

1 Landfill tax: disposals not made at landfill sites, etc

- (1) Schedule 1 makes provision about landfill tax, including provision for disposals of material elsewhere than at landfill sites to be chargeable.
- (2) The amendments made by Schedule 1 have effect in relation to disposals that are—
 - (a) made in England or Northern Ireland, and
 - (b) made (or treated as made) on or after 1 April 2018.Paragraph (b) does not apply to the amendments made by paragraph 11 of Schedule 1.
- (3) In section 47 of FA 1996 as it has effect following the amendments made by Schedule 1—
 - (a) the reference to taxable activities in subsection (3)(a) does not include taxable activities that are to be carried out elsewhere than at a landfill site before 1 April 2018;
 - (b) subsection (4), as it applies in relation to taxable activities carried out elsewhere than at a landfill site, has effect only where the person ceases on or after 1 April 2018 to have the intention of carrying out the activities;
 - (c) subsection (5A), as it applies in relation to taxable activities carried out before 1 April 2018, has effect as if “1 April 2018” were substituted for “the date when the person begins carrying out those activities”.
- (4) Where a person is registered under section 47 of FA 1996 immediately before the day on which this Act is passed, the registration continues after that day until terminated in accordance with that section (as amended by paragraph 11 of Schedule 1) or otherwise.
- (5) For the purposes of Part 3 of FA 1996 and this section, where—
 - (a) on or after 1 April 2018 the Commissioners become aware of material that has been disposed of at a place other than a landfill site,
 - (b) if the disposal had been made on that day it would have required a permit or licence mentioned in subsection (2) of section 40 of FA 1996 (as that section had effect on that day), and
 - (c) the disposal is not chargeable to tax apart from this subsection,the material is treated as having been disposed of at that place on that day.
- (6) But a person cannot be guilty of an offence solely as a result of the retrospective effect of subsection (5).
- (7) Expressions used in this section that are defined for the purposes of Part 3 of FA 1996 have the same meaning in this section as in that Part (as amended by Schedule 1).

SCHEDULE

Section 1

LANDFILL TAX: DISPOSALS NOT MADE AT LANDFILL SITES, ETC

PART 1

AMENDMENTS OF PART 3 OF FA 1996

Introduction

- 1 Part 3 of FA 1996 (landfill tax) is amended as set out in the following provisions of this Part of this Schedule.

Taxable disposals

- 2 (1) Section 40 (charge to tax) is amended as follows.
 - (2) For subsection (2) substitute –
 - “(2) A taxable disposal takes place where material is disposed of and either –
 - (a) the disposal is made at a landfill site (see subsection (4)), or
 - (b) the disposal requires a permit or licence mentioned in subsection (4) but is not made at a landfill site.”
 - (3) After subsection (3) insert –
 - “(4) Land is a landfill site at a given time if at that time –
 - (a) a permit under regulations made under –
 - (i) section 2 of the Pollution Prevention and Control Act 1999, or
 - (ii) Article 4 of the Environment (Northern Ireland) Order 2002 (S.I. 2002/3153 (N.I. 7)),is in force in relation to the land and authorises deposits or disposals in or on the land,
 - (b) a waste management licence issued under Part 2 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (S.I. 1997/2778 (N.I. 19)) (waste on land) is in force in relation to the land and authorises deposits in or on the land, or
 - (c) a licence under any provision for the time being having effect in Northern Ireland and corresponding to section 35 of the Environmental Protection Act 1990 (waste management licences) is in force in relation to the land and authorises disposals in or on the land.”
- 3 After section 40 insert –
 - “**40A Disposals of material**
 - (1) For the purposes of this Part, there is a disposal of material if –

