landfill by 2025.

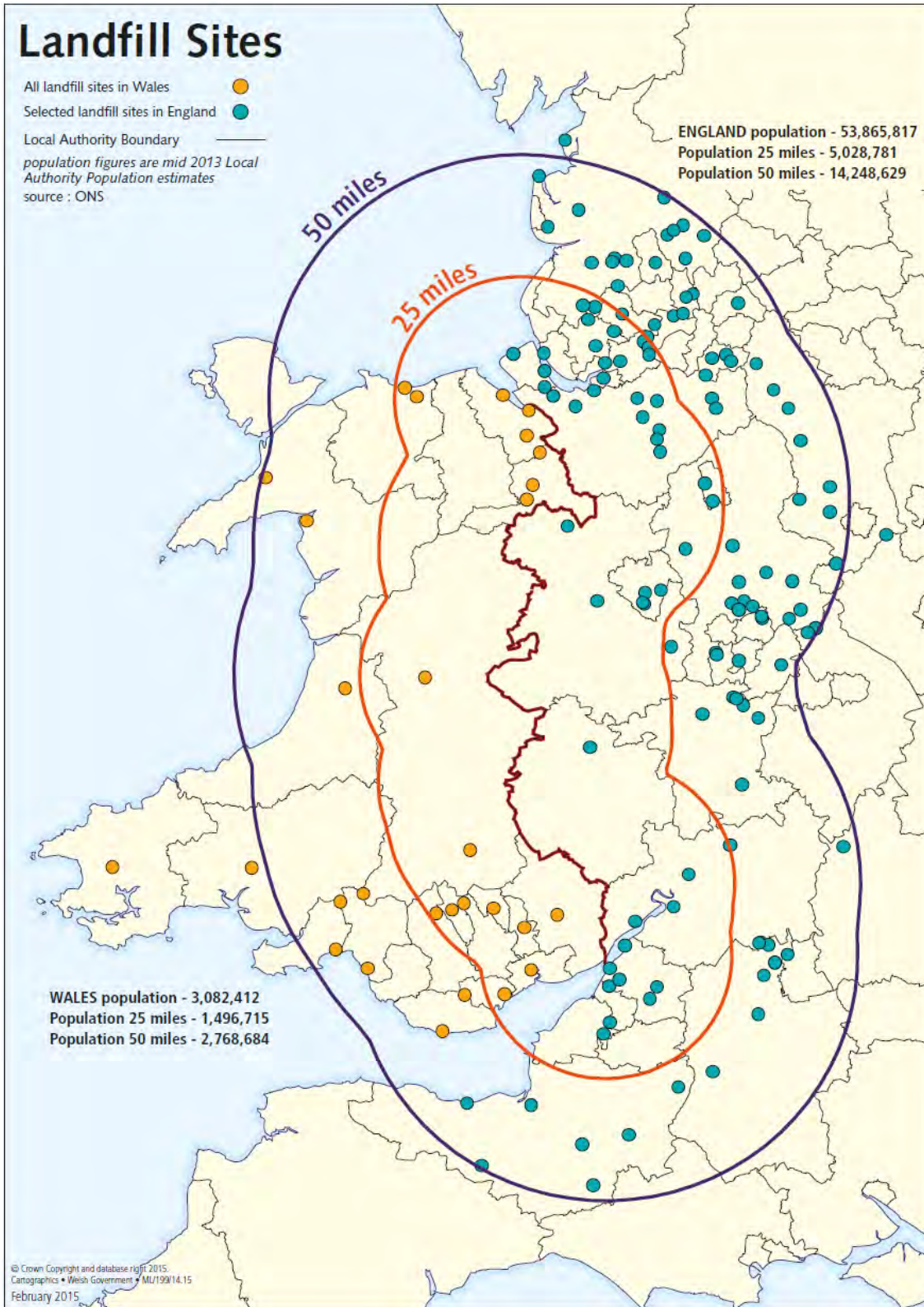
Developing a Welsh approach

- 2.5 One of the key principles guiding the development of devolved taxes in Wales is stability and certainty for taxpayers. The Welsh Government appreciates that businesses require long-term stability and certainty on which to base their business plans and investments.
- 2.6 Whilst the Welsh Government will not be confirming tax rates until nearer the time the tax is introduced (2018), it is seeking views in this consultation which will enable it to reach a considered position on tax rates.
- 2.7 An option would be to increase or decrease the level of the lower and/or standard rate of Landfill Tax relative to that set elsewhere in the UK. A differential tax rate between neighbouring countries could create waste tourism where it is more economical for waste carriers to travel further across country borders to dispose of waste. In a similar vein, there is also 'backhauling' where lorries cross borders to transport a load and take waste back to obtain a more favourable tax rate.
- 2.8 As demonstrated in Map 1, the majority of landfill sites in Wales (and the Welsh population) are within 50 miles of the England/Wales border. There are even more landfill sites within 50 miles of the border on the English side. Many landfill sites in the north-east and south-east of Wales are much closer than this to sites in England. Haulage costs are likely to be an important factor in consideration of this issue.

⁹ <http://www.scotland.gov.uk/Publications/2014/10/2706/4> and see also the draft Scottish Landfill Tax (Standard and Lower Rate) Order 2015.

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Map 1 - Landfill Sites and Populations – Wales/England Border¹⁰



¹⁰ Location of landfill sites based on HMRC data 2012
http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageExcise_ShowContent&id=HMCE_PROD_009941&propertyType=document

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- 2.9 The Welsh Government's early engagement with stakeholders suggests that there is little support for changing the standard tax rate but that there is potential for exploring an increase to the lower tax rate to encourage waste producers to prevent, re-use, recycle and recover qualifying materials rather than disposing of them at landfill.
- 2.10 The Landfill Tax (Scotland) Act 2014¹¹ gives the Scottish Government power (by way of secondary legislation) to set different lower rates of tax for different categories of qualifying material, although they are not proposing to exercise this power when Scottish Landfill Tax is initially introduced.
- 2.11 Stakeholders have suggested that this opportunity should be retained for the Welsh Government also, to provide flexibility for the future if needed in order to be able to respond to economic changes, social circumstances and/or environmental developments. The Welsh Government is also mindful that were the UK or Scottish Government to make significant and/or sudden changes to their tax rates then it would be desirable to have the ability to make changes itself to deter any negative impacts.

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?

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.

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?

Defining the taxable material

Wastes that should be classified as qualifying material and charged at the lower tax rate

- 2.12 Currently, the Landfill Tax (Qualifying Material) Order 2011 specifies the materials which qualify for the lower tax rate (Appendix 1). In drawing up the material to be listed in its lower rate Order, HM Treasury must have regard to

¹¹ S. 13(6) Landfill Tax (Scotland) Act 2014

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whether the material meets the following criteria (as well as any other factors they consider relevant)¹²:

- Non-hazardous
- Low potential for greenhouse gas emissions
- Low polluting potential in the landfill environment

2.13 Assuming that a lower tax rate was to be retained for Landfill Disposals Tax, the Welsh Government is interested in your views on whether there should be any changes to the list of qualifying materials charged at the lower tax rate (Appendix 1), for example, whether there are any further refinements that could be made to the list to provide greater clarity for the waste sector and for the Welsh Revenue Authority.

2.14 In determining the tax rates applied to different materials consideration might also be given to how Landfill Disposals Tax can assist the Welsh Government to deliver its waste policy objectives and how the tax might be brought up-to-date to better reflect modern waste management practices and technological advancements along with changes to the European regulatory landscape.

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?

Compliance with the lower tax rate

2.15 Currently under Landfill Tax legislation “*where material is disposed of it must be treated as qualifying material if it would in fact be such material but for a small quantity of non-qualifying material*”¹³ (described as ‘incidental’ in Excise Note LfT1: A general guide to Landfill Tax). HMRC’s approach acknowledges that a load of qualifying waste will nearly always have some level of residual non-qualifying waste in it.

2.16 The concept of a ‘small quantity’ of non-qualifying material is ambiguous and open to interpretation. This uncertainty gives rise to the potential for significantly less tax to be paid than if the higher rate material mixed with a low rate load was taxed at the higher rate. This is demonstrated in an industry report¹⁴ which highlighted that if 30% was considered a ‘small quantity’, then a 20 tonne load would incur a Landfill Tax bill of £50 at the lower tax rate but if it was charged at the higher rate it would have incurred a considerably higher Landfill Tax bill of £1,600 (2014/15 rates).

¹² S. 42 Finance Act 1996 and Excise Note LfT1: A general guide to Landfill Tax

¹³ S. 63(1) Finance Act 1996

¹⁴ *Waste Crime: Tackling Britain’s Dirty Secret (2014)* - Eunomia Research and Consulting commissioned on behalf of Environmental Services Association Education Trust.

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- 2.17 Some stakeholders have expressed concerns that quantifying what is meant by a 'small/incidental' amount would encourage perverse behaviours, for example deliberate mixing of waste up to a specified threshold and other stakeholders agree that there should be a degree of discretion and flexibility. Meanwhile, some stakeholders feel that a threshold should be specified with several suggesting that 10% would be more than adequate.
- 2.18 Others argue that fully enforcing EU Council Decision 2003/33/EC on waste acceptance criteria would help steer waste companies towards better separate collection (in order to achieve high quality recycling) and away from a mixed waste collection approach. Applying the waste acceptance criteria would most likely significantly reduce the amount of non-qualifying waste in a qualifying load.

