



Aggregates levy: suspension of exemptions

Who is likely to be affected?

Businesses which commercially exploit:

- coal, lignite, slate or shale, or the spoil from the separation of these materials from other rock;
- clay;
- certain industrial minerals, namely: anhydrite; ball clay; barites; china clay; feldspar; fireclay; fluorspar; fuller's earth; gems and semi-precious stones; gypsum; any metal or the ore of any metal; muscovite; perlite; potash; pumice; rock phosphates; sodium chloride; talc and vermiculite;
- the spoil, waste or other by-products from the extraction or separation of the industrial minerals set out in the previous bullet from other rock; and
- the spoil, waste or by-products from industrial combustion or the smelting or refining of metal.

General description of the measure

The measure will suspend those exemptions, exclusions and reliefs from the aggregates levy which are the subject of a State aid investigation by the European Commission.

Policy objective

This measure fulfils the Government's obligation under European law to suspend the application of those elements of the aggregates levy which are the subject of a formal Commission investigation.

Background to the measure

On 7 March 2012 the European General Court annulled a 2002 decision by the European Commission not to raise objections against the aggregates levy. As a result of that judgment, the Commission carried out a preliminary assessment of the levy in order to determine whether to raise objections against the tax on the grounds that it potentially gave rise to State aid. On 31 July 2013 the Commission notified its decision to open a formal State aid investigation which would examine whether certain exemptions, exclusions and reliefs ('the exemptions') from the levy are in line with the logic and nature of the tax.

The Government is strongly of the view that the exemptions in question do not give rise to State aid, and is providing information to the Commission to support that view as part of the formal investigation process. However, while this process continues, the Government is obliged to suspend the exemptions in question under Article 108(3) of the Treaty on the Functioning of the European Union.

Revenue & Customs Brief 31/13, published on 11 October 2013, invited anyone who wished to comment on the suspension before the publication of the draft legislation to register their interest. All those that registered an interest were sent questions with a deadline of 15 November 2013 for responses. Officials from HM Treasury and HM Revenue & Customs (HMRC) also held a number of meetings with interested businesses, their professional advisers and industry representative bodies.

Detailed proposal

Operative date

The measure will have effect on and after 1 April 2014.

Current law

Finance Act 2001 (the Act) (sections 16 to 48 and schedules 4 to 10) contains the primary legislation for the aggregates levy:

- section 17 defines aggregate and taxable aggregate and exempts materials that constitute rock, sand or gravel in geological terms but are not extracted for use as aggregate;
- section 18 deals with exempt processes and excludes from the levy a wide range of industrial minerals, none of which are quarried or mined in the UK for use as aggregate;
- section 19 defines commercial exploitation;
- section 22 determines who is responsible for the exploitation of aggregate;
- section 24 requires any person who carries out taxable activities and is not exempt from registration to be registered for the purposes of aggregates levy; and enables HMRC to make provision, through regulations, for certain persons to be exempt from the requirement to register; and
- section 30 empowers HMRC to make regulations providing for tax credits to be claimed in certain circumstances, including where levy has already been accounted for on aggregate that is subjected to an exempt process, including the separation of that aggregate from the industrial minerals listed in section 18 of the Act.

The Aggregates Levy (Registration and Miscellaneous Provisions) Regulations 2001 (the 2001 Regulations) deal with the requirements to register for aggregates levy. Regulation 3 deals with exemption from registration.

Proposed revisions

Legislation will be introduced in Finance Bill 2014 to amend the Act to make the following materials taxable:

- material that consists wholly of the spoil from any process by which coal, lignite, slate or shale has been separated from other rock after being extracted or won with that other rock;
- material consisting wholly of the spoil, waste or other by-products resulting from the extraction or other separation from any quantity of aggregate of any china clay or ball clay;
- material that is wholly the spoil from the separation of any of the industrial minerals listed in section 18(3) of the Act from other rock with which the mineral was extracted or won;
- material that is wholly or mainly clay, coal, lignite, slate or shale;
- other industrial minerals, namely; anhydrite; ball clay; barites; china clay; feldspar; fireclay; fluorspar; fuller's earth; gems and semi-precious stones; gypsum; any metal or the ore of any metal; muscovite; perlite; potash; pumice; rock phosphates; sodium chloride; talc and vermiculite; and
- material that is mainly but not wholly the spoil, waste or other by-product of any industrial combustion process or the smelting or refining of metal.

The production of ceramic construction products from clay or shale and the production of plaster or plasterboard from gypsum will become exempt processes.

The following will not be subject to commercial exploitation where they are not for use for construction purposes:

- material that is wholly or mainly clay, coal, lignite, slate or shale;
- other industrial minerals, namely; anhydrite; ball clay; barites; china clay; feldspar; fireclay; fluorspar; fuller's earth; gems and semi-precious stones; gypsum; any metal or the ore of any metal; muscovite; perlite; potash; pumice; rock phosphates; sodium chloride; talc and vermiculite; and
- material that is mainly but not wholly the spoil, waste or other by-product of any industrial combustion process or the smelting or refining of metal.

This legislation will provide for secondary legislation to restore any suspended exemption and for the restoration to take effect earlier than the date on which the secondary legislation is made. This will mean that tax paid as a result of the suspension of an exemption can be repaid to the person who accounted for it, following the conclusion of the Commission's investigation, should the terms of the Commission's final decision allow. HMRC would need to be satisfied that the taxpayer would not be unjustly enriched as a result of receiving the repayment. Businesses may therefore wish to keep records to demonstrate that they would not gain financially from this repayment; for example, by including a commitment in contracts to repay any amounts charged to their customers to cover all or part of the cost of the levy in the event that the taxpayer is repaid the tax.

The Aggregates Levy (Registration and Miscellaneous Provisions) (Amendment) Regulations 2014 will amend the 2001 Regulations so that anyone commercially exploiting material that becomes taxable from 1 April 2014 will be required to register for the levy.

