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<b>Report To:</b>	<b>Environment and Regeneration Committee</b>	<b>Date:</b>	<b>17/01/13</b>
<b>Report By:</b>	<b>Corporate Director Environment, Regeneration and Resources</b>	<b>Report No:</b>	<b>SSC/ENV/IM/13.145</b>
<b>Contact Officer:</b>	<b>Kenny Lang</b>	<b>Contact No:</b>	<b>5906</b>
<b>Subject:</b>	<b>A Landfill Tax for Scotland - Scottish Government Consultation</b>		

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## 1.0 PURPOSE

1.1 The purpose of this report is to advise the Committee of the consultation response submitted on behalf of Inverclyde Council in respect of the Scottish Government Consultation on Landfill Tax.

## 2.0 SUMMARY

2.1 The Scotland Act 2012 will give increased taxation powers including taxes on landfill disposal to The Scottish Government.

2.2 From 1<sup>st</sup> April 2015 the Scottish Parliament intends to introduce a replacement for landfill tax when it is devolved from the current UK Landfill Tax scheme.

2.3 Landfill tax was introduced in 1996 at a rate of £7/t for active waste and £2/t for inert. It is currently at £64/t and £2.50/t respectively and active waste will increase to £80/t by 2014 with no change for inert material. The purpose of the landfill tax being a fiscal measure to discourage landfilling of waste.

2.4 The Scottish Government is consulting on what provision it should make and have proposed legislation later in 2013. Responses were requested by 15 January 2013, a report detailing the consultation responses was submitted to the Corporate Management Team and a response has now been issued.

## 3.0 RECOMMENDATION

3.1 It is recommended that the Committee note the consultation response to the Scottish Government.

Ian Moffatt  
Head of Environmental and Commercial Services

## 4.0 BACKGROUND

4.1 The Scotland Act 2012 gives the Scottish Parliament the power to set a number of tax provisions. The Act fully devolves the power to raise taxes on waste disposal to landfill, it is expected that this will take effect in April 2015. At that time, the current provisions for landfill tax will not apply in Scotland. The UK Government will reduce the block grant to Scotland by the commensurate amount of tax it would have expected to receive.

4.2 Landfill tax is an economic instrument the principal aim of which is

*"to ensure that landfill costs reflect environmental impact thereby encouraging business and consumers, in a cost effective and non-regulatory manner, to produce less waste; to recover value from more of the waste that is produced; and to dispose of less waste,"*

4.3 The landfill tax is seen as a significant driver to move waste up the waste hierarchy and was introduced in April 1996 at a rate of £7/t for active waste and £2/t for inert. Landfill tax has increased year on year for active waste and it is currently at £64/t and will increase to £80/t by 2014. Inert material has not increased significantly and sits at £2.50/t with no anticipated change to 2014.

4.4 Since 1997, landfill tax has contributed to a 32 per cent reduction in the proportion of waste sent to landfill and a similar increase in levels of recycling.

4.5 Worth noting is that with the annual reduction in waste going to landfill there is a matched reduction in the revenues generated through the tax. Were the Scottish Government wishing to keep the revenue at a consistent level then tax would require to increase to compensate for the reduced waste

## 5.0 CONSULTATION DOCUMENT

5.1 The Consultation is split into five key chapters and has three appendices. The consultation also includes a draft Business Regulatory Impact Assessment (BRIA) and draft Equalities Impact Assessment (EQIA).

The structure of the consultation is as follows:

- Chapter 1 Background
- Chapter 2 Scotland's Environment and Tax Policy
- Chapter 3 Zero Waste and Landfill Tax
- Chapter 4 General Approach and Tax Structure
- Chapter 5 Landfill Communities Fund
- Annex A Summary of the Landfill Tax Qualifying Material Order 2011
- Annex B European Landfill Directive Definition of Inert Waste
- Annex C Summary of Current Landfill Tax Exemptions

5.2 Background

This section gives an overview of the Scotland Act and provides details of total UK receipts from landfill tax. No Scotland specific figures are available as the current system of tax is collected at a company level (with many companies operating across UK), rather than at a specific landfill site level.

The background also details the consultation arrangements and provides a timeline for consultation on the devolved taxes.

Autumn 2012	Consultation on replacement for UK Landfill Tax
15 January 2013	Consultation ends
Spring 2013	Introduction of Landfill Tax (Scotland) Bill to the Scottish Parliament
Autumn 2013	Enactment of Landfill Tax (Scotland) Bill, subject to Parliamentary agreement
April 2015	Devolved taxes introduced in Scotland; current UK taxes withdrawn

### 5.3 Scotland's Environment and Tax Policy

This chapter explains the purpose of the Landfill Tax in environmental policy is to compensate for the impacts on the environment that are a direct result of production and consumption leading to the generation of waste which is not a cost factored into the initial activity of those producing such waste. The use of such environmental taxes, generally, are fiscal instruments to change behaviour.