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?

Introduction of a Loss on Ignition (Lol) test

- 2.19 HMRC is introducing a Lol test from April 2015 as part of their efforts to prevent waste misclassification of fines from mechanical treatment plants produced through the process of segregation, sorting and screening (i.e. the small fragments of waste which remain after waste has been processed). Fines are not separately identified within Landfill Tax legislation but they can be lower-rated if they comprise solely of materials listed in the Landfill Tax (Qualifying Material) Order 2011 or comprise mainly of such materials, save for a small amount of non-qualifying material.
- 2.20 The Lol test will involve taking a sample of the fines and testing it under laboratory conditions. The Lol test determines the biodegradable and/or combustible element of the waste, which is indicative of the likely pollution potential of the material¹⁵. The Lol test will assist operators of landfill sites to determine the correct tax liability of fines and so ensure that the appropriate rate of tax is paid.
- 2.21 The lower rate of Landfill Tax will apply where fines meet a Lol threshold (the biodegradable and or/combustible element of the waste) of 15% or less (reducing to 10% after one year). This testing regime effectively gives a more precise and measurable definition to a 'small quantity' of non-qualifying material, although only in the context of fines.

¹⁵ The combustible material will include organic material that, when landfilled, will produce methane (a powerful greenhouse gas) and leachate. This organic material is typically contained in standard rate wastes (i.e. non-qualifying material). Waste policy aims to reduce the landfilling of this material, to help reduce greenhouse gas emissions from landfill.

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2.22 Stakeholders appear broadly in favour of the Lol test and initial views are that Wales should continue to implement the Lol test once Landfill Tax is devolved. However, stakeholders have raised some issues regarding the practical implementation of the test and the Welsh Government will keep a watching brief on the HMRC and the Scottish Lol testing arrangements¹⁶.

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

Defining the area in which a taxable disposal takes place

2.23 For there to be a taxable disposal, the disposal needs to be made at a landfill site. The site may include areas for storage or for sorting waste for recycling. Non-taxable uses of waste such as these must take place in a designated 'information area'. These activities are subject to additional administrative requirements including separate record keeping and weighing/characterisation of the waste.

2.24 There is the opportunity to provide greater clarity regarding the area in which a taxable disposal takes place. Current approaches to environmental protection regulation across the UK mean that the tipping area is now more readily identified in site permits. One option could be to legislate to provide that the taxable area on a site is that which is identified in the environmental permit as a tipping area. This would allow greater consistency between the tax and environmental permit requirements.

2.25 However, this could raise practical issues regarding the application of the tax point (currently at the site entrance where a weighbridge is normally sited) and whether the tax point should be moved to when waste enters the tipping area. This would be a significant change and could be complex to operate in terms of weighing and characterising loads and may increase the likelihood for disputes and evasion.

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?

¹⁶ Scotland is also expected to introduce a Lol testing regime as part of its Scottish Landfill Tax. HMRC and Scotland have however developed different approaches independently of each other as a result of the Scottish Landfill Tax devolution timetable.

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Credit for landfill waste removed

2.26 Under the existing Landfill Tax arrangements¹⁷, taxpayers may claim credit for landfill material permanently removed from a landfill site either:

- to another landfill site
- for re-use, recycling, or incineration

2.27 Certain conditions must be met in order to be able to claim the credit including having appropriate records as evidence for the claim. The credit is calculated on the basis of the tax rate that applied at the time of the original disposal.

2.28 The Welsh Government wants to ensure that any arrangements for credit for landfill waste removed are fair, simple and appropriate.

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?

Landfill site activities to be treated as disposals (and therefore subject to tax)

2.29 For there to be a taxable disposal there has to be a disposal of material as waste, which the legislation defines as occurring when “*the person making the disposal does so with the intention of discarding the material.*”¹⁸ The meaning of these words has given rise to a string of litigation, essentially with landfill site operators’ arguing that material is being used after it has entered the landfill site and has therefore not been discarded and is not liable to tax. The values of the claims currently before the courts mean that a significant proportion of the Landfill Tax revenue is at risk.

2.30 HMRC introduced the Landfill Tax (Prescribed Landfill Site Activities) Order 2009 along with additional guidance to clarify landfill site activities to be treated as disposals. The Order lists the activities that are considered taxable disposals - including material received on a landfill site which is put to a use on the site. However, this is an area that continues to be subject to challenge for example, whether methane gas produced from landfilled material is a use of that material that should therefore not be taxable.

2.31 The Welsh Government is keen to explore ways of designing a replacement Landfill Tax that takes account of the issues raised in these cases and which provides clarity to both the taxpayer and the Welsh Revenue Authority.

¹⁷ Part V of the Landfill Tax Regulations SI 1996/1527

¹⁸ S. 64(1) Finance Act 1996

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One option that has been put forward is to consider legislating on the basis that all material entering a landfill site (other than that which is specifically exempt) is subject to tax.

2.32 We are looking to adopt a common sense approach to items that would be exempt; this might include for example, plant and machinery undertaking the tipping and material stored in a non-disposal area. We also wish to ensure any new arrangements support efforts towards re-use, recycling and recovery of waste and minimise administrative burdens.

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?

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

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?

Exemptions and Reliefs

2.33 Under the current Landfill Tax arrangements¹⁹ there are a range of exemptions where Landfill Tax is not payable subject to certain conditions being met. These are:

- Dredgings - material removed from water
- Mining and quarrying waste
- Filling of quarries
- Pet cemeteries
- Waste from visiting (NATO) forces

2.34 During the Welsh Government's preliminary discussions with stakeholders, some have queried whether a Landfill Disposals Tax should include exemptions suggesting that they can be open to abuse, inconsistently applied and a source

¹⁹ s. 43-45 of the Finance Act 1996 and Excise Note LfT1: A general guide to Landfill Tax

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of dispute. In addition, the number of exemptions and reliefs can also add to the complexity of the tax and add administration costs.

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

2.35 There is also a water discount relief²⁰ where, subject to certain conditions being met, the water content of waste can be discounted where it is not present naturally when calculating the taxable weight of the waste. There are several reasons why water may have been added to waste, these include for transportation for disposal and as a result of an industrial process.

2.36 The water discount is generally acknowledged as being quite complex, which can increase the scope for abuse, inconsistency and disputes. In addition, from an environmental and public health perspective there are also concerns regarding pollution caused by water being landfilled. Liquid waste going to landfill is also banned under the EU Landfill Directive (1999). There may therefore be less need to discount water than there was in 1996 when Landfill Tax was first introduced.

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

2.37 Other stakeholders have expressed an interest in introducing new exemptions and reliefs, suggesting that this may be a way to tailor the tax to reflect different circumstances and apply the tax with greater fairness.

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?

²⁰ Regulation 44 of the Landfill Tax Regulations 1996 (SI 1996/1527) and Excise Note LfT1: A general guide to Landfill Tax

Chapter 3: Compliance and Enforcement

INTRODUCTION

3.1 This Chapter explores proposals to ensure that an effective compliance and enforcement framework is implemented and that the negative impacts of illegal waste activity, particularly caused by those seeking to evade paying Landfill Disposals Tax are minimised. Specifically, it seeks views on:

- Improving regulation:
 - Use of weighbridges
 - Extending the definition of landfill sites to include illegal deposits of waste within the scope of the tax
 - Criminal and civil penalties
 - Compliance activity
- Minimising the impact of Landfill Disposals Tax evasion
- Tackling tax avoidance

BACKGROUND

3.2 Most people voluntarily pay any taxes that are due and recognise that our public services are dependent upon such funding. The Welsh Government aims to make the payment of devolved taxes as easy as possible. There is however a minority who attempt to evade paying tax. Tax evasion can give people an unfair advantage over those who pay tax, and reduces the amount of money available to fund public services. This is unacceptable and the Welsh Government will establish robust arrangements to prevent this from happening.

3.3 There have been cases of Landfill Tax evasion. In many circumstances this has been to avoid paying the higher rate of tax. The standard tax rate has escalated rapidly in recent years (to £80/tonne in 2014-15) and some people consider that the profit that can be made from illegal waste activities far outweighs the risk of being caught.

3.4 Landfill Tax payment can be evaded through a number of routes, including waste misclassification, undeclared waste, and abuse of exemptions and reliefs. Other forms include illegal waste sites, fly-tipping, waste fires, and illegal exports of waste, which have direct impacts on communities.

3.5 A recent industry report²¹ found that the cost of waste crime to the UK economy is around £568 million per annum²². The pro-rata figure for the Welsh economy would be in the region of £28 million per annum.

²¹ *Waste Crime: Tackling Britain's Dirty Secret (2014)* - Eunomia Research and Consulting commissioned on behalf of Environmental Services Association Education Trust.

²² This figure consists of tax evaded (thought to be around £157m), illegal exports and the remediation of illegal waste sites, illegal burning and fly-tipping.

- 3.6 Modelling presented in this same report found that for every £1 spent on waste crime enforcement there is an expected return to Government of between £3.60 and £5.60.
- 3.7 The UK Government has begun to focus more on the issue of waste crime in the last year and £5m has been provided to the Environment Agency to ensure effective compliance and enforcement of waste law in England.

