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Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol
Cabinet Secretary for Finance and Local Government



Llywodraeth Cymru
Welsh Government

Simon Thomas AM
Chair
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Cardiff Bay
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Dear Simon

Landfill Disposals Tax (Wales) Bill

In my letter of 4 January 2017, in response to my evidence session to the Committee on 15 December, I committed to provide further information regarding the application of the relief at section 31 of the Bill and how this applied to refilling former open cast mines.

I can confirm that it is intended for the relief at section 31 of the Bill to apply to open cast mines. I have copied this letter to David Rees AM.

I have since been following the Finance Committee's other evidence sessions on the Bill and I thought it might be helpful to the Committee if I took this opportunity to provide further clarification around a few aspects of the Bill.

Unauthorised disposals (Section 3 and Part 4)

Section 3 of the Bill extends the application of the tax in Wales to disposals of material made at places other than at an authorised landfill site if an environmental permit would have been required for the disposal in question. They might include for example, illegal waste sites or fly-tipping.

The Welsh Revenue Authority (WRA) will be responsible for giving operational effect to this. I expect their approach to compliance and enforcement to be clear, proportionate and cost-effective, and to be considered in the context of the wider work that Natural Resources Wales (as environmental regulator) and local authorities are doing in relation to unauthorised disposals including fly-tipping.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

No distinction is drawn in the Bill between the scale, type or location of unauthorised disposals: all such disposals falling within the conditions set out at section 3 are potentially taxable. I anticipate that WRA's operational focus will be on larger unauthorised waste sites where significant tonnages of waste have been deposited illegally and potential tax is therefore lost to the revenue. It is possible that this may include regular or persistent fly-tipping.

The Bill provisions are intended primarily as a deterrent to tax evasion. They are intended to encourage people to dispose of their waste lawfully and pay their fair share of tax ensuring a level playing field for legitimate businesses. They seek to ensure that unauthorised disposals are more financially risky and so a less attractive option for those tempted to ignore their environmental obligations and evade tax. The provisions therefore seek to realign the balance of risk so that the consequences of making unauthorised disposals outweigh the perceived benefit of evading tax.

Qualifying mixtures of materials (section 16)

I note that there have been discussions around the provisions in the Bill dealing with the tax rate that will apply to mixed loads (a mixture of qualifying and non-qualifying materials) and particularly of the 'small and incidental' test.

Section 16(1) sets out a series of requirements, all of which must be met in order for a mixed load to be eligible for the lower rate. As has been discussed during the evidence sessions, the first requirement is that there is only a small amount of non-qualifying material that is incidental: terms which are further explained at subsection (2). This wording is chosen to reflect the intention that the volume and weight of the non-qualifying material contained in a mixed load should be insignificant; its impact on the nature/composition of the load should also be insignificant and its presence is accidental and unavoidable rather than deliberate.

Moving to consider some of the other requirements that must also be satisfied, requirements 3 and 6 respectively provide that the non-qualifying material cannot have been deliberately mixed with qualifying material and arrangements cannot have been made in respect of a mixture of materials if their main purpose was to avoid tax. This means, for example, that the deliberate and strategic placement of qualifying material on top of some non-qualifying material (however small or incidental the amount of non-qualifying material) or the deliberate crushing or blending of non-qualifying rate material in order to disguise it within a load would result in the entire load being taxable at the standard rate, because that load would not have met all the requirements at section 16. In contrast, the requirements at section 16 allow for the possibility that a mixture comprising mainly qualifying material with fragments of non-qualifying material attached, which cannot be readily separated, may be eligible for the lower rate of tax.

The proposed approach to mixed loads is not intended to represent a significant divergence from the position under the current landfill tax regime but does seek to make the process as transparent and accessible as possible. Finance Act 1996 provides at section 42(2) that the lower rate applies to material consisting entirely of qualifying material or qualifying fines. However, section 63 then provides that Commissioners of HMRC may direct that material be treated as qualifying material if it would be "but for a small quantity of non-qualifying material." This direction power is then exercised within the Landfill Tax guidance (LFT1, paragraphs 7.3 and 7.4) and sets out relevant factors and a flowchart that a landfill site operator will need to consider in deciding whether to claim the lower rate for a mixed load. The conditions and factors set out in the direction include the weight and volume of non-qualifying material, its potential to cause harm,

whether it has been deliberately added and whether it could be reasonably separated from the qualifying material.

These tests, with which landfill site operators are currently working, form the basis for the requirements that we have set out on the face of Bill. This has also provided an opportunity to embed the treatment of mixed loads that consist entirely of fines into these provisions, with the aim of improving coherence and accessibility.

The Bill does take a new step (at section 16(3)) in providing for a regulation making power to define a “small and incidental” amount by reference to a prescribed percentage of non-qualifying materials. This power provides flexibility to respond to new issues and technological developments in the future and the ability to respond should there be a misuse of the principle surrounding mixed loads or changes of approach on this issue elsewhere in the UK.

Penalties (Part 5, Chapter 4)

When considering the penalties proposed in the Bill, I would ask the Committee to note that these penalties apply in addition to the duty to account for and pay tax on a taxable disposal.

Therefore, a person who is liable to a penalty of £300 under section 63 for failing to register for tax (as required by section 34), is also under a separate duty to make a tax return under section 38 and to pay tax under section 41, with penalties set out at Part 5 of the Tax Collection and Management Act 2016 for failing to do so.

I hope that the Committee finds this additional information useful. There are a number of aspects to this tax and dependencies between each of them which creates a complex picture. If it would be of benefit, officials could provide the Committee with a further technical briefing to provide further detail on areas of the Bill which are of particular interest.

Yours sincerely



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