



BAA Press Release

Press release Immediate 4th February 2014

Aggregates Levy - A Warning to Companies with full or partial exemptions

The British Aggregates Association (BAA) has obtained legal advice from Herbert Smith Freehills in respect of HM Treasury's repeated claims that it will not seek to recover state aid given to companies with exemptions pre April 2014. The BAA takes the view that HMT has adopted this position for the sole purpose of avoiding high profile protest from companies at risk of bankruptcy. If this is indeed the case it is both cynical and dangerous. It is up to individual companies to look after their own interests but they can only do so if they have the correct information.

A copy of the opinion is attached and the following notes have been added to give additional perspective. As you will see from this information, it is important that you enlist as much political support as possible to have the Levy scrapped altogether before it causes even more damage.

1. If the Phase II investigation finds that exemptions to the Aggregates Levy, such as aggregates from slate, shale and china clay, are illegal then certain actions will follow. The UK will be asked to collect payment of the illegal State aid from companies with exemptions. If the UK resists, as it has already stated it will, then the Commission will initiate proceedings against the UK in the European Court of Justice, CJEU. If the CJEU Decision is to require the UK to recover the aid, it will be followed up and cannot be ignored by the UK. Once an order has been made for the recovery of State aid, the Commission will refer a Member State to the CJEU if it does not comply. The decision is made public and the Commission routinely issues progress reports on the recovery of illegal State aid.
2. State aid is a very hot subject within the EU. For example, large German companies have been given a rebate on the cost of their electricity to avoid them relocating to countries outside of the EU where power is much cheaper. This is being challenged by other EU companies. The UK needs to give the builder of a new nuclear power station at Hinkley Point State aid but this is being opposed by Member States who have decided to abandon nuclear power, such as Germany. These issues are much bigger than the AGL and there is no prospect of the EU weakening its authority by allowing exempt UK aggregate producers to escape enforcement.
3. If a non-exempt complainant puts pressure on the Commission to ensure that the aid is recovered, to remove the advantage gained by an exempt competitor, then the Commission is likely to take an even tougher line. It is known that a number of aggrieved companies have already made representations to the EU so this remains a distinct possibility.

4. A number of smaller companies that received such aid may possibly be able to avoid having to repay the aid under the "de minimis" exception if the amounts are less than €100K per three year period for the period before 1 January 2007 and €200K per three year period for the period since 1 January 2007. This must be applied at group level and they must not have received any other form of aid or grant.

To conclude:

It remains the BAA's firm position that the best, and indeed the only sensible outcome now is for the UK to scrap the levy altogether. Strictly speaking, this would not resolve the UK government's breach of State aid law entirely but it does provide a way out for all concerned. The onus would move to the UK government to cure its transgression by repaying the companies that paid the Levy. On the face of it, this would expose the government to a liability somewhere in excess of £3 billion. However Treasury have already said that they would resist any such claims for repayment on the grounds that aggregate producers have 'passed on' the cost of the Levy to their customers and would be 'unduly enriched' if repaid. The British Aggregates Association disputes that the Levy has always been passed on although a number of companies, including majors, did put the levy on their invoices, something that we advised against.

It is now clear that ultimate power in this matter resides with the EU and not the UK. Operators who are concerned about the possibility of having to repay up to twelve years Levy are advised to seek expert legal advice without delay. They could of course also ask HMRC for a written undertaking, specific to their company, that back Levy will not be collected. The response will tell them all they need to know.

4th February 2014

ENDS

Attachment: The legal opinion from Herbert Smith Freehills. Download as [PDF](#)

Press Contacts:

BAA Director	Robert Durward	01555 663 444
	rdurward@british-aggregates.com	
BAA Executive Officer	Richard Bird	07776 298 347
	rbird@british-aggregates.com	
BAA Secretary	Peter Huxtable	07711 492 378
	phuxtable@british-aggregates.com	