Current efforts to ensure effective compliance and enforcement of waste law within Wales

- 3.8 Natural Resources Wales (NRW) and local authorities have a regulatory role to ensure effective compliance and enforcement of waste law, and that waste management is undertaken without harm to the environment or human health.
- 3.9 The Welsh Government has been liaising closely with the Department for Environment, Food and Rural Affairs (Defra) on the initiatives proposed in their Waste Crime Action Plan and talking to NRW about what action can be taken in Wales to tackle illegal waste activity and improve site performance and compliance in the waste sector. In the short term, the Welsh Government will be consulting with Defra on changes to the Environmental Permitting Regulations to extend some of the enforcement powers available to the regulator. In addition, the consultation²³ also includes a Call for Evidence inviting views on further measures that the Government wishes to explore to tackle waste crime.
- 3.10 Waste policy is devolved and a variety of initiatives are being taken forward by the Welsh Government's Natural Resources Department to tackle waste crime. These include actions set out in the Welsh Government's strategy to tackle fly-tipping – *A Fly-tipping Free Wales*²⁴ and a recently completed consultation with Defra on commencing powers in the Clean Neighbourhoods Act to strengthen the powers of local authorities in seizing vehicles in relation to offences concerning waste.
- 3.11 In other developments, the Welsh Government has worked with the UK Government and other devolved administrations to develop an electronic duty of care system (e-doc) which facilitates a consistent, accurate transfer of waste records throughout the chain of collection and management. The widespread adoption of the e-doc system would have benefits for simplifying tax administration and supporting tax compliance.

PROPOSALS

- 3.12 As stated in the Minister's tax principles, the Welsh Government is seeking to establish Welsh tax arrangements that are simple and easy to understand. This

²³ <http://wales.gov.uk/consultations>

²⁴ <http://wales.gov.uk/topics/environmentcountryside/epq/cleanneighbour/flytipping/?lang=en>

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will help to support compliance particularly amongst those that become genuinely confused or in some cases careless with regard to paying their tax.

- 3.13 However there are a small minority that deliberately seek to evade or avoid paying tax and in discussions with stakeholders the Welsh Government is considering a number of options to reduce the opportunities for non-compliance.

Improving regulation

i) Introduce 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.

- 3.14 The amount of tax due is calculated on the basis of the weight of material being disposed; therefore sufficiently accurate weighing methodologies are required to ensure consistency, openness and fairness. Currently HMRC's Landfill Tax Guidance (Excise Note LfT1) states that landfill site operators are *expected* to use a weighbridge if one is present.
- 3.15 In order to provide greater clarity to taxpayers and the Welsh Revenue Authority an obligation on a weighbridge's use where one is functional and available on the landfill site or within close proximity of the site could be introduced with a corresponding penalty for failure to do so.
- 3.16 Other arrangements would be required for weighbridge breakdowns or when an alternative weighbridge is not available within a close proximity. These arrangements would need to be agreed with the Welsh Revenue Authority.
- 3.17 This may help to create a level playing field between operators and act as a financial deterrent that outweighs the profit to be made from under-declaring waste.
- 3.18 It is intended that Scottish Landfill Tax will introduce a weighbridge obligation and corresponding penalty in Scotland.

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?

ii) Extend the definition of a landfill site

- 3.19** The structure of Landfill Tax means that it cannot be imposed on illegal deposits of waste as they are not landfill sites within the definition of the legislation. If Landfill Tax had been chargeable on illegal deposits of waste, NRW estimates that a recently uncovered illegal waste site in Bridgend would have been liable to over £2 million of tax.
- 3.20** In addition, there were over 32,000 fly-tipping incidents recorded on public land in Wales during 2013/14 costing nearly £2 million to clear up²⁵. These incidents varied in size from a bin bag of rubbish to large-scale dumping of lorry loads of waste.
- 3.21** Illegal deposits of waste present a range of environmental, public health and social concerns for communities. It also places legitimate waste businesses at a disadvantage as illegal operators avoid waste disposal costs and undercut those who abide by the law. It also reduces the amount of money available to fund public services.
- 3.22** Scottish Landfill Tax²⁶ will define a landfill site more widely than the UK legislation, so as to extend the scope of the tax beyond disposals made at an authorised site (i.e. a site holding the requisite permits or authorisations) to also include disposals made on any land where an authorisation should have been obtained but has not been. This means that anyone caught illegally disposing of waste (and/or anyone who knowingly permits the disposal to be made) will have to pay the tax at the point where they disposed of it illegally and again when it is remediated to a licensed landfill site. The Scottish Government has extended the definition of a landfill site with the intention that it will act as an additional financial deterrent to such environmental crime and re-align the balance of risk so that the consequences of being caught outweigh the profit to be made.
- 3.23** The Welsh Government is considering introducing a similar extension to the definition of landfill sites to include illegal waste deposits within the scope of Landfill Disposals Tax. This could be a further lever with which to support the Welsh Government's Fly-tipping Strategy²⁷. However, any adoption of a similar extension of the definition of landfill sites will need to be carefully considered in terms of i) minimising the negative impacts of illegal waste disposal and ii) the cost-effectiveness of enforcement, including simplicity of administering and operational costs.

²⁵ Flycapture data – This is management information reported by local authorities to the Environment Agency.

²⁶ ss.12(3) and 16(3) of the Landfill Tax (Scotland) Act 2014.

²⁷ The Welsh Government's Fly-tipping Strategy is available to read at:

<http://wales.gov.uk/topics/environmentcountryside/epq/cleanneighbour/flytipping/?lang=en>

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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?

iii) Criminal and Civil Penalties

3.24 The White Paper on the Collection and Management of Devolved Taxes explained that in developing a penalty framework, the Welsh Government will consider the extent to which a consistent approach is taken across the devolved taxes and where it might be appropriate to take a specific approach to individual taxes i.e. Landfill Disposals Tax.

3.25 The Welsh Government will give careful consideration to the introduction of civil penalties and the creation of criminal offences relating to the administration of Landfill Disposals Tax. It will be important to consider how the balance of risk might be aligned so that the likelihood and consequences of being caught outweigh the potential profit to be made, for this to be achieved it will be important that the punishment is proportionate to the crime.

3.26 The existing Landfill Tax arrangements include a variety of criminal offences (with corresponding penalties) and civil penalties. Civil penalties include failure to:

- register or deregister
- notify that you are no longer liable to be registered
- notify HMRC about a controller of a landfill site
- preserve records
- produce information and records
- comply with the regulations made under Part III of the Finance Act 1996
- notify an under-assessment by HMRC or errors in taxpayer documents in some circumstances

3.27 Criminal offences include knowingly being involved in the fraudulent evasion of tax, the provision of false information and entering into a landfill contract with reason to believe that tax in respect of the disposal concerned will be evaded. When found guilty of a criminal offence set out in Part IV of Schedule 5 to the Finance Act 1996, the potential penalties flowing from that conviction are also set out there and comprise a financial penalty and/or imprisonment.

3.28 In 2014, the Sentencing Council issued new guidelines for magistrates on sentencing for environmental offences. Importantly, this guidance states that it should not be cheaper to offend than to take the appropriate precautions. Magistrates should ensure that the combination of financial orders imposed (compensation, confiscation if appropriate and fine) remove any economic benefit derived from offending.

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3.29 Environmental offences often involve an element of Landfill Tax evasion. It will therefore be important for the Welsh Government, Welsh Revenue Authority, Regulators, Police and other enforcement bodies, to work effectively together to tackle illegal waste activity. The Welsh Government will seek to work with the Sentencing Council to ensure appropriate sentencing takes into account any Landfill Disposals Tax evaded.

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

iv) Compliance Activity

3.30 The Eunomia Report on waste crime states “*Whatever the level of penalties...they will not act as a deterrent unless offenders believe it is likely that they will be caught and prosecuted.*”²⁸

3.31 Stakeholders indicate that over the past 5-10 years the number of on-site inspections carried out by HMRC has reduced with greater emphasis on desk-based assurance to identify and prevent Landfill Tax evasion. It is understood that this has been due, at least in part, to budget pressures and operational priorities (given that Landfill Tax is a small UK tax).

3.32 Stakeholders have told us that they would like to see a greater ‘boots on the ground’ approach in Wales to support effective enforcement. There is growing momentum around this view and the UK Government recently provided £5m extra funding to the Environment Agency (money which would otherwise have gone into the Landfill Communities Fund) to ensure effective compliance and enforcement of waste law, in particular waste misclassification, illegal waste sites and illegal exports.

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.

²⁸ *Waste Crime: Tackling Britain’s Dirty Secret (2014)*- Eunomia Research and Consulting commissioned on behalf of Environmental Services Association Education Trust.

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Minimising the impact of Landfill Disposals Tax evasion

3.33 It will be important to raise awareness of Landfill Disposals Tax to increase understanding and compliance. There is also a need for effective information and intelligence sharing between Welsh Government, Welsh Revenue Authority, Regulators, Police and other enforcement bodies; this includes pursuing and prosecuting individuals who commit waste crime in order to deter other incidents. As part of this the Welsh Government will look to put in place robust whistle-blowing mechanisms.

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?