The chapter however acknowledges the drawbacks of such a scheme such as companies making efforts for the avoidance of taxes, furthermore, there are difficulties in fully identifying the true future costs of pollution and setting appropriate taxes now to compensate for them.

Three key principles have been identified to guide the environmental tax policy in Scotland:

- Environmental taxes, should only be considered where it can address an environmental problem;
- Environmental tax should be clear to consumers and producers regarding their purpose and outcomes
- Environmental tax should not disadvantage Scottish companies, and lower income groups should not pay a greater share of the overall tax take.

### 5.4 Zero Waste and Landfill Tax

This section explains the link to commodity use and sustainability and the role that environmental taxes can play in ensuring that these are conserved. The section details the global significance of waste and resource used as commodities and products are traded globally. Examples are cited of rising resource prices with 29% of FTSE 350 issuing profit warnings as a result of increased resource prices.

The document explains the drive towards greater resource efficiency enshrined in the Zero Waste Plan and the Waste (Scotland) Regulations 2012. These are closely linked to the EU Landfill Directive (1999/31/EC) which includes targets for the reduction of the landfilling of biodegradable municipal waste; requirements for the pre-treatment of waste prior to landfilling and a ban on landfilling certain wastes and increased regulatory requirements to ensure the appropriate management of landfill sites.

### 5.5 General Approach and Tax Structure

This section covers the majority of the consultation questions detailed in this report and deals with the following areas:

- Approach to landfill tax
- Administrative arrangements

- Tax rates and qualifying materials
- A definition of taxable disposals materials
- Central assessment or self assessment systems
- Compliance penalties and appeals.

## 5.6 Landfill Communities Fund

The Landfill Communities Fund was set up in 1996 to provide funding for community or environmental projects in the vicinity of landfill sites, whereby landfill operators can give a percentage (currently 5.6%) of the landfill tax to community projects

The fund is administered and regulated by ENTRUST on behalf of HMRC, since its inception it is estimated that £80 million has been distributed to projects in Scotland from the Landfill Communities Fund. Additionally as the Landfill Communities Fund is entirely privately funded it is not restricted by state aid rules and can be used as match funding to enhance projects.

At present monies raised through the scheme can only be spent on not-for-profit projects within a 10 mile radius of a landfill site. Projects must meet one of the six following objectives:

- Remediation or restoration of land which cannot now be used because of a ceased activity
- Reduction of pollution
- Provide or improve a general public amenity
- Protect or enhance a species or its environment where it naturally occurs
- Restoration of religious buildings or historic structures
- Provision of support services by one organisation enrolled with Entrust to another

The Scottish Government proposes to establish a similar fund for worthy causes and to finance it through a tax credit system. This proposal will increase the amount of funding for the first three years of the scheme by 10% over the current system.

The Scottish Government seeks views on these proposals in the consultation paper.

## 6.0 BUSINESS REGULATORY IMPACT ASSESSMENT (BRIA)

- 6.1 The Scottish Government has produced a partial Business Regulatory Impact Assessment (BRIA).
- 6.2 As the BRIA is not fully developed, it is not possible to fully comment on the BRIA in detail.
- 6.3 The Scottish Government intend to hold a stakeholder workshop towards the end of the consultation exercise along with discussions with waste management organisations from the private and public sector during the consultation period coupled with discussions with other external bodies.
- 6.4 The Scottish Government will model impacts on landfilling and recycling activities as a result of changes in taxation rates in the final BRIA. The Scottish Government will outline the finalised BRIA, in table format and it this will include the estimated costs and benefits

to local authorities. However the modelling of landfill tax impacts is complex for example modelling the impact of the current recession against the impact that landfill tax escalator has had on landfilling rates is problematic.

6.5 The BRIA has identified 3 options:

- No landfill tax to apply in Scotland – i.e. do not replace the landfill tax when it is withdrawn from Scotland in 2015.
- Maintain a similar landfill tax system as the rest of the UK, set at similar tax rates.
- Maintain similar system as UK model but implement a non-self-assessment model.

6.6 The UK Government has indicated that it will reduce the Scottish Block Grant at the point of devolving the tax; this makes the option of no landfill tax a very unlikely option.

## 7.0 **EQUALITIES IMPACT ASSESSMENT (EQIA)**

7.1 The EQIA is designed to allow the Scottish Government to consider how policies may impact, on different sectors of the population in different ways. A list of criteria is detailed below.

- Age
- Disability
- Gender
- Sexual Orientation
- Race
- Religion and Belief
- Gender reassignment
- Pregnancy and maternity

7.2 The Scottish Government have no evidence suggesting that the proposals set out in the consultation document will have any significant impact on any of the criterion listed.

