



Landfill tax: compliance work in relation to lower rate

Who is likely to be affected?

Landfill site operators that are responsible for accounting for landfill tax in England, Wales and Northern Ireland; and operators of mechanical treatment plants and other waste industry interests that send waste fines for landfill in these parts of the UK.

General description of the measure

The measure will introduce a new, objective testing regime to help landfill site operators to identify the landfill tax liability of waste fines disposed of at landfill sites in England, Wales and Northern Ireland. In order to qualify for the lower rate of tax, waste fines must not exceed a 10 per cent threshold under an established scientific test (known as the 'loss on ignition test' (LOI)) undertaken on samples of waste. There will be a 12 month transitional period where the threshold will be 15 per cent.

Policy objective

The measure will help landfill site operators to identify the tax liability of waste fines sent for disposal at their sites by making available an objective scientific test to test samples. By prescribing the detailed specifications for the testing regime, as requested by the waste management industry, the Government is seeking to ensure that waste going to landfill is consistently declared at the prescribed rate, reducing the scope for errors and deliberate mis-description.

Background to the measure

Landfill tax was introduced on 1 October 1996 in support of the UK's waste policy. Less polluting materials are subject to a lower rate of tax and all other taxable waste is subject to the standard rate. The tax currently applies to waste disposed of at permitted landfill sites across the UK but from April 2015 it will no longer apply in Scotland.

Landfill site operators are responsible for ensuring the correct tax liability of waste is identified and charged. They raised concerns that the lower rate of tax was not being applied equitably and requested greater certainty on which to base their liability decisions, particularly in relation to fines - the smaller fractions of waste produced by any waste treatment process that includes an element of mechanical treatment. At present, fines are not separately identified within landfill tax legislation although they can be lower-rated if they comprise solely qualifying materials listed in legislation or mainly such materials, save for a small amount of non-qualifying material.

The Government responded by setting up a government-industry working group to consider the issues and develop proposals. Budget 2014 announced that, to assist landfill operators to determine the landfill tax liability of fines produced from the processing of waste at mechanical treatment plants, the Government would introduce an objective testing regime for waste sent to landfill, by April 2015.

A formal consultation was carried out during the summer on the proposals for how the testing regime will operate, including processes for the testing of samples and record-keeping requirements. The proposals set out in the consultation paper have been refined through further discussion with the government-industry working group. At Autumn Statement 2014 the Government published a summary of the responses received and its response to the outcome of the consultation. Draft primary legislation is being published on 10 December 2014.

Detailed proposal

Operative date

This measure will apply to disposals to landfill made, or treated as made, on or after 1 April 2015.

Current law

Landfill tax primary legislation is contained in Finance Act (FA) 1996 – sections 39 to 71 and Schedule 5. Section 42(4) provides for material that is disposed of to landfill and is listed in a Treasury Order to be taxable at the lower rather than the standard rate of landfill tax. Such material is termed ‘qualifying material’ and is listed in the Landfill Tax (Qualifying Material) Order 2011 (the 2011 Order) in a number of groups. Section 63 of FA 1996 contains further provisions in relation to qualifying material, including that the Treasury Order may provide that material must not be treated as qualifying material unless prescribed conditions are met.

Proposed revisions

Legislation will be introduced in Finance Bill 2015 to add new provisions to section 63 of FA 1996 and amendments to Schedule 5. The new provisions will allow secondary legislation to specify the conditions that must be met for fines to qualify for the lower rate and provide for detailed specifications to be set out in a public notice published by HM Revenue & Customs (HMRC).

Secondary legislation to be laid before Parliament in spring 2015 will add a new Group to the 2011 Order covering fines from mechanical treatment plants and set out the conditions for these fines to be lower rated, including in relation to the:

- composition of fines to be disposed of;
- testing whether fines are qualifying material;
- level of the LOI threshold above which the lower rate will not apply;
- frequency with which fines must be tested;
- checks landfill site operators will need to undertake on those sending fines to their sites; and
- keeping of samples of material on which tests have been carried out.

Summary of impacts

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20
	-	nil	nil	nil	nil	nil
	This measure is not expected to have an Exchequer impact.					
Economic impact	The measure is not expected to have any significant economic impacts.					
Impact on individuals, households and families	As landfill operators are responsible for arranging tests and paying landfill tax on waste to HMRC, this measure will not have a direct impact on individuals, households or families.					