Summary of impacts

Exchequer impact (£m)	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
	-	+ 15	nil	nil	nil	nil
	The Office for Budget Responsibility has included these numbers in its forecast.					
Economic impact	The measure is not expected to have any significant economic impacts.					
Impact on individuals and households	There is no impact on individuals or households because the changes affect businesses which commercially exploit aggregate.					
Equalities impacts	The changes are not expected to have any effect on any equalities group.					
Impact on business including civil society organisations	There is expected to be a small impact on approximately 200 businesses as a result of this measure. Businesses exploiting materials affected by these changes will have a small increase in administrative burden through registering and accounting for the tax and extra record-keeping and may incur a significant financial burden if the cost of the levy cannot be passed on fully to their customers. The measure is expected to have no impact on civil society organisations.					
Operational impact (£m) (HMRC or other)	The additional costs for HMRC in implementing this change are expected to be negligible.					

Other impacts	<p><u>Rural proofing</u>: reduced demand for waste materials for aggregate use from quarries may increase spoil heaps. This will apply particularly to south west England where there are a large number of china clay and ball clay quarries; and to north west Wales, where there are a large number of slate mines. This could impact slightly on wildlife and habitat in those areas.</p> <p><u>Small and micro business assessment</u>: the impact on small and micro sized firms has been considered. The majority of businesses affected will be small or micro businesses – quarries are quite often family-run businesses – although the impact will be small. Administration changes will also be felt more by small and micro businesses.</p> <p>Other impacts have been considered and none have been identified.</p>
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Monitoring and evaluation

Compliance with this measure will be monitored and reviewed as part of HMRC's normal assurance process.

Further advice

If you have any questions about this measure, please contact the Environmental Taxes Unit of Expertise on 03000 557496 (email: environmentaltaxesuofe@hmrc.gsi.gov.uk).

Declaration

Nicky Morgan MP, Economic Secretary to the Treasury, has read this Tax Information and Impact Note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.

1 Aggregates levy: removal of certain exemptions

- (1) FA 2001 is amended as follows.
- (2) Section 17 (meaning of “aggregate” and “taxable aggregate”) is amended as follows.
- (3) In subsection (3) – 5
 - (a) after paragraph (da) insert –
 - “(db) it consists wholly of the spoil or waste from, or other by-products of –
 - (i) any industrial combustion process, or
 - (ii) the smelting or refining of metal;”, and 10
 - (b) omit paragraphs (e) and (f).
- (4) In subsection (4), omit –
 - (a) paragraphs (a) and (c), and
 - (b) in paragraph (f), “clay”.
- (5) Section 18 (exempt processes) is amended as follows. 15
- (6) In subsection (1) –
 - (a) in paragraph (a), for the words from “references” to “but” substitute “references to –
 - (i) the spoil, waste, off-cuts and other by-products resulting from the application of any exempt process to any aggregate, and 20
 - (ii) any relevant substance extracted or otherwise separated as a result of the application of any exempt process within subsection (2)(b) to any aggregate; but”, and
 - (b) in paragraph (b), for “such” substitute “exempt”.
- (7) In subsection (2), after paragraph (c) insert – 25
 - “(d) any process for the production of ceramic construction products from clay or shale;
 - (e) any process for the production of plaster or plasterboard from gypsum.”
- (8) Section 19 (commercial exploitation) is amended as follows. 30
- (9) In subsection (1), after “aggregate” insert “not falling within subsection (1B)”.
- (10) After that subsection insert –
 - “(1A) For the purposes of this Part a quantity of aggregate falling within subsection (1B) is subjected to exploitation if, and only if –
 - (a) it is removed from a site falling within subsection (2) in a case where the person removing it intends that it should be used (by any person) for construction purposes; 35

- (b) it becomes subject to an agreement to supply it to a person who intends that it should be used (by any person) for construction purposes;
- (c) it is used for construction purposes; or
- (d) it is mixed, otherwise than in permitted circumstances, with any material other than water for the purpose of its use for construction purposes. 5
- (1B) A quantity of aggregate falls within this subsection if –
- (a) it consists wholly of a relevant substance listed in section 18(3) which results from the application to any aggregate of an exempt process within section 18(2)(b); 10
- (b) it consists mainly of the spoil or waste from, or other by-products of –
- (i) any industrial combustion process, or
- (ii) the smelting or refining of metal; or 15
- (c) it consists wholly or mainly of clay, coal, lignite, slate or shale.”
- (11) In section 22 (responsibility for exploitation of aggregate), in subsection (1) for paragraphs (c) and (d) substitute –
- “(c) in the case of the exploitation of a quantity of aggregate not falling within section 19(1B) by its being subjected, at a time when it is not on its originating site or a connected site, to any agreement, the person agreeing to supply it; 20
- (ca) in the case of the exploitation of a quantity of aggregate falling within section 19(1B) by its being subjected, at a time when it is not on its originating site or a connected site, to any agreement, the person agreeing to supply it and the person to whom it is agreed to be supplied; 25
- (cb) in the case of the exploitation of a quantity of aggregate by its being used, at a time when it is not on its originating site or a connected site, for construction purposes, the person using it for construction purposes; 30
- (cc) in the case of the exploitation of a quantity of aggregate not falling within section 19(1B) by its being subjected, at a time when it is on its originating site or a connected site, to any agreement, the person mentioned in paragraph (c) and (if different) the operator of that site; 35
- (cd) in the case of the exploitation of a quantity of aggregate falling within section 19(1B) by its being subjected, at a time when it is on its originating site or a connected site, to any agreement, the persons mentioned in paragraph (ca) and (if different) the operator of that site; 40
- (ce) in the case of the exploitation of a quantity of aggregate by its being used, at a time when it is on its originating site or a connected site, for construction purposes, the person mentioned in paragraph (cb) and (if different) the operator of that site;” 45
- (12) The amendments made by subsections (1) to (11) are treated as having come into force on 1 April 2014.

