



# Landfill Disposals Tax Consultation Response

19<sup>th</sup> May 2015



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## **INTRODUCTION**

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales. The three fire and rescue authorities and the three national park authorities are associate members.
2. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.
3. The WLGA welcomes the opportunity to comment on the consultation on the tax that will replace Landfill Tax in Wales once this tax is devolved from April 2018 and to contribute to policy development in this area. We will respond to the detailed questions below but it is important that we set out our general position in respect to the new tax environment, and the importance of controlling resources close to communities, where this is best to do so.

### **WLGA's general position on the new tax environment**

4. An essential part of our vision is that local government should have maximum freedom and flexibility to control the resources needed to deliver services locally to communities. The tax raising powers which local government already possesses are a key feature of the resource landscape at the local level and are a key element in our vision for greater local control of resources. The WLGA would argue that in the new tax environment, local democratic responsibility for taxation remains a key feature. Just as there is recognition in the Welsh Government's proposals that the new devolved taxes should be brought together, there must equally be recognition of the link between nationally devolved taxes and their administration with the management and control of local taxation. Gerry Holtham's paper to the Institute of Welsh Affairs<sup>1</sup> recognised the strategic links between locally collected property taxes, newly devolved taxes and taxes that have the potential to be devolved.
5. The WLGA has welcomed invitations already made to participate in the Tax Advisory Group and our officers are contributing constructively in other fora. We believe that

there is a need for Local Government to have a close relationship with the WRA and a means for high level and meaningful interaction with the new body.

## **Devolution of Landfill Tax**

6. Landfill Tax has had a major impact in terms of the downward trend in the amount of waste being taken to landfill sites. As the amount of tax escalated over recent years, so the incentive grew (i) to encourage less waste in the first place and (ii) to find alternative, more sustainable forms of treating waste and extracting valuable resources. The tax has therefore made a significant contribution to the Welsh Government policy of moving *Towards Zero Waste*. Local authorities have responded positively to this policy and, with Welsh Government support, recycling levels have increased significantly and waste reduction messages (such as *Love Food, Hate Waste*) have been widely promoted. In addition, alternative treatment facilities are coming on stream including anaerobic digestion for food waste and energy from waste for residual waste.
7. The WLGA supports the Welsh Government's decision to replace Landfill Tax in Wales once it is devolved from April 2018 with the Landfill Disposals Tax (LDT). The absence of such a tax would undermine all the work that has been undertaken to date to introduce more sustainable, resource efficient systems. Also, while there inevitably will be a downward trend in terms of tax yield as landfill tonnages continue to decrease, it never the less still contributes towards the costs of public services. Since the Welsh Government's block grant will be reduced to reflect its devolution, it is important given the continuing impact of austerity measures on public services that resources are not further reduced by having no income from a landfill tax on devolution.
8. We also concur that final decisions on some aspects of the new tax can be made much closer to April 2018, in order to take account of developments in the economic situation within Wales both for taxpayers and for public services. Welsh Government and wider stakeholders within Wales will also be able to benefit by learning from the experiences of Scotland due to the earlier devolution of this tax to the Scottish Government from April 2015.

## RESPONSE TO THE CONSULTATION QUESTIONS

### **Question 1: How important is it that the Welsh Government maintains consistency with the UK Government and Scottish Government on Landfill Tax rates and why?**

9. Continuing with the current rates would provide stability for all stakeholders and would mean no cross-border impact of differing tax regimes, which may be desirable at the outset of the devolution of this tax. Even though the battle for greater fiscal devolution has been hard fought, it may be wise to guard against change for change's sake.
10. Should Welsh Government be minded to look at changing tax rates the risks are two-fold. Set them too low and waste will come into Wales, raising revenue but undermining the policy objective of reducing the amount of waste landfilled in Wales to protect the environment. Set them too high and waste will be transported to England and revenue will be lost. Care needs to be taken to ensure that we do not significantly reduce the yield from the tax in Wales. A key consideration for the WLGA is to ensure that the overall level of funding for public services is not reduced significantly.

