

# **REVENUE SCOTLAND AND TAX POWERS ACT 2014**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### **BACKGROUND**

3. The Revenue Scotland and Tax Powers Act is the third of three related Acts which were brought forward in consequence of measures enacted in the Scotland Act 2012. It follows two tax-specific Acts, the Land and Buildings Transaction Tax (Scotland) Act 2013 (“LBTT(S)A 2013”) that received Royal Assent on 31 July 2013 and the Landfill Tax (Scotland) Act 2014 (“LT(S)A 2014”) that received Royal Assent on 21 January 2014.
4. The Act makes provisions for a Scottish tax system to enable the collection and management of Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT) - “the devolved taxes”. It establishes Revenue Scotland as the tax authority responsible for collecting Scotland’s devolved taxes from 1 April 2015. It puts in place a statutory framework which will apply to the devolved taxes and sets out the relationship between the tax authority and taxpayers in Scotland, including the relevant powers, rights and duties.

### **THE ACT**

#### *Overview*

5. The Act comprises 261 sections and five schedules and is divided into 12 Parts as follows:
  - **PART 1** provides an overview of the Act’s structure in relation to the different Parts and schedules.
  - **PART 2** establishes Revenue Scotland and provides for its general functions and responsibilities.
  - **PART 3** makes provision about the use and protection of taxpayer and other information.
  - **PART 4** sets out in detail the composition and operational arrangements of the new two-tier Scottish Tax Tribunals.

*These notes relate to the Revenue Scotland and Tax Powers Act 2014 (asp 16) which received Royal Assent on 24 September 2014*

- **PART 5** outlines the general anti-avoidance rule applying to avoidance of the two devolved taxes.
- **PART 6** sets out the powers and duties of taxpayers and Revenue Scotland, outlines the arrangements and time limits for taxpayer self-assessments and Revenue Scotland assessments and the arrangements for handling of double or overpayment of tax.
- **PART 7** makes provision for Revenue Scotland's investigatory powers.
- **PART 8** sets out the matters in relation to which penalties may be imposed.
- **PART 9** makes provision about the interest payable on unpaid tax and on penalties.
- **PART 10** contains provisions on debt enforcement by Revenue Scotland.
- **PART 11** sets out the review and appeals process.
- **PART 12** outlines final provisions including an index of defined expressions, subordinate legislation and ancillary powers.

## **Part 1 – Overview of Act**

6. **Section 1** sets out the content of the Act and provides a brief description of what each Part does.

## **Part 2 - Revenue Scotland**

7. **Part 2** formally establishes Revenue Scotland and introduces schedule 1. It sets out Revenue Scotland's functions, its independence from and relationship with the Scottish Ministers in the exercise of those functions, including the payment of tax receipts into the Scottish Consolidated Fund, its powers of delegation, and procedures for the publication and reporting of its Charter of standards and values, corporate plan and annual report.

## **Establishment of Revenue Scotland**

### ***Section 2 – Revenue Scotland***

8. This section establishes Revenue Scotland as a corporate body with a separate legal personality to that of the Scottish Ministers<sup>1</sup>. Revenue Scotland's Gaelic name (Teachd-a-steach Alba) has equal legal status. Section 2 also introduces schedule 1 which is concerned with the membership, procedures and staffing of Revenue Scotland.
9. Revenue Scotland is part of the Scottish Administration, within the meaning of section 126(8) of the Scotland Act 1998, by virtue of an order under section 104 of that Act<sup>2</sup>.

## **Functions of Revenue Scotland**

### ***Section 3 – Functions of Revenue Scotland***

10. Subsection (1) sets out Revenue Scotland's general function as the collection and management of the devolved taxes (devolved taxes having the meaning given by section 80A(4) of the Scotland Act 1998). By virtue of section 51(3) of the Commissioners for Revenue and Customs Act 2005, the reference to collection and management has the same meaning as references to care and management in older tax statutes. The effect of this is that jurisprudence concerning the proper bounds of the tax

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<sup>1</sup> Revenue Scotland was previously an administrative Division of the Scottish Government.

<sup>2</sup> [The Revenue Scotland and Tax Powers Act 2014 \(Consequential Provisions and Modifications Order 2014 \(2014 No. 3294\)\)](#)

authority's role is imported into the devolved tax system. This jurisprudence includes not only case law from the UK jurisdictions but other English-speaking jurisdictions<sup>3</sup>.

11. Subsection (2) sets out the particular functions relating to Revenue Scotland as:
  - the provision of information, advice and assistance to the Scottish Ministers on matters concerning tax; reflecting that the Scottish Ministers will lead on devolved tax policy development and future legislation;
  - the provision of information, assistance and advice to enable taxpayers, their agents and other persons to comply with the requirements of the devolved taxes;
  - the efficient resolution of disputes on matters of tax liability or compliance, including by mediation (other forms of dispute resolution being review and appeal under Part 11 of the Act); and
  - the protection of the revenue against tax fraud (that is to say, tax evasion)<sup>4</sup> and tax avoidance. Revenue Scotland might do this through robust while proportionate compliance activity, through application of Targeted Anti-Avoidance Rules (TAARs) or through application of the General Anti-Avoidance Rule (see Part 5 of the Act).

## **Delegation of functions by Revenue Scotland**

### ***Section 4 – Delegation of functions by Revenue Scotland***

12. Subsection (1) provides a power for Revenue Scotland to delegate any of its functions to the Keeper of the Registers of Scotland (RoS) with respect to LBTT and to the Scottish Environment Protection Agency (SEPA) with respect to SLfT (although Revenue Scotland will retain responsibility and accountability for the collection and management of both devolved taxes). Subsection (2) provides that in the delegation of these functions, both RoS and SEPA must comply with any directions Revenue Scotland gives to each regarding how to carry out the functions. Subsection (3) gives Revenue Scotland the power to change or revoke anything regarding the delegation or directions of these functions at any time. Subsection (7) makes it clear that delegation of a function does not affect Revenue Scotland's ability to exercise it or responsibility for it.
13. Subsection (4) provides that Revenue Scotland must publish information regarding any delegation or directions of its functions and must also lay a copy of this information before the Scottish Parliament (subsection (5)), unless it considers that to do so would impact upon the ability to carry out its functions effectively (subsection (6)). RoS and SEPA may be reimbursed by Revenue Scotland for any expenditure incurred in exercising its delegated functions (subsection (8)).

## **Money**

### ***Section 5 – Payments into the Scottish Consolidated Fund***

14. This section provides that, subject to deduction of payments in connection with repayments, interest on repayments and payments treated as repayments, Revenue Scotland must pay money received in the exercise of its functions into the Scottish Consolidated Fund. This is consistent with the general position of Scottish Administration bodies set out in section 64(3) of the Scotland Act 1998. Paragraph 3 of schedule 4 (minor and consequential modifications) makes a consequential amendment

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3 The leading English case is the "Fleet Street casuals case"; *Inland Revenue v National Federation of Self-employed and Small Businesses Ltd* [1982] A.C. 617.

4 Tax evasion by taxpayers or agents is a criminal offence at common law; *Strathern v Fogal* 1922 J.C. 73; *HM Advocate v Turnbull (Robert S)* 1951 J.C. 96.

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to section 9 of the Public Finance and Accountability (Scotland) Act 2000 so that RoS may direct receipts in connection with LBTT to the Scottish Consolidated Fund.

### ***Section 6 – Rewards***

15. This section provides that Revenue Scotland may pay a reward to a person for a service relating to a function of Revenue Scotland, an example being information which leads to the collection of undeclared tax.

## **Independence of Revenue Scotland**

### ***Section 7 – Independence of Revenue Scotland***

16. This section makes provision for Revenue Scotland's independence in that the Scottish Ministers must not direct or otherwise seek to control Revenue Scotland in the exercise of its functions. Revenue Scotland's independence is, however, subject to any contrary provisions made in this Act or any other enactment.

## **Ministerial guidance**

### ***Section 8 – Ministerial guidance***

17. This section sets out that the Scottish Ministers may give guidance to Revenue Scotland about the exercise of its functions and that Revenue Scotland must have regard to that guidance. The guidance provided must be published, as considered appropriate by Ministers, and laid before the Scottish Parliament unless the Scottish Ministers consider that to do so would impact upon the ability of Revenue Scotland to carry out its functions effectively.

## **Provision of information, advice or assistance to Ministers**

### ***Section 9 – Provision of information, advice or assistance to the Scottish Ministers***

18. This section sets out that Revenue Scotland must provide the Scottish Ministers with information or advice relating to its functions when required to do so, in such form as Ministers may determine.

## **Charter of standards and values**

### ***Section 10 – Charter of standards and values***

19. This section provides that Revenue Scotland must prepare and publish a Charter (including laying it before the Scottish Parliament) setting out the standards of behaviour and values its members and staff are expected to adhere to when dealing with taxpayers, their agents and other persons; and the standards of behaviour and values it expects such persons themselves to adhere to when dealing with Revenue Scotland. Revenue Scotland must consult on the Charter and review and revise it as and when it considers it appropriate to do so.

## **Corporate plan**

### ***Section 11 – Corporate plan***

20. This section provides that Revenue Scotland must prepare a corporate plan. Subsections (5), (7) and (8) relate specifically to the planning period for each corporate plan. Subsection (7) sets out that the first plan is to be published no later than a date to be appointed by an order made by the Scottish Ministers and that subsequent plans are to be submitted no later than the end date specified by that order and thereafter at three-yearly intervals. Subsection (5) provides that Revenue Scotland may review and submit a revised plan at any time for the approval of Ministers and subsection (8) enables

Ministers by order to substitute such other period as they consider appropriate for the planning period.

21. The remaining subsections set out procedures for the approval and publication of the corporate plan. The plan must describe Revenue Scotland's main objectives, the outcomes by which these objectives may be measured and its main activities for the duration of the planning period. Each plan must be submitted to the Scottish Ministers for approval, with approval being subject to any modifications as agreed between Ministers and Revenue Scotland. Following approval, a copy of the plan must be laid before the Scottish Parliament and published as Revenue Scotland considers appropriate.

## **Annual report**

### ***Section 12 – Annual report***

22. This section sets out a requirement for Revenue Scotland to prepare and publish an annual report (including sending a copy of the report to the Scottish Ministers and laying it before the Scottish Parliament) as soon as possible after the end of each financial year. The annual report might contain, for example, details of how Revenue Scotland has demonstrated the standards of behaviour and values in the Charter of standards and values referred to in section 10. Revenue Scotland may also publish other reports and information it considers relevant and appropriate to the exercise of its functions.
23. On the basis that Revenue Scotland will be part of the Scottish Administration, the accountability and audit provisions of Part 2 of the Public Finance and Accountability (Scotland) Act 2000 will apply, including the duty to prepare accounts under section 19.

## **Part 3 – Information**

### **Use of information by Revenue Scotland etc.**

#### ***Section 13 – Use of information by Revenue Scotland and other persons***

24. **Section 13** allows for information (whether taxpayer information or other information) to be disclosed and used within and between Revenue Scotland, RoS and SEPA. In the case of Revenue Scotland, this would allow information obtained in relation to one devolved tax to be used in the context of another devolved tax. RoS and SEPA may only participate in information sharing if there has been a delegation under section 4, in which case they may use tax information for land registration and environmental purposes respectively (and vice versa). But section 13 does not extend to sharing outside of Revenue Scotland, RoS and SEPA (for which see section 15(3)).

### **Protected taxpayer information**

#### ***Section 14 – Protected taxpayer information***

25. **Section 14** establishes the concept of “protected taxpayer information”. “Protected taxpayer information” is information about identifiable taxpayers and other persons (for example their personal or business associates) that becomes held by Revenue Scotland, RoS or SEPA in the exercise of tax functions. “Person” includes both natural and legal persons, so individuals and corporations are equivalently protected. Identifiable information not concerning tax functions (for example information about staff or contractors) is not “protected taxpayer information”.

#### ***Section 15 – Confidentiality of protected taxpayer information***

26. **Section 15** prohibits Revenue Scotland officials from disclosing protected taxpayer information unless the disclosure is expressly permitted by subsection (3). Breach of this requirement is a criminal offence (see section 19). The grounds for lawful disclosure

in that subsection include disclosure with the consent of the person or persons to whom the protected taxpayer information relates, and disclosure in connection with legal proceedings (whether civil or criminal). Revenue Scotland may also disclose protected taxpayer information in accordance with existing or future statutory provisions such as Part 2A of the Public Finance and Accountability (Scotland) Act 2000 (data matching for the detection of fraud etc.).

27. **Section 15** applies not only to Revenue Scotland staff but also to individuals working for delegates of Revenue Scotland or otherwise exercising functions on behalf of Revenue Scotland, for example an advocate engaged to conduct litigation for Revenue Scotland in the higher courts.

### ***Section 16 – Protected taxpayer information: declaration of confidentiality***

28. Revenue Scotland officials (and the other individuals mentioned in paragraph 27) must make a formal declaration acknowledging their statutory duty of confidentiality under section 15. Subsections (2) and (3) provide for when and how the declaration is to be made.

### **Other limits on use and disclosure of information**

#### ***Section 17 – Disclosure of information prohibited or restricted by statute or agreement***

29. **Section 17** reflects that the special statutory protection for taxpayer information provided for in Part 3 of the Act is additional to the existing legal protections that may apply to taxpayer and other forms of information, for example the Data Protection Act 1998 which includes as data protection principle seven that appropriate technical and organisational measures be taken to protect all personal data. Accordingly, the permissive effect of sections 13(1) and 15(3) is subject to any prohibitions or restrictions provided for in other enactments or agreements.

#### ***Section 18 – Protected taxpayer information: use by the Keeper***

30. **Section 18** specifically addresses the position of RoS and prohibits RoS from making use of protected taxpayer information in connection with RoS' power to provide consultancy, advisory or other commercial services. See also paragraph 2 of schedule 4 which makes specific provision about protected taxpayer information and SEPA.

### **Offence of wrongful disclosure**

#### ***Section 19 – Wrongful disclosure of protected taxpayer information***

31. **Section 19** makes it a criminal offence to breach section 15, that is to say to disclose protected taxpayer information where there is not specific statutory authority under section 15(3). The penalty is imprisonment and/or a fine, with the length of sentence and the amount of the fine being higher on solemn prosecution (conviction on indictment) (see subsection (3)). There is a defence where a person reasonably believed that disclosure was lawful or the information disclosed had already lawfully been made public.
32. Subsection (4) sets out that other legal measures may also be taken against a person who breaches section 15, for example disciplinary measures in terms of employment law or a breach of confidence action may be taken despite the criminal prosecution.

## **Part 4 – the Scottish Tax Tribunals**

### **Chapter 1 — Introductory**

#### **Section 20 – Overview**

33. This section provides an overview of Part 4 of the Act which provides for the establishment of the Tax Tribunals to hear appeals and exercise other functions in relation to devolved taxes.

### **Chapter 2 — Establishment and Leadership**

#### **Establishment**

#### **Section 21 – The First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland**

34. This section provides for the establishment of the First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland, referred to as the First-tier Tribunal and the Upper Tribunal and collectively as the Tax Tribunals in this Act.

#### **Leadership**

#### **Section 22 – President of the Tax Tribunals**

35. This section provides for the leadership of the Tax Tribunals. The Tax Tribunals will be led by the President of the Tax Tribunals who will be appointed by the Scottish Ministers after consultation with the Lord President of the Court of Session (who in terms of section 2 of the Tribunals (Scotland) Act 2014 will be Head of the unified Scottish Tribunals). The section provides that the President of the Tax Tribunals is to be appointed on such terms and conditions as are determined by the Scottish Ministers.
36. [Schedule 2](#) makes additional provision relating to the President of the Tax Tribunals.

#### **Section 23 – Functions of the President of the Tax Tribunals**

37. This section provides that the President of the Tax Tribunals is the senior member of the Tax Tribunals and has the functions laid out in this Act.

#### **Section 24 – Business arrangements**

38. This section sets out the President's functions in relation to the business of the Tax Tribunals and responsibility for the welfare of the members of the Tax Tribunals.

#### **Section 25 – Temporary President**

39. This section provides for the Scottish Ministers to appoint a temporary president (after consulting with the Lord President). The temporary president will be appointed from the legal members of the Tax Tribunals or from persons eligible to be legal members. All functions of the President can be carried out by a Temporary President. As such, all references to the President in this Act apply to a Temporary President.

### **Chapter 3 — Membership**

#### **Membership of Tax Tribunals**

#### **Section 26 – Members**

40. This section provides that the First-tier Tribunal's membership will be made up of ordinary and legal members. The Upper Tribunal will be made up of legal members

and Court of Session judges. Schedule 2 provides further details about ordinary and legal members.

## **Judicial members**

### ***Section 27 – Judicial members***

41. This section provides that a Court of Session judge may sit as a member of the Upper Tribunal if authorised to do so by the President of the Tax Tribunals. Such an authorisation would have to be approved by the Lord President and by the person involved.

