

LANDFILL TAX (SCOTLAND) ACT 2014

EXPLANATORY NOTES

THE ACT

Overview

7. The Act comprises 44 sections and is divided into five parts as follows:
 - PART 1 establishes that the tax is to be called the Scottish Landfill Tax to avoid potential confusion with references to UK Landfill Tax and gives an overview of the tax.
 - PART 2 contains the key concepts underlying the tax, including defining what a taxable disposal is, what disposals are exempt from the tax, how to calculate tax, who is liable to pay tax and when credit is available in relation to tax.
 - PART 3 contains the administrative provisions of the Act, including the registration requirements, accounting periods, recovery of overpaid tax, information provision and requirements for record keeping.
 - PART 4 defines the Tax Authority and establishes how functions may be delegated to SEPA and how directions may be made. It also outlines the rights of appeal.
 - PART 5 of the Act sets out the procedure for a series of subordinate legislation to be made under this Act. This includes:
 - setting the rates of the tax,
 - ability to change the materials taxed (setting qualifying material types),
 - ability to create new material types (due to new technologies or wanting to subdivide existing materials),
 - ability to add or remove exempted material types,
 - ability to change how the tax due is calculated,
 - methodologies for determining weight of material at a site,
 - ability to change credit/rebate qualifications (e.g the removal of material from a site that has already been taxed gets credited to the landfill site operator etc),
 - procedures for overpaid tax,
 - procedures for administering bad debt including bad debt relief (if a landfill operator's customer becomes insolvent or bankrupt),
 - procedures for writing off bad debts,
 - what information must be on Scottish Landfill Tax invoices.
8. Scottish Landfill Tax is a tax on taxable disposals. A "taxable disposal" is waste material which has been disposed of by way of landfill.

Part 1 – Scottish Landfill Tax

9. **Part 1** establishes Scottish Landfill Tax.

Section 1 – The tax

10. **Section 1** introduces Scottish Landfill Tax as the replacement for UK Landfill Tax in Scotland. Scottish Landfill Tax is a tax which is charged on taxable disposals. Scottish Landfill Tax will be managed by the Tax Authority.
11. Defined terms used in this section:

“taxable disposal”	section 3
“Tax Authority”	section 34

Section 2 – Overview

12. **Section 2** provides an overview of the Act.

Part 2 – Key Concepts

13. **Part 2** makes provision for the key concepts underlying the tax including:
- taxable disposals,
 - exemptions,
 - powers to vary,
 - landfill sites and operators of landfill sites,
 - calculation of tax,
 - persons liable to pay tax,
 - credit.

Taxable disposals

Section 3 – Charge to tax

14. **Section 3** defines “taxable disposal”. Please see sections 4, 5 and 12 for more information on additional elements to the definition ‘taxable disposal’.

Section 4 – Disposal of material as waste

15. **Section 4** provides that a disposal of material as waste is when a person disposes of material with the intention of discarding the material. It does not matter if the material could be of use to someone else; it is the act of discarding by way of landfill which makes the material taxable. If somebody carries out the disposal on behalf of another, either by being asked or as part of a contract, then the person on whose behalf the disposal is carried out is treated as making the disposal.

Section 5 – Disposal by way of landfill

16. **Section 5** sets out what disposal by way of landfill is. It includes depositing material on the surface of land, under the surface of land, in containers or on structures set into the surface of the land. The material can be covered after disposal or deposited in a cavity. If material is covered the deposit takes place when it is deposited not when it is covered. The Scottish Ministers may, by order, vary the meaning of disposal by landfill to amend any enactment or this Act. This gives flexibility to define novel disposal techniques or unauthorised activities.

Section 6 – Prescribed landfill site activities to be treated as disposals

17. **Section 6** gives the Scottish Ministers the power to prescribe activities which are to be treated as disposals. Such prescribed activities may have conditions attributed to them to define where the activity is carried out, for example in a designated area of the landfill site, or that information regarding the activity or the material involved is provided. This section gives the Scottish Ministers the power to define what type of activity involving certain materials may take place at particular locations on a landfill site in order to clarify which are taxable disposals.

