



HM TREASURY



HM Revenue  
& Customs

# Government response to modernising landfill tax legislation

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**March** 2010





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# 1

## Introduction

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The Government has today announced its formal response to the Budget 2009 consultation on modernising landfill tax legislation.

The consultation sought stakeholder views on how to ensure that landfill tax continues to be an effective means of reducing the volume of waste that goes to landfill, by encouraging alternative waste management treatments, including greater reuse and recycling of waste materials. In particular, the Government consulted on the possibility of redefining what constitutes a taxable disposal and what wastes should qualify for the lower rate of tax.

A non-interpretative summary of responses to the consultation was published on 4 December 2009. You can find the original consultation paper, the non-interpretative summary and the individual responses (except for those that requested confidentiality) on HM Treasury's website [www.hm-treasury.gov.uk/](http://www.hm-treasury.gov.uk/) (from the home page follow the link 'Consultations & legislation').

The Government's formal response to consultation is as follows:

The list of wastes that qualify for the lower rate will remain broadly the same as at present. This means, for example, that pulverised fuel ash landfilled in a mono-fill, incinerator bottom ash, used foundry sand, furnace slags and aluminium/ferric hydroxide wastes will all remain lower rated.

It will introduce new legislation as soon as possible in the next Parliament to provide for the publication and review of new qualifying criteria for the lower rate. This will provide a more transparent environmental rationale for the lower rate. Under the current rules in section 42(4) of the Finance Act 1996, Treasury must have regard to whether material being landfilled is commonly described as inactive or inert when deciding whether or not to include it in an Order that lists the materials that qualify for the lower rate of tax. The Landfill Tax (Qualifying Material) Order 1996 lists the qualifying wastes. The new legislation will replace section 42(4) with new provisions that specify that HMRC must publish the criteria that Treasury consider in determining what material is lower rated. HM Treasury will take account of these criteria when listing the materials that qualify for the lower rate of tax in an Order, for any disposals from 1 October 2010. A draft of the new criteria is attached at Annex A.

To coincide with the formal publication of these criteria later this year in the HMRC public notice, *A Guide to Landfill Tax LFT1*, some minor changes to the lower rate Order will be made from 1 October 2010. These are designed to update terminology and make minor changes to coverage to reflect developments since 1996, such as the implementation of the Landfill Directive. The Government will publish the proposed changes in draft by June and invite comments from affected stakeholders. A provisional summary of the proposed changes is set out at Annex B.

There are no plans to proceed with changes to way that waste disposal is defined in the legislation for tax purposes, as originally set out in the consultation; instead, the Government will continue to assess the impact of the legislative changes made in September 2009 to ensure they continue to provide clarity, support the environmental aims of the tax, and are not open to abuse.

If you have any queries regarding the above, please contact Dave Fitzgerald on 020 7147 0251 or by e-mail at [dave.fitzgerald1@hmrc.gsi.gov.uk](mailto:dave.fitzgerald1@hmrc.gsi.gov.uk)

# A

## Landfill tax lower rating criteria

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**A.1** In drawing up wastes to be listed in its lower rate Order, the Treasury will have regard to the criteria set out below. These are the principles that guide the Treasury's considerations – a waste is lower rated for landfill tax only if it is listed as a qualifying material in the Landfill Tax (Qualifying Material) Order 1996.

### Non-hazardous

- Wastes which are not 'hazardous' within the meaning of the Council Directive on Hazardous Waste (91/689/EEC). (This will be superseded by the revised Waste Framework Directive (Directive 2008/98/EC on waste and repealing certain Directives).)

### Low potential for greenhouse gas emissions

- Wastes which are not biodegradable, have a low organic content or do not break down under the anaerobic conditions that prevail in landfill sites to produce methane. These include inert waste within meaning given under the Landfill Directive; and waste with little or no organic content such as inorganic residues or completely combusted residues from the incineration or biodegradable / organic wastes.

### Low polluting potential in the landfill environment

- Waste where the contaminants are unlikely to become mobile in the landfill and any leachate produced has little or no pollution potential.
- Where the pollution potential of the waste is reduced if deposited alone in mono-fill landfill sites or within separate cells (not mixed with other wastes) within a landfill site.
- The engineering requirements for the landfill are lower than would be the case for a non-hazardous landfill (as laid out in the Landfill Directive) by virtue of a risk assessment agreed with the regulator.
- The aftercare period and requirements are significantly lower than would normally be required for a non-hazardous waste landfill, based on a risk assessment agreed with the regulator.



# B

## Changes envisaged to lower rate of landfill tax from 1 October 2010

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### Group 1 (naturally occurring rocks and soils)

- exclude topsoil and peat (but include subsoil)
- formally exclude rocks and soils from contaminated sites

### Group 2 (ceramic or concrete materials)

- no changes envisaged

### Group 3 (processed or prepared minerals)

- formally add used foundry sand (currently lower rated by extra-statutory concession) to the Treasury Order

### Group 4 (furnance slags)

- no changes envisaged

### Group 5 (ash)

- for ash from coal, restrict lower rating to instances where the ash is landfilled in a mono-fill site

### Group 6 (low activity inorganic compounds)

- tighten the definitions of wastes/conditions listed in this group (discussing with stakeholders as necessary), for example:
  - replacing titanium dioxide with "calcium-based reaction from titanium dioxide production"
  - restricting ferric and aluminium hydroxides waste to instances where the waste is landfilled in a mono-fill site

## **Group 7 (gypsum, plasterboard and other high sulphate bearing wastes disposed in specified conditions)**

- amend terminology to reflect implementation of Landfill Directive, possibly including plasterboard in the lower rate where it is landfilled in containment cell or at an inert only site

## **Group 8 (wastes in brine deposited in an underground brine cavity)**

- possible amendments to definitions and conditions following discussions with the salt industry

## **Group 9 (water containing other qualifying material in suspension)**

- removal of this group to reflect the banning of liquid wastes in landfill under the Landfill Directive (although water is used as a carrier for waste, the water is not waste in these circumstances so not taxable).

## HM Treasury contacts

This document can be found in full on our website at:  
[hm-treasury.gov.uk](http://hm-treasury.gov.uk)

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