

SCHEDULES

SCHEDULE 5

LANDFILL TAX

PART VII

MISCELLANEOUS

Security for tax

- 31 Where it appears to the Commissioners requisite to do so for the protection of the revenue they may require a registrable person, as a condition of his carrying out taxable activities, to give security (or further security) of such amount and in such manner as they may determine for the payment of any tax which is or may become due from him.

Assessments to penalties etc.

- 32 (1) Where a person is liable—
- (a) to a penalty under Part V of this Schedule, or
 - (b) for interest under paragraph 26 or 27 above,
- the Commissioners may, subject to sub-paragraph (2) below, assess the amount due by way of penalty or interest (as the case may be) and notify it to him accordingly; and the fact that any conduct giving rise to a penalty under Part V of this Schedule may have ceased before an assessment is made under this paragraph shall not affect the power of the Commissioners to make such an assessment.
- (2) In the case of the penalties and interest referred to in the following paragraphs of this sub-paragraph, the assessment under this paragraph shall be of an amount due in respect of the accounting period which in the paragraph concerned is referred to as the relevant period—
- (a) in the case of a penalty under paragraph 18 above relating to the evasion of tax, and in the case of interest under paragraph 27 above on an amount due by way of such a penalty, the relevant period is the accounting period for which the tax evaded was due;
 - (b) in the case of a penalty under paragraph 18 above relating to the obtaining of a payment under regulations under section 51(2)(c) or (d) or (f) of this Act, and in the case of interest under paragraph 27 above on an amount due by way of such a penalty, the relevant period is the accounting period in respect of which the payment was obtained;
 - (c) in the case of interest under paragraph 26 above, and in the case of interest under paragraph 27 above on an amount due by way of interest under paragraph 26 above, the relevant period is the accounting period in respect of which the tax was due;

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- (d) in the case of interest under paragraph 27 above on an amount of tax, the relevant period is the accounting period in respect of which the tax was due.
- (3) In a case where the amount of any penalty or interest falls to be calculated by reference to tax which was not paid at the time it should have been and that tax cannot be readily attributed to any one or more accounting periods, it shall be treated for the purposes of this Part of this Act as tax due for such period or periods as the Commissioners may determine to the best of their judgment and notify to the person liable for the tax and penalty or interest.
- (4) Where a person is assessed under this paragraph to an amount due by way of any penalty or interest falling within sub-paragraph (2) above and is also assessed under subsection (1) or (2) of section 50 of this Act for the accounting period which is the relevant period under sub-paragraph (2) above, the assessments may be combined and notified to him as one assessment, but the amount of the penalty or interest shall be separately identified in the notice.
- (5) Sub-paragraph (6) below applies in the case of an amount due by way of interest under paragraph 27 above.
- (6) Where this sub-paragraph applies in the case of an amount—
- (a) a notice of assessment under this paragraph shall specify a date, being not later than the date of the notice, to which the amount of interest which is assessed is calculated, and
 - (b) if the interest continues to accrue after that date, a further assessment or further assessments may be made under this paragraph in respect of amounts which so accrue.
- (7) If, within such period as may be notified by the Commissioners to the person liable for the interest under paragraph 27 above, the amount referred to in paragraph 27(2), (4), (6), (8) or (10) above (as the case may be) is paid, it shall be treated for the purposes of paragraph 27 above as paid on the date specified as mentioned in sub-paragraph (6)(a) above.
- (8) Where an amount has been assessed and notified to any person under this paragraph it shall be recoverable as if it were tax due from him unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced.
- (9) Subsection (8) of section 50 of this Act shall apply for the purposes of this paragraph as it applies for the purposes of that section.