Exemptions

Section 7 – Material removed from water

18. **Section 7** ensures that necessary dredging operations and extraction operations are not hindered by the applicability of a tax to deposit the material. It provides that the disposal of material removed from a river, canal, watercourse, dock or harbour is not a taxable disposal. It also exempts the disposal of material removed from harbours etc. in the interests of navigation, the disposal of naturally occurring mineral material from commercial marine operations to obtain sand or gravel and the disposal of other material added to such dredging and excavations to ensure that it is not a liquid waste.

Section 8 – Material resulting from mining and quarrying

19. **Section 8** provides that the disposal of naturally occurring material from mines and quarries is exempt from Scottish Landfill Tax. This encourages suitable landfill cover material to be used at landfill sites. If the material has been altered chemically after extraction, or is from a process separate to the mining or quarrying operations, then it does not qualify for this exemption.

Section 9 – Disposal of qualifying material at former quarries

20. **Section 9** exempts the disposal of qualifying material (defined in sections 13 and 14) in a quarry in respect of which it is a requirement of planning permission for the quarry to be refilled, either partially or fully, and which has a license or permit which allows only the disposal of qualifying material. This allows for the reinstatement of quarries which planning authorities have required to be reinstated without the burden of tax being imposed. Quarries that ceased operating before 1 October 1999 must have had the requirements to infill imposed on or before this date. This is to prevent the misuse of this exemption on old quarries with no reinstatement requirements.

Section 10 – Pet cemeteries

21. **Section 10** provides that disposals at pet cemeteries are exempt from Scottish Landfill Tax. Animal corpses are regarded as waste and cemeteries for pets require an environmental authorisation to operate as a landfill site. This exemption defines the disposal of dead domestic pets as a non-taxable disposal and allows for the activity to continue without the need to pay landfill tax.

Power to vary what is a taxable disposal

Section 11 – Taxable disposals: power to vary

22. **Section 11** provides that the Scottish Ministers may make orders to change what disposals are taxable. Existing taxable disposals may cease being taxable or non-taxable disposals may become taxable. The Tax Authority can issue certificates of exemption and make conditions prior to certificates being issued. This ensures that the process of creating or removing exemptions from Scottish Landfill Tax is simple and efficient to adjust.

Section 12 – Landfill sites and operators of landfill sites

23. **Section 12** provides that land is a landfill site if it is covered by an authorisation under the Regulatory Reform (Scotland) Act 2014, (an “authorised landfill site”), and that an operator of a landfill at a given time is the person who is the holder of the authorisation. The Regulatory Reform (Scotland) Act 2014 enables the integration of the permission arrangements of SEPA’s four main regimes (water, waste, radioactive waste and pollution prevention and control) and simplifies the regulatory procedures.
24. Land is also a landfill site if an authorisation is required in relation to disposals to land but no authorisation is in force (an “unauthorised site”).

Calculation of tax

Section 13 – Amount of tax

25. **Section 13** provides that the Scottish Ministers may specify by order what the standard rate for Scottish Landfill Tax is and that they may also make orders to specify which material may be charged at a lower rate; these materials are referred to as “qualifying material”. The lower rate may also be specified by the Scottish Ministers by order. Both standard rate material and qualifying material are charged on a per tonne basis, and a proportionate amount for any additional part of a tonne or if less than one tonne is disposed of. The Scottish Ministers must set the criteria for determining qualifying material and review, revise and publish them from time to time. This ensures that the system for defining the rates of tax and qualifying material is flexible, adaptable and kept up to date.

Section 14 – Qualifying material: special provisions

26. **Section 14** provides that the Tax Authority may direct that a deposit may be treated as qualifying material if it is qualifying material that is contaminated with a small amount of non-qualifying material. The direction may apply to all deposits by a person, or a quantity of the deposits and the quantity of non-qualifying material may be determined in the terms of the direction. The direction may be instigated by the Tax Authority or by request from a person. If a person requests the direction which is granted regarding a disposal then other directions regarding the disposal do not apply. The Scottish Ministers may, by order, ensure that conditions are met prior to material being treated as qualifying material. Such conditions may relate to whatever the Scottish Ministers think fit and can include documents stating the nature of the material. This section allows for small amounts of non-qualifying material to be contained in qualifying material but ensures that adequate controls are in place to prevent misuse.

