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## **Natural Resources Wales response to: Welsh Government landfill disposals tax consultation**

We welcome the opportunity to provide our views on this consultation and recognise that the transfer of tax-raising powers to Welsh Government represents a significant step in devolution in Wales. We are represented on your Wales Landfill Tax Project Board, and Landfill Tax Technical Experts Group. Through these groups we have been working with you to look at the potential role and opportunities for Natural Resource Wales in relation to Welsh Landfill Tax.

The purpose of Natural Resources Wales is to seek to achieve sustainable management of natural resources in relation to Wales, and apply the principles of sustainable management of natural resources. Natural Resources Wales works as a regulator, partner and advisor to businesses, non-governmental organisations, local authorities and communities to help deliver Welsh Government and European Union policies and priorities. We take an ecosystem approach to promoting integrated natural resource management that delivers social, economic and environmental benefits for the people of Wales.

We indicated in our response to the Welsh Government's consultation on the white paper "Collection and management of devolved tax in Wales" that we did not wish to be considered for the collection and management role at this time, but recognising there are potential synergies between our existing regulatory role and the forthcoming landfill tax regime, we committed to explore opportunities to deliver a more effective compliance and enforcement regime in Wales, working on the expectation that any additional role would be fully funded.

I trust you will find these comments and recommendations useful. If you have further queries relating to our comments, please contact Becky Favager, Waste & Resources Manager [rebecca.favager@cyfoethnaturiolcymru.gov.uk](mailto:rebecca.favager@cyfoethnaturiolcymru.gov.uk)

Yours Faithfully

Ceri Davies  
**Executive Director for Knowledge, Strategy and Planning**

## Response to specific questions

### Chapter 2: Tax Rates and Taxable Disposals

#### **Question 1: How important is it that the Welsh Government maintains consistency with the UK Government and Scottish Government on Landfill Tax rates and why?**

We believe there are significant potential benefits to continued consistency between Welsh Government and the UK and Scottish Governments. The UK Landfill Tax introduced in 1996 was the UK's first environmental tax and is a key mechanism in enabling the UK to meet its targets, for the landfilling of biodegradable municipal waste, set out in the Landfill Directive.

Landfill Tax is a tax on the disposal of waste at landfill, which provides a strong incentive for waste producers to produce less waste, recover more value from waste, for example, through recycling or composting and to use more environmentally friendly methods of waste management. Through increasing the cost of landfill, other advanced waste treatment technologies with higher gate fees are made to become more financially attractive. The effectiveness of this tax in changing behaviour has been demonstrated by the reduction of waste disposed at Landfill sites in Wales. Since 2000 the amount of waste disposed at landfills in Wales has reduced from 4.5 million to 2.1 million tonnes in 2013.

The proximity of major urban areas on both sides of the Welsh and English Borders means that potential flows of waste could easily be reversed simply by relatively small changes in differential rates. To create incentives to waste tourism to other parts of the UK could impact negatively on Welsh waste management enterprises when bidding against competitor operators from other parts of the UK. Welsh Government should also consider the potential impact on existing and developing long-term regional waste contracts, whilst primarily focussed on managing local authority municipal wastes, the business model would almost certainly include an element of commercial waste, the basis of which, would have been unlikely to have considered or mitigated for different taxation rates.

We believe co-operation between administrations in setting rates and fees is desirable if taxation is to achieve optimal environmental responses supporting the management of waste further up the waste hierarchy within appropriate proximity of its arising. We also recognise that stability and certainty are critical to how the business community will respond to any proposals. It would be helpful if any changes were clarified as early and as openly as possible.

#### **Question 2: Are the current standard and lower tax rates set at an appropriate level for Wales? Please explain your response.**

##### **Standard rate**

We believe that the current standard rate is appropriate for Wales. As highlighted in our response to the previous question, the effectiveness of achieving a greater than 50% reduction in disposal of biodegradable municipal waste at landfill, indicates that the implementation and escalation of the standard rate in tax has been successful. We would be concerned if the level of standard rate applied in Wales is changed as it could have the potential to negatively distort current waste management practise and weaken a key mechanism to delivering the ambitious targets set in Towards Zero Waste.

