

**Changes to legislation:** Finance Act 1996, SCHEDULE 5 is up to date with all changes known to be in force on or before 10 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## 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)**

#### PART I

##### INFORMATION [<sup>F1</sup>AND SAMPLES]

##### Textual Amendments

**F1** Words in Sch. 5 Pt. 1 heading inserted (with effect in accordance with Sch. 15 para. 8 of the amending Act) by Finance Act 2015 (c. 11), **Sch. 15 para. 7(2)**

##### *[<sup>F2</sup>Information: general]*

##### Textual Amendments

**F2** Sch. 5 para. 1 cross-heading substituted (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 60 para. 6**

<sup>F3</sup><sub>1</sub> .....

##### Textual Amendments

**F3** Sch. 5 para. 1 omitted (1.4.2010) by virtue of The Finance Act 2009, Section 96 and Schedule 48 (Appointed Day, Savings and Consequential Amendments) Order 2009 (S.I. 2009/3054), art. 1, **Sch. para. 7(a)**

##### *[<sup>F4</sup>Information: material at landfill sites]*

##### Textual Amendments

**F4** Sch. 5 para. 1A and cross-heading inserted (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 60 para. 7**

1A (1) Regulations may make provision about giving the Commissioners information relating to material at a landfill site or a part of a landfill site.

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- (2) Regulations under this paragraph may require a person to give information.
- (3) Regulations under this paragraph may—
- (a) require a person, or authorise an officer of Revenue and Customs to require a person, to designate a part of a landfill site (an “information area”), and
  - (b) require material, or prescribed descriptions of material, to be deposited in an information area.
- (4) Regulations under this paragraph may make provision about information relating to what is done with material.
- (5) Sub-paragraphs (2) to (4) do not prejudice the generality of sub-paragraph (1).]

*[<sup>F5</sup>Information: site restoration]*

**Textual Amendments**

- F5** Sch. 5 para. 1B inserted (with effect in accordance with Sch. 60 para. 13(2) of the amending Act) by Finance Act 2009 (c. 10), **Sch. 60 para. 11**

<sup>F6</sup>1B .....

**Textual Amendments**

- F6** Sch. 5 para. 1B omitted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by virtue of Finance Act 2018 (c. 3), **Sch. 12 para. 16(2)**

*[<sup>F7</sup>Site information]*

**Textual Amendments**

- F7** Sch. 5 para. 1C and cross-heading inserted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by Finance Act 2018 (c. 3), **Sch. 12 para. 16(3)**

- 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.]

*[<sup>F8</sup>Records: [<sup>F9</sup>taxable persons]]*

**Textual Amendments**

- F8** Sch. 5 para. 2 cross-heading substituted (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 60 para. 8**

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**F9** Words in Sch. 5 para. 2 cross-heading substituted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by Finance Act 2018 (c. 3), Sch. 12 para. 21(2)

- 2 (1) Regulations may require [<sup>F10</sup>taxable persons] to make records.
- (2) Regulations under sub-paragraph (1) above may be framed by reference to such records as may be stipulated in any notice published by the Commissioners in pursuance of the regulations and not withdrawn by a further notice.
- (3) Regulations may—
- (a) require [<sup>F11</sup>taxable persons] to preserve records of a prescribed description (whether or not the records are required to be made in pursuance of regulations) for such period not exceeding six years as may be specified in the regulations;
  - (b) authorise the Commissioners 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 Commissioners may stipulate.
- [<sup>F12</sup>(4) A duty under regulations under this paragraph 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 Commissioners.]

#### Textual Amendments

- F10** Words in Sch. 5 para. 2(1) substituted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by Finance Act 2018 (c. 3), Sch. 12 para. 21(2)
- F11** Words in Sch. 5 para. 2(3)(a) substituted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by Finance Act 2018 (c. 3), Sch. 12 para. 21(2)
- F12** Sch. 5 para. 2(4) substituted for Sch. 5 para. 2(4)-(7) (1.4.2010) by Finance Act 2009 (c. 10), s. 98(2), Sch. 50 para. 21; S.I. 2010/815, art. 2

*[<sup>F13</sup>Records: material at landfill sites [<sup>F14</sup>and other]*

#### Textual Amendments

- F13** Sch. 5 para. 2A and cross-heading inserted (21.7.2009) by Finance Act 2009 (c. 10), Sch. 60 para. 9
- F14** Words in Sch. 5 para. 2A heading inserted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by Finance Act 2018 (c. 3), Sch. 12 para. 16(4)(a)

- 2A (1) Regulations may require a person to make records [<sup>F15</sup>relating to—
- (a) material] at a landfill site or a part of a landfill site [<sup>F16</sup>, and
  - (b) material disposed of elsewhere than at a landfill site.]
- (2) Regulations under this paragraph may make provision about records relating to what is done with material.

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- (3) Sub-paragraphs (2) to (7) of paragraph 2 apply in relation to regulations under this paragraph as they apply in relation to regulations under paragraph 2.
- (4) But, in the application of paragraph 2(3)(a) in relation to regulations under this paragraph, the reference to registrable persons has effect as a reference to persons.]

#### Textual Amendments

- F15** Words in Sch. 5 para. 2A(1) substituted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 12 para. 16\(4\)\(b\)](#)
- F16** Sch. 5 para. 2A(1)(b) and word inserted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 12 para. 16\(4\)\(c\)](#)

#### <sup>F17</sup>Information: qualifying fines

#### Textual Amendments

- F17** Sch. 5 paras. 2B, 2C inserted (with effect in accordance with Sch. 15 para. 8 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 15 para. 7\(3\)](#)

- 2B (1) Regulations may make provision about giving the Commissioners information about fines proposed to be disposed of, or disposed of, as qualifying fines.
- (2) Regulations under this paragraph may require a person to notify the Commissioners if the result of a test carried out on fines indicates that the fines are not qualifying fines.

#### Samples: qualifying fines

- 2C (1) Regulations may require persons—
- where a sample is taken from a quantity of fines in order to carry out a test on the fines, to retain a prescribed amount of that sample;
  - to preserve fines retained under paragraph (a) for such period not exceeding three months as may be specified in the regulations.
- (2) A duty under regulations under this paragraph to preserve fines may be discharged by taking such steps to preserve them as the Commissioners may specify in writing.]

#### Documents

<sup>F18</sup><sub>3</sub> .....

#### Textual Amendments

- F18** Sch. 5 para. 3 omitted (1.4.2010) by virtue of [The Finance Act 2009, Section 96 and Schedule 48 \(Appointed Day, Savings and Consequential Amendments\) Order 2009 \(S.I. 2009/3054\)](#), art. 1, [Sch. para. 7\(a\)](#)

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## PART II

### POWERS

#### *Entry and inspection*

F19<sup>4</sup> .....

#### Textual Amendments

**F19** Sch. 5 para. 4 omitted (1.4.2010) by virtue of The Finance Act 2009, Section 96 and Schedule 48 (Appointed Day, Savings and Consequential Amendments) Order 2009 (S.I. 2009/3054), art. 1, **Sch. para. 7(a)**

#### *Entry and search*

F20<sup>5</sup> .....

#### Textual Amendments

**F20** Sch. 5 para. 5 repealed (8.11.2007) by Finance Act 2007 (c. 11), s. 84(4)(5), Sch. 22 para. 10(a), **Sch. 27 Pt. 5(1)**; S.I. 2007/3166, art. 2(c)

#### *Arrest*

F21<sup>6</sup> .....

#### Textual Amendments

**F21** Sch. 5 para. 6 repealed (8.11.2007) by Finance Act 2007 (c. 11), s. 84(4)(5), Sch. 22 para. 10(b), **Sch. 27 Pt. 5(1)**; S.I. 2007/3166, art. 2(c)

#### *Order for access to recorded information etc.*

- 7 (1) Where, on an application by an authorised person, a justice of the peace or, in Scotland, a justice (within the meaning of section 307 of the <sup>M1</sup>Criminal Procedure (Scotland) Act 1995) is satisfied that there are reasonable grounds for believing—
- (a) that an offence in connection with tax is being, has been or is about to be committed, and
  - (b) that any recorded information (including any document of any nature whatsoever) which may be required as evidence for the purpose of any proceedings in respect of such an offence is in the possession of any person, he may make an order under this paragraph.
- (2) An order under this paragraph is an order that the person who appears to the justice to be in possession of the recorded information to which the application relates shall—
- (a) give an authorised person access to it, and
  - (b) permit an authorised person to remove and take away any of it which he reasonably considers necessary,

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not later than the end of the period of 7 days beginning with the date of the order or the end of such longer period as the order may specify.

