

Suspension of certain aggregates levy exemptions, exclusions and reliefs

Thank you for expressing an interest in sharing your views on the measures to be taken to suspend certain aggregates levy exemptions, exclusions and reliefs that are currently the subject of a State aid investigation by the European Commission. The Government has taken the decision to implement these suspensory measures, not because it believes that the exemptions amount to State aid, but because it is obliged to do so under Article 108 (3) of the Functioning of the European Union.

An introduction to the levy can be found at <http://www.hmrc.gov.uk/aggregates-levy/index.htm>.

We would particularly welcome your answers to the questions set out in this document. Your responses to the questions below will help HM Treasury to make a well informed decision as to how best to discharge the obligation owed by the UK under Article 108(3) TFEU with regard to the suspension of certain exemptions, exclusions and reliefs.

If there are any issues this document does not cover, but which you consider to be important, please tell us about those too.

As already explained in Revenue & Customs Brief 31/13, you must send your response to us at aggregateslevy@hmtreasury.gsi.gov.uk. no later than 15 November 2013.

Background

From 1 April 2014 certain materials that are currently exempt from aggregates levy will become taxable when they are subjected to commercial exploitation. They are:

- material that consists wholly of the **spoil from any process by which coal, lignite, slate or shale has been separated** from other rock after being extracted or won with that other rock (section 17(3)(f)(i) Finance Act 2001);
- material consisting wholly of the **spoil, waste or other by-products**, resulting from the extraction or other separation from any quantity of aggregate **of any china clay or ball clay** (section 17(3)(e) Finance Act 2001);
- material that is wholly **the spoil from the separation of any of the industrial minerals** listed in section 18(3) of Finance Act 2001 from other rock with which the mineral was extracted or won (section 17(3)(f)(ii), 18(2)(b), 30(1)(b) Finance Act 2001);
- where extracted for use as aggregates and used as such:
 - material that is wholly or mainly **coal, lignite, slate or shale** (section 17(4)(a) Finance Act 2001);
 - material that is wholly or mainly **clay** (section 17(4)(f) Finance Act 2001);
 - **other industrial minerals**, namely; anhydrite; ball clay; barites; china clay; feldspar; fireclay; fluorspar; fuller's earth; gems and semi-precious stones; gypsum; any metal or the ore of any metal; muscovite; perlite; potash; pumice; rock phosphates; sodium chloride; talc and vermiculite (section 18(3) Finance Act 2001);
- where used as aggregate:
 - material that is mainly but not wholly **the spoil, waste or other by-product of any industrial combustion process or the smelting or refining of metal** (section 17(4)(c)(i) & (ii) Finance Act 2001).

Questions

1) Definition of “use / used as aggregate”

A number of the materials detailed above will only become taxable when they are extracted for use as aggregate and used as such. We are therefore considering including in the legislation a definition of use / used as aggregate, to apply specifically to those materials.

Adapting the definition of aggregate that the Commission set out at recital 8 of their letter of 31 July 2013, which opened the formal State aid investigation into the levy, we are considering the following definition for use / used as aggregate:

“use in the production of concrete, roadstone, asphalt or drainage courses, or for construction fill”.

1A) Is this definition sufficient?

1B) Are there any aggregate uses not captured by this definition?

1C) What are they?

1D) How should the proposed definition be amended to include them?

2) Evidence of use

Where the liability of a material depends on whether it is extracted for use as aggregate and put to such a use, businesses commercially exploiting such material will need to hold evidence of the use to which they / their customer put that material in order to support the liability applied to it.

2A) What documentation is already available that could be used as evidence to support the liability applied?

2B) If no such documentation already exists what form of new evidence would be easiest to use for those affected?

3) Commercial exploitation

Commercial exploitation is defined at section 19 of Finance Act 2001. For the purposes of the aggregates levy aggregate is exploited when it:

- (a) is removed from a site that is
 - i. its originating site,
 - ii. another site registered under the name of the same person as the originating site, or
 - iii. a site on which the intention to subject the aggregate to an exempt process was not met;
- (b) becomes subject to an agreement to supply it to any person;
- (c) is used for construction purposes; or
- (d) is mixed, otherwise than in permitted circumstances, with any material or substance other than water.

3A) Are any of the materials that you / your clients / your members deal in affected by arrangements that do not fall within (a) to (d) above?

3B) What are those arrangements?

3C) To which materials do those arrangements apply?

4) Transitional arrangements

When the aggregates levy was introduced, legislation contained at section 43 of Finance Act 2001 allowed for the adjustment of contracts so that:

- where an agreement to supply aggregate had been entered into before 1 April 2002, any levy payable from that date would be payable by the recipient of the aggregate; and
- where an agreement regarding sums payable for the use of land had been made before 1 April 2002, the cost of aggregates levy could be ignored in calculating the turnover of the business or price received for minerals extracted from the land.

These provisions enabled changes to be made to take account of the levy where suppliers' costs had increased as a result of its introduction.

4A) Are the same transitional arrangements required for the materials that will become taxable from 1 April 2014?

4B) If any other transitional arrangements are needed, what are they and why are they necessary?

5) Identifying levy paid as a result of the suspension of the exemptions

In the event that the outcome of the Commission investigation is confirmation that any or all of the exemptions being suspended are not State aids or are approvable State aids, and the Government is permitted to repay levy already collected, it will be necessary to identify those amounts. We would welcome views on how this could be achieved in a way that places the fewest administrative burdens on businesses.

5A) Would it be sufficient for businesses simply to make and retain separate records of these amounts in their business accounts?

5B) Alternatively, should this information be provided to HMRC, at the time the levy is paid, on an additional declaration form?

5C) If yes, should submission of the declarations be voluntary or obligatory?

5D) Do you have any other suggestions?

6) Impacts on businesses and the environment

We would welcome information from respondents to help us assess the impacts that the change in liability to aggregates levy for these materials.

Will the forthcoming change:

6A) result in any additional administrative burden for your/your clients'/your members' business(es)? If yes, please specify where possible what the extra burden would be.

6B) result in any additional financial burden for your/your clients'/your members' business(es)? If yes, please quantify where possible what the extra burden would be and in what areas that extra financial burden would occur.

6C) have any specific impacts on micro (employing up to 10 people) or small (employing up to 49 people) businesses? If so, please specify.

6D) involve any material alteration to the appearance of the landscape/townscape?

6E) disturb or enhance habitat or wildlife?

6F) affect the number of people exposed to noise or their levels of exposure?

6G) have significant impacts on regions or rural areas? If so, what are they?

7) Questions to assist with European Commission Investigation

We would also welcome your views on the questions below to help inform the European Commission's investigation

7A) Do you believe the levy will lead to a substantial increase in production costs for you/your clients'/ your members' business(es)? Please estimate what that would be and explain how you arrived at that estimate.

7B) Do you believe you/your clients'/your members' business(es) would experience a significant reduction in sales if they were to pass the additional costs of the levy on to their customers in full? Please estimate what that would be and explain how you arrived at that estimate.