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## SCHEDULES

### SCHEDULE 5

#### LANDFILL TAX

##### Modifications etc. (not altering text)

**C1** Sch. 5 extended (19.3.1997) by 1997 c. 16, s. 50(1), Sch. 5 Pt. I para. 4(3)

### [<sup>F1</sup>PART VIII

#### SECONDARY LIABILITY: CONTROLLERS OF LANDFILL SITES

##### Textual Amendments

**F1** Sch. 5 Pt. VIII paras. 48-61 added (28.7.2000 with effect in relation to taxable disposals made on or after 28.7.2000) by 2000 c. 17, s. 142(3)(4), Sch. 37

##### *Meaning of controller*

- 48 (1) For the purposes of this Part of this Schedule a person is the controller of the whole, or a part, of a landfill site at a given time if he determines, or is entitled to determine, what disposals of material, if any, may be made—
- (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.
- (2) But a person who, because he is an employee or agent of another, determines or is entitled to determine what disposals may be made at a landfill site or any part of a landfill site is not the controller of that site or, as the case may be, that part of that site.
- (3) Where a person is the controller of the whole or a part of a landfill site, that site or, as the case may be, that part of the site is referred to in this Part of this Schedule as being under his control.
- (4) Any reference in this Part of this Schedule to a controller (without more) is a reference to a controller of the whole or a part of a landfill site.

##### *Secondary liability*

- 49 (1) Where—
- (a) a taxable disposal is made at a landfill site,
  - (b) at the time when that disposal is made a person is the operator of the landfill site by virtue of section 67(a), (c) or (e) of this Act, and

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- (c) at that time a person other than the operator mentioned in paragraph (b) above is the controller of the whole or a part of the landfill site, the controller shall be liable to pay to the Commissioners an amount of the landfill tax chargeable on the disposal.
- (2) The amount which the controller is liable to pay shall be determined in accordance with the following provisions of this paragraph.
- (3) In a case where the whole of the landfill site is under the control of the controller, he shall be liable to pay the whole of the landfill tax chargeable.
- (4) In a case where a part of the landfill site is under the control of the controller, he shall be liable to pay an amount of the landfill tax calculated in accordance with sub-paragraphs (5) and (6) below.
- (5) The amount of landfill tax which the controller is liable to pay is the amount which would have been chargeable had a separate taxable disposal consisting of the amount of material referred to in sub-paragraph (6) below been made at the time of the disposal mentioned in sub-paragraph (1)(a) above.
- (6) That amount of material is the amount by weight of the material comprised in the disposal mentioned in sub-paragraph (1)(a) above which was disposed of on the part of the landfill site under the control of the controller.
- (7) If the amount mentioned in sub-paragraph (6) above is nil, the controller shall have no liability under sub-paragraph (1) above in relation to landfill tax chargeable on the disposal.
- (8) For the purposes of sub-paragraph (1)(b) and (c) above—
- (a) section 61 of this Act, and
  - (b) any regulations made under section 62 of this Act,
- shall not apply for determining the time when the disposal in question is made.

*Operator entitled to credit*

- 50 (1) This paragraph applies where—
- (a) the operator of a landfill site is liable to pay landfill tax on a taxable disposal by reference to a particular accounting period,
  - (b) a controller of the whole or a part of that site is (apart from this paragraph) liable under paragraph 49 above to pay an amount of that tax, and
  - (c) for the accounting period in question the operator is entitled to credit under regulations made under section 51 of this Act.
- (2) The amount of the tax which the controller is (apart from this sub-paragraph) liable to pay shall be reduced by the amount calculated in accordance with the following formula—

$$\frac{A \times C}{G}$$

where—

A is the amount of tax mentioned in sub-paragraph (1)(b) above;

C is the amount of credit mentioned in sub-paragraph (1)(c) above; and

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G is the operator's gross tax liability for the accounting period in question.

- (3) For the purposes of sub-paragraph (2) above, the operator's gross tax liability for the accounting period in question is the gross amount of landfill tax—
- (a) which is chargeable on disposals made at all landfill sites of which he is the operator, and
  - (b) for which he is required to account by reference to that accounting period.
- (4) In sub-paragraph (3) above, the gross amount of landfill tax means the amount of tax before any credit or any other adjustment is taken into account in the period in question.
- (5) If the amount calculated in accordance with the formula in sub-paragraph (2) above is greater than the amount of tax mentioned in sub-paragraph (1)(b) above, the amount of the tax which the controller is liable to pay shall be reduced to nil.

