

# Landfill Tax (Scotland) Bill

[AS AMENDED AT STAGE 2]

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**Amendments to the Bill since the previous version are indicated by sidelining in the right margin. Wherever possible, provisions that were in the Bill as introduced retain the original numbering.**

# Landfill Tax (Scotland) Bill

## [AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about the taxation of disposals to landfill.

### PART 1

#### SCOTTISH LANDFILL TAX

#### 1 The tax

- 5 (1) A tax (to be known as Scottish landfill tax) is to be charged in accordance with this Act.  
(2) The Tax Authority is to be responsible for the collection and management of the tax.

#### 2 Overview

This Act is arranged as follows—

Part 2 contains provision for the key concepts underlying the tax including—

- 10 (a) what is a taxable disposal,  
(b) what disposals are exempt from tax,  
(c) how to calculate the amount of tax,  
(d) who is liable to pay the tax,  
(e) when credit is available in relation to the tax,

15 Part 3 contains provision about the administration of the tax,

Part 4 contains provision about the Tax Authority and definitions of expressions used in the Act,

Part 5 contains provision about subordinate legislation powers and commencement as well as other final provisions.

20

### 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).
- 5 (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**

- 10 (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.
- 15 (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**

- 20 (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.
- 25 (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.
- 30 (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).
- 35 (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 2013 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—
- 5 (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.
- 10 (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**

- 15 (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—
- 20 (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.
- 25 (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
- 30 (e) the arrangements for payment of tax by a controller.
- (5) The regulations may modify any enactment (including this Act).

### *Credit*

### **18 Credit: general**

- 35 (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.

### **PART 3**

#### ADMINISTRATION

##### *Taxable activities*

#### **21 Taxable activities**

- (1) A person (P) carries out a taxable activity if—
- (a) P makes a taxable disposal in respect of which P is liable to pay tax, or
  - (b) P permits another person to make a taxable disposal in respect of which P is liable to pay tax.
- (2) Where—
- (a) a taxable disposal is made, and
  - (b) it is made without the knowledge of the person who is liable to pay tax in respect of it,
- the person is, for the purposes of this section, to be taken to permit the disposal.

#### *Registration*

#### **22 Registration**

- (1) The Tax Authority must keep a register containing such information as the Tax Authority thinks is required for the purposes of the collection and management of the tax.
- (2) A person who—
- (a) carries out taxable activities, and
  - (b) is not registered,
- is liable to be registered.
- (3) Where—
- (a) a person at any time forms the intention of carrying out taxable activities, and
  - (b) the person is not registered,
- the person must notify the Tax Authority of that intention.
- (4) A person who at any time ceases to have the intention of carrying out taxable activities must notify the Tax Authority of that fact.



(5) Where a person is liable to be registered by virtue of subsection (2), the Tax Authority must register the person with effect from the time when the person begins to carry out taxable activities (whether or not the person notifies the Tax Authority under subsection (3)).

5 (6) Where the Tax Authority is satisfied that a person has ceased to carry out taxable activities it may cancel the person's registration with effect from the earliest practicable time after the person ceased to carry out taxable activities (whether or not the person notifies the Tax Authority under subsection (4)).

(7) Where—

- 10 (a) a person notifies the Tax Authority under subsection (4),  
(b) it is satisfied that the person will not carry out taxable activities,  
(c) it is satisfied that no tax which the person is liable to pay is unpaid,  
(d) it is satisfied that no credit to which the person is entitled under regulations made under section 18 is outstanding, and  
15 (e) subsection (8) does not apply,

the Tax Authority must cancel the person's registration with effect from the earliest practicable time after the person ceases to carry out taxable activities.

(8) Where—

- (a) a person notifies the Tax Authority under subsection (4), and  
20 (b) it is satisfied that the person has not carried out, and will not carry out, taxable activities,

the Tax Authority must cancel the person's registration with effect from the time when the person ceased to have the intention to carry out taxable activities.

(9) For the purposes of this section, the Scottish Ministers may, by regulations, make provision—

- 25 (a) as to the time within which a notification is to be made,  
(b) 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,  
30 (c) requiring a person who has made a notification to notify the Tax Authority if any information contained in or provided in connection with the notification is or becomes inaccurate,  
(d) as to the correction of entries in the register.

(10) References in this Act to a registrable person are to a person who—

- (a) is registered under this section, or  
35 (b) is liable to be registered under this section.

