

Explanatory Note: draft clause

Landfill tax: disposals not made at landfill sites, etc

Summary

1. This clause and Schedule amend Part 3 of Finance Act (FA) 1996 to include disposals at sites without an environmental disposal permit (but which ought to have) within the charge to Landfill Tax. It will also introduce changes to what constitutes a taxable disposal for Landfill Tax purposes. This will take effect for disposals on or after 1 April 2018, subject to any transitional arrangements.

Details of the clause

2. Subsection 1 introduces Schedule 1 which amends Part 3 and Schedule 5 of FA 1996, Schedule 36 and Schedule 41 of FA 2008 and Schedule 23 of FA 2011.
3. Subsection 2 specifies that the changes take effect in relation to disposals in England and Northern Ireland on or after 1 April 2018.
4. Subsection 3 provides for the interpretation of taxable activities within Section 47 of FA 1996. Such taxable activities do not include those activities made elsewhere than at a landfill site.
5. Subsection 4 provides that all persons registered for Landfill Tax before 1 April 2018 will remain registered after that date until terminated in accordance with section 47 of FA 1996.
6. Subsection 5 introduces transitional arrangements for Part 3 of FA 1996 so that material disposed at a place other than a permitted landfill site before 1 April 2018 will be treated as being disposed of after 1 April 2018.
7. Subsection 6 specifies that a person cannot be guilty of an offence solely as a result of the retrospective effects introduced in subsection 5 above.
8. Subsection 7 provides for the interpretation of expressions used in the section.

Details of the Schedule

9. Part 1 introduces amendments to Part 3 and Schedule 5 of FA 1996.
10. Part 2 introduces consequential amendments to Schedule 36 and Schedule 41 of FA 2008 and Schedule 23 of FA 2011.

Part 1 Amendments of Part 3 of FA 1996

11. Paragraph 2 amends section 40 of FA 1996 to make changes to what constitutes a taxable disposal. It removes the requirement for the material disposed of to be waste, or disposed of by way of landfill. It also provides that disposals that require an environmental permit but do not take place at a landfill site will be subject to Landfill Tax. It also sets out what constitutes a permit.
12. Paragraph 3 inserts a new section 40A and provides details of when a disposal of material occurs. Subparagraph (5) provides for power to make an Order providing for material to be treated as disposed of where it would not be otherwise be so treated and for material to be treated as not disposed of in circumstances where it would otherwise be so treated.
13. Paragraph 4 amends section 41 of FA 1996 to define the persons responsible for paying the tax on taxable disposals not made at a landfill site. Subparagraph (4) provides that these persons are jointly and severally liable for the tax.
14. Paragraph 5 amends section 69 of FA 1996 to extend the definition of a taxable activity to taxable disposals made elsewhere than a landfill site.
15. Paragraph 6 makes consequential amendments to section 45 of FA 1996.
16. Paragraph 7 removes section 64 to 67 of FA 1996. Sections 64 to 65A are removed because they contained reference to material disposed of as waste and Sections 66 and 67 are removed because they now feature elsewhere.
17. Paragraph 8 makes consequential amendments to section 70 of FA 1996, including removing section 70(2) of FA 1996. Section 70(2A) is redundant and is now repealed.
18. Paragraph 9 inserts new paragraph (za) into section 71 of FA 1996 to provide for the procedure applicable for the making of an order under new section 40A(5) where such an order will cause a taxable disposal to occur when that would not otherwise have been the case.
19. Paragraph 10 removes paragraph 1B of Schedule 5 to FA 1996 and inserts a new paragraph 1C into Schedule 5 to FA 1996 to provide the power for the Commissioners to make regulations requiring the operator of a landfill site to retain information and provide copies or information to the Commissioners. Subparagraphs 4 to 7 make consequential amendments to paragraphs 2A, 10, 31, 45 and 46 of Schedule 5 of FA 1996.
20. Paragraph 11 makes changes to section 47 of FA 1996 in relation to the registration of persons who make taxable disposals not at landfill sites. Subparagraph (3) specifies the persons who are not required to register in relation to disposals made at a place other than a permitted landfill site. Subparagraph (5) substitutes a new version of section 47(9) of FA 1996 to provide for the Commissioners to specify in the regulations the conditions that will apply when deciding if a person is registered and related matters, besides repeating provisions already in place. Subparagraph (9A) provides for these conditions to be supplemented by information published by notice. Subparagraph (10) provides for definitions of 'registered person' and 'registrable person' that will apply to all of Part 3 of and Schedule 5 of the FA 1996 from the date of commencement.

21. Paragraphs 12 to 23 makes amendments to sections 42, 43, 44, 45, 49, 51, 52, 53, 59, 70 of FA 1996 and paragraphs 2, 15, 16, 26, 27 and 33 of Schedule 5 of FA 1996 so that these sections only apply to registered persons.
22. Paragraphs 24 and 25 make amendments to the assessment provisions for Landfill Tax. Paragraph 25 inserts new section 50A that provides that the Commissioners may assess an unregistered person for unpaid tax. This paragraph also inserts provisions for the information that must accompany an assessment made under the new section 50A.
23. Paragraphs 26 and 27 make consequential amendments to section 54 of FA 1996 and paragraphs 27, 33 and 36 of Schedule 5 of FA 1996.

Part 2 Amendments of Other Acts

24. Paragraph 28 inserts new paragraph 1A (to ensure powers to inspect business premises will apply to those liable to the tax in respect of unauthorised landfill sites) and makes consequential amendments to Schedule 36 to FA 2008, replacing “landfill disposal” with “disposal of material”.
25. Paragraph 29 inserts a new paragraph 3A to Schedule 41 of FA 2008 to provide for penalties to be payable by unregistered persons when they have been assessed under section 50A and there has been wrongdoing on the part of those persons.
26. Paragraph 30 makes consequential amendments to Schedule 23 to FA 2011, replacing “landfill disposal” with “disposal of material”.

Background note

27. Landfill Tax was introduced on 1 October 1996 as a disincentive to landfilling material and to encourage the switch to more environmentally friendly alternatives. Since the introduction of the tax in the UK, landfilling is down more than 60%.
28. In response to ongoing challenges by a number of landfill operators, Budget 2016 announced a consultation on changes to the criteria for determining when Landfill Tax is due. A consultation paper was published in May 2016 setting out proposals to amend the criteria and the summary of responses to the consultation was published 5 December 2016.
29. At Budget 2017, the government announced it would consult on whether to extend the scope of Landfill Tax to disposals of material at sites operating without the appropriate environmental licence or permit. These illegal waste sites operate outside the scope of Landfill Tax making the activity attractive to rogue operators who exploit the disparity of tax treatment to undercut legitimate operators.
30. The government published a consultation paper in May 2017 which set out the reasons for extending the scope of Landfill Tax and asked for responses on a number of areas including how to define an illegal waste site and who should be liable for the tax.
31. Following strong support from industry during consultation, the government confirmed its intention to legislate to extend the scope of Landfill Tax to illegal waste sites from 1 April 2018. To ensure the simplest transition for the industry to the new rules, the government has decided to combine the legislation on the revised scope with the previously announced changes to clarify what material is taxable.

32. HMRC will work with industry to publicise the changes and provide guidance before the changes come into effect, including a clear statement about the responsibilities of innocent parties.
33. Landfill Tax was devolved to Scotland in April 2015 and will be devolved to Wales from April 2018, therefore these changes will not apply to sites in Scotland and Wales.
34. If you have any questions about this change, or comments on the legislation, please contact James Wilson on 03000 575578 (email: james.wilson3@hmrc.gsi.gov.uk).