

HMRC in Denial Over EU Investigation

On 31 July 2013 the EU Commission announced a Phase II investigation into the Aggregates Levy the detail of which has yet to be made public. However, the UK Government were given an advance copy of the decision to allow them to check for any issues of confidentiality before publication.

On 16 August HMRC issued Business Brief [24/13](#) which acknowledged that an investigation had been opened. HMRC have so far refused to issue a copy of the full text of the decision but the Brief shows that all exemptions, with the exception of highway and railway building by-products, demolition materials and recycled aggregates, are to be investigated for State aid.

Business Brief 24/13 goes on to make a number of controversial claims;

1. "The Commission has not asked the Government to suspend the exemptions" even though EU law says clearly that it must. If true, then HMRC should have put the Commission's Decision in the public domain to substantiate it. It is quite misleading to say that "they see no reason to suspend the exemptions listed." This suggests that it is business as usual for quarry companies with exemptions which it most definitely is not.
2. "The Government remains confident that the evidence supports its position that there is no aid". However, in its recent discussions with the Commission, the Government had yet another opportunity to put forward any such evidence but obviously failed to do so or to convince the Commission of this. HMRC have now claimed on several occasions to have additional evidence which supported its position but failed to produce it. It is therefore difficult to understand what basis for the Government's "confidence" actually exists.
3. "The Commission has made explicit reference to the fact that the levy in its entirety is not in question". This claim is at complete odds with State aid law and simply reinforces the point that the Government should disclose what the Commission has actually said.
4. HMRC then admits; "If any reliefs or exemptions are found to be unlawful State aid there is a possibility that the Commission could require the UK Government to request businesses that have benefitted from those reliefs or exemptions to repay that aid." However, they then go on to say; "Whilst businesses that could be affected should take note of this, no further action is required of them at this stage." This is verging on irresponsible.

The British Aggregates Association is deeply concerned by HMRC's flagrant disregard for EU State aid law and by the potential risk posed to those companies which are being encouraged to continue with exemptions that are now subject to investigation. The BAA advises all companies who have now, or in the past, benefited from such exemptions to seek appropriate legal advice. European law is perfectly clear on the point of State aid which is subsequently deemed to be illegal in that all companies which have received such aid must be compelled to repay it, irrespective of whether this may cause them to go into liquidation.

British Aggregates Association director, Robert Durward.

"From John o'Groats to Lands End, and throughout Northern Ireland, we now have neighbouring quarries which look the same, have the same environmental footprint, use the same machinery and compete in the same market with identical products; yet some are legally exempt whilst others remain due to pay the Levy. The only safe outcome now for those companies with exemptions, or in the case of Northern Ireland a partial derogation [since withdrawn] is for the Levy to be declared illegal in the London Court of Appeal in October. This would mean that the ultimate remedy would be possible repayment of Levy paid rather than the inevitable liquidation of companies who had exemptions or derogations."

ENDS:

Notes for editors;

1. The British Aggregates Association is the trade body for independent UK quarry operators. It has over seventy member companies operating some three hundred sites.
2. Business Brief 24/13 <http://www.hmrc.gov.uk/briefs/excise-duty/brief2413.htm>
3. The BAA has written to the Treasury & Dept. for Business & Innovation requesting that the Levy be suspended with immediate effect. Copy attached.
4. The BAA appeal against the 2002 judgment by Justice Moses [as then was] will be heard in the Court of Appeal. Three days have been set aside for the hearing between 7 & 10 October 2013

Contacts;

BAA Executive Officer – Richard Bird

Tel./Fax: 01786 842483, Mobile: 07776 298347 rbird@british-aggregates.com

BAA Secretary – Peter Huxtable

Tel./Fax: 01433 639879, Mobile: 07711 492378 phuxtable@british-aggregates.com

BAA Director – Robert Durward 01555 663 444 rdurward@british-aggregates.com