<p>Equalities impacts</p>	<p>This measure concerns the taxation of businesses and there will be no direct impact on individuals. As such it is very unlikely that there will be any impact on equality.</p>
<p>Impact on business including civil society organisations</p>	<p>This measure will affect operators of mechanical treatment plants and other producers of fines as well as landfill operators upon whom the tax liability falls, and any other customers upon whom additional cost or changes in tax liability may be passed. There are currently around 200 registered landfill site operators and 450 mechanical treatment plants that produce fines in England, Wales and Northern Ireland.</p> <p>Since the test will apply at the point the waste is tipped to landfill the main additional administrative burdens will be on operators of landfill sites. One-off costs may include:</p> <ul style="list-style-type: none"> • time needed to familiarise themselves with the new rules; • IT system changes; • LOI sampling training for site staff; • identifying and setting up suitable storage facilities. <p>Continuing costs may include:</p> <ul style="list-style-type: none"> • the monetary fee of the LOI test charged by the laboratory; • sampling - the process for selecting a representative sample will be specified in legislation. Each test will require both the vehicle driver to remain with the load while it is tipped away from the tipping area in a safe environment and a landfill site operator to take the required sample; • sending samples to laboratories and ensuring that each can be attributed to the company that tipped the waste; • storing samples in case they need to be reviewed, including by HMRC; • maintaining a log of test results; • analysing test results; • reporting the results of failed tests to HMRC; • re-invoicing in cases where the original invoice has been based on the lower rate, and the waste subsequently fails the test; • additional credit control and site costs dealing with customer disputes tracking of failures and reporting costs. <p>The cost of an LOI test on a sample is roughly £10 and is carried out by testing laboratories, taking one to two weeks. The test rate minimum should be one in every thousand tonnes, plus possible additional tests for failed samples and small producers, total fees paid by business for the tests would likely be between £50,000 and £100,000. This is included in the continuing costs shown below.</p> <p>Checks and testing may already be carried out by some landfill operators, significantly reducing the additional costs for those operators.</p> <p>This measure is expected to have no impact on civil society organisations.</p>

		Cost	Time Period (years)
	Compliance Costs		
	One-off Costs	negligible	N/A
	Average Annual Costs	£0.2m	6
	Total Costs (PV)	£1.3m	N/A
	Compliance Benefits		
	One-off Benefit	N/A	N/A
	Average Annual Benefit	N/A	N/A
	Total Benefit (PV)	N/A	N/A
	Net Benefit (NPV)	-£1.3m	N/A
	Impact on Administrative Burden (included in Net Benefit)		
	Increase	Decrease	Net Impact
	£0.2m	£0	£0.2m
Operational impact (£m) (HMRC or other)	This measure will have minimal operational impact on HMRC.		
Other impacts	<u>Small and micro business assessment</u> : small and large businesses will face the same cost per test. Other impacts have been considered and none have been identified.		

Monitoring and evaluation

The measure will be monitored through regular meetings of the government-industry working group.

Further advice

If you have any questions about this change, please contact Phil Sears on 03000 585502 (email: phil.sears@hmrc.gsi.gov.uk).

1 Landfill tax: treatment of fines

Schedule 1 makes provision about the treatment of fines for the purposes of landfill tax.

SCHEDULE 1

Section 1

LANDFILL TAX: TREATMENT OF FINES

- 1 Part 3 of FA 1996 (landfill tax) is amended as follows.
- 2 (1) Section 42 (amount of tax charged on a taxable disposal) is amended as follows.
- (2) In subsection (2), after “qualifying material” insert “or qualifying fines”.
- (3) After subsection (3) insert – 5
- “(3A) Qualifying fines are a mixture of –
- (a) fines that consist of such qualifying material as is prescribed by order, and
- (b) fines that consist of material that is not qualifying material, that satisfies all the requirements prescribed in an order.
- (3B) An order under subsection (3A) relating to the mixture of fines may require, in particular – 10
- (a) that fines that consist of material that is not qualifying material do not exceed a prescribed proportion;
- (b) that the mixture of fines does not include prescribed materials or prescribed descriptions of materials; 15
- (c) that the mixture of fines is such that, if subjected to a prescribed test, it would give a prescribed result;
- (d) that the mixture of fines originates, or does not originate, in a prescribed way.”
- (4) In subsection (4)(a), after “listed” insert “or what fines are to be qualifying fines”. 20
- (5) In subsection (6), after “listed,” insert “or what fines are to be qualifying fines,”.
- 3 In section 63 (qualifying material: special provisions), after subsection (4) insert – 25
- “(4A) Subsections (2) to (4) do not apply where the material disposed of consists of qualifying fines.”
- 4 After section 63 insert –
- “63A Qualifying fines: special provisions”** 30
- (1) This section applies for the purposes of section 42.
- (2) An order may provide that fines must not be treated as qualifying fines unless prescribed conditions are met.
- (3) A condition may relate to any matter the Treasury think fit.
- (4) The conditions may include conditions making provision about –