### **23 Information required to keep register up to date**

(1) The Scottish Ministers may, by regulations, make provision requiring a registrable person to notify the Tax Authority of particulars of changes in circumstances relating to the registrable person (or any business carried on by the registrable person) which—

- 40 (a) appear to the Tax Authority to be required for the purpose of keeping the register kept under section 22 up to date, and

(b) are of a description specified in the regulations.

(2) The regulations may, in particular, make provision—

(a) as to the time within which a notification is to be made,

(b) as to the form and manner in which a notification is to be made,

(c) requiring a person who has made a notification to notify the Tax Authority if any information contained in or provided in connection with the notification is or becomes inaccurate.

## 24 Publication of the register

(1) The Tax Authority may publish, by such means as it thinks fit, information which—

(a) is derived from the register kept under section 22, and

(b) falls within any of the descriptions set out below.

(2) The descriptions are—

(a) the names of registered persons,

(b) the addresses of any sites or other premises at which they carry on business,

(c) the registration numbers assigned to them in the register,

(d) the fact (where it is the case) that the registered person is a body corporate which by virtue of section 38 is treated as a member of a group,

(e) the names of the other bodies corporate treated under that section as members of the group,

(f) the addresses of any sites or other premises at which those other bodies carry on business.

(3) Information may be published in accordance with this section notwithstanding any obligation not to disclose the information that would otherwise apply.

### *Accounting for tax*

## 25 Accounting for tax and time for payment

The Scottish Ministers may, by regulations, provide that a registrable person must—

(a) account for tax by reference to such periods (“accounting periods”) as may be determined by or under the regulations,

(b) make, in relation to accounting periods, returns in such form and at such times as may be so determined,

(c) pay tax at such times and in such manner as may be so determined.

### *Time of disposal where invoice issued*

## 26 Time of disposal where invoice issued

(1) Where—

(a) a taxable disposal is in fact made on a particular day, and

(b) within the period of 14 days beginning with that day the person liable to pay tax in respect of the disposal issues a landfill invoice in respect of that disposal,

for the purposes of this Act the disposal is to be treated as made at the time the invoice is issued.

- 5 (2) Subsection (1) does not apply if the person has notified the Tax Authority in writing that the person elects not to take advantage of that subsection.
- (3) A landfill invoice is a document containing such particulars as the Scottish Ministers may, by regulations, prescribe for the purposes of subsection (1).
- (4) The Tax Authority may at the request of a person direct that subsection (1) is to apply—
- 10 (a) in relation to disposals in respect of which the person is liable to pay tax, or
- (b) in relation to such disposals as may be specified in the direction,
- as if for the period of 14 days there were substituted such longer period as may be specified in the direction.

#### *Adjustment of contracts*

### 15 **27 Adjustment of contracts**

- (1) This section applies where—
- (a) material undergoes a landfill disposal,
- (b) a payment falls to be made under a disposal contract relating to the material, and
- 20 (c) after the making of the contract there is a change in the tax chargeable on the landfill disposal.
- (2) In such a case, the amount of any payment mentioned in subsection (1)(b) is to be adjusted, unless the disposal contract otherwise provides, so as to reflect the tax chargeable on the landfill disposal.
- (3) For the purposes of this section a disposal contract relating to material is a contract
- 25 providing for the disposal of the material, and it is immaterial—
- (a) when the contract was made,
- (b) whether the contract also provides for other matters,
- (c) whether the contract provides for a method of disposal and (if it does) what method it provides for.
- 30 (4) The reference in subsection (1) to a change in the tax chargeable is a reference to a change—
- (a) to or from no tax being chargeable, or
- (b) in the amount of tax chargeable.

#### *Evidence about tax status*

### 35 **28 Evidence about tax status**

- (1) A certificate of the Tax Authority—
- (a) that a person was or was not at any time registered under section 22, or

(b) that any return required by regulations made under section 25 has not been made or had not been made at any time,

is sufficient evidence of that fact until the contrary is proved.

- 5 (2) A copy of any document provided to the Tax Authority for the purposes of this Act and certified by it to be such a copy is admissible in any proceedings, whether civil or criminal, to the same extent as the document itself.
- (3) Any document purporting to be a certificate under subsection (1) or (2) is to be taken to be such a certificate until the contrary is proved.