### **Lower, 'inactive' rate**

We do not believe that the current lower rate provides enough of an incentive to effectively drive recovery and corresponding diversion from landfill of this waste stream. Since its introduction the inactive rate of Landfill Tax has remained at a low rate and not in pace with price changes in the wider economy. We recognise that it is difficult to separate out the impact of the rate change from that of the global downturn following 2008 and therefore assess the effectiveness of the lower tax rate in driving waste producer behaviour or choice of waste management options for qualifying waste types. There are a number of well-established options for recovery which should be encouraged over disposal at landfill and we would support Welsh Government in taking this opportunity to consider increasing the lower rate.

### **Question 3: Is there value in the Welsh Government having the ability to set different lower rates of tax (explained in paragraph 2.10 - 2.11) and why?**

We would support Welsh Government having the ability to set different lower rates of tax as this would provide a mechanism for tax rates to respond and support delivery of future policy objectives for Wales or to reflect any changes in England and Scotland. We recommend that the consequence of any actual proposed changes would need to be fully considered before introduction, for example, potential to alter waste flows and impact on waste crime.

### **Question 4: Are there any changes to the list of materials qualifying for the lower tax rate that should be considered, and on what basis?**

We believe that there are inherent advantages, highlighted above, in maintaining a consistent approach and keeping the list broadly the same as across the remainder of the UK.

We recognise that there is an inconsistency between what is defined as inert for waste regulation purposes and that which is defined as inactive for taxation purposes. Aligning the two classification systems so that only inert materials qualify for the lower rate, could incentivise improved management of non-inert waste streams, and however in doing so would have a significant economic impacts on large industrial waste producers in Wales.

Any proposed changes would require detailed modelling and the benefits of international experience where available to ensure that all potential outcomes, positive and negative are identified so perverse consequences are avoided.

### **Question 5: What would be the practical implications of introducing a threshold to define 'a small quantity' of non-qualifying waste in a load of qualifying material?**

We would strongly recommend that no threshold is introduced to define a small quantity. In our experience of regulating waste facilities, our common sense approach to waste acceptance is that any non-qualifying waste must be incidental, i.e. present by accident. We anticipate that the practical implications of introducing a threshold will encourage some parts of the industry to use less efficient methods for segregating waste at source and treatment, with even some operators deliberately mixing wastes to achieve the limit set. So introducing a 10% limit will legitimise 10% of higher rate waste to be disposed of at the

lower rate. As well as encouraging poor waste management practice this also legitimises tax avoidance.

**Question 6: Would you support the introduction of a Welsh Loss on Ignition (LoI) test when Landfill Tax is devolved? Please explain your reasons.**

We would support the introduction of the Loss on Ignition test in Wales. The LoI test was introduced in response to concerns raised that there was no consistent methods for both operator and regulator to assess whether certain materials attracted the lower or higher rate of tax. We believe that the introduction of a consistent measure is essential if the scheme is to be delivered successfully. The Environmental Services Association has supported the UK scheme in that it creates a level playing field and will reduce misclassification. We note that Scotland have a different methodology from England and recommend that Welsh Government learns from their experience and consults with other bodies before developing any test in Wales.

**Question 7: Are there any problems with the existing arrangements for defining the area in which a taxable disposal takes place, and if so, how might these be resolved?**

We are not aware of any problems with the existing arrangements, although we recognise that there may be potential for confusion between wastes deposited for recovery purposes within a landfill. We would recommend that the taxable disposal area is consistent with the site boundary identified within a landfill facilities environmental permit and operator's management plan. We would also recommend that the landfill operator ensures that they keep an accurate record of intention and final use of the wastes entering the disposal area.

**Question 8: In your view, are there any issues with the current arrangements for credit for landfill material permanently removed from a landfill site and if so, how might these be addressed?**

We have no relevant experience of this happening in practise. We would recommend that the landfill operator ensures that they keep an accurate of any material removed, including its final destination.

