

## SCHEDULES

### SCHEDULE 5

#### LANDFILL TAX

#### PART III

#### RECOVERY

##### *General*

- 11 Tax due from any person shall be recoverable as a debt due to the Crown.

##### *Preferential and preferred debts*

- 12 (1) In the Insolvency Act 1986, in section 386(1) (preferential debts) the words “landfill tax,” shall be inserted after “insurance premium tax,” and in Schedule 6 (categories of preferential debts) the following paragraph shall be inserted after paragraph 3A—

“**3B** Any landfill tax which is referable to the period of 6 months next before the relevant date (which period is referred to below as “the 6-month period”).

For the purposes of this paragraph—

- (a) where the whole of the accounting period to which any landfill tax is attributable falls within the 6-month period, the whole amount of that tax is referable to that period; and
- (b) in any other case the amount of any landfill tax which is referable to the 6-month period is the proportion of the tax which is equal to such proportion (if any) of the accounting period in question as falls within the 6-month period;

and references here to accounting periods shall be construed in accordance with Part III of the Finance Act 1996.”

- (2) In the Bankruptcy (Scotland) Act 1985, Schedule 3 (preferred debts) shall be amended as mentioned in sub-paragraphs (3) and (4) below.

- (3) In paragraph 2 the following sub-paragraph shall be inserted after sub-paragraph (1A)—

“(1B) Any landfill tax which is referable to the period of six months next before the relevant date.”

- (4) The following shall be inserted after paragraph 8A—

##### *“Periods to which landfill tax referable*

- 8B (1) For the purpose of paragraph 2(1B) of Part I of this Schedule—

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- (a) where the whole of the accounting period to which any landfill tax is attributable falls within the period of six months next before the relevant date (“the relevant period”), the whole amount of that tax shall be referable to the relevant period; and
- (b) in any other case the amount of any landfill tax which shall be referable to the relevant period shall be the proportion of the tax which is equal to such proportion (if any) of the accounting period in question as falls within the relevant period.

(2) In sub-paragraph (1) above “accounting period” shall be construed in accordance with Part III of the Finance Act 1996.”

- (5) In the Insolvency (Northern Ireland) Order 1989, in Article 346(1) (preferential debts) the words “landfill tax” shall be inserted after “insurance premium tax” and in Schedule 4 (categories of preferential debts) the following paragraph shall be inserted after paragraph 3A—

“3B Any landfill tax which is referable to the period of 6 months next before the relevant date (which period is referred to below as “the 6-month period”).

For the purposes of this paragraph—

- (a) where the whole of the accounting period to which any landfill tax is attributable falls within the 6-month period, the whole amount of that tax is referable to that period; and
- (b) in any other case the amount of any landfill tax which is referable to the 6-month period is the proportion of the tax which is equal to such proportion (if any) of the accounting period in question as falls within the 6-month period;

and references here to accounting periods shall be construed in accordance with Part III of the Finance Act 1996.”

#### *Distress and diligence*

- 13 (1) Regulations may make provision in respect of England and Wales and Northern Ireland—

- (a) for authorising distress to be levied on the goods and chattels of any person refusing or neglecting to pay any tax due from him or any amount recoverable as if it were tax due from him;
- (b) for the disposal of any goods or chattels on which distress is levied in pursuance of the regulations;
- (c) for the imposition and recovery of costs, charges, expenses and fees in connection with anything done under the regulations.

- (2) In respect of Scotland, where any tax or any amount recoverable as if it were tax is due and has not been paid, the sheriff, on an application by the Commissioners accompanied by a certificate by the Commissioners—

- (a) stating that none of the persons specified in the application has paid the tax or other sum due from him,
- (b) stating that payment of the amount due from each such person has been demanded from him, and
- (c) specifying the amount due from and unpaid by each such person,

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shall grant a summary warrant in a form prescribed by act of sederunt authorising the recovery, by any of the diligences mentioned in sub-paragraph (3) below, of the amount remaining due and unpaid.

- (3) The diligences referred to in sub-paragraph (2) above are—
  - (a) a poinding and sale in accordance with Schedule 5 to the Debtors (Scotland) Act 1987;
  - (b) an earnings arrestment;
  - (c) an arrestment and action of furthcoming or sale.
- (4) Subject to sub-paragraph (5) below and without prejudice to paragraphs 25 to 34 of Schedule 5 to the Debtors (Scotland) Act 1987 (expenses of poinding and sale) the sheriff officer's fees, together with the outlays necessarily incurred by him, in connection with the execution of a summary warrant shall be chargeable against the debtor.
- (5) No fee shall be chargeable by the sheriff officer against the debtor for collecting, and accounting to the Commissioners for, sums paid to him by the debtor in respect of the amount owing.
- (6) Regulations may make provision for anything which the Commissioners may do under sub-paragraphs (2) to (5) above to be done by an officer of the Commissioners holding such rank as the regulations may specify.

*Recovery of overpaid tax*

- 14 (1) Where a person has paid an amount to the Commissioners by way of tax which was not tax due to them, they shall be liable to repay the amount to him.
- (2) The Commissioners shall only be liable to repay an amount under this paragraph on a claim being made for the purpose.
- (3) It shall be a defence, in relation to a claim under this paragraph, that repayment of an amount would unjustly enrich the claimant.
- (4) No amount may be claimed under this paragraph after the expiry of six years from the date on which it was paid.
- (5) A claim under this paragraph shall be made in such form and manner and shall be supported by such documentary evidence as may be prescribed by regulations.
- (6) Except as provided by this paragraph, the Commissioners shall not be liable to repay an amount paid to them by way of tax by virtue of the fact that it was not tax due to them.