
WELSH STATUTORY INSTRUMENTS

2018 No. 101

**The Landfill Disposals Tax
(Administration) (Wales) Regulations 2018**

PART 3

CUSTOMER INSOLVENCY CREDIT

Entitlement to credit

Circumstances giving rise to entitlement to credit

14.—(1) A person (“the claimant”) is entitled to customer insolvency credit in respect of a taxable disposal if the following requirements are met.

Requirement 1

The disposal has been made at an authorised landfill site.

Requirement 2

The claimant—

- (a) was registered as the operator of the site at the time of the disposal, and
- (b) made the disposal or permitted the disposal to be made.

Requirement 3

The disposal was made for consideration in money for another person (“the customer”) to whom the claimant—

- (a) is not connected, and
- (b) was not connected at the time of the disposal.

Requirement 4

The claimant has issued a landfill invoice to the customer in respect of the taxable disposal—

- (a) within the period of 14 days beginning with the day on which the disposal was made, or
- (b) within any longer period specified in a notice issued to the claimant under section 41(6) of LDTA.

Requirement 5

The claimant—

- (a) has accounted for the amount of tax chargeable in respect of the disposal in a tax return, and
- (b) has paid the amount of tax payable under section 42(1) or (1A) of LDTA in respect of the return.

Requirement 6

The customer—

- (a) has become insolvent within the period of 12 months beginning with the date on which the landfill invoice was issued, and
- (b) has failed to pay the claimant the whole or part of the consideration due in respect of the disposal.

Requirement 7

The claimant has been unable to recover the unpaid consideration, despite having taken reasonable steps to do so.

Requirement 8

The claimant—

- (a) has set off against the amount of unpaid consideration any debt owed by the claimant to the customer which may be set off against that amount, and
- (b) has reduced the amount of unpaid consideration by the value of any enforceable security that the claimant holds in relation to the customer,

but an amount of consideration remains outstanding in respect of the disposal.

(2) Despite paragraph (1), a person is not entitled to customer insolvency credit in respect of a taxable disposal—

- (a) if the person has previously benefited from any amount of customer insolvency credit in respect of the disposal, or
- (b) if a landfill invoice has been issued in respect of the disposal after the end of the later of the periods mentioned in requirement 4.

(3) In this Part, references to outstanding consideration, in relation to a taxable disposal, are references to the amount of consideration mentioned at the end of requirement 8.

Supplementary provision relating to entitlement to credit

15.—(1) This regulation makes supplementary provision for the purposes of regulation 14.

(2) Sections 1122 and 1123 of the Corporation Tax Act 2010⁽¹⁾ (connected persons) apply for the purpose of determining whether or not the claimant is connected with the customer as mentioned in requirement 3, and section 1122 of that Act has effect as if after subsection (8) there were inserted—

“(9) A person (“A”) is connected with any person who is an employee of A or by whom A is employed.

(10) For the purposes of this section, any director or other officer of a company is to be treated as employed by that company.”

(3) Where the customer has made a payment to the claimant, regulation 16 applies for the purpose of determining whether, and to what extent, the payment is to be treated as being allocated to pay the consideration due in respect of the disposal (and consequently whether the customer has failed to pay the whole or part of the consideration for the disposal as mentioned in requirement 6).

(4) Regulation 17 applies for the purpose of determining whether the customer has become insolvent as mentioned in requirement 6.

(5) In requirement 8, “security” means—

- (a) in relation to Wales, England and Northern Ireland, any mortgage, charge, lien or other security;

(1) 2010 c.4.

- (b) in relation to Scotland, any security (whether heritable or moveable), any floating charge and any right of lien or preference and right of retention (other than a right of compensation or set-off);
- (c) in relation to any country or territory outside the United Kingdom, anything that has an effect corresponding to anything mentioned in sub-paragraph (a) or (b).

(6) Regulation 21(3) applies for the purpose of determining whether the claimant has previously benefited from an amount of customer insolvency credit in respect of the disposal as mentioned in regulation 14(2).

Consideration for taxable disposal: allocation of payments

16.—(1) Where—

- (a) a claimant receives a payment from a customer for whom a taxable disposal has been made, and
- (b) the customer owes a debt to the claimant in respect of the consideration for the disposal,

the payment is normally to be treated as being allocated to that debt.

(2) But where the customer also owes a debt to the claimant in respect of one or more matters (whether or not relating to taxable disposals) other than the consideration for the disposal, the payment is to be treated instead—

- (a) as being allocated to the debt that arose earliest; and
- (b) if the amount of the payment exceeds that debt, as being subsequently allocated to the other debts in the order of the dates in which they arose.

(3) Where the effect of paragraph (2) is to require a payment (or part of a payment) to be allocated to two or more debts arising on the same day, the amount of payment that is to be treated as being allocated to a particular debt arising on that day is to be calculated in accordance with the following formula—

$$\text{Allocation} = TP \times \frac{D}{TD}$$

where—

- (a) “Allocation” is the amount of the allocation;
- (b) TP is the total amount of payment to be allocated under paragraph (2) to the debts arising on that day;
- (c) D is the amount of the particular debt in question;
- (d) TD is the total amount of all of the debts which—
 - (i) arose on that day, and
 - (ii) are owed by the customer to the claimant.

(4) Where a landfill invoice has been issued in respect of more than one taxable disposal, each debt in respect of the consideration for each disposal is to be treated as arising on the same day (namely, the day after that by which the invoice must be paid); and paragraphs (2) and (3) apply accordingly.

Customer insolvency

17.—(1) A customer becomes insolvent for the purposes of regulation 14 if—

- (a) a company voluntary arrangement takes effect in relation to the customer under Part 1 of the Insolvency Act 1986(2);
 - (b) an administration order (within the meaning of Schedule B1 to that Act) is made, or a receiver or manager, or an administrative receiver, is appointed in relation to the customer;
 - (c) a creditors' voluntary winding up (within the meaning of Part 4 of that Act), or a winding up by the court under Chapter 6 of Part 4 of that Act, is commenced in relation to the customer;
 - (d) a debt relief order is made in relation to the customer under Part 7A of that Act;
 - (e) an individual voluntary arrangement takes effect in relation to the customer under Part 8 of that Act;
 - (f) a bankruptcy order (within the meaning of Part 9 of that Act) is made in relation to the customer;
 - (g) any corresponding event occurs that has effect under or as a result of the law of Scotland or Northern Ireland or a country or territory outside the United Kingdom.
- (2) In this Part, references to an insolvency event are references to an event described in paragraph (1)(a) to (g).