2 Aggregates levy: power to restore exemptions

- (1) The Treasury may by order provide that Part 2 of the Finance Act 2001 (the aggregates levy) is to have effect subject to such amendments as the Treasury consider necessary to secure that any of the exemptions that are removed as a result of the amendments made by section 1 is to any extent restored. 5
- (2) An order under this section—
 - (a) may provide for the restoration of an exemption to have effect in relation to commercial exploitation to which a quantity of aggregate is subjected on or after a day which is earlier than the day on which the order is made; 10
 - (b) may make such supplementary, incidental, consequential or transitional provision as the Treasury think fit.
- (3) An order under this section is to be made by statutory instrument.
- (4) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of the House of Commons. 15

EXPLANATORY NOTE

AGGREGATES LEVY – REMOVAL OF CERTAIN EXEMPTIONS

SUMMARY

1. This clause suspends the exemptions, exclusions and reliefs ('exemptions') from the aggregates levy which are subject to the European Commission's State aid investigation, from 1 April 2014.

DETAILS OF THE CLAUSE

2. Subsection (3) inserts a new sub-paragraph into section 17(3) of the Finance Act 2001 ('the Act') to provide that aggregate is exempt if it is made up entirely of the by-products from either an industrial combustion process or the smelting or refining of metal. It also repeals the exemptions where aggregate consists wholly of:

- by-products (excluding the overburden) from the extraction or other separation from a quantity of aggregate of any china clay or ball clay; and
- the spoil from a process by which coal, lignite, slate, shale or any of the substances listed in section 18(3) of the Act has been separated from other rock after having been extracted from that rock.

3. Subsection (4) amends section 17(4) of the Act to omit the exemption for coal, lignite, slate, shale, clay and to make a consequential amendment relating to the removal of the exemption for the by-products from an industrial combustion process and the smelting or refining of metal.

4. Subsection (6) amends section 18(1) of the Act to ensure substances listed in section 18(3) are brought into the definition of aggregate in Part 2 of the Act.

5. Subsection (7) adds two new exempt processes to section 18(2) of the Act relating to the production of clay ceramic construction products and of gypsum plaster or plasterboard.

6. Subsections (9) and (10) amend the definition of commercial exploitation in section 19 of the Act. Subsection (10) adds two new sections 19(1A) and (1B). The first defines what is meant by commercial exploitation and the second applies this definition to certain specified materials and processes being brought into tax by this clause. Subsection (9) disapplies the existing definition of commercial exploitation set out in section 19 of the Act to these materials.

7. Subsection (11) amends section 22 of the Act to ensure that anyone to whom the materials specified in section 19(1B) are or are to be supplied becomes responsible for their

commercial exploitation where that person intended that they be used for construction purposes.

8. Subsection (12) sets out the commencement provisions for the clause.

BACKGROUND NOTE

9. Aggregates levy is a tax on the commercial exploitation of rock, sand and gravel in the UK. It was introduced on 1 April 2002.

10. On 7 March 2012 the European General Court annulled a 2002 decision by the European Commission not to raise objections against the aggregates levy. As a result of that judgment, the Commission carried out a preliminary assessment of the levy in order to determine whether to raise objections against the tax on the grounds that it potentially gave rise to State aid. On 31 July 2013 the Commission notified its decision to open a formal State aid investigation which would examine whether certain exemptions from the levy are in line with the logic and nature of the tax.

11. As part of the formal investigation process, the government is providing information to the Commission to support its view that the exemptions are not State aid. However, while this process continues, the government is obliged to suspend the exemptions in question under Article 108(3) of the Treaty on the Functioning of the European Union.

12. Revenue & Customs Brief 31/13, published on 11 October 2013, invited anyone who wished to comment on the suspension before the publication of the draft legislation to register their interest. All those that registered an interest were sent questions with a deadline of 15 November 2013 for responses. Officials from HM Treasury and HM Revenue and Customs also held a number of meetings with interested businesses, their professional advisers and industry representative bodies. The legislation takes account of the views received.

13. If you have any questions about this change please contact the Environmental Taxes Unit of Expertise on 03000 557496 (email: environmentaltaxesuofe@hmrc.gsi.gov.uk). If you have any comments on the legislation, please contact Cathy Smith on 03000 585949 (email: Cathy.smith2@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

AGGREGATES LEVY – POWER TO RESTORE EXEMPTIONS

SUMMARY

1. This clause provides for secondary legislation to be introduced to enable the Treasury to restore certain exemptions, exclusions and reliefs ('exemptions') from the aggregates levy which are being suspended from 1 April 2014 under a separate clause in the Bill. It provides that this restoration can be introduced with effect from a date earlier than the secondary legislation is made.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that the Treasury may introduce an Order to restore any of the exemptions removed by the clause in the Bill dealing with the removal of certain aggregates levy exemptions.

3. Subsection (2) provides that any restoration of an exemption introduced under the Order may apply in relation to commercial exploitation of aggregates taking place on a date earlier than the Order is made. It also provides that the Order may include transitional provisions as the Treasury deem fit.

4. Subsection (4) provides that any Order made under this clause will be subject to the negative procedure of the House of Commons.

BACKGROUND NOTE

5. Aggregates levy is a tax on the commercial exploitation of rock, sand and gravel in the UK. It was introduced on 1 April 2002.

6. On 7 March 2012 the European General Court annulled a 2002 decision by the European Commission not to raise objections against the aggregates levy. As a result of that judgment, the Commission carried out a preliminary assessment of the levy in order to determine whether to raise objections against the tax on the grounds that it potentially gave rise to State aid. On 31 July 2013 the Commission notified its decision to open a formal State aid investigation which would examine whether certain exemptions from the levy are in line with the logic and nature of the tax.

7. As part of the formal investigation process, the government is providing information to the Commission to support its view that the exemptions are not State aid. However, while this process continues, the government is obliged to suspend the exemptions in question under Article 108(3) of the Treaty on the Functioning of the European Union.

8. This legislation provides for secondary legislation to restore any suspended exemption and for this restoration to take effect earlier than the date the secondary legislation is made. This will mean that tax paid as a result of the suspension of an exemption can be repaid to the person who accounted for it following the conclusion of the Commission's investigation, should the terms of the Commission's final decision allow. HM Revenue and Customs would need to be satisfied that the taxpayer would not be unjustly enriched as a result of receiving the repayment. Businesses may therefore decide to keep records to demonstrate that they would not gain financially from this repayment; for example, by including a commitment in contracts to repay any amounts charged to their customers to cover all or part of the cost of the levy in the event that the taxpayer is repaid the tax.

