

LANDFILL DISPOSALS TAX (WALES) ACT 2017

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Taxable Disposals Made at Places Other than Authorised Landfill Sites

Chapter 1 - Tax Chargeable on Taxable Disposals

Section 46 – Calculation of tax chargeable on taxable disposal

86. This section provides that the amount of tax chargeable on a disposal made at a place other than an authorised landfill site (see section 3 for the definition of a taxable disposal) will be calculated by multiplying the taxable weight of the material by the unauthorised disposals rate. The taxable weight is to be determined by WRA using any method it considers appropriate. The unauthorised disposals rate is to be prescribed by the Welsh Ministers in regulations. The tax only becomes payable following the issue of a charging notice under Chapter 2 of this Part.

Chapter 2 – Procedure for Charging Tax

Section 47 – The charging condition

87. Subsection (1) sets out the circumstances in which a person will meet the charging condition, which is relevant to the issuing of a preliminary and charging notice. A person meets the charging condition where they made the disposal or knowingly caused or knowingly permitted the taxable disposal to be made.
88. Subsection (2) builds on subsection (1)(b) and provides that unless a person can satisfy WRA or (on appeal) the tribunal otherwise, they will be treated as having knowingly caused or permitted the disposal to have been made if, at the time of the disposal, that person:
- a. controlled, or was in a position to control, a motor vehicle or trailer from which the disposal was made; or
 - b. was the owner, lessee or occupier of the land where the disposal was made
89. In considering whether a person has overturned the presumption that they meet the charging condition, it is anticipated that WRA or the tribunal may take account of whether the person:
- took reasonable efforts to prevent the waste from being dumped on their land (e.g. sturdy fencing);
 - took reasonable efforts to have the waste removed (e.g. contacted a registered waste carrier regarding removal);
 - actively assisted in any (potential) environmental action against the offenders (e.g. contacted the police, local authority or NRW about the waste and/or helped them in their investigations);

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which received Royal Assent on 7 September 2017*

- had no knowledge of the waste, and couldn't reasonably have had knowledge (e.g. given where the waste was deposited, the size of estate etc.);
 - was ill or otherwise incapacitated.
90. Subsection (3) confers a power on the Welsh Ministers, by regulations, to make further or different provision about the circumstances in which a person is (or is not) to be treated as meeting the charging condition, and matters that are to be taken into account in determining whether a person does (or does not) meet that condition.

Section 48 – Power to issue preliminary notice

91. WRA may issue a preliminary notice to a person where it appears to WRA that a taxable disposal has been made outside an authorised landfill site and that the person meets the charging condition in respect of that disposal (i.e. that the person knowingly caused or permitted the disposal to be made). The preliminary notice may relate to more than one taxable disposal. It must include the information listed in subsection (2) and inform the person of the matters listed in subsection (3). A preliminary notice may not be issued more than 4 years after WRA becomes aware of the taxable disposal and, in any case, not more than 20 years after WRA thinks that the taxable disposal was made.

Sections 49 and 50 – Power to issue charging notice after issuing preliminary notice and without issuing preliminary notice

92. After a period of at least 45 days has passed from issuing a preliminary notice in relation to a disposal, and after considering any written representations made by the recipient of the preliminary notice, WRA must issue either:
- a. a charging notice to the person in relation to the disposal; or
 - b. a notice to the person stating that it does not intend to issue a charging notice in relation to the disposal.
93. WRA may only issue a charging notice where it is satisfied that a taxable disposal has been made outside an authorised landfill site and that that the person meets the charging condition in relation to the disposal. A charging notice must include the matters listed in 49(5).
94. WRA may issue a charging notice without having issued a preliminary notice where, in addition to being satisfied about the matters referred to above, it thinks that there is likely to be a loss of tax if WRA issues a preliminary notice (because, for example, the person may enter into administration). In these circumstances, the notice must also include WRA's reasons for issuing a charging notice without having issued a preliminary notice.

Section 51 – Payment of tax

95. This section imposes an obligation on the recipient of a charging notice to pay the tax charged by that notice within a period of 30 days. Where charging notices are issued to more than one person in respect of the same taxable disposal, all of those persons are jointly and severally liable (i.e. WRA will be able to recover tax from all or any of them).

Section 52 – Power to make further provision

96. Regulations may make further or different provision (including by amending an enactment) about the procedures for issuing preliminary notices and charging notices; the payment of an amount of tax charged by a charging notice and; any other matters relating to or arising from the charging or payment of an amount of tax under this chapter.

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Section 53 - Late payment interest

97. This section amends section 157 of TCMA so as to ensure that late payment interest can be charged where tax owed under a charging notice, issued under section 49 or 50, has not been paid.