

**The Committee Clerk**

Finance Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

2 February 2017

Emailed to: seneddfinance@assembly.wales

Dear Sir/Madam

**Consultation on the Landfill Disposals Tax (Wales) Bill (“The Bill”)**

**Additional comments following our attendance at the Finance Committee’s evidence session on 25<sup>th</sup> January 2017**

We were pleased to attend this session and to respond to the questions raised by the Finance Committee. Thank you for sharing the draft transcript of the session.

We have no specific corrections to the transcript but in reading the details of the points we discussed, our responses and the supplementary questions raised by committee members, we would like to expand upon our comments in the interests of better clarifying our view of the Bill and further helping the Finance Committee in its deliberations (see the appendix attached).

I trust this is acceptable but please contact Mike Trotman or me if this prompts any further queries.

Yours sincerely



Deloitte LLP

**Gareth Pritchard**

## Appendix

Paragraph	
[110]	<p>In response to the question at para [109] we commented that “<i>There is no provision for an unauthorised tip to be taxed unless it finds its way into a licensed landfill site.</i>”</p> <p>To clarify - we were describing the position as set out in the current UK landfill tax legislation here and not our understanding of the draft Bill.</p>
[116]	<p>This discussion was around the imposition of a penalty for failure to operate an approved water discounting method, and the question raised was whether it is appropriate for a penalty to be imposed for failing to claim a tax relief i.e. should there be a penalty for paying more tax than might be required?</p> <p>As we understand it this is neither the intention nor impact the penalty provisions in the Bill.</p> <p>Our reading of the legislation results in a penalty being due only in circumstances where a site operator fails to apply the water discount in the manner approved by the WRA i.e. where a discount is taken that is larger than is approved (i.e. less tax is paid). The legislation also provides for the WRA having the power to demand the underpaid tax by means of an assessment issued to the waste operator.</p>
[126]	<p>We were asked questions relating to ‘water discounting’.</p> <p>Existing UK landfill tax legislation currently allows a discount to be applied if the water’s presence is for a qualifying purpose and it is determined that the weight of the water in the waste material exceeds 25% of the total weight of the waste material. The draft Bill does not contain such a threshold.</p> <p>Our initial consultation response included an endorsement of the absence of this 25% threshold from the Bill. The Committee was interested to understand why we endorse the removal of a threshold for water discounting but support the inclusion of a threshold for the proportion of standard rated waste material that can be ignored in a mixed load (such that the reduced rate can be applied to the whole load).</p> <p>Clearly if it is the Welsh Government’s policy to apply the tax to water that is sent to landfill then having a minimum threshold for water discounting applications will achieve it, but this is not our understanding of the policy. In the interests of clarity – our position is as follows.</p> <p>Waste producers are generally able to accurately calculate the water content of waste material. As a result, if an operator or waste producer is inclined to calculate the water content of its waste material (despite the</p>

level) then in our view it should not be precluded from claiming a discount even if the water content is relatively low.

Given that techniques for analysing and testing of waste is equally capable of determining a water content level of 5% as it is of 75%, then it seems to us that deciding whether to invest in such analysis should be a commercial one on the part of the waste producer rather than an apparently arbitrary proportion set by legislation.

For example, if the benefit of applying the water discount where, say, the water content is 20% of the total weight of the material is so small that the cost of proving the level it is uneconomical the waste producer is unlikely to pursue the discount (the cost outweighs the benefit).

Contrastingly, where the water content of material is, say, 5% but the discount available is seen to be significant – possibly because a large volume of standard rated waste is being sent to landfill - then the waste producer may decide to provide the analysis in order to claim the discount. Equally, if the data to prove the level of water content is easily obtained (because it already exists) the cost to the operator of applying the discount is likely to be low and it should, in our view, be permissible to claim the discount.

In other words, the perceived value of a discount will effectively impose a commercially driven threshold below which waste producers will not seek it. The level of that threshold will vary according to the industry and the type of waste, but in all cases, the discount would only be approved if the WRA is provided with a detailed water analysis and adequate evidence to satisfy them of the level of water content and that its presence falls within those set out in paragraph 21(4) of the Bill.

The rationale for a water discount contrasts considerably to the rationale for having a “small and incidental” deminimis for amounts of standard rated waste in mixed loads. The water discount sets out to relieve tax where the volume of waste is inflated by water – and puts the onus on the operator for claiming the discount (i.e. the operator has a choice). The latter provisions seek to restrict tax leakage where taxable waste is mixed with lower rate waste. Clearly in this scenario it’s important to limit tax leakage – but by allowing “small and incidental” levels of standard rated waste in mixed loads with lower rated waste the compliance burden is alleviated (to a degree).