- (3) The reference in sub-paragraph (2)(a) above to giving an authorised person access to the recorded information to which the application relates includes a reference to permitting the authorised person to take copies of it or to make extracts from it.
- (4) Where the recorded information consists of information [F22 stored in any electronic form] , an order under this paragraph shall have effect as an order to produce the information in a form in which it is visible and legible [F23 or from which it can readily be produced in a visible and legible form] and, if the authorised person wishes to remove it, in a form in which it can be removed.
- (5) This paragraph is without prejudice to paragraphs 3 to 5 above.

#### Textual Amendments

- F22** Words in Sch. 5 para. 7(4) substituted (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\), s. 138\(2\), Sch. 2 para. 13\(1\)\(a\)\(2\)\(h\)](#); S.I. 2003/708, art. 2(k)
- F23** Words in Sch. 5 para. 7(4) inserted (1.4.2003) by [Criminal Justice and Police Act 2001 \(c. 16\), s. 138\(2\), Sch. 2 para. 13\(1\)\(b\)\(2\)\(h\)](#); S.I. 2003/708, art. 2(k)

#### Marginal Citations

- M1** 1995 c. 46.

#### *Removal of documents etc.*

- 8 (1) An authorised person who removes anything in the exercise of a power conferred by or under paragraph 5 or 7 above shall, if so requested by a person showing himself—
  - (a) to be the occupier of premises from which it was removed, or
  - (b) to have had custody or control of it immediately before the removal,
 provide that person with a record of what he removed.
- (2) The authorised person shall provide the record within a reasonable time from the making of the request for it.
- (3) Subject to sub-paragraph (7) below, if a request for permission to be allowed access to anything which—
  - (a) has been removed by an authorised person, and
  - (b) is retained by the Commissioners for the purposes of investigating an offence,
 is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed or by someone acting on behalf of such a person, the officer shall allow the person who made the request access to it under the supervision of an authorised person.
- (4) Subject to sub-paragraph (7) below, if a request for a photograph or copy of any such thing is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of such a person, the officer shall—
  - (a) allow the person who made the request access to it under the supervision of an authorised person for the purpose of photographing it or copying it, or

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- (b) photograph or copy it, or cause it to be photographed or copied.
- (5) Subject to sub-paragraph (7) below, where anything is photographed or copied under sub-paragraph (4)(b) above the officer shall supply the photograph or copy, or cause it to be supplied, to the person who made the request.
- (6) The photograph or copy shall be supplied within a reasonable time from the making of the request.
- (7) There is no duty under this paragraph to allow access to, or to supply a photograph or copy of, anything if the officer in overall charge of the investigation for the purposes of which it was removed has reasonable grounds for believing that to do so would prejudice—
- (a) that investigation,
  - (b) the investigation of an offence other than the offence for the purposes of the investigation of which the thing was removed, or
  - (c) any criminal proceedings which may be brought as a result of the investigation of which he is in charge or any such investigation as is mentioned in paragraph (b) above.
- (8) Any reference in this paragraph to the officer in overall charge of the investigation is a reference to the person whose name and address are endorsed on the warrant concerned as being the officer so in charge.
- 9 (1) Where, on an application made as mentioned in sub-paragraph (2) below, the appropriate judicial authority is satisfied that a person has failed to comply with a requirement imposed by paragraph 8 above, the authority may order that person to comply with the requirement within such time and in such manner as may be specified in the order.
- (2) An application under sub-paragraph (1) above shall be made—
- (a) in the case of a failure to comply with any of the requirements imposed by sub-paragraphs (1) and (2) of paragraph 8 above, by the occupier of the premises from which the thing in question was removed or by the person who had custody or control of it immediately before it was so removed, and
  - (b) in any other case, by the person who had such custody or control.
- (3) In this paragraph “the appropriate judicial authority” means—
- (a) in England and Wales, a magistrates’ court;
  - (b) in Scotland, the sheriff;
  - (c) in Northern Ireland, a court of summary jurisdiction, as defined in Article 2(2)(a) of the <sup>M2</sup>Magistrates’ Court (Northern Ireland) Order 1981.
- (4) In England and Wales and Northern Ireland, an application for an order under this paragraph shall be made by way of complaint; and sections 21 and 42(2) of the <sup>M3</sup>Interpretation Act (Northern Ireland) 1954 shall apply as if any reference in those provisions to any enactment included a reference to this paragraph.

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**Marginal Citations**

**M2** S.I. 1981/1675 (N.I.26).

**M3** 1954 c. 33 (N.I.).

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*Power to take samples*

- 10 (1) An authorised person, if it appears to him necessary for the protection of the revenue against mistake or fraud, may at any time take, from material which he has reasonable cause to believe is intended to be, is being, or has been disposed of<sup>F24</sup> ..., such samples as he may require with a view to determining how the material ought to be or to have been treated for the purposes of tax.
- [<sup>F25</sup>(1A) An authorised person, if it appears to the person necessary for the protection of the revenue against mistake or fraud, may at any time take, from material which the person has reasonable cause to believe is an amount of fines retained under paragraph 2C(1)(a), such samples as the person may require with a view to determining how the fines tested ought to be or to have been treated for the purposes of tax.]
- (2) Any sample taken under this paragraph shall be disposed of in such manner as the Commissioners may direct.

**Textual Amendments**

**F24** Words in [Sch. 5 para. 10\(1\)](#) omitted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by virtue of [Finance Act 2018 \(c. 3\)](#), [Sch. 12 para. 16\(5\)](#)

**F25** Words in Sch. 5 para. 10(1A) inserted (with effect in accordance with Sch. 15 para. 8 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 15 para. 7\(4\)](#)

**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 <sup>F26</sup>(1) .....
- <sup>F26</sup>(2) .....
- (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—
- (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



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- (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.”

F27(5) .....

**Textual Amendments**

- F26** Sch. 5 para. 12(1)(2) repealed (15.9.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 26; S.I. 2003/2093, art. 2(1), Sch. 2 (with art. 4)
- F27** Sch. 5 para. 12(5) repealed (N.I.) (27.3.2006) by The Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), art. 1(3), Sch. 9; S.R. 2006/21, art. 2 (subject to S.R. 2006/22, arts. 2-7)

*Distress and diligence*

F28 13 .....

**Textual Amendments**

- F28** Sch. 5 para. 13 repealed (1.7.1997) by 1997 c. 16, s. 113, Sch. 18 Pt. V(2); S.I. 1997/1433, art. 2

*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.
- [F29(4) The Commissioners shall not be liable, on a claim made under this paragraph, to repay any amount paid to them more than [F30 4 years] before the making of the claim.]
- (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.

**Textual Amendments**

- F29** Sch. 5 para. 14(4) substituted (19.3.1997) by 1997 c. 16, s. 50(1), Sch. 5 Pt. II para. 5(3)
- F30** Words in Sch. 5 para. 14(4) substituted (1.4.2010) by Finance Act 2009 (c. 10), s. 99(2), Sch. 51 para. 38; S.I. 2010/867, art. 2(1) (with art. 24)

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

- C2** Sch. 5 para. 14(3) amended (19.3.1997) by 1997 c. 16, s. 50(1), **Sch. 5 Pt. I para. 1(1)(c)**  
Sch. 5 para. 14(3): power to modify conferred (19.3.1997) by 1997 c. 16, s. 50(1), **Sch. 5 Pt. I para. 1(1)(c)**

**PART IV**

CRIMINAL PENALTIES

*Criminal offences*

- 15 (1) A person is guilty of an offence if—
- (a) being a registrable person, he is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion of tax by him or another registrable person, or
  - (b) not being a registrable person, he is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion of tax by a registrable person.
- (2) Any reference in sub-paragraph (1) above to the evasion of tax includes a reference to the obtaining of a payment under regulations under section 51(2)(c) or (d) or (f) of this Act.
- (3) A person is guilty of an offence if with the requisite intent—
- (a) he produces, furnishes or sends, or causes to be produced, furnished or sent, for the purposes of this Part of this Act any document which is false in a material particular, or
  - (b) he otherwise makes use for those purposes of such a document;
- and the requisite intent is intent to deceive or to secure that a machine will respond to the document as if it were a true document.
- (4) A person is guilty of an offence if in furnishing any information for the purposes of this Part of this Act he makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular.
- (5) A person is guilty of an offence by virtue of this sub-paragraph if his conduct during any specified period must have involved the commission by him of one or more offences under the preceding provisions of this paragraph; and the preceding provisions of this sub-paragraph apply whether or not the particulars of that offence or those offences are known.
- (6) A person is guilty of an offence if—
- (a) he enters into a taxable landfill contract, or
  - (b) he makes arrangements for other persons to enter into such a contract,
- with reason to believe that tax in respect of the disposal concerned will be evaded.
- (7) A person is guilty of an offence if he carries out taxable activities without giving security (or further security) he has been required to give under paragraph 31 below.
- (8) For the purposes of this paragraph a taxable landfill contract is a contract under which there is to be a taxable disposal.

