

## CHAPTER 31

### AGGREGATES LEVY

All statutory references are to Finance Act 2001, unless otherwise specified.

#### 31.1 Introduction to Aggregates Levy

Aggregates Levy (AL) was introduced in the **Finance Act 2001** and took effect from **1 April 2002**. You will find all the relevant legislation in the Tolley Orange book.

[Finance Act 2001](#)

[SI 2001/4027](#)

Details regarding registration and returns are contained in two main statutory instruments namely, **SI 2001/4027** and **SI 2002/761**.

[SI 2002/761](#)

Aggregates levy is charged on the '**commercial exploitation**' of '**taxable aggregate**'. It was introduced as an environmental tax to encourage the recycling of second hand materials, as opposed to the purchase of new aggregate excavated from the countryside.

[s.16\(1\)](#)

The levy is charged on **the person who subjects the aggregate to commercial exploitation**. It is only **charged once** on the aggregate, ie when it is first subject to commercial exploitation. The person liable to pay it must **register** for Aggregates Levy. We will cover the registration rules in a minute.

[s.16\(3\)](#)

The rate is **£2 per tonne**, which is **pro rated** for part tonnes.

[s.16\(4\)](#)

This is **set to rise to £2.10 per tonne from 1<sup>st</sup> April 2011**.

#### Example 1

3½ tonnes of aggregate is commercially exploited. What amount of aggregates levy is due?

#### 31.2 Definition of aggregate

Now we know what aggregates levy is charged on, we need to define what 'aggregates' covers. It is defined as:

- **rock,**
- **gravel or**
- **sand**

together with substances that are incorporated or naturally occur mixed with them.

[s.17\(1\)](#)

All commercial exploitations of aggregate are subject to the levy unless they fall within one of the exemptions provided for in the legislation.

### 31.3 Exempt aggregate

Like with most taxes we've covered so far, there are a number of exemptions that are contained in the legislation. The exemptions include the following:

- aggregate that has **previously been used for construction purposes**;
- aggregate **removed from the ground on a building site**, in the course of lawful excavations, in connection with the **erection/modification of the building**, and exclusively for the **purpose of laying foundations, pipe or cable**. In the **East Midlands Aggregates High Court case**, the removal of all the rock from the site of a warehouse and lorry park was held to fall within the exemption as the lorry park was within the 'site' of the building. At the end of this chapter see also the Pat Munro case which tried to argue this exemption but failed;
 

[East Midlands Aggregates v C&E](#)
- aggregate removed by **dredging** from a river, canal, watercourse, channel, approach to a port or harbour, the purpose of which is to **create, restore, improve or maintain** the said water. The word 'watercourse' has been defined in a tribunal case. The decision in **Humberside Aggregates & Excavation Ltd v Commissioners of Customs & Excise** confirmed that a watercourse means the water must flow under gravity into another watercourse. Therefore a lake does not generally constitute a watercourse;
 

[s.17\(3\)](#)  
[Humberside Aggregates v C&E](#)
- aggregate excavated from the ground along a **highway/proposed highway** for the purpose of **improving/maintaining/constructing** the highway;
- aggregate consisting **wholly/mainly of coal, lignite, slate, shale, clay, soil, vegetable or other organic matter**. (Wholly or mainly means more than 50%).
- aggregate consisting wholly of the spoil from any process by which coal, lignite, slate or shale or a substance listed in s.18(3) has been separated from other rock after being extracted or won with that other rock.

So basically this exemption says that if the extraction of the aggregate is not the main purpose - i.e. the aggregate is effectively a by-product of the extraction of the other product then the aggregate is exempt. One of the substances listed in s18 (3) is fluorspar.

This has been the subject of a recent High Court case. In **MMC Midlands Ltd**, the appellant was extracting fluorspar and also limestone, which it contended came within the exemption above as being the spoil from the process of winning the fluorspar.