## **Status and capacity**

### ***Section 28 – Status and capacity of members***

42. This section provides for the members of the Tax Tribunals to have judicial status and capacity for the purpose of making a decision on any case before the Tax Tribunals.

## ***Chapter 4 — Decision-Making and Composition***

### **Decision-making and composition: general**

#### ***Section 29 – Decisions in the First-tier Tribunal***

43. This section sets out the composition of a panel hearing a case in the First-tier Tribunal and details the President's responsibility for selecting the size and composition of the panel and the individual members that are to sit on the panel. The President may choose himself or herself.

#### ***Section 30 – Decisions in the Upper Tribunal***

44. This section sets out the President's responsibility for selecting the legal member or members who will make up the panel in the Upper Tribunal. The President may choose himself or herself.

#### ***Section 31 – Composition of the Tribunals***

45. This section allows the Scottish Ministers, by affirmative regulations, to make provision regarding the composition of the Tax Tribunals and may differentiate between decision making on a case heard at first instance or on appeal.

### **Decision by two or more members**

#### ***Section 32 – Voting for decisions***

46. [Section 32](#) allows the Scottish Ministers, by affirmative regulations, to make provision regarding how decisions are voted for in panels of two or more members and how ties are resolved.

#### ***Section 33 – Chairing members***

47. [Section 33](#) makes provision for chairing members where a decision is being taken by two or more members. Subsection (1) specifies that tribunal rules may make provision for determining who will be the chairing member in a case before the First-tier or Upper Tribunal. Subsection (2) makes further provision for what can be specified in tribunal rules in relation to chairing members.

## **Chapter 5 — Appeal of Decisions**

### **Appeal from First-tier Tribunal**

#### **Section 34 – Appeal from the First-tier Tribunal**

48. This section provides that most decisions of the First-tier Tribunal can be appealed to the Upper Tribunal by a party in the case on a point of law. The appeal needs either the permission of the First-tier Tribunal or the Upper Tribunal. Subsection (5) lists the provisions where decisions of the First-tier Tribunal are final and cannot be appealed.

#### **Section 35 – Disposal of an appeal under section 34**

49. This section provides for the Upper Tribunal’s consideration of an appeal from the First-tier Tribunal. When reaching a decision the Upper Tribunal may uphold or quash the decision of the First-tier Tribunal, and if it quashes it, it may remake the decision or remit the case back to the First-tier Tribunal with any directions the Upper Tribunal sees fit.

### **Appeal from Upper Tribunal**

#### **Section 36 – Appeal from the Upper Tribunal**

50. This section provides for an appeal from the Upper Tribunal to the Court of Session. Such an appeal may only be made on a point of law and requires the permission of the Upper Tribunal or the Court of Session. Subsection (5) lists the provisions where decisions of the Upper Tribunal are final and cannot be appealed.

#### **Section 37 – Disposal of an appeal under section 36**

51. This section provides for the Court of Session’s consideration of an appeal from the Upper Tribunal. When reaching a decision, the Court of Session may uphold or quash the decision of the Upper Tribunal, and if it quashes it, it may remake the decision or remit the case back to the Upper Tribunal with any directions the Court of Session sees fit.

#### **Section 38 – Procedure on second appeal**

52. This section makes provision for “second appeals” – appeals to the Court of Session from the Upper Tribunal, where the decision being appealed was itself a decision on an appeal from the First-tier Tribunal. The Tribunal or Court must not give permission for a second appeal unless the appeal raises an important point of principle or practice, or there is some other compelling reason for a second appeal to proceed. The Court of Session has the powers of either tribunal if remaking the decision appealed. The Court may remit the case either to the Upper Tribunal or to the First-tier Tribunal. And where the Court remits the case to the Upper Tribunal, the Upper Tribunal may itself remit the case to the First-tier Tribunal. Where it does so, however, it must send to that tribunal any directions given by the Court of Session to the Upper Tribunal.

### **Further provision on permission to appeal**

#### **Section 39 – Process for permission**

53. This section allows the Scottish Ministers, by regulations, to specify a time limit within which permission for an appeal must be sought. A refusal to give permission is not appealable under section 34 or 36.

## **Chapter 6 — Special Jurisdiction**

### **Section 40 – Judicial review cases**

54. This section provides for judicial review. The Court of Session may remit such a petition for judicial review to the Upper Tribunal if the Court of Session is content that the petition does not seek anything other than the exercise of the Court’s judicial review function and the petition falls within a category specified by an act of sederunt made by the Court for the purposes of this subsection. The Court of Session also has to be satisfied that the matter in question falls within the functions and expertise of the tribunal.

### **Section 41 – Procedural steps where petition remitted**

55. This section brings the Act into line with the corresponding provisions of the Courts Reform (Scotland) Act 2014 in respect of circumstances where the Court of Session remits a petition for judicial review to the Upper Tribunal. The effect in such cases is that the Upper Tribunal will have the same powers as the Court of Session would have had.

### **Section 42 – Decision on remittal**

56. This section sets out that, when considering a petition remitted from the Court of Session, the Upper Tribunal, in determining the issues raised, has the same powers as the Court of Session and will apply the same principles that the Court of Session would when considering a petition for judicial review. An order made by the Upper Tribunal in these circumstances will have the same effect as if it was made by the Court of Session. This section does not limit the right of appeal from the Upper Tribunal to the Court of Session.

### **Section 43 – Additional matters**

57. This section sets out that any step or order made by the Court of Session in a remitted case is to be treated as if it was made by the Upper Tribunal, further provisions on cases remitted from the Court of Session to the Upper Tribunal may be made in the tribunal rules.

### **Section 44 – Meaning of judicial review**

58. This section defines what is meant by references to a petition to the Court of Session for a judicial review and to references to the exercise of the Court of Session’s judicial review function.

## **Chapter 7 — Powers and Enforcement**

### **Section 45 – Venue for hearings**

59. This section provides that the Tax Tribunals may convene at any time or place in Scotland subject to any provision in tribunal rules, which may allow the President of the Tax Tribunals to determine the question.

### **Section 46 – Conduct of cases**

60. This section provides that the Tax Tribunals’ powers, authority, rights and privileges in relation to the following things (set out in subsection (3)) will be set out in tribunal rules and may reference any authority exercisable by a sheriff or the Court of Session:
- the attendance or examination of witnesses;
  - the recovery, production or inspection of relevant materials (documents and other items);

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- the commissioning of reports of any relevant type; and
- other procedural, evidential or similar measures.

### ***Section 47 – Enforcement of decisions***

61. This section provides that a decision of the Tax Tribunals will be enforceable by provisions laid out in tribunal rules, and may reference the means of enforcing an order from a sheriff or the Court of Session.

### ***Section 48 – Award of expenses***

62. This section sets out that the Tax Tribunals may award expenses in accordance with tribunal rules.

### ***Section 49 – Additional powers***

63. This section provides that the Scottish Ministers may, by regulations, confer on the Tax Tribunals such additional powers as are necessary or expedient for the exercise of their functions.

### ***Section 50 – Offences in relation to proceedings***

64. **Section 50** allows the Scottish Ministers, by affirmative regulations, to create certain types of offences in relation to proceedings before the First-tier and Upper Tribunals. This allows offences to be created in connection with tribunals for things like making false statements and concealing or destroying evidence. Section 50(1)(b) allows regulations to be made specifying circumstances in which a person cannot be compelled to give or produce evidence. Section 50(2) sets out the maximum penalties regulations may apply to any offences created.

## ***Chapter 8 — Practice and Procedure***

### **Tribunal rules: general**

#### ***Section 51 – Tribunal rules***

65. This section provides for rules regulating the practice and procedure for both tiers of the Scottish Tax Tribunals to be established (subsection (1)), to be known as Scottish Tax Tribunal Rules (subsection (2)). Tribunal rules are to be contained in negative regulations made by the Scottish Ministers, as prescribed in subsection (3). Before making regulations the Scottish Ministers must consult the President of the Scottish Tribunals referred to in section 4 of the Tribunals (Scotland) Act 2014 and such other persons as they consider appropriate.

#### ***Section 52 – Exercise of functions***

66. This section provides that tribunal rules may state, in relation to functions exercised by members of the Tax Tribunals, how and by whom a function is to be exercised. They may provide for something to require further authorisation, permit something to be done on a person's behalf and allow specified persons to make certain decisions.

#### ***Section 53 – Extent of rule-making***

67. This section provides that tribunal rules may apply to both tribunals or specifically to one or other tribunal. They may make particular provision for different types of proceedings or purposes.

## **Particular matters**

### ***Section 54 – Proceedings and steps***

68. This section sets out that tribunal rules may make provision for proceedings of a case before the tax tribunal. In particular, they may detail how a case is to be brought, allow for the withdrawal of a case, set time limits for applications and taking particular steps, allow for two or more cases to be conjoined and specify when the tribunals may act on their own initiative.

### ***Section 55 – Hearings in cases***

69. This section sets out that tribunal rules may provide for when matters can be dealt with without a hearing, in a private hearing or at a public hearing. They will also detail when notice of a hearing has to be given, who may appear on behalf of a party in a case and who may attend to provide support to a party in a case or as a witness in a case. Tribunal rules will also detail when particular persons may appear or be represented at a hearing, and specify when a hearing may go ahead without notice in the absence of a particular member. Tribunal rules may also allow two or more sets of proceedings to be taken concurrently and may also cover when a case may be adjourned to allow the parties to try and resolve the dispute by alternative dispute resolution methods. The tribunal rules will also set out when reporting restrictions may be imposed.

### ***Section 56 – Evidence and decisions***

70. This section sets out that tribunal rules will cover giving evidence and administering oaths. Tribunal rules will also provide for the payment of expenses to persons giving evidence in certain circumstances. Rules might also, for example, state that a document which had been posted to a person would be presumed to have been duly served on that person, unless the contrary was proved. Tribunal rules may also make provisions relating to decisions of the Tax Tribunals, including how decisions are made, the incorporation of findings of fact, the recording of, issuing of and publication of such decisions.

## **Issuing directions**

### ***Section 57 – Practice directions***

71. This section sets out that the President of the Tax Tribunals may issue directions relating to practice and procedure in both the First-tier and Upper Tribunal. Directions may include guidance and instruction on decision making, may revoke earlier directions and may make different provision for different purposes. Such directions may be published in a way the President thinks appropriate.

## ***Chapter 9 – Administration***

### ***Section 58 – Administrative support***

72. This section sets out the Scottish Ministers' duty to provide the property, services and personnel the Tribunals require to carry out their function. The Scottish Ministers must have regard to any representations from the President of the Tax Tribunals on matters concerning administrative support.

### ***Section 59 – Guidance***

73. This section sets out that the President of the Tax Tribunals may issue such guidance relating to the administration of the Tax Tribunals as the President of the Tax Tribunals thinks fit. Such guidance will be published unless the President thinks that publication would prejudice the effective conduct of the Tax Tribunals' functions. Members of the tax tribunals and officials supporting them must have regard to any guidance.

### ***Section 60 – Annual reporting***

74. This section provides that the President must produce an annual report and provides details of what the annual report must cover. The report must be given to the Scottish Ministers at the end of each financial year. The Scottish Ministers have a duty to lay a copy of the report before the Parliament prior to publishing it.

### ***Chapter 10 — Interpretation***

#### ***Section 61 – Interpretation***

75. This section defines various expressions used in this Part, including “judicial member” and the “Lord President”.

## **Part 5 – the General Anti-Avoidance Rule**

### **Introductory**

#### ***Section 62 – The general anti-avoidance rule: introductory***

76. This section sets out the overall purpose of this Part of the Act – to enable Revenue Scotland to counteract tax advantages in relation to the devolved taxes that arise from tax avoidance schemes that are artificial. Subsection (2) provides that the sections in this Part, taken together, are to be known as the general anti-avoidance rule (GAAR). Under UK legislation set out in the Finance Act 2013, provision is made for a general anti-abuse rule. Although the terms “avoidance” and “abuse” do not have exact definitions, avoidance generally refers to a spectrum of activities designed to reduce tax liability, while abuse is often used to describe highly contrived schemes. Subsequent sections in Part 5 define the terms used and provide more detail about how the provisions as a whole are to work. The GAAR is intended to operate in tandem with Targeted Anti-Avoidance Rules (TAARs) and the “Ramsay principle” of purposive statutory interpretation applied by the Scottish courts and tribunals.

### **Artificial tax avoidance arrangements**

#### ***Section 63 – Tax avoidance arrangements***

77. This section sets out the definition of a “tax avoidance arrangement”. Subsection (2) gives a broad definition of an “arrangement”, which includes transactions, schemes, agreements etc., either individually or combined in parts and stages. This definition is kept broad so that a wide range of arrangements can be considered to determine whether they constitute tax avoidance arrangements.
78. Subsection (1) defines a “tax avoidance arrangement” as an arrangement (defined in subsection (2)) which appears to have as its main purpose or one of its main purposes the obtaining of a “tax advantage”. The test for determining whether or not an arrangement has such a purpose is that it would be reasonable in all the circumstances to conclude that it did. Section 65 defines a tax advantage.

#### ***Section 64 – Meaning of “artificial”***

79. This section sets out the definition of “artificial” in the context set out in section 62 – that the purpose of this Part of the Act is to give power to counteract “tax avoidance schemes that are artificial”.
80. The section sets out two tests for deciding whether a tax avoidance scheme is artificial. An arrangement is artificial if it satisfies either test. The first test is set out in subsection (2). It is that the arrangement under consideration is artificial if, in all the circumstances, it is not a reasonable course of action in relation to the tax legislation in question. Subsections (2)(a) and (2)(b) make further provision to assist in determining

the question. Subsection (2)(a) provides that if the substantive results of the arrangement are consistent with any principles on which the tax legislation in question is known to be based, and the results are consistent with the policy objectives of the legislation, this would be a relevant factor in deciding that the course of action is reasonable in all the circumstances and, therefore, not artificial.

81. Subsection (2)(b) adds a further ground for determining reasonableness: whether the arrangement is intended to exploit any shortcomings in the tax legislation in question. Another way of describing this would be exploiting a ‘loophole’ or ‘loopholes’ in tax legislation. If an arrangement is intended to exploit shortcomings, the effect of subsection (2)(b) is that such an arrangement may not be a reasonable course of action in all the circumstances and may be regarded as artificial.
82. The grounds for determining reasonableness set out in subsection (2) are not exhaustive, meaning that Revenue Scotland can take account of other factors in determining whether entering into a tax avoidance arrangement was a reasonable course of action or not.
83. The second test is set out in subsection (3). It is that a tax avoidance arrangement is artificial if the arrangement lacks economic or commercial substance.
84. Subsection (4) then provides examples of characteristics of a tax avoidance arrangement that could indicate that an arrangement lacks economic or commercial substance. These are where:
  - the manner of carrying out the arrangement would not normally be employed by a person in reasonable business conduct
  - the legal characterisation of the steps in the arrangement is inconsistent with the legal substance of the arrangement as a whole
  - elements in the arrangement effectively offset each other or cancel each other out
  - the transactions are circular in nature
  - the arrangement results in a tax advantage not reflected in the business risks undertaken by the taxpayer.
85. These characteristics are not exhaustive but illustrative. They are intended to be helpful to taxpayers and to Revenue Scotland in determining under subsection (3) whether a tax avoidance arrangement is artificial.
86. Subsection (5) provides an example of characteristics of a tax avoidance arrangement that could indicate that the arrangement is not artificial. The example given is where:
  - A tax avoidance arrangement accords with established practice and at the time it was entered into, Revenue Scotland had indicated that it accepted this practice.
87. As in subsection (4), this example is not exhaustive but illustrative. This subsection is only applicable where both conditions are fulfilled – that is, that a tax avoidance arrangement accords with established practice, and that Revenue Scotland had indicated its acceptance of that practice at the time it was entered into. It is expected that Revenue Scotland will publish guidance about acceptance of established practice, either at its own initiative or in response to requests from taxpayers or agents.
88. Finally, subsection (7) provides that, where a tax avoidance arrangement forms part of any other arrangements, then in determining whether it is artificial or not these other arrangements must also be considered.

### ***Section 65 – Meaning of “tax advantage”***

89. This section sets out the criteria for determining whether a tax advantage exists or not. A tax advantage could consist of:

*These notes relate to the Revenue Scotland and Tax Powers Act 2014 (asp 16) which received Royal Assent on 24 September 2014*

- Relief or increased relief from tax
  - Repayment or increased repayment of tax
  - Avoidance or reduction of a charge to tax or an assessment to tax
  - Avoidance of a possible assessment to tax
  - Deferral of payment of tax or advancement of a repayment of tax.
90. These criteria are not exhaustive.
91. Subsection (2) provides that in determining whether a tax avoidance arrangement has resulted in a tax advantage, Revenue Scotland may take account of the amount of tax that would have been payable in the absence of the arrangement.