Tackling Tax Avoidance

3.34 Whilst it is generally recognised that evasion is a key issue for Landfill Tax (and the proposals set out earlier in this Chapter seek to minimise the opportunities for this) the Welsh Government is also interested in gaining a practical understanding of the type and extent of any avoidance in the context of Landfill Disposals Tax.

3.35 HMRC explains avoidance in the following terms: '*Tax avoidance...unlike evasion is not in itself illegal, but it involves using the tax law to get a tax advantage that Parliament never intended. It frequently involves contrived, artificial transactions that serve little or no purpose other than to reduce tax liability.*'²⁹

3.36 Those who engage in tax avoidance gain an unfair advantage over those who pay the fair amount of tax. It also reduces the amount of money available to fund public services and can also undermine confidence in the wider tax system.

3.37 The Welsh Government will expect the Welsh Revenue Authority to support taxpayers who pay the appropriate amount of tax in a timely way, but take firm action against those who avoid, or seek to avoid, paying tax. The Welsh Government will not limit the options available to the Welsh Revenue Authority to deal with aggressive or intentional tax avoidance, and will consider the full range of operational, policy and legislative tools to deliver this aim.

3.38 The Welsh Government recognises the need to be clear in its expectations, and will provide comprehensive support and guidance on the meaning and

²⁹ <https://www.gov.uk/government/publications/tackling-tax-avoidance--2>

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application of its legislation to ensure that taxpayers can operate confidently within the new tax system.

- 3.39** The Welsh Government's White Paper on the Collection and Management of Devolved Taxes included a number of questions around the benefit or need for a General Anti-Avoidance or Anti-Abuse Rule (GAAR), and the possible need and proportionality of safeguards and other measures to support and enable its application.
- 3.40** On the basis of the responses received, the Welsh Government intends to introduce its own Welsh tax avoidance rule to enable the Welsh Revenue Authority to counteract the tax advantage of avoidance arrangements and activities. This will draw on both the UK General Anti-Abuse Rule and Scottish General Anti-Avoidance Rule. The Welsh Government will also look to wider experience and knowledge in considering how widely to apply this rule to Welsh devolved taxes. The nature and scope of the Welsh tax avoidance rule will be determined in light of responses to this consultation, as well as responses to the Land Transaction Tax consultation.
- 3.41** The Welsh Government is aware that the UK GAAR does not currently apply to Landfill Tax, although the Scottish GAAR does apply to the Scottish Landfill Tax. To inform the Welsh Government's consideration of this issue it would welcome views on whether there is evidence of tax avoidance within the existing Landfill Tax, keeping in mind that avoidance is action taken within the context of the legislation, but not in keeping with the spirit or intention behind this legislation.

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

Chapter 4: Administration

INTRODUCTION

4.1 This Chapter explores proposals to simplify and modernise administrative processes and make compliance simple. In particular, it seeks views on:

- aligning the invoice period with the financial year
- the practical implications of making it a requirement that European Waste Catalogue codes are used in completion of the tax return
- opportunities to simplify and modernise the filing of tax returns including improving electronic and online support
- the circumstances in which bad debt relief is appropriate
- resolving tax disputes

BACKGROUND

4.2 Landfill Tax is paid by landfill site operators. There are currently 28 landfill sites and 23 landfill site operators in Wales. A small number of operators currently within Wales also operate in others parts of Great Britain. Once Landfill Tax is devolved to Wales there may be three different tax administrations in Great Britain with which these waste operators will need to comply.

4.3 Furthermore, the Welsh Government's waste policy is likely to significantly reduce the amount of waste going to landfill in the coming years. This will impact on the revenue generated by Landfill Disposals Tax and the number of landfill sites in Wales is likely to be fewer than 10 by 2020.

4.4 The Welsh Government is therefore keen to develop a simple and efficient administrative system for Landfill Disposals Tax which is cost effective, proportionate to the tax raised and a low burden on landfill site operators.

PROPOSALS

The invoice period

4.5 Currently landfill site operators pay Landfill Tax on a quarterly basis. The quarterly date at which payment falls is set by HMRC to enable them to manage work flow. It does not necessarily align with the financial year, or with the quarterly waste returns that landfill site operators complete for Natural Resources Wales (NRW) as part of their environmental permitting requirements.

4.6 One option the Welsh Government is considering is to align the quarterly invoice period with the financial year, also making this consistent with the landfill site operators' waste returns to NRW. Aligning these could support compliance activity by enabling them to be cross checked against each other.

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

European Waste Catalogue codes

- 4.7 A further step could be to require European Waste Catalogue (EWC) codes to be used to complete the tax return. The EWC allocates a 6 digit code to identify each waste and whilst there are over 600 EWC codes there is well-established guidance available on their use. EWC codes are already used to complete waste transfer notes and the quarterly NRW waste returns.
- 4.8 This would provide greater consistency with environmental permitting regulations thereby further supporting compliance by simplifying the process of cross-checking tax and waste returns. It might also further help to provide greater clarity for taxpayers and the Welsh Revenue Authority as the EWC codes provide tightly defined waste descriptions.
- 4.9 The EWC codes also require waste producers to clearly identify the source of the waste and its constituent parts reinforcing principles of good waste management. If EWC codes were applied to tax, then some landfill site operators might incur one-off costs such as amending software/invoices.

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?

Filing tax returns

- 4.10 The current filing system for Landfill Tax is entirely paper-based. HMRC send out the self assessment tax forms every quarter and they are returned by post by the site operators. The form is available online, but only as a sample form that operators are not able to print. Payment is usually by cheque or bank transfer.
- 4.11 It has been noted that the number of landfill site operators in Wales is likely to reduce to fewer than 10 by 2020, and continue to reduce as waste is diverted from landfill to re-use, recycling, and recovery. As a result, a complete move to an online platform for Landfill Tax may be difficult to justify for cost and proportionality reasons at this stage. Online filing and payment for Landfill Tax is not a priority for HMRC at this stage as it is one of their smaller taxes. In Scotland, where there are approximately 58 landfill sites run by around 52 operators, taxpayers will be able to use an online system or keep using a paper based approach.

Landfill Disposals Tax

- 4.12 It would be helpful to understand the appetite for online support so that this option may be kept under review over the medium-term. However, there are small changes that could be made to simplify the tax filing process and which would better reflect the Welsh Government's Digital Wales ambitions³⁰.
- 4.13 This could include changing the format of the tax return to enable electronic returns to be submitted (that is, by email rather than the current postage requirements), and encouraging more electronic payment. This would release efficiency savings for landfill site operators and the Welsh Revenue Authority as time and money would not be spent on printing and postage every quarter. The use of electronic returns may also help to prevent errors and improve compliance.

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

Bad Debt Relief

- 4.14 Whilst landfill site operators pay Landfill Tax, they 'pass on' these costs to the waste carriers disposing of waste at their sites via the gate fee, and the carriers in turn pass on the cost to the waste producers. There is currently a bad debt relief process in place which allows (subject to certain conditions³¹) landfill site operators to claim back the portion of tax they have paid to HMRC if their customer becomes insolvent or has not paid their invoice within 12 months. The process to claim back the tax can take several months; in the meantime landfill site operators are carrying this as a business risk.
- 4.15 For businesses to remain viable it is important that good business practice is adopted with proper contract and insurance arrangements in place. The availability of bad debt relief can be seen as a dis-incentive to putting these arrangements in place and further puts at risk the tax revenue which is used to fund public services. There is also a question of fairness and consistency as other business sectors do not have access to bad debt relief and have to absorb bad debt.
- 4.16 Scotland has decided to narrow the circumstances in which landfill site operators can claim bad debt relief to only those cases where the waste carrier has become insolvent in ways set out in their legislation³².
- 4.17 Your views are welcome on whether bad debt relief should be offered and if so, in what circumstances it is appropriate.

³⁰ <http://wales.gov.uk/topics/businessandconomy/digitalwales/?lang=en>

³¹ Part VI of the Landfill Tax Regulations 1996 (S 1996/1527) and Excise Note LfT1: A general guide to Landfill Tax

³² Scottish Landfill (Administration) Regulations 2015 – paragraph 25.

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

Resolving Tax Disputes

- 4.18** The White Paper on the Collection and Management of Devolved Taxes³³ sets out proposals for managing and resolving any disputes that may arise between the taxpayer and the Welsh Revenue Authority during the administration of taxes. Disputes might arise as a result of different opinions on matters such as the amount of tax due or the timing of when tax should be paid. In these circumstances it is important that there are arrangements in place that can help resolve matters fairly and swiftly.
- 4.19** The Welsh Government's tax principles will shape the approach to appeals arrangements in Wales. In particular, these will be established to be fair, simple, transparent, efficient and affordable.
- 4.20** One of the Welsh Government's key policy objectives will be to try and avoid disputes arising in the first place. The Welsh Revenue Authority will be expected to work on the basis of 'getting it right first time' and fostering a culture of collaboration with taxpayers, communicating clearly and effectively and providing appropriate explanations of decisions. Where disputes do arise, every effort will be made to resolve matters informally, cost-effectively and swiftly.
- 4.21** As part of this, the Welsh Revenue Authority will be expected to engage in informal discussions and, similarly to HMRC, to use alternative dispute resolution mechanisms, such as mediation, when appropriate. In relation to many decisions of the Welsh Revenue Authority there will be a right to request an internal review of that decision and if a dispute is not resolved, there will be a right of appeal to the existing Ministry of Justice's First Tier and Upper Tribunal system.