[MMC Midlands Ltd v HMRC 2009](#)

The High Court concurred with the tribunal and dismissed the appeal by MMC. The tribunal felt that in reality the appellant was in truth carrying on a business of limestone quarrying and that the extraction of fluorspar was merely incidental. This was decided partly because of the amount of limestone sold compared with the much smaller volumes of fluorspar sold. However, that would not be decisive in deciding whether the exemption applied. The legislation did not say anything about looking at the volume of aggregate to the volume of mineral. What they had to decide was whether the wording of the legislation was satisfied. **It talks about the 'separation' of the substance from rock. The tribunal felt that the wording meant physical separation from each other and not merely sorting by an excavator.** And that in their view the limestone could not be regarded as 'spoil'.

It is interesting to note that in this case, the tribunal felt that **the appellant had a 'reasonable excuse' for not registering and therefore the penalties were quashed.** They had told HMRC of their intended operations before they began but heard nothing more until much later when HMRC decided that they should be registered and **given the genuine dispute about the correct interpretation of the law, these all amounted to a reasonable excuse.**

The Finance Act 2007 introduced a further exemption. Aggregate removed from the ground along the line, or proposed line of any railway, tramway or monorail for the purposes of improving, maintaining or constructing it is exempt.

This is not a definitive list. Look through section 17 of the legislation to see all the exemptions that apply.

An important point to note is that once the aggregate is covered by one of the exemptions it will never have the levy charged on it ever again. So if it has been previously used for construction purposes then you could sell it on to someone else free of the levy. They in turn could then sell it on to someone else also free of the levy.

#### 31.4 Definition of commercial exploitation

We said that aggregates levy is charged on the commercial exploitation of taxable aggregate. We have already looked at what 'taxable aggregate' means. Now we need to see what 'commercial exploitation' covers.

'Commercial exploitation' is defined in the legislation.

'Exploitation' means that the aggregate has been

- **removed from a specified site,**
- **sold to a person,**
- **is used for construction purposes or**
- **is mixed with materials/substances other than water.**

### Illustration 1

Commercial exploitation would cover aggregate that is mined from a quarry and sold to a construction company that is building a road.

### Illustration 2

Commercial exploitation would cover aggregate that is mined from a quarry and is sold to a person to make concrete.

The specified sites referred to are:

- 1) the aggregate's **originating site**;
- 2) a **connected site** which is registered under the same name as the originating site;
- 3) sites other than those falling in 1. or 2. above, where the aggregate was **removed for the purpose of having an exempt process applied to it but which has not been applied.**

[s.19](#)

'Commercial' is defined and requires a number of conditions to be satisfied. These are that:

- it is **sold in the course of a business**;
- it is **not sold between registered sites**, where both sites are registered under the **name of the same person**;
- it is **not removed** to a registered site to be **applied to an exempt process**;
- it is **not to be used for the purpose of having china clay or ball clay extracted from it**; and
- it does not **again become part of the land** at the site from which it was extracted (without being mixed with anything other than water)

[s.19\(3\)](#)

Therefore, aggregate that is removed from a site to be applied to an exempt process, is used for the purposes of having china clay or ball clay extracted from it, or becomes part of the land at the site from which it was extracted is not commercially exploited.

We can have a look at one of these points in a bit more detail as it arose in a tribunal case. You will find a separate lecture on all the details of this case on the Academy and notes at the end of this chapter in section 31.19. To give you a brief summary now though - here is what happened.

The case concerned a contractor that was constructing a hydro electric power station for Scottish and Southern electricity. A dam had to be constructed from over 1million tonnes of rock which had been removed from a quarry site approximately 100 metres away. **Other than crushing and screening the rock was not subjected to any other process in making the dam.** Customs compulsory registered the appellant for aggregates levy and raised an assessment for over £1.6 million pounds. The **appellant argued that the rock was not commercially exploited as it became part of the land at the site from which it was won.** The tribunal found in favour of the appellant stating the following:

1. One - that 'land' was not defined in the relevant legislation and therefore looking at the Interpretation Act of 1978, land includes buildings and structures. Therefore the dam was included in the word 'land'.
2. Secondly, the word 'site' was not limited to the immediate footprint of the quarry. They cited the East Midlands Aggregates case - which we mentioned earlier in this chapter. The footprint of the dam and that of the quarry were not different sites. The tribunal also noted that Customs have the power in the legislation to set the boundaries of a site.
3. Finally - even if it was not covered by this 'get out' in the legislation a tax credit for the levy would be available as the aggregate was used in a prescribed industrial process - the production of energy. You'll come across tax credits a little later in this chapter.

