



HM Revenue  
& Customs

# Aggregates Levy - whether to exempt aggregate extracted when laying underground utility pipes

**Summary of responses to consultation and  
government response**

December 2017

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# 1. Introduction

1.1 At Budget 2016, the government announced a consultation on the case for introducing an exemption from Aggregates Levy for aggregate removed as a by-product when laying utility pipes. The consultation “Aggregates Levy - whether to exempt aggregate extracted when laying underground utility pipes” was published on 9 August 2016 and closed on 18 October 2016.

1.2 In the consultation, the government invited views on two proposed changes. The first would extend the scope of the existing Aggregates Levy exemptions for aggregate removed from work carried out by utility operators under specified legislation and from the site of a building in the process of erecting or modifying the building, or for laying pipes or cables on the site. The second would introduce a new exemption for aggregate extracted when laying any utility pipes.

1.3 This document:

- sets out the background to the consultation
- outlines the responses to the consultation, and
- sets out the government’s response

## 2. Background

2.1 The Aggregates Levy was introduced on 1 April 2002. It is a UK wide environmental tax on the commercial exploitation of aggregate (i.e. rock, sand and gravel) for use in construction. It is a one stage, non-deductible tax levied at a rate of £2 per tonne of taxable aggregate that is commercially exploited. The levy is paid by quarry operators, importers of aggregate and marine aggregate dredgers.

2.2 There is no general exemption from the Levy for aggregate extracted when carrying out major engineering works. Exemptions apply where aggregate is an unavoidable by-product of some necessary, specified construction works, such as the construction or repair of a road or railway, erecting or modifying a building or laying pipes on a building site.

2.3 In the case of street works, if the operator's work extends beyond the street (which can be beyond the building site), any aggregate removed from the area outside the street from laying the pipe is liable to the Levy. This can happen, for example, where a pipe runs off a main road into a private property. This approach minimises the opportunity for tax avoidance.

2.4 Representatives of the water industry suggested that it was difficult to work out how much aggregate was exempt and how much was taxable. They suggested that the best way to deal with this would be a wide exemption covering all aggregate removed as an unavoidable by-product in the process of laying water or sewerage pipes.

2.5 The government decided to consult on the proposal but to widen the scope of the consultation to include all aggregate removed in the course of laying connection pipes, as the reasons given in favour of a potential new

exemption would have applied equally to them. References in this document to the laying of pipes include the laying of cables.

2.6 On 9 August 2016, the government published the consultation document “Aggregates Levy - whether to exempt aggregate extracted when laying underground utility pipes”. Three options were included:

- a narrow exemption for small-scale pipe laying - extending existing exemptions for aggregate arising from street works to include when pipes are laid between the road and another location
- a wider exemption for all aggregate extracted when laying utility pipes, as suggested by the water industry. Unlike the first option this would include large utility projects
- do nothing – retaining tax liability for aggregate extracted arising from utility projects

2.7 By the closing date of 18 October 2016, HMRC received 22 written responses to the consultation and held meetings with some respondents. A breakdown of the representative capacities in which respondents made comments is as follows:

- 7 from pipe-laying contractors
- 7 from water companies
- 3 from wider utility providers
- 3 from trade associations
- 1 from a telecommunications provider
- 1 from an accountancy business

2.8 Responses came from a variety of locations in the UK:

- 11 from UK-wide businesses
- 9 from England
- 1 from Wales

- 1 from Northern Ireland

2.9 The responses highlighted issues around how any exemption might work without adding compliance costs to businesses and also raised potential risks of avoidance. These required further consideration and discussion between HMRC and stakeholders which delayed earlier announcement of the outcome of the consultation.

## 3. Summary of responses

**Q1: What do you think of the case for exempting all aggregate which is removed as an unavoidable by-product extracted when laying utility pipes? What do you consider the impact would be if the status quo was maintained?**

3.1 The responses were divided between those associated with utility providers and those producing aggregates that could be in competition from any Levy-free aggregates removed as a by-product when laying utility pipes. Those associated with utility providers were in favour of an exemption; whilst those that produced taxable aggregates were opposed to an exemption.