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### *Criminal penalties*

- 16 (1) A person guilty of an offence under paragraph 15(1) above is liable—
- (a) on summary conviction, to a penalty of [<sup>F31</sup>the statutory maximum][<sup>F31</sup>£20,000] or of three times the amount of the tax, whichever is the greater, or to imprisonment for a term not exceeding six months or to both;
  - (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years or to both.
- (2) The reference in sub-paragraph (1) above to the amount of the tax shall be construed, in relation to tax itself or a payment falling within paragraph 15(2) above, as a reference to the aggregate of—
- (a) the amount (if any) falsely claimed by way of credit, and
  - (b) the amount (if any) by which the gross amount of tax was falsely understated.
- (3) A person guilty of an offence under paragraph 15(3) or (4) above is liable—
- (a) on summary conviction, to a penalty of [<sup>F32</sup>the statutory maximum][<sup>F32</sup>£20,000] (or, where sub-paragraph (4) below applies, to the alternative penalty there specified if it is greater) or to imprisonment for a term not exceeding six months or to both;
  - (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years or to both.
- (4) Where—
- (a) the document referred to in paragraph 15(3) above is a return required under this Part of this Act, or
  - (b) the information referred to in paragraph 15(4) above is contained in or otherwise relevant to such a return,
- the alternative penalty is a penalty equal to three times the aggregate of the amount (if any) falsely claimed by way of credit and the amount (if any) by which the gross amount of tax was understated.
- (5) A person guilty of an offence under paragraph 15(5) above is liable—
- (a) on summary conviction, to a penalty of [<sup>F33</sup>the statutory maximum][<sup>F33</sup>£20,000] (or, if greater, three times the amount of any tax that was or was intended to be evaded by his conduct) or to imprisonment for a term not exceeding six months or to both;
  - (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years or to both;
- and paragraph 15(2) and sub-paragraph (2) above shall apply for the purposes of this sub-paragraph as they apply respectively for the purposes of paragraph 15(1) and sub-paragraph (1) above.
- (6) A person guilty of an offence under paragraph 15(6) above is liable on summary conviction to a penalty of [<sup>F34</sup>level 5 on the standard scale][<sup>F34</sup>£20,000] or three times the amount of the tax, whichever is the greater.
- (7) A person guilty of an offence under paragraph 15(7) above is liable on summary conviction to a penalty of [<sup>F35</sup>level 5 on the standard scale][<sup>F35</sup>£20,000].
- (8) In this paragraph—

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- (a) “credit” means credit for which provision is made by regulations under section 51 of this Act;
- (b) “the gross amount of tax” means the total amount of tax due before taking into account any deduction for which provision is made by regulations under section 51(2) of this Act.

**Textual Amendments**

**F31** Sum substituted for figure in Sch. 5 para. 16(1)(a) (E.W.) (12.3.2015) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015 (S.I. 2015/664), reg. 1(1), **Sch. 2 para. 9(a)** (with reg. 5(1))

**F32** Sum substituted for figure in Sch. 5 para. 16(3)(a) (E.W.) (12.3.2015) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015 (S.I. 2015/664), reg. 1(1), **Sch. 2 para. 9(b)** (with reg. 5(1))

**F33** Sum substituted for figure in Sch. 5 para. 16(5)(a) (E.W.) (12.3.2015) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015 (S.I. 2015/664), reg. 1(1), **Sch. 2 para. 9(c)** (with reg. 5(1))

**F34** Sum substituted for level in Sch. 5 para. 16(6)(a) (E.W.) (12.3.2015) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015 (S.I. 2015/664), reg. 1(1), **Sch. 2 para. 9(d)** (with reg. 5(1))

**F35** Sum substituted for level in Sch. 5 para. 16(7)(a) (E.W.) (12.3.2015) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015 (S.I. 2015/664), reg. 1(1), **Sch. 2 para. 9(e)** (with reg. 5(1))

*Criminal proceedings etc.*

17 Sections 145 to 155 of the <sup>M4</sup>Customs and Excise Management Act 1979 (proceedings for offences, mitigation of penalties and certain other matters) shall apply in relation to offences under paragraph 15 above and penalties imposed under paragraph 16 above as they apply in relation to offences and penalties under the customs and excise Acts as defined in that Act.

**Marginal Citations**

**M4** 1979 c. 2.

**PART V**

CIVIL PENALTIES

*Evasion*

<sup>F36</sup>18 .....

**Textual Amendments**

**F36** Sch. 5 paras. 18-20 omitted (1.4.2009) by virtue of Finance Act 2008 (c. 9), s. 122(2), **Sch. 40 para. 21(e)** (with savings in S.I. 2009/511, art. 4(c)); S.I. 2009/571, art. 2 (with art. 6)

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F36<sup>19</sup> .....

**Textual Amendments**

**F36** Sch. 5 paras. 18-20 omitted (1.4.2009) by virtue of Finance Act 2008 (c. 9), s. 122(2), Sch. 40 para. 21(e) (with savings in S.I. 2009/511, art. 4(c)); S.I. 2009/571, art. 2 (with art. 6)

*Misdeclaration or neglect*

F36<sup>20</sup> .....

**Textual Amendments**

**F36** Sch. 5 paras. 18-20 omitted (1.4.2009) by virtue of Finance Act 2008 (c. 9), s. 122(2), Sch. 40 para. 21(e) (with savings in S.I. 2009/511, art. 4(c)); S.I. 2009/571, art. 2 (with art. 6)

*Registration*

21 F37(1) .....

F38(2) .....

(3) A person who fails to comply with section 47(4) of this Act is liable to a penalty of £250.

F39(4) .....

**Textual Amendments**

**F37** Sch. 5 para. 21(1) omitted (with effect in accordance with art. 3 of the commencing S.I.) by virtue of Finance Act 2008 (c. 9), s. 123(2), Sch. 41 para. 25(h)(ii); S.I. 2009/511, art. 2 (with art. 4)

**F38** Sch. 5 para. 21(2) omitted (with effect in accordance with art. 3 of the commencing S.I.) by virtue of Finance Act 2008 (c. 9), s. 123(2), Sch. 41 para. 25(h)(ii); S.I. 2009/511, art. 2 (with art. 4)

**F39** Sch. 5 para. 21(4) omitted (with effect in accordance with art. 3 of the commencing S.I.) by virtue of Finance Act 2008 (c. 9), s. 123(2), Sch. 41 para. 25(h)(ii); S.I. 2009/511, art. 2 (with art. 4)

*Information*

22 (1) If a person—

F40<sup>(a)</sup> .....

(b) fails to make records as required by any provision of regulations made under paragraph 2 [F41 or 2A] above,

he is liable to a penalty of £250; but this is subject to sub-paragraph (4) below.

(2) Where—

(a) a penalty (an initial penalty) is imposed on a person under sub-paragraph (1) above, and

(b) the failure which led to the initial penalty continues after its imposition,

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he is (subject to sub-paragraph (4) below) liable to a further penalty of £20 for each day during which (or any part of which) the failure continues after the day on which the initial penalty was imposed.

- (3) A person [<sup>F42</sup>who—
- (a) fails to preserve records in compliance with any provision of regulations made under paragraph 2 (read with that paragraph and any direction given under the regulations), or
  - (b) fails to preserve records in compliance with any provision of regulations made under paragraph 2A (read with that paragraph and any direction given under the regulations),
- is liable] to a penalty of £250; but this is subject to sub-paragraph (4) below.
- (4) Where by reason of a failure falling within sub-paragraph (1) or (3) above—
- (a) a person is convicted of an offence (whether under this Part of this Act or otherwise), or
  - (b) a person is assessed to a penalty under paragraph 18 above [<sup>F43</sup>or a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007 (penalties for errors)] [<sup>F44</sup>or a penalty under Schedule 41 to the Finance Act 2008 (penalties: failure to notify and certain VAT and excise wrongdoing)],
- that failure shall not also give rise to liability to a penalty under this paragraph.

