

LANDFILL TAX (SCOTLAND) ACT 2014

EXPLANATORY NOTES

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.