**Question 9: What would be the practical implications of legislating on the basis that all material entering a landfill site (other than that which is specifically exempt) is subject to tax?**

We would support Welsh Government in taking a common sense approach, so that materials entering the landfill where waste disposal was never the intention are excluded from tax requirements, for example, compaction vehicles. We believe that it would also be useful to ensure that any exemptions are clearly defined. It is essential that operators keep an accurate record is kept all wastes types and quantities.

**Question 10: What activities would you expect to be exempt (not subject to tax) why?**

We would support Welsh Government considering tax exemptions for activities that promote recycling or recovery of waste over disposal, or the activity offers a clear benefit by reducing unnecessary administrative burden.

We believe the exemptions in place under the current regime are appropriate, and therefore should be maintained in the Welsh provisions. These exemptions incentivise the reuse of waste materials on site, where appropriate, without compromising the objectives of the tax regime.

**Question 11: Do you have any other suggestions for how we might clarify the taxable and non-taxable activities on a landfill site and what would be the practical implications of these?**

We suggest that the operator's management system / site working plan includes information which clearly sets out the location and activities being undertaken.

**Question 12: Do you think that any of the current exemptions should be removed or modified? Please explain your response.**

We do not believe that removing the exemptions would result in any positive changes in the amount of waste arising and/or encouraging alternative waste management to landfill disposal. For example, there are limited options for the appropriate treatment and disposal of dredgings. Where the dredged material cannot be deposited on the bankside or otherwise recovered the most appropriate option would be disposal at landfill. Removing the exemption would not decrease the amount of waste destined for disposal but could potentially increase costs for public authorities with a responsibility for dredging waterways.

We also believe that there are benefits, in maintaining a consistent approach and keeping the exemptions broadly the same as across the remainder of the UK.

**Question 13: Is there a case for removing or modifying the water discount relief? Please explain your response.**

We would support Welsh Government in considering modification of the water relief discount and recommend that a cost-benefit analysis is undertaken and the potential timescales analysed. The current system encourages the addition of water to waste, increasing the amount of leachate being generated that will require further management to ensure that the environment is appropriately protected. The availability of a water discount relief may also support bad practice of operators in undertaking ineffective pre-treatment of waste prior to landfill.

However we do believe it is appropriate to maintain water discount relief in some circumstances, for example, where water has been added to ash to ensure dust suppression or in the disposal of fire damaged materials. We would recommend that Welsh Government considers the potential for limiting the water discount relief to specific wastes and/or circumstances.

**Question 14: Do you think there is a case for introducing any new exemptions or reliefs, and if so, what should they be and why?**

We believe there may be merit in including difficult stable non-reactive (SNR) wastes, such as Asbestos and Gypsum, in the list exempting landfill disposal tax. An important and appropriate waste management option for disposal of both waste streams is landfill. There are limited asbestos and no gypsum disposal facilities in Wales. The sensitive handling required for both materials means that they are likely to be illegally dumped and/or deliberately mis-described resulting in inappropriate management putting the environment and human health at risk. Providing an incentive for these specific wastes to qualify may encourage responsible management of wastes.

We would also support the introduction of an exemption for public authorities, such as Natural Resources Wales and the Local Authorities, who have responsibility to clear and dispose of fly tipped and illegally deposited waste. This would reduce the financial burden on the public purse and may enable waste to be cleared more quickly.

### **Chapter 3: Compliance and Enforcement**

**Question 15: What would be the practical implications of placing an obligation on landfill site operators to use a weighbridge where one is functional and available on the landfill site or within close proximity of the site, with a corresponding penalty for failure to do so?**

We do not believe that there would be any practical implications of obliging operators to use a weighbridge, as our understanding is that all permitted landfill sites in Wales have a weighbridge.

We recognise that we may become aware of potential breaches of this obligation through our compliance activities and would ensure that this information is shared with the appropriate body.

**Question 16: What would be the practical implications of extending the definition of landfill sites to include illegal deposits of waste within the scope of the tax?**

We believe that introducing this measure may act as an additional deterrent to illegally depositing waste. However Welsh Government should be aware that this measure will only become effective if sufficient evidence is gathered to undertake successful enforcement action.

