

LANDFILL DISPOSALS TAX (WALES) ACT 2017

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – The Tax and Taxable Disposals

Chapter 2 – Taxable Disposals

Sections 3 to 5 - Taxable disposals; disposal of material by way of landfill; and authorised landfill sites and environmental permits

13. These sections set out what a taxable disposal is. A taxable disposal takes place when all of the following conditions are met:
 - a. Material is disposed of by way of landfill (which section 4 defines as being when it is deposited on or under the surface of land);
 - b. The land where the material is deposited:
 - is an authorised landfill site (as defined in section 5(1)), or
 - is not or does not form part of an authorised landfill site, but the disposal requires an environmental permit (as defined in section 5(2));
 - c. The material is disposed of as waste (as defined in sections 6 and 7); and
 - d. The disposal takes place in Wales.
14. Regulations may modify the meaning of a disposal of material by way of landfill as set out in section 4.

Section 6 – Disposal of material as waste

15. The effect of this section is that a disposal of material is a disposal of waste if the person responsible for the disposal intends to discard the material. An intention to discard may be inferred from the circumstances of the disposal and in particular from the deposit of material into a landfill disposal area, such as a void, that is generally used for landfill disposals on a site. An intention to discard (whether inferred or not) is only one of the four conditions that must be met for a tax liability to arise (see section 3).
16. The fact that a person makes a temporary or incidental use of material deposited in a landfill disposals area, or derives a benefit from it (or anything, such as gas, emitted by it), does not necessarily prevent that person from intending to discard the material. Subsection (3) clarifies that a person may intend to discard material, even though it is being used. Where that is the case (and the other conditions in section 3 are met), the tax is chargeable on the disposal of that material.
17. Regulations may modify the meaning of a disposal of material as waste as set out in section 6.

Section 7 - Disposal of material as waste: person responsible for disposal

18. This section identifies the person responsible for a disposal for the purposes of section 6. It is this person's intention that is relevant in determining whether a disposal is a disposal of material as waste.
19. The section provides that where a disposal is made at an authorised landfill site, the landfill site operator is normally the person responsible for the disposal. If the operator intends to discard the material and the disposal is made with the operator's permission, the disposal will be a disposal of material as waste. However, where a disposal is made at the site without the permission of the landfill site operator, the person responsible for the disposal is the person who disposes of the material. If that person intends to discard the material, the disposal will be a disposal of material as waste, regardless of the operator's intention. Section 13 (persons chargeable to tax) makes it clear that a landfill site operator will be liable for tax on a disposal made at the site, even if another person made the disposal. So if a disposal is made out of hours, without the permission of the landfill site operator, by a person who intended to discard the material, the landfill site operator will be liable to pay tax on the disposal .
20. Where a disposal is an unauthorised disposal (i.e. is a taxable disposal made other than at an authorised landfill site - see section 3) the person responsible for the disposal is the person who disposes of the material. Part 4 sets out the procedure for imposing a charge to tax in relation to unauthorised disposals.

Section 8 - Landfill site activities to be treated as taxable disposals

21. This section lists landfill site activities (as defined in section 96) that are to be categorised as specified landfill site activities and therefore treated as taxable disposals. If an activity is a specified landfill site activity as listed in 8(3)(a) to (i) and takes place in Wales, then it is treated as a taxable disposal regardless of whether the disposal would have otherwise have met the conditions as set out at section 3. This section also provides that the disposal is to be treated as taking place when material is first used in relation to a specified activity. So, for example, the point at which material was used to create a temporary road would trigger a taxable disposal and if further material was subsequently used to maintain or repair that road, that material would be the subject of a taxable disposal on the date on which it was used.
22. **Section 8(3)(e)** refers to using material to cover a landfill disposal area during a temporary cessation in landfill disposals. This is often commonly known as daily cover and is used to prevent litter and pests.
23. The Welsh Ministers may, by regulations, add, modify or remove a specified landfill site activity. While the current list at section 8(3) consists of activities carried out at authorised landfill sites, regulations could provide for activities carried out at unauthorised sites to be specified landfill site activities too. This provides additional flexibility to address any attempts to avoid paying tax by those liable for unauthorised disposals of waste.