CHAPTER 29

LANDFILL TAX (2)

29.1 Credit

SI 1996/1527

This chapter continues our look at landfill tax and we start by looking at when a landfill site operator can claim money back from Customs. Credit can be claimed under Parts V, VI and VII of the Landfill Tax Regulations. We will take each of these in order.

29.2 Part V - Permanent removals

Firstly, Part V is concerned with **permanent removals**. Credit can be claimed under this part where either of the following conditions are satisfied:

- Firstly, the **reuse condition**. This means the material has been **recycled** or **incinerated** or **removed** from the landfill site for use elsewhere, which does not include dumping on another landfill site, or has been removed for use in the restoration of a landfill site and the material involved has previously been used to create or maintain a temporary hard standing, temporary screening bund, or temporary haul road.

  The material must have been recycled, incinerated or removed **within 1 year** of the original disposal. This 1 year is extended to **5 years if water has been added** in order to assist in its disposal.

The idea behind this credit is that landfill tax applies where waste is land filled. If it has been removed and taken elsewhere, and effectively recycled, then the tax should not be due.

- The second circumstance where credit can be claimed is where the "**enforced removal**" condition is satisfied. Like the title suggests, this is where the disposal has been in **breach of the terms of the licence** in order to be a landfill site and the operator has been directed to remove the material and it has therefore had to be **disposed of in a different landfill site.** Where this happens, landfill tax will have to be paid again on the subsequent disposal.

So as the landfill tax has been paid twice, the original operator can claim a credit for the tax on the original disposal.

The direction to remove waste in England will have been made by the Environment Agency.

Where this part of the regulations are satisfied, the **credit can be claimed** by deducting it from amounts due in the accounting period in which the reuse or enforced removal happened, or any **subsequent accounting period**. If the credit exceeds what you owe them, they will repay the amount back to you.

29.3 Part VI – bad debts

Reg.22-29 SI 1996/1527

Credit can be claimed for bad debts, provided that the landfill site operator complies with regulations 22 to 29. The credit is usually claimed in the accounting period in which entitlement to credit arises or a subsequent period. The credit can be claimed if the following conditions are satisfied:

- the landfill site operator made a **disposal** on his site;
- landfill tax was **paid** on the original disposal and related to a disposal by a person not connected with the operator;
- the person who disposed of the waste has **not paid the landfill site operator** for the whole or part of the debt;
- the operator must have **written off the debt** in his Accounts;
- evidence of the debt must be supplied to Customs. For instance, a **landfill tax invoice** issued within 14 days of the original disposal;
- he must have records to show that he paid the tax in the first place, and that the write off has occurred;
- he must keep a **record** of any claim he has made from Customs to show the amount of tax charged on the disposal, the Return where the original tax was accounted for and paid, dates and numbers of landfill tax invoices, any money that has since been received and any transfer notes.

These records will be kept in the landfill tax bad debt account and

- The final condition is that **one year** must have elapsed since the date of the invoice.

How much credit will the landfill site operator be allowed to claim? Credit can be claimed for the **proportion of tax** on the disposal that relates to the amount outstanding.

Illustration 1

For example, if you are due a payment from a debtor of £500, but the debtor has only paid £400 towards his debt. The total landfill tax on the invoice is £50. If we take the £50 tax and divide it by the total payment due under the invoice of £500, the tax makes up 10% of the invoice.

Therefore, if £100 is outstanding, this allows the landfill site operator to reclaim £10 of the tax, i.e. 10% of the £100 gives us the tax reclaim of £10.

You could also have calculated the credit in another way. £100 is outstanding out of the total £500. Therefore, one fifth of the invoice has not been paid. One fifth of the tax can be reclaimed, which is the £10 we just worked out.

What if then, the debtor actually settles the outstanding £100 and we have already reclaimed the £10 landfill tax from Customs. In this scenario the landfill site operator must pay back to Customs the £10 that he has reclaimed. If the debtor had only settled £50 of the outstanding amount then the landfill site operator will a proportionate amount back, i.e. half the debt has been repaid so half the tax will be repaid, this amounts to £5.

29.4 Part VII – Bodies concerned with the Environment

This part covers bodies concerned with the environment. If a landfill site operator makes a **monetary contribution** to a body that is helping our environment then he will be given a **tax credit** based on the donation made. This is known as the Landfill Communities Fund (LCF) and used to be called the Landfill Tax Credit Scheme or LTCS.

Reg.32 SI 1996/1527

Therefore, we are looking at qualifying contributions being made by registered persons. A qualifying contribution is defined in Regulation 32, and this states that it must be made by a registered person, e.g. a landfill site operator, and the contribution must be made to an approved body.

Essentially an **approved body** is one that has satisfied various requirements, such as it must be **non profit making**, and must have **approved objects**. There are numerous approved objects and they include, for example, **land remediation** and operations to **prevent pollution**.