9. If you have any questions about this change please contact the Environmental Taxes Unit of Expertise on 03000 557496 (email: environmentaltaxesuofe@hmrc.gsi.gov.uk). If you have any comments on the legislation, please contact Cathy Smith on 03000 585949 (email: cathy.smith2@hmrc.gsi.gov.uk).

2014 No. 0000

AGGREGATES LEVY

The Aggregates Levy (Registration and Miscellaneous Provisions) (Amendment) Regulations 2014

Made - - - - ***
Laid before the House of Commons ***
Coming into force - - *1st April 2014*

The Commissioners for Her Majesty’s Revenue and Customs(a) make the following Regulations in exercise of the powers conferred by sections 24(4) and 45(5) of the Finance Act 2001(b):

1. These Regulations may be cited as the Aggregates Levy (Registration and Miscellaneous Provisions) (Amendment) Regulations 2014 and come into force on 1st April 2014(c).
2. The Aggregates Levy (Registration and Miscellaneous Provisions) Regulations(d) are amended as follows.
- 3.—(1) For regulation 3(2) substitute—

“(2) For the purposes of this regulation, a “relevant taxable activity” is the commercial exploitation of aggregate which is exempt under section 17(3)(b), (c), (d), (da) or (db) or section 17(4)(d), (e) or (f) of the Act.”.

(2) Omit regulation 3(3) and (4).

Name
Name

Date Two of the Commissioners for Her Majesty’s Revenue and Customs

(a) Section 48(1) of the Finance Act 2001 (c. 9) defines “the Commissioners” as those of Customs and Excise for the purposes of Part 2 of that Act and “prescribed” as meaning prescribed by regulations made by the Commissioners under that Part. The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of the latter Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty’s Revenue and Customs.

(b) 2001 c. 9. Section 24(4) came into force on 11th January 2002 (article 3 of S. I. 2001/4033 (C. 129)); paragraph (da) of section 17(3) was inserted by section 22(3) of the Finance Act 2007 (c. 11); paragraph 1A of Schedule 4 was inserted by paragraph 9 of Schedule 38 to the Finance Act 2002 (c. 23).

(c) The amendments made by these Regulations are consequential upon a resolution passed by the House of Commons on [date] under the Provisional Collection of Taxes Act 1968 (c. 2), section 1. This resolution has statutory effect but will cease to have effect on [date 2014] unless re-enacted in the Finance Act 2014. Relevant amendments to this section were made by section 60 of the Finance Act 1968 (c. 44), section 205(5) of the Finance Act 1993 (c. 34), section 50(1) of the Finance (No. 2) Act 1997 (c. 58) and section 112 of the Finance Act 2007 (c. 11).

(d) S.I. 2001/4027, amended by S.I. 2003/465, S.I. 2007/2168.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 1st April 2014, amend the Aggregates Levy (Registration and Miscellaneous Provisions) Regulations 2001(S.I. 2001/4027) (“the Registration Regulations”) to take account of the removal of certain exemptions from the aggregates levy provided for in section 17(3) and (4) of the Finance Act 2001 (“the Act”).

These Regulations amend a provision in the Registration Regulations defining “relevant taxable activity”. Provision in the Finance Act 2014 (Aggregates levy: removal of certain exemptions) will remove certain exemptions from the Aggregates levy which will affect the requirement to register under the Act, with effect from 1st April 2014.

As a consequence of the removal of these exemptions from section 17(3) and (4) of the Act, the Regulations also omit provisions requiring businesses to make notifications to HMRC.

A Tax Information and Impact Note covering this instrument was published on 18 December 2013 alongside draft clauses of the Finance Bill 2014 and is available on the GOV.UK website. [It remains an accurate summary of the impacts that apply to this instrument].

EXPLANATORY MEMORANDUM TO
THE AGGREGATES LEVY (REGISTRATION AND MISCELLANEOUS PROVISIONS)
(AMENDMENT) REGULATIONS 2014

2014 No. [0000]

1. This explanatory memorandum has been prepared by HM Revenue & Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 This instrument amends the Aggregates Levy (Registration and Miscellaneous Provisions) Regulations 2001 ('the principal Regulations') to make a number of administrative changes to the aggregates levy as a consequence of the suspension of certain levy exemptions on 1 April 2014. All of the changes made by the instrument come into force on that date.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

- 3.1 The Government announced on 13 September 2013 that it would suspend the application of certain elements of the aggregates levy that had become subject to a formal State aid investigation by the European Commission, opened on 31 July 2013. This instrument makes changes to the provisions dealing with exemption from registration and obligations to notify certain information that are consequential to the partial or entire suspension of certain exemptions.

- 3.2 It has been necessary to breach the 21 day rule in relation to the making and laying and the coming into force of statutory instruments under the negative procedure. This is because the Government has an obligation to bring the suspension into effect as soon as practicable, taking account of the Finance Bill process. This obligation is achieved by making the primary legislation subject to a resolution under the Provisional Collection of Taxes Act 1968 (c. 2) which enables the measure to take effect on 1 April 2014 rather than having to wait for Royal Assent. Once the resolution has been passed it will be necessary to breach the 21 day rule for this instrument in order to ensure that the administrative provisions in this instrument are brought into effect at the same time the suspension comes into effect.

4. **Legislative Context**

- 4.1 The primary legislation relating to the aggregates levy is contained in sections 16 to 48 of, and schedules 4 to 10 to, Finance Act 2001 ('the Act'). The exemptions affected by the suspension are contained in section 17(3) and (4) of the Act. The provisions dealing with registration are set out in section 24 of the Act. Amendments to the Act necessitated by the suspension are being made by clause [X] to Finance Bill 2014, coming into effect on 1 April 2014. A further clause [Y] in the Bill provides for secondary legislation to restore the exemptions should circumstances allow – this provision comes into force at Royal Assent.
- 4.2 The principal Regulations provide, among other things, that where a person's only activity is the commercial exploitation of aggregate that is exempt under certain parts of section 17(3) and 17(4) of the Act, including those parts that will be affected by the suspension, that person is exempt from the requirement to register for the levy and all consequent obligations and liabilities (regulation 3(1) and (2)). However, in specified situations they must notify HMRC of the material they are commercially exploiting (regulation 3(3)) and of any change in the circumstances already notified (regulation 3(4)).

