

WHERE THERE'S MUCK THERE'S BRASS:

**NEW TAX LIABILITIES FOR THE
INCORRECT REUSE OF MATERIALS
IN DEVELOPMENT**

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10th July 2018

Answers not options...

- What are the changes in landfill tax?
- Why are they relevant to the reuse of excavated materials in development?
- How much is the tax liability?
- Who might be liable?
- Wider implications

- Landfill tax now payable on illegally deposited waste (not just waste deposited at a landfill)
- Intended to target operators of illegal landfill sites BUT wider implications for breaches of waste legislation
- Tax due even on unauthorised deposits made before 1 April 2018

- In 2016 a prosecution for the illegal deposit of 6,000 tonnes of waste resulted in fines of **£170k**
- Had this new tax legislation been in place, the parties could have been additionally liable for over **£1m** to HMRC
- SO the implications of getting it wrong are now radically different

Relevant Legislation

England

- Finance Act 1996
 - amended by Finance Act 2018
- Landfill Tax Regulations 1996

Wales

- Landfill Disposals Tax (Wales) Act 2017
- Landfill Disposals Tax (Administration) (Wales) Regulations 2018

- Both sets of changes came into force on 1 April 2018 (note: applied to unauthorised deposits before this date)

What triggers payment of landfill tax?

- Same triggers apply in both England and Wales
- Tax due when a material is either:
 - disposed of at a landfill site; or
 - when a disposal requires a permit but is not made at a landfill site (unauthorised depositing)
- Disposal includes disposal of material on and under surface of land
- Irrelevant whether material put in container before disposal

- The following is NOT waste:
 - “Uncontaminated soil and other naturally occurring material excavated in the course of construction activities where it is certain that the material will be used for the purposes of construction in its natural state on the site from which is excavated”
- In all other situations, when soil is excavated it becomes “waste” at the moment of excavation UNLESS appropriate steps taken before excavation

Why is this relevant to reuse of excavated materials?
(cont)

- Any future use/deposit of the “waste” (ie excavated material) on- or off-site requires an environmental permit/exemption
- If a permit/exemption is not obtained, you potentially have a taxable disposal & landfill tax is due (as well as a breach of waste legislation)

Who is liable for the tax?

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- A number of parties can be found liable in connection with unauthorised disposals:
 - person who makes the disposal; and
 - anyone who knowingly causes or knowingly permits the disposal to be made
- Each such party is jointly and severally liable

- **Presumption** that the following parties “knowingly caused or knowingly permitted the disposal” (unless it is shown to HMRC satisfaction that they did not)
- Before the time of disposal:
 - Took any action re disposal
 - Party to contract for sale of material
 - Facilitated transport or storage of material
- At the time of disposal
 - Owns/leases/occupies land where disposal made
 - Controls vehicle/trailer from which disposal made
 - Officer of entity that makes disposal or knowingly causes/permits disposal

Which rate of tax applies?

FREETHS

- England: Unauthorised disposals
 - Standard rate
2018/19: £88.95/tonne
- Wales: Unauthorised disposals
 - Unauthorised Disposals Rate
2018/19: £133.45/ tonne

- The discounted lower rate (£2.80 per tonne) for qualifying materials does not apply to disposals made at unauthorised sites
- Unlike disposals at permitted sites, no deposited materials are exempt from tax
- HMRC can charge an additional penalty of up to 100% of the tax due
- HMRC can prosecute those who do not pay

- In addition to inadvertent breaches of waste regulation when reusing excavated materials, the following situations could also give rise to tax liability:
 - Use of waste under exemptions where conditions of exemption not complied with
 - Off-site disposals of construction waste where final disposal site not appropriately permitted
- Landlords also need to be aware of tenant's activities as they may be found liable for these as "owners of the land". There is a particular danger to the landlord if the tenant disappears/ is wound up

- A development site is excavating materials (2,000 tonnes). It is decided to spread them across another part of the same site which is being used for landscaping, to avoid the need to move the material off-site. The site has not applied for a licence or a permit for these activities. On the face of it, this appears to be an taxable deposit.
- Who could be liable?
 - Developer, site manager, controller of vehicle, land owner
- How much would they owe?
 - $2000 \times 88.95 = \text{£}177,900$ (if the site is in England)
 - $2000 \times 133.45 = \text{£}266,900$ (if the site is in Wales)
- These figures could double as HMRC can decide to charge an additional penalty of up to 100% of the tax due

Answers not options...

- The amendments to landfill tax legislation in England and Wales introduce significant new liabilities if waste regulation is breached
- This has the potential to impact development sites where excavated materials are incorrectly reused
- Developers need to ensure that reuse and disposal of excavated materials is carefully planned and managed to avoid liability
eg using DoWCoP

ANY QUESTIONS?

Contact

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