



Simon Thomas AM
Chair
Finance Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

5 May 2017

Dear Simon

Landfill Disposals Tax (Wales) Bill

I am writing to provide you with further information about the government's intention to bring forward regulations under section 53 of the Bill to create a tax credit in relation to bad debts. This is an area where provision will be technical and intricate. I therefore believe it is better suited to secondary legislation.

The committee and external stakeholders have taken a great deal of interest in this area. We have worked closely with technical experts and external stakeholders to develop our approach and I am keen to support the committee in its understanding of our intentions. A statement of policy intent is attached.

I recognise the important role the committee has in scrutinising the new Welsh taxes and the need to have adequate opportunity to do so. For that reason, I committed during the general principles debate to share the draft regulations with the committee ahead of tabling them in the autumn.

I am also writing to make you aware of my intention to bring forward some technical amendments at stage 3. It is anticipated these will include three general areas, although it is possible further areas will be identified during the course of stage 2.

We are considering the need to bring forward amendments in relation to section 18 (calculation of taxable weight of material) to clarify the effect of any calculation of taxable weight made by the Welsh Revenue Authority (WRA).

The government will bring forward amendments in respect of section 38 (accounting for tax), which will ensure that where an unregistered operator of an authorised landfill site subsequently becomes registered, they will not have to account for any taxable disposals for which they have already accounted while they were unregistered.

Finally, during early preparatory work in relation to the regulations in section 17 (qualifying mixtures of materials: fines), we identified the need to bring forward amendments to ensure a robust and workable loss on ignition testing system can be put

in place and the WRA can take responsibility for setting out some of the detail about how the system will operate, as is the case for the equivalent regimes in the UK and Scotland.

I hope you find this information helpful. I am copying this letter to the chair of the Constitutional and Legislative Affairs Committee.

Yours sincerely

A handwritten signature in black ink that reads "Mark". The letters are cursive and slightly slanted to the right.

Mark Drakeford AM/AC

Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol
Cabinet Secretary for Finance and Local Government



Llywodraeth Cymru
Welsh Government

LANDFILL DISPOSALS TAX (WALES) BILL

Statement of Policy Intent

May 2017

Tax Credits

Power: Section 53 Landfill Disposals Tax (Wales) Bill (the LDT Bill)

Description: Power to make provision for tax credits

Regulations may make provision for the circumstances in which a person will be entitled to a tax credit in respect of landfill disposals tax (LDT). The regulations may among other things, specify the conditions that must be met for an entitlement to a credit to arise and the procedure for claiming a credit.

Policy Intention:

It is the policy intention of the Welsh Ministers to make regulations under section 53 of the LDT Bill.

The intention is to make regulations which create a tax credit that is linked to customer insolvency. It is intended that an entitlement to such a credit will only arise where a landfill site operator has accounted for and paid LDT in respect of a disposal but has not received payment from the customer behind that disposal due to an insolvency event having taken place.

UK approach

Section 51 and 52 of the Finance Act 1996 provide regulation making powers to create an entitlement to a credit for bad debt.

The substance of the bad debt provisions are found in secondary legislation: at Part VI of the Landfill Tax Regulations 1996 (SI 1996/1527).

The regulations set out the conditions that must be met in order for an entitlement to credit to arise and provide that the credit to which a claimant will be entitled will reflect the proportion of the consideration that has not been paid. There are evidential requirements if a claim to a credit is to be made and also record-keeping requirements. There is a provision setting out how to deal with a scenario in which a claimant is owed more than one debt by a customer, some of which may not relate to a landfill tax disposal, so that a fair calculation of how much of the debt is outstanding can be reached for the purpose of claiming the tax credit. A key concept among the conditions for claiming this credit is that the claimant has accounted to the tax authority for landfill tax in relation to a disposal but all or part of the consideration that was owing to the claimant in relation to that disposal has subsequently “been written off in his accounts as a bad debt.” Whether and to what extent consideration is to be treated as having been written off as a bad debt is to be determined in accordance with the provisions in the regulations. In essence, this requires that the claimant has written off the debt as a bad debt in their accounts and recorded it in a record known as a “landfill tax bad debt account” as prescribed by the regulations.

Scottish approach

The Scottish Government has taken the same approach to bad debt credit in terms of the primary and secondary legislation split. Many of the conditions for claiming bad debt credit and the records that need to be kept are the same at Part 6 of the Scottish Landfill Tax (Administration) Regulations 2015 as those found in the equivalent UK provisions. However there is one significant divergence, in that the Scottish legislation has significantly narrowed the definition of “written off as a bad debt”. A claim for this credit will only be available where the claimant’s customer has become insolvent (as defined in the regulations) and the insolvency has meant that the claimant has been unable to recover some or all of the consideration.

Welsh Government policy approach:

The policy intention reflects the views of stakeholders in the consultation responses. The majority of those who responded did not want bad debt credit to be offered at all. Of those who did, many suggested the circumstances in which it should be offered be limited to an insolvency event.

Given the current economic climate it is felt fair and appropriate to offer a credit in relation to bad debt where the customer has become insolvent.