At the moment we only have the decision of the tribunal - given the amount of money at stake it wouldn't be surprising if an appeal ensues.

### 31.5 Exempt processes

We mentioned above that 'commercial exploitation' did not include aggregate that was to be removed to a registered site to be applied to an exempt process.

We, therefore, need to know what processes are exempt.

Exempt processes are listed in the legislation.

[s.18](#)

They include the following:

- the **cutting of any rock** to produce stone with **one or more flat surfaces**;
- any process by which a **relevant substance is extracted** or otherwise separated from any aggregate;
- any process for the **production of lime or cement from limestone** or from limestone and anything else.

The second process referred to 'relevant substances'. These include:

- ball clay;
- china clay;
- fuller's earth;
- potash;
- sodium chloride; and
- talc

Note that this is not a definitive list; take a look at section 18.

### 31.6 Weight of aggregate

We have already mentioned that aggregates levy is charged at the rate of £2 per tonne. Therefore, as it is charged on the weight of the aggregate, are there any rules on ascertaining the weight?

[reg 3](#)  
[SI 2002/761](#)

The Aggregates Levy (General) Regulations 2002 provide the rules for determining the weight of the aggregate.

The **weight is determined by a weighbridge** at the site where the commercial exploitation occurs. The regulations provide terms and conditions attaching to the weighbridge are to be stipulated in a public notice.

[s.23](#)

The relevant public notice is AGL 1 and provides that weighbridges must **comply with weights and measures legislation** and weighbridge tickets must be kept as they will be used in the 'aggregates levy account'.

[SI 2002/761](#)

If a weighbridge is not practical, or there is no weigh bridge, the weight can be determined in accordance with a **method approved by Customs**. Approval will be **in writing** and include any **terms and conditions** as Customs sees fit. If the method is not applied correctly or produces an inaccurate result, Customs can **withdraw the approved method**.

Customs can also **prescribe** a method to be used.

If a person has mixed loads, for example, taxable aggregate with recycled materials and non-taxable aggregate, they will need to agree a special method with Customs.

**Water** which is added to the aggregate after it has been excavated **can be discounted from the weight**. Customs approval is needed. Either a special method needs to be agreed with Customs as to how it will be discounted or standard percentages can be used. The percentages are 7% for washed sand, 3.5% for washed gravel and 4% for washed rock/aggregate.

[reg.3 SI](#)  
[2002/761](#)

### 31.7 Registration

A person that carries out taxable activities, who is not exempt from registration, is **required to register** for the purposes of aggregates levy.

'Taxable activities' are defined as subjecting aggregate to commercial exploitation. In English this means that where a person is liable to pay aggregates levy he needs to register with Customs. **There is no threshold**, unlike VAT.

[s.24\(2\)](#)

Where a person is required to be registered or has formed the intention to carry out taxable activities, he must notify Customs on **form AL 1 within 30 days**. Site details must be notified on **form AL 1A**. Other forms may need to be completed and Public Notice AGL1 gives the details.

[Sch.4](#)

Customs will **register him from day one**, i.e. when the requirement to register arose. They will send a **certificate of registration** to the person.

[reg.2 SI 2001/4027](#)

Where a person carries out commercial exploitation that is exempt (see 31.3 above), registration is not required. However, Customs still require notification for activities that are listed in reg 3(3), which are re-iterated in section 9.2.2 of the public notice.

[reg.3 SI 2001/4027](#)

**From 1<sup>st</sup> April 2010, the new single penalty regime takes effect.** Go back to chapter 26, paragraph 26.8 for a reminder. Penalties are not imposed where the person satisfies Customs that he has a reasonable excuse, or has been convicted of a criminal offence.

[para.1\(3\) sch. 4](#)

Reasonable excuse was discussed in a tribunal case. Customs had imposed a 5% penalty on the appellant for understating aggregates levy due. **The tribunal quashed the penalty because the steps taken by the appellant would have been perfectly legal, had the legislation in the 2001 Finance Act not been amended retrospectively.** In addition, Public Notice AGL1 continued to provide taxpayers with incorrect information once the legislation had been enacted.