- (a) material is disposed of on the surface of land or on a structure set into the surface, or
 - (b) material is disposed of under the surface of land.
- (2) For the purposes of subsection (1)(a) and (b) it does not matter whether the material is placed in a container before it is disposed of.
- (3) For the purposes of subsection (1)(b) it does not matter whether the material –
- (a) is covered after it is disposed of, or
 - (b) is disposed of in a cavity (such as a cavern or mine).
- (4) If material is disposed of on the surface of land or on a structure set into the surface with a view to the material being covered, the disposal is to be treated as made when the material is disposed of and not when it is covered.
- (5) An order may for the purposes of this Part provide for –
- (a) material to be treated as disposed of in circumstances where it would not otherwise be so treated;
 - (b) material to be treated as not disposed of in circumstances where it would otherwise be so treated.
- (6) An order under subsection (5) may, among other things, make provision by reference to –
- (a) descriptions of material;
 - (b) the quantities disposed of;
 - (c) the nature of the site at which material is disposed of;
 - (d) the location of material in a site (for example, whether it is in a discrete unit within the site).
- (7) An order under subsection (5) may make provision subject to exceptions, conditions or other qualifications.”

Liability to pay landfill tax

- 4 (1) Section 41 (liability to pay tax) is amended as follows.
- (2) In subsection (1), after “a taxable disposal” insert “made at a landfill site”.
- (3) After subsection (2) insert –
- “(3) A person is liable to pay tax charged on a taxable disposal not made at a landfill site if the person –
- (a) makes the disposal,
 - (b) knowingly causes or knowingly permits the disposal to be made, or
 - (c) is a director of a body corporate that is within paragraph (a) or (b).
- (4) Every such person is jointly and severally liable to pay the tax charged.
- (5) In the case of a taxable disposal not made at a landfill site, a person within subsection (6) or (7) is taken for the purposes of this Part to be a person who knowingly causes or knowingly permits the disposal

to be made, unless it shown to the satisfaction of the Commissioners that the person did not do so.

- (6) A person is within this subsection if at the time of the disposal the person –
 - (a) is the owner, or a lessee or occupier, of the land at which the disposal is made, or
 - (b) controls, or is able to control, a vehicle or trailer from which the disposal is made.
- (7) A person is within this section if, before the time of the disposal of the material in question, the person –
 - (a) took any action with a view to the disposal of the material,
 - (b) was party to a contract for the sale of the material, or
 - (c) facilitated the transport or storage of the material.”

Taxable activities

- 5 (1) Section 69 (taxable activities) is amended as follows.
- (2) For subsection (1) substitute –
 - “(1) A person carries out a taxable activity if the person –
 - (a) makes a taxable disposal (whether or not at a landfill site),
 - (b) permits a taxable disposal to be made at a landfill site, or
 - (c) knowingly causes or knowingly permits a taxable disposal to be made elsewhere than at a landfill site,and the person is liable to pay tax in respect of the disposal.”
- (3) In subsection (2) –
 - (a) in paragraph (a), after “is made” insert “at a landfill site”;
 - (b) for “this section” substitute “subsection (1)(b)”.

Taxable disposals etc: supplementary and consequential amendments

- 6 (1) Section 45 (pet cemeteries) is amended as follows.
- (2) In subsection (1)(b) omit “landfill”.
- (3) In subsection (2) –
 - (a) in paragraph (a), for “landfill disposal” substitute “disposal of material”;
 - (b) in paragraph (b), for “landfill disposals” substitute “disposals of material”.
- 7 Omit sections 64 to 67.
- 8 (1) Section 70 (interpretation) is amended as follows.
- (2) In subsection (1), at the appropriate places insert –
 - ““disposal” and “dispose of” shall be construed in accordance with section 40A;”;
 - ““landfill site” has the meaning given by section 40(4);”;
 - ““operator”, in relation to a landfill site, means the person who at the relevant time is the holder of the permit (where section