Detailed and extensive discussions with landfill site operators and technical experts have highlighted the careful balance that needs to be struck between a policy preference to ensure that landfill waste is deposited appropriately at a landfill site even if the financial situation of the waste producer is challenging, and encouraging landfill site operators to implement robust contract management and good business relationships with their customers. External stakeholder discussions suggested that an approach that retained a credit but narrowed the circumstances in which it is available under UK legislation to something more akin to the approach taken by the Scottish Government would be appropriate for Wales.

In achieving a fair and balanced approach, some of the challenges for the regulations are:

- Ensuring an appropriate definition of insolvency and appropriate evidential requirements for a bad debt claim to ensure that the insolvency is linked to the failure to pay;
- Ensuring the legislation clearly identifies the point in time at which requirements have been met and that these are appropriate – for example, this is an issue in setting out the point in time at which there needs to have been an insolvency event;
- Ensuring the provisions are considered and work within the wider LDT Bill and Tax Collection and Management (Wales) Act 2016 (TCMA) framework – for example, to consider if and how the credit should apply when a tax liability arises through a WRA assessment or determination and also to ensure that the consequences of failing to comply with record keeping requirements in relation to a claim for the credit are carefully considered and work alongside existing penalties;

- Ensuring the provisions adequately cater for more complicated scenarios, such as where part of a payment has been received or payment is received after a credit has been claimed;
- Ensuring there is sufficient flexibility to respond to the WRA's experience and evidence that it gathers once operating the tax and the credit system.

It is our intention to continue to work with external stakeholders as we further develop the regulations and we will be testing the draft regulations with the Technical Expert Group and Landfill Site Operators Group. Further, the government is committed to sharing the draft regulations with the National Assembly for Wales ahead of laying them.

Regulations - breakdown of provisions:

Provision/ Topic Area	Description
Landfill Disposals Tax: provision for a tax credit.	The regulations will introduce a tax credit.
Entitlement to credit.	<p>It is intended that the regulations will prescribe a set of requirements which will have to be met in connection with a disposal before an entitlement to a credit can arise.</p> <p>The following are examples of the sort of requirements that are intended to be prescribed:</p> <ul style="list-style-type: none"> • The disposal to which the claim relates must have taken place on an authorised landfill site; • The landfill site operator (“operator”) must have paid and accounted for LDT on that disposal; • A landfill invoice must have been issued to the customer by the operator; • The customer must be insolvent.
Definition of insolvency	<p>It is intended that the regulations will define “insolvency” for the purposes of the credit. It is proposed that any definition will cover both individual and corporate insolvency.</p> <p>It is envisaged that an inclusive approach to the definition of</p>

	<p>insolvency will be taken so that for example, in the context of a company, a company voluntary arrangement or an administration would be caught as well as a winding-up order.</p> <p>However, it is expected that a qualifying insolvency event will need to be sufficiently formal as to be capable of being identified by reference to a particular point in time and verified with supporting evidence.</p>
Timescales	<p>It is intended that the regulations will prescribe the timescales within which the various requirements will have to be met in order for a person to be entitled to and claim a credit.</p> <p>The timescales that are intended to be prescribed by the regulations include:</p> <ul style="list-style-type: none"> • The landfill invoice being issued within 14 days of the taxable disposal being made; and • The insolvency event occurring within a period of 12 months, beginning with the date on which the landfill invoice was issued.
Documentation	<p>It is intended that the regulations will prescribe the documentation that will be required to support the credit claim and the consequences of failing to comply with any record keeping requirements.</p> <p>It is the intention for the regulations to specify that where an operator makes a claim for a credit in respect of a taxable disposal the operator must keep a record of the credit claimed. The regulations will further set out the detail that record must contain.</p>
Calculation of amount of credit	<p>It is intended that the regulations will set out how the credit is to be</p>

	calculated. Further, the regulations will need to make provision for those cases where a customer may owe a debt to an operator in respect of more than one matter and/or has made some (but not all) repayments.
Claims by persons carrying out taxable operations	It is intended that the regulations will outline the process by which a landfill site operator can claim a credit. It is proposed that the credit should be claimed as part of the submission of a Landfill Disposals Tax return.
Claims by other persons	It is intended that the regulations will specify the circumstances in which an operator who no longer carries on taxable operations may claim a credit. Consideration will need to be given as to how such an application should be made and the documentation required to support it.
Repayment of credit on payment by customer.	It is intended that the regulations will make appropriate provision to deal with those cases where a person has received a credit but has thereafter received payment from the customer.
Appeals	It is intended that decisions taken by WRA in relation to credits should be open to a review or appeal.

The proposed regulations are intended to be supplemented by guidance.

Relationship with other provisions in the LDT Bill and TCMA:

During the preparation and drafting of these regulations careful consideration will be given to the relationship between the tax credit and the provisions in the LDT Bill and TCMA. Specifically, the following provisions:

- Accounting for tax provisions set out in sections 38 to 40 of the LDT Bill;
- Payment, recovery and repayment of tax provisions set out in sections 41 and 42 LDT Bill; and
- Tax Returns, Enquires and Assessments provisions set out in Part 3 TMCA 2016.