

PURPOSE AND INTENDED EFFECT OF MEASURES

Policy Objective

11.1 This partial regulatory impact assessment examines proposals to reform land remediation relief and the exemption from landfill tax for waste from the clearing of contaminated land. Reform of these tax reliefs aims to improve targeting of help to developers of hard to remediate sites whilst at the same time providing better environmental outcomes.

11.2 The reform package is intended to support other measures, particularly the commitment to increase housing supply and to respond to proposed changes to business rates aimed at improving the fiscal incentives for efficient use of urban land. The Government would not implement changes arising from this consultation earlier than 2008.

Background and rationale for Government intervention

11.3 Contaminated land is subject to obligations under the Environmental Protection Act 1990. Lord Rogers Urban Task reported in 1999 and the Government responded with the Urban White Paper in 2000, recommending that additional tax relief should be given to help developers decontaminate contaminated land. Land remediation relief, providing a 150% corporation tax relief was introduced in 2001. Kate Barker's 2004 Review of Housing Supply recommended that the relief should be extended to long-term derelict land, as long as the extra public money levered into the market would encourage genuine new investment in brownfield remediation, and not simply subsidise development that would take place anyway.

11.4 Proposals for reforming business rates on empty property and vacant land will introduce fiscal incentives for bringing unused land back into use. Land remediation relief reform can provide a channel for increased Government support through the tax system to return to productive use properties and vacant land that suffer from contamination or features of long-term dereliction.

11.5 Current legislation for land remediation relief is contained in Schedule 22 of the Finance Act 2001 and for the landfill tax exemption for waste from contaminated land in Sections 43A and 43B Finance Act 1996.

11.6 Other Government departments with an interest are the Department for Communities and Local Government through their policy responsibility for planning law and development and the Department for Environment Food and Rural Affairs in relation to waste and the environment.

Consultation

11.7 The partial regulatory impact assessment forms part of the formal consultation on tax reliefs for brownfield land. Comments are welcomed on the likely regulatory impact of the proposals.

OPTIONS

Option 1: “Do nothing”

11.8 Leaving the current system unchanged would mean there was no additional regulatory burden.

11.9 It would however mean that the land remediation relief would continue to lack targeting and would not be available for cleaning up Japanese Knotweed or long-term derelict land.

11.10 It would also mean that the landfill tax exemption for contaminated land would continue, and as landfill tax rates rise there would continue to be an increasing incentive to send to landfill waste from contaminated land whereas other waste, much of it less polluting, would continue to be taxed at the standard rate. The tax system would also continue to encourage landfill solutions for contaminated land instead of on site clean up, which can have better environmental outcomes.

Option 2: Extension of land remediation relief to long-term derelict land

11.11 The extension of land remediation relief to long-term derelict land would apply to specific expenditure incurred on long-term derelict sites. The consultation proposes that dereliction could be generally defined and could qualify if it has been vacant and unused since a fixed date in the past. Evidence from the National Land Use Database for England and similar databases would be accepted as evidence of the status of the land, but any land could meet the tests whether or not it was on the database. Setting a fixed date in the past avoids the problem of development being postponed until it can qualify.

11.12 There is a risk that it might not be possible to identify whether particular land counts as derelict. However the tax relief will be self-assessed and ascertaining the availability of the relief is unlikely to be a significant burden.

11.13 There is also a risk that insufficient clarity will be available about the types of qualifying expenditure qualifying for relief. This can be resolved through the consultation process.

11.14 A possible unintended consequence is that development on qualifying long-term derelict sites will be encouraged instead of those which have not been derelict for so long. The proposal makes an assumption that the social good in remediating a site is correlated to the length of time it has been derelict.

11.15 Compliance and monitoring of this option (and the other corporation tax options below) would be through the corporation tax self assessment process.

Option 3: Focusing on development

11.16 This option would remove land remediation relief from some taxpayers who can at present qualify, but would allow resources to be more accurately targeted at development. It would bring the relief more in line with the Government’s statement in 2001 that the relief was intended to help developers.

11.17 The type of expenditure which would not qualify under this option is the clean up of land for regulatory (for example health and safety reasons) which could currently

qualify for relief, (as long as the land was not polluted by the current owner in the first place) where no redevelopment requiring an application for planning permission is needed.

11.18 As expenditure would have to be pursuant to a planning requirement this change could encourage taxpayers to ensure that planning authorities stipulate clear conditions in relation to contamination and dereliction. This may possibly mean that planning authorities may incur some additional burden in granting planning permission.

Option 4: Timing of land remediation relief

11.19 This option would accelerate the availability of land remediation relief to companies by allowing claims to relief to depart from standard accountancy rules.