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?

³³ The consultation and analysis of responses on the Collection and Management of Devolved Taxes White Paper can be accessed from the Welsh Government's website at: www.wales.gov.uk/consultations

The timing of the payment when a dispute arises

- 4.22** Currently HMRC will not seek payment of the tax due from a taxpayer whilst the dispute is in the early stage process of dispute resolution. If, however, the dispute remains unresolved then payment of the tax due is required before an appeal can be made to the tribunal.
- 4.23** Under current UK arrangements taxpayers appealing a decision that requires an upfront payment can in certain circumstances apply to postpone the payment of the tax until the conclusion of the appeal. In the case of Landfill Tax, an application would need to be made (to HMRC or failing that to the appeal tribunal) demonstrating that the requirement to pay the amount determined would cause the appellant to suffer hardship. Where an appeal has been heard without an upfront payment and the amount is found to be due on appeal, it will need to be paid with interest.
- 4.24** The Scottish Government has introduced a more stringent approach to payment. The Revenue Scotland and Tax Powers Act 2014 contains a general pay-first principle to the effect that, pending a review or appeal, tax remains due and payable.³⁴ The Scottish Government has the power to provide (by way of secondary legislation) for circumstances in which payment could be postponed pending a review or appeal but is not currently proposing to exercise this power in relation to Scottish Landfill Tax. The Scottish Government is of the view that in general a landfill site operator who is due to pay Scottish Landfill Tax will already have collected tax due from persons depositing waste at the site in question.
- 4.25** The Welsh Government's White Paper on devolved tax collection and management explored the conditions under which payment could or should be postponed pending an appeal. There were sixteen responses to this question. Of these, fourteen emphasised the need to ensure that provisions should be made for particular challenging circumstances. Only two respondents considered that the rules should be more stringent than those that HMRC currently operate.
- 4.26** On the basis of these responses, the Welsh Government is clear that the pay-first principle should remain as a key pillar of its approach to tax collection and management. However, we are interested to explore opportunities to streamline and clarify the existing process and to consider the circumstances in which we might allow postponement of payment, in particular to ensure fairness, access to justice, and in cases of hardship. The nature and scope of the pay-first principle will be determined in light of responses to this consultation.

³⁴ s. 245 Revenue Scotland and Tax Powers Act 2014.

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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?

Chapter 5: Community Wellbeing

INTRODUCTION

- 5.1 In developing Landfill Disposals Tax, it is important to consider how landfill sites and Landfill Tax evasion affects communities. This Chapter explores:
- whether to allocate a proportion of Landfill Disposals Tax revenue to enhance community wellbeing
 - the proposed activities that could receive funding
 - the administrative options to ensure the maximum amount of funding reaches initiatives

BACKGROUND

- 5.2 The EU Waste Framework Directive establishes the principle that waste is handled in a way that does not have a negative impact on the environment or human health. It also seeks to ensure that waste is handled in accordance with the waste hierarchy which seeks to divert waste from landfill towards more environmentally sustainable methods of waste management. Communities living close to landfill sites can experience dis-amenity due to their proximity to the landfill site, this can include the impact of increased traffic and noise.
- 5.3 The Landfill Communities Fund (LCF) is a tax credit scheme which 'offsets' some of the dis-amenity of living near a landfill site. The purpose of this fund is to incentivise landfill site operators to support local projects benefiting the general public, biodiversity or the environment. In doing so the LCF provides an opportunity for landfill site operators to demonstrate their Corporate Social Responsibility.
- 5.4 Landfill site operators may make a voluntary contribution of a proportion of their tax liability (up to 5.1%³⁵) to approved projects, and claim a 90% credit of their contribution. The landfill site operator can choose to absorb the remaining 10% or, so that contributions are cost neutral to them, can ask an independent party to make up the remaining amount.
- 5.5 It is important to note that the contributions made to the LCF by landfill site operators results in a corresponding reduction in Landfill Tax receipts; so less tax revenue is available to support public services.

Administration

- 5.6 HMRC govern the LCF and it is regulated on their behalf by Entrust³⁶. As a private fund, approved projects are eligible to apply for match funding from a variety of public and European sources.

³⁵This figure is set by Treasury and may be liable to change each year.

³⁶<http://www.entrust.org.uk>

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5.7 Projects looking for support through the LCF must be within 10 miles of a landfill site and comply with one of the following six objectives:

- **Object A:** The remediation or restoration of land which cannot now be used because of a ceased activity that used to take place there.
- **Object B:** The reduction, prevention or mitigation of effects of pollution that has resulted, or may result, from an activity which has now ceased.
- **Object D:** The provision, maintenance or improvement of a public park or another public amenity.
- **Object DA:** The conservation of a specific species or a specific habitat where it naturally occurs.
- **Object E:** The repair, maintenance or restoration of a place of worship or a place of architectural importance.
- **Object F:** The provision of financial, administrative or other similar services by one organisation enrolled with Entrust to another.

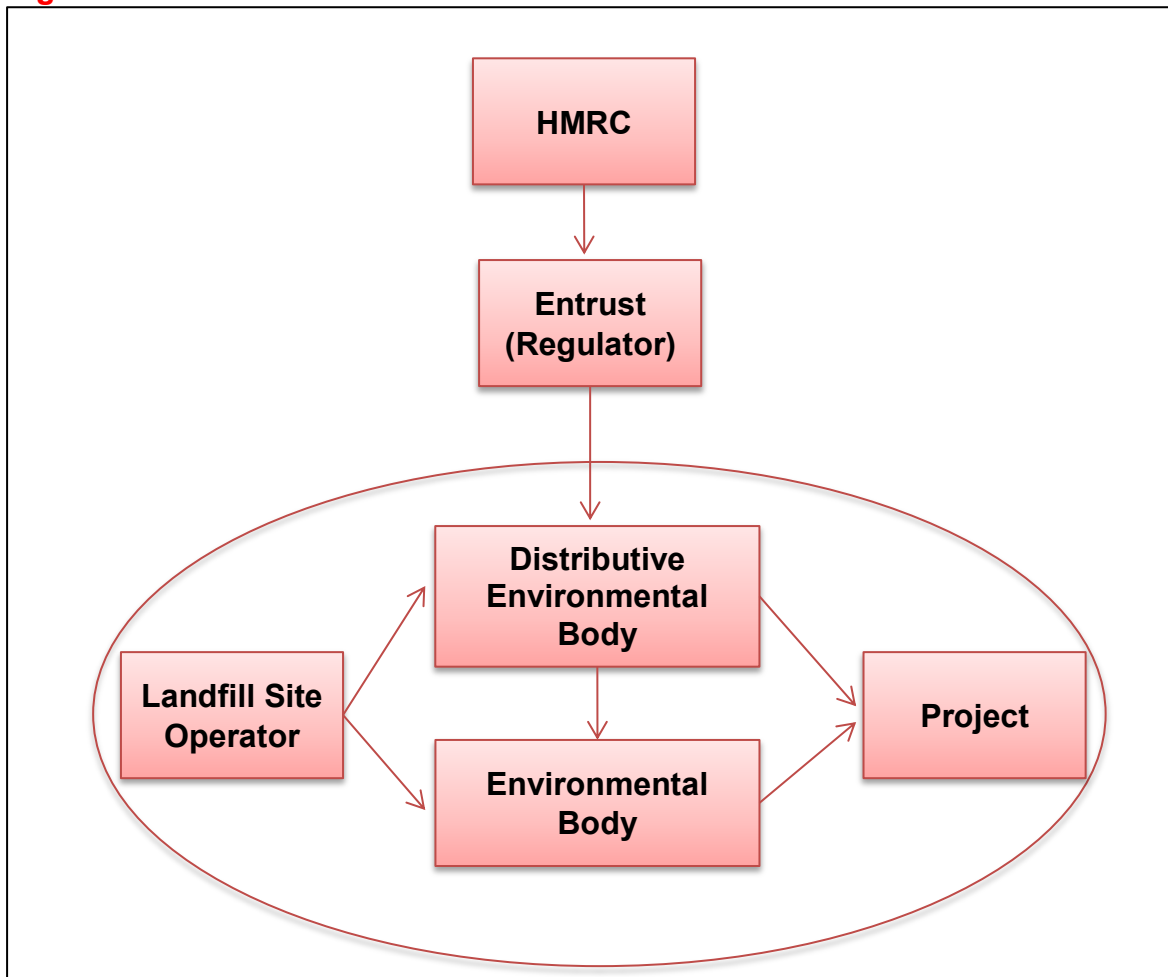
5.8 Projects receive funding in two ways:

- a. directly from a landfill site operator - by doing this the project must register itself as an Environmental Body through the fund's regulator Entrust; or
- b. through a Distributive Environmental Body - an organisation that distributes funds to projects on behalf of a landfill site operator.

In total there are around 191 Environmental and Distributive Environmental Bodies registered in Wales with approximately 50 currently active.

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Figure 1: Current LCF Distribution Process



5.9 Entrust does not hold any of the funding as this is directly distributed to projects via Environmental and Distributive Environmental Bodies. However they do receive a fee plus a proportion of the fund to cover administration costs:

- a. an application fee of £100 made by Environmental Bodies when they register; and
- b. a 2.17% levy³⁷ applied to each contribution an Environmental and Distributive Environmental Body receives from a landfill site operator.