## **Counteracting tax advantages**

### ***Section 66 – Counteracting tax advantages***

92. This section provides Revenue Scotland with the power to adjust the tax liability of a taxpayer who would otherwise benefit from a tax advantage in relation to the devolved taxes arising from an artificial tax avoidance arrangement. Subsection (1) provides that Revenue Scotland may make any adjustments that it considers to be just and reasonable in order to counteract such a tax advantage. Subsection (2) makes clear that these adjustments may be made in respect of the tax in relation to which a tax advantage has been gained, or in respect of any other tax.
93. Subsection (3) makes clear that the adjustments made to counteract a tax liability include adjustments that impose or increase a tax liability, and that tax is to be charged in accordance with the adjustment. Subsection (4) provides that the adjustment made to counteract a tax advantage may take the form of a tax assessment, a modification to an existing assessment, an amendment, or the disallowance of a claim (for a relief or reduction in tax) amongst other things.
94. Subsection (5) requires that in counteracting a tax advantage Revenue Scotland is obliged to adhere to the procedures and steps set out in later sections in this Part of the Act.
95. Subsection (6) provides that the power to make adjustments is subject to any time limit set out in Part 6 or any other enactment.

### ***Section 67 – Proceedings in connection with the general anti-avoidance rule***

96. This section makes provision in relation to court actions arising from the operation of the GAAR in relation to the devolved taxes. Subsection (1) provides that, where Revenue Scotland makes adjustments to counteract a tax advantage, the burden of proof is on it to demonstrate that there is a tax avoidance arrangement that is artificial, and that the adjustments made to counteract the tax advantage arising from the arrangement are just and reasonable.
97. Subsection (2) provides that, in determining any issues in connection with the GAAR, a court or tribunal is obliged to take account of guidance published by Revenue Scotland about the GAAR which was extant when the tax avoidance arrangement in question was entered into.
98. Subsection (3) provides that a court or tribunal may also take account of guidance, statements or other material in the public domain at the time the tax avoidance arrangement in question was entered into, and may also take account of evidence of established practice at that time.

***Section 68 – Notice to taxpayer of proposed counteraction of tax advantage***

99. This section sets out Revenue Scotland’s responsibility for notifying a taxpayer when it is intending to counteract a tax advantage in relation to the devolved taxes.
100. Subsection (1) provides that if a member of staff in Revenue Scotland (“a designated officer”) considers that a tax advantage has arisen from a tax avoidance arrangement that is artificial, and that the tax advantage should be counteracted, the designated officer must notify the taxpayer.
101. Subsection (2) specifies that a notification must include a statement of the tax avoidance arrangement and the tax advantage; an explanation of why the designated officer considers that a tax advantage has arisen to the taxpayer from a tax avoidance arrangement that is artificial; a statement of the counteraction that Revenue Scotland intends to take; and a statement of the period of time that the taxpayer has for making representations (45 days under subsection (4)).
102. Subsection (3) provides that a notice to a taxpayer may also describe the steps that the taxpayer can take to avoid the proposed counteraction.
103. Subsection (4) provides that when a taxpayer receives a notice under this section, they have 45 days in which to respond to the notice by making written representations. Subsection (5) gives the designated officer power to increase the number of days within which written representations may be made to more than 45 days, if the taxpayer makes a written request. Subsection (6) provides that the designated officer must take account of any representations made by the taxpayer in response to the notification given under subsection (1) and (2).

***Section 69 – Final notice to taxpayer of counteraction of tax advantage***

104. This section provides that where a taxpayer has been sent a notice under section 63(1), after the period for making representations about the notice has expired, the designated officer must provide the taxpayer with another written notice setting out whether or not the tax advantage arising from the tax avoidance arrangement is to be counteracted as proposed in the earlier notice.

***Section 70 – Counteraction of tax advantages: payment of tax charged etc.***

105. Section 70 provides that, where a taxpayer has been sent a notice of counteraction under section 64, the taxpayer must pay any tax amount, penalty or interest which is payable within 30 days of the notice being issued.
106. Subsection (2) stipulates that if the tax advantage is to be counteracted, the notice must explain the adjustments required to give effect to the counteraction, and any steps required of the taxpayer in this regard.

***Section 71 – Assumption of tax advantage***

107. This section gives a designated officer power to give a taxpayer a notice under section 68 and section 69 where the designated officer thinks that a tax advantage in relation to the devolved taxes might have arisen to the taxpayer. Subsection (2) makes clear that this enables a designated officer to send a notification to a taxpayer on the assumption that a tax advantage does arise.

**General anti-avoidance rule: commencement and transitional provision**

***Section 72 – General anti-avoidance rule: commencement and transitional provision***

108. This section makes provision relating to when the GAAR comes into effect and for transitional arrangements. Subsection (1) provides that the GAAR has effect in relation

to a tax avoidance arrangement entered into on or after the date that the GAAR provisions come into force. Subsection (2) provides that where the tax avoidance arrangement forms part of another arrangement that was entered into before the GAAR came into force, this other arrangement is to be ignored for the purposes of section 64(7) (which provides that all parts of an arrangement of which a tax avoidance arrangement forms part are to be considered in deciding if a tax avoidance arrangement is artificial). Subsection (3) provides that the earlier arrangements should be taken into account, if, as a result of taking them into account, the tax avoidance arrangement would not be artificial.

## **Part 6 – Tax Returns, Enquiries and Assessments**

### **Chapter 1 — Overview**

#### **Section 73 – Overview**

109. This section provides an overview of the matters that are dealt with in this Part of the Act, namely the assessment of the devolved taxes.

### **Chapter 2 — Taxpayer Duties to Keep and Preserve Records**

#### **Duties to keep records**

#### **Section 74 – Duty to keep and preserve records**

110. This section sets out the duty of a person who is required to deliver a return in relation to devolved taxes to keep and preserve records that are needed to complete that return. In addition, a person who is liable to be registered for a devolved tax must: a) keep and preserve any records that may be needed to enable the person to notify Revenue Scotland about their intention to carry out, or to cease to carry out, taxable activities; b) make and preserve records relating to material at a landfill site. It lists the types of records that generally need to be kept and sets out the maximum time period for which records need to be kept whilst permitting Revenue Scotland to specify an earlier date.
111. It allows the Scottish Ministers to make regulations to specify the records and supporting documents that must be kept and preserved. The regulations are subject to negative procedure and may make reference to things specified in a notice published and not withdrawn by Revenue Scotland. Examples are given of documents that may be deemed as “supporting documents”.

#### **Section 75 – Preservation of information etc.**

112. This section provides that the duty in section 74 to preserve records under that section may be satisfied by preserving records (or the information contained in them) in an alternative form (such as microfiche or an electronic facsimile) and by any means. This is subject to any conditions or exceptions that may be prescribed by the Scottish Ministers in regulations. Such regulations are subject to the negative procedure.

#### **Penalties for failing to keep and preserve records**

#### **Section 76 – Penalty for failure to keep and preserve records**

113. This section provides for a penalty of a maximum of £3,000 for a failure to comply with section 74 (duty to keep and preserve records), with the exception that no penalty is incurred if Revenue Scotland is satisfied that the required facts which would have been demonstrated by the records are provided to Revenue Scotland by other documentary evidence.

***Section 77 – Reasonable excuse for failure to keep and preserve records***

114. This section provides that, if a person satisfies Revenue Scotland (or on appeal the tribunal) that there is reasonable excuse on the person's behalf for a failure to comply with section 74, then the person is not liable to pay a penalty arising from that failure. The section also set out some circumstances in which reasonable excuse does not apply.

***Section 78 – Assessment of penalties under section 76***

115. This section provides that, where a person becomes liable for a penalty under section 76, Revenue Scotland must assess the penalty and then notify the person of this. The assessment of the penalty must be made within 12 months of the person becoming liable to the penalty.

***Section 79 – Enforcement of penalties under section 76***

116. This section provides that a penalty under section 76 must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person. If a notice of review or appeal against the penalty is given (under section 235 or 242 respectively), the penalty must be paid within 30 days of the review being concluded or the appeal determined or withdrawn, whichever applies. If mediation has been entered into following review, the penalty must be paid within 30 days of notice of withdrawal from mediation being given (if this applies).

***Section 80 – Power to change penalty provisions in sections 76 to 79***

117. This section provides a regulation-making power for the Scottish Ministers to make provision, or further provision, about penalties under Chapter 2 of Part 6. Such regulations are subject to the affirmative procedure, may not create criminal offences but may modify any enactment. Regulations under this section do not apply to a failure which began before the date on which the regulations came into force.

**Duty to keep and preserve records: further provision**

***Section 81 – Further provision: land and buildings transaction tax***

118. This section applies to LBTT and sets out that the Scottish Ministers may make regulations (subject to affirmative procedure) to specify records and supporting documents that a buyer must keep and preserve in relation to land transactions that do not have to be notified. A land transaction may not initially be notifiable under the LBTT(S)A 2013, but it can become notifiable later, for instance where a lease continues after the end of its original term.
119. Regulations under this section may apply the provisions in sections 74 to 79 (concerning a taxpayer's duty to keep and preserve records and the associated penalty for failing to comply with the duty) to a buyer in a land transaction that is not notifiable. Any expressions used in this section and in LBTT(S)A 2013 have the meaning given in that Act.

***Chapter 3 — Tax Returns***

**Filing dates**

***Section 82 – Dates by which tax returns must be made***

120. This section provides a definition of "filing date", being the date on which tax returns for the devolved taxes are due. A person who fails to make a return on or before the filing date is liable to a penalty under section 159 of the Act.

## **Amendment and correction of returns**

### ***Section 83 – Amendment of return by taxpayer***

121. This section provides for the amendment of a tax return by the taxpayer and allows Revenue Scotland to specify the form and content of any notice of such an amendment. It sets out that the taxpayer must make an amendment within 12 months of either the filing date (which is defined) or any other dates that the Scottish Ministers may prescribe by order (and different provision may be made for different devolved taxes). The power for the taxpayer to amend the return by notice under this section does not apply where sections 87 or 93 apply, which involve Revenue Scotland making its own amendment to the return either during the course, or on completion, of an enquiry.

### ***Section 84 – Correction of return by Revenue Scotland***

122. This section provides that Revenue Scotland may correct returns for obvious errors or omissions by notice to the taxpayer. The correction must be within 12 months from the date the return or amended return is made. The taxpayer may amend the return to reject the correction during the amendment period, which is provided for in section 84(5). However, if that period has expired, the taxpayer can amend the return within three months of the date the notice of correction was issued by Revenue Scotland.

## ***Chapter 4 — Revenue Scotland Enquiries***

### **Notice and scope of enquiry**

#### ***Section 85 – Notice of enquiry***

123. This section sets out that a designated officer (defined in section 252) may enquire into a tax return, provided that notice of intention to carry out an enquiry is given to the taxpayer or the person who submitted the return on their behalf (the ‘relevant person’) within the period set out. It also limits the number of notices of enquiry that may be made in relation to any particular tax return.

#### ***Section 86 – Scope of enquiry***

124. This section sets out the scope of an enquiry into a tax return and limits the scope of a subsequent enquiry on a return to amendments made after the completion of that enquiry, if that prior enquiry had been completed before the expiry of the amendment period (provided for in section 83(2), during which the taxpayer can make amendments to their return.

### **Amendment of return during enquiry**

#### ***Section 87 – Amendment of self-assessment during enquiry to prevent loss of tax***

125. This section provides for the amendment of a tax return by a designated officer during the course of an enquiry. The amendment can only be made where the designated officer forms the opinion that the amount stated in the self-assessment contained in the return is insufficient and that unless the assessment is immediately amended there is likely to be a loss of tax to the Crown. Where an enquiry is made into an amended return and is limited by provision under section 86(2) and (3), it limits the ability of the designated officer to make their own amendment under this section to any tax deficiency which is attributable to the taxpayer’s amendment made under section 83.
126. Where a designated officer issues notice of an amendment under this section, section 83 no longer applies and the taxpayer cannot therefore submit any further amendment of their own. The taxpayer must pay any amount, or additional amount, of tax chargeable as a result of an amendment under this section at the same time as the notice of

the amendment is given. The period in which an enquiry is in progress is defined in subsection (5) for the purposes of this section and section 88.

## **Referral during enquiry**

### ***Section 88 – Referral of questions to appropriate tribunal during enquiry***

127. This section provides for the referral of questions to the appropriate tribunal (defined in section 92) during an enquiry. It requires notice of the referral to be given jointly by the relevant person (defined in section 85(2)(a)) and the designated officer.

### ***Section 89 – Withdrawal of notice of referral***

128. This section provides for the withdrawal of a notice made under section 88 by a designated officer or the relevant person (defined in section 85(2)(a)).

### ***Section 90 – Effect of referral on enquiry***

129. This section sets out the effect of referral under section 88 on an enquiry. It provides that a closure notice or an application for a closure notice cannot be made while proceedings under section 88 are in progress and defines what “in progress” means in this context.

### ***Section 91 – Effect of determination***

130. This section provides that the determination of any question by the appropriate tribunal under section 88 is binding on the parties. It requires the designated officer to take the determination into account when making any amendments to the return (under section 87 or section 93) and limits the question determined from being reopened.

### ***Section 92 – “Appropriate tribunal”***

131. This section sets out which are the appropriate tribunals for the referral of questions under section 88.

## **Completion of enquiry**

### ***Section 93 – Completion of enquiry***

132. This section provides for completion of an enquiry. An enquiry is completed when a designated officer notifies the relevant person (defined in section 85(2)(a)) that the enquiry is complete (a “closure notice”). The closure notice must state the conclusions reached in the enquiry and must be given no later than three years after the relevant date (defined in section 85(3)). If no closure notice is given, an enquiry is also treated as complete three years after the relevant date. A designated officer can make an amendment of a return and give it to the relevant person with the closure notice. The taxpayer must pay any amount, or additional amount, of tax chargeable as a result of an amendment under this section within 30 days of the closure notice being given. Where a designated officer issues notice of an amendment under this section, section 83 no longer applies and the taxpayer cannot therefore submit any further amendment of their own.

### ***Section 94 – Direction to complete enquiry***

133. This section provides for the person who made the return to apply to the tribunal to give a direction that Revenue Scotland should issue a closure notice. The tribunal must give the direction unless it is satisfied that Revenue Scotland has reasonable grounds for not giving a closure notice within that period.

## ***Chapter 5 — Revenue Scotland Determinations***

### ***Section 95 – Determination of tax chargeable if no return made***

134. This section provides that, in the circumstances where a designated officer has reason to believe a person is liable to pay tax, and that person has not filed a tax return with Revenue Scotland by the date by which it believes a return was required to be made (the “relevant filing date”), Revenue Scotland may make a determination of the amount of tax to be charged. Notice of the determination must be given to the person believed to be liable for the chargeable tax, including a statement of the date on which the notice was issued. A determination cannot be made more than five years after the relevant filing date or, if the Scottish Ministers by order prescribe another date, five years after that date. The taxpayer must pay the amount of tax chargeable as a result of a determination under this section immediately upon receipt of the determination.

### ***Section 96 – Determination to have effect as a self-assessment***

135. This section provides that a determination by Revenue Scotland has the same effect for enforcement purposes (i.e. the collection and recovery of tax as provided for in Part 10 of this Act) as if it were a self-assessment made by the person liable for the chargeable tax. Under these provisions, a determination by Revenue Scotland does not affect a person’s liability to a penalty for failure to make a tax return (under sections 159 to 167).

### ***Section 97 – Determination superseded by actual self-assessment***

136. This section provides that, where a person makes a tax return after Revenue Scotland has made a determination of chargeable tax, the self-assessed tax return will supersede Revenue Scotland’s determination. This provision does not apply when a person makes a tax return more than five years after the power to make the determination was first exercisable by Revenue Scotland, or more than three months after the date on which the determination was issued, whichever is the later. In instances where proceedings have commenced for the recovery of tax following a Revenue Scotland determination, and during those proceedings Revenue Scotland receives a self-assessment that supersedes its determination, the proceedings may continue as if they were for the recovery of so much of the self-assessed tax which remains due and not yet paid.

## ***Chapter 6 — Revenue Scotland Assessments***

### **Assessment of loss of tax or of excessive repayments**

#### ***Section 98 – Assessment where loss of tax***

137. This section provides a designated officer with the power to make an assessment to make good a loss of tax where an amount that should have been assessed has not been, an amount assessed is less than it should be or relief that has been given is or has become excessive.

#### ***Section 99 – Assessment to recover excessive repayment of tax***

138. This section provides for an assessment to be made to recover an excessive repayment of tax including any interest that may have been paid.

#### ***Section 100 – References to “Revenue Scotland assessment”***

139. This section provides for references to “Revenue Scotland assessment” in the Act to mean assessments made under section 98 or 99.

### ***Section 101 – References to the “taxpayer”***

140. This section provides that, in sections 102 to 105, references to the “taxpayer” in relation to an assessment under section 98 mean the chargeable person and, in relation to an assessment under section 99, mean the person to whom the excessive repayment of tax was made.