Assessments: time limits

- 33 (1) Subject to the following provisions of this paragraph, an assessment under—
- (a) any provision of section 50 of this Act, or
 - (b) paragraph 32 above,
- shall not be made more than six years after the end of the accounting period concerned or, in the case of an assessment under paragraph 32 above of an amount due by way of a penalty which is not a penalty referred to in sub-paragraph (2) of that paragraph, six years after the event giving rise to the penalty.
- (2) Subject to sub-paragraph (5) below, an assessment under paragraph 32 above of—
- (a) an amount due by way of any penalty referred to in sub-paragraph (2) of that paragraph, or

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- (b) an amount due by way of interest,
may be made at any time before the expiry of the period of two years beginning with the time when the amount of tax due for the accounting period concerned has been finally determined.
- (3) In relation to an assessment under paragraph 32 above, any reference in sub-paragraph (1) or (2) above to the accounting period concerned is a reference to that period which, in the case of the penalty or interest concerned, is the relevant period referred to in sub-paragraph (2) of that paragraph.
- (4) Subject to sub-paragraph (5) below, if tax has been lost—
- (a) as a result of conduct falling within paragraph 18(1) above or for which a person has been convicted of fraud, or
 - (b) in circumstances giving rise to liability to a penalty under paragraph 21 above,
- an assessment may be made as if, in sub-paragraph (1) above, each reference to six years were a reference to twenty years.
- (5) Where after a person's death the Commissioners propose to assess an amount as due by reason of some conduct of the deceased—
- (a) the assessment shall not be made more than three years after the death, and
 - (b) if the circumstances are as set out in sub-paragraph (4) above, the modification of sub-paragraph (1) above contained in that sub-paragraph shall not apply but any assessment which (from the point of view of time limits) could have been made immediately after the death may be made at any time within three years after it.

Supplementary assessments

- 34 If, otherwise than in circumstances falling within subsection (5)(b) of section 50 of this Act, it appears to the Commissioners that the amount which ought to have been assessed in an assessment under any provision of that section or under paragraph 32 above exceeds the amount which was so assessed, then—
- (a) under the like provision as that assessment was made, and
 - (b) on or before the last day on which that assessment could have been made,
- the Commissioners may make a supplementary assessment of the amount of the excess and shall notify the person concerned accordingly.

Disclosure of information

- 35 (1) Notwithstanding any obligation not to disclose information that would otherwise apply, the Commissioners may disclose information to—
- (a) the Secretary of State,
 - (b) the Environment Agency,
 - (c) the Scottish Environment Protection Agency,
 - (d) the Department of the Environment for Northern Ireland,
 - (e) a district council in Northern Ireland, or
 - (f) an authorised officer of any person (a principal) mentioned in paragraphs (a) to (e) above,
- for the purpose of assisting the principal concerned in the performance of the principal's duties.

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- (2) Notwithstanding any such obligation as is mentioned in sub-paragraph (1) above, any person mentioned in sub-paragraph (1)(a) to (f) above may disclose information to the Commissioners or to an authorised officer of the Commissioners for the purpose of assisting the Commissioners in the performance of duties in relation to tax.
- (3) Information that has been disclosed to a person by virtue of this paragraph shall not be disclosed by him except—
 - (a) to another person to whom (instead of him) disclosure could by virtue of this paragraph have been made, or
 - (b) for the purpose of any proceedings connected with the operation of any provision of, or made under, any enactment in relation to the environment or to tax.
- (4) References in the preceding provisions of this paragraph to an authorised officer of any person (the principal) are to any person who has been designated by the principal as a person to and by whom information may be disclosed by virtue of this paragraph.
- (5) The Secretary of State shall notify the Commissioners in writing of the name of any person designated by the Secretary of State under sub-paragraph (4) above.
- (6) No charge may be made for a disclosure made by virtue of this paragraph.

The register: publication

- 36 (1) The Commissioners may publish, by such means as they think fit, information which—
 - (a) is derived from the register kept under section 47 of this Act, and
 - (b) falls within any of the descriptions set out below.
- (2) The descriptions are—
 - (a) the names of registered persons;
 - (b) the addresses of any sites or other premises at which they carry on business;
 - (c) the registration numbers assigned to them in the register;
 - (d) the fact (where it is the case) that the registered person is a body corporate which under section 59 of this Act is treated as a member of a group;
 - (e) the names of the other bodies corporate treated under that section as members of the group;
 - (f) the addresses of any sites or other premises at which those other bodies carry on business.
- (3) Information may be published in accordance with this paragraph notwithstanding any obligation not to disclose the information that would otherwise apply.