*Payment of secondary liability*

- 51 (1) This paragraph applies where a controller is liable under paragraph 49 above (after taking account of any reduction under paragraph 50 above) to pay an amount of landfill tax ("the relevant amount").
- (2) The controller is required to pay the relevant amount to the Commissioners only if—
- (a) a notice containing the required information is served on him, or
  - (b) other reasonable steps are taken with a view to bringing the required information to his attention,
- before the end of the period of two years beginning with the day immediately following the relevant accounting day.
- (3) The relevant accounting day is the last day of the accounting period by reference to which the landfill site operator liable to pay the landfill tax in question is required to account for that tax.
- (4) If the controller is required to pay the relevant amount by virtue of this paragraph, the amount shall be paid before the end of the period of thirty days beginning with the day immediately following the notification day.
- (5) The notification day is—
- (a) in a case where notice is served on a controller as mentioned in sub-paragraph (2)(a) above, the day on which the notice is served, or
  - (b) in a case where other reasonable steps are taken as mentioned in sub-paragraph (2)(b) above, the day on which the last of those steps is taken.
- (6) For the purposes of sub-paragraph (2) above the required information is the relevant amount and, if that amount is one reduced in accordance with paragraph 50 above, also—
- (a) the amount of the controller's liability under paragraph 49 above apart from the reduction,
  - (b) the amount of credit to which the operator is entitled, and
  - (c) the operator's gross tax liability.

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### *Assessments*

- 52 (1) Where an amount of landfill tax is—
- (a) assessed under section 50 of this Act, and
  - (b) notified to a licensed operator,
- the Commissioners may also determine that a controller of the whole or a part of any landfill site operated by the licensed operator shall be liable to pay so much of the amount assessed as they consider just and equitable.
- (2) A controller is required to pay an amount determined under sub-paragraph (1) above only if—
- (a) a notice stating the amount is served on him, or
  - (b) other reasonable steps are taken with a view to bringing the amount of the liability to his attention,
- before the expiry of the period of two years beginning with the day immediately following the assessment day.
- (3) The assessment day is the day on which the assessment in question is notified to the licensed operator.
- (4) If a controller is required to pay an amount by virtue of this paragraph, it shall be paid before the end of the period of thirty days beginning with the day immediately following the notification day.
- (5) The notification day is—
- (a) in a case where notice is served on a controller as mentioned in sub-paragraph (2)(a) above, the day on which the notice is served, or
  - (b) in a case where other reasonable steps are taken as mentioned in sub-paragraph (2)(b) above, the day on which the last of those steps is taken.
- (6) For the purposes of this paragraph a licensed operator is a person who is the operator of a landfill site by virtue of section 67(a), (c) or (e) of this Act.

### *Assessment withdrawn or reduced*

- 53 (1) Where—
- (a) a controller is liable to pay an amount determined under paragraph 52 above, and
  - (b) the assessment notified to the licensed operator is withdrawn or reduced,
- the Commissioners may determine that the controller's liability is to be cancelled or to be reduced to such an amount as they consider just and equitable.
- (2) Sub-paragraphs (3) to (5) below apply where the Commissioners make a determination under sub-paragraph (1) above that the controller's liability is to be reduced (but not cancelled).
- (3) In such a case they shall—
- (a) serve the controller with notice stating the amount of the reduced liability, or
  - (b) take other reasonable steps with a view to bringing the reduced amount to the controller's attention.
- (4) If the controller has already been served with notice of the amount determined under paragraph 52 above, or if other steps have already been taken to bring that amount to his attention—

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- (a) the Commissioners shall serve the notice mentioned in sub-paragraph (3)(a) above, or take the steps mentioned in sub-paragraph (3)(b) above, before the end of the period of thirty days beginning with the day immediately following that on which they make the determination under sub-paragraph (1) above, and
  - (b) the reduced amount shall be payable, or treated as having been payable, on or before the day on which the amount referred to in sub-paragraph (1)(a) above would have been payable apart from this paragraph.
- (5) In a case where the controller has not been served with notice of the amount determined under paragraph 52 above, or no other steps have been taken to bring that amount to his attention, he shall be liable to pay the reduced amount only if—
- (a) the notice mentioned in sub-paragraph (3)(a) above is served, or
  - (b) the other steps mentioned in sub-paragraph (3)(b) above are taken,
- before the expiry of the period of two years beginning with the day immediately following that on which the Commissioners make the determination under sub-paragraph (1) above.
- (6) Sub-paragraph (7) below applies where—
- (a) the Commissioners make a determination under sub-paragraph (1) above that the controller's liability is to be cancelled, and
  - (b) the controller has already been served with notice of the amount determined under paragraph 52 above, or other steps have already been taken to bring that amount to his attention.
- (7) In such a case the Commissioners shall—
- (a) serve the controller with notice stating that the liability has been cancelled, or
  - (b) take other reasonable steps with a view to bringing the cancellation to the controller's attention,
- before the end of the period of thirty days beginning with the day immediately following that on which they make the determination that the liability is to be cancelled.