5. Territorial Extent and Application

- 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

- 7.1 The aggregates levy is an environmental tax introduced on 1 April 2002. Part of its rationale is to encourage the recycling of aggregates and the use of waste and by-products from other processes, including the extraction of other non-aggregate minerals, in place of virgin aggregate. Certain exemptions, exclusions and reliefs from the levy are designed to give effect to that rationale.
- 7.2 By a judgment issued on 7 March 2012 the European General Court annulled a 2002 decision by the European Commission not to raise objections against the levy. As a result of that judgment, the Commission carried out a preliminary assessment of the levy in order to determine whether to raise objections against the tax on the ground that it potentially gave rise to State aid. On 31 July 2013 the Commission notified its decision to open a formal State aid investigation. It reached that decision because it had doubts as to whether certain exemptions from the levy are in line with the logic and nature of the tax. Because of the doubts the Commission has expressed the UK is obliged, under article 108(3) of the Treaty

on the Functioning of the European Union, to suspend those elements that are the subject of the investigation until such time as they are pronounced compatible with the internal market.

7.3 Where materials become taxable from 1 April 2014 those commercially exploiting such materials will no longer be exempt from registration, nor will they be subject to the requirement to notify HMRC that they are commercially exploiting the materials. Those that have already notified HMRC that they are commercially exploiting materials that were exempt before 1 April 2014 but become taxable from that date will not be required to notify HMRC that their circumstances have changed.

- Consolidation

7.4 This instrument makes minor amendments to the principal Regulations. HMRC has no plans to consolidate these Regulations.

8. Consultation outcome

8.1 Following receipt of the Commission's letter dated 31 July 2013 it was necessary to obtain legal advice and have discussions with the Commission in order to determine exactly which aspects of the levy must be suspended, and the extent to which they must be suspended, before consulting with affected businesses in the industry on how to bring the suspension into effect.

8.2 Revenue & Customs Brief 31/13, published on 11 October 2013, invited anyone who wished to comment on the suspension before the publication of the draft legislation to register their interest. HM Treasury sent out questions to all those that registered an interest and set a deadline of 15 November 2013 for responses. Officials from HM Treasury and HMRC subsequently held a number of meetings with interested businesses and their professional advisers, and with industry representative bodies.

8.3 The need for this consultation and to allow time to take account of comments received during the course of this consultation when preparing the legislation meant that it was impossible to consult for a full 12 weeks before publication of the legislation in draft.

9. Guidance

9.1 The details of the introduction of the suspension of the levy exemptions are explained in a Tax Information and Impact Note (TIIN) published on 18 December 2013. Two public notices covering aggregates levy, which are available at www.hmrc.gov.uk, will be reviewed and updated by 1 April 2014 to reflect the suspension of the exemptions from that date.

10. Impact

- 10.1 HMRC estimates that approximately 200 businesses will be affected, incurring a small increase in administrative burden through registering and accounting for the tax and extra record keeping. Businesses commercially exploiting the materials that become taxable may incur a significant financial burden if the cost of the levy cannot be passed on fully to their customers. There will be no impact on charities or voluntary bodies.
- 10.2 There will be no impact on the public sector.
- 10.3 A Tax Information and Impact Note covering this instrument was published on 18 December 2013 alongside draft clauses of the Finance Bill 2014 and is available on the GOV.UK website [It remains an accurate summary of the impacts that apply to this instrument.]

11. Regulating small business

- 11.1 The legislation applies to small business.
- 11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is a general tax provision and the same for all affected businesses.
- 11.3 Interested businesses and industry representative bodies have been consulted during preparations to implement the suspension.

12. Monitoring & review

- 12.1 Compliance with the changes to the exemption from registration and to the requirements to provide certain notifications will be monitored and reviewed as part of HMRC's normal assurance process to ensure that the changes made by this instrument achieve their aims.

13. Contact

Cathy Smith at HMRC Tel: 03000 585949 or email: Cathy.Smith2@hmrc.gsi.gov.uk can answer any queries regarding the instrument.



HM Revenue
& Customs

**AGGREGATES LEVY: SUSPENSION OF CERTAIN EXEMPTIONS,
EXCLUSIONS AND RELIEFS**

INTERIM GUIDANCE

Interim guidance
18 December 2013

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Introduction

HM Revenue & Customs (HMRC) Notices [AGL1 Aggregates Levy](#) and [AGL2 Industrial and Agricultural Processes Relief](#) are the main sources of guidance for quarry operators and other extractors of rock, sand and gravel, and others who commercially exploit aggregates. These notices will be reviewed and updated for 1 April 2014, when the suspension of certain aggregates levy exemptions, exclusions and reliefs comes into effect.

Until the notices are updated, this interim guidance supplements the content of the notices and is provided in a Question and Answer format to enable businesses that will be affected by the suspension to understand the circumstances in which they will be affected, and to answer the kinds of questions that have been raised with HMRC since the suspension was announced.

Liability

Q1 What is aggregate for the purposes of the levy?

A1 For the purposes of the levy, aggregate is rock, gravel or sand, together with whatever substances are incorporated in the rock, gravel or sand or naturally occur mixed with it.

The spoil, waste, offcuts and other by-products of an exempt process are also aggregate.

Q2 Are slag and ash within the scope of the aggregates levy before the changes come into effect on 1 April 2014?

A2 Yes. Where they arise as the waste or by-product of an exempt process, such as the separation of metal from its ore, they are aggregate for the purposes of the levy. However, slag and ash are currently exempt from aggregates levy as the waste or other by-product of any industrial combustion process or the smelting or refining of metal (section 17(4)(c) of Finance Act 2001).

