

SCHEDULES

SCHEDULE 12

Section 42

LANDFILL TAX: DISPOSALS NOT MADE AT LANDFILL SITES, ETC

PART 1

AMENDMENTS OF PART 3 OF FA 1996

Introduction

- 1 Part 3 of FA 1996 (landfill tax) is amended as set out in the following provisions of this Part of this Schedule.

Taxable disposals

- 2 (1) Section 40 (charge to tax) is amended as follows.
- (2) For subsection (2) substitute—
- “(2) A taxable disposal takes place where material is disposed of and either—
- (a) the disposal is made at a landfill site (see subsection (4)), or
 - (b) the disposal requires a permit or licence mentioned in subsection (4) but is not made at a landfill site.”
- (3) After subsection (3) insert—
- “(4) Land is a landfill site at a given time if at that time—
- (a) a permit under regulations made under—
 - (i) section 2 of the Pollution Prevention and Control Act 1999,
 - or
 - (ii) Article 4 of the Environment (Northern Ireland) Order 2002 (S.I. 2002/3153 (N.I. 7)),is in force in relation to the land and authorises deposits or disposals in or on the land,
 - (b) a waste management licence issued under Part 2 of the Waste and Contaminated Land (Northern Ireland) Order 1997 (S.I. 1997/2778 (N.I. 19)) (waste on land) is in force in relation to the land and authorises deposits in or on the land, or
 - (c) a licence under any provision for the time being having effect in Northern Ireland and corresponding to section 35 of the Environmental Protection Act 1990 (waste management licences) is in force in relation to the land and authorises disposals in or on the land.”
- 3 After section 40 insert—

“40A Disposals of material

- (1) For the purposes of this Part, there is a disposal of material if—
 - (a) material is disposed of on the surface of land or on a structure set into the surface, or
 - (b) material is disposed of under the surface of land.
- (2) For the purposes of subsection (1)(a) and (b) it does not matter whether the material is placed in a container before it is disposed of.
- (3) For the purposes of subsection (1)(b) it does not matter whether the material—
 - (a) is covered after it is disposed of, or
 - (b) is disposed of in a cavity (such as a cavern or mine).
- (4) If material is disposed of on the surface of land or on a structure set into the surface with a view to the material being covered, the disposal is to be treated as made when the material is disposed of and not when it is covered.
- (5) An order may for the purposes of this Part provide for—
 - (a) material to be treated as disposed of in circumstances where it would not otherwise be so treated;
 - (b) material to be treated as not disposed of in circumstances where it would otherwise be so treated.
- (6) An order under subsection (5) may, among other things, make provision by reference to—
 - (a) descriptions of material;
 - (b) the quantities disposed of;
 - (c) the nature of the site at which material is disposed of;
 - (d) the location of material in a site (for example, whether it is in a discrete unit within the site).
- (7) An order may for the purposes of this Part provide for a prohibited disposal to be treated as a disposal falling within paragraph (b) of section 40(2).

“Prohibited disposal” here means a disposal of material the disposal of which at a landfill site is prohibited by or by virtue of a prescribed enactment.
- (8) An order under this section may make provision subject to exceptions, conditions or other qualifications.”

Liability to pay landfill tax

- 4 (1) Section 41 (liability to pay tax) is amended as follows.
 - (2) In subsection (1), after “a taxable disposal” insert “made at a landfill site”.
 - (3) After subsection (2) insert—
 - “(3) A person is liable to pay tax charged on a taxable disposal not made at a landfill site if the person—
 - (a) makes the disposal, or

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- (b) knowingly causes or knowingly permits the disposal to be made.
- (4) Every such person is jointly and severally liable to pay the tax charged.
- (5) In the case of a taxable disposal not made at a landfill site, a person within subsection (6) or (7) is taken for the purposes of this Part to be a person who knowingly causes or knowingly permits the disposal to be made, unless it is shown to the satisfaction of the Commissioners that the person did not do so.
- (6) A person is within this subsection if, before the time of the disposal of the material in question, the person—
 - (a) took any action with a view to the disposal of the material,
 - (b) was party to a contract for the sale of the material, or
 - (c) facilitated the transport or storage of the material.
- (7) A person is within this subsection if at the time of the disposal the person—
 - (a) is the owner, or a lessee or occupier, of the land at which the disposal is made,
 - (b) controls, or is able to control, a vehicle or trailer from which the disposal is made, or
 - (c) is an officer of a body corporate or unincorporated association that is within subsection (3)(a) or (3)(b).
- (8) In subsection (7)(c) “officer”—
 - (a) in relation to a body corporate, means a director, manager, secretary, chief executive or member of the committee of management, or a person purporting to act in such a capacity;
 - (b) in relation to an unincorporated association, means an officer of the association or a member of its governing body, or a person purporting to act in such a capacity.”