There are some practical implications that we recommend Welsh Government further consideration, such as;

- the practicalities of assessing the illegal deposit of waste; would Welsh Government expect every illegal deposit to be assessed and who would take responsibility for undertaking the assessment?
- Proceeds of Crime Act (POCA) - we use the avoided costs (legitimate disposal) figures to prove criminal benefit. It would be duplicitous to expect a Defendant to pay a Confiscation Order based on his criminal benefit and then expect them to repay the taxation which, essentially, will already be covered by the POCA proceedings. Excluding the legitimate disposal would reduce the total benefit

assessment, which could reduce the amount of funds payable under the confiscation order and the subsequent funds returned back to the regulators.

**Question 17: Are there any issues with the current penalty regime and if so, how might they be addressed?**

We have no experience of the penalty regime, however we would recommend that Welsh Government consider the development or implementation of the penalty scheme to deliver the Hampton<sup>1</sup> principles as follows;

**Six Penalties Principles**

A sanction should:

- Aim to change the behaviour of the offender;
- Aim to eliminate any financial gain or benefit from non-compliance;
- Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
- Be proportionate to the nature of the offence and the harm caused;
- Aim to restore the harm caused by regulatory non-compliance, where appropriate; and
- Aim to deter future non-compliance.

**Seven characteristics of a successful sanctioning regime**

Regulators should:

- Publish an enforcement policy;
- Measure outcomes not just outputs;
- Justify their choice of enforcement actions year on year to stakeholders, Ministers and Parliament;
- Follow-up enforcement actions where appropriate;
- Enforce in a transparent manner;
- Be transparent in the way in which they apply and determine administrative penalties; and
- Avoid perverse incentives that might influence the choice of sanctioning response.

**Question 18: Is there a need for increased compliance activity on the ground, rather than desk-based? If yes, please explain your view and provide evidence/explain the benefits where possible.**

Our perception is that currently there is little on the ground compliance activity undertaken, which may not pose an effective regulatory framework. We support Welsh Government's aspiration to increase compliance with the tax regime, and believe there are significant benefits in undertaking on the ground site compliance activities as it will allow the regulating officer to check compliance and compare actual site practise against the site management documentation and record keeping. We also believe that on the ground presence will be essential to ensure that the Lol tests are being undertaken properly.

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<sup>1</sup> The Hampton report

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmspeak/1069/106911.htm>

We also recognise the benefits that having an effective tax compliance would have on protecting the environment, for example, operators ensuring inactive and active wastes are appropriately described would ensure that the correct amount of tax is levied and that the wastes are properly managed. It would also support more effective segregation of wastes at source and pre-treatment, providing increased opportunity to recycle and recover more materials.

We will continue to work with Welsh Government to explore any potential role that we may have in compliance or enforcement of this regime, to ensure that we are fully funded and that there is a resilient level of knowledge and skills present to enable us to deliver any role effectively.

**Question 19: Are there any further actions the Welsh Government might take to use its new tax powers to improve compliance and enforcement and minimise the impact of Landfill Disposals Tax evasion? If yes, please describe what those actions could be?**

We recognise, that there are opportunities and synergies in delivery of this activity to achieve shared outcomes. Examples include improving information sharing and coordination, and potential to reduce administrative burdens on businesses, through new policy approaches. We will continue to work with you on these opportunities through our representation on your Project Board and Technical Experts Group.

**Question 20: In your view, is there evidence of tax avoidance within the existing Landfill Tax, and what is the nature of this?**

We have no evidence of tax avoidance.

#### **Chapter 4: Administration**

**Question 21: Would you support aligning the tax return period with the financial year? Please explain your reasons.**

Yes we would support aligning the tax return period to a financial year. Landfill operators are required to submit a quarterly summary of the waste received on site, this is an important information source to cross-check the accuracy of the tax return submission. Aligning the tax return periods will simplify this cross-checking.

