



Landfill Tax (Scotland) Act 2014

2014 asp 2

PART 2

KEY CONCEPTS

Taxable disposals

3 Charge to tax

- (1) Tax is to be charged on a taxable disposal made in Scotland.
- (2) A disposal is a taxable disposal if—
 - (a) it is a disposal of material as waste (see section 4),
 - (b) it is made by way of landfill (see section 5), and
 - (c) it is made at a landfill site (see section 12).
- (3) For the purposes of subsection (2)(c), a disposal is made at a landfill site if the land on or under which it is made constitutes or falls within land which is a landfill site at the time of the disposal.

4 Disposal of material as waste

- (1) A disposal of material is a disposal of it as waste if the person making the disposal does so with the intention of discarding the material.
- (2) The fact that the person making the disposal or any other person could benefit from or make use of the material is irrelevant.
- (3) Where a person makes a disposal on behalf of another person, for the purposes of subsections (1) and (2) the person on whose behalf the disposal is made is to be treated as making the disposal.
- (4) The reference in subsection (3) to a disposal on behalf of another person includes references to a disposal—
 - (a) at the request of another person,
 - (b) in pursuance of a contract with another person.

5 Disposal by way of landfill

- (1) A disposal of material is a disposal of it by way of landfill if—
 - (a) it is deposited on the surface of land or on a structure set into the surface, or
 - (b) it is deposited under the surface of land.
- (2) Subsection (1) applies whether or not the material is placed in a container before it is deposited.
- (3) Subsection (1)(b) applies whether the material—
 - (a) is covered with earth after it is deposited, or
 - (b) is deposited in a cavity (such as a cavern or mine).
- (4) If material is deposited on the surface of land or on a structure set into the surface with a view to it being covered with earth, the disposal must be treated as made when the material is deposited and not when it is covered.
- (5) The Scottish Ministers may, by order, make provision varying the meaning of the disposal of material by way of landfill.
- (6) The order may modify any enactment (including this Act).
- (7) In this section, “land” includes land covered by water where the land is above the low water mark of ordinary spring tides.
- (8) In this section, “earth” includes similar matter (such as sand or rocks).

6 Prescribed landfill site activities to be treated as disposals

- (1) The Scottish Ministers may, by order, prescribe a landfill site activity for the purposes of this section.
- (2) A “landfill site activity” means any of the following descriptions of activity, or an activity that falls within any of the following descriptions—
 - (a) using or otherwise dealing with material at a landfill site,
 - (b) storing or otherwise having material at a landfill site.
- (3) If a prescribed landfill site activity is carried out at a landfill site, the activity is to be treated—
 - (a) as a disposal of the material involved in the activity as waste,
 - (b) as a disposal of that material made by way of landfill, and
 - (c) as a disposal at the landfill site of that material.
- (4) An order under this section may prescribe a landfill site activity by reference to conditions.
- (5) Those conditions may, in particular, relate to either or both of the following—
 - (a) whether the landfill site activity is carried out in a designated area of a landfill site,
 - (b) whether there has been compliance with a requirement to give information relating to—
 - (i) the landfill site activity, or
 - (ii) the material involved in the landfill site activity,

including information relating to whether the activity is carried out in a designated area of a landfill site.

- (6) In subsection (5), “designated area” means an area of a landfill site designated in accordance with—
- (a) an order under this section, or
 - (b) regulations under section 30, 32 or 33.
- (7) An order under this section may modify any enactment (including this Act).