### **Question 2: Are the current standard and lower tax rates set at an appropriate level for Wales?**

11. Landfill operators use some of the lower rate material to help with the ongoing development of their sites. An increase in the lower rate in Wales could lead to reduced amounts of this material coming on site (e.g. because it is transported to English landfill sites instead and/or incineration becomes a cheaper option and/or because business generating the waste are forced out of business by the higher costs). If landfill operators had to purchase similar materials for their site development works this would increase their costs and could undermine their viability.
12. For this reason, as in paras 9-10 above, there is merit in retaining consistency with rates in England. There can be attempts to pass off higher rate waste at the lower rate because of the significant cost differential. However, this is better dealt with through checks and enforcement than by changing rates.

**Question 3: Is there value in Welsh Government having the ability to set different lower rates of tax and why?**

13. There may be merit in having *the power* to set different lower rates of tax for different categories of qualifying material. This would provide a safeguard against any sudden changes of this nature by the UK or Scottish Governments which could otherwise put Wales at a disadvantage.

**Question 4: Are there any changes to the list of material qualifying for lower tax rate that should be considered and on what basis?**

14. The current list is established and generally understood in the industry (or subject to legal cases). Making changes would introduce unnecessary uncertainty at a time of change and could also lead to unintended consequences in terms of 'waste tourism'. It is better left as it is in the initial period and possibly reviewed once the new arrangements have bedded in.

**Question 5: What would be the practical implications of introducing a threshold to define a 'small quantity' of non-qualifying waste in a load of qualifying material?**

15. The figure quoted in the consultation document of 10% appears to be an existing 'rule of thumb' that operators already apply successfully. However, it would be worth contacting the (limited number of) operators in Wales to substantiate this position. Typically, a load that appears to infringe this threshold, with non-qualifying waste deliberately concealed, will be impounded by the site operator. The disposer is required either to take the load away or pay the higher rate - or else the instance is reported to NRW. The disposer would also have to demonstrate compliance before they are allowed to tip again.
16. If this existing system is working effectively then there would not appear to be much merit in making a change but it would be worth confirming the position with operators.

**Question 6: Would you support the introduction of Weight Loss on Ignition (LoI) test when Landfill Tax is devolved? Please explain your reasons.**

17. The LoI test is effective for testing fines (e.g. from MRF trommels). However, it is an expensive test that takes time to generate results and would not be suitable for use with much of the material that comes in skips to landfill sites.

18. Therefore we would support selective use but widespread application would not be applicable.

**Question 7: Are there any problems with the existing arrangements for defining the area in which a taxable disposal takes place and, if so, how might these be resolved?**

19. There is a need to have a clearly defined area within the overall landfill site within which taxable disposal take place. The site entrance weighbridge tends to be the most sensible location for this and for practical reasons the existing arrangements should not be changed.

**Question 8: In your view, are there any issues with the current arrangements for credit for landfill material permanently removed from a landfill site and, if so, how might these be addressed?**

20. At present there is limited removal of material from landfill sites so this is not a major issue. In the future, it is possible that interest could increase in 'mining' landfill sites to extract resources. However, this is very much subject to market forces. As supply of certain materials declines and their value increases, so the economic case for extracting these resources builds. Any such large scale recovery operations would, however, raise environmental issues that would need to be considered too.

**Question 9: What would be the practical implication of legislating on the basis that all material entering a landfill site (other than that which is specifically exempt) is subject to tax?**

21. Whilst such an approach has some attractions, the practical implication is likely to be that it will open up a fresh round of legal challenges over what is, and is not, on the exempt list (as opposed the current challenges which are over what is, and is not, on the taxable list). As a result it is felt that it would be better to retain the existing arrangements based on the prescribed list of taxable materials.

