

POLICY NOTE

THE SCOTTISH LANDFILL TAX (ADMINISTRATION) REGULATIONS 2015

SSI No. 2015/3

This Policy Note has been prepared by the Scottish Government to assist the reader of the Scottish Landfill Tax (Administration) Regulations 2015 and to help inform debate on it. It does not form part of the legislation and has not been endorsed by Parliament.

The instrument was made in exercise of the powers conferred by sections 15, 18, 19, 20, 22(9), 23, 25, 30, 32 and 37(1) and (4) to (7) of the Landfill Tax (Scotland) Act 2014 (“LT(S)A 2014”) and all other powers enabling them to do so.

Policy issues

These regulations set out how Scottish Landfill Tax will be collected and managed by Revenue Scotland. They make provision for the registration of landfill operators with Revenue Scotland, rules for tax returns and payments, tax credits (including the establishment of rules for a Scottish Landfill Communities Fund) and rules for determining the weight of waste for tax purposes.

Registration and provision for special cases

The regulations provide that from 16 February 2015, someone (i.e. a landfill operator) who intends to carry out a taxable activity must notify Revenue Scotland within 30 days of this intention. They also make provision to allow the landfill operator to correct any inaccuracy or make changes to their details.

Accounting periods, payment and non-disposal areas

A landfill operator’s first accounting period begins on the day they become registered. Tax returns should be submitted along with any payment of tax no later than 44 days after the end of the accounting period. Revenue Scotland has a discretionary power to amend the accounting period or the date by which a return must be made.

Where a return is amended by the landfill operator, any payment due must also be made at the same time as the amended return is made.

Any payment of tax is treated as having been paid if arrangements that are satisfactory to Revenue Scotland have been made. The tax return must include a declaration by the taxpayer or an agent if one is used, that the return is to the taxpayer’s knowledge, complete and correct.

Where a payment is owed to the taxpayer by Revenue Scotland, the payment need not be made until any outstanding tax return and tax payment have been made by the taxpayer.

Non-disposal areas

The Scottish Government recognises that several activities may occur adjacent to a landfill site such as energy and material recovery or temporary storage of material for later re-use and recycling. The regulations facilitate these activities by requiring a landfill operator to designate a 'non-disposal area' if required to do so by an officer of Revenue Scotland. For the designation of a non-disposal area to cease, Revenue Scotland must give notice to the landfill operator in writing. The landfill operator must keep records on a non-disposal area and make them available to Revenue Scotland Officers on request.

Credit: general

The 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. Over a defined accounting period a landfill operator 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 define how a person who ceased to be registrable can benefit from credit.

Where a person fails to submit a return, Revenue Scotland may withhold payment of credits until the taxpayer has complied with the requirement to submit the return. The regulations provide Revenue Scotland with the power to impose conditions with regard to payment or repayment.

Credit: permanent removals

The regulations allow landfill operators the opportunity to divert waste away from landfill wherever possible. Landfill operators can claim a credit for material where landfill tax has already been paid and where conditions in relation to the re-use and recycling of waste have been met. Tax credit may also be claimed if tax has previously been paid on the waste and the waste is then used to restore a site.

Credit: bad debts

If a customer of a landfill operator becomes insolvent, the landfill operator may claim a tax credit for bad debt if they meet all of the conditions set out in the regulations. Certain sums must be offset against the amount of the bad debt.

Credit: bodies concerned with the environment

The regulations establish a Scottish Landfill Communities Fund (SLCF) to provide funding for community or environmental projects in recognition of the dis-amenity experienced in the vicinity of landfill sites. Landfill operators can give a percentage of their tax liability to a distribution body to fund community projects through the SLCF. In this way, the distribution of funds within the SLCF is entirely independent of the Scottish Government. When making a contribution to the SLCF, landfill operators receive a 90% tax credit.

The tax credit is only available where the community project meets one of the objectives of the SLCF which are set out in the regulations. The liability against which the percentage of qualifying contributions may be calculated is a period of 12 months from 1 April each year. Credit can be claimed in any accounting period.

A contribution and any income derived must be spent on an approved objective of the SLCF within 2 years of the contribution being made.