Q3 Are cement, concrete and asphalt aggregates for the purposes of the levy?

A3 No. These materials are not aggregates in themselves for the purposes of the levy, although aggregates are used in their production.

Q4 Which additional materials will become taxable from 1 April 2014?

A4 The following materials will become taxable from 1 April 2014:

- material that consists wholly of the spoil from any process by which coal, lignite, slate or shale has been separated from other rock after being extracted or won with that other rock;
- material consisting wholly of the spoil, waste or other by-products resulting from the extraction or other separation from any quantity of aggregate of any china clay or ball clay;
- material that is wholly the spoil from the separation of any of the industrial minerals listed in section 18(3) of Finance Act 2001 from other rock with which the mineral was extracted or won;
- material that is wholly or mainly clay, coal, lignite, slate or shale;
- other industrial minerals, namely; anhydrite; ball clay; barytes; china clay; feldspar; fireclay; fluorspar; fuller's earth; gems and semi-precious stones; gypsum; any metal or the ore of any metal; muscovite; perlite; potash; pumice; rock phosphates; sodium chloride; talc and vermiculite; and
- material that is mainly but not wholly the spoil, waste or other by-product of any industrial combustion process or the smelting or refining of metal.

However, the production of ceramic construction products from clay and shale, and the production of plaster or plasterboard from gypsum will become exempt processes from 1 April 2014.

Furthermore, the following will not be subject to commercial exploitation (and, therefore, continue not to be charged with levy after 1 April 2014) where they are not for use for construction purposes:

- material that is wholly or mainly clay, coal, lignite, slate or shale;
- other industrial minerals, namely; anhydrite; ball clay; barytes; china clay; feldspar; fireclay; fluorspar; fuller's earth; gems and semi-precious stones; gypsum; any metal or the ore of any metal; muscovite; perlite; potash; pumice; rock phosphates; sodium chloride; talc and vermiculite; and
- material that is mainly but not wholly the spoil, waste or other by-product of any industrial combustion process or the smelting or refining of metal.

Material that is wholly the spoil, waste or other by-product of any industrial combustion process or the smelting or refining of metal will continue to be exempt after 1 April 2014.

Anhydrite, slag and ash used in the manufacture of cement are covered by an existing exempt process (at section 18(2)(c) of Finance Act 2001) as is slate that is cut to produce stone with one or more flat surfaces (at section 18(2)(a) of Finance Act 2001). These will therefore continue not to be taxable.

Q5 Which activities constitute use for construction purposes? Will this change after 1 April 2014?

A5 The meaning of the term 'use for construction purposes' is already established in aggregates levy and will not change after 1 April 2014. It covers:

- use as material or support in the construction or improvement of any structure, or
- mixing with anything as part of a process of producing mortar, concrete, tarmacadam, coated roadstone or any similar construction material.

It encompasses material used for:

- lining ponds and lagoons;
- landfill engineering;
- railway ballast;
- construction of embankments, bunds, flood defences, paths, temporary haulage roads, dams;
- walling, hedging, gabion and rockery stone;
- scouring protection for off-shore wind turbines and foundations for on-shore wind-turbines; and
- landscaping and restoration.

More information about use for construction purposes can be found in section 2.3 of [Notice AGL1](#).

Q6 From 1 April 2014, certain materials will only be chargeable with levy when they are for use for construction purposes. Why “for use” rather than “used”?

A6 The original design of the tax ensured that any charge to the levy generally became payable at the head of the supply chain rather than its end. In order to preserve that design it is necessary to consider the intended use of those materials.

Q7 Revenue and Customs Brief 31/13, published on 11 October 2013, set out the criteria for determining the liability, from 1 April 2014, of certain materials affected by the suspension. What changes have you made to those criteria and why?

A7 We have made some small changes to the liability set out in Revenue & Customs Brief 31/13 where the liability of the materials will depend on their eventual use. They are:

- material that is wholly or mainly clay, coal, lignite, slate or shale;
- other industrial minerals, namely; anhydrite; ball clay; barytes; china clay; feldspar; fireclay; fluorspar; fuller's earth; gems and semi-precious stones; gypsum; any metal or the ore of any metal; muscovite; perlite; potash; pumice; rock phosphates; sodium chloride; talc and vermiculite; and
- material that is mainly but not wholly the spoil, waste or other by-product of any industrial combustion process or the smelting or refining of metal.

First, comments received from the industry, their advisers and representative bodies convinced us that determining whether certain materials had been "extracted for use as aggregates" would be impractical. Accordingly, that criterion is not included in the draft legislation.

Second, we were persuaded that the criterion of intended use “as aggregate” should rather be “for construction purposes”. As a result of this change and in order to ensure they remain free of the levy, the draft legislation provides that the following will be covered by new exempt processes:

- clay (including ball clay, china clay and fireclay) and shale used to make ceramic construction products; and
- gypsum used to make plaster and plasterboard.

Third, instead of retaining exemption for materials where they are not for use for construction purposes the draft legislation specifies that they will not be subject to commercial exploitation from 1 April 2014. The end result will be the same: no levy will be due. It is just the means of achieving that end result that has changed. This is because, in the course of preparing the legislation to give effect to the suspension, we realised the difficulty of regarding everything other than use for construction purposes as being an exempt process.

Q8 Material that is mainly but not wholly the spoil, waste or by-product of industrial combustion or the smelting or refining of metal will become taxable from 1 April 2014 where it is commercially exploited for use for construction purposes. What does “mainly” mean?

A8 In this context "mainly" means more than 50 per cent but less than 100 per cent.

Q9 What does "wholly" mean in the context of the liability of materials to aggregates levy? Does it provide for incidental amounts of unavoidable contamination?

A9 "Wholly" means 100 per cent. However, some businesses have asked us about incidental amounts of unavoidable contamination. If this affects your business, please contact our Environmental Taxes Unit of Expertise to discuss your particular circumstances. (Telephone 03000 557496 or email environmentaltaxesuofe@hmrc.gsi.gov.uk)

Q10 What will be the liability of perlite powder used for filtration (removing solids from liquids) in the food industry after 1 April 2014?