**Question 10: What activities would you expect to be exempt (not subject to tax) and why? and**

**Question 11: Do you have any other suggestions for how we might clarify the taxable and non-taxable activities on a landfill site and what would be the practical implications of these?**

22. There would be no need to specify exempt activities if the approach in para 21 is taken. It would also ensure consistency with the approach in England. Given the existing legal cases regarding what is, and is not, taxable it may be best to retain existing arrangements until such time as court cases resolve the issues.

**Question 12: Do you think that any of the current exemptions should be removed or modified?**

23. The current exemptions should remain in place to ensure consistency with England and avoid diverting waste.

**Question 13: Is there a case for removing or modifying the water discount relief?**

24. Water is used as a transport medium in some cases to move certain types of waste into landfill (e.g. pulverised fuel ash). It is also used, for example, by some street sweeping machines. In such instances it is the most effective and efficient way of dealing with the waste and therefore relief is appropriate. Likewise, rainfall on waste adds to the weight and volume but some allowance for this is sensible.
25. There are issues with leachate though that are recognised and therefore there might be a case for further investigation and clarification on the issue of when water relief should – and possibly should not - be applied.

**Question 14: Do you think there is a case for introducing any new exemptions or reliefs?**

26. No. Again for reasons of consistency with England there is value in retaining the same exemptions and reliefs (but perhaps undertaking periodic reviews jointly with England).

**Question 15: What would be the practical implications of placing an obligation on landfill site operators to use a weighbridge where one is functional and available on the landfill site or within close proximity of the site, with a corresponding penalty for failure to do so?**

27. On the face of it this seems a sensible and reasonable idea. One potential practical implication could be that some waste carriers will choose to use sites where there is no weighbridge if they believe the possibility of under-declaring is felt to be greater at certain sites. That would undermine the attempt to create level playing field.

**Question 16: What would be the practical implications of extending the definition of landfill sites to include illegal deposits of waste within the scope of the tax?**

28. The main practical issues associated with this proposal would be in relation to enforcement. Illegal waste disposal is difficult to control by its very nature and obtaining hard evidence to prove who is responsible is not always easy (although some councils have successfully prosecuted offenders, for example using CCTV evidence). The costs of enforcement would need to be weighed against the likely tax income and, crucially, local authorities (and NRW) would need to be resourced to carry out monitoring and enforcement activity.

**Question 17: Are there any issues with the current penalty regime and, if so, how might they be addressed?**

29. No major issues.

**Question 18: Is there a need for increased compliance activity on the ground, rather than desk-based?**

30. Yes – only when there is visible activity is there a deterrent effect. Moreover, 'on the ground' work can help to identify *causes* of recurring problems and suggest preventative measures instead of simply and repeatedly dealing with the consequences after the event.

**Question 19: Are there any further actions the Welsh Government might take to use its new tax powers to improve compliance and enforcement and minimise the impact of Landfill Disposal Tax evasion?**

31. The measures proposed look sensible. Given their 'on the ground' presence and experience of local tax collection, Welsh Government may want to consider resourcing local authorities to assist with local enforcement.

**Question 20: In your view, is there evidence of tax avoidance within the existing Landfill Tax, and what is the nature of this?**

32. Yes. Local authorities and NRW frequently have to deal with instances of fly tipping of waste which, if taken to landfill, would have incurred Landfill Tax. Similarly there have been incidences where piles of materials at recycling facilities have caught fire, sometimes in suspicious circumstances. If this material was contaminated and not fit for recycling then it might (in the absence of other options) have had to be sent for landfill, which would have incurred Landfill Tax. Illegal waste sites have also been known to exist (e.g. where unofficial tipping has been allowed by landowners).

**Question 21: Would you support aligning the tax return period with the financial year?**

33. Alignment with financial year has some obvious attractions in terms of consistency of financial reporting periods. Local authorities are already able to do this by requesting a form from HMRC each year and similar provision should continue to apply. The situation may not be as straightforward, however, for some private sector operators if they work on a January to December financial year.

