
STATUTORY INSTRUMENTS

1996 No. 1527

The Landfill Tax Regulations 1996

PART XI

SET-OFF OF AMOUNTS

Landfill tax amount owed to Commissioners

45.—(1) Subject to regulation 47, this regulation applies 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) Where the total of the amount or amounts mentioned in paragraph (1)(a) above exceeds the total of the amount or amounts mentioned in paragraph (1)(b) above, the latter shall be set off against the former.

(3) Where the total of the amount or amounts mentioned in paragraph (1)(b) above exceeds the total of the amount or amounts mentioned in paragraph (1)(a) above, the Commissioners may set off the latter in paying the former.

(4) Where the total of the amount or amounts mentioned in paragraph (1)(a) above is the same as the total of the amount or amounts mentioned in paragraph (1)(b) above, no payment need be made in respect of either.

(5) Where this regulation applies and an amount has been set off in accordance with any of paragraphs (2) to (4) above, the duty of both the person and the Commissioners to pay the amount or amounts concerned shall be treated as having been discharged accordingly.

(6) References in 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 amounts of penalty, surcharge or interest.

(7) In this regulation “tax” includes “duty”.

Landfill tax amount owed by Commissioners

46.—(1) Subject to regulation 47, this regulation applies 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.

(2) Where the total of the amount or amounts mentioned in paragraph (1)(a) above exceeds the total of the amount or amounts mentioned in paragraph (1)(b) above, the latter shall be set off against the former.

(3) Where the total of the amount or amounts mentioned in paragraph (1)(b) above exceeds the total of the amount or amounts mentioned in paragraph (1)(a) above, the Commissioners may set off the latter in paying the former.

(4) Where the total of the amount or amounts mentioned in paragraph (1)(a) above is the same as the total of the amount or amounts mentioned in paragraph (1)(b) above, no payment need be made in respect of either.

(5) Where this regulation applies and an amount has been set off in accordance with any of paragraphs (2) to (4) above, the duty of both the person and the Commissioners to pay the amount or amounts concerned shall be treated as having been discharged accordingly.

(6) Paragraphs (6) and (7) of regulation 45 shall apply in relation to this regulation as they apply in relation to that regulation.

No set-off where insolvency procedure applied

47.—(1) Neither regulation 45 nor 46 shall require any such amount as is mentioned in paragraph (1)(b) of those regulations (in either case, “the credit”) to be set against any such sum as is mentioned in paragraph (1)(a) of those regulations (in either case, “the debit”) in any case where—

- (a) an insolvency procedure has been applied to the person entitled to the credit;
- (b) the credit became due after that procedure was so applied;
- (c) the liability to pay the debit either arose before that procedure was so applied or (having risen afterwards) relates to, or to matters occurring in the course of—
 - (i) the carrying on of any business; or
 - (ii) in the case of any sum such as is mentioned in regulation 46(1)(b), the carrying out of taxable activities,

at times before the procedure was so applied.

(2) Subject to paragraph (3) below, the following are the times when an insolvency procedure is to be taken, for the purposes of this regulation, to have been applied to any person, that is to say—

- (a) when a bankruptcy order, winding-up order, administration order or award of sequestration is made in relation to that person;
- (b) when that person is put into administrative receivership;
- (c) when that person, being a corporation, passes a resolution for voluntary winding-up;
- (d) when any voluntary arrangement approved in accordance with Part I or Part VIII of the Insolvency Act 1986⁽¹⁾, or Part II or Chapter II of Part VIII of the Insolvency (Northern Ireland) Order 1989⁽²⁾, comes into force in relation to that person;
- (e) when a deed of arrangement registered in accordance with the Deeds of Arrangement Act 1914⁽³⁾ or Chapter I of Part VIII of that Order of 1989 takes effect in relation to that person;
- (f) when that person’s estate becomes vested in any other person as that person’s trustee under a trust deed.

(3) References in this regulation, in relation to any person, to the application of an insolvency procedure to that person shall not include—

- (a) the making of a bankruptcy order, winding-up order, administration order or award of sequestration at a time when any such arrangements or deed as is mentioned in paragraph (2)(d) to (f) above is in force in relation to that person;

(1) 1986 c. 45.

(2) S.I.1989/2405 (N.I. 19).

(3) 1914 c. 47.

- (b) the making of a winding-up order at any of the following times—
 - (i) immediately upon the discharge of an administration order made in relation to that person;
 - (ii) when that person is being wound-up voluntarily;
 - (iii) when that person is in administrative receivership; or
 - (c) the making of an administration order in relation to that person at any time when that person is in administrative receivership.
- (4) For the purposes of this regulation a person shall be regarded as being in administrative receivership throughout any continuous period for which (disregarding any temporary vacancy in the office of receiver) there is an administrative receiver of that person, and the reference in paragraph (2) above to a person being put into administrative receivership shall be construed accordingly.