A10 Perlite powder used in this way is not used for construction purposes; therefore, it will not be liable to aggregates levy after 1 April 2014.

Q11 What will be the liability of clay used to make bricks and other ceramic products used in construction after 1 April 2014?

A11 Clay used to make bricks and other ceramic products used in construction will not be liable to aggregates levy after 1 April 2014. Clay is a raw material that undergoes a chemical change when used in the manufacture of these products so this process will become an exempt process from 1 April 2014.

Q12 I've heard we're going to have to pay levy on exempt materials commercially exploited before 1 April 2014. Is that true?

A12 No. The levy will be chargeable on the newly taxable materials only when they are commercially exploited on or after 1 April 2014.

Commercial exploitation

Q13 When does exploitation take place?

A13 A quantity of aggregate is subjected to exploitation if any one of the following applies:

- It is removed from:
 - its originating site;
 - a connected site which is registered under the same name as the originating site;
 - a site where it had been intended to apply an exempt process to it, but this process was not applied.
- It is subject to an agreement to supply (for example, when a contract is made or when goods change hands and a document is raised).
- It is used for construction purposes.
- It is mixed with anything other than water except in permitted circumstances.

See [Notice AGL 1](#) section 2.2.

Q14 What is commercial exploitation for the purposes of aggregates levy?

A14 Aggregate is regarded as being subject to commercial exploitation if it is exploited in the course or furtherance of a business.

Q15 Are any changes to the definition of commercial exploitation taking place from 1 April 2014?

A15 Yes. From 1 April 2014 the definition of commercial exploitation will change for the following materials only:

- material that is wholly or mainly clay, coal, lignite, slate or shale;
- other industrial minerals, namely; anhydrite; ball clay; barytes; china clay; feldspar; fireclay; fluorspar; fuller's earth; gems and semi-precious stones; gypsum; any metal or the ore of any metal; muscovite; perlite; potash; pumice; rock phosphates; sodium chloride; talc and vermiculite; and
- material that is mainly but not wholly the spoil, waste or other by-product of any industrial combustion process or the smelting or refining of metal.

A quantity of any of these materials will be subject to commercial exploitation if any one of the following applies:

- It is removed from:
 - its originating site;
 - a connected site which is registered under the same name as the originating site;
 - a site where it had been intended to have an exempt process applied to it, but this process was not applied**for use for construction purposes.**
- It is subject to an agreement to supply **for use for construction purposes** (for example, when a contract is made or when goods change hands and a document is raised).
- It is used for construction purposes.
- It is mixed with anything other than water, except in permitted circumstances, for the purpose of its use **for construction purposes**.

Materials which are not subject to commercial exploitation are not liable to aggregates levy.

Q16 Does commercial exploitation occur only once?

A16 No. Commercial exploitation can occur more than once: for example, when a material leaves its originating site and is then used for construction purposes. However, aggregates levy is only charged once on the same material.

Q17 If, before 1 April 2014, I commercially exploit material that is going to become taxable from that date, will I have to account for levy if it is commercially exploited again after that date?

A17 Yes. Levy is not chargeable on a material which has previously borne the levy (and has not been subsequently relieved) even if it is commercially exploited again; however, if no aggregates levy has been paid on the commercial exploitation of a material which becomes taxable on 1 April 2014, any further commercial exploitation of that material after that date will be liable to the levy.

Q18 What if I use the material I produce on its originating site?

A18 If you use taxable material on its originating site it is liable to the levy unless it is returned to the land at that site in the same state that it was won. Returning to the land includes using unmixed, dry aggregate to make tracks or paths within the boundary of the registered site.

Responsible person

Q19 Who is liable to pay the levy? Are any changes taking place from 1 April 2014?

A19 The person who is responsible for commercially exploiting aggregate in the UK will need to register for aggregates levy and account for and pay the levy to us. From 1 April 2014, the liability to aggregates levy for some materials will depend on whether or not they are commercially exploited for use for construction purposes (see Q4). To support any claim that materials will not be used for construction purposes, the quarry operator will be required to hold evidence confirming the use to which the material is intended to be put. If that involves obtaining evidence from a customer and that evidence is later found to be incorrect, the customer may be liable to register for the levy and pay the underdeclared levy (plus inaccuracy penalties and interest where appropriate).

Q20 What if I rely on evidence from my customer that the material is not to be used for construction purposes, but the evidence from my customer is incorrect?

A20 If there was no reasonable way in which you could have known or established that the evidence given to you by your customer was incorrect you would not be liable to pay the underdeclared tax or penalties. However, if, for example, documentation provided to you was unclear or lacking in key information, it is reasonable that you should challenge that evidence. Failure to do so might leave you open to having to pay the underdeclared levy (plus inaccuracy penalties and interest where appropriate).

Q21 Will the evidence be acceptable if the customer simply writes that the material they receive is not to be used for construction purposes?

A21 No. You should ensure that the customer states clearly what they intend to use the material for. If the customer is not willing to do that it must be assumed that the material is for use for construction purposes and we will expect you to account for the levy due.

Registration

Q22 I deal with one or more of the materials being brought into tax after 1 April 2014. Do I need to register for the levy?

A22 If you commercially exploit, or intend to commercially exploit, materials that become taxable from 1 April 2014 you must register for the levy if you are not already registered. Unlike VAT, there is no registration threshold.

Q23 How do I register for the levy?

A23 You need to complete form AL1: Aggregates Levy and form AL1A: Site Details. These forms can be downloaded from our website (go to the 'Forms' link on our homepage). There are also notes to help with the completion of form AL1 - these are currently being updated to reflect the changes from 1 April.

You may have to complete other forms, depending on your status. The different forms are listed in section 22 of [Notice AGL 1](#).

You can get further information and copies of other forms from:

HM Revenue & Customs
Central Collection Unit (AL)
Alexander House
21 Victoria Avenue
Southend-on-Sea
SS99 1AS

Tel 01702 366558
Fax 01702 366562.