Exemptions

7 Material removed from water

- (1) A disposal is not a taxable disposal for the purposes of this Act if it is shown to the satisfaction of the Tax Authority that the disposal is of material all of which—
- (a) has been removed (by dredging or otherwise) from water falling within subsection (2), and
 - (b) formed part of or projected from the bed of the water concerned before its removal.
- (2) Water falls within this subsection if it is—
- (a) a river, canal or watercourse (whether natural or artificial), or
 - (b) a dock or harbour (whether natural or artificial).
- (3) A disposal is not a taxable disposal for the purposes of this Act if it is shown to the satisfaction of the Tax Authority that the disposal is of material all of which—
- (a) has been removed (by dredging or otherwise) from water falling within the approaches to a harbour (whether natural or artificial),
 - (b) has been removed in the interests of navigation, and
 - (c) formed part of or projected from the bed of the water concerned before its removal.
- (4) A disposal is not a taxable disposal for the purposes of this Act if it is shown to the satisfaction of the Tax Authority that the disposal is of material all of which—
- (a) consists of naturally occurring mineral material, and
 - (b) has been removed (by dredging or otherwise) from the sea in the course of commercial operations carried out to obtain substances such as sand or gravel from the seabed.
- (5) A disposal is not a taxable disposal for the purposes of this Act if it is shown to the satisfaction of the Tax Authority that the disposal is of material all of which comprises material falling within subsection (1) or (3) and other material which has been added to that material for the purpose of securing that it is not liquid waste.

8 Material resulting from mining and quarrying

- (1) A disposal is not a taxable disposal for the purposes of this Act if it is shown to the satisfaction of the Tax Authority that the disposal is of material all of which fulfils each of the conditions set out in subsection (2).
- (2) The material—

- (a) must result from commercial mining operations (whether the mining is deep or open-cast) or from commercial quarrying operations,
 - (b) must be naturally occurring material extracted from the earth in the course of the operations, and
 - (c) must not have been subjected to, or result from, a non-qualifying process carried out at any stage between the extraction and the disposal.
- (3) A non-qualifying process is—
- (a) a process separate from the mining or quarrying operations, or
 - (b) a process forming part of those operations and permanently altering the material's chemical composition.

9 Disposal of qualifying material at former quarries

- (1) A disposal is not a taxable disposal for the purposes of this Act if it is—
- (a) of material all of which is treated for the purposes of section 13 as qualifying material, and
 - (b) made at a qualifying landfill site.
- (2) A landfill site is a qualifying landfill site for the purposes of this section if at the time of the disposal—
- (a) the landfill site is or was a quarry,
 - (b) subject to subsection (3), it is a requirement of planning permission in respect of the land in which the quarry or former quarry is situated that it be wholly or partially refilled, and
 - (c) subject to subsection (4), the authorisation permitting disposals on or in the land comprising the site permits only the disposal of material which constitutes qualifying material.
- (3) Where a quarry—
- (a) was in existence before 1 October 1999, and
 - (b) quarrying operations ceased before that date,
- the requirement referred to in subsection (2)(b) must have been imposed on or before that date.
- (4) Where an authorisation permitting disposals on or in the land does not (apart from the application of this subsection) meet the requirements of subsection (2)(c) and an application has been made to vary the authorisation in order to meet them, it is to be deemed to meet them for the period before—
- (a) the application is disposed of, or
 - (b) the second anniversary of the making of the application if it occurs before the application is disposed of.
- (5) For the purposes of subsection (4), an application is disposed of if—
- (a) it is granted,
 - (b) it is withdrawn,
 - (c) it is refused and there is no right of appeal against the refusal,
 - (d) a time limit for appeal against refusal expires without an appeal having been commenced, or
 - (e) an appeal against refusal is dismissed or withdrawn and there is no further right of appeal.

10 Pet cemeteries

- (1) A disposal is not a taxable disposal for the purposes of this Act if—
 - (a) the disposal is of material consisting entirely of the remains of dead domestic pets, and
 - (b) the landfill site at which the disposal is made fulfils the condition set out in subsection (2).
- (2) The condition is that during the relevant period—
 - (a) no landfill disposal was made at the site, or
 - (b) the only landfill disposals made at the site were of material consisting entirely of the remains of dead domestic pets.
- (3) For the purposes of subsection (2), the relevant period—
 - (a) begins with the coming into force of this section or, if later, with the coming into force in relation to the site of the authorisation mentioned in section 12, and
 - (b) ends immediately before the disposal mentioned in subsection (1).