#### Textual Amendments

- F40** Sch. 5 para. 22(1)(a) and word omitted (1.4.2010) by virtue of [The Finance Act 2009, Section 96 and Schedule 48 \(Appointed Day, Savings and Consequential Amendments\) Order 2009 \(S.I. 2009/3054\)](#), art. 1, [Sch. para. 7\(b\)](#) (with art. 6)
- F41** Words in Sch. 5 para. 22(1)(b) inserted (with effect in accordance with Sch. 15 para. 8 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 15 para. 7\(5\)\(a\)](#)
- F42** Words in Sch. 5 para. 22(3) substituted (with effect in accordance with Sch. 15 para. 8 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 15 para. 7\(5\)\(b\)](#)
- F43** Words in Sch. 5 para. 22(4) inserted (1.4.2009) by [The Finance Act 2008, Schedule 40 \(Appointed Day, Transitional Provisions and Consequential Amendments\) Order 2009 \(S.I. 2009/571\)](#), art. 1(1), [Sch. 1 para. 19](#)
- F44** Words in Sch. 5 para. 22(4)(b) inserted (1.4.2010) by [The Finance Act 2008 \(Penalties for Errors and Failure to Notify etc\) \(Consequential Amendments\) Order 2010 \(S.I. 2010/530\)](#), art. 1, [Sch. para. 6\(b\)](#)

#### *Breach of regulations*

- 23 (1) Where regulations made under this Part of this Act impose a requirement on any person, they may provide that if the person fails to comply with the requirement he shall be liable to a penalty of £250; but this is subject to sub-paragraphs (2) and (3) below.
- (2) Where by reason of any conduct—
- (a) a person is convicted of an offence (whether under this Part of this Act or otherwise), or
  - (b) a person is assessed to a penalty under paragraph 18 above [<sup>F45</sup>or a penalty for a deliberate inaccuracy under Schedule 24 to the Finance Act 2007

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(penalties for errors)]<sup>F46</sup> or a penalty under Schedule 41 to the Finance Act 2008 (penalties: failure to notify and certain VAT and excise wrongdoing)], that conduct shall not also give rise to liability to a penalty under the regulations.

- (3) Sub-paragraph (1) above does not apply to any failure mentioned in paragraph 22 above.

#### Textual Amendments

- F45** Words in Sch. 5 para. 23(2) inserted (1.4.2009) by [The Finance Act 2008, Schedule 40 \(Appointed Day, Transitional Provisions and Consequential Amendments\) Order 2009 \(S.I. 2009/571\)](#), art. 1(1), **Sch. 1 para. 19**
- F46** Words in Sch. 5 para. 23(2)(b) inserted (1.4.2010) by [The Finance Act 2008 \(Penalties for Errors and Failure to Notify etc\) \(Consequential Amendments\) Order 2010 \(S.I. 2010/530\)](#), art. 1, **Sch. para. 6(b)**

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

- C3** Sch. 5 para. 23 extended (19.3.1997) by [1997 c. 16, s. 50\(1\)](#), **Sch. 5 Pt. I para. 4(3)**

### <sup>F47</sup>Controlled Goods Agreements

#### Textual Amendments

- F47** [Sch. 5 para. 23A](#) inserted (6.4.2014) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), s. 148, **Sch. 13 para. 123** (with s. 89); [S.I. 2014/768](#), art. 2(1)(b); and omitted (6.4.2014) by virtue of [Finance Act 2008 \(c. 9\)](#), s. 129(4), **Sch. 43 para. 5**; [S.I. 2014/906](#), art. 2

- 23A (1) This paragraph applies where an enforcement agent acting under the power conferred by section 51(A1) of the Finance Act 1997 (power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007) has entered into a controlled goods agreement with the person against whom the power is exercisable (“the person in default”).
- (2) In this paragraph, “controlled goods agreement” has the meaning given by paragraph 13(4) of that Schedule.
- (3) If the person in default removes or disposes of goods (or permits their removal or disposal) in breach of the controlled goods agreement, he is liable to a penalty equal to half of the tax or other amount recoverable under section 51(A1) of the Finance Act 1997.
- (4) The person in default shall not be liable to a penalty under sub-paragraph (3) above if he satisfies the Commissioners or, on appeal, an appeal tribunal, that there is a reasonable excuse for the breach in question.
- (5) This paragraph extends only to England and Wales.]

### *Walking possession agreements*

- 24 (1) This paragraph applies where—
- (a) in accordance with regulations under <sup>F48</sup>section 51 of the Finance Act 1997 (enforcement by distress)] a distress is authorised to be levied on the goods and chattels of a person (a person in default) who has refused or neglected

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- to pay any tax due from him or any amount recoverable as if it were tax due from him, and
- (b) the person levying the distress and the person in default have entered into a walking possession agreement.
- (2) For the purposes of this paragraph a walking possession agreement is an agreement under which, in consideration of the property distrained upon being allowed to remain in the custody of the person in default and of the delaying of its sale, the person in default—
- (a) acknowledges that the property specified in the agreement is under distraint and held in walking possession, and
- (b) undertakes that, except with the consent of the Commissioners and subject to such conditions as they may impose, he will not remove or allow the removal of any of the specified property from the premises named in the agreement.
- (3) If the person in default is in breach of the undertaking contained in a walking possession agreement, he is liable to a penalty equal to half of the tax or other amount referred to in sub-paragraph (1)(a) above.
- [<sup>F49</sup>(4) This paragraph extends only to Northern Ireland.]

#### Textual Amendments

**F48** Words in Sch. 5 para. 24(1)(a) substituted (1.7.1997) by 1997 c. 16, s. 53(8); S.I. 1997/1432, art. 2

**F49** Sch. 5 para. 24(4) substituted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, Sch. 13 para. 124 (with s. 89); S.I. 2014/768, art. 2(1)(b)

#### *Mitigation of penalties*

- 25 (1) Where a person is liable to a penalty under this Part of this Schedule the Commissioners or, on appeal, an appeal tribunal may reduce the penalty to such amount (including nil) as they think proper.
- (2) Where the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for any breach, failure or other conduct, that is a factor which (among other things) may be taken into account under sub-paragraph (1) above.
- (3) In the case of a penalty reduced by the Commissioners under sub-paragraph (1) above an appeal tribunal, on an appeal relating to the penalty, may cancel the whole or any part of the reduction made by the Commissioners.

## PART VI

### INTEREST

#### *Interest on under-declared tax*

- 26 (1) Sub-paragraph (2) below applies where—
- (a) under section 50(1) of this Act the Commissioners assess an amount of tax due from a [<sup>F50</sup>registered person] for an accounting period and notify it to him, and



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- (b) the assessment is made on the basis that the amount (the additional amount) is due from him in addition to any amount shown in a return made in relation to the accounting period.
- (2) The additional amount shall carry interest for the period which—
  - (a) begins with the day after that on which the person is required by provision made under section 49 of this Act to pay tax due from him for the accounting period, and
  - (b) ends with the day before the relevant day.
- (3) For the purposes of sub-paragraph (2) above the relevant day is the earlier of—
  - (a) the day on which the assessment is notified to the person;
  - (b) the day on which the additional amount is paid.
- (4) Sub-paragraph (5) below applies where under section 50(2) of this Act the Commissioners assess an amount as being tax due from a [<sup>F51</sup>registered person] for an accounting period and notify it to him.
- (5) The amount shall carry interest for the period which—
  - (a) begins with the day after that on which the person is required by provision made under section 49 of this Act to pay tax due from him for the accounting period, and
  - (b) ends with the day before the relevant day.
- (6) For the purposes of sub-paragraph (5) above the relevant day is the earlier of—
  - (a) the day on which the assessment is notified to the person;
  - (b) the day on which the amount is paid.
- (7) Interest under this paragraph shall be payable at the rate applicable under section 197 of this Act.
- (8) Interest under this paragraph shall be paid without any deduction of income tax.
- (9) Sub-paragraph (10) below applies where—
  - (a) an amount carries interest under this paragraph (or would do so apart from that sub-paragraph), and
  - (b) all or part of the amount turns out not to be due.
- (10) In such a case—
  - (a) the amount or part (as the case may be) shall not carry interest under this paragraph and shall be treated as never having done so, and
  - (b) all such adjustments as are reasonable shall be made, including adjustments by way of repayment by the Commissioners where appropriate.