Section 15 – Weight of material disposed of

27. **Section 15** sets out that the Scottish Ministers may make regulations to define how the weight of taxable disposals is to be determined. Rules for determining weight may be prescribed to define the method of calculation, the time-scale for determining weight and what materials, such as water, are to be discounted. The rules may apply to only certain wastes or activities.

Persons liable to pay tax

Section 16 – Liability to pay tax

28. **Section 16** provides that the person who is liable to pay tax on a taxable disposal made at an authorised site is the person who is at the time of disposal the operator of the landfill site which constitutes or contains the land under which the disposal is made. In the case of an unauthorised site, both the person who made the disposal and anyone who knowingly permitted the disposal are jointly and severally liable.

Section 17 – Liability of controllers of landfill sites

29. **Section 17** provides that the Scottish Ministers may, by regulations, make provisions for the controllers of landfill sites to pay the tax. A controller is a person who can determine what disposals may be made at a site or part of a site at that time (but not if the person is doing that only as an employee or agent of another). The regulations may make provision about who is a controller, when the controller is liable to pay tax, the amount of tax the controller is liable to pay, entitlement to credit in respect of tax and the arrangements for payment by a controller.

Credit

Section 18 – Credit: general

30. **Section 18** provides that the Scottish Ministers may, by regulations, provide for a tax credit system, in so far as a person who has paid or is liable to pay tax may be entitled to credit providing prescribed conditions are fulfilled. The regulations may make provision for the manner in which a person is to benefit from credit. Over a defined accounting period a person can deduct the credit from the amount of tax due and may receive payment if the credit is greater than the amount of tax due. Tax credits may be carried over to a subsequent accounting period and the regulations may define how a person who ceased to be registrable can benefit from credit. Where a person fails to submit a return, the Tax Authority may withhold payment of credits until the person has complied with the requirement to submit a return. Regulations may provide the Tax Authority with the power to impose conditions with regard to payment or repayment as it sees fit. Regulations may require a person to make a claim in a return as required by section 25.

Section 19 – Credit: bad debts

31. **Section 19** provides that the Scottish Ministers may, by regulations, allow a person who carries out a taxable activity for which the person has not been paid to be entitled to credit for that activity. The regulations may provide for credit to be repaid if the debt was not justified as being bad. The regulations may make provision for determining whether, and to what extent, a debt is taken to be bad.

Section 20 – Credit: bodies concerned with the environment

32. **Section 20** provides that regulations may entitle a person to credit if the person pays a sum to a body whose objects include matters connected with the protection of the environment (as specified in the regulations). Regulations may require the bodies to which sums are paid (“environmental bodies”) to be approved by the Tax Authority. The sums which are paid are to be spent on matters which are prescribed by the regulations. Regulations can define the amount of credit available, including limitations to the amount of credit and may define the overheads associated with prescribed activities. They may make provisions for determining the allowable administration spends by environmental bodies and make provisions for an environmental body to remain approved only if it complies with conditions imposed by the Tax Authority. Provisions may also be made to withdraw approval of an environmental body by the Tax Authority. Regulations can provide for the Tax Authority to share the tax affairs of persons carrying out taxable activities which are relevant to the credit scheme. This section ensures that the funding of environmental bodies through taxing landfill can continue in Scotland under a replacement fund.

Part 3 – Administration

33. **Part 3** makes provision for—
- registration,

*These notes relate to the Landfill Tax (Scotland) Act 2014 (asp 2)
which received Royal Assent on 21 January 2014*

- administration arrangements for accounting for tax, and
- other matters relating to the administration of the tax.

Taxable activities

Section 21 – Taxable activities

34. **Section 21** provides that a person carries out a taxable activity if that person carries out a taxable disposal in respect of which that person is liable to pay tax or permits somebody to carry out a taxable disposal in respect of which that person is liable to pay tax. When a taxable disposal is made without the knowledge of the person who is liable to pay tax, then the person is taken to have permitted the disposal. This provision ensures that a landfill operator is responsible for all taxable disposals on their site.

