

# LANDFILL DISPOSALS TAX (WALES) ACT 2017

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 3 - Taxable Disposals Made at Authorised Landfill Sites**

#### *Chapter 2 – Tax Chargeable on Taxable Disposals*

#### **Qualifying materials and qualifying mixtures of materials**

#### *Section 15 – Qualifying material*

33. This section sets out the circumstances in which material will qualify for the lower rate of tax. Firstly, the material needs to be listed in the Table in Schedule 1. Secondly, each applicable condition (if any) that is set out in the Table in Schedule 1 will need to be met. Thirdly, landfill site operators must hold a written description of the material, often referred to as a waste transfer note, if such a document is required by the Environmental Protection Act 1990 or, if it is not, other evidence which establishes that the material is in fact a qualifying material. Welsh Ministers may, by regulations, amend Schedule 1.

#### *Section 16 – Qualifying mixtures of materials*

34. This section sets out the tests that a mixture of materials must meet in order to qualify for the lower rate of LDT. Requirements 1-6 apply to all qualifying mixtures and requirement 7 provides for the possibility of there being additional requirements to be met when the mixture is made up of fines.
35. It should be noted that requirement 1 provides that the load must be made up of one or more qualifying materials and only a small amount of non-qualifying material which is incidental to the qualifying material. Subsection (2) sets out matters that must be taken into account in determining whether an amount of non-qualifying material is a small amount and whether it is incidental to the qualifying materials.
36. Requirement 3 states that the non-qualifying material must not have been mixed with the qualifying materials deliberately for the purposes of disposal or matters preparatory to disposal: for example, for transportation. This test will, for example, distinguish between a case where there are fragments of non-qualifying material attached to qualifying material because the complete removal of it was not possible and a case where a non-qualifying material has been separately and deliberately added to the load. The latter would not satisfy requirement 3.
37. Requirement 4 allows for the Welsh Ministers to prescribe in regulations any materials which must not be included in a qualifying mixture of materials. If such regulations were made, the standard rate of tax (as defined in section 14) would apply to any mixture of materials containing prescribed material, regardless of whether the amount of prescribed material was small and incidental to the other material.
38. Requirement 6 states that no arrangements (this includes any actions or operations) should be made in respect of the mixture, that have, as the main purpose, or as one

of the main purposes, the avoidance of tax liability. Such arrangements might include, for example, the blending of a mixture in a way that allows its composition to be disguised, such as deliberately crushing up or hiding standard rate material within a load of qualifying material so as to reduce the likelihood of it appearing to have more than a small and incidental amount of such material present in the load.

***Section 17 – Qualifying mixtures of materials: fines***

39. This section empowers the Welsh Ministers to make regulations in respect of fines (as defined at section 17(6)). The regulations may prescribe requirements that must be met (in addition to those set out for qualifying mixtures at section 16) in order for a mixture of fines to be eligible for the lower rate. Section 17(2) sets out a non-exhaustive list of matters those regulations may cover and includes the possibility of requiring that a mixture of fines gives a prescribed result if subjected to a prescribed test (17(2)(e)). If such a requirement is imposed under section 17(2)(e), section 17(3) sets out a non-exhaustive list of connected provision that can be made, such as a requirement that a landfill site operator carry out the prescribed test on prescribed mixtures of fines at a prescribed time. The effect of section 17(5) is that requirements in relation to mixtures of fines, other than those relating to WRA powers or duties, may be set out in a WRA notice, provided the regulations allow for this.