#### *Recovery of overpaid tax*

### **29 Recovery of overpaid tax**

- 10 (1) Where a person has paid an amount to the Tax Authority by way of tax which was not tax due to it, it is liable to repay the amount to the person.
- (2) The Tax Authority is only liable to repay an amount under this section on a claim being made for the purpose.
- 15 (3) It is a defence, in relation to a claim under this section, that repayment of an amount would unjustly enrich the claimant.
- (4) The Tax Authority is not liable, on a claim made under this section, to repay any amount paid to it more than 4 years before the making of the claim.
- (5) A claim under this section must be made in such form and manner and supported by such documentary evidence as the Scottish Ministers may, by regulations, prescribe.
- 20 (6) Except as provided by this section, the Tax Authority is not liable to repay an amount paid to it by way of tax by virtue of the fact that it was not tax due to it.

#### *Information*

### **30 Information: material at landfill sites**

- 25 (1) The Scottish Ministers may, by regulations, make provision about giving the Tax Authority information relating to material at a landfill site or part of a landfill site.
- (2) The regulations may require a person to give information.
- (3) The regulations may—
- 30 (a) require a person, or authorise an authorised person to require a person, to designate a part of a landfill site (a “non-disposal area”), and
- (b) require material, or descriptions of material specified in the regulations, to be deposited in a non-disposal area.
- (4) The regulations may make provision about information relating to what is done with material.
- 35 (5) Subsections (2) to (4) do not prejudice the generality of subsection (1).

### **31 Information: site restoration**

- (1) Before commencing restoration of all or part of a landfill site, the operator of the site must—

- (a) notify the Tax Authority in writing that the restoration is to commence, and
  - (b) provide such other written information as the Tax Authority may require.
- (2) In this section “restoration” means work, other than capping waste, which is required by a relevant instrument to be carried out to restore a landfill site to use on completion of waste disposal operations.
- (3) The following are relevant instruments—
- (a) a planning permission,
  - (b) an authorisation.

*Record keeping*

**32 Records: registrable persons**

- (1) The Scottish Ministers may, by regulations, require registrable persons to make records.
- (2) The regulations may be framed by reference to such records as may be stipulated in any notice published by the Tax Authority in pursuance of the regulations and not withdrawn by a further notice.
- (3) The regulations may—
- (a) require registrable persons to preserve records of a description specified in the regulations (whether or not the records are required to be made in pursuance of regulations) for such period not exceeding 6 years as may be specified in the regulations,
  - (b) authorise the Tax Authority to direct that any such records need only be preserved for a shorter period than that specified in the regulations,
  - (c) authorise a direction to be made so as to apply generally or in such cases as the Tax Authority may stipulate.
- (4) A duty under regulations under this section to preserve records may be discharged—
- (a) by preserving them in any form and by any means, or
  - (b) by preserving the information contained in them in any form and by any means, subject to any conditions or exceptions specified in writing by the Tax Authority.

**33 Records: material at landfill sites**

- (1) The Scottish Ministers may, by regulations, require a person to make records relating to material at a landfill site or part of a landfill site.
- (2) The regulations may make provision about records relating to what is done with material.
- (3) Subsections (2) to (4) of section 32 apply in relation to regulations under this section as they apply in relation to regulations under section 32.
- (4) But, in the application of section 32(3)(a) in relation to regulations under this section, the reference to registrable persons has effect as a reference to persons.

**PART 4**

## GENERAL AND INTERPRETATION

*The Tax Authority***34 The Tax Authority**

- 5 (1) For the purposes of this Act, the Tax Authority is the Scottish Ministers.
- (2) The Scottish Ministers may, by order, amend subsection (1) to provide that another person is the Tax Authority.

**35 Delegation of functions to SEPA**

- 10 (1) The Tax Authority may delegate the exercise of any of its functions under this Act to SEPA.
- (2) But subsection (1) does not apply to any function of making an order or regulations.
- (3) A delegation under this section may be varied or revoked at any time.
- (4) A delegation under this section does not affect the Tax Authority's responsibility for the exercise of any functions delegated or the Authority's ability to carry out such functions.
- 15 (5) The Tax Authority may reimburse SEPA for any expenditure incurred which is attributable to the exercise by SEPA of functions delegated under this section.

**36 Review and appeal**

- (1) The Scottish Ministers may, by regulations, make provision for—
- 20 (a) the review by the Tax Authority, on the application of a specified person, of any specified kind of decision by the Tax Authority,
- (b) the appeal by a specified person to a tribunal or court against any specified kind of decision by the Tax Authority.
- (2) The regulations may modify any enactment (including this Act).
- (3) In this section, "specified" means specified in the regulations.