#### Textual Amendments

- F50** Words in [Sch. 5 para. 26\(1\)\(a\)](#) substituted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 12 para. 21\(3\)](#)
- F51** Words in [Sch. 5 para. 26\(4\)](#) substituted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 12 para. 21\(3\)](#)

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*Interest on unpaid tax etc.*

- 27 (1) Sub-paragraph (2) below applies where—
- (a) a [<sup>F52</sup>registered person] makes a return under provision made under section 49 of this Act (whether or not he makes it at the time required by such provision), and
  - (b) the return shows that an amount of tax is due from him for the accounting period in relation to which the return is made.
- (2) The amount shall carry interest for the period which—
- (a) begins with the day after that on which the person is required by provision made under section 49 of this Act to pay tax due from him for the accounting period, and
  - (b) ends with the day before that on which the amount is paid.
- (3) Sub-paragraph (4) below applies where—
- (a) under section 50(1) of this Act the Commissioners assess an amount of tax due from a [<sup>F53</sup>registered person] person for an accounting period and notify it to him, and
  - (b) the assessment is made on the basis that no return required by provision made under section 49 of this Act has been made by the person in relation to the accounting period.
- (4) The amount shall carry interest for the period which—
- (a) begins with the day after that on which the person is required by provision made under section 49 of this Act to pay tax due from him for the accounting period, and
  - (b) ends with the day before that on which the amount is paid.
- (5) Sub-paragraph (6) below applies where—
- (a) under section 50(1) of this Act the Commissioners assess an amount of tax due from a [<sup>F54</sup>registered person] for an accounting period and notify it to him, and
  - (b) the assessment (the supplementary assessment) is made on the basis that the amount (the additional amount) is due from him in addition to any amount shown in a return, or in any previous assessment, made in relation to the accounting period.
- (6) The additional amount shall carry interest for the period which—
- (a) begins with the day on which the supplementary assessment is notified to the person, and
  - (b) ends with the day before that on which the additional amount is paid.
- (7) Sub-paragraph (8) below applies where under section 50(2) of this Act the Commissioners assess an amount as being tax due from a [<sup>F55</sup>registered person] for an accounting period and notify it to him.
- (8) The amount shall carry interest for the period which—
- (a) begins with the day on which the assessment is notified to the person, and
  - (b) ends with the day before that on which the amount is paid.

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- [<sup>F56</sup>(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.]
- (9) Sub-paragraph (10) below applies where under paragraph 32 below the Commissioners—
- (a) assess an amount due from a person by way of penalty under Part V of this Schedule [<sup>F57</sup>or under Schedule 41 to the Finance Act 2008] and notify it to him, or
  - (b) assess an amount due from a person by way of interest under paragraph 26 above and notify it to him.
- (10) The amount shall carry interest for the period which—
- (a) begins with the day on which the assessment is notified to the person, and
  - (b) ends with the day before that on which the amount is paid.
- (11) Interest under this paragraph shall be compound interest calculated—
- (a) at the penalty rate, and
  - (b) with monthly rests;
- and the penalty rate is the rate found by taking the rate at which interest is payable under paragraph 26 above and adding 10 percentage points to that rate.
- (12) Interest under this paragraph shall be paid without any deduction of income tax.
- (13) Where—
- (a) the Commissioners assess and notify an amount as mentioned in sub-paragraph (5)(a) or (7) [<sup>F58</sup>or (8A)] or (9)(a) or (b) above,
  - (b) they also specify a date for the purposes of this sub-paragraph, and
  - (c) the amount concerned is paid on or before that date,
- the amount shall not carry interest by virtue of sub-paragraph (6) or (8) [<sup>F59</sup>or (8B)] or (10) above (as the case may be).
- (14) Sub-paragraph (15) below applies where—
- (a) an amount carries interest under this paragraph (or would do so apart from that sub-paragraph), and
  - (b) all or part of the amount turns out not to be due.
- (15) In such a case—
- (a) the amount or part (as the case may be) shall not carry interest under this paragraph and shall be treated as never having done so, and
  - (b) all such adjustments as are reasonable shall be made, including adjustments by way of repayment by the Commissioners where appropriate.

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### Textual Amendments

- F52** Words in [Sch. 5 para. 27\(1\)\(a\)](#) substituted (with effect in accordance with s. 42(2), [Sch. 12 para. 29\(1\)](#) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 12 para. 21\(4\)](#)
- F53** Words in [Sch. 5 para. 27\(3\)\(a\)](#) substituted (with effect in accordance with s. 42(2), [Sch. 12 para. 29\(1\)](#) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 12 para. 21\(4\)](#)
- F54** Words in [Sch. 5 para. 27\(5\)\(a\)](#) substituted (with effect in accordance with s. 42(2), [Sch. 12 para. 29\(1\)](#) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 12 para. 21\(4\)](#)
- F55** Words in [Sch. 5 para. 27\(7\)](#) substituted (with effect in accordance with s. 42(2), [Sch. 12 para. 29\(1\)](#) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 12 para. 21\(4\)](#)
- F56** [Sch. 5 para. 27\(8A\)\(8B\)](#) inserted (with effect in accordance with s. 42(2), [Sch. 12 para. 29\(1\)](#) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 12 para. 25\(2\)\(a\)](#)
- F57** Words in [Sch. 5 para. 27\(9\)\(a\)](#) inserted (1.4.2010) by [The Finance Act 2008 \(Penalties for Errors and Failure to Notify etc\) \(Consequential Amendments\) Order 2010 \(S.I. 2010/530\)](#), art. 1, [Sch. para. 6\(a\)](#)
- F58** Words in [Sch. 5 para. 27\(13\)\(a\)](#) inserted (with effect in accordance with s. 42(2), [Sch. 12 para. 29\(1\)](#) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 12 para. 25\(2\)\(b\)\(i\)](#)
- F59** Words in [Sch. 5 para. 27\(13\)](#) inserted (with effect in accordance with s. 42(2), [Sch. 12 para. 29\(1\)](#) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 12 para. 25\(2\)\(b\)\(ii\)](#)

- 28 (1) Where a person is liable to pay interest under paragraph 27 above the Commissioners or, on appeal, an appeal tribunal may reduce the amount payable to such amount (including nil) as they think proper.
- (2) Where the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the conduct giving rise to the liability to pay interest, that is a factor which (among other things) may be taken into account under sub-paragraph (1) above.
- (3) In the case of interest reduced by the Commissioners under sub-paragraph (1) above an appeal tribunal, on an appeal relating to the interest, may cancel the whole or any part of the reduction made by the Commissioners.

### *Interest payable by Commissioners*

- 29 (1) Where, due to an error on the part of the Commissioners, a person—
- has paid to them by way of tax an amount which was not tax due and which they are in consequence liable to repay to him,
  - has failed to claim payment of an amount to the payment of which he was entitled in pursuance of provision made under section 51(2)(c) or (d) or (f) of this Act, or
  - has suffered delay in receiving payment of an amount due to him from them in connection with tax,
- then, if and to the extent that they would not be liable to do so apart from this paragraph, they shall (subject to the following provisions of this paragraph) pay interest to him on that amount for the applicable period.

[<sup>F60</sup>(1A) In sub-paragraph (1) above—

- the reference in paragraph (a) to an amount which the Commissioners are liable to repay in consequence of the making of a payment that was not due is a reference to only so much of that amount as is the subject of a claim that the Commissioners are required to satisfy or have satisfied; and

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- (b) the amounts referred to in paragraph (c) do not include any amount payable under this paragraph.]
- (2) The applicable period, in a case falling within sub-paragraph (1)(a) above, is the period—
  - (a) beginning with the date on which the payment is received by the Commissioners, and
  - (b) ending with the date on which they authorise payment of the amount on which the interest is payable.
- (3) The applicable period, in a case falling within sub-paragraph (1)(b) or (c) above, is the period—
  - (a) beginning with the date on which, apart from the error, the Commissioners might reasonably have been expected to authorise payment of the amount on which the interest is payable, and
  - (b) ending with the date on which they in fact authorise payment of that amount.
- <sup>F61</sup>(4) In determining the applicable period for the purposes of this paragraph there shall be left out of account any period by which the Commissioners' authorisation of the payment of interest is delayed by the conduct of the person who claims the interest.
- <sup>F61</sup>(4A) The reference in sub-paragraph (4) above to a period by which the Commissioners' authorisation of the payment of interest is delayed by the conduct of the person who claims it includes, in particular, any period which is referable to—
  - (a) any unreasonable delay in the making of the claim for interest or in the making of any claim for the payment or repayment of the amount on which interest is claimed;
  - (b) any failure by that person or a person acting on his behalf or under his influence to provide the Commissioners—
    - (i) at or before the time of the making of a claim, or
    - (ii) subsequently in response to a request for information by the Commissioners,with all the information required by them to enable the existence and amount of the claimant's entitlement to a payment or repayment, and to interest on that payment or repayment, to be determined; and
  - (c) the making, as part of or in association with either—
    - (i) the claim for interest, or
    - (ii) any claim for the payment or repayment of the amount on which interest is claimed,of a claim to anything to which the claimant was not entitled.
- <sup>F61</sup>(5) In determining for the purposes of sub-paragraph (4A) above whether any period of delay is referable to a failure by any person to provide information in response to a request by the Commissioners, there shall be taken to be so referable, except so far as may be provided for by regulations, any period which—
  - (a) begins with the date on which the Commissioners require that person to provide information which they reasonably consider relevant to the matter to be determined; and
  - (b) ends with the earliest date on which it would be reasonable for the Commissioners to conclude—