- 40(4)(a) applies) or the licence (where section 40(4)(b) or (c) applies);”;
- ““taxable person” means a person who is liable to pay tax on a taxable disposal.”
- (3) Omit subsections (2) and (2A).
- (4) In subsection (4), for “sections 64 to” substitute “sections 68 and”.
- 9 In section 71 (orders and regulations), in subsection (7) –
- (a) before paragraph (a) insert –
- “(za) an order under section 40A(5) which has the result that anything which would not otherwise be a taxable disposal is a taxable disposal;”;
- (b) omit paragraphs (ca), (cb) and (d).
- 10 (1) Schedule 5 (landfill tax) is amended as follows.
- (2) Omit paragraph 1B (information: site restoration).
- (3) Before paragraph 2 insert –
- “Site information*
- 1C (1) Regulations may require the operator of a landfill site –
- (a) to retain plans, permits and licences relating to the site;
- (b) to provide the Commissioners with copies of, or information relating to, plans, permits and licences retained under paragraph (a).
- (2) Regulations under sub-paragraph (1)(b) may be framed by reference to such copies or information as may be stipulated in any notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice.”
- (4) In paragraph 2A (records: material at landfill sites) –
- (a) in the heading, after “landfill” insert “and other”;
- (b) in sub-paragraph (1), for “relating to material” substitute “relating to –
- (a) material”;
- (c) at the end of that sub-paragraph insert “, and
- (b) material disposed of elsewhere than at a landfill site.”
- (5) In paragraph 10 (power to take samples), in sub-paragraph (1) omit “as waste by way of landfill”.
- (6) In paragraph 45 (adjustment of disposal contracts), in sub-paragraphs (1)(a) and (c) and (2) omit “landfill”.
- (7) In paragraph 46 (adjustment of construction contracts), in sub-paragraph (1)(b) omit “landfill”.

Registration

- 11 (1) Section 47 (registration) is amended as follows.

- (2) In subsections (2)(a) and (5), after “taxable activities” insert “at a landfill site”.
- (3) After subsection (5) insert –
- “(5A) Where a person who is not registered carries out taxable activities elsewhere than at a landfill site, the Commissioners may register the person with effect from the date when the person begins carrying out those activities.
- (5B) Subsections (2) to (5A) do not apply to a person within subsection (7) of section 41 who, but for that subsection, would not be treated as carrying out taxable activities.”
- (4) In subsection (6), for “a person” substitute “a registered person”.
- (5) For subsection (9) substitute –
- “(9) For the purposes of this section regulations may make –
- (a) provision as to the time within which a notification is to be made (including provision enabling the Commissioners to grant an extension of time);
 - (b) provision as to the form and manner in which any notification is to be made and as to the information to be contained in or provided with it;
 - (c) provision as to the criteria that the Commissioners are to apply in deciding whether to register a person under subsection (5A);
 - (d) provision under which, in prescribed circumstances, taxable activities at a site within subsection (9B) may, on a provisional or conditional basis, be treated as carried out at a landfill site;
 - (e) provision requiring a person who has made a notification to notify the Commissioners if any information contained in or provided in connection with it is or becomes inaccurate;
 - (f) provision as to the correction of entries in the register (including provision for a person provisionally or conditionally registered by virtue of paragraph (d) to be treated, in prescribed circumstances, as never having been so registered).
- (9A) Provision made by regulations under subsection (9)(c) may be supplemented by provision made by notice published by the Commissioners in accordance with the regulations.
- (9B) A site is within this subsection if –
- (a) it is not a landfill site, or
 - (b) it not known at the relevant time whether it is a landfill site or not.”
- (6) For subsection (10) substitute –
- “(10) In this Part –
- “registered person” means –
- (a) a person registered under subsection (5) or (5A), and
 - (b) a person who was registered under this section before the passing of FA 2018 and who remains registered;

“registrable person” means a person who is liable to be registered by virtue of subsection (2) or who may be registered under subsection (5A) (including a person who is in fact registered).”