## Appendix A – Consultation response



# A LANDFILL TAX FOR SCOTLAND

## RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

### 1. Name/Organisation

Organisation Name

Inverclyde Council

Title Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

Surname

Kenneth

Forename

Lang

### 2. Postal Address

Inverclyde Council

Environmental and Commercial Services

Ingleston Park

Carstburn Street Greenock

Postcode PA15 4UE

Phone 01475 715906

Email kenny.lang@inverclyde.gov.uk

### 3. Permissions - I am responding as...

Individual

/ Group/Organisation

Please tick as appropriate

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate  Yes  No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis  
Please tick **ONE** of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate  Yes  No

- (d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

**Q1** In moving toward greater fiscal autonomy, what role do you see for environmental tax policy in contributing to the sustainable growth of Scotland's economy?

The role that Landfill tax has in terms of sustainable growth is well demonstrated within the consultation paper in terms of additional revenues it generates, the benefits to communities through the Landfill Communities fund and also as a fiscal mechanism to move waste up the waste hierarchy.

It is unlikely that the levels of recycling and waste diversion would have been achieved were Landfill tax not available. The tax also plays a role in encouraging alternative treatments as it narrows the marginal costs between new technologies and alternative methods of waste management compared to landfill.

However cognisance needs to be given in respect of the affordability to local government if taxes are increased from current levels. Anticipated cuts in public finances will impact on services and increased burdens of higher landfill tax may in fact be detrimental to sustainable growth.

Additional services and infrastructure will be required to continue to move waste up the hierarchy and as a result grants need to continue to be available to allow Councils to develop sustainable solutions to reducing landfill.

**Q2** What issues and opportunities do you see for the Scottish Government should the Aggregates Levy be devolved?

The major issue regarding the Aggregates Levy currently centres around the European General Court position on the levy in respect of state aid rules. Any subsequent restructuring of the aggregates levy which is made in order to comply with the current position in state aid will impact on the levy as it stands. This could impact on operators currently exempt from the levy being required to pay or lead to a requirement to repay any levies where a claim may exist.

Given the current EU position, it is unlikely that there will be any opportunity arising from the aggregate levy, as the position is currently under a legal challenge.

**Q3** Are there any refinements to the list of materials qualifying for the lower tax rate that should be considered for implementing the tax in Scotland?

From a local authority perspective, there are no identifiable refinements that should be considered.

**Q4** Looking beyond the initial introduction of the tax, are there any materials, or classes of materials, that could or should be charged at a different differential rate and, if so, on what basis?

The current system in operation is well established and simple to administer. It is likely that any changes in charges for materials will be requested at an industry specific level however this may make the scheme less clear and more difficult and costly to administer.

The Scottish Government could be minded to incentivise those Local Authorities who are complying with the Zero Waste Scotland policies and have made inroads in terms

of reducing those materials which are sent to landfill and are known to create greenhouse gases (food, paper cardboard etc). These Local Authorities who have reduced the biodegradable content of their waste are paying for decreasing harmful waste and there could be a lower charge based on assessed waste composition.

**Q5** Are there any changes to the list of exempt materials that would support the environmental outcomes of the tax and the Scottish economy?

The response to this would be similar to that of Q4 – any exemptions requested would be identified at an industry level by producer. The list of exemptions is comprehensive and in line with most EU countries. Additional exemptions may result in waste migrating to Scotland to avoid any penalties imposed from the home nation where such exemptions may not apply.

**Q6** Could the tax be used to help further our efforts to tackle illegal dumping and, if so, do you have any specific views on actions the Scottish Government should consider?

The issue of illegal dumping affects Local Authorities directly. The majority of Local Authorities are required to remove dumping caused through the avoidance of landfill fees. More could be done to support Local Authorities in respect of funding to minimise, investigate and remove illegal dumping.

The provisions within the Environmental Protection Act 1990 placing the onus on landowners to secure against the illegal deposit of waste and making them ultimately responsible for the cost of removal is unfair and compliance is not always practicable. The Scottish Government should consider providing financial support to those landowners affected by illegal dumping. This funding could be identified through the Landfill Communities Fund.

The root problem however are those contractors who do not comply with legislation and may advertise locally for removal and disposal services. A crackdown on these linked to advertising campaigns to inform householders and businesses what may be happening to their waste may reduce some of the problems.

In terms of sites which may accept taxable waste while not levying the tax on that waste, there should be a methodical and auditable trail of materials backed up by regular inspections to ensure that this is not happening. A minimum level of fine should be imposed to deter any facility accepting waste which it should tax for and doesn't. It is not clear how avoided tax would be calculated at these premises and this requires further work to assess the scale of the issue.