Administrative challenges

5.10 The LCF is currently being reviewed by HMRC with the aim of improving the flow of funding to projects³⁸. This is in light of figures showing that Environmental and Distributive Environmental Bodies have accumulated large

³⁷ This levy is set by HMRC each year, and has been set at 2.17% for 2014/2015

³⁸ <https://www.gov.uk/government/news/government-considers-options-to-improve-the-landfill-communities-fund>

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amounts of unspent funds (£140 million) raising concerns that money is not reaching communities as quickly as it should.

- 5.11** There are also concerns regarding the costs of administering the LCF. Entrust³⁹ advises that Environmental and Distributive Environmental Bodies' administration costs should not be higher than 10%. However, recent figures show that in reality these costs are closer to 11.4%. As stated above, Entrust are also funded through a 2.17% levy taken from the fund.
- 5.12** In effect, over 13% of the fund is used for its administration so for every £100 contributed to the LCF, a project will receive around £86.

The LCF in Wales

- 5.13** At UK level, over 52,000 projects have been approved since the LCF was established in 1996. Of these, almost 33,000 have completed and nearly 5,500 are ongoing.
- 5.14** In Wales, 1,532 projects have been approved since the LCF was established, 3% of the UK total. 206 projects are currently underway. In both England and Wales, the majority of projects that are approved fall into Object D, DA and E. (see paragraph 5.7 for definitions)
- 5.15** Wales is well supported through the LCF and received close to £4m in 2013-14. Some of the projects that have received funding in Wales since the LCF was established are set out in Table 3.

Table 3: Examples of Projects that have received LCF funding in Wales

Project Name	Project Description ⁴⁰	Location	Obj	LCF Funding (£)
Community Regeneration through waste	Reclamation of contaminated land adjacent to community building. Following reclamation, the land was used to extend an existing building to provide a community owned asset that delivered re-use and recycling services, anti-poverty services, volunteering and work based learning, as well as paid employment and community regeneration.	Rhondda Cynon Taf	A	43,522

³⁹ <http://www.entrust.org.uk/>

⁴⁰ A full list of Projects and their descriptions can be found on the Entrust website: <http://www.entrust.org.uk/projects>

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Hailey Park Outdoor Activity Centre	Refurbished Hailey Park Outdoor Activity Centre to include new playground and fitness equipment which is environmentally friendly and improves the social and built environment. The improved amenity is aimed to help discourage antisocial behavior	Llandaff North	D	40,867
Aberman Boxing Club	Complete refurbishment both internally and externally to an old building, adding new porch entry, electricity supply, showers, heating system, windows, toilets and boxing ring to restore back to use for the community.	Rhondda Cynon Taf	D	90,099
Alun & Chwiler Living Landscapes	The project will create, restore and improve Priority Habitats associated with the upper Alun/Alyn and Chwiler/Wheeler river corridors, engaging with local communities.	Denbighshire	DA	277,807
Dolforwyn Woods Appeal (ongoing)	To purchase Dolforwyn Woods and continue to enhance the biodiversity on site whilst keeping it open and accessible for local people.	Powys	DA	150,000
Boderwyn Parish Church (ongoing)	Enable the continued running of the Church by repairing its roof. The roof timbers were renewed and the slates refitted.	Isle of Anglesey	E	10,000
Goleulong Lightship	Refitted the galley area of the Lightship in order to provide an enhanced visitor experience.	Cardiff Bay	E	27,093

PROPOSALS

5.16 As explained in Chapter 1, the progress of the Welsh Government's waste policy will significantly reduce the amount of waste going to landfill in the coming years, resulting in a reduction in the number of landfill sites. Essentially,

Landfill Disposals Tax

this is expected to reduce the revenue generated through Landfill Disposals Tax and as such, the amount of funding available to support initiatives.

- 5.17 Considering the above, your views are welcome on whether a proportion of Landfill Disposals Tax receipts should be allocated to enhance the wellbeing of communities or whether the full Landfill Disposals Tax revenue should be taken into the Welsh Government budget to be allocated across Welsh Government priorities and public services.

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

Activities that could receive funding

- 5.18 There are a number of potential areas that would benefit from this type of funding if it is agreed that a proportion of the tax should be used to enhance community wellbeing. Your views are welcome on the following options:

Supporting compliance and enforcement and minimising the impact of waste crime

- 5.19 Since the LCF was established alongside the tax in 1996, it has played a key role in funding projects in Wales to offset some of the dis-amenity of living near a landfill site. However, the reducing amount of waste going to landfill and the reducing number of landfill sites (less than 10 by 2020) is likely to minimise the dis-amenity impact on communities near landfill sites.
- 5.20 This option recognises that there are wider dis-amenity impacts on communities as a result of Landfill Tax. There are a small minority who will seek to evade paying Landfill Tax and will engage in illegal waste activities. Illegal deposits of waste present a range of environmental, public health and social concerns for communities. Research also shows that it is deprived areas that are most affected by this issue⁴¹.
- 5.21 Chapter 3 sets out the Welsh Government's approach to putting in place an effective compliance and enforcement framework for Landfill Disposals Tax. As noted in Chapter 3, £5m was re-directed from the LCF to the Environment Agency last year to ensure effective compliance and enforcement of waste law in England.
- 5.22 Additional investment in this area in Wales could provide the opportunity to further protect communities from deposits of illegal waste. This would help to improve quality of place and bring land back into community use. It also has the potential to increase tax revenue and enable additional money to be re-directed

⁴¹ *Fly-tipping: causes, incentives and solutions*. (2006) - <http://www.ucl.ac.uk/jdi>

to other areas that would benefit from funding. Industry research⁴² states that for every £1 spent on enforcement a return of between £3.60 and £5.50 will be generated.

Biodiversity initiatives and wider environmental improvements

- 5.23 The current LCF provides for the conservation of a specific species or a specific habitat where it naturally occurs. These projects may bring wider community benefit through improving quality of place and bringing land back into community use.
- 5.24 It has been suggested that the LCF is currently the main source of funding for projects focusing on these objectives and that without it these projects would find it difficult to receive the level of funding needed through other sources.
- 5.25 Funding therefore could be given specifically to projects that focus on biodiversity initiatives and environmental improvement which could allow these projects that may otherwise go unfunded to continue benefitting the environment and communities.

Waste minimisation and the diversion of waste from landfill

- 5.26 The Welsh Government has a number of plans and interventions in place to deliver waste minimisation and greater levels of recycling in order to achieve a Zero Waste Wales, for example additional financial support has been provided to local authorities to help them increase recycling rates.
- 5.27 To date the greatest focus has been on reducing and recycling local authority waste. Areas that do not receive as much support for waste minimisation and recycling are the industrial, commercial and construction sectors. Funding could be used to support greater waste minimisation and recycling rates within these sectors and release further environmental benefits of diverting waste from landfill.
- 5.28 There is scope to encourage and educate industry and the public sector to see waste as a resource and promote the re-use sector. There are additional benefits to deprived communities through the ability to make use of some products that would otherwise have been landfilled, and valuable local jobs and training opportunities in re-use would also be created.
- 5.29 To stimulate jobs growth, small re-use and recycling businesses could be encouraged to carry out this role and provide these services generating a greater drive for re-use and recycling.

⁴² *Waste Crime: Tackling Britain's Dirty Secret (2014)*- Eunomia Research and Consulting commissioned on behalf of Environmental Services Association Education Trust.

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Tackling Poverty and Deprivation in communities

- 5.30** Poverty imposes enormous costs on society from lower economic productivity, reduced social cohesion and increased demands on public services. The lower level of skills, poor health and poverty of ambition that deprivation brings with it are a brake on the potential of the Welsh economy.
- 5.31** The Welsh Government has a number of existing initiatives that support tackling poverty and promoting community resilience through helping people train in new skills to gain employment, providing families with young children the support they need and access to good education, providing housing and welfare support and ensuring that the communities in which they live are safe and prosper. These goals reflect many of the objectives of the LCF.
- 5.32** Landfill sites are often situated in deprived areas and likewise, it is deprived areas that are affected most by illegal deposits of waste. The dis-amenity this results in for deprived areas could be partly offset by targeting funding to these areas. This might allow these communities to build up social and working skills through volunteering as well improving their community.

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)

Administration

- 5.33** The current administrative arrangements are explained in paragraphs 5.6 to 5.12. As stated, if this tax combined with other initiatives continues to be successful in diverting waste from landfill, essentially this will affect the revenue generated through Landfill Disposals Tax and as such, the amount of funding available to support initiatives.
- 5.34** If it is agreed that a proportion of Landfill Disposals Tax revenue should be allocated to enhance community wellbeing the Welsh Government will seek to establish a simple, cost-effective administrative model and maximise the amount of money that reaches initiatives.

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5.35 Possible administrative models that stakeholders have so far suggested for further exploration include: retaining some form of LCF, distributing funding through an existing body or distributing funding directly through the Welsh Government. In exploring these, careful consideration will need to be given to the options of retaining existing features of the LCF including a tax credit element, opportunities for landfill site operators to demonstrate their social corporate responsibility and match funding.

