



Landfill Tax (Scotland) Act 2014

2014 asp 2

PART 4

GENERAL AND INTERPRETATION

Application of Act to partnerships, groups of companies etc.

37 Partnership, bankruptcy, transfer of business etc.

- (1) As regards any case where a business is carried on in partnership or by an unincorporated body, the Scottish Ministers may, by regulations, make provision for determining by what persons anything required by this Act to be done by a person is to be done.
- (2) The registration under this Act of an unincorporated body may be in the name of the body concerned; and in determining whether taxable activities are carried out by such a body no account is to be taken of any change in its members.
- (3) The registration under this Act of a body corporate carrying on a business in several divisions may, if the body corporate so requests and the Tax Authority thinks fit, be in the names of those divisions.
- (4) As regards any case where a person carries on a business of a person who has died or become bankrupt or incapacitated or whose estate has been sequestrated, or of a person which is in liquidation or receivership or administration, the Scottish Ministers may, by regulations—
 - (a) require the person carrying on the business to inform the Tax Authority of the fact that the person is carrying on the business and of the event that has led to that person carrying it on,
 - (b) make provision allowing the person carrying on the business to be treated for a limited time as if the person were the other person,
 - (c) make provision for securing continuity in the application of this Act where the person carrying on the business is so treated.
- (5) The Scottish Ministers may, by regulations, make provision for securing continuity in the application of this Act in cases where a business carried on by a person is transferred to another person as a going concern.

Status: This is the original version (as it was originally enacted).

- (6) Regulations under subsection (5) may, in particular—
- (a) require the transferor to inform the Tax Authority of the transfer,
 - (b) provide for liabilities and duties under this Act of the transferor to become, to such extent as may be provided in the regulations, liabilities and duties of the transferee,
 - (c) provide for any right of either of them to repayment or credit in respect of tax to be satisfied by making a repayment or allowing a credit to the other.
- (7) Regulations under subsection (5) may, in particular, provide that no such provision as is mentioned in subsection (6)(b) or (c) is to have effect in relation to any transferor and transferee unless an application to that effect has been made by them under the regulations.

38 Groups of companies

- (1) Where any bodies corporate are treated as members of a group by virtue of this section, for the purposes of this Act—
- (a) any liability of a member of the group to pay tax is to be taken to be a liability of the representative member,
 - (b) the representative member is to be taken to carry out any taxable activities which a member of the group would carry out (apart from this section) by virtue of section 21,
 - (c) all members of the group are jointly and severally liable for any tax due from the representative member.
- (2) Two or more bodies corporate are eligible to be treated as members of a group if the condition mentioned in subsection (3) is fulfilled and—
- (a) one of them controls each of the others,
 - (b) one person (whether a body corporate or an individual) controls them all, or
 - (c) two or more individuals carrying on a business in partnership control all of them.
- (3) The condition is that the prospective representative member has an established place of business in the United Kingdom.
- (4) Two or more bodies corporate eligible to be treated as members of a group may apply to the Tax Authority to be so treated.
- (5) An application under subsection (4) must set out which of the bodies corporate is to be the representative member.
- (6) Where an application referred to in subsection (4) is made—
- (a) the bodies corporate are to be treated as a group from the beginning of an accounting period, and
 - (b) the body corporate set out in the application is to be the representative member,
- unless the Tax Authority refuses the application.
- (7) Where any bodies corporate are treated as members of a group, an application may be made to the Tax Authority to the effect that—
- (a) a further body eligible to be treated as a member of the group is to be included among the bodies so treated,

- (b) a body corporate is to be excluded from the bodies so treated,
 - (c) another member of the group is to be substituted as the representative member, or
 - (d) the bodies corporate are no longer to be treated as members of a group.
- (8) Where an application referred to in subsection (7) is made, the change is to have effect from the beginning of an accounting period unless—
- (a) the application is to the effect mentioned in subsection (7)(a) or (c), and
 - (b) the Tax Authority refuses the application.
- (9) The Tax Authority may refuse an application under subsection (4) or (7)(a) or (c) only if it appears to it necessary to do so for the protection of the revenue.
- (10) Where—
- (a) a body corporate is treated as a member of a group as being controlled by any person, and
 - (b) it appears to the Tax Authority that it has ceased to be so controlled,
- the Tax Authority must, by notice given to that person, terminate that treatment from such date as may be specified in the notice.
- (11) An application under this section with respect to any bodies corporate—
- (a) must be made by one of those bodies or by the person controlling them, and
 - (b) must be made not less than 90 days before the date from which it is to take effect, or at such later time as the Tax Authority may allow.
- (12) For the purposes of this section—
- (a) a body corporate is to be taken to control another body corporate if—
 - (i) it is empowered by statute to control that body's activities, or
 - (ii) it is that body's holding company within the meaning of section 1159 of and Schedule 6 to the Companies Act 2006,
 - (b) an individual is or individuals are to be taken to control a body corporate if the individual or individuals would be that body's holding company within the meaning of the provisions mentioned in paragraph (a)(ii), were the individual or individuals a company.