**Q7** What benefits or issues do you see in linking the definitions of taxable activities more closely to environmental permitting through PPC and Waste Management Licensing?

Aligning the definitions of taxable to that of environmental permitting through PPC and Waste Management Licensing would clarify the current situation which has arisen from two separate pieces of legislation.

Ensuring that the tax point is at the tipping area allows for more transparency in respect of materials classification while reducing the burden to maintain separate disposal accounts. Clearly at the tipping point the materials deposited meets the



definition of it being waste based on the intentions of the person discarding the material.

**Q8** What steps, if any, should the Scottish Government consider to improve clarity around taxable and non taxable activities on landfill sites. We are particularly interested in steps that can be taken to reduce any potential abuse of these allowances?

This answer is more appropriate from landfill operators; however there are financial implications for clients of such sites where their material could be exempt from tax by virtue of being used as engineering material while still having to pay the tax for a full load. What mechanism would be put in place to ensure that this was treated transparently?

**Q9** What merits do you see in examining further the option of establishing an assessed system of tax returns?

The self assessed system is currently in operation and appears to be well administered. The system is clear and can be checked and verified against SEPA data returns. Adopting this system would be a simple solution and would not require any additional administrative burden.

The centrally assessed model while being more closely aligned to the permitting regime would require additional administrative controls including higher costs. The onus would also shift from the landfill operator to SEPA to determine the levels of tax applicable and may cause some delay between the issuing of demands to receipt of payment.

Therefore it is the view that the current self assessed methodology be retained.

**Q10** What powers should the collection agent (SEPA) be given to audit landfill sites?

SEPA should have full powers to audit the site including all records of waste receipts, these powers should extend to requesting details of customer invoicing etc to ensure that landfill charges are applied consistently and recovered accordingly.

**Q11** Do you support maintaining a Landfill Communities Fund and extending the credit limit for contributions to the fund?

The proposal to maintain a Landfill Communities Fund and extend the credit limit for contributions to the fund is a welcome proposal. Consideration however should be given to the use of this fund to support the aims and objectives of a Zero Waste Scotland.

**Q12** Could the money from the fund deliver similar or greater benefits through a different approach or delivery model? What alternative arrangement would you propose?

The delivery model shows that there are two distinct streams for a landfill operator to divert funds, either through a distributive environmental body or environmental body. The proposal to distribute funding the tax collector would seem a sensible and appropriate method as it allows for greater transparency and ease of administration.

**Q13** What benefits would be obtained from retaining an independent regulator? What functions and responsibilities should the regulator have?

An independent regulator would ensure that there was transparency and consistency in respect of dealing with Landfill tax.

This would also ensure a level playing field between landfill operators and the tax collection agency ensuring that both are treated equally.

The regulator should have the usual range of powers including the power to arbitrate, make decisions, provide complaints resolution, powers to impose sanctions including financial penalties. This should be clearly defined as distinct from any policy setting objectives while retaining full accountability and being answerable to the Scottish Government.

**Q14** Should the 10 mile eligibility radius from landfill sites be maintained or reviewed to ensure those most affected by landfill sites benefit from projects?

The 10 mile radius does not have any clearly defined significance and can be seen as a relatively arbitrary distance, it is unlikely that depending on the locus of landfill site that a person residing 10 miles from it will be considerably affected.

Furthermore, it could be argued that as landfills close and there are fewer landfills any monies raised will go to fewer communities. A Council for example with no landfill capacity in its area could be effectively subsidising facilities in communities many miles from its area.

**Q15** Do you support using a proportion of the fund to support more strategic environmental objective, including climate change and, if so, do you have views on which organisations could play a role in identifying and channel funding toward of these strategic priorities?

While we agree with the principles behind the Landfill Communities Fund, this fund should be targeted more towards assisting the reduction of waste to landfill and activities and projects around this, irrespective of the 10 mile radius.

The support could be made to Local Authorities based on a proportion of their input tonnage.

**Q16 BUSINESS REGULATORY IMPACT ASSESSMENT:** Do you have any comments on the draft Business Regulatory Impact Assessment?

The BRIA does not fully identify at present the impacts (including costs) to Local Authorities and as such it is difficult to make any comment at present.

The option that there be no landfill tax to apply in Scotland would seem to be at odds to the Zero Waste aspirations of the Scottish Government and could cause a significant impact in terms of waste diversion and planned infrastructure which is economically predicated on landfill tax at the current known rates.

**Q17 EQUALITIES IMPACT ASSESSMENT:** Do you have any comments on the draft Equalities Impact Assessment?

No comment, it is likely that any comment on the consultation will come from bodies and or individuals specifically identified within the criteria listed in the EQIA.