11.20 There is a risk that accelerating the relief could lead to a loss of tax revenue if developers claiming the repayable tax credit cease trading before recognising the profits at the end of the development.

11.21 This risk would be difficult to mitigate within the self-assessment system for corporation tax.

Option 5: Extension to Japanese Knotweed

11.22 This option would allow expenditure on removal of Japanese Knotweed as part of the development process to qualify for enhanced tax relief.

11.23 There is a risk that the costs of removing Japanese Knotweed are far greater than expected which could limit the Government's scope to help in the long-term. The consultation therefore seeks to explore the costs with consultees in more detail

Option 6: Ending the exemption from landfill tax for waste from clearing contaminated land

11.24 This option would remove an existing distortion in the tax system whereby "dig and dump" is subsidised through the landfill tax exemption and on site clean up is not. Currently both landfill costs and on site clean up costs can qualify for land remediation relief at the enhanced 150% rate, but dig and dump qualifies for the additional help of the landfill tax exemption. Removing this exemption would remove the distortion and the additional funds could be recycled into improvements in land remediation relief such as those covered in this consultation. However, the exemption is currently available for all who remove waste from contaminated land but under the options covered by the consultation some taxpayers who are entitled to claim the exemption will not be able to claim land remediation relief. There may, for example, be some sites where on site remediation is not a viable option.

11.25 Removing the exemption risks affecting some large sites where considerable amounts of contaminated land waste needs to be removed quickly. The impact of this can be mitigated through transitional rules, which are the subject of the consultation.

11.26 Ending the exemption would not have any compliance or monitoring impacts.

COSTS AND BENEFITS

Sectors and groups affected

11.27 The proposals have the potential to affect those carrying out development on contaminated and derelict land. This includes:

Private Sector

- Property developers, including landowners, developing their own property investments with planning applications
- construction industry and services
- landfill site operators
- landowners who remove contamination from land and are not developing it.

Public Sector

- Central Government
- planning authorities (indirectly).

Benefits

11.28 Government help through the tax system will be targeted more closely on developers allowing funds to be recycled into hard to remediate sites. It should encourage development on brownfield land, supporting Government targets, the National Brownfield Strategy and similar programmes in Scotland, Wales and Northern Ireland.

11.29 There are also environmental benefits in discouraging dig and dump and encouraging on site remediation as well as encouraging developers to clean up Japanese Knotweed and dereliction.

11.30 On site decontamination may offer better environmental results overall than using landfill as it can reduce environmental externalities such as transportation.

11.31 Economic benefits accrue from bringing vacant and derelict land back into use. It can create jobs and homes and regenerate towns and cities.

11.32 Discouraging dig and dump will encourage technologies and techniques for on site remediation. Providers of these services will benefit and many are small and medium sized enterprises.

11.33 Ending the landfill tax exemption for clearing contaminated land would have a deregulatory benefit for developers, who currently have to send extensive documentation to HM Revenue and Customs to obtain the exemption certificate. It would also reduce HM Revenue and Customs' administrative costs and deregulate landfill site operators to a minor extent by removing their need to be satisfied that the waste is certified as exempt.

11.34 Direct benefits will accrue to those incurring expenditure on developing land where Japanese Knotweed or dereliction is present.

Costs

11.35 The measures proposed, if all implemented, would increase overall help for many developers but would reduce tax help for those not undertaking development, or returning damaged land to beneficial use. It will therefore lead to additional costs on those taxpayers.

11.36 Removing the landfill tax exemption could potentially encourage alternatives such as use of exempt sites and illegal activity such as hiding waste by mixing it with clean soil.

11.37 Limiting the land remediation relief to planning permission could possibly increase costs associated with planning permission if additional negotiations were needed to ensure that the conditions would allow land remediation relief to be claimed.

SMALL FIRMS IMPACT TEST

11.38 The proposals will have some impact on small businesses. The Government welcomes the opportunity given by consultation to gather evidence on this aspect.

COMPETITION ASSESSMENT

11.39 The proposals do not appear to have any direct competition impacts but the Government welcomes the views of stakeholders on this issue.

ENFORCEMENT, SANCTIONS AND MONITORING

11.40 Land remediation relief is a corporation tax relief which is monitored by HM Revenue and Customs as part of its ordinary self-assessment compliance processes. HM Revenue and Customs also administer landfill tax and the exemption for waste from contaminated land.

Contact Point

Land remediation relief and landfill tax consultation
Room 2-32
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

E-mail: jamil.mohamed@hm-treasury.gsi.gov.uk