### **Conditions for making Revenue Scotland assessments**

#### ***Section 102 – Conditions for making Revenue Scotland assessments***

141. This section limits the circumstances in which a Revenue Scotland assessment can be made under section 98 or 99 to situations which arose because of careless or deliberate behaviour by the taxpayer, a person acting on behalf of the taxpayer or a person who was a partner of the taxpayer at the relevant time. It also prohibits a Revenue Scotland assessment being made under those provisions if the situation was attributable to a mistake in the calculation of the tax liability that was in accordance with generally prevailing practice at the time the return was made.

#### ***Section 103 – Time limits for Revenue Scotland assessments***

142. This section provides the time limits under which a Revenue Scotland assessment may be made. The general time limit for the making of a Revenue Scotland assessment is five years from the “relevant date”. This time limit is extended to 20 years where the loss of tax is attributable to deliberate behaviour by the taxpayer or a “related person”. A Revenue Scotland assessment to recover excessive repayment of tax is not late if it is made within 12 months of that repayment. If a taxpayer has died, a Revenue Scotland assessment may be made on a taxpayer’s personal representatives within three years of death and is limited to “relevant dates” within five years before the death. It also sets out how any objection to a Revenue Scotland assessment on the basis of the time limits can be made and defines “relevant date” and “related person”.

#### ***Section 104 – Losses brought about carelessly or deliberately***

143. This section provides the definition of a loss of tax or situation brought about carelessly or deliberately by or on behalf of a person for the purposes of sections 102 and 103.

### **Notice of assessment and other procedure**

#### ***Section 105 – Assessment procedure***

144. This section provides the procedure for serving notice of a Revenue Scotland assessment on a taxpayer and also specifying what the notice of such an assessment must state (such as the amount of tax due, the date on which the notice is issued, the date by which the amount must be paid and the date by which any notice of review or appeal against the assessment must be given – see sections 235 and 242 for the relevant time limits relating to notices of review and appeal). The amount, or further amount, of tax chargeable (or tax or interest that is to be repaid) must be paid within 30 days of the date on which the assessment is issued.

### ***Chapter 7 — Relief in Case of Excessive Assessment Or Overpaid Tax***

#### **Double assessment**

#### ***Section 106 – Relief in case of double assessment***

145. This section provides that a taxpayer can make a claim to Revenue Scotland for relief if they believe they have been assessed more than once for the same matter.

## **Overpaid tax etc.**

### ***Section 107 – Claim for relief for overpaid tax etc.***

146. This section provides that a taxpayer may make a claim to Revenue Scotland for repayment where they have paid tax that they believe was not chargeable. It also provides that, if an assessment or determination is made that a person is chargeable to an amount of tax and they believe the tax is not chargeable, they can make a claim for the tax to be discharged.

## **Order changing tax basis not approved**

### ***Section 108 – Claim for repayment if order changing tax basis not approved***

147. This section relates to situations where an order intended to change the tax basis of a devolved tax by means of the provisional affirmative procedure applies for a period but is not subsequently approved by the Scottish Parliament within 28 days of it being laid.
148. When such an order is made, the changes to the tax basis set out in it (which might be changes to tax rates or bands, and in the case of SLfT, changes to the definition of a disposal to landfill, changes to the definition of landfill site activities, or changes to the types of qualifying materials, the disposal of which is taxable) can apply immediately, so taxpayers' liability will change as soon as the order is made. If the proposed changes are not approved by Parliament within 28 days, then the Order falls. This section provides that in such a situation, a taxpayer can make a claim for repayment of the amount of additional tax paid during the period when the Order was in force.
149. Subsection (2) allows a taxpayer to make a claim to Revenue Scotland for the amount of additional tax paid because of the Order that fell, and any related penalty or interest. Subsection (3) sets out which Orders are relevant to this section. Subsection (5) provides that any claim must be made within two years of the 'relevant date' which is defined in subsection (6).

## **Defence of unjustified enrichment**

### ***Section 109 – Defence to certain claims for relief under section 107 or 108***

150. This section provides that Revenue Scotland can reject a claim for relief on the basis that paying it would unjustly enrich the person making the claim. This would happen if the taxpayer was not the person who ultimately bore the cost of the tax. For example, for SLfT, while the tax is paid by the landfill site operator it is ultimately borne by those charged for depositing waste at the site.

### ***Section 110 – Unjustified enrichment: further provision***

151. This section explains circumstances in which a repayment would constitute unjustified enrichment where the payment of tax was made by someone other than the taxpayer. Loss or damage related to mistaken assumptions about tax made by a taxpayer should be excluded from consideration of whether a taxpayer would be unjustly enriched. The taxpayer may show that a certain amount would be appropriate compensation for the loss or damage resulting from the mistaken assumption and this may be taken into account.

### ***Section 111 – Unjustified enrichment: reimbursement arrangements***

152. This section provides that the Scottish Ministers may make regulations (subject to the affirmative procedure) under which certain reimbursement arrangements may count for the purposes of section 109 (and so do not allow Revenue Scotland to defend the claim for repayment on the ground of unjust enrichment). The regulations may also provide for the conditions that such reimbursement arrangements must comply with, and for

other reimbursement arrangements to be disregarded for the purpose of section 109 (so that the fact that the person claiming a repayment may be reimbursing others does not stop Revenue Scotland using the unjust enrichment defence). Subsection (2) defines “reimbursement arrangements” as arrangements made by the person claiming under which the repaid tax is passed on to the persons who actually bore the cost of paying the tax in the first place. For example, if a landfill site operator had overpaid tax, having collected that tax from the person who disposed of the waste, then to return an overpayment of tax to the landfill site operator may lead to the operator being unjustly enriched (if the person who disposed of the waste cannot be found to be reimbursed).

153. Subsection (3) sets out the elements of reimbursement arrangements which may be required by the regulations provided for in subsection (1). These arrangements include setting a period for reimbursement to take place, repayment to Revenue Scotland if reimbursement does not take place and requires interest paid by Revenue Scotland on a repayment to be treated in the same way as the repayment, as well as records to be kept and made available to Revenue Scotland on request that show how the arrangements for reimbursement were carried out.

### ***Section 112 – Reimbursement arrangements: penalties***

154. This section provides that regulations made under section 111 may make provision for penalties to be imposed where an obligation by virtue of subsection 111(4) is breached. Regulations may set out circumstances in which a penalty is payable, the amounts payable, and other arrangements for penalties, which may be different for different taxes. The regulations may not create criminal offences.

### **Other defences to claims**

#### ***Section 113 – Cases in which Revenue Scotland need not give effect to a claim***

155. This section provides a list of situations (other than unjust enrichment) in which Revenue Scotland does not need to make a repayment or discharge an assessment or determination. The situations are: where a mistake is made in a claim, or where a claim is made or not made by mistake; where other provisions in the Act provide means of seeking relief; where a claimant could have sought relief under other provisions in the Act but time limits on those provisions have expired; where the same matter has been put to a court or tribunal by the claimant, has been withdrawn from a court or tribunal, or time limits for putting it to a court or tribunal have passed; where the amount paid is the result of enforcement action or agreement between Revenue Scotland and the claimant; and where the amount paid is excessive but was calculated following normal procedures at the time, unless the tax charged was contrary to EU law.

### **Procedure for making claims**

#### ***Section 114 – Procedure for making claims etc.***

156. This section sets out that schedule 3 applies in relation to claims made under sections 106 to 108.

#### ***Section 115 – Time-limit for making claims***

157. This section provides that claims for relief from double assessment or overpayment of tax made under section 106 or 107 must be made within five years of the date the tax return was required and must be made separately from any tax return made to Revenue Scotland.

### ***Section 116 – The claimant: partnerships***

158. This section provides that, where an overpayment was made on behalf of a partnership, a claim for relief for overpayment can only be made by someone who is nominated to act on behalf of all partners who would have been liable for the tax if it had been correct.

### ***Section 117 – Assessment of claimant in connection with claim***

159. This section provides that, where a claim for relief for overpaid tax is made, and the grounds for that claim are also grounds for Revenue Scotland to make an assessment on the claimant in respect of the tax, then Revenue Scotland can disregard certain restrictions on its ability to make an assessment. These include disregarding the expiry of a time limit. It also provides that a claim for relief for overpayment is not finally determined until the amount to which it relates is final (e.g. following the result of a review or appeal).

## **Contract settlements**

### ***Section 118 – Contract settlements***

160. This section makes provision for the effect of contract settlements (defined in subsection (8)). The effect of subsection (1) is that an overpayment of tax can still be reclaimed under section 107 or 108 even though it was paid under a contract settlement. Subsections (3) to (7) apply to situations where tax was paid by someone under a contract settlement but that person who was not the person from whom it was due. In this circumstance a claim for relief from overpayment can be made by the person who paid the amount. In such a case, however, the way some of the defences available to Revenue Scotland under section 113 operate is modified, as is section 117. And where such a claim is made, Revenue Scotland can set off any amount repaid to the person who paid against any amount payable by the taxpayer.

## **Part 7 – Investigatory Powers of Revenue Scotland**

### ***Chapter 1 – Investigatory Powers: Introductory***

#### **Overview**

### ***Section 119 – Investigatory powers of Revenue Scotland: overview***

161. This section sets out an overview of Part 7 of the Act.

#### **Interpretation**

### ***Section 120 – Meaning of “tax position”***

162. This section sets out the definition of a “tax position” as referred to throughout this Part of the Act. A tax position can include a person’s past, present and future liability to pay any devolved tax or associated penalties and also includes any claims, elections, applications and notices in connection with the liability to pay any devolved tax.

### ***Section 121 – Meaning of “carrying on a business”***

163. This section sets out the definition of a “carrying on a business” as referred to throughout this Part of the Act. A business includes the letting of property, the activities of a charity, the activities of a local authority and also any other public authority. The section also confers powers on the Scottish Ministers to make further provision by regulations regarding what is or is not to be treated as carrying on a business in this Part of the Act. Such regulations are subject to the negative procedure.

***Section 122 – Meaning of “statutory records”***

164. This section sets out the definition of “statutory records” as referred to throughout this Part of the Act.

***Chapter 2 — Investigatory Powers: Information and Documents***

***Section 123 – Power to obtain information and documents from taxpayer***

165. This section provides that where a designated officer reasonably requires a document or information to check a taxpayer’s position and considers it reasonable that the taxpayer should provide the document or information, the designated officer can write to a taxpayer and ask for that. Such a request is known as a ‘taxpayer notice’.

***Section 124 – Power to obtain information and documents from third party, section 125 – Approval of taxpayer notices and third party notices and section 126 – Copying third party notice to taxpayer***

166. These three sections provide that where the designated officer knows the identity of a taxpayer and wants to check that taxpayer’s tax position, the designated officer can give a notice to a third party requiring that party to provide information or document(s) for the purpose of checking the tax position of the taxpayer. Such a notice is a “third party notice”. The taxpayer would have to agree to the third party notice or a tribunal would need to approve it, subject to certain conditions being met. The tribunal may also approve a third party notice that does not name the taxpayer if the tribunal accepts that having the taxpayer’s name in the third party notice might negatively affect tax assessment or collection. The designated officer must give a copy of the third party notice to the relevant taxpayer unless the tribunal decides that the designated officer has reasonable grounds for believing that doing so might negatively affect tax assessment or collection.

***Section 127 – Power to obtain information and documents about persons whose identity is not known***

167. This section provides that, where a designated officer wants to check the tax position of a person (or class of persons) but does not know their identity, the designated officer may give a notice to another person requiring them to produce a document or provide information. The tribunal must have approved the giving of the notice beforehand and can only do so if it is satisfied that certain conditions are met.

***Section 128 – Third party notices and notices under section 127: groups of undertakings***

168. This section provides for arrangements for third party notices or notices under section 127 where the tax authority wishes to check the tax position of a parent undertaking and any of its subsidiary undertakings (for example a parent company and its subsidiary companies). Subsection (2) provides that such notices need only state the purpose of the notice, the name of the taxpayer and the name of the parent undertaking.
169. Subsection (4) provides that a third party notice given to a parent undertaking for the purpose of checking the tax position of more than one subsidiary undertaking need only state that purpose. For the purposes of section 125(6) any references to naming the taxpayer are to making that statement. Subsection (5) sets out how the provisions of other related sections apply to such notices.
170. Subsection (7) provides that the meanings of parent and subsidiary undertakings reflect those set out in sections 1161-1162 and schedule 7 of the Companies Act 2006.

***Section 129 – Third party notices and notices under section 127: partnerships***

171. This section provides for arrangements for third party notices or notices under section 127 where the tax authority wishes to check the tax position of one or more persons in a business partnership.

***Section 130 – Power to obtain information about persons whose identity can be ascertained***

172. This section allows a designated officer to issue a notice to someone requiring them to provide information about a taxpayer (either a single person or class of persons), in order to establish the taxpayer's identity. The notice can only be given with tribunal approval to do so. The tribunal can only approve the giving of the notice if it is satisfied that conditions A to D in subsections (2) to (6) are met. Under this section, the designated officer may require any of the following information: name, last known address and the date of birth.

***Section 131 – Notices***

173. This section sets out the definition of an information notice as a notice which is issued under sections 123, 124, 127 and 130 of the Act. An information notice may specify or describe the information or documents to be provided and must state the notice has been issued with the approval of a tribunal where this is the case. Any decision of the tribunal under sections 125, 126, 127 or 130 of the Act is final.

***Section 132 – Complying with information notices***

174. This section sets out that a person issued with an information notice must provide the required information or documents at a time, location (which cannot be in a place solely used as a dwelling) or in such form or means as is specified in the information notice. A person who fails to comply with an information notice is liable to a penalty under section 195 of the Act.

***Section 133 – Producing copies of documents***

175. This section provides that where an information notice requires the person to produce a document, the person may produce a copy of the document (unless the notice specifically requests, or a designated officer subsequently requests, the original document). The ability to produce a copy of the document is subject to any conditions or exceptions set out in regulations made by the Scottish Ministers. Such regulations are subject to the negative procedure.

***Section 134 – Further provision about powers relating to information notices***

176. This section provides the Scottish Ministers with a power to make regulations regarding the form and content of information notices and the manner and time period for complying with such notices. Such regulations are subject to the negative procedure.

***Chapter 3 — Restrictions on Powers in Chapter 2***

***Section 135 – Information notices: general restrictions***

177. This section provides for some general restrictions on information notices, including that a person is required to produce a document only if it is in their possession or power. Furthermore, unless the tribunal has given its approval, an information notice may not require a person to produce a document if the whole of it originates more than five years before the date of the notice. An information notice issued to check the tax position of someone who has died cannot be given more than 3 years after the death.

### ***Section 136 – Types of information***

178. This section sets out provision on types of information that an information notice cannot require, including journalistic material, information that relates to the conduct of a pending review or appeal in relation to tax and also information contained in certain types of personal records. Information in personal records covered by this exclusion provision relates to a person's health and/or different types of counselling or assistance given to that person.

### ***Section 137 – Taxpayer notices following a tax return***

179. This section sets out restrictions on when taxpayer notices may be given. A taxpayer notice cannot be given in relation to a transaction or an accounting period (to check the tax position for those) where a person has made a tax return in relation to that transaction or accounting period. However, a taxpayer notice could be given where a notice of enquiry had been given and the enquiry was not completed or where a designated officer suspected an issue with the assessed tax liability (including any reliefs) for the transaction or accounting period.

### ***Section 138 – Protection for privileged communications between legal advisers and clients***

180. This section provides that information notices (a term defined in section 131) do not require a person to provide privileged information or parts of documents that are privileged. This refers to information or documents that benefit from the confidentiality that arises in information or documents between a professional legal adviser and a client. The section gives the Scottish Ministers a power to make provision by regulations for the tribunal to resolve disputes as to whether or not information or documents are privileged. Such regulations are subject to the negative procedure.

### ***Section 139 – Protection for auditors***

181. This section provides that an information notice does not require an auditor to provide any information held or to produce documents where that information or those documents relate to the function or role of an auditor.

### ***Section 140 – Auditors: supplementary***

182. This section sets out the circumstances in which an information notice to an auditor would apply. Subsection (1) requires the auditor to comply with an information notice where information explaining any information or document given to any client in the role of tax accountant has assisted the client in preparing for, or delivering a document to, Revenue Scotland. Subsection (2) requires the auditor to comply with a notice under section 127 requiring the auditor to provide information or document about the identity or address of a taxpayer. Subsection (3) allows the auditor not to comply with subsections (1) and (2) if the information or documents have already been provided to a designated officer.

## ***Chapter 4 — Investigatory Powers: Premises and Other Property***

### **Inspection of business premises**

#### ***Section 141 – Power to inspect business premises***

183. This section provides that a designated officer can enter a business premises and inspect the premises (including buildings, structures, land and transport), assets and documents if the officer has reason to believe that the inspection is reasonably required to check a person's tax position. The designated officer would not be able to enter or inspect any part of those premises that was used solely as a dwelling. A person who deliberately obstructs a designated officer (or a person authorised by the officer) in the course of

an inspection under this section, and which has been approved by the tribunal, is liable to a penalty under section 195.