3.2. The arguments made in favour of an exemption were as follows:

- Businesses laying pipes did not intend to produce aggregates for commercial exploitation so it was unfair to treat any by-products of the work as taxable material
- The lack of an exemption in legislation was an oversight that needed correcting
- An exemption would give those laying pipes parity with others such as those building railways who already had exemptions for aggregate which had been extracted in the process of construction work
- Creation of small amounts of aggregate as a result of pipe-laying was unavoidable and often highly regulated so it was unfair to levy tax
- Pipe-laying was good for the wider community and should not be penalised
- A single pipe-laying project would include both exempt aggregate, where it was under streets, and taxable aggregate where the work extended beyond the street. There was

uncertainty about which material extracted was exempt. An exemption would remove this ambiguity

3.3 The arguments made against an exemption were:

- There was no justification to extend the number of exemptions from the Levy
- Extending the number of exemptions was against the environmental objectives of the tax which discouraged the removal of taxable aggregate from its originating site
- A change to the existing exemptions might result in greater uncertainty over the liability of aggregate to the Levy
- Any extension to exemptions from the Levy would provide opportunities for avoidance/evasion
- Allowing an exemption would make it more difficult for HMRC to police the tax since it would be harder to identify the source of aggregates and therefore whether it should be exempt or not

**Q2: Of the three options, which do you prefer and why? If you support an exemption, what are the main pros and cons of the two options for change? If you consider there is a better way of achieving an exemption, please specify.**

3.4 Responses were split largely between the utility providers and companies that support utilities businesses - who would benefit from an exemption - and trade associations representing the aggregates industry.

3.5 Businesses laying pipes and cables favoured the creation of a wider exemption, in broad terms for the following reasons:

- The current situation - where some material extracted when laying pipes may be exempt and other aggregate is taxable - resulted in those laying the pipes having the responsibility of

identifying and separating these two categories. This was an administrative burden and difficult for HMRC to enforce

- Pipes were often laid as a result of statutory obligations. Their laying was highly regulated to ensure that by-products resulted only when unavoidable
- Major new utility installations were undertaken to meet social need and should be encouraged

3.6 There was little support for a narrower exemption.

3.7 Those against either a wide or a narrow exemption stated that:

- An exemption would lead to a significant supply of Levy-free aggregate in some localities. This would adversely affect quarries in the locality and provide an incentive for those undertaking major construction in order to lay utility pipes to sell aggregate rather than return it to the site of excavation
- The scope of an exemption would be difficult to limit to aggregate necessarily removed in the laying of utility pipes

3.8 One respondent saw it as an unnecessary burden on the sector which would not raise much revenue given that most projects involving aggregates were in the public sector.

**Q3: What would be the economic/market impact of the three options? Are there significant projects on the horizon that could be captured by either option for change and if so what is the scale of the impact?**

3.9 The respondents opposing the exemption argued that an exemption would be damaging for the quarrying industry by giving an unfair advantage to utilities over businesses that had to pay the tax. They accepted that the narrower exemption might result in little change to the current situation, although they were concerned about the possibility of tax avoidance if the

exemption was not tightly drawn or tax evasion if businesses mis-represented the facts surrounding the laying of utility pipes.

3.10 Those businesses in favour of an exemption argued that there was little chance that the aggregates market would be affected as they claimed that the amount of aggregate which would be made available by the proposed exemption would be too small to have much impact.

3.11 Those involved in pipe-laying said the narrower exemption would create additional administrative burdens for them while delivering very little revenue in return.

#### **Q4: What would be the environmental impact of the three options?**

3.12 Those supporting an exemption made the following points:

- An exemption would encourage the use of secondary aggregates
- An exemption was unlikely to lead to more aggregates coming onto the market as utilities' pipe-laying was highly regulated
- In any event, the amounts of aggregate involved were very small
- Pipe-laying was less environmentally damaging than quarrying so it would be unfair to tax it similarly to aggregates that came from quarrying

3.13 The respondents that opposed a new exemption argued that:

- There could be a negative environmental impact caused by lower quality aggregate coming onto the market
- The justification for quarry operators paying the Levy is the impact on the environment, such as noise, dust, general disruption and traffic congestion. It would be unfair to exempt

from the Levy those removing aggregate when laying utility pipes as this has a similar impact on the environment

- If the government allowed this exemption it might provoke calls for further exemptions from others, with similar environmental implications

**Q5: Do you think the options for change would stimulate future projects that are not currently planned? Please specify the nature of your business and provide an estimate of the annual tonnages affected (all information will be treated in confidence).**

3.14 Those supporting an exemption suggested that the pipe-laying sector was already particularly highly regulated, particularly the water industry. They said that, as these businesses generated aggregate only when laying pipes they needed to lay, there would be no more aggregate produced than would have been regardless of an exemption.