*Application of Act to partnerships, groups of companies etc.***37 Partnership, bankruptcy, transfer of business etc.**

- 30 (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.
- 35 (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—
- 5           (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,
- 10           (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.
- 15           (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,
- 20           (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.
- 25

### **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—
- 30           (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,
- 35           (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
- 40           (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.
- 5 (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.
- 10 (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,
  - 15 (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
  - 20 (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
  - 25 (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—
- 30 (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—
  - 35 (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.

5

### *Interpretation*

## **39 Interpretation**

In this Act—

“accounting period” is to be construed in accordance with section 25,

10

“authorisation” means an authorisation under regulations under section 10 of the Regulatory Reform (Scotland) Act 2013,

“authorised person” means any person authorised by the Tax Authority,

“material” means material of all kinds, including objects, substances and products of all kinds,

“operator” has the meaning given by section 12(2),

15

“planning permission” has the meaning given by section 277 of the Town and Country Planning (Scotland) Act 1997,

“registrable person” has the meaning given by section 22(10),

“SEPA” means the Scottish Environment Protection Agency,

“the tax” means Scottish landfill tax,

20

“the Tax Authority” has the meaning given by section 34,

“taxable activity” is to be construed in accordance with section 21,

“taxable disposal” has the meaning given by section 3.

## **PART 5**

### FINAL PROVISIONS

25

### *Ancillary provision*

## **40 Ancillary provision**

- (1) The Scottish Ministers may, by order, make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision made by or under this Act.
- (2) An order under subsection (1) may modify any enactment (including this Act).

30

### *Subordinate legislation*

## **41 Subordinate legislation**

- (1) Any power conferred by this Act on the Scottish Ministers to make an order or regulations includes the power to make—

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- (a) different provision for different cases or description of case or for different purposes,
- (b) such incidental, supplementary, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient.
- 5 (2) Orders and regulations under the following provisions are subject to the affirmative procedure—
- (za) section 11(1),
- (a) the first order under section 13(2) or (5),
- (aa) section 17(1),
- 10 (b) section 34(2).
- (3) An order mentioned in subsection (4)—
- (a) must be laid before the Scottish Parliament, and
- (b) ceases to have effect at the expiry of the period of 28 days beginning with the date on which it was made unless, before the expiry of that period, the order has been
- 15 approved by resolution of the Parliament.
- (4) The orders are—
- (a) an order under section 5(5) providing for anything which would otherwise not be a disposal of material by way of landfill to be such a disposal,
- (b) an order under section 6(1) which produces the result that a landfill site activity which would otherwise not be prescribed for the purposes of section 6 is so
- 20 prescribed,
- (d) a second or subsequent order under section 13(2) or (5),
- (e) an order under section 13(4),
- (f) an order under section 14(7) other than one which provides only that an earlier
- 25 order under section 14(7) is not to apply to material.
- (5) In reckoning for the purposes of subsection (3)(b) any period of 28 days, no account is to be taken of any period during which the Scottish Parliament is—
- (a) dissolved, or
- (b) in recess for more than 4 days.
- 30 (6) Subsection (3)(b) is without prejudice to—
- (a) anything previously done by reference to an order mentioned in subsection (4), or
- (b) the making of a new order.
- (7) Orders and regulations under the following provisions which add to, replace or omit the text of any Act (including this Act) are subject to the affirmative procedure—
- 35 (a) section 5(5) (except an order mentioned in subsection (4)(a)),
- (b) section 6(1) (except an order mentioned in subsection (4)(b)),
- (e) section 36(1), and
- (f) section 40(1).
- (8) All other orders and regulations under this Act are subject to the negative procedure.

- (9) This section does not apply to an order under section 43(2).

*Crown application*

**42 Crown application**

Nothing in this Act affects Her Majesty in Her private capacity.

5

*Commencement and short title*

**43 Commencement**

- (1) This section and sections 34, 35, 40, 41, 42 and 44 come into force on the day of Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may, by order, appoint.
- (3) An order under subsection (2) may contain transitional, transitory or saving provision.

10

**44 Short title**

The short title of this Act is the Landfill Tax (Scotland) Act 2013.

# **Landfill Tax (Scotland) Bill**

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about the taxation of disposals to landfill.

Introduced by: John Swinney  
On: 17 April 2013  
Bill type: Government Bill

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