

Budget 2009



BN79

22 April 2009

LANDFILL TAX: TAXABLE DISPOSALS OF WASTE AT A LANDFILL SITE

Who is likely to be affected?

1. Businesses registered for landfill tax.

General description of the measure

2. Legislation in Finance Bill 2009 and associated secondary legislation will:
 - make certain uses of material on a landfill site subject to tax, in order to address the situation, arising from a recent Court case, that uses of waste are not taxable;
 - remove provisions which stand to cause confusion in the light of the Court case;
 - protect HM Revenue & Customs' (HMRC's) access to the information necessary to determine whether a taxable disposal has taken place; and
 - provide that the tax return form can be prescribed in a public notice.

Operative date

3. The arrangements provided for by the legislation will come into effect on 1 September 2009.

Current law and proposed revisions

4. The Finance Act (FA) 1996:
 - provides that landfill tax is charged on a disposal of material as waste, by way of landfill, at a landfill site, on or after 1 October 1996 (section 40);
 - provides that site restoration is not a taxable disposal of waste (section 43C);
 - provides that HMRC may make regulations that a disposal is not to be treated as a taxable disposal (section 62). These powers have been used to provide for so-called "tax-free areas";
 - defines "disposal of material as waste" (section 64) and "landfill site" (section 65); and
 - provides for the landfill tax return form to be prescribed in regulations (section 49). The relevant regulations are the Landfill Tax Regulations

1996 (SI 1996/1527). This approach differs to that taken for other environmental taxes where the return form is prescribed in a public notice.

5. This measure covers changes following the judgment of the Court of Appeal in Commissioners for Her Majesty's Revenue and Customs (HMRC) – v- Waste Recycling Group Limited [2008] EWCA Civ 849 (“the WRG case”). The judgment means that use of waste on a landfill site is not a taxable disposal of waste, waste used in site restoration is not subject to tax and tax-free area provisions for tax are no longer strictly necessary. However, the information previously supplied by taxpayers to HMRC (both in order that the taxpayers may benefit from the site restoration exemption and to justify use of the tax-free area provisions) remain important to HMRC being able to establish whether a taxable disposal has taken place.
6. Legislation in Finance Bill 2009 will:
 - provide that secondary legislation may prescribe activities that are to be treated as taxable disposals;
 - remove sections 43C and 62 of FA 1996;
 - provide that secondary legislation may be made to require the supply to HMRC of information about material at a landfill site and site restoration;
 - provide that the tax return form can be prescribed in a public notice; and
 - update certain references in landfill tax legislation.
7. The draft secondary legislation provided for by the Finance Bill will be published alongside the Bill.

Further advice

8. If you have any questions about this change, please contact the National Advice Service on 0845 010 9000. Information about Budget measures is available on the HM Revenue & Customs website at www.hmrc.gov.uk