Power to vary what is a taxable disposal

11 Taxable disposals: power to vary

- (1) The Scottish Ministers may, by order, make provision to produce the result that—
 - (a) a disposal which would otherwise be a taxable disposal is not a taxable disposal,
 - (b) a disposal which would otherwise not be a taxable disposal is a taxable disposal.
- (2) The order may, in particular—
 - (a) confer exemption by reference to certificates issued by the Tax Authority and to conditions set out in certificates,
 - (b) allow the Tax Authority to direct requirements to be met before certificates can be issued.
- (3) The order may modify any enactment (including this Act).

Landfill sites and operators of landfill sites

12 Landfill sites and operators of landfill sites

- (1) Land is a landfill site at a given time if at that time an authorisation is in force in relation to the land and authorises disposals on or under the land.
- (2) The operator of a landfill site at a given time is the person who is at the time concerned the holder of the authorisation.
- (3) Land is to be treated as a landfill site at a given time if at that time—
 - (a) disposals of material are made on or under the land,
 - (b) an authorisation is required in relation to those disposals, and
 - (c) no authorisation is in force.

- (4) In determining for the purposes of subsection (3) whether an authorisation is required in relation to disposals of material, no account is to be taken of any prohibition or restriction under the Regulatory Reform (Scotland) Act 2014 that would prevent an authorisation being granted in relation to the disposal of the material by way of landfill.

Calculation of tax

13 Amount of tax

- (1) The amount of tax charged on a taxable disposal is to be found by multiplying the standard rate by the weight in tonnes of the material disposed of.
- (2) The standard rate is the sum specified for the purposes of this section in an order made by the Scottish Ministers.
- (3) Where the material disposed of consists entirely of qualifying material, the amount of tax charged is to be found by multiplying the lower rate by the weight in tonnes of the material disposed of.
- (4) Qualifying material is material listed (in one or more category) in an order made by the Scottish Ministers.
- (5) The lower rate is the sum specified for the purposes of this section in an order made by the Scottish Ministers.
- (6) An order under subsection (5) may set different lower rates for different categories of qualifying material.
- (7) The Scottish Ministers must—
- (a) set criteria to be considered in determining from time to time what material is to be listed as qualifying material,
 - (b) keep those criteria under review,
 - (c) revise them whenever they consider they should be revised, and
 - (d) publish the criteria (and any revised criteria).
- (8) In determining from time to time what material is to be listed as qualifying material, the Scottish Ministers must have regard to—
- (a) the criteria (or revised criteria) published under subsection (7)(d), and
 - (b) any other factors they consider relevant.

14 Qualifying material: special provisions

- (1) This section applies for the purposes of section 13.
- (2) The Tax Authority may direct that where material is disposed of it must be—
- (a) treated as qualifying material if it would in fact be such material but for a small quantity of non-qualifying material,
 - (b) treated as qualifying material of one category if it would in fact be such material but for a small quantity of qualifying material of another category.
- (3) The Tax Authority may at the request of a person direct that where there is a disposal in respect of which the person is liable to pay tax the material disposed of is to be—

- (a) treated as qualifying material if it would in fact be such material but for a small quantity of non-qualifying material,
 - (b) treated as qualifying material of one category if it would in fact be such material but for a small quantity of qualifying material of another category.
- (4) Whether a quantity of non-qualifying material or (as the case may be) qualifying material of another category is small is to be determined in accordance with the terms of the direction.
- (5) A direction under subsection (3) may apply to all disposals in respect of which a person is liable to pay tax or to such of them as are identified in the direction.
- (6) If a direction under subsection (3) applies to a disposal, any direction under subsection (2) is not to apply to it.
- (7) The Scottish Ministers may, by order, provide that material must not be treated as qualifying material (or as qualifying material of a particular category) for the purposes of this section unless conditions specified in the order are fulfilled.
- (8) A condition specified under subsection (7) may relate to any matter the Scottish Ministers think fit (such as the production of a document which includes a statement of the nature of the material).