Registration

Section 22 – Registration

35. Subsection (1) provides that the Tax Authority must maintain a register containing whatever information the Tax Authority deems necessary for the purposes of the collection and management of the tax. Subsections (2) to (8) set out the registration duties placed on the Tax Authority and persons who carry out taxable activities (described at section 21) as well as the notification duties placed on persons who form the intention of carrying out taxable activities.
36. Subsection (9) contains a regulation-making power to allow the Scottish Ministers to: state the timeframe within which a notification should be made to the Tax Authority; provide details on the format, content and method of sending the notification to the Tax Authority; place a duty on a person who has sent a notification to the Tax Authority to tell the Tax Authority if any of the information in the notification needs to be updated; set out how corrections will be made to entries in the register. Such regulations will be subject to the negative procedure (see section 41).
37. Subsection (10) provides that references in this Act to a registrable person are to a person who is registered under or liable to be registered under this section.

Section 23 – Information required to keep register up to date

38. **Section 23** contains a regulation-making power to allow the Scottish Ministers to require a registrable person to tell the Tax Authority of any change in that person's circumstances (or any business carried on by the registrable person) which will enable the Tax Authority to ensure the register kept under section 22 is up to date. Such regulations will be subject to the negative procedure (see section 41).

Section 24 – Publication of the register.

39. **Section 24** enables the Tax Authority to publish, by such means as it sees fit, information which is derived from the register kept under section 22 and which falls within any of the descriptions listed at subsection (2).

Accounting for tax

Section 25 – Accounting for tax and time for payment

40. **Section 25** contains a regulation-making power to allow the Scottish Ministers to set out the format, frequency and manner of returns to be submitted by the registrable person. Such regulations will be subject to the negative procedure (see section 41).

Time of disposal where invoice issued

Section 26 – Time of disposal where invoice issued

41. **Section 26** provides that where a disposal is made on one day and the operator issues an invoice within 14 days of that day, the disposal is to be treated as made at the time of the invoice issue and not at the time of disposal. The Tax Authority may, if requested by a person, agree to a longer invoicing period. This allows for timely information to be collected with regard to taxable deposits.

Adjustment of contracts

Section 27 – Adjustment of contracts

42. **Section 27** provides that, when a contract is in place for the disposal of a waste in a landfill and the tax changes with regard to that waste, then the payment for that waste in the contract must increase to reflect the tax increase unless the contract says otherwise. This ensures that operators do not suffer as a result of tax increases not being reflected in historical contracts.

Evidence about tax status

Section 28 – Evidence about tax status

43. **Section 28** provides that a certificate issued by the Tax Authority is deemed to be sufficient evidence about a person's tax status until the contrary is proved.

Recovery of overpaid tax

Section 29 – Recovery of overpaid tax

44. **Section 29** sets out the conditions whereby the Tax Authority is liable to repay overpaid tax. Subsection (5) contains a regulation-making power to allow the Scottish Ministers to prescribe the form and manner of a claim made under this section and the documentary evidence required in support of said claim. Such regulations will be subject to the negative procedure (see section 41).

Information

Section 30 – Information: material at landfill sites

45. **Section 30** contains a regulation-making power to allow the Scottish Ministers to make provision for the Tax Authority to obtain information relating to material at a landfill site or part of a landfill site. The regulations may: require a person to give information; make provision for "information areas" and the type of material that can be deposited in said areas; make provision about information relating to what is done with material.

Section 31 – Information: site restoration

46. **Section 31** requires that before starting to restore all or part of a landfill site, the site operator must notify the Tax Authority in writing that restoration is to commence and further that the site operator must provide any other written information the Tax Authority may ask for. Subsection (2) defines what the term "restoration" means in the context of this section and subsection (3) lists what are "relevant instruments" in the context of subsection (2).

Record keeping

Section 32 – Records: registrable persons

47. **Section 32** contains a regulation-making power to allow the Scottish Ministers to require registrable persons, as defined in section 22(10), to make records. Registrable persons will be required to keep a record of the taxable activities they carry out. The regulations will prescribe the information that is required to be included in the record. Such regulations will be subject to the negative procedure (see section 41).
48. Subsection (4) provides that the duty to preserve records can be discharged by holding the records, or the information in them, in any form or by any means, in order to allow the records to be held in an electronic format.

Section 33 – Records: material at landfill sites

49. **Section 33** contains a regulation-making power to allow the Scottish Ministers to require a person to make records relating to material at a landfill site. The regulations can make provision for records to be made about the nature of the material, or what is done with the material. Such regulations will be subject to the negative procedure (see section 41). Subsections (3) and (4) of section 32 are also applicable to regulations made under this section.