**Question 22: What would be the practical implications of making it a requirement that European Waste Catalogue codes are used in completion of the tax return?**

We would support the use of the European Waste Catalogues (EWC) codes in the completion of the tax return as this is the classification system used for waste regulation purposes and is the basis of the waste return summary highlighted above. If both returns use the same classification system this will improve the ability to cross-check the information.

We highlighted the difference in categorisation of inactive (for tax purposes) and inert (for waste regulation purposes), to help overcome this difference it would be useful if the inactive list was translated into the associated EWC. There will be some codes that are



more difficult to directly translate, for example 19 12 12 – Other wastes (including mixtures of materials) from mechanical treatment of wastes.

**Question 23: How might the Welsh Government simplify and modernise the filing of tax returns including improving electronic and online support?**

We recognise that the number of landfill operations in Wales is likely to decrease significantly by 2018, and that the expense associated with developing an electronic system will be a consideration for Welsh Government. We would be happy to share the experience we've gained from developing replacement IT system for waste permits and returns, following decoupling from the Environment Agency. We have designed the overall architecture for our regulatory IT systems to be modular to facilitate additional functionality to be built in if required, including automatic validation or quality assurance checks. In our experience this provides a cost-effective way of providing an electronic system.

**Question 24: Should bad debt relief be offered and if so, in what circumstances is it appropriate?**

**Question 25: Have you any comments on the operation of the current internal reviews and appeals provisions in a Landfill Tax context, including in particular the people eligible to seek a review or appeal?**

**Question 26: In your view, are there any exceptional circumstances in which taxpayers might be able to postpone payment of Landfill Disposals Tax until the conclusion of their appeal?**

We have no comment on these questions.

## **Chapter 5: Community Wellbeing**

**Question 27: Should Welsh Government allocate a proportion of Landfill Disposals Tax revenue to enhance the wellbeing of communities?**

We would strongly support the allocation of a proportion of the Landfill Disposal Tax (LDT) revenue to be used to enhance the wellbeing of communities.

**Question 28: If the Welsh Government allocates a proportion of Landfill Disposals Tax revenue to enhance community wellbeing, which of the following activities should benefit from funding, and why?**

- Supporting compliance and enforcement and minimising the impact of waste crime
- Supporting waste minimisation and the diversion of waste from landfill
- Biodiversity initiatives and wider environmental improvements
- Tackling poverty and deprivation in communities
- Other (please specify)

We would support the use of the LDT revenue to support compliance and enforcement and recognise the wider potential benefits that an effective enforcement regime could bring to community wellbeing. We are aware of the success that the Environment Agency has been able to deliver, to reduce waste crime with additional funding, this could also lead to greater amount of tax captured.

We also recognise and support the use of this funding in tackling poverty and deprivation via biodiversity initiatives and wider environmental improvements. It is well documented that the wider benefits of a healthy environment on communities, urban and rural, so activity that encourages access to quality outdoor space, environmental improvement work, habitat restoration and biodiversity enhancements are very welcome and important to local communities as well as wider ecosystems. An example of how we believe the funds could be put to use is woodland creation in areas of greater social deprivation. This would allow regeneration of former industrialised areas whilst promoting health and well-being agenda through provision of attractive open green spaces. This can drive economic regeneration, opportunities for flood alleviation and education opportunities for the community. A significant number of sites brought forward annually for action are associated with past waste management practices (e.g. closed landfills/closed tips).

We have benefited directly from some small amounts of LCF funding, and would wish to be able to eligible for funding but also recognise the great importance of this funding for third sector partners in delivering biodiversity and community outcomes.

**Question 29: Do you have any thoughts on the possible administrative model?**

We consider that there are opportunities to simplify and improve efficiency of the administration of this fund, particularly as we recognise that the total size of the fund is estimated to be around £1M and diminishing. A model that it might be worth looking at might be the Welsh Government's Aggregate Levy Fund, with a cross-sector assessment panel including WG, Landfill Operators, NRW and other parties, although we think a flexible timetable is essential to support partners to find match and "contributing third party" funding.