Exemptions

- 5 In section 43 (material removed from water), in subsections (1), (3), (4) and (5), after “A disposal” insert “made at a landfill site”.
- 6 In section 44 (mining and quarrying), in subsection (1), after “A disposal” insert “made at a landfill site”.
- 7 (1) Section 45 (pet cemeteries) is amended as follows.
 - (2) In subsection (1), after “A disposal” insert “made at a landfill site”.
 - (3) In subsection (2)—
 - (a) in paragraph (a), for “landfill disposal” substitute “disposal of material”;
 - (b) in paragraph (b), for “landfill disposals” substitute “disposals of material”.
- 8 In section 46 (power to vary), in subsection (2), before paragraph (a) insert—
 - “(za) confer exemption by reference to guidance (as it has effect from time to time) issued by—
 - (i) a body established by or under any enactment, or
 - (ii) a government department or an agency of a government department,

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to the effect that particular kinds of disposal do not require a permit or licence mentioned in section 40(4);”.

Taxable activities

- 9 (1) Section 69 (taxable activities) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) A person carries out a taxable activity if the person—
- (a) makes a taxable disposal (whether or not at a landfill site),
 - (b) permits a taxable disposal to be made at a landfill site, or
 - (c) knowingly causes or knowingly permits a taxable disposal to be made elsewhere than at a landfill site,
- and the person is liable to pay tax in respect of the disposal.”
- (3) In subsection (2)—
- (a) in paragraph (a), after “is made” insert “at a landfill site”;
 - (b) for “this section” substitute “subsection (1)(b)”.

Taxable disposals etc: supplementary and consequential amendments

- 10 In section 42 (amount of tax), in subsection (2)—
- (a) for “Where the” substitute “Where—
 - (a) the”;
 - (b) for “fines this section” substitute “fines, and
 - (b) the disposal is made at a landfill site,
 - this section”.
- 11 In section 51 (credit: general), in subsection (1)(a), after “liable to pay tax” insert “in respect of the disposal of material at a landfill site”.
- 12 In section 52 (bad debts), in subsection (1)(a), after “taxable activity” insert “at a landfill site”.
- 13 Omit sections 64 to 67.
- 14 (1) Section 70 (interpretation) is amended as follows.
- (2) In subsection (1), at the appropriate places insert—
- ““disposal” and “dispose of” shall be construed in accordance with section 40A;”;
- ““landfill site” has the meaning given by section 40(4);”;
- ““operator”, in relation to a landfill site, means the person who at the relevant time is the holder of the permit (where section 40(4)(a) applies) or the licence (where section 40(4)(b) or (c) applies);”;
- ““taxable person” means a person who is liable to pay tax on a taxable disposal.”
- (3) Omit subsections (2) and (2A).
- (4) In subsection (4), for “sections 64 to” substitute “sections 68 and”.
- 15 In section 71 (orders and regulations), in subsection (7)—

- (a) before paragraph (a) insert—
 - “(za) an order under section 40A which has the result that anything which would not otherwise be a taxable disposal is a taxable disposal;”;
 - (b) omit paragraphs (ca), (cb) and (d).
- 16 (1) Schedule 5 (landfill tax) is amended as follows.
- (2) Omit paragraph 1B (information: site restoration).
- (3) Before paragraph 2 insert—

“Site information

- 1C (1) Regulations may require the operator of a landfill site—
- (a) to retain plans, permits and licences relating to the site;
 - (b) to provide the Commissioners with copies of, or information relating to, plans, permits and licences retained under paragraph (a).
- (2) Regulations under sub-paragraph (1)(b) may be framed by reference to such copies or information as may be stipulated in any notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice.”
- (4) In paragraph 2A (records: material at landfill sites)—
- (a) in the heading, after “landfill” insert “and other”;
 - (b) in sub-paragraph (1), for “relating to material” substitute “relating to—
 - (a) material”;
 - (c) at the end of that sub-paragraph insert “, and
 - (b) material disposed of elsewhere than at a landfill site.”
- (5) In paragraph 10 (power to take samples), in sub-paragraph (1) omit “as waste by way of landfill”.
- (6) In paragraph 45 (adjustment of disposal contracts), in sub-paragraphs (1)(a) and (c) and (2) omit “landfill”.
- (7) In paragraph 46 (adjustment of construction contracts), in sub-paragraph (1)(b) omit “landfill”.