[Humberside Aggregates & Excavation v C&E](#)

Customs can cancel someone's registration where they have ceased to carry out taxable activities and no longer intend to carry them out. If the person themselves **ceases to carry out taxable activities** they need to **notify Customs within 30 days**.

[para.4\(1\) sch.4 reg.5 SI 2001/4027](#)

If a person's particulars change, they need to **notify the change to Customs within 30 days**.

[reg.4 SI 2001/4027](#)

### 31.8 Transfers of going concerns

We'll now look at what happens if a registered person transfers their business as a going concern to another person. The transferor's **registration number can be passed to the transferee**. In order to do this a written application must be made to Customs on **form AL 68**.

[reg.37 SI 2002/761](#)

If this occurs, the transferee **takes over the liabilities** of the transferor, and **rights to receive repayments** if aggregates levy has been overpaid.

### 31.9 Special Cases

The 2002 regulations make provision for death, incapacity and insolvency.

For example, where a registered person dies, Customs may treat a person who carries on the activities as if they were the registered person. A person taking over in this way must **notify Customs within 21 days of taking over**.

[reg.34-36 SI 2002/761](#)

In addition, if a partnership commercially exploits aggregate, then each partner is joint and severally liable for compliance with the legislation. For other unincorporated associations, the rules are the same as those that we have seen already for landfill tax. If you need a reminder go back to chapter 28, paragraph 28.11.

### 31.10 Returns

Returns are required to be made by registered traders. They are made for accounting periods, which are generally **three months** in length.

[reg.5 SI 2002/761](#)

Returns are required on **form AL 100**, which is sent by Customs a couple of weeks before the end of each accounting period. It must be sent by the **last working day of the month following** the accounting period. **Payment must also be made by the same date** unless payment is made by direct debit. In the latter case, an **extra 7 days** are allowed for payment to reach Customs.

[reg.8 SI 2002/761](#)

Four boxes require completion. These are:

- Box 1** This shows the amount of aggregates levy due for the period. Bad debt relief claimed should be included.
- Box 2** This shows the total tonnage of taxable aggregate commercially exploited the period, including any aggregate which is, or may become, eligible for relief.
- Box 3** This shows the total tonnage of aggregate commercially exploited that is relieved from the levy in the period, including exported aggregate.
- Box 4** This shows the total tonnage of aggregate commercially exploited during the period that is exempt from the levy.

### 31.11 Records

An '**aggregates levy account**' must be kept. Public notice AGL 1 details what information this contains. It is a two sided account that includes on the left hand side the gross levy due to Customs and on the right hand side credits due from Customs, for example, credits for exports.

[reg.9 SI 2002/761](#)

The two sides are netted off to show the levy due to Customs or any reclaim payable by Customs.

The **regulations detail additional records** that must be kept. They include the following:

- business and accounting records;
- stock records;
- invoices issued;
- invoices received;
- credit and debit notes issued and received; and
- documentary evidence to support the weight of aggregate

[reg.10 SI  
2002/761](#)

Records should generally be kept for **6 years**.

[reg.11 SI  
2002/761](#)

### 31.12 Bad debts

Where a person has paid aggregates levy to Customs on a debt owed by a customer and the customer has failed to pay, a claim for bad debt relief can be made provided certain conditions are satisfied:

1. The person and the customer **cannot be connected**;
2. The **whole or part** of the consideration must have been **written off** in the accounts;
3. The customer has become **insolvent** or gone into **liquidation**

Provided the conditions are satisfied, the person is entitled to a '**tax credit**' for the Aggregates Levy paid.

Where the amount charged to the customer for the aggregate is less than twice the levy paid, the amount of the credit that can be claimed is half of the outstanding amount.

#### Illustration 3

[reg.12 SI  
2002/761](#)

Bill is a quarry operator and charges Pete £3.50 per tonne of sand. Pete buys 20 tonnes but fails to pay Bill and becomes insolvent.

As the total charged to the customer per tonne (£3.50) is less than twice the levy paid (i.e.  $2 \times £2 = £4$ ), then Bill can reclaim half the outstanding amount i.e.  $(\frac{1}{2} \times 20 \times 3.50 = £35)$  This is less than the £40 of aggregates levy due on the total ( $£2 \times 20 = £40$ ).