Reg.33 SI 1996/1527

The body has to be approved by the regulator which currently is **Entrust**. The amount of credit that the landfill site operator can claim is **90% of the contribution** that he makes, but this is restricted to a **maximum 5.5%** of his landfill tax liability. (Prior to 1.4.10 this was 6%.) In order that Customs can audit the amounts claimed, the landfill site operator must keep **records** showing the amount of payments made, the date each payment is made, and the name and enrolment number of the body to whom the payment was made.

The obligations that are imposed on approved bodies are that they are required to apply to the regulatory body and pay an application fee. The legislation sets the fee at a **maximum £100** at the moment. They must **apply the money that they receive for their approved objects**, i.e. they are helping the environment, and this must not be to the benefit of the contributors. The approved body must keep a **record of contributions it receives**. For example, it must record

- the name, address, registration number of the registered people making the contribution,
- the amount of the contribution, and
- the date of receipt of the contribution.

It must provide this information to the regulatory body within 7 days of receiving the money.

The approved body may have to deliver to the regulatory authority **audited accounts where** the regulatory authority requests them. The request cannot be made earlier than 10 months from the body's year end. In addition, the legislation sets a maximum payment to the regulatory body of **5% of contributions received,** which will go towards the running costs of the regulatory body.

Customs can retrospectively recover tax credits from a landfill operator under regulation 36 if they are not satisfied that the contribution or any income from it has been spent by the approved body on its approved objects.

29.5 Case Law: Groundwork Community Forests, Twizell & Others (2009) EWCA Civ 1192.

There has been a case concerning the legislation on these types of donations to approved bodies. There is a separate lecture on this case on the Academy if you want to listen to it in detail.

You will see in a minute that it wasn't a landfill tax case per se but the tax was relevant to the decision. In summary though this is what the case was about.

The case was to do with an environmental body that went into administration. It was the owner of 3 pieces of land purchased (or substantially purchased) with funds provided from the Landfill Communities Fund. The Administrators proposed to sell the land and use the monies from the sales to pay their own remuneration and pay unsecured creditors.

Entrust expressed the view that the sale of the land could infringe the landfill regulations and that HMRC would therefore be able to claim back the tax credits that landfill operators were given when they donated the money to the environmental body. This could then lead to an action being taken by those operators against the environmental body and/or the Administrators.

Remember we said earlier that Customs can recover tax credits from an operator if they aren't spent on their approved objects and if income derived from the contribution is also not spent on their approved objects.

So although this wasn't a landfill case as such the tax was relevant. The Administrators were obviously concerned as to whether they should enter into the contracts for sale of the land – because they would not wish to sell the land if it was unlawful to do so (and also they were concerned as to their remuneration!) Therefore, they sought a direction from the court.

Initially the case was heard in the High Court but then went to appeal to the Court of Appeal. The issue was regulation 33A(1)(b) which says that an approved body must

'apply qualifying contributions and any income derived therefrom only to approved objects'

The **High Court initially focused on the word 'income' and decided that the money received from the land would be capital** so there would be no problem with using the sale proceeds from the land to pay creditors and the administrators.

The **Court of Appeal also said there would be no problem with using the sale proceeds in this way – but arrived at that decision from a different angle**. **They focused on whether paying creditors and the administrators would be 'approved objects' and if so it didn't matter whether the sale proceeds were income or not**. They concluded that there was no evidence that the activities carried out by the company were 'unapproved' and that if they had have been then they would have been ultra vires and a misfeasance and a misapplication of its assets.

It is interesting to note that the court also said that whether 'income' did include the proceeds of sale was irrelevant to the issue the court had to determine. That type of question should await a case in which they were relevant! So maybe we haven't seen the last of this one!

Example 1

You need to use your legislation to find out where each of the items in the list are contained. The 3 columns on the right-hand side show the three pieces of legislation where the items on the list could appear.

All you have got to do is fill in the empty boxes, by putting in the number of the relevant section, regulation or schedule where you will find each of the items. Most of the items are only listed in one place so you are only required to write one number for each item.

The exception to this rule is the definition of qualifying material where I would like you to write 3 numbers.

	Finance Act 1996	**SI 1996/1527**	**SI 1996/1528**
Rates of Tax			
Bad debt relief			
Payment of tax			
Definition of qualifying material			
Definition of accounting period			
Determination of weight			

Answer 1

	Finance Act 1996	SI 1996/1527	SI 1996/1528
Rates of Tax	s.42		
Bad debt relief		Reg. 22	
Payment of tax		Reg.15	
Definition of qualifying material	s.42		Reg.2 Schedule
Definition of accounting period		Reg.2	
Determination of weight		Reg.41	