Registration

- 17 (1) Section 47 (registration) is amended as follows.
- (2) In subsections (2)(a), (5) and (6), after “taxable activities” insert “at a landfill site”.
- (3) After subsection (3) insert—
- “(3A) A registered person who forms the intention of carrying out taxable activities elsewhere than at a landfill site shall notify the Commissioners of that intention.”
- (4) After subsection (5) insert—

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“(5A) Where a person who is not registered carries out taxable activities elsewhere than at a landfill site, the Commissioners may register the person with effect from the date when the person begins carrying out those activities.

(5B) Subsections (2) to (5A) do not apply to a person within subsection (6) of section 41 who, but for that subsection, would not be treated as carrying out taxable activities.”

(5) In subsection (6), for “a person” substitute “a registered person”.

(6) For subsection (9) substitute—

“(9) For the purposes of this section regulations may make—

- (a) provision as to the time within which a notification is to be made (including provision enabling the Commissioners to grant an extension of time);
- (b) provision as to the form and manner in which any notification is to be made and as to the information to be contained in or provided with it;
- (c) provision as to the criteria that the Commissioners are to apply in deciding whether to register a person under subsection (5A);
- (d) provision under which, in prescribed circumstances, taxable activities at a site within subsection (9B) may, on a provisional or conditional basis, be treated as carried out at a landfill site;
- (e) provision requiring a person who has made a notification to notify the Commissioners if any information contained in or provided in connection with it is or becomes inaccurate;
- (f) provision as to the correction of entries in the register (including provision for a person provisionally or conditionally registered by virtue of paragraph (d) to be treated, in prescribed circumstances, as never having been so registered).

(9A) Provision made by regulations under subsection (9)(c) may be supplemented by provision made by notice published by the Commissioners in accordance with the regulations.

(9B) A site is within this subsection if—

- (a) it is not a landfill site, or
- (b) it not known at the relevant time whether it is a landfill site or not.”

(7) For subsection (10) substitute—

“(10) In this Part—

“registered person” means—

- (a) a person registered under subsection (5) or (5A), and
- (b) a person who was registered under this section before the passing of FA 2018 and who remains registered;

“registrable person” means a person who carries out taxable activities (whether registered or not), excluding a person within subsection (6) of section 41 who, but for that subsection, would not be treated as carrying out taxable activities.”

Registration: supplementary and consequential amendments

- 18 In section 49 (accounting for tax and time for payment), for “registrable person” substitute “registered person”.
- 19 (1) Section 59 (groups of companies) is amended as follows.
- (2) In subsection (2)—
- (a) for “condition” substitute “conditions”;
- (b) for “is fulfilled” substitute “are fulfilled”.
- (3) In subsection (3), for “The condition is that the” substitute “The conditions are that—
- (a) each of the bodies corporate is a registered person, and
- (b) the”.
- 20 In section 70 (interpretation), in subsection (1), for ““registrable person” has” substitute ““registered person” and “registrable person” have”.
- 21 (1) Schedule 5 is amended as follows.
- (2) In paragraph 2 (records: registrable persons), in the heading and in sub-paragraphs (1) and (3)(a), for “registrable persons” substitute “taxable persons”.
- (3) In paragraph 26 (interest on under-declared tax), in sub-paragraphs (1)(a) and (4), for “registrable person” substitute “registered person”.
- (4) In paragraph 27 (interest on unpaid tax etc), in sub-paragraphs (1)(a), (3)(a), (5)(a) and (7), for “registrable person” substitute “registered person”.

Assessment

- 22 (1) Section 50 (power to assess) is amended as follows.
- (2) In the heading, for “assess” substitute “assess: registered persons”.
- (3) In subsection (1)(a), (b), (c) and (d) and subsection (2), for “a person” substitute “a registered person”.
- 23 After that section insert—

“50A Power to assess: unregistered persons

- (1) Where—
- (a) it appears to the Commissioners that a person is liable to pay tax on a taxable disposal, and
- (b) the person is not a registered person,
- the Commissioners may assess the amount of tax due from the person to the best of their judgment and notify it to the person.
- (2) An assessment under this section must be accompanied by a notice—
- (a) identifying the land where the disposal was made;
- (b) indicating the date on which the disposal was made or treated as made, or the date on which (or period within which) the Commissioners believe it was made;
- (c) explaining why the Commissioners believe that the person to whom the notification is sent is liable to pay tax on the disposal;

