

Environmental Bodies (EBs), project applicants and Contributing Third Parties (CTPs)

September 2013

1. Introduction

- 1.1 This guidance document is a clarification of the correct interpretation of the Landfill Tax Regulations 1996 (Regulations) in relation to Contributing Third Parties (CTPs).
- 1.2 In 2011/2012 we identified from an evidence gathering exercise that many Environmental Bodies (EBs) were making payments to Landfill Operators (LOs) as CTP payments from their non-LCF funds. Both we and HMRC sought legal advice which clarified that this practice is non-compliant with the Regulations.
- 1.3 When a LO makes a qualifying contribution to an EB, they can only claim tax relief on 90% of the contribution and are left with a 10% funding shortfall. Some LOs will absorb this cost themselves, but others will require a CTP to make this 10% payment so that their contribution is cost neutral to them. This guidance note sets out the revised definition of a CTP and who can act as a CTP.
- 1.4 The Regulations provide the following definition of a CTP:

30 - Interpretation and general provisions

(1) In this Part—

“contributing third party” means a person who has made or agreed to make (whether or not under a legally binding agreement) a payment to a registered person to secure the making by him of a qualifying contribution or to reimburse him, in whole or in part, for any such contribution he has made;

2. Principles

- 2.1 The Regulations set out that a CTP must be an entity independent of the LO and independent of the EB who receives the qualifying contribution from the LO (either from the LO directly or via an EB-to-EB transfer). HMRC’s guidance to LOs in “A general guide to landfill tax - Notice LFT1” specifically sets out in paragraph 11.8.1 that:

“There is nothing to prevent a third party from helping to fund your contribution, so long as that person or organisation is not itself the enrolled EB you propose to donate to. You must make sure that any third party contributors do not directly benefit from the projects which they are helping to fund.”

Guidance document

- 2.2 In **general** terms, a CTP must:
- Be a person or organisation separate to the EB spending the LCF monies on the project and separate to the LO;
 - Have the intention of making the 10% payment to secure the making of a qualifying contribution to the EB (or to reimburse the LO for such a contribution);
 - Make the payment to the LO (but please note the requirements of section four below); and
 - Not receive a unique benefit from any of the EB's expenditure of LCF monies.
- 2.3 In administering a CTP payment an EB should assess what a potential CTP may have to gain by making the payment. This may help to determine whether or not the proposed CTP would derive a unique benefit. For further advice surrounding unique benefit, please refer to our EB Guidance Manual, **Section H – The Benefit Rules**, which can be found at: <http://www.entrust.org.uk/home/guidance-library?did=1012>
- 2.4 The Regulations also require EBs to maintain records of the name and address of each CTP against the qualifying contribution, or transfer, that the CTP payment corresponds to.

3. Project applicants as CTPs

- 3.1 An organisation which applies to an EB for funding for their project is termed a project applicant. A project applicant who receives funds from an EB and is not itself an EB can act as a CTP because it is a third party, i.e. not the LO or the EB. However, there is still the benefit rule to consider (see paragraph 2.3).

4. EBs acting as intermediaries for CTPs

- 4.1 CTP payments are required by the Regulations to be made by an independent third party. However, there are circumstances where an EB can pass a CTP payment onto a LO on behalf of a third party or third parties. Many EBs will have to rely on fundraising and small donations from lots of different people to make a CTP payment. It is often not practicable for all those contributors to pay the LO directly. A charitable trust may wish to act as the CTP but are precluded from making a direct payment to a LO. In such cases an EB may wish to act as an intermediary for passing CTP payments onto the LO. It is important that the EB understands the CTP payment is not to be treated as the EB's funds and that in being an intermediary the EB is handling another organisation's money.
- 4.2 An EB would be regarded as an intermediary if it was making the CTP payment wholly out of funds donated from independent third parties. In these circumstances the original donors would be regarded as the CTP, not the EB. The CTP donation is not the EBs funds.
- 4.3 If an EB acts in the capacity of an intermediary, the EB must be able to provide an audit trail to demonstrate the payment originated from a third party and that it was given with the intention of it being used as a CTP payment. An example of a sufficient audit trail would be an EB using a separate cost code for the donation or holding the CTP payment in a separate bank account.

Guidance document

- 4.4 When acting as an intermediary, an EB should consider how the requirements of paragraph 2.2 will be met. If necessary, they should seek advice from us.

5.0 Record keeping

- 5.1 EBs are required to keep and maintain a clear audit trail to show a link between expenditure and the contributing LO and any CTP payments relating to the qualifying contribution or transfer. Regulation 33A(1)(d)(ii) and (iv) require EBs to keep clear records to demonstrate the name and address of the CTP in relation to the contribution or transfer. We will examine these records during compliance reviews. The EB spending LCF monies and reporting this project expenditure would be responsible for keeping the CTP records.

Regulations:

33A(1) An approved body shall –

(d) make and retain records of the following:

(ii) the name and address of any contributing third party in relation to a qualifying contribution received by the body;

(iv) in the case of a transfer of the whole or part of any qualifying contribution or income derived therefrom to or from the body, the date of the transfer, the amount transferred, the name and enrolment number of the body from or, as the case may require, to which it was transferred, the name, address and registration number of the person who made the qualifying contribution and the name and address if any contributing third party in relation to the contribution.

6. Timescales

- 6.1 This guidance document sets out the requirements of the Regulations in relation to the organisations which can compliantly act as a CTP. Consequently, EBs must take the necessary steps to comply with the Regulations. We require EBs to make changes to their operations to cease making CTP payments to LOs out of their non-LCF funds (except where they can demonstrate that they are acting as an intermediary) by 01 October 2013.

7. Further information

- 7.1 If you have any questions regarding this guidance document, or have concerns about your current processes which you would like to discuss, please contact Madeleine Hodgson, Regulations Officer on 01926 488 323 or madeleinehodgson@entrust.org.uk.

ENTRUST
September 2013