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- (i) that they have received a complete answer to their request for information;
  - (ii) that they have received all that they need in answer to that request; or
  - (iii) that it is unnecessary for them to be provided with any information in answer to that request.]
- (7) The commissioners shall only be liable to pay interest under under this paragraph on a claim made in writing for that purpose.
- [<sup>F62</sup>(8) A claim under this paragraph shall not be made more than [<sup>F63</sup>4 years] after the end of the applicable period to which it relates.]
- [<sup>F64</sup>(9) References in this paragraph—
- (a) to receiving payment of any amount from the Commissioners, or
  - (b) to the authorisation by the Commissioners of the payment of any amount,
- include references to the discharge by way of set-off (whether in accordance with regulations under paragraph 42 or 43 below or otherwise) of the Commissioners' liability to pay that amount.]
- (10) Interest under this paragraph shall be payable at the rate applicable under section 197 of this Act.

#### Textual Amendments

- F60** Sch. 5 para. 29(1A) inserted (*retrospective* to 29.4.1996) by 1997 c. 16, s. 50(1), **Sch. 5 Pt. III para. 11(2)**
- F61** Sch. 5 para. 29(4)(4A)(5) substituted (19.3.1997 with effect as mentioned in Sch. 5 Pt. III para. 12(2) of the amending Act) for para. 29(4)-(6) by 1997 c. 16, s. 50(1), **Sch. 5 Pt. III para. 12(1)**
- F62** Sch. 5 para. 29(8) substituted (*retrospective* to 29.4.1996) by 1997 c. 16, s. 50(1), **Sch. 5 Pt. III para. 11(3)**
- F63** Words in Sch. 5 para. 29(8) substituted (1.4.2010) by Finance Act 2009 (c. 10), s. 99(2), **Sch. 51 para. 39**; S.I. 2010/867, art. 2(1) (with art. 25)
- F64** Sch. 5 para. 29(9) substituted (*retrospective* to 29.4.1996) by 1997 c. 16, s. 50(1), **Sch. 5 Pt. III para. 1(4)**

- 30 (1) Where—
- (a) any interest is payable by the Commissioners to a person on a sum due to him under this Part of this Act, and
  - (b) he is a person to whom regulations under section 51 of this Act apply,
- the interest shall be treated as an amount to which he is entitled by way of credit in pursuance of the regulations.
- (2) Sub-paragraph (1) above shall be disregarded for the purpose of determining a person's entitlement to interest or the amount of interest to which he is entitled.

## PART VII

### MISCELLANEOUS

#### *Security for tax*

- 31 Where it appears to the Commissioners requisite to do so for the protection of the revenue they may require a registrable person, as a condition of his carrying out

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taxable activities, to give security (or further security) of such amount and in such manner as they may determine for the payment of any tax which is or may become due from him.

*Assessments to penalties etc.*

- 32 (1) Where a person is liable—
- (a) to a penalty under Part V of this Schedule, or
  - (b) for interest under paragraph 26 or 27 above,
- the Commissioners may, subject to sub-paragraph (2) below, assess the amount due by way of penalty or interest (as the case may be) and notify it to him accordingly; and the fact that any conduct giving rise to a penalty under Part V of this Schedule may have ceased before an assessment is made under this paragraph shall not affect the power of the Commissioners to make such an assessment.
- (2) In the case of the penalties and interest referred to in the following paragraphs of this sub-paragraph, the assessment under this paragraph shall be of an amount due in respect of the accounting period which in the paragraph concerned is referred to as the relevant period—
- (a) in the case of a penalty under paragraph 18 above relating to the evasion of tax, and in the case of interest under paragraph 27 above on an amount due by way of such a penalty, the relevant period is the accounting period for which the tax evaded was due;
  - (b) in the case of a penalty under paragraph 18 above relating to the obtaining of a payment under regulations under section 51(2)(c) or (d) or (f) of this Act, and in the case of interest under paragraph 27 above on an amount due by way of such a penalty, the relevant period is the accounting period in respect of which the payment was obtained;
  - (c) in the case of interest under paragraph 26 above, and in the case of interest under paragraph 27 above on an amount due by way of interest under paragraph 26 above, the relevant period is the accounting period in respect of which the tax was due;
  - (d) in the case of interest under paragraph 27 above on an amount of tax, the relevant period is the accounting period in respect of which the tax was due.
- (3) In a case where the amount of any penalty or interest falls to be calculated by reference to tax which was not paid at the time it should have been and that tax cannot be readily attributed to any one or more accounting periods, it shall be treated for the purposes of this Part of this Act as tax due for such period or periods as the Commissioners may determine to the best of their judgment and notify to the person liable for the tax and penalty or interest.
- (4) Where a person is assessed under this paragraph to an amount due by way of any penalty or interest falling within sub-paragraph (2) above and is also assessed under subsection (1) or (2) of section 50 of this Act for the accounting period which is the relevant period under sub-paragraph (2) above, the assessments may be combined and notified to him as one assessment, but the amount of the penalty or interest shall be separately identified in the notice.
- (5) Sub-paragraph (6) below applies in the case of an amount due by way of interest under paragraph 27 above.
- (6) Where this sub-paragraph applies in the case of an amount—

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- (a) a notice of assessment under this paragraph shall specify a date, being not later than the date of the notice, to which the amount of interest which is assessed is calculated, and
  - (b) if the interest continues to accrue after that date, a further assessment or further assessments may be made under this paragraph in respect of amounts which so accrue.
- (7) If, within such period as may be notified by the Commissioners to the person liable for the interest under paragraph 27 above, the amount referred to in paragraph 27(2), (4), (6), (8) or (10) above (as the case may be) is paid, it shall be treated for the purposes of paragraph 27 above as paid on the date specified as mentioned in sub-paragraph (6)(a) above.
- (8) Where an amount has been assessed and notified to any person under this paragraph it shall be recoverable as if it were tax due from him unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced.
- (9) Subsection (8) of section 50 of this Act shall apply for the purposes of this paragraph as it applies for the purposes of that section.

*Assessments: time limits*

- 33 (1) Subject to the following provisions of this paragraph, an assessment under—
- (a) any provision of section 50 [<sup>F65</sup>or 50A] of this Act, or
  - (b) paragraph 32 above,
- shall not be made more than [<sup>F66</sup>4 years] after [<sup>F67</sup>the relevant event].
- <sup>F68</sup>(1A) In this paragraph “the relevant event”, in relation to an assessment, means—
- (a) the end of the accounting period concerned, <sup>F69</sup>...
    - [ in the case of an assessment under section 50A, evidence of facts, sufficient
  - <sup>F70</sup>(aa) in the Commissioners' opinion to justify the making of the assessment, coming to their knowledge, or]
  - (b) in the case of an assessment under paragraph 32 of an amount due by way of a penalty other than a penalty referred to in paragraph 32(2), the event giving rise to the penalty.]
- (2) Subject to sub-paragraph (5) below, an assessment under paragraph 32 above of—
- (a) an amount due by way of any penalty referred to in sub-paragraph (2) of that paragraph, or
  - (b) an amount due by way of interest,
- may be made at any time before the expiry of the period of two years beginning with the time when the amount of tax due for the accounting period concerned has been finally determined.
- (3) In relation to an assessment under paragraph 32 above, any reference in [<sup>F71</sup>sub-paragraph (1A)] or (2) above to the accounting period concerned is a reference to that period which, in the case of the penalty or interest concerned, is the relevant period referred to in sub-paragraph (2) of that paragraph.
- <sup>F72</sup>(4) An assessment of an amount due from a person in a case involving a loss of tax—
- (a) brought about deliberately by the person (or by another person acting on that person's behalf), or



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- (b) attributable to a failure by the person to comply with an obligation under section 47(2) or (3),  
may be made at any time not more than 20 years after the relevant event (subject to sub-paragraph (5)).
- (4A) In sub-paragraph (4)(a) the reference to a loss brought about deliberately by the person includes a loss brought about as a result of a deliberate inaccuracy in a document given to Her Majesty's Revenue and Customs by or on behalf of that person.]
- (5) Where after a person's death the Commissioners propose to assess an amount as due by reason of some conduct of the deceased—
- (a) the assessment shall not be made more than [<sup>F73</sup>4 years] after the death, <sup>F74</sup>...
- <sup>F74</sup>(b) .....

