**Partial Business and Regulatory Impact Assessment**

# **Title of Proposal**

## Amendment to the Scottish Landfill Tax (Prescribed Landfill Site Activities) Order 2014.

# **Purpose and intended effect**

**Background**

## Scotland is committed to building a circular economy, meaning we reduce demand for raw materials by keeping resources in use for as long as possible, extract maximum value from them, minimise waste and encouraging reuse, repair and recycling, to ensure products last as long as possible.

Scottish Landfill Tax replaced UK Landfill Tax in Scotland on 1 April 2015. The tax seeks to encourage the prevention, reuse and recycling of waste, supporting the Scottish Government’s ambitions to foster a more circular economy.

The tax is collected from operators or controllers of a landfill site based upon the weight and type of waste material. The cost of the tax is ultimately borne by waste producers and the waste industry, as well as local authorities disposing of municipal waste.

## A Business and Regulatory Impact Assessment was carried out in 2013 prior to the introduction of the Scottish Landfill Tax Act 2014 and associated secondary legislation including the Scottish Landfill Tax (Prescribed Landfill Site Activities) Order 2014 (“the Prescribed Activities Order”).

# **Objective and rationale**

## The Scottish Government’s explicit policy intention is that all material entering a landfill site should be subject to the tax, unless it is used in the final restoration of the site, stored in a non-disposal area or otherwise exempted.

## Section 3 of the Landfill Tax (Scotland) Act 2014 defines that a disposal is taxable if it is a disposal of material as waste, made by way of landfill and made at a landfill site. All three criteria must be satisfied for a disposal to be taxable.

## In addition, section 6 of the act provides a power to prescribe a “landfill site activity”, that is to be treated as a taxable disposal. These powers are presently exercised by means of the Prescribed Activities Order.

## The Scottish Government is of the view that that existing legislation clearly delineates the scope of the tax. There have however been long running challenges as to when a taxable disposal has occurred for the purpose of UK Landfill Tax and, more recently, for Scottish Landfill Tax. In particular these disputes have related to whether certain materials used in certain landfill site engineering activities has been disposed of “as waste” and are therefore taxable disposals.

## While disputes about the correct tax treatment can ultimately be resolved through the tax tribunal system, any period of dispute can undermine the circular economy objectives of the tax, create additional expense for taxpayers and result in an uneven playing field across the waste industry.

## The objective of the amendment to the Prescribed Activities Order is therefore to provide certainty about when a taxable disposal has occurred.

# **Consultation**

# **Within Government**

## The following government agencies and departments have been consulted in the preparation of this partial Business and Regulatory Impact Assessment (BRIA):

* Revenue Scotland has provided advice on the operation of Scottish Landfill Tax
* Scottish Environment Protection Agency has provided advice on landfill sites and environmental regulations.
* Environment Directorate has provided advice on circular economy issues;
* Scottish Government Legal Directorate has provided advice on legal issues.

## **Public Consultation**

## A formal consultation is being conducted to present the draft amendment order and seek thoughts on:

## Whether this amendment provides additional clarity and certainty for taxpayers.

## Whether the activities prescribed as taxable disposals are defined with sufficient clarity.

## Whether the proposed amendment will result in any practical or operational difficulties for landfill operators.

## **Business**

## Consultation with businesses will take place during the public consultation process. It is expected that it will include virtual discussions and other engagement with key waste and recycling industry representative organisations.

# **Options**

## **Option 1 - Amend the Scottish Landfill Tax (Prescribed Landfill Site Activities) Order 2014.**

## The Scottish Government is proposing to amend the Scottish Landfill Tax (Prescribed Landfill Site Activities) Order 2014 to reflect that any use of material in a landfill cell is taxable.

## A set of defined exceptions, consistent with the activities that are not currently taxable, will be included in the Order.

## Any material that is elsewhere defined as chargeable to or exempted from the tax will remain either chargeable or exempt, as applicable.

**Option 2 – Do Nothing**

Continue with existing Scottish Landfill Tax legislation, with no change.

**Sectors and groups affected**

## Landfill site operators and their customers may be affected by this amendment to the Prescribed Activities Order.

**Benefits**

## As stated above, the Scottish Government is of the view that that existing legislation clearly delineates the scope of Scottish Landfill Tax. It would therefore be possible to continue without this this amendment to the Prescribed Activities Order.

## However Option 1 will provide additional clarity regarding when a taxable disposal has been made. This will reduce the possibility of future disputes which need to be resolved through the tax tribunal system, causing expense for taxpayers and Revenue Scotland. This will also ensure a level playing field for all taxpayers and their customers.

**Costs**

The Scottish Government’s view is there will not be any additional costs for taxpayers or their customers as a result of option 1. The amendment does not change the scope of tax and no additional administrative or operational requirements are imposed. This conclusion will be tested through public consultation and discussion with industry groups.

Option 1 reduces the risk of future tax disputes, which may result in significant costs for both taxpayer and Revenue Scotland.

# **Scottish Firms Impact Test**

Consultation with representative organisations will take place as part of the public consultation process.

# **Competition Assessment**

## The Scottish Government’s view is that the amendment to the Prescribed Activities Order will not impact negatively on competition.

# **Consumer Assessment**

## The Scottish Government’s view is that the amendments to the Prescribed Activities Order will not impact negatively on consumers.

# **Test run of business forms**

## The amendments to the Prescribed Activities Order will not introduce any new business forms.

# **Digital Impact Test**

## No digital impact is expected.

# **Legal Aid Impact**

## No legal aid impact is expected

# **Enforcement, sanctions and monitoring**

## Revenue Scotland is responsible for the collection and management of the devolved taxes, including Scottish Landfill Tax. Sanctions for non-compliance with tax obligations are set out in the Revenue Scotland and Tax Powers Act 2014.

# **Implementation and delivery plan**

## Pending consideration of the consultation responses, The Scottish Landfill Tax (Prescribed Landfill Site Activities) (Amendment) Order 2021 will be laid in Parliament at the earliest practical date.

# **Post-implementation review**

The Scottish Government will work with Revenue Scotland to monitor the effectiveness of The Scottish Landfill Tax (Prescribed Landfill Site Activities) (Amendment) Order 2021.

# **Summary and recommendation**

## We recommend amending the Scottish Landfill Tax (Prescribed Landfill Site Activities) Order, providing additional clarity about when a taxable disposal has occurred and reducing any potential for uncertainty.

## The proposed amendment does not change the scope of Scottish Landfill Tax and in the Scottish Government’s view, the amendments do not bring any additional costs beyond those which were included in the impact assessment undertaken by the Scottish Government in relation to the introduction of the Scottish Landfill Tax Act 2014.

## The proposed amendments provide certainty regarding when a taxable disposal has been made. This will reduce the possibility of future disputes which need to be resolved through the tax tribunal system and ensure a level playing field for all taxpayers.

## This recommendation will be reviewed in light of further information gathered through further consultation with stakeholders, which will also be used to form any final BRIA.