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- (a) the production of a document which includes a statement of the nature of the fines;
- (b) carrying out a specified test on fines proposed to be disposed of as qualifying fines;
- (c) the frequency with which tests are to be carried out on any fines proposed to be disposed of as qualifying fines; 5
- (d) the frequency with which tests are to be carried out on any fines that come from a particular source and are proposed to be disposed of as qualifying fines;
- (e) the steps to be taken by operators of landfill sites in relation to persons sending fines to be disposed of as qualifying fines. 10
- (5) The conditions may enable provision to be made by notices issued by the Commissioners in accordance with such provision as is made in the conditions.
- (6) A notice issued as described in subsection (5) may be revoked by a notice issued in the same way. 15
- (7) If an order includes provision falling within subsection (4)(b), the Commissioners may direct a person to carry out such a test in relation to any fines proposed to be disposed of as qualifying fines.
- (8) In this section “specified” means specified in— 20
- (a) a condition prescribed under subsection (2), or
- (b) a notice issued as described in subsection (5).”
- 5 In section 70(1) (interpretation), at the appropriate place insert—
- ““fines” means particles produced by a waste treatment process that involves an element of mechanical treatment;” 25
- 6 (1) In section 71 (orders and regulations), subsection (7) is amended as follows.
- (2) After paragraph (a) insert—
- “(aa) an order under section 42(3A) providing for fines which would otherwise be qualifying fines not to be qualifying fines;” 30
- (3) After paragraph (c) insert—
- “(cza) an order under section 63A(2) other than one which provides only that an earlier order under section 63A(2) is not to apply to fines;”
- 7 (1) Schedule 5 (provision about information etc) is amended as follows. 35
- (2) In the heading to Part 1, after “Information” insert “and samples”.
- (3) After paragraph 2A insert—
- “Information: qualifying fines*
- 2B (1) Regulations may make provision about giving the Commissioners information about fines proposed to be disposed of, or disposed of, as qualifying fines. 40
- (2) Regulations under this paragraph may require a person to notify the Commissioners if the result of a test carried out on fines indicates that the fines are not qualifying fines.

Samples: qualifying fines

- 2C (1) Regulations may require persons –
- (a) where a sample is taken from a quantity of fines in order to carry out a test on the fines, to retain a prescribed amount of that sample;
 - (b) to preserve fines retained under paragraph (a) for such period not exceeding three months as may be specified in the regulations. 5
- (2) A duty under regulations under this paragraph to preserve fines may be discharged by taking such steps to preserve them as the Commissioners may specify in writing.”
- (4) In paragraph 10 (power to take samples), after sub-paragraph (1) insert – 10
- “(1A) An authorised person, if it appears to him necessary for the protection of the revenue against mistake or fraud, may at any time take, from material which he has reasonable cause to believe is an amount of fines retained under paragraph 2C(1)(a), such samples as he may require with a view to determining how the fines tested ought to be or to have been treated for the purposes of tax.” 15
- (5) In paragraph 22 (information) –
- (a) in sub-paragraph (1)(b), after “2” insert “or 2A”;
 - (b) in sub-paragraph (3), for the words from “who” to “liable” substitute “who – 20
 - (a) fails to preserve records in compliance with any provision of regulations made under paragraph 2 (read with that paragraph and any direction given under the regulations), or 25
 - (b) fails to preserve records in compliance with any provision of regulations made under paragraph 2A (read with that paragraph and any direction given under the regulations), 25
- is liable”.
- 8 The amendments made by this Schedule have effect in relation to disposals made (or treated as made) on or after the day on which this Act is passed. 30