The regulations set out the information that the landfill operator must record and provide to the regulator when a contribution is made to the SLCF. The regulator will provide appropriate regulation to help ensure accountability and transparency. The regulator's main task would be to provide a safeguard that funds were being used properly against the objectives of the scheme. The regulator will report to Revenue Scotland. The regulator will also assess applications to become a distribution body and keep and administer a register of all distribution bodies.

The regulations set out the functions of Revenue Scotland for the SLCF and in particular, provide that Revenue Scotland may perform the role of the regulator or delegate the function to another body. If the role of regulator is delegated, Revenue Scotland retains responsibility for the operation of the SLCF. From 1 April 2015, the SLCF will be regulated by the Scottish Environment Protection Agency (SEPA) on behalf of Revenue Scotland. Revenue Scotland will provide a report on the performance of the SLCF to the Scottish Parliament.

As mentioned above, landfill operators will make contributions direct to a Distribution Body (all such contributions would be notified to SEPA as tax collector and fund regulator). The distribution bodies will enrol projects, ensure that all monies are spent in accordance within their objects and report to the regulator. All distribution bodies will be registered and approved by the regulator. Distribution bodies can apply to an independent review panel if they have their registration rejected or revoked.

Landfill invoices

To ensure that the correct information is available to the landfill operator for completing a tax return, the regulations prescribe the information that must be included in a landfill invoice.

Determination of weight of material disposed of

The regulations require that the waste material that is being disposed to landfill must be weighed at the time of the disposal. Revenue Scotland may specify by notice the methods by which the weight of the waste is to be determined.

Following consultation with landfill operators (see the section on 'consultation' below), the regulations include a discount for non-natural water that has been added to the waste, for example, to damp down the waste to reduce dust.

Consultation

A consultation paper *Scottish Landfill Tax – A Consultation on Subordinate Legislation*¹ was published on 16 May 2014 inviting views on draft regulations by 31 July 2014 on draft regulations. The Scottish Government received 48 responses to the consultation, 46 of which were from a range of different organisations and 2 from individuals. The consultation closed on 31 July 2014 and an analysis by Zero Waste Scotland was published thereafter².

In addition to publishing the consultation documents, Scottish Government held a series of events including workshops for all landfill operators and those with an interest in landfill tax, a specific communities fund workshop, held sessions with key stakeholder groups, and organised visits by officials to individual stakeholders to discuss how proposals could affect their business. The Landfill Tax Working Group which includes representation from each major stakeholder group also provided feedback on the proposals.

In light of feedback from the consultation process, the Scottish Government has made changes to the regulations as highlighted below.

Eligibility criteria for the Scottish Landfill Communities Fund; Transfer Stations

Following the consultation process in 2012 for the Landfill Tax (Scotland) Bill and the consultation process over the summer of 2014 for subordinate legislation, there was a call to extend the reach of the SLCF to reflect the wider dis-amenity of landfill activity.

The Scottish Government recognises that waste transfer stations, where taxable waste to be landfilled is often collected for forward transportation to a landfill site, can cause a dis-amenity to local communities. For this reason the regulations provide that community and environmental projects in the vicinity of waste transfer stations are eligible to be considered for funding from the SLCF. The ‘vicinity’ rules in regulation 29(5) apply to landfill sites and transfer stations. The definition of a transfer station is a site handling 2,500 tonnes of waste destined for landfill.

Objectives of the Scottish Landfill Communities Fund

There was support for widening the definition of two of the objectives that funds can be spent on. A significant number of stakeholders observed that including waste prevention was a logical addition to the community re-use and recycling objective. There was also support for including sites of archaeological interest to the objective allowing funds to be spent on historical buildings, provided that the sites are

¹ ‘Scottish Landfill Tax, A Consultation on Subordinate Legislation’, published 16 May 2014, available at: <http://www.scotland.gov.uk/Resource/0045/00450678.pdf>

² ‘Responses to the Public Consultation on Proposed Landfill Tax Subordinate Legislation’, published October 2014 available at: www.zerowastescotland.org.uk/PublicConsultation/ProposedLandfillTaxSubordinate/Responses

accessible to the public and within the vicinity of a landfill site. These proposals have been incorporated in the list of objectives for the SLCF that is set out in the regulations.

