

SLfT Forum: 21 January 2016

Revenue Scotland: RS
Donald Carvel: DC
Chris Myerscough: CM

Welcome and introduction

(Donald Carvel, Head of Tax Policy)

DC welcomed everyone to the meeting and confirmed with a show of hands that around half of those present had not attended the SLfT forum before. DC also explained that based on the feedback received, the next forum would take place in Glasgow.

AGENDA

DC outlined the agenda for the meeting highlighting the intention to discuss the Loss on ignition (LOI) consultation and guidance after the break.

DC then invited feedback and questions on the current SLfT guidance from the forum. A delegate asked whether Revenue Scotland had changed the definition of 'street works waste' given in its guidance, because they had noted that it states that pieces of tarmac must be picked out by hand. The delegate said that the industry had guidance from HMRC to the effect that non-qualifying material (such as tarmac) in street works waste could be discounted if it comprised less than 50% of the total load. Such a load could therefore be accepted as qualifying for the lower rate.

[Chapter: SLfT2006 Extract](#)

"a load of sub-soil and stone from street works containing small amounts of tarmac (Note: large pieces of tarmac which could be removed by hand or other means would make the entire load taxable at the standard rate)."

DC asked for details of the query to be emailed to the mailbox: slft@revenue.scot and promised to look into it and provide the delegate with an answer.

After the forum, we now advise that our guidance has not changed on this point, but that it is different from HMRC's guidance. We do not accept, nor have we ever accepted, that loads containing significant quantities of tarmac, even if less than 50%, can be accepted at the lower rate. We do not set a specific percentage, but 'small amounts' (in our guidance) and 'small quantity' (in section 14 of the SLfT Act), have their natural English meaning. Neither could reasonably be applied to loads containing 30% or 40% of tarmac.

SLCF: TIMING OF PAYMENTS:

DC gave a reminder that payment in respect of a contribution to the Scottish Landfill Communities Fund has to be received by the Approved Body to whom it is made before a credit can be claimed in a SLfT return. Landfill Operators were advised to ensure that they made such payments in good time to ensure this would be possible.

Loss On Ignition: CONSULTATION BY SCOTTISH GOVERNMENT (SG):

CM gave an update on the SG consultation, explaining that unfortunately Alison Cumming was not able to attend the forum.

CM confirmed that 10 responses were received to the Scottish Government consultation on statutory LOI testing and 8 of these had now been published on the Scottish Government website in the devolved taxes subject area.

A common theme throughout the responses was that a statutory testing regime would help provide certainty and create a level playing field. Almost all respondents wanted to see testing at 440 degrees centigrade and a loss threshold of 10%; that is: at the same levels as in the rest of the UK.

CM confirmed that SG plan to lay draft legislation before the Scottish Parliament in February. Since the forum this was done. The Scottish Landfill Tax (Qualifying Material) Order 2016 – which replaces the 2015 Order – was laid before the Scottish Parliament on 11 February 2016. It comes into force on 1 October 2016. It specifies that testing should be done at 440 degrees centigrade and it sets a loss threshold of 10%.

Questions / Comments

A delegate commented that in his opinion the consultation was too open to interpretation. Another asked what operators should do until the new legislation came into effect. CM confirmed that landfill operators (LfOs) should continue to follow the current Revenue Scotland guidance until further notice.

After the forum, we now confirm that we will not change our guidance until the new statutory regime comes into effect. So the current guidance applies until 30 September.

Another delegate queried how quickly the legislation would be finalised. This has been addressed by the publication of the legislation mentioned above.

- **How quickly will the legislation be finalised? – now finalised.**
- **Does the current guidance stand until Sep 2016? – yes.**

CM confirmed the new rates of SLfT had been announced in the draft budget in December, and that the proposal was for these to increase in line with inflation with effect from 1 April 2016. She also highlighted that the credit limit for contributions to the SLCF was to stay at 5.6%, whereas this has been reduced to 4.2% in the rest of the UK.

Since the forum, the Scottish Landfill Tax (Standard Rate and Lower Rate) Order was laid in the Scottish Parliament on 11 February 2016. It comes into force on 1 April 2016. The standard rate will be £84.40 and the lower rate will be £2.65.

One of the delegates queried if any other changes to the tax were planned, highlighting the concern that the proposed changes would require considerable investment to be made to meet the LOI standard. CM confirmed that as far as she is aware the current proposal is not intended as a temporary or interim arrangement but if it was found not to be effective or workable in practice then future changes were always a possibility.

Another question from the floor concerned whether there was any further discussion surrounding a third rate of SLfT. CM explained that while Scottish Ministers have the power to create a third rate of SLfT, she is not aware of any current intention to do so.

LOI GUIDANCE

DC began by highlighting the importance of distinguishing between the roles of RS and SG. Ministers bring forward legislation for Parliamentary approval. RS implements the legislation, while exercising the discretion given in law. Once legislation is in place, our guidance will explain how this works in practice. DC also clarified SEPA's role in supporting Revenue Scotland compliance activity.

DC asked the forum to think about whether it would be better for draft guidance to be circulated among all forum members, or for the forum members to nominate a stakeholder group who could provide input to the draft guidance. There was no firm view on this, so we have assumed that all would like to see the guidance as it is drafted. We will seek to facilitate this, but it will restrict the scope for discussion on specific points (with such a large group). A delegate highlighted that the last update was given without warning, and it would be better for updates to guidance to be notified to the LfOs. This could be done on a regular timetable, so updates would be restricted to a particular day, or by emailing LfOs when something is changed.