If only some of the debt is outstanding, the amount of the credit is calculated pro rata.

## Example 2

Bill our quarry operator charges Phil £6 per tonne of sand. Phil buys 10 tonnes. Phil has paid £15 but then goes insolvent. How much credit can Bill get as bad debt relief?

### 31.13 Other tax credits

We've looked at claiming credit for bad debts but what about other credits? A person who has paid Aggregates Levy is entitled to a **tax credit where the taxable aggregate is used in one of the following ways:**

- exported or removed from the UK without further processing;
- used in an exempt process;
- used in certain industrial or agricultural processes;
- disposed of by being returned to its original site;
- disposed of to landfill; and
- gravel or sand used for beach restoration purposes.

[reg.13 SI 2002/761](#)

The schedule lists a number of processes. Make sure that you look through it. Below are an illustration of the processes contained in it:

[schedule to SI 2002/761](#)

- production of energy (which was discussed in the tribunal case of Hochtief which we looked at earlier);
- manufacture of plastics;
- paper manufacture;
- manufacture of animal feeds; and
- production of fertiliser

Tax credits are also available at present for **aggregate commercially exploited in Northern Ireland**. This is currently due to end by 31<sup>st</sup> March 2011. However, it is intended that the scheme will be extended for a further 10 years and run until 2021. **The regulations provide for a credit of 80% of the aggregates levy paid.**

To be eligible for the credit, a person must comply with the regulations in SI 2004/1959. For example, he must be registered for Aggregates Levy, he must have entered into an aggregates levy credit agreement with Customs and be in possession of an aggregates levy credit certificate.

[SI 2004/1959](#)

### 31.14 Claiming tax credits

We've looked at the circumstances in which tax credits are available but how are they claimed? To claim a tax credit, a person can include it on his quarterly return and therefore nets off his payments and credits and pays the excess to Customs. If his **credits exceed his payments, Customs will repay the excess amount** to him. He must have records to back up his claim; otherwise the claim will be invalid.

[reg.14 SI 2002/761](#)

Claims are subject to the 'unjust enrichment' rules and the **4 year time limit** that was introduced by the Finance Act 2009, subject to the transitional rules that don't allow claims to go back any further than 31<sup>st</sup> March 2007.

The registered person must keep records as detailed in the public notice. These have the force of law by virtue of reg.13 (3).

[reg.13\(3\) SI 2002/761](#)

### 31.15 Correction of errors

If an error comes to light, it must be corrected. If the error amounts to a **maximum £10,000** or if greater 1% of turnover (subject to a maximum £50,000) it can be **corrected on the return** during which the error was discovered.

[reg.28 SI 2002/761](#)

Errors exceeding this limit need to be voluntarily disclosed to Customs.

### 31.16 Distress and diligence

If a person fails to pay aggregates levy due, as well as invoking penalties. Customs can take a person's goods and chattels and sell them to cover the outstanding debt plus recovery costs etc. This is known as '**distress**'.

In addition, if a person fails to pay aggregates levy due, a summary warrant can be obtained to authorise recovery by a '**diligence**'. This simply means it is a way that Customs can legally recover the money owed by the debtor. A diligence comprises things such as an earnings arrestment.

[s.51\(5\) FA 1997](#)

[s.52\(5\) FA 1997](#)

An 'earnings arrestment' means that **Customs can recover the debt direct from the debtor's employer**.

### 31.17 Relevant Cases: Pat Munro

Our final look at Aggregates Levy concerns case law. The first case we're going to look at is the **tribunal case of Pat Munro (AIness) Ltd**. The case concerned exemptions from aggregates levy.

Pat Munro  
A002  
16/8/04

The company concerned was providing an all weather football pitch for a school. The ground was sloping and therefore had to be excavated. Several thousand tonnes of sand, gravel and stone were extracted. This was transported to the company's recycling facility to be processed and sold.

The company argued that aggregates levy was not due. Customs imposed aggregates levy on the company, based on the fact that the operations did not fall within any of the exemptions in the legislation.