Evidence by certificate etc.

- 37 (1) A certificate of the Commissioners—
 - (a) that a person was or was not at any time registered under section 47 of this Act,
 - (b) that any return required by regulations made under section 49 of this Act has not been made or had not been made at any time, or

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- (c) that any tax shown as due in a return made in pursuance of regulations made under section 49 of this Act, or in an assessment made under section 50 of this Act, has not been paid,
shall be sufficient evidence of that fact until the contrary is proved.
- (2) A photograph of any document furnished to the Commissioners for the purposes of this Part of this Act and certified by them to be such a photograph shall be admissible in any proceedings, whether civil or criminal, to the same extent as the document itself.
- (3) Any document purporting to be a certificate under sub-paragraph (1) or (2) above shall be taken to be such a certificate until the contrary is proved.

Service of notices etc.

- 38 Any notice, notification or requirement to be served on, given to or made of any person for the purposes of this Part of this Act may be served, given or made by sending it by post in a letter addressed to that person at his last or usual residence or place of business.
- 39 (1) This paragraph applies to directions, specifications and conditions which the Commissioners or an authorised person may give or impose under any provision of this Part.
- (2) A direction, specification or condition given or imposed by the Commissioners may be withdrawn or varied by them.
- (3) A direction, specification or condition given or imposed by an authorised person may be withdrawn or varied by him or by another authorised person.
- (4) No direction, specification or condition shall have effect as regards any person it is intended to affect unless—
- (a) a notice containing it is served on him, or
- (b) other reasonable steps are taken with a view to bringing it to his attention.
- (5) No withdrawal or variation of a direction, specification or condition shall have effect as regards any person the withdrawal or variation is intended to affect unless—
- (a) a notice containing the withdrawal or variation is served on him, or
- (b) other reasonable steps are taken with a view to bringing the withdrawal or variation to his attention.

No deduction of penalties or interest

- 40 In section 827 of the Taxes Act 1988 (no deduction for penalties etc.) the following subsection shall be inserted after subsection (1B)—
- “(1C) Where a person is liable to make a payment by way of—
- (a) penalty under Part V of Schedule 5 to the Finance Act 1996 (landfill tax), or
- (b) interest under paragraph 26 or 27 of that Schedule,
- the payment shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.”

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Destination of receipts

- 41 All money and securities for money collected or received for or on account of the tax shall—
- (a) if collected or received in Great Britain, be placed to the general account of the Commissioners kept at the Bank of England under section 17 of the Customs and Excise Management Act 1979;
 - (b) if collected or received in Northern Ireland, be paid into the Consolidated Fund of the United Kingdom in such manner as the Treasury may direct.

Set-off of amounts

- 42 (1) Regulations may make provision in relation to any case where—
- (a) a person is under a duty to pay to the Commissioners at any time an amount or amounts in respect of landfill tax, and
 - (b) the Commissioners are under a duty to pay to that person at the same time an amount or amounts in respect of any tax (or taxes) under their care and management.
- (2) The regulations may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) above exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(b) above, the latter shall be set off against the former.
- (3) The regulations may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(b) above exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(a) above, the Commissioners may set off the latter in paying the former.
- (4) The regulations may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) above is the same as the total of the amount or amounts mentioned in sub-paragraph (1)(b) above no payment need be made in respect of the former or the latter.
- (5) The regulations may include provision treating any duty to pay mentioned in sub-paragraph (1) above as discharged accordingly.
- (6) References in sub-paragraph (1) above to an amount in respect of a particular tax include references not only to an amount of tax itself but also to other amounts such as interest and penalty.
- (7) In this paragraph “tax” includes “duty”.
- 43 (1) Regulations may make provision in relation to any case where—
- (a) a person is under a duty to pay to the Commissioners at any time an amount or amounts in respect of any tax (or taxes) under their care and management, and
 - (b) the Commissioners are under a duty to pay to that person at the same time an amount or amounts in respect of landfill tax.
- (2) The regulations may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) above exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(b) above, the latter shall be set off against the former.
- (3) The regulations may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(b) above exceeds the total of the amount or amounts mentioned

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in sub-paragraph (1)(a) above, the Commissioners may set off the latter in paying the former.

