

Aggregates Levy: Proposals on the treatment of aggregate removed during construction works

Response by the Chartered Institute of Taxation

1 Executive Summary

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.
- 1.2 Although much of the consultation is outside of our technical expertise, we have answered questions where we have received feedback from members with appropriate experience.
- 1.3 We would like the position to be made clear for taxpayers in respect of the on-site use of ‘discovery aggregate’ as opposed to ‘winning of aggregate’ – see para 4.2.
- 1.4 We raise an example where exempt aggregate could be introduced into the market – see para 4.10.
- 1.5 We consider the proposed new exemption to look like a common-sense measure and will bring utility works into parity with highways and railways – see para 4.20.

2 About us

- 2.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 2.2 The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

- 2.3 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.
- 2.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

3 Introduction

- 3.1 We welcome the opportunity to respond to the HM Revenue & Customs consultation on Aggregates Levy: 'Proposals on the treatment of aggregate removed during construction works'.
- 3.2 Aggregates Levy was introduced in 2002, as an environmental tax on commercially exploited fresh aggregate (ie rock, sand and gravel), including aggregate dug from the ground, dredged from the sea in UK waters or imported. The levy rate has been £2.00 per tonne since 2009.
- 3.3 Following the conclusion of long-standing litigation in February 2019, HM Government announced a comprehensive review of aggregates levy at Spring Statement 2019; an [Aggregates Levy Review Working Group](#) was formed from sector experts from industry and relevant organisations, who met throughout 2019, thereafter HM Treasury's [review outcome and next steps report](#) was published in July 2020.
- 3.4 Our stated objectives for the tax system include:
- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
 - Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
 - Greater certainty, so businesses and individuals can plan ahead with confidence.
 - A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
 - Responsive and competent tax administration, with a minimum of bureaucracy.

4 Consultation Questions

4.1 Question 1:

- a) **Do you think the proposed change to the exclusion for aggregate returned to the land at the site where it was won will clarify the taxable status of borrow pit aggregate on construction sites?**

- 4.2 An example of where the proposed changes may not be effective is the situation where aggregate is discovered on the site of a larger development during the works on that site, and then used as part of the site development. Various parts of the UK are rich in aggregate material that may be difficult to avoid in any excavation (eg the South Downs and underground works beneath London) and might then be put to use on the development site rather than create the environmental damage of removing it off site. In these cases,

this 'discovery aggregate' is unlikely to be used of a purpose connected with the 'winning of aggregate' but may be returned to the land unmixed. Under the proposed change, it seems that this kind of aggregate would be taxable because its use is not connected with the winning of the aggregate, so the position should be made clear to taxpayers.

4.3 **b) Is there a better way to achieve the policy intention?**

4.4 As above for question 4(a).

4.5 **Question 2: Are you aware of any circumstances when the exclusion for aggregate returned to the land at the site where it was won applies to something which has not been mentioned above, and which may be affected by the proposed change?**

4.6 This question is outside of our technical expertise.

4.7 **Question 3:**

a) **Do you have any comments on the continuing need for the farming and forestry exclusion?**

b) **Are there similar uses of aggregate which are unrelated to farming and forestry which should also benefit from an exclusion?**

4.8 This question is outside of our technical expertise.

4.9 **Question 4: Do you think the legislation setting out the highways exemption correctly reflects the intention to exempt only material that arises unavoidably along the line of the highway? If not, please explain why.**

4.10 Although we presume that aggregate discovered during the highway development (after planning permission is granted) and used away from the development site would be exempt from AGL, we would like this point made clear.

Unlike the case above where the aggregate is 'excluded' from AGL and becomes taxable when it is commercially exploited by mixing it with something other than water or using it for construction purposes, aggregate removed from the line of a highway (or railways, or foundations, or the newly proposed exemption for utility pipes) is exempt from AGL even where it is exploited – there is no requirement that it is used in the development in some way here. This being the case, then the quarry industry may make the same criticism here as previously – that this will introduce exempt aggregate into the market.

4.11 **Question 5: Is there any more HMRC could do to make it clear how the highways exemption applies in practice? Please give details.**

4.12 This question is outside of our technical expertise.

4.13 **Question 6: Do you think the legislation setting out the railways, tramways and monorails exemption correctly reflects the intention to exempt only material that arises unavoidably along the line of the railway, tramway or monorail? If not, please explain why.**

4.14 This question is outside of our technical expertise.

4.15 **Question 7: Is there any more HMRC could do to make it clear how the railways, tramways and monorails exemption applies in practice? Please give details.**

4.16 This question is outside of our technical expertise.

4.17 **Question 8: Are you aware of any problems with the exemption for aggregate removed for laying foundations pipes and cables for a building? If so, please explain what they are and, if possible, how you think they could be resolved.**

4.18 This question is outside of our technical expertise.

4.19 **Question 9: If you replied to the 2016 consultation, please tell us if your views on a general exemption for aggregate necessarily removed when laying all underground utility pipes are the same, or if there is anything different or new you wish to add. Alternatively, if you did not reply to the 2016 consultation, please comment on the proposed new exemption if you would like to.**

4.20 The CIOT did not respond to the 2016 consultation so we respond to the latter question. We consider the proposed new exemption to look like a common-sense measure and will bring utility works into parity with highways and railways.

Determining the extent of aggregate which is removed from the pipeline works and is eligible for exemption, compared to what taxable aggregate is removed from borrow pits or from locations outside the line of the pipeline (ie, removal being non-essential for the pipeline works) would be, in our opinion, no more difficult here than for other exemptions.

4.21 **Question 10: Can you provide any evidence to quantify the volumes of material that would be exempted under the proposal, and how much of it would be in competition with other aggregate?**

4.22 This question is outside of our technical expertise.

4.23 **Question 11: Are you aware of any activity currently exempted under the street works exemption which would not be covered under a new exemption for aggregate unavoidably removed for the purpose of laying underground utility pipes?**

4.24 This question is outside of our technical expertise.

4.25 **Question 12: Please tell us if there are any other types of construction not covered in this consultation for which incidental by-product aggregate is not currently exempt from the levy, and which you believe should be exempt. Please give as much detail as possible.**

4.26 This question is outside of our technical expertise.

4.27 **Question 13: Do you have any comments on the assessment of impacts in Section 3?**

4.28 This question is outside of our technical expertise.

5 Acknowledgement of submission

5.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

16 June 2021

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