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Committee Clerk
Finance Committee
National Assembly for Wales
Cardiff Bay
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11 January 2017

Welsh Landfill Disposals Tax Consultation Response

Dear Sir,

Thank you for the opportunity to contribute to your consultation. FCC Environment (and its subsidiaries) is one of the major landfill operators in the United Kingdom and have a number of both open and closed sites in Wales.

The general principles of the draft Landfill Disposals Tax (Wales) Bill are reasonably framed but the introduction of separate legislation in Wales on top of existing legislation for both England and Scotland adds further complexity to what is already a complex area. FCC's view is that one combined set of legislation, potentially with separate payments based on the location of the landfill site would have been a less onerous solution, i.e Option 2.

Continuing developments in both England and Scotland need to be considered further, particularly the draft legislation issued by HMRC as part of the Finance Act 2017, whereby HMRC are looking to put the definition of a taxable disposal for Landfill Tax purposes beyond doubt.

In the following appendices, we have included high level comments against the terms of reference and also specific comments where elements of the draft Bill require further clarification or challenge.

If you have any follow up questions or require any further information, please let contact Barry.

Yours sincerely

A handwritten signature in blue ink that reads 'Barry Plane'.

Barry Plane
Assistant Financial Controller

A handwritten signature in blue ink that reads 'Patrick Mainprize'.

Patrick Mainprize
Group Financial Controller

Appendix 1 - Terms of reference

WRA comment	FCC comment
1. The general principles of the Bill and the need for legislation	Reasonably framed, subject to overall comments above and specific comments below
2. Any potential barriers to the implementation of these provisions and whether the Bill takes account of them	See comments
3. Whether there are any unintended consequences arising from the Bill	See comments
4. The financial implications of the Bill (as set out in Chapter 6 of the Explanatory Memorandum)	No further comment
5. The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of the Explanatory Memorandum)	No further comment
6. Whether the Welsh Government's principles for the development of devolved tax policy and legislation have been followed: <ul style="list-style-type: none"> • be fair to businesses and individuals who pay them • be simple, with clear rules which seek to minimise compliance and administration costs • support growth and jobs that in turn help tackle poverty; and • provide stability and certainty for taxpayers 	No further comment
7. The definition of a 'taxable disposal' and 'qualifying materials'	See comments
8. The provisions on how the tax will be calculated including the taxable weight of material and the discount in respect of water content	See comments
9. The implementation of tax rates and whether these retain the flexibility to deal with subsequent changes at a Wales and UK level	Rates need to be consistent to avoid waste tourism
10. The proposed exemptions	See comments
11. The proposed reliefs	See comments
12. The inclusion of unauthorised disposals of waste at places other than authorised landfill sites	See comments
13. The inspection of premises for the purposes of ascertaining a person's liability to LDT and the sharing of information between the Welsh Revenue Authority, Natural Resources Wales and local authorities	No further comment
14. The duties on taxpayers to make payments and pay penalties and interest in certain circumstances	See comments
15. How companies, partnerships and unincorporated bodies are treated in terms of the provisions and responsibility for compliance	No further comment
16. Establishing the Landfill Communities Scheme as a grant scheme rather than a tax credit and developing it outside of the Bill	No further comment

Appendix 2 – Specific comments on the draft Bill

Page /Para	Detail	FCC comment
1 1 (4)	Part 4 makes provision about how the tax is to be charged on taxable disposals made at places other than authorised landfill sites	The challenge to fly tippers and others who flout the law is welcomed
4 8 (4) work carried out to restore a landfill disposal area is restoration work only if it is carried out after the area has been capped	This definition is not totally clear and may be misleading. There could be examples in practice where restoration is undertaken prior to an area being capped
8 16 (4) is treated as a small amount if it constitutes more than a prescribed percentage	Needs further definition. Percentages need to be in line with England and Scotland. 3.62 and 3.63 of the explanatory memorandum refer
9 17	Qualifying mixture of materials:fines	More detail is required in due course. Extensive time and effort has been deployed together with HMRC to develop Lol rules which are due to change on 1 April 2017
10 20 (1)	The operator of an authorised landfill must determine the weight of the material in a taxable disposal before the disposal is made	This needs rewording, the current proposal is not possible, the net weight of the material is only known after the empty vehicle has weighed off
11 21	Discount in respect of water content of material	The proposal as drafted puts the onus on the landfill operator to apply to WRA for approval for a water discount. This is inconsistent with England and Scotland. It is the waste producer who has the technical knowledge regarding the waste stream and they should apply to WRA. If WRA give approval then this should be sent to both the producer and the landfill operator
13 25	Reliefs general (4) relief from tax must be claimed in a return	We would be interested to see how this would work in practice, if no tax is charged, how can a relief be claimed. The wording would appear to suggest that for example standard LFT is charged and then a deduction made?
14 26 (4)	Material is within this subsection if it is qualifying material	This section proposes that all dredgings must be qualifying material. Is this the intention, in practice some dredgings may not be qualifying material, the exemption should be based on the environmental benefit of clearing waterways rather than the nature of the material removed
26 49 (5)	Nor may WRA issue a charging notice under this section more than 20 years after the time when it appears to WRA that any taxable disposal to which the notice relates was made	This reference to 20 years needs clarification

Page /Para	Detail	FCC comment
28 54 (3)	(d) The notice may specify a maximum amount of material that may be carried out in an area (f) The notice must specify the maximum period for which material may be kept in the area	Limiting tonnages and time limits places an administrative burden on the operator for no good reason. The proposed HMRC approach of eliminating information areas is more welcome
33 60 etc	An operator... who fails to comply with a requirement to determine weight properly is liable to a penalty not exceeding £500 in respect of each failure	This and the penalty proposed in para 61 re water discounts would appear to be disproportionate to some of the other penalties in section 4. For example a genuine oversight on weighing incurs £500, yet a blatant disregard by not registering as in para 63 would carry a penalty of £300
44 88	Power to impose secondary liabilities on controllers of authorised landfill sites (2) A controlleris a person other than the operator who determines what disposals may be made	This requires clarification, it is the operator that determines what disposals may be made
46 91 (5)	...The Welsh Ministers are satisfied that the regulations do not cause the amount of tax chargeable on a taxable disposal to be greater than the amount that would otherwise be chargeable on the disposal	Both 5 (a) and 5 (b) are difficult to understand what is being proposed