Registration: supplementary and consequential amendments

- 12 In section 42 (amount of tax), in subsection (2) –
- (a) for “Where the” substitute “Where –
 - (a) the”;
 - (b) for “fines this section” substitute “fines, and
 - (b) the person (or at least one of the persons) liable to pay tax charged on the disposal is a registered person at the time of the disposal,
 this section”.
- 13 In section 43 (material removed from water), after subsection (5) insert –
- “(6) This section applies to a disposal only where the person (or at least one of the persons) liable to pay tax charged on the disposal is a registered person at the time of the disposal.”
- 14 In section 44 (mining and quarrying), after subsection (5) insert –
- “(6) This section applies to a disposal only where the person (or at least one of the persons) liable to pay tax charged on the disposal is a registered person at the time of the disposal.”
- 15 In section 44A (quarries), after subsection (5) insert –
- “(6) This section applies to a disposal only where the person (or at least one of the persons) liable to pay tax charged on the disposal is a registered person at the time of the disposal.”
- 16 In section 45 (pet cemeteries), after subsection (3) insert –
- “(4) This section applies to a disposal only where the person (or at least one of the persons) liable to pay tax charged on the disposal is a registered person at the time of the disposal.”
- 17 In section 49 (accounting for tax and time for payment), for “registrable person” substitute “registered person”.
- 18 (1) Section 51 (credit: general) is amended as follows.
- (2) In the following provisions, for “person” (in each place) substitute “registered person” –
- (a) subsection (1)(a);
 - (b) the opening words of subsection (2) and paragraphs (a), (b), (c), (d) and (f) of that subsection;
 - (c) subsection (3);
 - (d) subsection (6).
- (3) In subsection (4), for “person’s” substitute “registered person’s”.
- 19 In section 52 (bad debts), in subsection (1), for “person” substitute “registered person”.

- 20 In section 53 (bodies concerned with the environment), in subsection (1), for “person” substitute “registered person”.
- 21 (1) Section 59 (groups of companies) is amended as follows.
- (2) In subsection (2) –
- (a) for “condition” substitute “conditions”;
- (b) for “is fulfilled” substitute “are fulfilled”.
- (3) In subsection (3), for “The condition is that the” substitute “The conditions are that –
- (a) each of the bodies corporate is a registered person, and
- (b) the”.
- 22 In section 70 (interpretation), in subsection (1), for ““registrable person” has” substitute ““registered person” and “registrable person” have”.
- 23 (1) Schedule 5 is amended as follows.
- (2) In paragraph 2 (records: registrable persons), in the heading and in sub-paragraphs (1) and (3)(a), for “registrable persons” substitute “taxable persons”.
- (3) In paragraph 26 (interest on under-declared tax), in sub-paragraphs (1)(a) and (4), for “registrable person” substitute “registered person”.
- (4) In paragraph 27 (interest on unpaid tax etc), in sub-paragraphs (1)(a), (3)(a), (5)(a) and (7), for “registrable person” substitute “registered person”.

Assessment

- 24 In section 50 (power to assess), in the heading, for “assess” substitute “assess: registered persons”.

- 25 After that section insert –

“50A Power to assess: unregistered persons

- (1) Where –
- (a) it appears to the Commissioners that a person is liable to pay tax on a taxable disposal, and
- (b) the person is not a registered person,
- the Commissioners may assess the amount of tax due from the person to the best of their judgment and notify it to the person.
- (2) An assessment under this section must be accompanied by a notice –
- (a) identifying the land where the disposal was made;
- (b) indicating the date on which the disposal was made or treated as made, or the date on which (or period within which) the Commissioners believe it was made;
- (c) explaining why the Commissioners believe that the person to whom the notification is sent is liable to pay tax on the disposal;
- (d) describing the methods used to calculate the amount of tax, including the method used by the Commissioners to determine the weight of the material disposed of;
- (e) containing any other information prescribed by regulations.

- (3) An assessment under this section is not invalidated by any inaccuracy in the information given in the notice under subsection (2).
- (4) An assessment under this section –
 - (a) may relate to more than one taxable disposal;
 - (b) may relate to an unascertained number of taxable disposals.
- (5) An assessment under this section shall not be made more than two years after evidence of facts, sufficient in the Commissioners' opinion to justify the making of the assessment, comes to their knowledge.
 But where further such evidence comes to their knowledge after the making of an assessment under this section another assessment may be made under this section in addition to any earlier assessment.
- (6) Where an amount has been assessed and notified to a person under this section it shall be deemed to be an amount of tax due from the person and may be recovered accordingly unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced."