Part 4 – General and Interpretation

50. **Part 4** contains general provisions, including provision about the Tax Authority and definitions of expressions used in the Act.

The Tax Authority

Section 34 – The Tax Authority

51. **Section 34** defines the Tax Authority as the Scottish Ministers. The Tax Authority has responsibility for the collection and management of Scottish Landfill Tax (see section 1(2)).
52. Subsection (2) confers a power on the Scottish Ministers to provide by order that another person is the Tax Authority. This provision could be used to allow for Revenue Scotland to become the Tax Authority, at a future point when Revenue Scotland has a legal personality separate to that of the Scottish Ministers and subject to parliamentary agreement of provisions for Revenue Scotland. Such an order will be subject to the affirmative procedure (see section 41).

Section 35 – Delegation of functions to SEPA

53. **Section 35** allows for the delegation of Tax Authority functions to the Scottish Environment Protection Agency (SEPA). The administration and collection of Scottish Landfill Tax will be undertaken by SEPA.

Section 36 – Review and appeal

54. **Section 36** confers a power on the Scottish Ministers to make provision by regulations for the review and appeal of Tax Authority decisions. Such regulations will be subject to the affirmative procedure if they modify the Bill itself. Otherwise, they will be subject to the negative procedure (see section 41).

Application of act to partnerships, groups of companies etc.

Section 37 – Partnership, bankruptcy, transfer of business etc.

55. **Section 37** provides that the Scottish Ministers may, by regulations, make provision for determining the requirements of a partnership to comply with the tax. The Tax Authority may determine what divisions of a corporate body are registrable for Scottish Landfill Tax. The Scottish Ministers may make regulations to require the person carrying on the business after a death, bankruptcy, sequestration, liquidation, receivership or administration to inform the Tax Authority who is carrying on the business and of the event that led to them carrying it on. For a limited time such a person can be treated as the original registered person to ensure continuity of the Landfill Tax applicability. The Scottish Ministers may also make regulations to ensure continuity during the transfer of a business as a going concern, including requiring the transferor to inform the Tax Authority of the transfer, providing for any liabilities and duties under the Act to become those of the transferee and providing for any right to repayments or credit to be satisfied by making a repayment or allowing credit.

Section 38 – Groups of companies

56. **Section 38** provides for how groups of companies and members of groups are to be treated with regard to tax liabilities. This includes providing about how groups of companies are liable through their representative member carrying out taxable activities (section 21) and how corporate bodies can be considered a group.
57. Subsections (2) to (9) set out the conditions of the application for group treatment and that a successful application will take effect from the following accounting period. Subsection (10) states that if a group stops being controlled by the persons then the group will no longer be treated as a group. Subsection (11) states that an application must be made by the bodies or person controlling them and that the application should be made 90 days before the group status is to take effect. Subsection (12) sets out the circumstances in which a corporate body or individuals will be deemed to control another corporate body, mainly if the corporate body is the latter body's holding company within the meaning of section 1159 and Schedule 6 of the Companies Act 2006 or, in the case of individuals, would be were the individuals a company.

Interpretation

Section 39 – Interpretation

58. **Section 39** sets out certain definitions used in the Act.

Part 5 – Final Provisions

59. **Part 5** contains provisions on subordinate legislation powers and commencement as well as other final provisions.

Ancillary provision

Section 40 – Ancillary provision

60. **Section 40** empowers the Scottish Ministers to make ancillary provision by order. Orders under this section will be subject to the affirmative procedure if they modify an Act.

Subordinate legislation

Section 41 – Subordinate legislation

61. **Section 41** sets out general provisions for subordinate legislation under the Bill.

Crown application

Section 42 – Crown application

62. [Section 42](#) provides that the Act does not apply to Her Majesty in Her private capacity. By virtue of section 20 of the [Interpretation and Legislative Reform \(Scotland\) Act 2010 \(asp 10\)](#), the Act otherwise applies to the Crown.

Commencement and short title

Section 43 – Commencement

63. [Section 43](#) provides for the commencement of the Act.

Section 44 – Short title

64. [Section 44](#) sets out the short title of the Act.