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

Further Development of the Administrative Model

5.36 This Chapter focuses on the principles of whether and how a proportion of Landfill Disposals Tax revenue should be used to enhance community wellbeing. Your thoughts will enable the Welsh Government to form a view on the approach to be taken.

5.37 There will be future engagement with stakeholders to develop the favoured approach and its practical implementation. This may include consideration of factors such as the geographical focus of the funding (currently within 10 miles of a landfill site) and the percentage of funding contributed (currently 5.1% of landfill site operators' tax liability).

5.38 In addition, it may be useful to consider the Scottish Government's approach as they have made some administrative changes in developing their Scottish LCF.

5.39 In the meantime, the Welsh Government will continue to monitor developments, particularly HMRC's review of the existing LCF.

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APPENDIX 1: SUMMARY OF THE LANDFILL TAX (QUALIFYING MATERIAL) ORDER 2011

Group	Description of material	Conditions	Notes
1	Rocks and soils	Naturally occurring	<p>Group 1 comprises only</p> <ul style="list-style-type: none"> i. rock ii. Clay iii. Sand iv. Gravel v. sandstone vi. Limestone vii. crushed stone viii. china clay ix. construction stone x. stone from the demolition of buildings or structures xi. Slate xii. sub-soil xiii. Silt xiv. Dredgings.
2	Ceramic or concrete materials		<p>Group 2 comprises only</p> <ul style="list-style-type: none"> i. glass, including fritted enamel ii. ceramics, including bricks, bricks and mortar, tiles, clay ware, pottery, china and refractories iii. concrete, including reinforced concrete, concrete blocks, breeze blocks and aircrete blocks <p>Group 2 does not include</p> <ul style="list-style-type: none"> i. glass fibre and glass-reinforced plastic, and ii. concrete plant washings.
3	Minerals	Processed or prepared	<p>Group comprises only</p> <ul style="list-style-type: none"> i. moulding sands, including used foundry sand. ii. clays, including moulding clays and clay absorbents (including Fuller's earth and bentonite) iii. mineral absorbents iv. man-made mineral fibres, including glass fibres v. silica vi. Mica vii. mineral abrasives. <p>Group 3 does not include</p> <ul style="list-style-type: none"> i. moulding sands containing organic binders ii. man-made mineral fibres made from glass-reinforced plastic and asbestos.

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4	Furnace slags		<p>Group 4 comprises only</p> <ul style="list-style-type: none"> i. vitrified wastes and residues from thermal processing of minerals where, in either case, the residue is both fused and insoluble, and ii. slag from waste incineration.
5	Ash		<p>Group 5 comprises only</p> <ul style="list-style-type: none"> i. bottom ash and fly ash produced only from the combustion of wood, of waste or of both ii. bottom ash and fly ash from the combustion of coal, of petroleum coke or of both, deposited in a cell containing the product of that combustion alone, and iii. bottom ash and fly ash from the combustion of coal, of petroleum coke or of both, burnt together with biomass and deposited in a cell containing the product of that combustion and burning alone. <p>Group 5 does not include fly ash from sewage sludge, municipal, clinical and hazardous waste incinerators.</p>
6	Low activity inorganic compounds		<p>Group 6 comprises only</p> <ul style="list-style-type: none"> i. calcium based reaction wastes from titanium dioxide production ii. calcium carbonate iii. magnesium carbonate iv. magnesium oxide v. magnesium hydroxide vi. iron oxide vii. ferric hydroxide viii. aluminium oxide ix. aluminium hydroxide x. zirconium dioxide.
7	Calcium sulphate	Disposed of in landfills for non-hazardous waste in a cell where no biodegradable waste is accepted	<p>Group 7 includes</p> <ul style="list-style-type: none"> i. calcium sulphate ii. Gypsum iii. calcium sulphate based plasters. <p>Group 7 does not include plasterboard.</p>
8	Calcium hydroxide and brine	Deposited in brine cavity.	

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APPENDIX 2: CONSULTATION RESPONSE FORM, INCLUDING SUMMARY OF CONSULTATION QUESTIONS

Welsh Government

Consultation on: Landfill Disposals Tax (Number: WG24170)

Consultation Response Form

Name:

E-mail:

Telephone number:

Address:

Town:

Postcode:

Organisation (if responding on behalf of that organisation):

Landfill Disposals Tax

Chapter 2: Tax Rates and Taxable Disposals

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?

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.

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?

Landfill Disposals Tax

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?

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?

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

Landfill Disposals Tax

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?

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?

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?

Landfill Disposals Tax

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

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?

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

Landfill Disposals Tax

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

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?

Chapter 3: Compliance and Enforcement

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?

Landfill Disposals Tax

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?

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

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.

Landfill Disposals Tax

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?

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

Chapter 4: Administration

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

Landfill Disposals Tax

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?

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

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

Landfill Disposals Tax

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?

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?

Chapter 5: Community Wellbeing

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

Landfill Disposals Tax

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)

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

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Additional Questions

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

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

Publication of responses

Responses to consultations may be made public - on the internet or in a report. Normally the name and address (or part of the address) of its author are published along with the response, as this helps to show the consultation exercise was carried out properly.

If you would prefer your name and address not to be published, please tick here:

Returning this form

The closing date for replies is **19 May 2015**.

Landfill Disposals Tax

Please send this completed form to us by post to:

Tax Policy and Legislation Division
2nd Floor East
Welsh Government
Cathays Park
Cardiff, CF10 3NQ

or e-mail to: FinancialReformMailbox@wales.gsi.gov.uk

If you are sending your response by e-mail, please mark the subject matter:
Consultation on Landfill Disposals Tax

APPENDIX 3: GLOSSARY OF TERMS

Defra	Department for Environment, Food and Rural Affairs
ECHR	European Convention on Human Rights
e-doc	Electronic Duty of Care
EU	European Union
EWG	European Waste Codes
GAAR	General Anti-Avoidance Rule/General Anti-Abuse Rule
GOWA	Government Act Wales
HMRC	Her Majesty's Revenue and Customs
Lol	Loss on Ignition
LCF	Landfill Communities Fund
NRW	Natural Resources Wales
OBR	Office of Budget Responsibility
RIA	Regulatory Impact Assessment

APPENDIX 4: INITIAL REGULATORY IMPACT ASSESSMENT

BACKGROUND

1. The Wales Act 2014 provided for the disapplication of the UK Government's Landfill Tax in Wales and conferred powers on the National Assembly for Wales to introduce a replacement tax on disposals to landfill.
2. The Welsh Government has decided to introduce Landfill Disposals Tax to replace Landfill Tax in Wales from April 2018. Its development will allow Wales to design and deliver arrangements that are better suited to Welsh circumstances and priorities. The Minister for Finance and Government Business has already set out the principles which will underlie Landfill Disposals Tax, these will ensure that it:
 - is fair to the businesses and individuals who pay them;
 - is simple, with clear rules, aiming to minimise compliance and administration costs;
 - supports growth and jobs, and in turn will help tackle poverty; and
 - provides stability and certainty for taxpayers.
3. The Welsh Government is in the very early stages of developing Landfill Disposals Tax. This consultation is open and wide-reaching, and considers the fullest range of options. It seeks views on a number of aspects of the tax including:
 - Tax Rates and Taxable Disposals, particularly addressing aspects of the existing tax which may be confusing or cause uncertainties
 - Compliance and Enforcement, tackling tax evasion and avoidance
 - Simplifying and modernising the administration of the tax, enabling it to operate more efficiently, minimising the burdens on business
 - Whether and how a proportion of the Landfill Disposals Tax revenue may be used to enhance community wellbeing
4. The existing Landfill Tax is complex and the Welsh Government is aware of the interdependencies between the different aspects of the tax. There are a number of variables that will affect costs, benefits (and dis-benefits) and these will emerge more clearly as a result of this consultation.
5. The Welsh Government recognises that there may well be trade-offs between the objectives of securing tax revenue for public funding, supporting jobs and growth, enhancing community wellbeing and protecting the environment. The Welsh Government is seeking to maximise the benefits delivered and to avoid any disproportionately adverse impacts.
6. Landfill Disposals Tax will affect a broad range of interests; key stakeholders include: businesses, regulators, communities and the Third Sector. The Welsh Government has already undertaken preliminary discussions with a wide range of interested organisations and individuals in order to help shape its proposals.

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This approach will continue throughout the consultation period with a variety of stakeholder engagement events planned.

CONTEXT

7. The purpose of a Regulatory Impact Assessment (RIA) is to show the costs and benefits of each proposal, and to use it as an evidence base to demonstrate why the chosen policy option was selected.
8. The Wales Act 2014 confers competence on the National Assembly in relation to taxation on disposals to landfill made in Wales. This means that the Welsh Government may decide whether to introduce a replacement tax, one option could be to do nothing.
9. Chapter 1 of this consultation sets out the case for introducing a replacement tax. The Welsh Government intends to introduce Landfill Disposals Tax to replace Landfill Tax in Wales because the negative financial and policy implications of not doing so would be significant.
10. At this early stage in the development of Landfill Disposals Tax, the Welsh Government is seeking views on a number of different proposals that will be used to inform its policy decisions at a later date.
11. The scale of costs and/or benefits that may be generated by implementing Landfill Disposals Tax depends on the policy option taken. As such for the purposes of this consultation the Welsh Government has set out an initial summary of the implications they may have on stakeholders at Table 4.
12. Your thoughts are welcome on whether all the costs, benefits and dis-benefits have been captured. The Welsh Government would welcome any supporting evidence you are able to provide to support or challenge the proposals in this consultation and their implications on stakeholders.
13. A full Regulatory Impact Assessment for Landfill Disposals Tax will be completed prior to the introduction of legislation expected to be after the Assembly elections in May 2016. The responses received from this consultation will be used to inform this. It will consider the likely impact of the tax on the Welsh public, key stakeholders and the Welsh economy.