### ***Section 142 – Powers to inspect business premises of involved third parties***

184. This section provides that a designated officer can enter a business premises of an involved third party and inspect the premises, assets and documents where it is reasonable to do so to check a position in regard to a devolved tax, whether the person's identity was known or not. The designated officer would not be able to enter or inspect any part of those premises that was used solely as a dwelling. A person who deliberately obstructs a designated officer (or a person authorised by the officer) in the course of an inspection under this section, and which has been approved by the tribunal, is liable to a penalty under section 195.

### ***Section 143 – Carrying out inspections under section 141 or 142***

185. This section sets out conditions for inspections on business premises as provided for under sections 141 and 142. Subsections (1) and (2) provide that such inspections may only be carried out at a time agreed with the occupier of the premises or at any reasonable time if either: a) the occupier of the premises is given at least seven days' notice in writing of the time of the inspection; or b) the designated officer has reasonable grounds for believing that giving advance notice of the inspection is likely to seriously inhibit or prejudice the collection of tax (for example, the officer had concerns that the person was likely to try and destroy or remove important evidence in advance of an inspection).
186. Subsection (3) provides that where subsection (2)(b) applies (i.e. no advance notice of the inspection is given), a written notice must be provided to the occupier or someone else who appears to be in charge of the premises at the time. If no one is present at the time, the notice must be left in a prominent place on the premises. Subsection (4) provides that a notice given in advance of an inspection (under subsection (2)(a)) or at the time of an inspection (under subsection (3)) must state the possible consequences of obstructing the designated officer from exercising the power to carry out the inspection. If such a notice has been given with the approval of the tribunal, it must state this (in order that the occupier is aware that if they deliberately obstruct the designated officer in the course of carrying out the inspection then they are liable to the penalty under section 167).

### ***Section 144 – Carrying out inspections under section 141 or 142: further provision***

187. This section provides further powers, in subsections (2) to (5), available to a designated officer carrying out an inspection of business premises under section 141 or 142. These include: taking any other person(s) with them onto the premises (including a constable where there is serious obstruction); taking any equipment or materials required for the purpose of the inspection (for example heavy machinery); examining or investigating anything considered necessary in the circumstances of the inspection; directing that the premises (or any part of the premises) be left undisturbed for as long as is reasonably necessary for the purposes of any examination or investigation.
188. The power to take equipment or machinery can be exercised either at a time agreed with the occupier or at any other reasonable time. The power can only be exercised at any reasonable time either: a) where a notice was issued under section 143(2)(a) informing the occupier in advance that the officer intended to exercise the power; or b) where it is deemed by the officer that there are reasonable grounds for believing that giving advance notice that the power will be exercised would seriously prejudice the assessment or collection of tax.

## **Inspection for valuation etc.**

### ***Section 145 – Power to inspect property for valuation etc. and section 146 – Carrying out of inspections under section 145***

189. These sections provide that a designated officer may enter and inspect premises for the purpose of valuing the premises if it is reasonably required to check a person's tax position. Section 146 sets out the conditions under which such an inspection can be carried out. A person who deliberately obstructs a designated officer (or a person authorised by the officer) in the course of an inspection under this section, and which has been approved by the tribunal, is liable to a penalty under section 195 of the Act.

## **Approval of tribunal for premises inspections**

### ***Section 147 – Approval of tribunal for premises inspections***

190. This section provides that a designated officer may ask the tribunal to approve an inspection under sections 141, 142 or 145 or to approve the exercise of any of the powers in section 144 in relation to an inspection under section 141 or 142. The tribunal must be satisfied the inspection or exercise of powers is justified. The conditions outlined in subsection (4) apply to approving inspections under section 145. The application to the tribunal can be made without notice, and any decision of the tribunal is final.

## **Other powers in relation to premises**

### ***Section 148 – Power to mark assets and to record information***

191. This section provides that while inspecting premises, assets or documents (for valuation and/or for checking a tax position), assets can be marked to show that they have been inspected and relevant information can be obtained and recorded.

## **Restriction on inspection of documents**

### ***Section 149 – Restriction on inspection of documents***

192. This section sets out that a designated officer may not inspect a document during an inspection if an information notice given at the time of the inspection could not require the occupier to produce the document (for example, if the document is legally privileged).

## ***Chapter 5 – Further Investigatory Powers***

### ***Section 150 – Power to copy and remove documents***

193. **Section 150** provides a power for a designated officer to copy, make extracts from and remove documents. The officer may also retain the document for a reasonable period of time. Subsection (3) allows the person who produced the document to request a receipt for it and a copy of it. Subsection (4) provides that the designated officer must not charge for providing either the receipt or the copy.
194. Subsection (6) provides that where a document that has been removed is lost or damaged, Revenue Scotland is liable to compensate the owner of the document for any expenses reasonably incurred in replacing or repairing the document.

### ***Section 151 – Computer records***

195. This section applies to any provision of this Part of the Act or Part 8 that relates to the production of documents or the inspection, copying or removal of documents. References to documents are to be read as references to anything in which information may be recorded. Subsection (3) allows a designated officer at a reasonable time to

obtain access to, inspect, and check the operation of any computer or other equipment used in connection with a relevant document. Subsection (4) provides that a relevant document is a document that someone is required to produce or which may be inspected, copied or removed by a designated officer. Subsection (5) allows the designated officer to require the person in charge of the computer to provide help to fulfil the requirements of subsection (3). Subsection (6) provides that if someone obstructs the officer or does not assist the officer within a reasonable time, then that person may have to pay a financial penalty of £300.

## **Chapter 6 — Reviews and Appeals Against Information Notices**

### **Section 152 – Review or appeal against information notices**

196. This section provides for the circumstances under which a person can and cannot request a review or appeal in relation to the giving of an information notice or requirements contained in an information notice.

### **Section 153 – Power to modify section 152**

197. This section provides a power for the Scottish Ministers to modify by order (subject to affirmative procedure) whether the decisions in section 152(2)-(7) relating to the giving of information notices and the requirements contained within such information notices are appealable (generally or in certain circumstances only) or not appealable for the purposes of section 233(1)(h).

### **Section 154 – Disposal of reviews and appeals in relation to information notices**

198. This section provides that a person who has requested a review or an appeal in relation to a decision arising from an information notice must comply, where the information notice is upheld or varied, with the conclusion or requirements of the review or appeal.

## **Chapter 7 — Offences Relating to Information Notices**

### **Section 155 (Offence of concealing etc. documents following information notice) and Section 156 (Offence of concealing etc. documents following information notification)**

199. These two sections provide for the creation of offences relating to concealing, destroying or otherwise disposing of documents either: a) required by an information notice which is approved by the tribunal (see section 155); or b) likely to be required by an information notice and the person has been informed by a designated officer of that fact (and that the officer intends or is required to seek the approval of the tribunal to the giving of the information notice – see section 156). If a person is convicted of an offence under either of these sections, the person is liable to: a) a fine not exceeding the statutory maximum on summary conviction; or b) on conviction on indictment, imprisonment for up to two years and/or a fine.

## **Part 8 – Penalties**

### **Chapter 1 — Penalties: Introductory**

#### **Overview**

### **Section 157 – Penalties: overview**

200. This section provides an overview of the structure of Part 8 of the Act.

## **Double jeopardy**

### ***Section 158 – Double jeopardy***

201. This section provides that a person is not liable to any penalty under the Act if the person has already been convicted of an offence on the same matter.

## ***Chapter 2 — Penalties for Failure to Make Returns Or Pay Tax***

### **Penalty for failure to make returns**

#### ***Section 159 – Penalty for failure to make returns***

202. This section provides that a person is liable to a penalty where they fail to make a tax return (defined in the provisions listed in the table) on or before the filing date (as defined in section 82). Where a person's failure either falls: a) within more than one provision listed in the table; or b) within more than one provision in sections 160 to 167, the person is liable to a penalty for each of those returns and failures. Sections 160 to 163 apply in relation to a return listed in the table which is connected to LBTT. Sections 164 to 167 apply in relation to a return listed in the table which is connected to SLfT.

### **Amounts of penalties: land and buildings transaction tax**

#### ***Sections 160 to 163 – Land and buildings transaction tax: first penalty for failure to make return; 3 month penalty for failure to make return; 6 month penalty for failure to make return; 12 month penalty for failure to make return***

203. **Section 160** provides that the penalty amount for a person who fails to make a LBTT tax return on time (under section 159) is a fixed £100. Sections 161 to 163 provide for additional (and higher) penalty amounts if the person has not submitted the return three, six and 12 months after the penalty date, which is defined in section 159(4) as the day after the filing date.

### **Amounts of penalties: Scottish landfill tax**

#### ***Sections 164 to 167 – Scottish landfill tax: first penalty for failure to make return; multiple failures to make return; 6 month penalty for failure to make return; 12 month penalty for failure to make return***

204. **Section 164** provides that the penalty amount for a person who fails to make a SLfT tax return on time (under section 159) is a fixed £100. Section 165 provides for additional (and higher) penalty amounts if the person fails to make other SLfT returns on time within a specified penalty period. A penalty period is one which is begun under section 165(1) and, unless extended under section 165(2)(c), ends 12 months after the filing date for the return.
205. **Sections 166 and 167** provide that a person is liable to further tax-geared penalties if the person's failure to make a return continues six and 12 months respectively after the penalty date, as defined in section 159(4).

### **Penalties for failure to pay tax**

#### ***Section 168 – Failure to pay tax***

206. This section provides that a person is liable to a penalty where they fail to pay an amount of tax ("Amount of tax payable" in the table) on or before a certain date ("Date after which penalty incurred" in the table). Where a person's failure either falls: a) within more than one amount of tax payable listed in the table; or b) within more than one provision in sections 169 to 173, the person is liable to a penalty for each of those

amounts of tax and failures. Section 169 applies in relation to LBTT and sections 170 to 173 apply in relation to SLfT.

***Section 169 – Land and buildings transaction tax: amounts of penalties for failure to pay tax***

207. This section provides that the penalty amount for a penalty under section 168 in relation to LBTT is 5% of the unpaid tax. If any amount of tax is still unpaid five months after the person first became liable to a penalty under section 159, the person is liable to a further penalty of 5% of the outstanding amount. If any amount of tax is still unpaid 11 months after the person first became liable to a penalty under section 159, the person is liable to a further penalty of 5% of the outstanding amount.

***Sections 170 to 173 – Scottish landfill tax: first penalty for failure to pay tax; penalties for multiple failures to pay tax; 6 month penalty for failure to pay tax; 12 month penalty for failure to pay tax***

208. **Section 170** provides that the penalty amount for a penalty under section 168 in relation to SLfT is 1% of the unpaid tax. Section 171 provides for additional (and higher) penalty amounts if the person fails to pay further amounts of tax on time within a specified penalty period. A penalty period is one which is begun under section 168(3) and, unless extended under section 171(2)(c), ends 12 months after the filing date for the return.
209. **Sections 172 and 173** provide that a person is liable to further tax-geared penalties if any amount of tax remains unpaid six and 12 months after the penalty date, as defined in section 159(4).

**Penalties under Chapter 2: general**

***Section 174 – Interaction of penalties under Chapter 2 with other penalties***

210. This section provides that any penalty applied as a result of a failure to make a tax return or failure to pay tax on time is reduced by the amount of any other penalty (which is not related to a failure to make a return on time or to pay tax on time) which is applied and determined by the same tax liability. In other words, for a reduction under this section to be possible, the other penalty amount must be calculated: a) against the same tax liability; and b) using 'tax-geared' or 'percentage-based' means (and so does not include a penalty where the amount is fixed or in a variable 'up to' category).

***Section 175 – Reduction in penalty under sections 159 to 167 for disclosure***

211. This section provides for Revenue Scotland to be able to reduce a penalty applied due to a failure to make a return. This applies only where a person discloses information to Revenue Scotland which has been previously withheld by the failure to submit a tax return. Any reductions applied may reflect whether or not the disclosure was unprompted (where the person has no reason to believe that Revenue Scotland is or is about to discover the information) and also the quality (timing, nature and extent) of the information disclosed. By timing this refers to how promptly the disclosure was made; by nature this refers to the level of evidence provided and the degree of access to test the disclosure; by extent this means how complete the disclosure may be.

***Section 176 – Suspension of penalty under sections 168 to 173 during currency of agreement for deferred payment***

212. This section provides that a person who has failed to pay tax by the due date can make a request to Revenue Scotland to have the payment deferred and Revenue Scotland can then choose whether or not to agree to the deferral of payment for a specified period as well as specifying any conditions of that deferral.

213. If payment is deferred, any penalty the person might have incurred during the specified period for failing to pay tax is not applied. If the person breaks the agreement (by either failing to pay the tax due when the deferral period ends or failing to comply with any condition of that deferral) the person becomes liable for any penalty that Revenue Scotland issues a notice to the person about. If the deferral agreement is further varied the agreement applies until the end of the new agreement.

***Section 177 – Special reduction in penalty under Chapter 2***

214. This section provides that Revenue Scotland may in special circumstances reduce a penalty that has been applied due to either a failure to make a tax return or a failure to pay tax on or before the due date. The penalty can be suspended, remitted entirely or reduced following Revenue Scotland agreeing a compromise with the taxpayer in relation to the penalty proceedings. The special circumstances under which the penalty may be reduced cannot be related to the taxpayer's ability to pay or by the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another taxpayer. The ability of Revenue Scotland to apply this discretionary reduction in the penalty can still be made following a decision of the tribunal or court in relation to the penalty.

***Section 178 – Reasonable excuse for failure to make return or pay tax***

215. This section provides that if a person satisfies Revenue Scotland or the tribunal that there is reasonable excuse on the person's behalf for a failure to either make a return or make a payment, then the person is not liable to pay a penalty arising from that failure. The section also sets out some circumstances in which reasonable excuse does not apply.

***Section 179 – Assessment of penalties under Chapter 2***

216. Subsection (1) provides that where a person becomes liable for a penalty due to a failure to make a return or pay tax, Revenue Scotland must assess the penalty, notify the person that a penalty has been incurred, and state in the notice the period or transaction against which the penalty is assessed. Subsection (2) provides that the penalty must be paid within 30 days of Revenue Scotland issuing the penalty notification. Subsection (3) provides that the assessment of the penalty is to be treated for enforcement purposes as an assessment of tax and may be combined with an existing assessment to tax. Subsections (4) and (5) make provision for a supplementary and replacement assessments to be made in respect of a penalty applied under sections 159 to 167 and 168 to 173 respectively if the penalty was calculated in reference to the amount of tax the person was liable to pay or failed to pay and it subsequently becomes clear that this amount was an over or underestimate.

***Section 180 – Time limit for assessment of penalties under Chapter 2***

217. This section provides that assessment of a penalty due to a failure to make a return or pay tax must be made on or before the later of one of these two dates:
- a) two years from the filing date (in the case of a failure to make a return) or the last date on which payment may be made without paying a penalty (in the case of failing to pay tax); or
  - b) for a failure to make a tax return:
    - 12 months from either the end of the appeal period for the assessment of the liability to pay tax or, if there is no such assessment, 12 months from the date on which that liability is ascertained or that it is ascertained the liability is nil.for a failure to pay tax:

*These notes relate to the Revenue Scotland and Tax Powers Act 2014 (asp 16) which received Royal Assent on 24 September 2014*

- 12 months from either the end of the appeal period for the assessment of the liability to pay tax or, if there is no such assessment, 12 months from the date on which the amount of tax was ascertained.

### ***Section 181 – Power to change penalty provisions in Chapter 2***

218. This section provides a regulation-making power for the Scottish Ministers to make provision, or further provision, about penalties under Chapter 2 of Part 8. Such regulations are subject to the affirmative procedure, may not create criminal offences but may modify any enactment. Regulations under this section do not apply to a failure which began before the date on which the regulations came into force.

### ***Chapter 3 — Penalties Relating to Inaccuracies***

#### ***Section 182 – Penalty for inaccuracy in taxpayer document***

219. This section provides that a person is liable to a penalty under this section where they give Revenue Scotland a document that falls under one of the provisions listed in the table and two conditions are met. The first condition is that the error amounts or leads to an understatement of the tax liability, a false or inflated statement of a loss or a false or inflated claim for relief or repayment of tax. The second condition is that the error is either careless or deliberate on the person’s behalf. A penalty is payable for each error in a document.

#### ***Section 183 – Amount of penalty for error in taxpayer document***

220. This section provides for the amount of a penalty that is payable under section 182. Different amounts apply depending on whether the failure was careless (as determined under section 182) or deliberate and are calculated with reference to the potential lost revenue. Potential lost revenue is defined in sections 187 to 190.