3.15 Those opposed to an exemption said that it would be seen as a windfall by providers of utilities. One respondent suggested that if the government wanted to stimulate future projects then abolishing the tax entirely might have a greater impact.

**Q6: Do you envisage any practical difficulties in applying either of the change options consistently and equitably?**

3.16 Those supporting the new exemption said that a narrower exemption would be more costly for affected businesses and HMRC to administer than a wider exemption. This was because an exemption would in effect mean that there would be two types of aggregate that could be generated in such projects: exempt and taxable aggregates. Sorting out and accounting for the different types of aggregates would add an extra burden on all and create more disputable “grey areas” between businesses and HMRC. In addition, over 700 contractors could potentially find themselves liable to register for the tax.

3.17 It was also suggested that there could be complexity in a narrow exemption especially in cases where a pipe passes through different areas/types of land.

3.18 Those opposed to an exemption said that extending the exemptions that already existed for the tax would make it more complex and might make avoidance/evasion of the tax easier.

**Q7: Do you think the options for change are open to abuse? If so, how could we mitigate the risks? Please also indicate how we could distinguish between aggregate necessarily and unavoidably extracted, and that extracted specifically to obtain the aggregate, and any impact this would have on the administrative burden on businesses.**

3.19 Those supporting an exemption argued that:

- If worded clearly, an exemption would not be open to abuse
- A wider exemption would create fewer administrative burdens for businesses than a narrower one
- A new exemption would be no more open to abuse than existing exemptions
- Abuse could be limited if eligibility was restricted to work undertaken to comply with the Water Industries Act 1991
- A narrow exemption that did not cover work done by sub-contractors would lead to confusion/complexity

3.20 A business in the telecoms sector said that it was important to ensure that any exemption was not confined to the water sector.

3.21 Those opposed to an exemption said that avoidance/evasion would be encouraged by a new exemption and that HMRC did not have the resources to police it properly. They said that an exemption would lead to a large increase in untaxed material coming onto the market and would therefore increase the incentives to avoid/evade for businesses that paid the tax.

**Q8: Have you any other views or concerns which have not been identified elsewhere? If so, please outline them.**

3.22 Those supporting an exemption made the following points:

- The only reason an exemption was not in place already was it had been overlooked when the existing legislation was drafted and very similar exemptions for other sectors were already in place
- A wider exemption was easiest for those laying pipes
- A list of businesses registered for the tax could be published by HMRC to help identify who was entitled to the exemption
- Certainty was needed for the sector - at present the law was ambiguous about whether material from pipe-laying was exempt or not. This ambiguity made complying with/paying the tax more complex for businesses

3.23 Those opposed to an exemption thought that there were no economic, environmental or equity issues which could justify the introduction of an exemption. One respondent suggested that the tax should be abolished.

## 4. Government response

4.1 The government thanks everyone who responded to this consultation. Responses to the consultation were divided between those that supported the introduction of an exemption and those that were opposed to it.

4.2 There is a risk that a wide exemption could lead to large amounts of aggregate coming onto the market from major construction projects. This material would be in direct competition with aggregate produced by quarries which had accounted for the tax.

4.3 A narrower exemption, however, would give very small benefits for utilities companies (a tax saving across the utility sector of less than £3m a year). Such an exemption would be difficult to define e.g. in situations where a number of contractors were involved in one project and where networks of pipes were being laid not just between a main pipe and a property but between a main pipe and other pipe networks. Demonstrating compliance with a narrow exemption would introduce new burdens for utility companies and an estimated 700 contractors, and the costs of administering the exemption would be disproportionately high given the cost of the relief.

4.4 The government also acknowledges that an exemption would be difficult for HMRC to police and might even incentivise avoidance of the tax as proving the origin of such aggregates from an exempt activity could be difficult. The costs of countering possible avoidance would outweigh the benefit of any exemption for those producing and selling aggregates.

### Conclusion and next steps

4.5 On balance, the government has decided that the case to introduce an exemption is not strong enough at this time.

## 5. List of respondents to consultation

Bristol Water

British Aggregates Association

BSG Civil Engineering Ltd

Claret Civil Engineering Limited

Deloitte

Glanvill Cleansing Ltd

J N Bentley Ltd

Mineral Products Association

Morrison Utility Services Limited

National Joint Utilities Group

North Midland Construction PLC

Openreach

Pennon Group PLC

Public Sewer Services

R & M Utility and Civil Engineering Services

South Staffordshire PLC

Southern Water

Thames Water Utilities Ltd

Tideway

United Utilities

Water UK

Welsh Water