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- (d) describing the methods used to calculate the amount of tax, including the method used by the Commissioners to determine the weight of the material disposed of;
 - (e) containing any other information prescribed by regulations.
- (3) An assessment under this section is not invalidated by any inaccuracy in the information given in the notice under subsection (2).
- (4) An assessment under this section—
- (a) may relate to more than one taxable disposal;
 - (b) may relate to an unascertained number of taxable disposals;
 - (c) may relate to taxable disposals at more than one location.
- (5) An assessment under this section shall not be made more than two years after evidence of facts, sufficient in the Commissioners' opinion to justify the making of the assessment, comes to their knowledge.
- But where further such evidence comes to their knowledge after the making of an assessment under this section another assessment may be made under this section in addition to any earlier assessment.
- (6) Where an amount has been assessed and notified to a person under this section it shall be deemed to be an amount of tax due from the person and may be recovered accordingly unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced."

Assessment: supplementary and consequential amendments

- 24 In section 54 (appeals), in subsection (2)—
- (a) for "it is an assessment" substitute "it is—
 - (a) an assessment";
 - (b) at the end insert " , or
 - (b) an assessment under section 50A."
- 25 (1) Schedule 5 is amended as follows.
- (2) In paragraph 27 (interest on unpaid tax etc)—
- (a) after sub-paragraph (8) insert—

“(8A) Sub-paragraph (8B) below applies where under section 50A of this Act the Commissioners assess an amount as being due from a person who is not a registered person in respect of a taxable disposal and notify it to the person.

(8B) The amount shall carry interest for the period which—

 - (a) begins with the day (or the last day of the period) notified under section 50A(2)(b), and
 - (b) ends with the day before that on which the amount is paid.”;
 - (b) in sub-paragraph (13)—
 - (i) in paragraph (a), after “or (7)” insert “or (8A)”;
 - (ii) in the words after paragraph (c), after “or (8)” insert “or (8B)”.
- (3) In paragraph 33 (assessments: time limits)—

- (a) in sub-paragraph (1)(a), after “section 50” insert “or 50A”;
 - (b) in sub-paragraph (1A), omit the word “or” at the end of paragraph (a) and after that paragraph insert—
 - “(aa) in the case of an assessment under section 50A, evidence of facts, sufficient in the Commissioners’ opinion to justify the making of the assessment, coming to their knowledge, or”.
- (4) In paragraph 36 (the register: publication)—
- (a) for the heading substitute “Publication of information by Commissioners”;
 - (b) after sub-paragraph (2) insert—
 - “(2A) The Commissioners may publish, by such means as they think fit—
 - (a) the names of persons assessed to tax under section 50A in respect of taxable disposals not made at a landfill site;
 - (b) the addresses of any places used by persons within paragraph (a) for making taxable disposals or otherwise for carrying on business.

This sub-paragraph does not apply where the assessment in question is subject to an outstanding appeal.”

PART 2

AMENDMENTS OF OTHER ACTS

FA 2008

- 26 (1) Schedule 36 to FA 2008 (information and inspection powers) is amended as follows.
- (2) In paragraph 60 (business), after sub-paragraph (1) insert—
- “(1A) A person who under section 41 of FA 1996 is liable to pay landfill tax charged on a taxable disposal is treated for the purposes of this Schedule (subject to regulations under this paragraph) as carrying on a business.”
- (3) In paragraph 61A (involved third parties), in entry 12 of the table, for “landfill disposal” substitute “disposal of material”.
- 27 (1) Schedule 41 to that Act (penalties: failure to notify etc) is amended as follows.
- (2) In the table in paragraph 1, in the entry for landfill tax, for “section 47(2) and (3)” substitute “section 47(2), (3) and (3A)”.
- (3) After paragraph 3 insert—

“Involvement in landfill disposal by unregistered person

- 3A A penalty is payable by a person (“P”) where P does an act which enables HMRC to assess an amount as landfill tax due from P under section 50A of FA 1996.”