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EXPLANATORY NOTE

LANDFILL TAX: TREATMENT OF FINES

SUMMARY

1. Clause [X] and Schedule [A] amend Part 3 of the Finance Act 1996 (FA 1996) to provide for the introduction of a new testing regime to help landfill site operators to identify the landfill tax liability of waste fines disposed of at landfill sites in England, Wales and Northern Ireland. Fines are the waste produced by any waste treatment process that involves an element of mechanical treatment, and can include a wide variety of different materials some of which may be liable to landfill tax at the standard rate and some at the lower rate.
2. This schedule establishes a new category of “qualifying fines” which will be liable to landfill tax at the lower rate and provides for the power to impose requirements with which fines must comply in order to be considered “qualifying fines”. The amendments made by this schedule will apply to disposals made (or treated as made) on or after the day on which Finance Bill 2015 receives Royal Assent.

DETAILS OF THE SCHEDULE

3. Paragraph (2) inserts new subsections into section 42 of FA 1996 and makes consequential amendments accommodate the introduction of those new subsections. Sub-paragraphs (2)(2) and (2)(3) insert sections 42(3A) and 42(3B) into FA 1996; these provide that a new category of material referred to “qualifying fines” is to be eligible for the lower rate of landfill tax, and that fines are to be treated as “qualifying fines” if they are comprised of a mixture of materials specified in an order. Sub-paragraphs (4) and (5) make consequential amendments to section 42 of FA 1996 accommodate the insertion of the new subsections 42(3A) and 42(3B).
4. Paragraph (3) makes a consequential amendment to section 63 of FA 1996.
5. Paragraph (4) inserts a new section 63A into FA 1996. Section 63A(1) to (4) provides for the power to make an Order requiring that fines are only to be treated as “qualifying fines” if they are subjected to a specified test, and includes a power to specify the frequency with which such tests are to be carried out; as well as what documents are to be produced, and what conditions landfill operators are to adhere to, in connection with carrying out the specified test. Section 63A(5) and (6) enables these conditions to be set out in notice issued by HMRC. Section 63A(7) provides that HMRC may have the power to direct that a person must carry out the specified test in certain circumstances. Section 63A(8) defines terms used elsewhere in section 63A.

6. Paragraph (5) amends section 70(1) of FA 1996 to include a statutory definition of “fines”.
7. Paragraph (6) makes consequential amendments to section 71 of FA 1996.
8. Paragraph (7) inserts new paragraphs (2B) and (2C) into schedule 5 to FA 1996 and make consequential amendments to that schedule. Sub-paragraphs (7)(1) to (7)(3) insert the new paragraphs (2B) and (2C) into schedule 5 to FA 1996. Paragraph (2B) provides for the power to make regulations requiring persons to give HMRC information concerning fines that are claimed to be “qualifying fines”, and to notify HMRC if the specified test indicates that fines do not meet the criteria for “qualifying fines”; while paragraph (2C) provides for the power to make regulations requiring persons to retain and preserve samples of fines that have been subjected to testing. Sub-paragraph (7)(4) makes consequential amendments to paragraph 10 of schedule 5 and sub-paragraph (7)(5) makes consequential amendments to paragraph 22 of schedule 5.
9. Paragraph (8) provides that the amendments made by this schedule are to have effect in relation to disposals made (or treated as having been made) on or after the day on which the Finance Bill 2015 receives Royal Assent.

BACKGROUND NOTE

10. Landfill tax was introduced on 1 October 1996 in support of the UK’s waste policy to increase the cost of disposal to landfill to reflect the environmental costs; and encourage more environmentally-friendly alternative behaviours. Less polluting materials are subject to a lower rate of tax and all other taxable waste is subject to the standard rate. The tax currently applies to waste disposed of at permitted landfill sites across the UK but from 1 April 2015 it will no longer apply in Scotland following the decision to devolve it.
11. Landfill site operators are responsible for ensuring the tax liability of waste is identified and charged. They raised concerns that the lower rate of tax was not being applied equitably and requested greater certainty on which to base their liability decisions, particularly in relation to fines. At present, fines are not separately identified within landfill tax legislation although they can be lower-rated if they comprise solely qualifying materials listed in legislation or mainly such materials, save for a small amount of non-qualifying material.
12. The Government responded by developing proposals through consultation. This measure, secondary legislation and prescribed testing regime will provide certainty and fairness.
13. If you have any questions about this change, or comments on the legislation, please contact Phil Sears on 03000 585502 (email:phil.sears@hmrc.gsi.gov.uk).