#### ***Section 184 – Suspension of penalty for careless inaccuracy under section 182***

221. This section provides that Revenue Scotland may, by means of a written notice, suspend all or part of a penalty which is applied where a taxpayer submits a document to Revenue Scotland containing an error and which is due to careless behaviour by the taxpayer. Subsection (2) requires that a notice served by Revenue Scotland must specify what part of the penalty is being suspended, a period not exceeding two years and the conditions of suspension with which the taxpayer must comply. Subsection (3) allows Revenue Scotland to suspend all or part of a penalty only if it meant that if a taxpayer complied with the condition of suspension the taxpayer would avoid liability to further penalties incurred under section 182 for careless inaccuracy.

#### ***Section 185 – Penalty for inaccuracy in taxpayer document attributable to another person***

222. This section provides that a penalty is payable by a person (“T”) where: a) another person (“P”) submits a document to Revenue Scotland that falls under one of the provisions listed in the table in section 182; b) the document contains an inaccuracy attributable to T either deliberately supplying P with false information or deliberately withholding information from P with the intention of creating the inaccuracy and c) the inaccuracy leads to either an understatement in the tax liability or a false/inflated claim for loss or repayment of tax a penalty is payable by T whether or not P is liable to a penalty under section 182 for the same inaccuracy. The penalty amount is calculated with reference to the potential lost revenue and is 100% of the potential lost revenue. Potential lost revenue is defined in sections 187 to 190.

***Section 186 – Under-assessment by Revenue Scotland***

223. This section provides that a penalty is payable by a person where an assessment issued by Revenue Scotland (as defined under section 98) understates the tax liability and the person has failed to take reasonable steps to inform Revenue Scotland of that fact within 30 days of receiving the understatement. Revenue Scotland must consider whether the person knew, or should reasonably have known, about the under-assessment. References to a Revenue Scotland assessment include a Revenue Scotland determination (as defined under section 95). The penalty amount is calculated with reference to the potential lost revenue and is 30% of the potential lost revenue. Potential lost revenue is defined in sections 187 to 190.

***Section 187 – Potential lost revenue: normal rule, section 188 – Potential lost revenue: multiple errors, section 189 – Potential lost revenue: losses and section 190 – Potential lost revenue: delayed tax***

224. **Section 187** defines “potential lost revenue” (used in the calculation of the penalty amounts in sections 183, 185 and 186) as the additional amount due and payable (either to or from Revenue Scotland) in respect of tax as a result of correcting the inaccuracy (under sections 183 and 185) or under-assessment (under section 186).
225. **Section 188** provides that where a penalty under section 182 is for more than one inaccuracy, if a calculation of potential lost revenue depends on the order in which inaccuracies are corrected then careless inaccuracies are to be corrected before deliberate inaccuracies. In calculating potential lost revenue, account is to be taken of any overstatement in a document given by the same person in the same tax period. When calculating the amount of a penalty under section 182, no account will be taken of a potential overpayment by another person except where specifically allowed for elsewhere in the Act.
226. **Section 189** provides that where an inaccuracy has the result of a loss being recorded and the loss has been wholly used to reduce the amount of tax payable then section 189 will apply in terms of calculating potential lost revenue. Where an inaccuracy has the result of a loss being recorded partially for the purpose of reducing the amount of tax payable then potential lost revenue will be calculated: a) with reference to the part of the loss used to reduce the amount of tax payable; and b) 10% of the loss that has not been used to reduce the amount of tax payable. This applies where no loss would have been recorded apart from the inaccuracy and also to where a different loss would have been recorded because of the inaccuracy. The potential lost revenue is nil where the nature of the loss means there is no reasonable prospect of the loss being used to reduce a tax liability.
227. **Section 190** provides that where an inaccuracy results in an amount of tax being declared later than it should have been, the potential lost revenue is 5% of the delayed tax for each year of the delay. If the delay is less than one year then the potential lost revenue is a percentage equivalent to 5% per year for each separate period of delay. This section does not apply to cases where section 189 applies.

***Section 191 – Special reduction in penalty under this Chapter***

228. This section provides that Revenue Scotland may reduce a penalty (including any interest applied) if it thinks it reasonable to do so because of special circumstances and the penalty is applied under sections 182, 185 and 186. A person’s ability to pay tax or the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment of another are not reasons under which the penalty can be reduced.

***Section 192 – Reduction in penalty under this Chapter for disclosure***

229. This section provides for Revenue Scotland to be able to reduce a penalty applied due to sections 182, 185 and 186. Any reductions applied may reflect whether or not the

disclosure was unprompted (where the person has no reason to believe that Revenue Scotland is or is about to discover the information) and also the quality (timing, nature and extent) of the information disclosed. By timing this refers to how promptly the disclosure was made; by nature this refers to the level of evidence provided and the degree of access to test the disclosure; by extent this means how complete the disclosure may be.

### ***Section 193 – Assessment of penalties under this Chapter***

230. This section provides that where a person becomes liable for a penalty under sections 182, 185 and 186, Revenue Scotland must assess the penalty and then notify the person of this, including making clear the period against which the penalty is being assessed. The penalty must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person and this may be combined with an existing assessment to tax.
231. The assessment of a penalty due to an error in a taxpayer document attributable to either the taxpayer or another person must be made within 12 months of either the end of the appeal period for the decision correcting the inaccuracy or the date on which the inaccuracy is corrected, whichever applies. The assessment of a penalty due to an under-assessment of tax by Revenue Scotland must be made within 12 months of either the end of the appeal period for the assessment of tax which corrected the under-statement or the date on which the understatement is corrected, whichever applies.

### ***Section 194 – Power to change penalty provisions in Chapter 3***

232. This section provides a regulation-making power for the Scottish Ministers to make provision, or further provision, about penalties under Chapter 3 of Part 8. Such regulations are subject to the affirmative procedure, may not create criminal offences but may modify any enactment. Regulations under this section do not apply to a failure which began before the date on which the regulations came into force.

## ***Chapter 4 — Penalties Relating to Investigations***

### ***Section 195 – Penalties for failure to comply or obstruction***

233. This section provides that a person is liable to pay a fixed penalty for either failing to comply with an information notice or deliberately obstructing a designated officer in the course of an inspection or exercise of a power that has been approved by the tribunal under section 147. Failing to comply with an information notice includes concealing, destroying or disposing of a document in breach of the provisions under sections 198 and 199.

### ***Section 196 – Daily default penalties for failure to comply or obstruction***

234. This section provides that a person is liable to a further fixed penalty for each subsequent day they continue to fail to comply with an information notice or deliberately obstructs a designated officer in the course of an inspection approved by the tribunal.

### ***Section 197 – Penalties for inaccurate information or documents***

235. This section provides that a person is liable in certain circumstances to pay a fixed penalty if, in the course of complying with an information notice, they submit a document which contains an error. The circumstances in which the penalty is payable are: if the error is due to careless or deliberate behaviour; if the person is aware of the error at the time of submitting the document but fails to tell Revenue Scotland; or if the person discovers the error after submitting the document but fails to take reasonable steps to inform Revenue Scotland. Where there is more than one error in a document, a fixed penalty is payable for each error.

***Section 198 – Concealing, destroying etc. documents following information notice***

236. This section provides that a person must not generally conceal, destroy or otherwise dispose of a document that is the subject of an information notice addressed to them, unless particular circumstances apply as set out in subsections (2) and (3). A person in breach of section 198 is liable to a penalty under section 195 on the grounds that the breach is deemed as a failure to comply with an information notice for the purposes of determining liability to the penalty.

***Section 199 – Concealing, destroying etc. documents following information notification***

237. This section provides that a person must not generally conceal, destroy or otherwise dispose of a document if a designated officer has informed the person that the document is, or is likely to be, the subject of an information notice addressed to that person. This section does not apply if the person acts after either at least six months since the person received the last such notification from an officer or if an information notice has been issued. A person in breach of section 199 is liable to a penalty under section 195 on the grounds that the breach is deemed as a failure to comply with an information notice for the purposes of determining liability to the penalty.

***Section 200 – Failure to comply with time limit***

238. This section provides that a penalty is not payable by a person failing to comply with an information notice or obstructing an officer during an investigation if a designated officer allows them further limited time to correct the failure and the person then does so.

***Section 201 – Reasonable excuse for failure to comply or obstruction***

239. This section provides for a person not being liable to a fixed or daily penalty (under section 195 and 196) for failure to comply with an information notice or obstructing a designated officer (or a person authorised by that officer) during an inspection, if the person satisfies Revenue Scotland or (on appeal) the tribunal that there is reasonable excuse. The section defines some circumstances which would not be accepted as reasonable excuse.

***Section 202 – Assessment of penalties under sections 195, 196 and 197***

240. This section provides that where a person becomes liable for a penalty under section 195, 196 or 197, Revenue Scotland must assess the penalty and then notify the person of this. The assessment of a fixed or daily penalty arising from a failure to comply with an information notice or obstructing an officer during an inspection must be made within 12 months of the person becoming liable to the penalty. An assessment of a penalty due to an error in a taxpayer document submitted following an information notice must be made within 12 months on the date that the error first came to the attention of a designated officer and within six years of the date on which the person became liable to the penalty.

***Section 203 – Enforcement of penalties under sections 195, 196 and 197***

241. This section provides that a penalty under section 195, 196 or 197 must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person. If a notice of review is given against the penalty, the penalty must be paid within 30 days of the review being concluded. If mediation is entered into following a review, the penalty must be paid within 30 days of the person or Revenue Scotland giving notice of withdrawal from mediation (where this is the case). If notice of an appeal against the penalty is given, the penalty must be paid within 30 days of the appeal being determined or withdrawn.

***Section 204 – Increased daily default penalty***

242. This section provides that where a person continues to fail to comply with an information notice or obstructs an inspection and the daily default penalty has been applied for more than 30 days, a designated officer may make an application to the tribunal for an increase in the daily penalty. The tribunal may approve an increased amount up to a maximum of £1,000 for each applicable day and must have regard to factors including the likely cost of complying with the notice and the benefits to the person or anyone else arising from the non-compliance. If the tribunal approves the request, the increased daily penalty would then apply from the date of the tribunal's decision until such time as the person complies with the information notice or inspection.

***Section 205 – Enforcement of increased daily default penalty***

243. This section provides that an increased daily default penalty must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person.

***Section 206 – Tax-related penalty***

244. This section provides that, where certain criteria apply, a person can be made liable for an additional penalty whose amount is decided by the Upper Tribunal. The criteria are that: a person is liable to a penalty under section 195; the person continues to fail to comply with an information notice or continues to obstruct an investigation; a designated officer believes that the amount of tax the person has paid or is likely to pay is significantly less than it would have been if they had complied; a designated officer makes an application to the Upper Tribunal for an additional penalty to be imposed; and the Upper Tribunal decides it is appropriate to do so. In determining the amount of the penalty, the Upper Tribunal must factor in the amount of tax which has not been, or is not likely to be, paid by the person. Any additional penalty imposed by a decision of the Upper Tribunal against this section is additional to the fixed and daily penalties already applied as a result of a continued failure to comply with an information notice or obstruction to an officer carrying out an inspection.

***Section 207 – Enforcement of tax-related penalty***

245. This section provides that a penalty applied under section 206 must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person.

***Section 208 – Power to change penalty provisions in Chapter 4***

246. This section provides a regulation-making power for the Scottish Ministers to make provision, or further provision, about penalties under Chapter 4 of Part 8. Such regulations are subject to the affirmative procedure, may not create criminal offences but may modify any enactment. Regulations under this section do not apply to a failure which began before the date on which the regulations came into force.

***Chapter 5 — Other Administrative Penalties***

***Section 209 – Penalty for failure to register for tax etc.***

247. This section provides that a penalty is payable where a person fails to comply with a requirement imposed by or under section 22 or 23 of the LT(S)A 2014 (deemed as a "relevant requirement") and that failure was careless or deliberate. The section also defines what is meant by a failure which is careless.

***Section 210 – Amount of penalty for failure to register for tax etc.***

248. This section provides the penalty amounts for a penalty under section 209. Different amounts apply depending on whether the failure was careless or deliberate (as

determined under section 209(2) and are calculated with reference to the potential lost revenue. Potential lost revenue is defined as the amount of tax (if any) for which the person is liable in the period between the date from which they were liable to be registered for tax and the date on which Revenue Scotland received notification of (or became aware of) the person's liability to be registered.

### ***Section 211 – Interaction of penalties under section 209 with other penalties***

249. This section provides that the amount of any penalty under section 209 is to be reduced by the amount of any other penalty (apart from any penalty relating to failure to make a return on time or failure to pay tax on time) if it is applied and determined by reference to the same tax liability. In other words, for a reduction under this section to be possible the other penalty amount must be calculated: a) against the same tax liability; and b) using 'tax-gear'd' or 'percentage-based' means (and so does not include a penalty where the amount is fixed or in a variable 'up to' category).

### ***Section 212 – Reduction in penalty under section 209 for disclosure***

250. This section provides for Revenue Scotland to be able to reduce a penalty applied due to a failure to comply with a "relevant requirement" (as specified in section 209(1)(a)). The section applies when the person liable to the penalty discloses the failure to Revenue Scotland. Any reductions applied may reflect whether or not the disclosure was unprompted (where the person has no reason to believe that Revenue Scotland has discovered or is about to discover the information) and also the quality (timing, nature and extent) of the information disclosed. By timing this refers to how promptly the disclosure was made; by nature this refers to the level of evidence provided and the degree of access to test the disclosure; by extent this means how complete the disclosure may be.

### ***Section 213 – Special reduction in penalty under section 209***

251. This section provides that Revenue Scotland may in special circumstances reduce a penalty that has been applied under section 209. The penalty can be suspended, remitted entirely or reduced following Revenue Scotland agreeing a compromise with the taxpayer in relation to the penalty proceedings. The special circumstances under which the penalty may be reduced cannot be related to the taxpayer's ability to pay or by the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another taxpayer. The ability of Revenue Scotland to apply this discretionary reduction in the penalty can still be made following a decision of the tribunal or court in relation to the penalty.

### ***Section 214 – Reasonable excuse for failure to register for tax etc.***

252. This section provides that if a person satisfies Revenue Scotland (or on appeal the tribunal) that there is reasonable excuse on the person's behalf for a failure to comply with a "relevant requirement" (as specified in section 209(1)(a)), then the person is not liable to pay a penalty arising from that failure. The section also sets out some circumstances in which reasonable excuse does not apply.

### ***Section 215 – Assessment of penalties under section 209***

253. This section provides that where a person becomes liable for a penalty under section 209, Revenue Scotland must assess the penalty and then notify the person of this, including making clear the period against which the penalty is being assessed. The penalty must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person and this may be combined with an existing assessment to tax.
254. The assessment of a penalty under section 209 must be made within 12 months of either the end of the appeal period for the assessment of unpaid tax related to the failure to

comply with the ‘relevant requirement’ or, if there is no such assessment, the date on which the amount of unpaid tax is ascertained.

### ***Section 216 – Power to change penalty provisions in Chapter 5***

255. This section provides a regulation-making power for the Scottish Ministers to make provision, or further provision, about penalties under Chapter 5 of Part 8. Such regulations are subject to the affirmative procedure, may not create criminal offences but may modify any enactment. Regulations under this section do not apply to a failure which began before the date on which the regulations came into force.

## **Part 9 – Interest on Payments Due to Or by Revenue Scotland**

### ***Section 217 – Interest on unpaid tax***

256. This section provides that interest is payable by the taxpayer on unpaid tax. Interest is payable from the “relevant date” until the tax is paid. Subsection (2) confers a power on the Scottish Ministers to make, by regulations, further provision to specify the date for payment of the devolved tax. Such regulations are subject to the negative procedure. If the taxpayer lodges an amount of money with Revenue Scotland in respect of the tax payable then the amount on which interest is payable is reduced by the amount lodged. Regulations made by the Scottish Ministers under section 220 will specify the rate at which interest will be calculated.

### ***Section 218 – Interest on penalties***

257. This section provides that interest is payable by the taxpayer on unpaid penalties. If penalties are not paid on the date they are due, then interest is payable from that date until the penalty is paid. Regulations made by the Scottish Ministers under section 220 will specify the rate at which interest will be calculated.

### ***Section 219 – Interest on repayment of tax overpaid etc.***

258. This section provides that interest is payable by Revenue Scotland to the taxpayer on any repayment of tax, repayment on penalties or repayment of interest (on either tax or penalties). Interest also applies to repayment of any amount lodged with Revenue Scotland by the taxpayer in respect of the tax payable. Regulations made under section 220 will set out the rate at which interest on repayment will be calculated.

### ***Section 220 – Rates of interest***

259. This section provides that Ministers will specify the rate of interest to be paid in sections 217, 218 and 219 in regulations subject to the affirmative procedure. Different rates may be set for different taxes and different penalties.

## **Part 10 – Enforcement of Payment of Tax**

### ***Chapter 1 — Enforcement: General***

#### **Issue of tax demands and receipts**

### ***Section 221 – Issue of tax demands and receipts***

260. This section provides Revenue Scotland with a power to demand a sum of tax that is due and payable from a taxpayer. Revenue Scotland must provide a receipt upon payment of the tax.