- (4) The regulations may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) above is the same as the total of the amount or amounts mentioned in sub-paragraph (1)(b) above no payment need be made in respect of the former or the latter.
- (5) The regulations may include provision treating any duty to pay mentioned in sub-paragraph (1) above as discharged accordingly.
- (6) References in sub-paragraph (1) above to an amount in respect of a particular tax include references not only to an amount of tax itself but also to other amounts such as interest and penalty.
- (7) In this paragraph “tax” includes “duty”.

Amounts shown as tax on invoices

- 44 (1) Where—
- (a) a registrable person issues an invoice showing an amount as tax chargeable on an event, and
 - (b) no tax is in fact chargeable on the event,
- an amount equal to the amount shown as tax shall be recoverable from the person as a debt due to the Crown.
- (2) Where—
- (a) a registrable person issues an invoice showing an amount as tax chargeable on a taxable disposal, and
 - (b) the amount shown as tax exceeds the amount of tax in fact chargeable on the disposal,
- an amount equal to the excess shall be recoverable from the person as a debt due to the Crown.
- (3) References in this paragraph to an invoice are to any invoice, whether or not it is a landfill invoice within the meaning of section 61 of this Act.

Adjustment of contracts

- 45 (1) This paragraph applies where—
- (a) material undergoes a landfill disposal,
 - (b) a payment falls to be made under a disposal contract relating to the material, and
 - (c) after the making of the contract there is a change in the tax chargeable on the landfill disposal.
- (2) In such a case the amount of any payment mentioned in sub-paragraph (1)(b) above shall be adjusted, unless the disposal contract otherwise provides, so as to reflect the tax chargeable on the landfill disposal.
- (3) For the purposes of this paragraph a disposal contract relating to material is a contract providing for the disposal of the material, and it is immaterial—
- (a) when the contract was made;

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- (b) whether the contract also provides for other matters;
 - (c) whether the contract provides for a method of disposal and (if it does) what method it provides for.
- (4) The reference in sub-paragraph (1) above to a change in the tax chargeable is a reference to a change—
- (a) to or from no tax being chargeable, or
 - (b) in the amount of tax chargeable.
- 46 (1) This paragraph applies where—
- (a) work is carried out under a construction contract,
 - (b) as a result of the work, material undergoes a landfill disposal,
 - (c) the contract makes no provision as to the disposal of such material, and
 - (d) the contract was made on or before 29th November 1994 (when the proposal to create tax was announced).
- (2) In such a case the amount of any payment which falls to be made—
- (a) under the construction contract, and
 - (b) in respect of the work,
- shall be adjusted, unless the contract otherwise provides, so as to reflect the tax (if any) chargeable on the disposal.
- (3) For the purposes of this paragraph a construction contract is a contract under which all or any of the following work is to be carried out—
- (a) the preparation of a site;
 - (b) demolition;
 - (c) building;
 - (d) civil engineering.

Adjustment of rent etc.

- 47 (1) This paragraph applies where—
- (a) an agreement with regard to any sum payable in respect of the use of land (whether the sum is called rent or royalty or otherwise) provides that the amount of the sum is to be calculated by reference to the turnover of a business,
 - (b) the agreement was made on or before 29th November 1994 (when the proposal to create tax was announced), and
 - (c) the circumstances are such that (had the agreement been made after that date) it can reasonably be expected that it would have provided that tax be ignored in calculating the turnover.
- (2) In such a case the agreement shall be taken to provide that tax be ignored in calculating the turnover.