

From *Construction News*. 23 March 2006

Legal challenge could see exempt industries paying back-dated charges **Six month wait for EU aggies tax ruling**

BY PAUL THOMPSON

QUARRIERS could have to wait a further six months before they hear whether a legal challenge against a tax on freshly-dug aggregate has been successful. Solicitors working for industry body the British Aggregates Association warned that the final judgement by the European Court of First Instance in Luxembourg on the aggregates levy may not be handed down until September.

Last week law firm Herbert Smith, working for the BAA, recommended that aggregate producers file precautionary claims against the Treasury for the repayment of aggies tax collected since its introduction in April 2002. But Craig Poncey, a partner at Herbert Smith, said the final judgement on the legality of the tax may not be available until the end of the summer.
He said: "These judges are specialists in European law and are used to hearing claims such as the BAA's. Normally we would expect a judgement within nine months but we just don't know for sure."

The BAA's bid to have the stone tax overturned centres on the European Commission's May 2002 decision to approve the tax under state aid rules. The BAA claims it breaches these rules by distorting competition and putting its members at a disadvantage. If the Court of First Instance finds for the association, the Treasury would have to rethink the levy system, said senior consultant Lode van den Hende of Herbert Smith. He added: "If the court finds in our favour then the Commission would have to alter its judgement on state aid. We don't think it could do that without amending the levy itself. That means it would have to be referred back to the UK Government for a total rethink."

Robert Durward, director at the BAA, claimed one avenue open to the Treasury would be to impose a new tax on stone but include previously exempt sectors, including slate, china clay, industrial minerals and sand for glass manufacture. This could leave operators previously exempt from the aggregates levy facing massive tax bills.

He said "If they replaced the aggregates levy with a straightforward tax that does not seek to protect specific industries, all those previously exempt would have to repay the full amount of state aid they had received, plus interest that has accrued".

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