#### *Adjustments*

- 54 (1) This paragraph applies in any case where the liability of a licensed operator to pay landfill tax is adjusted otherwise than by—
- (a) his being entitled to credit under regulations made under section 51 of this Act,
  - (b) his being notified of an amount assessed under section 50 of this Act, or
  - (c) the withdrawal or reduction of an assessment under section 50 of this Act which was notified to him.
- (2) In such a case the Commissioners may determine that a controller of the whole or any part of a landfill site operated by the licensed operator—
- (a) shall be liable to pay to the Commissioners such an amount as they consider just and equitable, or
  - (b) shall be entitled to an allowance of such an amount as they consider just and equitable.
- (3) A controller is required to pay an amount determined under sub-paragraph (2)(a) above only if—

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- (a) a notice stating the amount is served on him, or
  - (b) other reasonable steps are taken with a view to bringing the amount of the liability to his attention,
- before the end of the period of two years beginning with the day immediately following the relevant accounting day.
- (4) The relevant accounting day is the last day of the accounting period of the operator within which the adjustment in question was taken into account.
  - (5) If a controller is required to pay an amount by virtue of sub-paragraph (3) above, it shall be paid before the end of the period of thirty days beginning with the day immediately following the notification day.
  - (6) The notification day is—
    - (a) in a case where notice is served on a controller as mentioned in sub-paragraph (3)(a) above, the day on which the notice is served, or
    - (b) in a case where other reasonable steps are taken as mentioned in sub-paragraph (3)(b) above, the day on which the last of those steps is taken.
  - (7) The Commissioners may determine in what manner a controller is to benefit from an allowance determined under sub-paragraph (2)(b) above.
  - (8) For the purposes of this paragraph a licensed operator is a person who is the operator of a landfill site by virtue of section 67(a), (c) or (e) of this Act.

*Amounts payable to be treated as tax*

- 55 An amount which a controller is required to pay under paragraph 52, 53 or 54(2) (a) above or under paragraph 58 below shall be deemed to be an amount of tax due from him and shall be recoverable accordingly.

*Controller not carrying out taxable activity*

- 56 A controller is not to be treated for the purposes of this Act as carrying out a taxable activity by reason only of any liability under this Part of this Schedule.

*Joint and several liability*

- 57 (1) In any case where the condition in sub-paragraph (4), (5) or (6) below is satisfied, the controller and the operator shall be jointly and severally liable for the principal liability.
- (2) But the amount which may be recovered from the controller in consequence of such liability shall not exceed the amount of the secondary liability.
- (3) For the purposes of this paragraph—
- (a) the principal liability is the amount referred to in sub-paragraph (4)(a), (5) (a) or (6)(a) below, as the case may be, and
  - (b) the secondary liability is the amount referred to in sub-paragraph (4)(b), (5) (b) or (6)(b) below, as the case may be.
- (4) The condition in this sub-paragraph is satisfied if—
- (a) the operator of a landfill site is liable under section 41 of this Act for landfill tax, and

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- (b) a controller is liable under paragraph 49 above, after taking account of any reduction under paragraph 50 above, to pay an amount of that tax.
- (5) The condition in this sub-paragraph is satisfied if—
- (a) the operator of a landfill site is notified of the amount of an assessment made under section 50 of this Act, and
  - (b) in consequence of a determination made under paragraph 52 above by the Commissioners in connection with the assessment, a controller is liable to pay an amount (after taking account of any reduction under paragraph 53 above).
- (6) The condition in this sub-paragraph is satisfied if—
- (a) the liability of the operator of a landfill site to pay landfill tax is adjusted in such a way that paragraph 54 above applies, and
  - (b) in consequence of a determination made under paragraph 54(2)(a) above by the Commissioners in connection with the adjustment, a controller is liable to pay an amount.