#### Textual Amendments

- F65** Words in Sch. 5 para. 33(1)(a) inserted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by Finance Act 2018 (c. 3), Sch. 12 para. 25(3)(a)
- F66** Words in Sch. 5 para. 33(1) substituted (1.4.2010) by Finance Act 2009 (c. 10), s. 99(2), Sch. 51 para. 40(2)(a); S.I. 2010/867, art. 2(1) (with art. 26)
- F67** Words in Sch. 5 para. 33(1) substituted (1.4.2010) by Finance Act 2009 (c. 10), s. 99(2), Sch. 51 para. 40(2)(b); S.I. 2010/867, art. 2(1) (with art. 26)
- F68** Sch. 5 para. 33(1A) inserted (1.4.2010) by Finance Act 2009 (c. 10), s. 99(2), Sch. 51 para. 40(3); S.I. 2010/867, art. 2(1) (with art. 26)
- F69** Word in Sch. 5 para. 33(1A)(a) omitted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by virtue of Finance Act 2018 (c. 3), Sch. 12 para. 25(3)(b)
- F70** Sch. 5 para. 33(1A)(aa) inserted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by Finance Act 2018 (c. 3), Sch. 12 para. 25(3)(b)
- F71** Words in Sch. 5 para. 33(3) substituted (1.4.2010) by Finance Act 2009 (c. 10), s. 99(2), Sch. 51 para. 40(4); S.I. 2010/867, art. 2(1) (with art. 26)
- F72** Sch. 5 para. 33(4)(4A) substituted for Sch. 5 para. 33(4) (1.4.2010) by Finance Act 2009 (c. 10), s. 99(2), Sch. 51 para. 40(5); S.I. 2010/867, art. 2(1) (with art. 27)
- F73** Words in Sch. 5 para. 33(5)(a) substituted (1.4.2010) by Finance Act 2009 (c. 10), s. 99(2), Sch. 51 para. 40(6)(a); S.I. 2010/867, art. 2(1) (with art. 28)
- F74** Sch. 5 para. 33(5)(b) and word omitted (1.4.2010) by virtue of Finance Act 2009 (c. 10), s. 99(2), Sch. 51 para. 40(6)(b); S.I. 2010/867, art. 2(1) (with art. 28)

#### Supplementary assessments

- 34 If, otherwise than in circumstances falling within subsection (5)(b) of section 50 of this Act, it appears to the Commissioners that the amount which ought to have been assessed in an assessment under any provision of that section or under paragraph 32 above exceeds the amount which was so assessed, then—
- (a) under the like provision as that assessment was made, and
- (b) on or before the last day on which that assessment could have been made, the Commissioners may make a supplementary assessment of the amount of the excess and shall notify the person concerned accordingly.

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### *Disclosure of information*

- 35 (1) Notwithstanding any obligation not to disclose information that would otherwise apply, the Commissioners may disclose information to—
- (a) the Secretary of State,
  - (b) the Environment Agency,
  - [<sup>F75</sup>(ba) the Natural Resources Body for Wales;]
  - (c) the Scottish Environment Protection Agency,
  - (d) the Department of the Environment for Northern Ireland,
  - (e) a district council in Northern Ireland, or
  - (f) an authorised officer of any person (a principal) mentioned in paragraphs (a) to (e) above,
- for the purpose of assisting the principal concerned in the performance of the principal's duties.
- (2) Notwithstanding any such obligation as is mentioned in sub-paragraph (1) above, any person mentioned in sub-paragraph (1)(a) to (f) above may disclose information to the Commissioners or to an authorised officer of the Commissioners for the purpose of assisting the Commissioners in the performance of duties in relation to tax.
- (3) Information that has been disclosed to a person by virtue of this paragraph shall not be disclosed by him except—
- (a) to another person to whom (instead of him) disclosure could by virtue of this paragraph have been made, or
  - (b) for the purpose of any proceedings connected with the operation of any provision of, or made under, any enactment in relation to the environment or to tax.
- (4) References in the preceding provisions of this paragraph to an authorised officer of any person (the principal) are to any person who has been designated by the principal as a person to and by whom information may be disclosed by virtue of this paragraph.
- (5) The Secretary of State shall notify the Commissioners in writing of the name of any person designated by the Secretary of State under sub-paragraph (4) above.
- (6) No charge may be made for a disclosure made by virtue of this paragraph.

#### **Textual Amendments**

**F75** Sch. 5 para. 35(1)(ba) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 390** (with Sch. 7)

### *[<sup>F76</sup>Publication of information by Commissioners]*

#### **Textual Amendments**

**F76** Sch. 5 para. 36 heading substituted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), **Sch. 12 para. 25(4)(a)**

- 36 (1) The Commissioners may publish, by such means as they think fit, information which—

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- (a) is derived from the register kept under section 47 of this Act, 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 under section 59 of this Act 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.

[<sup>F77</sup>(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.]

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

**Textual Amendments**

**F77** Sch. 5 para. 36(2A) inserted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by Finance Act 2018 (c. 3), Sch. 12 para. 25(4)(b)

*Evidence by certificate etc.*

37 (1) A certificate of the Commissioners—

- (a) that a person was or was not at any time registered under section 47 of this Act [<sup>F78</sup>or],
- (b) that any return required by regulations made under section 49 of this Act has not been made or had not been made at any time, <sup>F79</sup>...

<sup>F79</sup>(c) .....

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

(2) A photograph of any document furnished to the Commissioners for the purposes of this Part of this Act and certified by them to be such a photograph shall be 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 sub-paragraph (1) or (2) above shall be taken to be such a certificate until the contrary is proved.

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### Textual Amendments

- F78** Word in Sch. 5 para. 37(1)(a) inserted (21.7.2008) by [Finance Act 2008 \(c. 9\)](#), [Sch. 44 para. 7\(a\)](#)  
**F79** Sch. 5 para. 37(1)(c) and word omitted (21.7.2008) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 44 para. 7\(b\)](#)

### *Service of notices etc.*

- 38 Any notice, notification or requirement to be served on, given to or made of any person for the purposes of this Part of this Act may be served, given or made by sending it by post in a letter addressed to that person at his last or usual residence or place of business.
- 39 (1) This paragraph applies to directions, specifications and conditions which the Commissioners or an authorised person may give or impose under any provision of this Part.
- (2) A direction, specification or condition given or imposed by the Commissioners may be withdrawn or varied by them.
- (3) A direction, specification or condition given or imposed by an authorised person may be withdrawn or varied by him or by another authorised person.
- (4) No direction, specification or condition shall have effect as regards any person it is intended to affect unless—
- (a) a notice containing it is served on him, or
  - (b) other reasonable steps are taken with a view to bringing it to his attention.
- (5) No withdrawal or variation of a direction, specification or condition shall have effect as regards any person the withdrawal or variation is intended to affect unless—
- (a) a notice containing the withdrawal or variation is served on him, or
  - (b) other reasonable steps are taken with a view to bringing the withdrawal or variation to his attention.

### *No deduction of penalties or interest*

- 40 In section 827 of the Taxes Act 1988 (no deduction for penalties etc.) the following subsection shall be inserted after subsection (1B)—
- “(1C) Where a person is liable to make a payment by way of—
- (a) penalty under Part V of Schedule 5 to the Finance Act 1996 (landfill tax), or
  - (b) interest under paragraph 26 or 27 of that Schedule,
- the payment shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.”

