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ANOTHER BUDGET, ANOTHER RISE IN LANDFILL TAX

Introduction

Budget 2010 was a relatively quiet one for property and construction. For brownfield development specifically it was very quiet, particularly when compared to last year, which saw the first revisions of Land Remediation Relief (LRR). Predictably, LRR remains unchanged as companies get to grips with the new rules and the effects of those changes start to emerge. The decision to keep landfill tax largely unaltered was generally not anticipated, with the opportunity to extend the escalator until 2014-15 not missed by the Government.

This article reports on the Budget 2010's comments in respect of landfill tax and recommends ways to practice more commercially focussed remediation.

Waste of a consultation?

In the Budget last year, the Government launched an extensive consultation into potential reforms to landfill tax. In particular, the definition of a taxable disposal, taxable activities, taxable area and the measurement and categorisation of waste were highlighted for discussion. Responses were also sought on the types of waste that should qualify for the lower tax rate and the use of transitional rates for any that change as a result of post-consultation revisions.

A summary of the responses received was published by HM Revenue & Customs in December 2009, with the Government's formal response due in Spring 2010. As such it was rolled in with the Budget announcements, most likely because the announcement turned out to be a non-starter. Specifically, the details of the announcement included:

- "Wastes qualifying for the lower rate of tax will remain broadly unchanged. A number of wastes that the consultation suggested might be standard rated will not be [adjusted]."
- Legislation will provide for publication and review of qualifying criteria for the lower rate. HM Treasury will take account of these criteria in future when listing materials qualifying for the lower rate of tax in an Order.
- Minor changes to the lower rate Order will be made from 1 October 2010, to update terminology and make amend coverage to reflect developments since 1996. The Government will publish the changes in draft by June and invite comments from affected stakeholders.
- There are no plans to proceed with changes to the way that waste disposal is defined in the legislation for tax purposes, as originally set out in the consultation."¹

¹ Reference HMRC website, Budget 2010: Business, Excise Duties, Environmental and Transport Taxes, Landfill tax
[See <http://www.hmrc.gov.uk/budget2010/businesses.htm>, last accessed 1st April 2010]

Industry consensus was largely anticipating structural change to the legislation that would raise the landfill tax over and above the known effects of the escalator. So this fear has at least been largely relieved. Yet, the escalator is alive and well and back in operation. The Finance Act 2010 will confirm the increase to £56/tonne, effective from 1 April 2011. By 2015, the cost of relevant disposals to landfill will reach a substantial £84/tonne.

This considerable cost of landfill should visibly stimulate changes in attitude towards sustainable remediation technologies, as intended. Whilst treatment is often a more cost-effective solution in the current market, many are anticipating its cost to also rise above the rate of inflation as demand increases and the environmental technologies industry tries to react. Consequently, it is not immediately clear how the industry will respond, other than to continue to strive for more commercially focussed remediation as other externalities continually push up cost.

Principles for commercially focussed remediation

Combining the effects of the rapidly rising cost of landfill with the diminishing funds available to support regeneration and Part 2A responsibilities, there is a definite need to bring greater commerciality to remediation solutions. Here are our recommended principles for getting more value from investment in contaminated sites:

Principle 1: Be more efficient in the way you procure public funding.

Particularly relevant to DEFRA's Contaminated Land Capital Grant Programme, but also relevant to other grants/public funding sources, is the need to think more strategically in the application. Increasingly applications are being received for initial site investigation work in isolation. Without the support of a project plan post site investigation works, leading to a remediated site, awarding bodies find it difficult to assess the merits of applications. More investment in consultancy upfront to prepare a comprehensive application for all the works could be more efficient in the long run, if a larger amount of funds are received in the end.

Principle 2: Ensure your balance sheet properly reflects your environmental liabilities.

Increasingly company accounting practices are aware of FRS12 requirements for recognising liabilities arising from contaminated land in the portfolio, but how accurate are those assessments? Estimating costs for accounting purposes is different from development purposes and poor estimates could unnecessarily be affecting the perception of health of your business.

Principle 3: Be prepared to be innovative.

There are all manner of alternative remediation solutions available now, for a variety of cost and risk profiles. Cluster approach and established treatment centres/soil hospitals are particular favourites, as ways of taking waste offsite without attracting the often prohibitively expensive landfill tax.

Principle 4: Remove the mystery and reduce the risk premium paid to contractors.

De-risking sites through proper understanding of the uncertainties driving time and cost will reduce the price paid for passing the risk on, making it more efficient.

For further advice concerning any of the issues raised in this briefing, please contact one of our key individuals detailed overpage, or alternatively call our helpline on 0800 526262. Information on other property tax related topics can also be found on our website at <http://bankingtaxfinance.davislangdon.com>.