**Question 22: What would be the practical implications of making it a requirement that European Waste Catalogue Codes are used in completion of the tax return?**

34. Operators already report tonnages handled using the Catalogue codes so this should not be an additional burden. However, the codes may not align in a simple way (e.g. with higher and lower rate Landfill Tax rates) in terms of completing tax returns and views of operators need to be taken into consideration. One option to consider would be for returns completed using the European Waste Catalogue Codes (e.g. weighbridge sheets) simply to be attached to tax returns. As a guiding principle, administrative burdens should be kept to a minimum, however.

**Question 23: How might the Welsh Government simplify and modernise the filing of tax returns including improving electronic and online support?**

35. Introduction of electronic forms would be beneficial but, given the small number of operators and the declining tonnages, the costs of developing an online version would probably outweigh any additional benefit.

**Question 24: Should bad debt relief be offered and, if so, in what circumstances is it appropriate?**

36. Bad debt relief should be retained. There may be merit in tightening up on the conditions where this applies, though, and the experience of doing this in Scotland should be monitored before making a decision.

**Question 25: Have you any comments on the operation of the current internal reviews and appeals provisions in a Landfill Tax context, including in particular the people eligible to seek a review or appeal?**

37. WLGA agrees with Welsh Government that taking steps to avoid disputes arising in the first place should be the prime focus. Should a dispute arise, however, only the person who submitted the documentation should be eligible to appeal and this should then be subject to an independent review. Procedures need to be kept as simple as possible.

**Question 26: In your view, are there any exceptional circumstances in which taxpayers might be able to postpone payment of Landfill Disposal Tax until the conclusion of their appeal?**

38. Yes. If the appeal is over payment at the lower rate of tax and this payment is required upfront, the risk that a subsequent decision might force the higher rate to be paid would be too great. Operators would have to charge customers at the higher rate to protect themselves against such a risk. If they continued collecting only the lower rate of tax, such a decision could drive them out of business.

**Question 27: Should Welsh Government allocate a proportion of Landfill Disposals Tax to enhance the well-being of communities?**

39. Whilst the Landfill Communities Fund has supported a range of good projects in communities over the years, the declining revenue expected from the tax over coming years will mean that this will be a dwindling fund. Since each fund requires its own administration, with associated costs, having a multitude of small funds is not a cost effective approach.
40. One option would be for a proportion of the revenue raised to be used to support waste awareness work by local authorities. There is already an established mechanism for supporting local authorities with waste awareness work in the form of Waste Awareness Wales so there would be no need to establish a new body to oversee this.
41. Otherwise, it would seem more sensible for the revenue raised to contribute to strategic funding within Welsh Government to protect public services to communities.

**Question 28: If the Welsh Government allocates a proportion of Landfill Disposals Tax revenue to enhance community well-being, which of the following activities should benefit from funding:**

- **supporting compliance and enforcement and minimising the impact of waste crime**
- **supporting waste minimisation and the diversion of waste from landfill**
- **biodiversity initiatives and wider environmental improvements**
- **tackling poverty and deprivation in communities**
- **other**

42. If the response to question 27 regarding Waste Awareness Wales is accepted then this would fit best under the 'waste minimisation and diversion from landfill' heading (or if the suggestion of revenue being used to support strategic funding is adopted, none of these would apply in a direct sense). The enforcement option would seem worthy of consideration if the claimed return of £3.60 to £5.50 for every £1 spent on enforcement is correct. This would have the potential to increase the amount of revenue raised overall in protection of services.

**Question 29: Do you have any thoughts on the possible administrative model?**

43. Again, if the response to question 27 is accepted then this would be administered via the existing Waste Awareness Wales operation. (Alternatively, if the funds simply go to

support strategic funding of public services within Welsh Government then this would not be an issue).

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**For further information please contact:**

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