## **Fees for payment**

### ***Section 222 – Fees for payment***

261. This section provides the Scottish Ministers with a power to make regulations specifying any fee associated with particular methods of payment (such as credit cards). Such regulations are subject to the negative procedure. The fee charged to the person making the payment must not exceed what is reasonable having regard to the costs incurred by Revenue Scotland (or a person authorised by it) in accepting or processing the payment.

## **Certification of matters by Revenue Scotland**

### ***Section 223 – Certification of matters by Revenue Scotland***

262. This section provides for certificates of Revenue Scotland relating to: returns not being made to Revenue Scotland as required under any enactment; sums payable to Revenue Scotland under any enactment not having been paid; notifications not being made to Revenue Scotland as required under any enactment. Their purpose is to provide evidence to the court in support of any debt or action which Revenue Scotland administers, avoiding the need for lengthy documentation. The decision whether to accept such evidence is for the court.

## **Court proceedings**

### ***Section 224 – Court proceedings***

263. This section provides that a taxpayer may be sued in order to recover tax that is due and payable.

## **Summary warrant**

### ***Section 225 – Summary warrant***

264. This section provides that a designated officer may apply to the sheriff for a summary warrant where a person does not pay an amount due. The application to the sheriff must include a certificate which states that the sum due has been requested and has remained unpaid for at least 14 days. The sheriff must then issue the summary warrant which authorises the recovery of the sum payable by the means set out in subsection (6). In addition to the sum of tax due, the sheriff officers' fees and expenses reasonably incurred are also chargeable against the taxpayer. Although not listed in section 225 it should be noted that, depending on the circumstances, Revenue Scotland may also choose to submit a petition for sequestration following a summary warrant should it (the summary warrant) fail to resolve the issue of the outstanding amount due to Revenue Scotland.

## **Recovery of penalties and interest**

### ***Section 226 – Recovery of penalties and interest***

265. This section provides that any penalty or interest payable is to be treated as though it was an amount of unpaid tax, so the means of enforcement in Chapter 1 apply to them too.

## ***Chapter 2 — Enforcement: Powers to Obtain Contact Details for Debtors***

### ***Section 227 – Requirement for contact details for debtor***

266. This section provides that Chapter 2 applies where Revenue Scotland is owed money by a debtor but has no contact details and a designated officer reasonably believes that

a third party (which must be a company or local authority and cannot be a charity or an organisation operating on behalf of a charity) holds the contact details.

### ***Section 228 – Power to obtain details***

267. This section provides a designated officer of Revenue Scotland with a power, by means of a written notice, to require the third party to provide the contact details of the debtor outlined in section 227. The notice must name the debtor. The third party is obliged to provide contact details of the debtor in accordance with the timescale and in the form set out in the notice.

### ***Section 229 – Reviews and appeals against notices or requirements***

268. This section provides the third party with a right of review or appeal against a notice under section 228 but only on the basis that it would be unduly onerous to comply.

### ***Section 230 – Power to modify section 229***

269. This section provides a power for the Scottish Ministers to modify by order (subject to affirmative procedure) section 229(2). Such orders can provide as to whether certain decisions in relation to the giving of notices under section 228, or any requirements contained within such notices, are appealable (generally or in certain circumstances only) or not appealable for the purposes of section 233(1)(i).

### ***Section 231 – Penalty***

270. This section provides that in the event that the third party fails to comply with a notice under section 228, a £300 penalty would apply.

## **Part 11 – Reviews and Appeals**

### ***Chapter 1 — Introductory***

#### **Overview**

#### ***Section 232 – Overview***

271. This section sets out an overview of the provisions of this Part of the Act relating to the review and appeal of certain decisions of Revenue Scotland.

#### **Appealable decisions**

#### ***Section 233 – Appealable decisions***

272. This section sets out the types of decision by Revenue Scotland which can be reviewed and appealed, and types of decision which cannot. It also provides that the Scottish Ministers may, by order, add, change or remove a type of decision from the lists in subsections (1) and (4).

### ***Chapter 2 — Reviews***

#### **Review of appealable decisions**

#### ***Section 234 – Right to request review***

273. This section provides a right to a taxpayer to request that Revenue Scotland should review a decision. It states that no steps of a review will be undertaken until the end of any existing enquiry process. In certain listed circumstances, review is incompetent.

### ***Section 235 – Notice of review***

274. This section provides for giving notice of review. Someone who wishes to ask Revenue Scotland to review a decision must do so within 30 days of the specified date (which generally will be the date of being told about that decision). The notice to Revenue Scotland must state the grounds of the review.

### ***Section 236 – Late notice of review***

275. This section provides the rules for a review requested outside the time limits. Notice of review may be given after the time limit if Revenue Scotland agrees or where the tribunal gives permission for the late notice. Subsection (3) requires Revenue Scotland to agree to the notice of review being given outside the time limit if Revenue Scotland agrees that there was a reasonable excuse for the notice of review being late and that there had been no unreasonable delay to the issue of the request. Subsection (4) requires Revenue Scotland to notify the appellant of its decision about whether to agree to the request.

### ***Section 237 – Duty of Revenue Scotland to carry out review***

276. This section sets out the duties of Revenue Scotland to initiate a review by giving the appellant notice within 30 days, or within a reasonable period where 30 days is insufficient, of its view on the matter in question. Subsection (2) disapplies subsection (1) if the appellant has already given a notice of review in relation to the same matter or if Revenue Scotland has concluded a review of the matter already.

### ***Section 238 – Nature of review etc.***

277. This section provides for the carrying out of reviews by Revenue Scotland. Revenue Scotland will take into account any steps taken before in deciding the matter in question, and any evidence provided by the taxpayer at a reasonable stage. The review may determine that Revenue Scotland's view of the matter in question is upheld, varied or cancelled.

### ***Section 239 – Notification of conclusions of review***

278. This section requires Revenue Scotland to notify the appellant of the result of the review within 45 days (or within another agreed period) of the appellant being notified under section 202 of Revenue Scotland's view on the matter in question. Subsection (3) provides that, where Revenue Scotland does not give notice of its conclusion about the review within the required time period, the review is treated as having concluded that Revenue Scotland's view (given under section 237) is upheld. Subsection (4) provides that in such circumstances, Revenue Scotland must notify the appellant of the conclusions which the review is treated as having reached.

### ***Section 240 – Effect of conclusions of review***

279. This section sets out that the conclusion of the review has the effect of a settlement agreement unless the taxpayer enters into mediation with Revenue Scotland or gives notice of appeal to the tribunal.

## ***Chapter 3 — Appeals***

### ***Section 241 – Right of appeal***

280. This section provides a right of appeal to the tribunal, and states that an appellant may not appeal to the tribunal if a review is ongoing, an enquiry is in progress, or the appellant has entered into a settlement agreement with Revenue Scotland.

### ***Section 242 – Notice of appeal***

281. This section sets out the way in which an appeal can be raised. An appellant must give notice to the tribunal within 30 days of the completion of an enquiry, of being notified of the decision they wish to appeal, of the conclusion of a review, of a decision to withdraw from mediation, or of a decision to withdraw from a settlement agreement.

### ***Section 243 – Late notice of appeal***

282. This section applies where no notice of appeal has been given before the relevant time limit. Notice of appeal may be given after the time limit if Revenue Scotland agrees or where the tribunal may give permission for the late notice (a decision to refuse permission not being itself appealable). Subsection (3) requires Revenue Scotland to agree to the notice of appeal being given outside the time limit if Revenue Scotland agrees that there was a reasonable excuse for the notice of appeal being late and that there had been no unreasonable delay to the issue of the request. Subsection (4) requires Revenue Scotland to notify the appellant of its decision about whether to agree to the request.

### ***Section 244 – Disposal of appeal***

283. This section provides that the tribunal should determine in an appeal whether Revenue Scotland's view of the matter being appealed should be upheld, varied, or cancelled. Part 4 of the Act contains further provision about appeals to the tribunal, and about appeals from the tribunal to the Court of Session.

## ***Chapter 4 — Supplementary***

### ***Section 245 – Reviews and appeals not to postpone recovery of tax***

284. Subsection (1) provides that where a review or appeal takes place, any tax charged or interest or penalty continues to apply and remains payable as if there had been no review or appeal. Subsection (2) gives the Scottish Ministers a power to make regulations for the postponement of any tax, penalty or interest pending reviews or appeals. Regulations may include provision about: applications by appellants to postpone amounts of tax, penalties and interest; the effect of any determination by Revenue Scotland on such applications; agreements between appellants and Revenue Scotland about the postponement of amounts of tax, penalties and interest; applications to the tribunal for such postponement; and appeals against determinations by Revenue Scotland and decisions by the tribunal on such applications. Such regulations are subject to the affirmative procedure.

### ***Section 246 – Settling matters in question by agreement***

285. This section sets out the rules by which reviews, mediation and appeals can be settled by agreement between the appellant and Revenue Scotland, including the time limit for the appellant to withdraw from such an agreement. Subsection (1) defines what is meant by a 'settlement agreement'. Subsection (2) provides that the consequences of a settlement agreement are to be the same as if the tribunal had determined the outcome of an appeal, unless the appellant notifies Revenue Scotland within 30 days that the appellant wishes to withdraw from the agreement (subsection (4)). Subsection (3) provides that a settlement agreement is not to be treated as a decision of the Tribunal in terms of onward appeal as provided for in Sections 34 or 36. Subsection (5)(a) provides that where the settlement agreement is not in writing, subsection (2) does not apply unless the fact that the agreement was reached is confirmed in writing by Revenue Scotland to the appellant or by the appellant to Revenue Scotland, Subsection (5)(b) provides that if the agreement is not in writing, then the date that the conformation notice was given is to be taken as the date of the agreement between Revenue Scotland and the

appellant. In this section, references to an appellant include a person acting on behalf of the appellant in relation to the review, mediation or appeal.

### ***Section 247 – Application of this Part to joint buyers***

286. This section provides for situations when one or some (but not all) the buyers in a land transaction seek a review, mediation or appeal of a tax assessment in relation to LBTT. In this situation, in accordance with subsection (2), Revenue Scotland must notify all the buyers whose identity is known of the review, mediation or appeal; any of the buyers may participate in the review, mediation or appeal; and the agreement of all the buyers is required before Revenue Scotland can enter into a settlement agreement. Subsection (4)(e) provides that in the case of an appeal relating to the transaction, the tribunal's decision binds all of the buyers.

### ***Section 248 – Application of this Part to trustees***

287. This section provides for situations when the buyer in relation to LBTT is a trust, and where one or some (but not all) of the trustees seek a review, mediation or appeal of a tax assessment. In a review or mediation, Revenue Scotland must notify all the trustees whose identity is known of the review or mediation; any of the trustees may participate in the review or mediation; and the agreement of all the trustees is required before Revenue Scotland can enter into a settlement agreement. In an appeal, the trustee bringing the appeal must inform the other trustees, all trustees may take part in the appeal, and the decision of the tribunal is binding on all trustees.

### ***Section 249 – References to the “tribunal”***

288. This section sets out the definition of the term “the tribunal” for the purposes of this Part of the Act to mean the First-tier Tribunal or the Upper Tribunal (where determined by tribunal rules). This reflects that tribunal rules might provide for certain types of proceedings to begin in the Upper Tribunal (in which case an appeal to the Court of Session will not be a “second appeal” within the meaning of section 38).

### ***Section 250 – Interpretation***

289. This section defines expressions used in this Part of the Act and makes other interpretative provision, including about the meaning of the term “matter in question”. It also makes clear that reference to an appellant includes a person acting on behalf of the appellant except in certain circumstances.

### ***Section 251 – Communications from taxpayers to Revenue Scotland***

290. This section allows Revenue Scotland to specify the form, content and manner of making notices, applications or other things to be given by taxpayers to Revenue Scotland under the Act. This allows Revenue Scotland to accept communications in forms other than paper, for example online or telephone communications.

## **Part 12 – Final Provisions**

### **Interpretation**

#### ***Section 252 – General interpretation***

291. This section provides a list and explanation of general terms which are used throughout the Act.

#### ***Section 253 – Index of defined expressions***

292. This section introduces schedule 5 which contains an index of the main expressions defined or explained in the Act.

## **Subordinate legislation**

### ***Section 254 – Subordinate legislation***

293. This section sets out the parliamentary procedure to which the various delegated powers will be subject.

## **Ancillary provision**

### ***Section 255 – Ancillary provision***

294. This section provides a power for the Scottish Ministers to make ancillary provision in relation to the Act.

## **Modifications of enactments**

### ***Section 256 – Minor and consequential modifications of enactments***

295. This section introduces schedule 4 which sets out minor and consequential amendments and repeals of enactments made as a result of the provisions in the Act.

## **Crown application**

### ***Section 257 – Crown application: criminal offences***

296. The Act applies to the Crown by virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010. In line with usual practice for Acts of the Scottish Parliament, section 257 has the effect that the Crown cannot be found criminally liable in terms of the offences created by the Act, such as those set out in sections 155 (offence of concealing etc. documents following information notice) and 156 (offence of concealing etc. documents following information notification). However, through the mechanism in subsection (2) any unlawful conduct on the part of Crown bodies can be declared unlawful. Subsection (3) has the effect that section 257 does not exempt civil servants from criminal prosecution; this has particular relevance to the offence in section 19 (wrongful disclosure of protected taxpayer information).

### ***Section 258 – Crown application: powers of entry***

297. This section provides that power of entry in relation to Crown land can be granted only with the consent of the appropriate authority. The section sets out a table defining for the purposes of this Act what is considered “Crown land” and who the relevant authority is.

### ***Section 259 – Crown application: Her Majesty***

298. This section provides that nothing in this Act affects Her Majesty in Her private capacity.

## **Commencement and short title**

### ***Section 260 – Commencement***

299. This section sets out those sections which will come into force on the day after Royal Assent and states that the other provisions come into force at a time specified in order(s) made by the Scottish Ministers.

### ***Section 261 – Short title***

300. This section provides that the short title of the Act is the Revenue Scotland and Tax Powers Act 2014.

## **Schedule 1 – Revenue Scotland**

301. This schedule is introduced by section 2 and makes further provisions on the membership, procedures and staffing of Revenue Scotland.

### **Revenue Scotland**

#### Membership

302. [Paragraph 1](#) sets out provisions for the membership of Revenue Scotland. No fewer than five and no more than nine members are to be appointed by the Scottish Ministers, one of whom is to be appointed to the role of Chair. The minimum and maximum number of members may be amended by an order made by Ministers. Ministers will determine the period and terms of appointment of members of Revenue Scotland, and may reappoint those who already are or may have been members. A member may resign from Revenue Scotland by giving written notice to Ministers.

#### Disqualification

303. [Paragraph 2](#) sets out those persons to be disqualified from becoming members or holding membership of Revenue Scotland. These persons include Ministers, elected members of the Scottish, UK and European Parliaments, local authority councillors, officers of the Crown and civil servants. A person would also be disqualified if they are or have been insolvent, disqualified as a company director under the Company Directors Disqualification Act 1986, or disqualified as a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005.

#### Removal of members

304. [Paragraph 3](#) provides that the Scottish Ministers can remove a member should that member become disqualified as described above. Ministers may also remove a member if that member has been absent from meetings of Revenue Scotland for a period longer than six months without permission from Revenue Scotland, or Ministers consider that the member is otherwise unfit to be a member or is unable to carry out their functions as a member. Ministers are required to give a member written notice of their removal from Revenue Scotland.

#### Remuneration and expenses

305. [Paragraph 4](#) makes provision allowing Revenue Scotland, with the approval of Ministers, to determine the remuneration of its members and members of its committees, and for the reimbursement of expenses incurred by those members when carrying out their functions.

#### Committees

306. [Paragraph 5](#) makes provision allowing Revenue Scotland to establish committees for any purpose relating to its functions. Revenue Scotland may also determine the composition of its committees and appoint persons to those committees who are not members of Revenue Scotland. Persons appointed as a member of a committee, but who are not members of Revenue Scotland, are not entitled to a vote at the meetings of the committee.

#### Procedure

307. [Paragraph 6](#) sets out that Revenue Scotland may regulate its own procedures and that of its committees. The validity of proceedings set by Revenue Scotland and its committees is not affected by any membership vacancy, any defect in the appointment of a member or the subsequent disqualification of a member after appointment.

#### Internal delegation by Revenue Scotland

308. [Paragraph 7](#) provides that Revenue Scotland may authorise a member, a committee, the chief executive or any other member of staff to exercise its functions. Internal delegation of authority does not affect Revenue Scotland's responsibility for the exercise of those functions. "External" delegation of functions is provided for in section 4 of the Act.

#### Chief Executive and other staff

309. [Paragraph 8](#) provides that Revenue Scotland must employ a chief executive and that the person holding this position may not be a member of Revenue Scotland. The Scottish Ministers may appoint the first chief executive of Revenue Scotland through consultation with the Chair (should a person hold that position at the time of appointment of the chief executive). Each subsequent chief executive may be appointed by Revenue Scotland, with approval of Ministers, on such terms as it may determine. Revenue Scotland may also, again with approval of Ministers, appoint other members of staff on such terms as it may determine.