### *Destination of receipts*

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### Textual Amendments

**F80** Sch. 5 para. 41 repealed (18.4.2005) by Commissioners for Revenue and Customs Act 2005 (c. 11), s. 53(1), Sch. 4 para. 65, Sch. 5; S.I. 2005/1126, art. 2(2)(h)(i)

### *Set-off of amounts*

- 42 (1) Regulations may make provision in relation to any case where—
- (a) a person is under a duty to pay to the Commissioners at any time an amount or amounts in respect of landfill tax, and
  - (b) the Commissioners are under a duty to pay to that person at the same time an amount or amounts in respect of any tax (or taxes) under their care and management.
- (2) The regulations may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) above exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(b) above, the latter shall be set off against the former.
- (3) The regulations may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(b) above exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(a) above, the Commissioners may set off the latter in paying the former.
- (4) The regulations may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) above is the same as the total of the amount or amounts mentioned in sub-paragraph (1)(b) above no payment need be made in respect of the former or the latter.
- [<sup>F81</sup>(4A) The regulations may provide for any limitation on the time within which the Commissioners are entitled to take steps for recovering any amount due to them in respect of landfill tax to be disregarded, in such cases as may be described in the regulations, in determining whether any person is under such a duty to pay as is mentioned in sub-paragraph (1)(a) above.]
- (5) The regulations may include provision treating any duty to pay mentioned in sub-paragraph (1) above as discharged accordingly.
- (6) References in sub-paragraph (1) above to an amount in respect of a particular tax include references not only to an amount of tax itself but also to other amounts such as interest and penalty.
- (7) In this paragraph “tax” includes “duty”.

### Textual Amendments

**F81** Sch. 5 para. 42(4A) inserted (19.3.1997) by 1997 c. 16, s. 50(1), Sch. 5 Pt. IV para. 13(1)

- 43 (1) Regulations may make provision in relation to any case where—
- (a) a person is under a duty to pay to the Commissioners at any time an amount or amounts in respect of any tax (or taxes) under their care and management, and
  - (b) the Commissioners are under a duty to pay to that person at the same time an amount or amounts in respect of landfill tax.

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- (2) The regulations may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) above exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(b) above, the latter shall be set off against the former.
- (3) The regulations may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(b) above exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(a) above, the Commissioners may set off the latter in paying the former.
- (4) The regulations may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) above is the same as the total of the amount or amounts mentioned in sub-paragraph (1)(b) above no payment need be made in respect of the former or the latter.
- [<sup>F82</sup>(4A) The regulations may provide for any limitation on the time within which the Commissioners are entitled to take steps for recovering any amount due to them in respect of any of the taxes under their care and management to be disregarded, in such cases as may be described in the regulations, in determining whether any person is under such a duty to pay as is mentioned in sub-paragraph (1)(a) above.]
- (5) The regulations may include provision treating any duty to pay mentioned in sub-paragraph (1) above as discharged accordingly.
- (6) References in sub-paragraph (1) above to an amount in respect of a particular tax include references not only to an amount of tax itself but also to other amounts such as interest and penalty.
- (7) In this paragraph “tax” includes “duty”.

#### Textual Amendments

**F82** Sch. 5 para. 43(4A) inserted (19.3.1997) by 1997 c. 16, s. 50(1), Sch. 5 Pt. IV para. 13(2)

#### *Amounts shown as tax on invoices*

- 44 (1) Where—
- (a) a registrable person issues an invoice showing an amount as tax chargeable on an event, and
  - (b) no tax is in fact chargeable on the event,
- an amount equal to the amount shown as tax shall be recoverable from the person as a debt due to the Crown.
- (2) Where—
- (a) a registrable person issues an invoice showing an amount as tax chargeable on a taxable disposal, and
  - (b) the amount shown as tax exceeds the amount of tax in fact chargeable on the disposal,
- an amount equal to the excess shall be recoverable from the person as a debt due to the Crown.
- (3) References in this paragraph to an invoice are to any invoice, whether or not it is a landfill invoice within the meaning of section 61 of this Act.

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### *Adjustment of contracts*

- 45 (1) This paragraph applies where—
- (a) material undergoes a <sup>F83</sup>... disposal,
  - (b) a payment falls to be made under a disposal contract relating to the material, and
  - (c) after the making of the contract there is a change in the tax chargeable on the <sup>F84</sup>... disposal.
- (2) In such a case the amount of any payment mentioned in sub-paragraph (1)(b) above shall be adjusted, unless the disposal contract otherwise provides, so as to reflect the tax chargeable on the <sup>F85</sup>... disposal.
- (3) For the purposes of this paragraph a disposal contract relating to material is a contract 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.
- (4) The reference in sub-paragraph (1) above 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.

#### **Textual Amendments**

**F83** Word in [Sch. 5 para. 45\(1\)\(a\)](#) omitted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by virtue of [Finance Act 2018 \(c. 3\)](#), [Sch. 12 para. 16\(6\)](#)

**F84** Word in [Sch. 5 para. 45\(1\)\(c\)](#) omitted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by virtue of [Finance Act 2018 \(c. 3\)](#), [Sch. 12 para. 16\(6\)](#)

**F85** Word in [Sch. 5 para. 45\(2\)](#) omitted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by virtue of [Finance Act 2018 \(c. 3\)](#), [Sch. 12 para. 16\(6\)](#)

- 46 (1) This paragraph applies where—
- (a) work is carried out under a construction contract,
  - (b) as a result of the work, material undergoes a <sup>F86</sup>... disposal,
  - (c) the contract makes no provision as to the disposal of such material, and
  - (d) the contract was made on or before 29th November 1994 (when the proposal to create tax was announced).
- (2) In such a case the amount of any payment which falls to be made—
- (a) under the construction contract, and
  - (b) in respect of the work,
- shall be adjusted, unless the contract otherwise provides, so as to reflect the tax (if any) chargeable on the disposal.
- (3) For the purposes of this paragraph a construction contract is a contract under which all or any of the following work is to be carried out—
- (a) the preparation of a site;
  - (b) demolition;

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- (c) building;
- (d) civil engineering.

#### Textual Amendments

**F86** Word in [Sch. 5 para. 46\(1\)\(b\)](#) omitted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by virtue of [Finance Act 2018 \(c. 3\)](#), [Sch. 12 para. 16\(7\)](#)

#### *Adjustment of rent etc.*

- 47 (1) This paragraph applies where—
- (a) an agreement with regard to any sum payable in respect of the use of land (whether the sum is called rent or royalty or otherwise) provides that the amount of the sum is to be calculated by reference to the turnover of a business,
  - (b) the agreement was made on or before 29th November 1994 (when the proposal to create tax was announced), and
  - (c) the circumstances are such that (had the agreement been made after that date) it can reasonably be expected that it would have provided that tax be ignored in calculating the turnover.
- (2) In such a case the agreement shall be taken to provide that tax be ignored in calculating the turnover.

### [<sup>F87</sup>PART VIII

#### SECONDARY LIABILITY: CONTROLLERS OF LANDFILL SITES

#### Textual Amendments

**F87** 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.



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- (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
  - (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.

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- (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

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

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- (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.

#### *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.

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- (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—
- (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,

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- (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—
- (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.

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- (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
  - (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—

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- (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.

- (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.

### *[<sup>F88</sup>Reviews and Appeals]*

#### **Textual Amendments**

**F88** Sch. 5 para. 59 cross-heading substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 240(3)**

- 59 <sup>[<sup>F89</sup>Sections 54 to 56]</sup> 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

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- (d) as to the amount of any liability or any allowance under this Part of this Schedule,  
 [<sup>F90</sup> as they apply] to the other decisions of the Commissioners specified in [<sup>F91</sup> section 54(1)].

#### Textual Amendments

- F89** Words in Sch. 5 para. 59 substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 240(4)(a)**
- F90** Words in Sch. 5 para. 59 substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 240(4)(b)**
- F91** Words in Sch. 5 para. 59 substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 240(4)(c)**

#### *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,
  - (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.



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- (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.]

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- Sch. 5 para. 19(5)(c) substituted by [S.I. 2009/56 Sch. 1 para. 240\(2\)\(b\)](#)
- Sch. 5 para. 2(6)(e) words repealed by [S.I. 1999/2789 \(N.I.\) Sch. 3](#)
- Sch. 5 para. 19(5)(a)(b) words substituted by [S.I. 2009/56 Sch. 1 para. 240\(2\)\(a\)](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 26 para. 16 repealed by [2005 c. 22 Sch. 6 para. 9\(1\)\(b\)](#)[Sch. 11 Pt. 2\(6\)](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 6 para. 9 repealed (1.4.2009, with effect in accordance with s. 1329(1) of the amending Act) by [2009 c. 4, s. 1329\(1\)](#), [Sch. 1 para. 673\(b\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2 Pts. 1, 2](#), [Pt. 8 para. 64](#)))