15 Weight of material disposed of

- (1) The weight of material disposed of on a taxable disposal is to be determined in accordance with regulations made by the Scottish Ministers.
- (2) The regulations may—
- (a) specify rules for determining the weight,
 - (b) authorise rules for determining the weight to be specified by the Tax Authority in a manner set out in the regulations,
 - (c) authorise rules for determining the weight to be agreed by the person liable to pay the tax and an authorised person.
- (3) The regulations may, in particular, specify, or authorise the specification or agreement of, rules about—
- (a) the method by which the weight is to be determined,
 - (b) the time by reference to which the weight is to be determined,
 - (c) the discounting of constituents (such as water).
- (4) The regulations may include provision that a specification authorised under subsection (2)(b) may provide—
- (a) that it is to have effect only in relation to disposals of such descriptions as may be set out in the specification,
 - (b) that it is not to have effect in relation to particular disposals unless the Tax Authority is satisfied that such conditions as may be set out in the specification are met in relation to the disposals,
- and the conditions may be framed by reference to such factors as the Tax Authority thinks fit (such as the consent of an authorised person to the specification having effect in relation to disposals).
- (5) The regulations may include provision that—
- (a) where rules are agreed as mentioned in subsection (2)(c), and

- (b) the Tax Authority believes that they should no longer be applied because they do not give an accurate indication of the weight or they are not being fully observed or for some other reason,
the Tax Authority may direct that the agreed rules are no longer to have effect.
- (6) The regulations may be so framed that where in relation to a particular disposal—
 - (a) no specification of the Tax Authority has effect, and
 - (b) no agreed rules have effect,
 the weight is to be determined in accordance with rules specified in the regulations.

Persons liable to pay tax

16 Liability to pay tax

- (1) The person liable to pay the tax charged on a taxable disposal made at an authorised landfill site is the landfill site operator.
- (2) The reference in subsection (1) to the landfill site operator is to the person who is at the time of the disposal the operator of the landfill site which constitutes or contains the land on or under which the disposal is made.
- (3) The person liable to pay the tax charged on a taxable disposal made at an unauthorised landfill site is any person who—
 - (a) made the disposal, or
 - (b) knowingly permitted the disposal to be made.
- (4) Where two or more persons are liable under subsection (3), those persons are jointly and severally liable to pay the tax.
- (5) In this section—
 - (a) an “authorised landfill site” is land referred to in section 12(1),
 - (b) an “unauthorised landfill site” is land referred to in section 12(3).

17 Liability of controllers of landfill sites

- (1) The Scottish Ministers may, by regulations, make provision about the liability of controllers of landfill sites to pay the tax.
- (2) A person is the controller of the whole, or a part, of a landfill site at a given time if the person determines, or is entitled to determine, what disposals of material (if any) may be made—
 - (a) at every part of the site at that time, or
 - (b) at that part of the site at that time,
 (as the case may be).
- (3) But a person who determines or is entitled to determine what disposals may be made at a landfill site or any part of a landfill site only because the person is an employee or agent of another is not the controller of that site or (as the case may be) that part of that site.
- (4) The regulations may, in particular, make provision (or further provision) about—
 - (a) who is a controller of a landfill site for the purposes of this Act,

- (b) the circumstances in which a controller is liable to pay tax,
 - (c) the amount of tax which a controller is liable to pay,
 - (d) the entitlement of a controller to credit in respect of tax, and
 - (e) the arrangements for payment of tax by a controller.
- (5) The regulations may modify any enactment (including this Act).

