



Law Society
of Scotland

Consultation response

Scottish Landfill Tax: further clarity and certainty

December 2021



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Environmental Law Sub-committee welcomes the opportunity to respond to the Scottish Government's consultation on *Scottish Landfill Tax: further clarity and certainty*¹. We have the following comments to put forward for consideration.

Consultation questions

Question 1: Do you agree that the proposed amendment provides greater certainty and clarity to taxpayers and their customers?

The proposed amendment is welcome to provide some clarity around the issues that have recently been the subject of dispute between several individual taxpayers and Revenue Scotland. However, the amendment does not offer clarity on all of the issues which have recently been disputed, only in relation to waste material disposed within a landfill cell.

It should be noted that:

- (1) there are a number of landfill sites (in Scotland) within which several different activities are carried out, including the landfilling of waste (such as material sorting etc). The statement in the 'Background' section of the consultation that "*all material entering a landfill site should be subject to the tax...*" is not helpful in that regard as, in relation to sites of that nature, it is fundamentally incorrect; and
- (2) the amendment does not provide any clarity in relation to the issues which have been disputed about the application of the lower rate of the tax and when that applies to certain materials used or disposed of within a landfill site.

¹ <https://consult.gov.scot/taxation-and-fiscal-sustainability/scottish-landfill-tax/>

It is feasible that there will still be scope for ambiguity in the way in which the proposals in the consultation are interpreted and applied by Revenue Scotland and the taxpayer and, as such, there is yet insufficient certainty and clarity.

Question 2: Is the definition of a “landfill cell” or impermeable layer” unclear or open to interpretation? Please specify, along with any suggestions that would provide greater clarity.

No comments.

Question 3: The amendment order provides that any use of material in a landfill cell is taxable unless specifically excluded in the Order. Is this new prescription unclear or open to interpretation? Please specify any issues, along with any suggestions that would provide greater clarity.

Given that there are some complexities around the way in which material is used on a landfill site for creating the drainage layer of the landfill cell and for infrastructure etc, it may be necessary to be more prescriptive within the amendment to the legislation than is currently the case.

The change proposed appears to be inconsistent with the current Revenue Scotland guidance (at SLfT3002). In that part of the guidance, there is a table of prescribed activities and the wording of Activity A, Column 3 in that table – which determines what is taxable – suggests that the use of material within the disposal area (landfill cell) for engineering purposes (rather than health or environmental purposes) is not taxable. On that basis, the guidance currently allows for a range of engineering activities within the disposal area (landfill cell) to be excluded from the charge to tax. The change proposed alters that position and, therefore, does expand the scope of what is taxable (contrary to what is expressed at the outset of the consultation document) by limiting the engineering activities which fall outside the scope of the tax to those listed in Colum 4 of the table (permanent cap or geological barrier). Clarification of this point is required urgently.

Question 4: Are any of the activities listed as excluded from prescription unclear or open to interpretation? Please specify any issues, along with any suggestions that would provide greater clarity.

No comments.

Question 5: Should any additional activities be prescribed or excluded from prescription? Please set out any proposals, along with an explanation as to why these activities should be prescribed or excluded.

No comments.

Question 6: Do you foresee any practical difficulties with the proposed changes? If so, what are they and how could they be overcome.

As commented on above, there is still scope for inconsistency with the existing Revenue Scotland guidance and that needs to be resolved. Further clarity within the amendment to address the concerns noted above would help to avoid any continued ambiguity.

Question 7: Do you have any information which could inform any final Business and Regulatory Impact Assessment?

No comments.

Question 8: Do you have any information which could inform any other impact assessments?

No comments.

Question 9: Please provide any further comments on the proposals set out in this consultation.

No comments.

For further information, please contact:

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