*Interest payable by a controller*

- 58 (1) This paragraph applies where—
- (a) the operator of a landfill site and the controller of the whole or a part of that site are by virtue of paragraph 57 above jointly and severally liable for an amount, and
  - (b) that amount carries interest by virtue of any provision of this Schedule.
- (2) The controller and the operator shall be jointly and severally liable to pay the interest.
- (3) But the amount which may be recovered from the controller in consequence of such liability shall not exceed the amount calculated in accordance with the following formula—

$$\frac{(I[A+B]) \times S}{P}$$

where—

I is the total amount of interest in question;

A is the amount of interest carried for the period which—

(a) begins with the first day of the period for which interest is carried, and

(b) ends with the day on which the controller becomes liable to pay the secondary liability;

B is the amount of interest carried for any day falling after that on which the secondary liability is met in full;

S is the amount of the secondary liability;

P is the amount of the principal liability.

In this paragraph secondary liability and principal liability have the same meaning as in paragraph 57 above.

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- (4) The controller is liable for an amount of interest only if—
- (a) a notice stating the amount is served on him, or
  - (b) other reasonable steps are taken with a view to bringing the amount of the liability to his attention,
- before the end of the period of two years beginning with the day immediately following the final day.
- (5) The final day is the last day of the period for which the interest in question is carried.
- (6) If the controller is required to pay an amount in accordance with this paragraph, it shall be paid before the end of the period of thirty days beginning with the day immediately following the notification day.
- (7) The notification day is—
- (a) in a case where notice is served on a controller as mentioned in sub-paragraph (4)(a) above, the day on which the notice is served, or
  - (b) in a case where other reasonable steps are taken as mentioned in sub-paragraph (4)(b) above, the day on which the last of those steps is taken.
- (8) Where by virtue of sub-paragraph (2) above a controller is liable to pay interest which arises under paragraph 27 above, paragraph 28 above shall apply in relation to that interest as it applies to interest which a person is liable under paragraph 27 above to pay.

#### *Reviews*

- 59 Section 54 of this Act shall apply to a decision of the Commissioners under this Part of this Schedule—
- (a) that a person is a controller,
  - (b) that a person is liable under this Part of this Schedule to pay any amount (including a penalty under paragraph 60 below),
  - (c) that a person is not entitled under this Part of this Schedule to an allowance, or
  - (d) as to the amount of any liability or any allowance under this Part of this Schedule,
- as it applies to the other decisions of the Commissioners specified in subsection (1) of that section.

#### *Notice that person is, or is no longer, a controller*

- 60 (1) This paragraph applies where—
- (a) on the date when this paragraph comes into force, a person is a controller of the whole or a part of a landfill site, or
  - (b) after that date, a person becomes or ceases to be a controller of the whole or a part of a landfill site.
- (2) The controller, and the operator of the landfill site in question, shall be under a duty to secure that notice which complies with the requirements of sub-paragraph (3) below appropriate to the case in question is given to the Commissioners.
- (3) The requirements of this sub-paragraph are that the notice—
- (a) states that a person is, has become or has ceased to be a controller,



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- (b) identifies that person and the site under his control or formerly under his control,
  - (c) states the date when he became or ceased to be the controller, and
  - (d) is given within the period of thirty days beginning with the day immediately following—
    - (i) the day when this paragraph comes into force, in a case falling within sub-paragraph (1)(a) above, or
    - (ii) the day when the person in question becomes or ceases to be the controller, in a case falling within sub-paragraph (1)(b) above.
- (4) If a person fails to comply with sub-paragraph (2) above, he is liable to a penalty of £250.
- (5) Paragraph 25 above applies to a penalty under sub-paragraph (4) above as it applies to a penalty under Part V of this Schedule.

*Extension of time limits where notice not served*

- 61 (1) This paragraph applies where—
- (a) a person is liable under paragraph 49 above to pay an amount of landfill tax or liable under paragraph 58 above to pay interest, or
  - (b) the Commissioners are entitled under paragraph 52, 53 or 54 above to determine an amount which a person is liable to pay.
- (2) The reference to two years in paragraph 51(2), 52(2), 53(5), 54(3) or 58(4) above (as the case may be) shall be treated as a reference to twenty years if the requirement of paragraph 60(2) above to give notice to the Commissioners in relation to the person mentioned in sub-paragraph (1) above being or becoming a controller has not been complied with.]

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