The company's argument was based on the intention of the levy when the Act was introduced. It was introduced as an environmental tax to help protect the countryside. It was introduced to encourage the re-use of secondary materials, including those excavated from construction projects. This is what the company had done excavated material and recycled it. However, within the wording of the legislation it had not been previously used for construction purposes.

None of the exempt processes in section 18 FA 2001 applied. Section 17(3)(b) was considered. Aggregate which has been excavated on the site of any new building that is being erected, and relates to the laying of foundations is exempt. **In order for the exemption to apply, the pitch would need to be classified as a building.**

The tribunal chairman stated that had a sports pavilion been created along with the all weather pitch, the exemption may have applied as it would form part of the 'site' of the building. However, the pitch in its own right was not a building.

He was sympathetic to the company and that the decision did nothing to encourage recycling, and may be a departure from the purpose of the Act. He could not however, interpret it in any other way.

### 31.18 Relevant Cases - British Aggregates Association

The next case we're going to look at is the ECJ case concerning the British Aggregates Association or BAA. In essence **the BAA is trying to argue that aggregates levy is 'illegal' as it contravenes EU law on state aid.** The Commission issued a decision and decided not to raise an objection to the levy. The BAA subsequently appealed to the Court of First Instance requesting that it annul the Commission Decision.

The Court of First Instance upheld the Commission Decision so the BAA appealed to the ECJ. The Advocate General initially gave an opinion which suggested that elements of the Commission's Decision were flawed and that the case should be remitted back to the Court of First Instance for a re-examination. **The ECJ issued its decision at the end of last year and has set aside the judgement of the Court of First Instance and referred it back to that court.** We will have to be patient and wait and see what the Court of First Instance decides.

C-487/06P

### 31.19 Relevant Cases: Hochtief

**Hochtief Ltd v Her Majesty's Revenue & Customs [2009] UKFTT 321 (TC) TC00264 (20<sup>th</sup> November 2009) (Appeal allowed)**

The appellant was the contractor that was constructing a hydro electric power station for Scottish and Southern electricity. It involved the removal of peat and till to form a reservoir and a dam was constructed from over 1 million tonnes of rock which had been removed from a quarry site approximately 100 metres away (to its nearest point)

Some of the rock had to be crushed and screened to a smaller size before being used. It was not mixed with any other material or substance (other than water) during the construction of the dam. Once the dam had been built up a 300 millimetre thick concrete slab was applied to the waterside of it to provide a waterproof impermeable barrier. The concrete was not the subject of the appeal.

Pipelines and tunnels were laid to divert water to the reservoir and a control building was constructed at the head of the dam, along with generators, temporary roads and other buildings etc. The hydro electric power is generated by the force of the water driving generation machinery. The dam stores potential energy by retraining the flow of water from the reservoir to a lower elevation. The potential energy is converted to kinetic energy as the water is released from the reservoir and moves under the action of gravity.

Customs had compulsorily registered the appellant for aggregates levy and an assessment for over £1.6 million pounds was raised. The quarry where the rock came from was in the reservoir footprint and was now under water. In order to construct the dam on a solid base peat, soil etc were removed to a depth of 12 metres to reveal solid rock.

Rock from the quarry was then used to fill the area where the peat and soil etc had been removed and to construct the dam itself. The dam was partially below the previous ground level and partly above it and rose in a triangular form (when looked at in cross-section) the estimated working life is 75 years.

Now remember in order for the levy to be due, it has to be taxable aggregate that is commercially exploited. It was not contested that the rock was aggregate, that it was taxable (as none of the exemptions applied), and that it was 'exploited'. It is exploited if it is used for construction purposes. This includes using it as a support in the construction of a structure such as a dam.

So, initially what the tribunal had to look at was whether it was 'commercially' exploited. Sub section 3 e of section 19 to the Finance Act 2001 says that it is commercially exploited if

*'the exploitation to which it is subjected is not such that, as a result and without its being subjected to any process involving its being mixed with any other substance or material (other than water) it again becomes part of the land at the site from which it was won.'*

So basically the appellant was arguing that because they hadn't mixed the rock with anything (other than water) and the dam was on the land at the site from where the rock was won - they satisfied this bit of the legislation. Therefore what they had done did not amount to commercial exploitation.