Q24 When do I need to register for the levy?

A24 You must notify us of your liability to register within 30 days of commercially exploiting aggregate, or of forming the intention to commercially exploit aggregate. If you fail to notify us on time you may be liable to a penalty.

Q25 The amount of material that I commercially exploit is minimal – do I need to register?

A25 Yes. There is no registration threshold for aggregates levy.

Q26 I used to be registered for the levy and will need to become registered again from 1 April – can I simply resurrect my old registration?

A26 No. You must apply for a new registration.

Q27 I am already registered for the levy but I also commercially exploit materials that will become taxable from 1 April 2014. Do I need to register again?

A27 No, but you must include the newly taxable materials which you commercially exploit on or after 1 April 2014 in your aggregates levy returns after this date.

Record-keeping, submission of returns and payment

Q28 What records must registrable persons keep to evidence that material has not been commercially exploited for use for construction purposes?

A28 You must obtain evidence from your customers of the use to which they will put the material. This may be existing commercial documentation such as product specification or contracts, but it must also include a signed declaration from the customer describing the intended use, similar to the evidence that those who claim reliefs are already required to hold (see [Notice AGL1](#) Sections 6.7 to 6.10). For sales through intermediaries such as merchants, you still have a requirement to keep sufficient evidence to enable the material to be linked to its final customer and end use.

Q29 The draft legislation includes provision to enable levy paid as a result of the suspension of certain aggregates levy exemptions, exclusions and reliefs to be repaid once the Commission investigation has been concluded, if the Commission's final decision allows that. What records should be kept to evidence any future repayment claims?

A29 You should keep separate records (see [Notice AGL 1](#) section 15.1) in support of the levy you pay as a result of the suspension of the exemptions and reliefs to enable you to reclaim those amounts if the Commission's final decision allows that. Before making any repayment of the amounts claimed we would need to be satisfied that you would not be unjustly enriched as a result of receiving the repayment. You may, therefore, wish to keep records to demonstrate that you would not gain financially from this repayment; for example, by including a commitment in contracts to repay any amounts charged to your customers to cover all or part of the cost of the levy in the event that you are repaid the tax.

Q30 Will I have to account to HMRC separately for levy due on aggregate that is taxable before the exemptions are suspended and levy due on the materials that will become taxable from 1 April 2014?

A30 No. This can all be declared together on your aggregates levy return. However, you may wish to keep separate records of the levy payable as a result of the suspension of exemptions to support a claim for repayment in the event that the Government decides to repay this revenue to businesses in the future.

Q31 How often must returns be submitted?

A31 A return will normally cover a three month period. If we consider that a risk to the revenue exists we may require you to submit monthly returns.

Q32 How do I pay HMRC the tax due? When must payments be made?

A32 Once you are registered for the levy we will send you your return (form AL100) a week or two before the end of each accounting period. You must complete the return with details of your taxable supplies during the period and pay the levy due by the due date, which is the last working day of the month following the end of the return period. See [Notice AGL 1](#) Section 12.

Q33 Even though, in law, certain materials will become taxable from 1 April 2014, can't HMRC defer actually collecting the levy due on those materials until after the Commission has completed its State aid investigation and issued its decision?

A33 Failing to collect the tax would mean the UK was not meeting its obligations and make us vulnerable to legal action by the Commission.

Q34 The levy is calculated per tonne of material commercially exploited. What if I don't have a weighbridge?

A34 If you do not have a weighbridge you will need to contact us to agree an alternative method of calculating weight. If you are not sure which HMRC office to call you can phone our Excise and Customs Helpline on 0300 200 3700.

Legislation and guidance

Q35 The legislation is complex – are there any documents that explain it?

A35 [Notice AGL 1](#) and [Notice AGL 2](#) contain guidance for businesses on the legislation as it currently stands.

Explanatory notes and an explanatory memorandum have been published alongside the draft legislation prepared to give effect to the suspension, together with this interim guidance. These explain how that legislation will operate.

Q36 What should I do if I have comments on the draft legislation?

A36 Please send any comments on the draft legislation to:

Cathy Smith
HM Revenue and Customs
Room 3C/18
100 Parliament Street
London
SW1A 2BQ

Email: cathy.smith2@hmrc.gsi.gov.uk

Q37 When will you be updating the aggregates levy public notices?

A37 [Notice AGL 1](#) will be updated by 1 April 2014.

Q38 What if I have queries that are not covered in this Q&A?

A38 For further help, please contact the Environmental Taxes Unit of Expertise on:

Tel. 03000 557496
or email environmentaltaxesuofe@hmrc.gsi.gov.uk

Commission investigation

Q39 When do you expect the Commission investigation to conclude?

A39 We do not know when the Commission will conclude its investigation.

Q40 What will you do if the Commission concludes that the exemptions are State aids?

or

What will happen if the Commission concludes that some but not all of the exemptions under investigation are State aids?

A40 The Commission's investigation has only recently begun and, at present, the Government's priority is to satisfy the Commission that none of the exemptions or reliefs under investigation is a State aid. Once the investigation is concluded, the Government will study the Commission's findings, and the terms of any directions they might contain, and will (if appropriate) issue further information to aggregates businesses at that time.

Suspension general

Q41 How long do you expect the suspension to last?

A41 The suspension will operate for as long as the Commission's investigation continues. From then on, the Government will decide its course of action taking into account the outcome of the investigation.

Q42 Will the suspension of the exemptions become permanent?

A42 The Government believes that none of the exemptions or reliefs within the aggregates levy being investigated by the Commission amount to State aid, and will be providing evidence to the Commission to support this view as part of the formal investigation process. Provided that the Commission's decision allows, the Government intends to reintroduce all of the exemptions and reliefs at the conclusion of the investigation.

Q43 Wouldn't it be simpler to abolish the levy while the Commission investigation continues?

A43 No. The Commission has made it clear that the legality of the aggregates levy in its entirety is not in question. Businesses commercially exploiting taxable aggregate in the UK have a continuing legal obligation to pay the levy due.