Filing date for landfill tax returns

Conditions in a Waste Management Licence (WML) or Pollution Prevention and Control (PPC) permit require the provision of quarterly data to SEPA by landfill site operators on the types and quantities of waste managed (treated and/or disposed) at the facility. In the consultation paper, the Scottish Government proposed that the filing date for the SLfT returns should be the same as the PPC Permit return at the end of every quarter. It also proposed to allow 30 days for payment after the filing date.

Section 26 of the LT(S)A 2014 allowed landfill site operators to issue an invoice to the person who disposed of the waste 14 days after the disposal was made. The issue date of the invoice was then treated as the date that the tax is due. This moved the tax point from the date of the disposal of waste to the date that the invoice was issued by the landfill site operator. Section 26 of the LT(S)A 2014 was repealed as the 14 day period meant that the administrative dates for the environmental and tax systems were continually misaligned.

The regulations provide for a system where the administrative dates for the environmental and tax systems are aligned. Following consultation with landfill operators, the Scottish Government agreed that tax returns should be made to Revenue Scotland within 44 days (rather than 30) of the end of the accounting period. This gives a landfill operator the same 14 day period to invoice the person who disposed of the waste and ensures that there are no additional cash flow issues to the landfill operator as a result of these changes.

Water discount when weighing waste

Under the existing UK system, a landfill operator can apply to discount the water content of waste in certain circumstances, for example where water has been used to damp down waste to reduce dust. The consultation paper included a proposal not to include a “water discount” in Scottish Landfill Tax. The main reasons for this were:

- The current system actively encourages the addition of water to waste and discourages de-watering by allowing a 25% discount on water – but adding water to waste can increase the negative environmental effect through leachate.
- The discount process when determining the tax due can be quite complex and is difficult to enforce – potentially leading to opportunities for abuse/evasion by for example claiming that water has been added where this is not in fact the case.
- The relief allowed on the water content of waste that would otherwise attract tax tends to encourage operators to allow excess water to enter the landfill mass. This in turn adds to the generation of leachate and creates a further pollution risk, with mitigating action required for leachate treatment to reduce that risk.
- Liquid waste going to landfill was banned in 2003 by the Landfill (Scotland) Regulations 2003. There should therefore be less need to discount water than there was in 1996 when UK Landfill Tax was first introduced.

Stakeholders identified the following concerns with the proposal to exclude the “water discount” provisions:

- Health and safety concerns with regard to transporting and handling fine materials such as ash.
- The costs of de-watering waste would put Scottish businesses at a disadvantage internationally and compared to other UK companies.
- The proposal could encourage ‘waste tourism’ from Scotland to England.

In light of these concerns, Scottish Ministers have decided to include provisions that allow for the weight of non-naturally occurring water to be discounted from waste deposits for the purposes of tax. The provisions are similar to those in the equivalent UK legislation. This issue will be kept under review by the Scottish Government.

Impact Assessments

A Business and Regulatory Impact Assessment (“BRIA”)³ has been published for the regulations and orders associated with LT(S)A 2014. As the Scottish Government’s approach to these instruments largely mirror the current UK-wide approach to landfill tax, no significant financial effect or impact on the private, voluntary or public sector is anticipated.

An Equality Impact Assessment (“EQIA”)⁴ has been published and there are no equality impacts or issues associated with this SSI. An environmental screening exercise has determined that the subordinate legislation following on from the LT(S)A 2014 is not likely to generate a negative impact on the environment and a Strategic Environmental Assessment is therefore not required.

Scottish Government
Finance Directorate
Fiscal Responsibility Division

³ ‘Scottish Landfill Tax Final Business and Regulatory Impact Assessment’, published 14 December 2014, available at: <http://www.scotland.gov.uk/Publications/2014/12/6274>

⁴ ‘Scottish Landfill Tax – Equality Impact Assessment Results’, published 17 December 2014, available at: <http://www.scotland.gov.uk/Publications/2014/12/7976>