Since the forum, this new process of notifying LfOs directly of an SLfT update has been used to communicate the approaching changes in the SLfT rates and the new QMO

DC demonstrated using a live weblink how to navigate the Revenue Scotland website to the SLfT updates section. He also described the 'opt in' requirement of secure messaging and confirmed that the new search engine should make it easier to find things on the RS website.

DC confirmed the broad headings for the LOI discussion

- sources of waste,
- description of waste,
- testing requirements,
- evidence and fines.

Sources of waste

DC explained that the applicability of testing will depend on the type of waste and whether it comes from: qualifying sources, non-qualifying sources or mixed sources. DC asked what issues operators are experiencing with these, and how they seek to clean material from mixed or non-qualifying these sources.

A delegate noted that this discussion also took place at the last forum and his recollection was that it was agreed that it is the source of the waste from which the fines are created, rather than the process by which the fines are created, that determines whether or not the fines themselves are qualifying materials.

Another delegate stated that for Material Recovery Facilities (MRFs), most of the waste comes in from councils so they can't produce qualifying fines, regardless of whether soils and stones are separated out as fines during the process.

Another delegate confirmed that this is consistent with HMRC's position which is that qualifying fines cannot be created out of non-qualifying material.

Delegates also agreed that EWC codes (on their own account) cannot be used to determine if a waste stream is a qualifying material, as there is no direct correlation between the QMO and the EWC codes.

DC asked the forum whether having three categories of waste: clean; dirty and cleanable, was useful. There was no direct confirmation or consensus on this point.

There was brief discussion on whether a questionnaire along the lines of the one that HMRC use would be useful. There was no consensus. One delegate observed that with waste coming from waste transfer stations it would be very difficult to answer some of the questions, as it may not be clear where the waste originated from, or whether waste from different sources had been mixed.

Some delegates suggested that it does not matter where the waste originates, provided the material passed an LOI test, it should be accepted at the lower rate. SEPA mentioned that there were materials not in the QMO that would pass an LOI test, such as some plastics and polystyrene. Some delegates challenged whether such material would pass an LOI test. DC explained that the question at the bottom of this is whether material falls within the QMO. Revenue Scotland and SEPA do not accept that LOI on its own is evidence of a waste stream being qualifying material. Some delegates agreed with this, but others disagreed and believed LOI should be accepted as sufficient evidence for lower rate.

There was some discussion on what other sources of evidence, including other potential tests, might supplement LOI in determining whether waste qualified for the lower rate. There was no clear option identified, other than consideration of the source of the material. But this had difficulties, as the vast majority of waste at waste transfer stations is mixed and not clean.

Description of Waste

DC moved onto the next category for discussion, using the examples of EWC codes, waste acceptance criteria (WAC) or waste transfer notes to describe waste. He asked the forum how waste is described in practice.

It was noted that the standard of description ranges from perfect to bad. It depends on the source of the waste, whether there were intermediaries in the chain and the nature of the waste producer.

There was some discussion, including about the use of questionnaires (both the LfOs' own, and the HMRC one referenced above). The only consensus was that the description of waste generally provided challenges for LfOs in classifying waste.

Testing

DC explained that although the testing parameters (temperature and % threshold) would be dealt with in the legislation, we expected the rest would fall to Revenue Scotland to provide guidance. Since the forum, the legislation has been passed and it reflects this expectation. DC invited the delegates to share their views on the frequency of testing.

There was some discussion on the arrangements for notification of LOI failures and in what circumstances material could be retested.

More generally, it was suggested that it would be helpful if Revenue Scotland's guidance mirrored HMRC's excise notice LFT1. Comment was also made that some operators have found the high risk threshold, which requires operators to test twenty consecutive loads, difficult to meet and costly to manage.

There was some discussion but, as there was no agreement on the key elements of a testing regime, DC asked delegates to send their comments and suggestions for frequency of testing to the SLfT inbox.

Evidence and fines

DC moved the forum onto the next topic, cleaning up mixed or 'dirty', material so that it can be demonstrably qualifying material. He asked what treatment processes can be, or are being, used to produce qualifying material from these waste streams, and how the qualifying nature of the material can be evidenced.

Some delegates stated that their individual processes were a matter of commercial confidentiality and that they were unable to discuss them in open forum. DC accepted that and said that we need to consider generic components of such processes in relation to different waste streams.

Some delegates suggested that as there is a virtually endless list of the different kinds of processes for dealing with waste. Because of this they would prefer to respond to specific proposals from Revenue Scotland than to discuss processes and possibilities in theory.

Some delegates suggested that Revenue Scotland should simply adopt the existing HMRC guidance on the issue. DC replied that the legislative framework was different, so it was likely that there would be at least slight differences in the guidance. He went on to say that we wanted to explore various possibilities in order to develop the best possible guidance. That might be a similar approach to the guidance in the rest of the UK, or it might be something different.

One delegate asked if it was not possible to link the regime to the producers that make fines, with a clear chain of the path taken by the waste. DC noted that such an audit trail was important in providing evidence about the nature of the material.

One delegate suggested that Revenue Scotland should take a more pragmatic approach about what is qualifying material. DC explained that the intention is to produce guidance that is clear and practical to operate, but that Revenue Scotland does not have the discretion to decide what is, and what is not in the QMO.

Conclusion

There was no other business and DC concluded the forum by thanking delegates for their attendance and contributions.