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Table 4: Summary Initial RIA

<i>Tax Rates and Taxable Disposals</i>	
Key stakeholders (bearers of costs and benefits)	<ul style="list-style-type: none"> ➤ Waste producers ➤ Waste and resource management companies ➤ Local authorities ➤ Landfill site operators ➤ UK Government/HMRC
Options with (major) costs	<ul style="list-style-type: none"> ➤ Increase or reduce tax rates ➤ Changes to the list of Qualifying Materials ➤ Changes to definition of what is taxable (area and activity) ➤ Introduction of Loss on Ignition test ➤ Changes to exemptions and reliefs
Options with (major) benefits	<ul style="list-style-type: none"> ➤ Increase or reduce tax rates ➤ Changes to the list of Qualifying Materials ➤ Changes to definition of what is taxable (area and activity) ➤ Introduction of Loss on Ignition test ➤ Changes to exemptions and reliefs
Sources of information on costs and benefits	<ul style="list-style-type: none"> ➤ Landfill site operators ➤ Representative bodies for: <ul style="list-style-type: none"> ○ The waste and resources industry ○ Business ○ Major landowners ➤ Natural Resources Wales ➤ National and Local Governments
<i>Compliance and Enforcement</i>	
Key stakeholders (bearers of costs and benefits)	<ul style="list-style-type: none"> ➤ Landfill site operators ➤ Local authorities ➤ Natural Resources Wales ➤ Fire and Rescue services ➤ Landowners and communities ➤ Waste and resource management companies ➤ Public Health Wales
Options with (major) costs	<ul style="list-style-type: none"> ➤ Changes to criminal and civil penalties ➤ Increased compliance activity (boots on the ground) ➤ Extension of the definition of landfill sites to include illegal

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	deposits of waste within the scope of the tax
Options with (major) benefits	<ul style="list-style-type: none"> ➤ Changes to criminal and civil penalties ➤ Increased compliance activity (boots on the ground) ➤ Extension of the definition of landfill sites to include illegal deposits of waste within the scope of the tax
Sources of information on costs and benefits	<ul style="list-style-type: none"> ➤ Landfill site operators ➤ Representative bodies for: <ul style="list-style-type: none"> ○ The waste and resources industry ○ Business ○ Major landowners ➤ Natural Resources Wales ➤ National and Local Governments
Administration	
Key stakeholders (bearers of costs and benefits)	<ul style="list-style-type: none"> ➤ Landfill site operators ➤ Welsh Revenue Authority ➤ Natural Resources Wales
Options with (major) costs	<ul style="list-style-type: none"> ➤ Aligning the invoice period ➤ Adopting the use of the European Waste Catalogue codes ➤ Online filing ➤ Maintaining, ceasing or reducing bad debt relief ➤ Resolution of tax disputes
Options with (major) benefits	<ul style="list-style-type: none"> ➤ Aligning the invoice period ➤ Adopting the use of the European Waste Catalogue codes ➤ Electronic filing ➤ Resolution of tax disputes
Sources of information on costs and benefits	<ul style="list-style-type: none"> ➤ Landfill site operators ➤ Environmental and commercial consultants ➤ Natural Resources Wales ➤ National and Local Governments
Community Wellbeing	
Key stakeholders (bearers of costs and benefits)	<ul style="list-style-type: none"> ➤ Key beneficiaries such as Environmental and Distributive Environmental Bodies, Third Sector, and community organisations ➤ Entrust ➤ Landfill site operators ➤ Local authorities

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Options with (major) costs	<ul style="list-style-type: none"> ➤ Stopping or changing the focus and/or administration of the fund <p>Note: Costs unlikely to be major in cash terms given the likely size of a scheme. However, the removal of a tax credit scheme could remove funding entirely from some types of projects.</p>
Options with (major) benefits	<ul style="list-style-type: none"> ➤ Stopping or changing the focus and/or the administration of the fund <p>Note: Benefits unlikely to be major in cash terms given the likely size of a scheme. However, the continuation of a scheme may have relatively large benefits to organisations with little other funding.</p>
Sources of information on costs and benefits	<ul style="list-style-type: none"> ➤ Entrust ➤ Key beneficiaries/ Environmental and Distributive Environmental Bodies ➤ Natural Resources Wales ➤ National and Local Governments ➤ Landfill site operators

OTHER IMPACT ASSESSMENTS

14. A series of specific impact tests on the policy proposals to develop Landfill Disposals Tax will be considered as part of the full Regulatory Impact Assessment. In your responses, the Welsh Government would particularly welcome your views on the potential beneficial and negative impacts (including costs) of the proposals set out in this consultation on the following:

Small Business

15. The current Landfill Tax is a tax that is levied on businesses; it has positively influenced businesses to review their waste management and move towards greater prevention, re-use, recycling and recovery of waste.
16. Whilst landfill site operators pay Landfill Tax, they 'pass on' these costs to the waste carriers disposing of waste at their sites, and the carriers in turn pass on the cost to the waste producers.
17. Therefore a range of businesses may be affected by the introduction of Landfill Disposals Tax. Wherever possible the Welsh Government will be seeking to minimise burdens on businesses and minimise compliance and administration costs. The Welsh Government also appreciates that businesses require long-term stability and certainty on which to base their business plans and investments.

Voluntary sector

18. A fund to support local community and environment projects within the vicinity of a landfill site is also provided for through the current UK Government's Landfill Tax. The Landfill Communities Fund (LCF) is a tax credit scheme that enables landfill site operators to contribute a proportion of their tax liability to eligible projects.

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Projects in Wales, the majority of which were managed by the voluntary sector, received close to £4m from the UK LCF fund in 2013-14.

19. Chapter Five of this consultation refers to the options being considered on whether and how Landfill Disposals Tax should be used to enhance community wellbeing. The continuation of a scheme may have relatively large benefits to organisations with little other funding, likewise, the removal of a scheme could remove funding entirely from some types of projects.

Equality

20. The Government of Wales Act (section 108(6) (c) GOWA 2006) states that a Bill will not be within legislative competence of the National Assembly for Wales if it is incompatible with the European Convention on Human Rights (ECHR).
21. The areas in the ECHR relevant to tax consist of a number of Articles setting out basic principles of human rights. The principal Articles which are being considered as part of the Tax Collection and Management (Wales) Bill for devolved taxes are:
 - Article 1 of the First Protocol which protects the right to property.
 - Article 6 which guarantees the right to a fair trial in the determination of civil obligations and affords further rights where a person is charged with a criminal offence.
 - Article 8 which requires respect for private and family life.
 - Article 14 which prohibits discrimination.
22. The Welsh Government will consider ECHR with regard to its specific policy proposals for Landfill Disposals Tax; this may have particular relevance for the proposed arrangements for exemptions and reliefs, penalties and appeals.
23. In considering if there is any differential impact for Gender and Gender Reassignment, Religion and Belief and Non-Belief, Sexual Orientation, Pregnancy and Maternity, Civil Partnerships and Race, the Welsh Government has determined that there is no evidence to indicate a differential impact to any of these protected groups.

Privacy

24. The Welsh Government has considered a Privacy Impact Assessment and the Information Rights Unit has confirmed that a full Privacy Impact Assessment is not required at this stage.

Rights of the child

25. Having explored the Articles, the Welsh Government considers that, at this stage in the policy development, there are no identified issues in this legislation but further consideration will be given as the policy develops.

Rural

26. The Welsh Government has considered an early Rural Proofing Checklist and been informed that an assessment is not required at this stage. Further assessment, taking into account consultation responses and policy development will be carried out at a later date

Welsh language

27. There is no evidence to suggest that the existing Landfill Tax has a negative impact on the Welsh language and therefore introducing a comparable replacement Welsh tax should not have a negative impact either. The Welsh Government would expect the Welsh Revenue Authority, as a non-Ministerial Government Department, to fully meet the Welsh Language Standards⁴³.
28. Chapter Five of this consultation refers to the options being considered on whether and how Landfill Disposals Tax could be used for community wellbeing. In developing proposals, consideration will be given to the impact on the Welsh language and Welsh speaking communities.

Competition assessment

29. There are two stages to the Competition Assessment. The first is a short filter that assesses whether there is a risk of a significant detrimental effect on competition. The table below summarises the competition filter results at this stage. This will be revisited as the policy develops.
30. At this stage the second stage of the competition assessment is not required.

The competition filter test	
Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No

⁴³<http://www.comisiynyddygymraeg.org/English/Law/welshlanguagemeasure2011/standards/Pages/homestandards.aspx>

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The competition filter test	
Question	Answer yes or no
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

POST IMPLEMENTATION REVIEW

31. It is anticipated that the legislation will be reviewed two years after it comes into force or sooner, if the need arises.

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