Credit

18 Credit: general

- (1) The Scottish Ministers may, by regulations, provide that where—
- (a) a person has paid or is liable to pay tax, and
 - (b) conditions specified in the regulations are fulfilled,
- the person is to be entitled to credit of such an amount as is found in accordance with rules specified in the regulations.
- (2) The regulations may make provision as to the manner in which a person is to benefit from credit, and may, in particular, make provision—
- (a) that a person is to be entitled to credit by reference to accounting periods,
 - (b) that a person is to be entitled to deduct an amount equal to the person's total credit for an accounting period from the total amount of tax due from the person for the period,
 - (c) that if no tax is due from a person for an accounting period but the person is entitled to credit for the period, the amount of the credit is to be paid to the person by the Tax Authority,
 - (d) that if the amount of credit to which a person is entitled for an accounting period exceeds the amount of tax due from the person for the period, an amount equal to the excess is to be paid to the person by the Tax Authority,
 - (e) for the whole or part of any credit to be held over to be credited for a subsequent accounting period,
 - (f) as to the manner in which a person who has ceased to be registrable is to benefit from credit.
- (3) Regulations under subsection (2)(c) or (d) may provide that where at the end of an accounting period an amount is due to a person who has failed to submit returns for an earlier period as required by this Act, the Tax Authority may withhold payment of the amount until the person has complied with that requirement.
- (4) Regulations under subsection (2)(e) may provide for credit to be held over either on the person's application or in accordance with directions given by the Tax Authority from time to time; and the regulations may allow directions to be given generally or with regard to particular cases.
- (5) The regulations may provide that—
- (a) no benefit is to be conferred in respect of credit except on a claim made in such manner and at such time as may be determined by or under regulations,
 - (b) payment in respect of credit is to be made subject to such conditions (if any) as the Tax Authority thinks fit to impose, including conditions as to repayment in specified circumstances,

- (c) deduction in respect of credit is to be made subject to such conditions (if any) as the Tax Authority thinks fit to impose, including conditions as to the payment to the Tax Authority, in specified circumstances, of an amount representing the whole or part of the amount deducted.
- (6) The regulations may require a claim by a person to be made in a return required by provision made under section 25.
- (7) Nothing in section 19 or 20 is to be taken to derogate from the power to make regulations under this section (whether with regard to bad debts, the environment or any other matter).

19 Credit: bad debts

- (1) Regulations may be made under section 18 with a view to securing that a person is entitled to credit if—
 - (a) the person carries out a taxable activity as a result of which the person becomes entitled to a debt which turns out to be bad (in whole or in part), and
 - (b) such other conditions as may be specified in the regulations are fulfilled.
- (2) The regulations may include provision under section 18(5)(b) or (c) requiring repayment or payment if it turns out that it was not justified to regard a debt as bad (or to regard it as bad to the extent that it was so regarded).
- (3) The regulations may include provision for determining whether, and to what extent, a debt is to be taken to be bad.

20 Credit: bodies concerned with the environment

- (1) Regulations may be made under section 18 with a view to securing that a person is entitled to credit if—
 - (a) the person pays a sum to a body whose objects are or include such matters connected with the protection of the environment as are specified in regulations, and
 - (b) such other conditions as are specified in the regulations are fulfilled.
- (2) The regulations may, in particular, specify conditions—
 - (a) requiring bodies to which sums are paid (“environmental bodies”) to be approved by the Tax Authority,
 - (b) requiring such sums to be paid with the intention that they be expended on such matters connected with the protection of the environment as may be specified in the regulations.
- (3) The regulations may include provision under section 18(5)(b) or (c) requiring repayment or payment if—
 - (a) a sum is not in fact expended on matters specified under subsection (2)(b), or
 - (b) a condition specified in the regulations turns out not to have been fulfilled.
- (4) The regulations may include—
 - (a) provision for determining the amount of credit (including provision for limiting it),

- (b) provision that matters connected with the protection of the environment include such matters as overheads (including administration) of environmental bodies,
- (c) provision for determining the amounts that may be spent on the administration of environmental bodies,
- (d) provision as to the matters by reference to which an environmental body can be and remain approved (including matters relating to the functions and activities of any such body),
- (e) provision for an environmental body to be and remain approved only if it complies with conditions imposed from time to time by the Tax Authority (including provision for the variation or revocation of such conditions),
- (f) provision allowing (whether prospectively or retrospectively) the withdrawal of approval of an environmental body by the Tax Authority,
- (g) provision allowing the Tax Authority to delegate the exercise of any of its functions under section 18 or this section to another person,
- (h) provision allowing the Tax Authority to disclose to any person to whom its functions are delegated by virtue of provision made under paragraph (g) information which relates to the tax affairs of persons carrying out taxable activities and which is relevant to the credit scheme established by the regulations.