Assessment: supplementary and consequential amendments

- 26 In section 54 (appeals), in subsection (2) –
 - (a) for "it is an assessment" substitute "it is –
 - (a) an assessment";
 - (b) at the end insert ", or
 - (b) an assessment under section 50A."
- 27 (1) Schedule 5 (landfill tax) is amended as follows.
 - (2) In paragraph 27 (interest on unpaid tax etc), after sub-paragraph (8) insert –
 - "(8A) Sub-paragraph (8B) below applies where under section 50A of this Act the Commissioners assess an amount as being due from a person who is not a registered person in respect of a taxable disposal and notify it to the person.
 - (8B) The amount shall carry interest for the period which –
 - (a) begins with the day (or the last day of the period) notified under section 50A(2)(b), and
 - (b) ends with the day before that on which the amount is paid."
 - (3) In paragraph 33 (assessments: time limits) –
 - (a) in sub-paragraph (1)(a), after "section 50" insert "or 50A";
 - (b) in sub-paragraph (1A), omit the word "or" at the end of paragraph (a) and after that paragraph insert –
 - "(aa) in the case of an assessment under section 50A, evidence of facts, sufficient in the Commissioners' opinion to justify the making of the assessment, coming to their knowledge, or".
 - (4) In paragraph 36 (the register: publication) –

- (a) for the heading substitute “Publication of information by Commissioners”;
- (b) after sub-paragraph (2) insert –

“(2A) The Commissioners may publish, by such means as they think fit –

- (a) the names of persons assessed to tax under section 50A in respect of taxable disposals not made at a landfill site;
- (b) the addresses of any places used by persons within sub-paragraph (a) for making taxable disposals or otherwise for carrying on business.

This sub-paragraph does not apply where the assessment in question is subject to an outstanding appeal.”

PART 2

AMENDMENTS OF OTHER ACTS

FA 2008

- 28 (1) Schedule 36 of FA 2008 (information and inspection powers) is amended as follows.

- (2) In paragraph 60 (business), after sub-paragraph (1) insert –

“(1A) A person who under section 41 of FA 1996 is liable to pay landfill tax charged on a taxable disposal is treated for the purposes of this Schedule (subject to regulations under this paragraph) as carrying on a business.”

- (3) In paragraph 61A (involved third parties), in entry 12 of the table, for “landfill disposal” substitute “disposal of material”.

- 29 (1) Schedule 41 to that Act (penalties: failure to notify etc) is amended as follows.

- (2) After paragraph 3 insert –

“Involvement in landfill disposal by non-registrable person

- 3A (1) A penalty is payable by a person to whom this paragraph applies (“P”) where P does an act which enables HMRC to assess an amount as landfill tax due from P under section 50A of FA 1996. This is subject to paragraph 6CA(2).

- (2) This paragraph applies to a person within subsection (7) of section 41 of FA 1996 who, but for that subsection, would not be treated as carrying out taxable activities (within the meaning given by section 69 of that Act).”

- (3) In paragraph 5 (degrees of culpability), in sub-paragraph (3), after “a relevant excise provision” insert “, or to assess an amount of landfill tax as due from P under section 50A of FA 1996,”.

- (4) After paragraph 6C insert –

“6CA(1) The penalty payable under paragraph 3A is –

- (a) for a deliberate and concealed act or failure, 100% of the potential lost revenue, and
- (b) for a deliberate but not concealed act or failure, 70% of the potential lost revenue.

(2) No penalty is payable under paragraph 3A in any other case.”

(5) In paragraph 7 (potential lost revenue) –

(a) after sub-paragraph (8) insert –

“(8A) In the case of a relevant obligation under section 47 of FA 1996 (which relates to landfill tax), the potential lost revenue is the amount of tax (if any) for which P is liable for the period –

- (a) beginning with the date with effect from which P is required in accordance with that section to be registered or (as the case may be) from which the Commissioners may register P under that section, and
- (b) ending with the day on which HMRC received notification of, or otherwise became fully aware of, P’s liability to be registered or (as the case may be) the Commissioners’ power to register P.”;

(b) in sub-paragraph (9) omit “, landfill tax”.

(6) After paragraph 9 insert –

“9A In the case of the doing of an act which enables HMRC to assess an amount of landfill tax as due under section 50A of FA 1996, the potential lost revenue is the amount of the tax which may be assessed as due.”

FA 2011

30 In FA 2011, in Schedule 23 (data-gathering powers), in paragraph 25(c), for “landfill disposal” substitute “disposal of material”.