Now Customs on the other hand argued that the word 'again' meant the rock would have to be returned to the site of the quarry and not the dam to 'again' become part of that land. The tribunal said that the legislation did not use the word 'returned' to the land - which would imply putting it back in the same way - which would likely be impossible anyway. They also said that the word 'site' should not be construed so narrowly.

Customs also argued that it didn't become part of the 'land' but part of a new structure - the dam - and a distinction should be drawn between the part of the dam below ground level and the part above.

The tribunal went to the Interpretation Act of 1978 to look at the definition of land there - given that there wasn't one in the Finance Act itself, which says that land includes buildings and other structures. So being satisfied that the dam was included in the word land - the tribunal had to decide on the interpretation of the word 'site'.

The tribunal found it persuasive that the area of the reservoir contained the quarry and where the rock was removed from the quarry to form the dam, the quarry was then filled with soil and till and rock and when the reservoir filled with water was covered with water and became part of the reservoir.

The footprint of the quarry was not on an area of land several kilometres away from the footprint of the dam. It was on land that became part of the reservoir which was created when the dam was built and the water captured.

The East Midlands Aggregates High Court case was considered. The High Court in that case had to look at the word 'site' in connection with an exemption from Aggregates Levy. It concerned warehouses and a lorry park.

The exemption was available for aggregate removed on the 'site of a proposed building.' The High Court agreed with the tribunal that the lorry park came within the immediate area of the building operations and therefore the word 'site' was not limited to the immediate footprint of the building.

The tribunal was persuaded that based on the High Court's ruling above if ten people were asked to line up and identify the 'site' they would not consider the footprint of the dam as one site and the footprint of the quarry as another.

The tribunal considered the distance of the quarry from the dam but even if it had have been 2 kilometres long it was still within the sensible workable meaning of the word 'site'. Finally the tribunal looked at the scale of the project. It was a major civil engineering project.

The tribunal also noted that Customs has the authority to set the boundaries of a site under the legislation.

Customs final argument was that if the tribunal allowed the appeal then in the future the dam could be dismantled and the aggregate sold free of the levy - because section 17(a)(b) says that if it has previously been used for construction purposes it is not taxable aggregate. The tribunal was not persuaded by that argument and aligned it to the example of farmers that use rocks in their natural state to build dry stone walls. When they collapse the loose stones can be sold free of the levy. The only difference here to them was the sheer scale of the dam.

One final point that the tribunal had to address was if they had found in favour of Customs, the appellant had a second argument to put forwards. A tax credit is available for aggregates levy paid where the aggregate is used in a prescribed industrial or agricultural process. These processes are listed in a schedule to a statutory instrument - the Aggregates Levy General Regulations. One of the processes listed is 'production of energy.'

Customs' argument was that the aggregate must be used **IN** the production of energy and not used in construction **FOR** the production of energy and that if this latter interpretation were given then aggregate used in the construction of the concrete walls of a power station or for the road to the power station would be entitled to credit. In their view the aggregate is only entitled to a credit if it is being used for their other physical properties. The tribunal rejected this argument as one of the uses listed is sand in a children's sand pit.

The tribunal said that a rockfill dam may be in a special and possibly singular category in relation to its use in the production of energy and distinguished the use of aggregate as concrete in the construction of a shell to hold an oil filled power station. The dam was a significant part of the hydro electric scheme. It collected and stored water and consequently potential energy by restraining the flow of water which in turn converted to kinetic energy. It was an integral part of the energy production scheme. So the tribunal would have allowed that appeal anyway if they had to have decided the issue.

**Answer 1**

$$3\frac{1}{2} \times \text{£}2 = \text{£}7$$

**Answer 2**

As the total amount charged per tonne is more than twice the levy paid (i.e. more than £4), the full £2 per tonne is recoverable. However, as Phil has partly paid for his aggregate only part of the debt is bad.

Phil owes £60 but has paid £15. Therefore, he owes £45. This equates to  $7\frac{1}{2}$  tonnes that have not been paid for (i.e. 45/6 per tonne)

$$7\frac{1}{2} \times \text{£}2 = \text{£}15$$