#### Powers

310. [Paragraph 9](#) provides Revenue Scotland with powers to do what it considers necessary or expedient in connection with the exercise of its functions, or incidental or conducive to the exercise of those functions.

### **Schedule 2 – the Scottish Tax Tribunals**

#### **Part 1 – Appointment of members**

##### **President of the Tax Tribunals: eligibility for appointment**

311. [Paragraph 1](#) makes provision additional to section 22 concerning the President of the Tax Tribunals. To be appointed, a person must have the experience, qualifications and training in relation to tax law and practice that the Scottish Ministers consider appropriate and be practising and have at least 10 years' experience as a solicitor or advocate in Scotland. The Scottish Ministers may prescribe criteria alternative to 10 years' experience as a Scottish lawyer by regulations (see paragraph 8).

##### **First-tier Tribunal: ordinary members**

312. [Paragraph 2](#) provides that the Scottish Ministers must appoint ordinary members of the First-tier Tribunal (after consulting the Lord President) and will, by regulations, define the experience, qualifications and training required to be appointed as an ordinary member of the First-tier Tribunal.

##### **First-tier Tribunal: legal members**

313. [Paragraphs 3 and 4](#) provide that the Scottish Ministers must appoint legal members of the First-tier Tribunal (after consulting the Lord President). To be appointed a person must have the experience, qualifications and training in relation to tax law and practice that the Scottish Ministers consider appropriate and be practising and meet the criteria set out in paragraph 3 and 4. These are that the person is practising and has practiced for a period of not less than 5 years as a solicitor or advocate in Scotland; and meets a description to be specified by the Scottish Ministers in regulations (see also paragraph 8).

##### **Upper Tribunal: legal members**

314. [Paragraphs 5 and 6](#) provide that the Scottish Ministers must appoint legal members of the Upper Tribunal (after consulting the Lord President). To be appointed a person must have the experience, qualifications and training in relation to tax law and practice that the Scottish Ministers consider appropriate and meet the criteria set out in paragraph 6. These are that the person is practising and has been practising for a period of not less than 10 years as a solicitor or advocate in Scotland and meets a description to be specified by the Scottish Ministers in regulations (see also paragraph 8).

##### **Disqualification from office**

315. [Paragraph 7](#) lists positions that would disqualify a person from being President or a member of the Tax Tribunals.

## **Eligibility under regulations**

316. Paragraphs 8 and 9 provide further detail about the content of the regulations that can be made under paragraphs 1(3), 4(2) and 6(2). In particular, they allow for regulations to take account of practice as a solicitor or barrister in England and Wales or Northern Ireland or in certain legal work outside practice or employment as a lawyer.

## **Part 2 – Conditions of membership etc.**

### **Application of this Part**

317. Paragraph 10 sets out that this Part will apply to ordinary and legal members of the Tax Tribunals, but not judicial members and also details the paragraphs that apply to the President of the Tax Tribunals.

### **Initial period of office**

318. Paragraph 11 sets out that a person appointed to the Tax Tribunals holds the position for five years.

### **Reappointment**

319. Paragraphs 12, 13 and 14 allow for the reappointment of members of the Tax Tribunal for a period of five years and sets out the exceptions that would prevent reappointment.

### **Appointment to position of President**

320. Paragraph 15 provides that the appointment of a legal member of the First-tier or Upper Tribunal as President supersedes the earlier appointment as a legal member.

### **Termination of appointment**

321. Paragraph 16 sets out the ways in which a member of the Tax Tribunals can cease to hold the position.

### **Pensions etc.**

322. Paragraph 17 provides for the Scottish Ministers to make arrangements in relation to pensions, allowances and gratuities.

### **Oaths**

323. Paragraph 18 sets out that all members of the Tax Tribunals must swear an oath in the presence of the President of the Tax Tribunals

### **Other conditions**

324. Paragraph 19 provided that Scottish Minister may set the terms and conditions on which members of the Tax Tribunal hold the position.

## **Part 3 - Conduct and discipline**

### **Application of this Part**

325. Paragraph 20 sets out that this Part will apply to ordinary and legal members of the Tax Tribunals, but not judicial members and also details the paragraphs that apply to the President of the Tax Tribunals.

## **Conduct rules**

326. Paragraphs 21, 22 and 23 set out the Scottish Ministers' responsibility for the conduct of members of the Tax Tribunals, provides power for Ministers to make regulations regarding the conduct and details what these regulations may contain.

## **Reprimand etc.**

327. Paragraphs 24 and 25 provide for disciplinary action to be taken against members of the Tax Tribunal by the President of the Tax Tribunals.

## **Suspension of membership**

328. Paragraphs 26 and 27 provide for the suspension of members of the Tax Tribunal by the President of the Tax Tribunals.

## **Judicial Complaints Reviewer**

329. Paragraphs 28 and 29 set out the role of the Judicial Complaints Reviewer, established under the Judiciary and Courts (Scotland) Act 2008, in relation to the Tax Tribunals.

## **Part 4 – Fitness and removal**

### **Application of this Part**

330. Paragraph 30 sets out that this Part will apply to ordinary and legal members of the Tax Tribunals, but not judicial members and also details the paragraphs that apply to the President of the Tax Tribunals.

### **Constitution and procedure**

331. Paragraphs 31 and 32 set out the arrangements that relate to a fitness assessment tribunal. The purpose of the fitness assessment tribunal is to determine whether a member of the Tax Tribunal is fit to hold the position of member of the tribunals, as set out in paragraph 31(3).

### **Composition and remuneration**

332. Paragraphs 33 and 34 provide for who will sit on a fitness assessment tribunal and their remuneration.

### **Proceedings before fitness assessment tribunal**

333. Paragraphs 35 and 36 provide for the proceedings a fitness assessment tribunal will follow.

### **Suspension during investigation**

334. Paragraphs 37, 38 and 39 provide for the suspension of a member of the Tax Tribunals at any time before a fitness assessment tribunal reports.

### **Report and removal**

335. Paragraphs 40 and 41 set out the reporting arrangements of a fitness assessment panel and allow for the removal of a member of the Tax Tribunals if the member is found to be unfit.

### **Application of this Part to the President of the Tax Tribunals**

336. Paragraph 42 sets out which paragraphs of Part 4 of Schedule 1 apply to the President of the Tax Tribunals.

## **Interpretation**

337. [Paragraph 43](#) sets out how unfitness to hold a position as a member of the Tax Tribunals should be interpreted.

## ***Schedule 3 – Claims for Relief from Double Assessment and for Repayment***

### **Introduction**

338. As set out in paragraph 1, this schedule applies to a claim under section 106, 107 or 108 of this Act.

### **Making of claims**

339. [Paragraph 2](#) provides for the process by which someone may make a claim under section 106, 107 or 108. Revenue Scotland may determine the form by which a claim must be made. Making a claim for repayment of tax requires evidence that the tax has been paid.

### **Duty to keep and preserve records**

340. [Paragraph 3](#) provides that a person who wishes to make a claim under section 106, 107 or 108 must keep and preserve any records that may be needed to enable the person to make a correct and complete claim. It lists the types of records that generally need to be kept and sets out the maximum time period for which such records need to be kept.
341. [Paragraph 3\(3\)](#) and [\(4\)](#) allow the Scottish Ministers to make regulations to specify the records and supporting documents that must be kept and preserved under paragraph 3. The regulations are subject to negative procedure and may make reference to things specified in a notice published and not later withdrawn by Revenue Scotland. Examples are given of documents that may be deemed as “supporting documents”.

### **Preservation of information etc.**

342. [Paragraph 4](#) provides that the duty in paragraph 3 to preserve records under that paragraph may be satisfied by preserving records (or the information contained in them) in an alternative form (such as microfiche or an electronic facsimile) and by any means, subject to any conditions or exceptions that may be prescribed by Revenue Scotland.

### **Penalty for failure to keep and preserve records**

343. [Paragraph 5](#) provides that there is a penalty for failing to keep records, but that the penalty is not incurred if other documentary evidence can show the same information.

### **Reasonable excuse for failure to keep and preserve records**

344. [Paragraph 6](#) provides that if a person satisfies Revenue Scotland (or on appeal the tribunal) that there is reasonable excuse on the person’s behalf for a failure to comply with paragraph 3 of this schedule, then the person is not liable to pay a penalty under paragraph 5 of this schedule arising from that failure. The section also sets out some circumstances in which reasonable excuse does not apply.

### **Assessment of penalties under [paragraph 5](#)**

345. [Paragraph 7](#) provides that, where a person becomes liable for a penalty under paragraph 5, Revenue Scotland must assess the penalty and then notify the person of this. The assessment of the penalty must be made within 12 months of the person becoming liable to the penalty.

### **Enforcement of penalties under [paragraph 5](#)**

346. [Paragraph 8](#) provides that a penalty under [paragraph 5](#) must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person. If a notice of review or appeal against the penalty is given (under [section 235](#) or [242](#) respectively), the penalty must be paid within 30 days of the review being concluded or the appeal determined or withdrawn, whichever applies. If mediation has been entered into following review, the penalty must be paid within 30 days of notice of withdrawal from mediation being given (if this applies).

### **Power to change penalty provisions in [paragraphs 5 to 8](#)**

347. [Paragraph 59](#) provides a regulation-making power for the Scottish Ministers to make provision, or further provision, about penalties under [paragraphs 5 to 8](#) of this schedule. Such regulations are subject to the affirmative procedure, may not create criminal offences but may modify any enactment. Regulations under this paragraph do not apply to a failure which began before the date on which the regulations came into force.

### **Amendment of claim by claimant**

348. [Paragraph 10](#) provides that a claimant can amend their claim within 12 months, unless Revenue Scotland gives notice during that period that it is carrying out an enquiry.

### **Correction of claim by Revenue Scotland**

349. [Paragraph 11](#) provides that Revenue Scotland may correct obvious errors or omissions in a claim, within nine months of the claim being made. The claimant may reject this correction within three months.

### **Giving effect to claims and amendments**

350. [Paragraph 12](#) provides that Revenue Scotland should make repayment or discharge a determination as soon as practicable after a claim is made. Revenue Scotland may give effect to this on a provisional basis.

### **Notice of enquiry**

351. [Paragraph 13](#) provides that Revenue Scotland may enquire into a claim or amendment of a claim. Revenue Scotland must give the claimant notice that it is going to carry out an enquiry within three years of the claim being made or amended. A claim or amendment may only be subject to one notice of enquiry.

### **Completion of enquiry**

352. [Paragraph 14](#) provides that Revenue Scotland will notify a claimant when its enquiries have been completed and state the conclusions of the enquiry. The closure notice must be issued within three years of the date of the claim and must state either that no amendment is required, or that the claim is insufficient or excessive and amend it to reflect this.

### **Direction to complete enquiry**

353. [Paragraph 15](#) provides that a claimant may apply to the tribunal for a direction that Revenue Scotland issue a closure notice, and completes its enquiry, within a specified period. The tribunal must give a direction unless there are reasonable grounds for not giving a closure notice within a specified period.

**Giving effect to amendments under [paragraph 14](#)**

354. [Paragraph 16](#) provides that, once a closure notice has been issued, Revenue Scotland must carry out an assessment, make a repayment or discharge a determination within 30 days.

**Appeals against amendments under [paragraph 14](#)**

355. [Paragraph 17](#) provides that a claimant may appeal against a closure notice, and sets out the procedure by which that appeal must be made.

***Schedule 4 – Minor and Consequential Modifications***

356. [Schedule 4](#) makes consequential amendments to listed Acts. One of the effects is that Revenue Scotland is made subject to the Ethical Standards in Public Life etc. (Scotland) Act 2000 and other Acts generally applicable to devolved public bodies<sup>5</sup>. The legislation for LBTT and SLfT is also amended in consequence of the provisions of the Act, for example to provide that references to the ‘Tax Authority’ in LBTT(S)A 2013 and LT(S)A 2014 mean Revenue Scotland. The Debtors (Scotland) Act 1987 is amended to ensure that the same enforcement machinery which is available to HMRC for the recovery of tax, penalties and interest owed by taxpayers is also available to Revenue Scotland.

***Schedule 5 – Index of Defined Expressions***

357. [Schedule 5](#) provides an index to definitions used in the Act.

**PARLIAMENTARY HISTORY**

355. The table below sets out, for each stage of the proceedings in the Scottish Parliament on the Bill, the dates on which the proceedings at that stage took place, the reference to the Official Report of those proceedings and the dates on which the Committee reports and other papers relating to the Bill were published.

INTRODUCTION

<i>Proceedings and Reports</i>	<i>Date</i>	<i>Reference</i>
Bill as introduced	13 December 2013	<a href="#">SP Bill 43</a>
SPICe Briefing	13 February 2014	<a href="#">Sb 14-16</a>
Policy Memorandum	13 December 2013	<a href="#">SP Bill 43-PM</a>
Delegated Powers Memorandum	13 December 2013	<a href="#">SP Bill 43-DPM</a>

STAGE 1

FINANCE COMMITTEE

<i>Proceedings and Reports</i>	<i>Date</i>	<i>Reference</i>
Evidence Session 1	5 February 2014	<a href="#">ISBN 978-1-78392-704-3</a>
Evidence Session 2	19 February 2014	<a href="#">ISBN 978-1-78392-779-1</a>

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<sup>5</sup> Some of these requirements apply automatically to Scottish Administration bodies.

*These notes relate to the Revenue Scotland and Tax Powers Act 2014 (asp 16) which received Royal Assent on 24 September 2014*

<b><i>Proceedings and Reports</i></b>	<b><i>Date</i></b>	<b><i>Reference</i></b>
Evidence Session 3	26 February 2014	<a href="#">ISBN 978-1-78392-837-8</a>
Evidence Session 4	26 March 2014	<a href="#">ISBN 978-1-78457-101-6</a>
Evidence Session 5	23 April 2014	<a href="#">ISBN 978-1-78457-218-1</a>
Evidence Session 6	30 April 2014	<a href="#">ISBN 978-1-78457-268-6</a>
Finance Committee Stage 1 Report	2 May 2014	Session 4 – <a href="#">SP Paper 516</a>

DELEGATED POWERS AND LAW REFORM COMMITTEE

<b><i>Proceedings and Reports</i></b>	<b><i>Date</i></b>	<b><i>Reference</i></b>
Official Report	13 May 2014	<a href="#">ISBN 978-1-78457-377-5</a>

PUBLIC AUDIT COMMITTEE

<b><i>Proceedings and Reports</i></b>	<b><i>Date</i></b>	<b><i>Reference</i></b>
Official Report	15 January 2014	<a href="#">ISBN 978-1-78392-513-1</a>

CONSIDERATION BY PARLIAMENT

<b><i>Proceedings and Reports</i></b>	<b><i>Date</i></b>	<b><i>Reference</i></b>
Stage 1 Debate	20 May 2014	Official Report - <a href="#">ISBN 978-1-78457-434-5</a>

STAGE 2

FINANCE COMMITTEE

<b><i>Proceedings and Reports</i></b>	<b><i>Date</i></b>	<b><i>Reference</i></b>
Day 1 Official Report	11 June 2014	<a href="#">ISBN 978-1-78457-615-8</a>
List of Amendments	9 June 2014	<a href="#">SP Bill 43-ML1</a>
Bill as Amended	17 June 2014	<a href="#">SP Bill 43A (As Amended at Stage 2)</a>
Supplementary Delegated Powers Memorandum	5 August 2014	<a href="#">SP Bill 43A-DPM</a>

DELEGATED POWERS AND LAW REFORM COMMITTEE

<b><i>Proceedings and Reports</i></b>	<b><i>Date</i></b>	<b><i>Reference</i></b>
Official Report	12 August 2014	<a href="#">ISBN 978-1-78457-863-3</a>

*These notes relate to the Revenue Scotland and Tax Powers Act 2014 (asp 16) which received Royal Assent on 24 September 2014*

STAGE 3

CONSIDERATION BY PARLIAMENT

<i>Proceedings and Reports</i>	<i>Date</i>	<i>Reference</i>
List of Amendments	14 August 2014	<a href="#">SP Bill 43A-ML</a>
Stage 3 Debate- Official Report	19 August 2014	<a href="#">ISBN 978-1-78457-916-6</a>
Bill as passed	20 August 2014	<a href="#">SP Bill 43B</a>

THE BILL RECEIVED ROYAL ASSENT ON 24 SEPTEMBER 2014

<i>Proceedings and Reports</i>	<i>Date</i>	<i>Reference</i>
Act as published	30 September 2014	<a href="#">2014 Asp 16</a>
Summary Process Paper	10 April 2015	<a href="http://www.scottish.parliament.uk/S4_Bills/Revenue%20Scotland%20and%20Tax%20Powers%20Bill/BBV_206_final(1).pdf">http://www.scottish.parliament.uk/S4_Bills/Revenue%20Scotland%20and%20Tax%20Powers%20Bill/BBV_206_final(1).pdf</a>