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- (4) In paragraph 5 (degrees of culpability), in sub-paragraph (3), after “a relevant excise provision” insert “, or to assess an amount of landfill tax as due from P under section 50A of FA 1996,”.
- (5) After paragraph 6C insert—
 - “6CA (1) The penalty payable under paragraph 3A is—
 - (a) for a deliberate and concealed act or failure, 100% of the potential lost revenue, and
 - (b) for a deliberate but not concealed act or failure, 70% of the potential lost revenue.
 - (2) No penalty is payable under paragraph 3A in any other case.”
- (6) In paragraph 7 (potential lost revenue)—
 - (a) after sub-paragraph (8) insert—
 - “(8A) In the case of a relevant obligation under section 47 of FA 1996 (which relates to landfill tax), the potential lost revenue is the amount of tax (if any) for which P is liable for the period—
 - (a) beginning with the date with effect from which P is required in accordance with that section to be registered or (as the case may be) from which the Commissioners may register P under that section, and
 - (b) ending with the day on which HMRC received notification of, or otherwise became fully aware of, P’s liability to be registered or (as the case may be) the Commissioners’ power to register P.”;
 - (b) in sub-paragraph (9) omit “, landfill tax”.
- (7) After paragraph 9 insert—
 - “9A In the case of the doing of an act which enables HMRC to assess an amount of landfill tax as due under section 50A of FA 1996, the potential lost revenue is the amount of the tax which may be assessed as due.”

FA 2011

- 28 In FA 2011, in Schedule 23 (data-gathering powers), in paragraph 25(c), for “landfill disposal” substitute “disposal of material”.

PART 3

COMMENCEMENT AND TRANSITIONAL PROVISIONS

Commencement

- 29 (1) The amendments made by this Schedule have effect in relation to disposals that are made (or treated as made) on or after 1 April 2018.
- (2) Sub-paragraph (1) does not apply to the amendments made by paragraph 17 (as to which, see paragraph 30).

Registration

- 30 (1) In section 47 of FA 1996 as it has effect following the amendments made by this Schedule—
- (a) the reference to taxable activities in subsection (3)(a) does not include taxable activities that are to be carried out elsewhere than at a landfill site before 1 April 2018;
 - (b) subsection (3A) has effect only where the intention of carrying out taxable activities elsewhere than at a landfill site is formed on or after 1 April 2018;
 - (c) subsection (4), as it applies in relation to taxable activities carried out elsewhere than at a landfill site, has effect only where the person ceases on or after 1 April 2018 to have the intention of carrying out the activities;
 - (d) subsection (5A), as it applies in relation to taxable activities carried out before 1 April 2018, has effect as if “1 April 2018” were substituted for “the date when the person begins carrying out those activities”.
- (2) Where a person is registered under section 47 of FA 1996 immediately before the day on which this Act is passed, the registration continues after that day until terminated in accordance with that section (as amended by paragraph 17) or otherwise.

Disposals before April 2018 at places other than landfill sites

- 31 (1) Where the Commissioners become aware of a disposal that—
- (a) has been made at a place other than a landfill site,
 - (b) would, if made on or after 1 April 2018, require a permit or licence mentioned in subsection (4) of section 40 of FA 1996 (as that section has effect on that day), and
 - (c) is not chargeable to tax apart from this paragraph,
- the disposal is treated for the purposes of Part 3 of FA 1996 as having been made at that place on 1 April 2018.
- (2) But a person cannot be guilty of an offence, or liable to a civil penalty, solely as a result of the retrospective effect of this paragraph.
- 32 (1) A person who is liable (by virtue of paragraph 31) to pay tax on a disposal made before 1 April 2018 at a place other than a landfill site must—
- (a) notify the Commissioners of the disposal, and
 - (b) provide the Commissioners with the required information,
- no later than 30 April 2018.
- (2) The required information is—
- (a) the place where the disposal was made;
 - (b) the nature and weight of the material disposed of;
 - (c) any other information prescribed by regulations.
- (3) Subsections (2), (3), (6), (8) and (9) of section 71 of FA 1996 (orders and regulations) apply to regulations under sub-paragraph (2)(c) as they apply to regulations under Part 3 of that Act.
- 33 Schedule 41 to FA 2008 (penalties: failure to notify etc) has effect as if—
- (a) the obligation under paragraph 32 above were an obligation specified in the Table in paragraph 1 of that Schedule;

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- (b) a reference in paragraph 6CA (inserted by paragraph 27(5) above) to paragraph 3A included a reference to paragraph 1 as it has effect by virtue of paragraph (a) above.

34 Paragraphs 31 to 33 come into force on 1 April 2018.

Interpretation

35 Expressions used in this Part of this Schedule that are defined for the purposes of Part 3 of FA 1996 have the same meaning in this Part of this Schedule as in Part 3 of that Act (as amended by this Schedule).