



# Revenue Scotland and Tax Powers Act 2014

2014 asp 16

## PART 11

### REVIEWS AND APPEALS

#### CHAPTER 1

##### INTRODUCTORY

###### *Overview*

### 232 Overview

This Part makes provision about the review and appeal of certain decisions of Revenue Scotland including—

- (a) which decisions are, and which are not, reviewable and appealable,
- (b) the taxpayer's right to have decisions reviewed and the nature and conduct of those reviews,
- (c) the option of mediation following a review that doesn't settle the matter in question,
- (d) the taxpayer's right to appeal decisions to the tribunal, whether following review or otherwise, and
- (e) settling tax disputes by agreement and other supplementary matters.

###### *Appealable decisions*

### 233 Appealable decisions

- (1) The following decisions of Revenue Scotland are appealable decisions—
  - (a) a decision under section 66 to make adjustments to counteract a tax advantage,

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- (b) a decision in relation to the registration of any person in relation to any taxable activity,
  - (c) a decision which affects whether a person is chargeable to tax,
  - (d) a decision which affects the amount of tax to which a person is chargeable,
  - (e) a decision which affects the amount of tax a person is required to pay,
  - (f) a decision which affects the date by which any amount by way of tax, penalty or interest must be paid,
  - (g) a decision in relation to a penalty under the following provisions—
    - (i) section 76,
    - (ii) section 112,
    - (iii) section 151,
    - (iv) Part 8,
    - (v) section 231,
    - (vi) paragraph 5 of schedule 3,
  - (h) subject to subsection (2), a decision in relation to the giving of an information notice or in relation to the use of any of the other investigatory powers in Part 7,
  - (i) subject to subsection (3), a decision in relation to the giving of a notice under section 228.
- (2) See section 152 for decisions in relation to the giving of information notices that are not appealable or are appealable only on certain grounds and in certain circumstances.
- (3) See section 229 for the grounds on which decisions in relation to the giving of notices under section 228 are appealable.
- (4) The following decisions of Revenue Scotland are not appealable decisions—
- (a) the giving of a notice under section 68,
  - (b) the making of a Revenue Scotland determination,
  - (c) a decision to give a notice of enquiry under section 85 or paragraph 13 of schedule 3.
- (5) The decisions mentioned in subsection (1) are appealable whether they are decisions under this Act or any other enactment.
- (6) The Scottish Ministers may by order modify subsection (1) or (4) to—
- (a) add a decision to either subsection,
  - (b) vary the description of a decision,
  - (c) remove a decision from either subsection.

## CHAPTER 2

### REVIEWS

#### *Review of appealable decisions*

#### **234 Right to request review**

- (1) A person aggrieved by an appealable decision (the “appellant”) may request Revenue Scotland to review the decision.
- (2) An appellant may not request review if subsection (3), (4) or (5) applies.
- (3) This subsection applies where—
  - (a) the decision which the appellant seeks to review is a decision of Revenue Scotland to amend a self-assessment under section 87 while an enquiry is in progress, and
  - (b) the enquiry has not been completed.
- (4) This subsection applies where—
  - (a) the appellant has given notice of appeal in relation to the same matter in question, or
  - (b) the tribunal has determined the matter in question under section 244.
- (5) This subsection applies where the appellant has entered into a settlement agreement with Revenue Scotland in relation to the same matter in question and has not withdrawn from the agreement under section 246(4).
- (6) This section does not prevent the matter in question from being dealt with in accordance with section 246(1) and (2) (settling matters in question by agreement).

#### **235 Notice of review**

- (1) Notice of review under section 234 must be given—
  - (a) within 30 days after the specified date,
  - (b) to Revenue Scotland.
- (2) In subsection (1) “specified date” means—
  - (a) the date on which the appellant was notified of the appealable decision,
  - (b) in a case to which section 234(3) applies—
    - (i) the date the appellant was given notice that the enquiry was completed, or
    - (ii) no such notice having been given, the date the enquiry is completed by virtue of section 93(1)(b), or
  - (c) where the appellant and Revenue Scotland entered into a settlement agreement but the appellant withdrew from the agreement, the date of that withdrawal.
- (3) The notice of review must specify the grounds of review.

#### **236 Late notice of review**

- (1) This section applies in a case where—

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- (a) notice of review may be given to Revenue Scotland under this Part, but
  - (b) no notice is given before the relevant time limit.
- (2) Notice may be given after the relevant time limit if—
- (a) Revenue Scotland agrees, or
  - (b) where Revenue Scotland does not agree, the tribunal gives permission.
- (3) Revenue Scotland must agree to notice being given after the relevant time limit if the appellant has requested that Revenue Scotland does so and Revenue Scotland is satisfied—
- (a) that there was reasonable excuse for not giving the notice before the relevant time limit, and
  - (b) that the request has been made without unreasonable delay.
- (4) If a request of the kind referred to in subsection (3) is made, Revenue Scotland must notify the appellant whether or not Revenue Scotland agrees to the request.
- (5) In this section “relevant time limit”, in relation to notice of review, means the time before which the notice is to be given (but for this section).

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

- (1) If the appellant gives Revenue Scotland notice of review, Revenue Scotland must—
- (a) notify the appellant of Revenue Scotland's view of the matter in question within the relevant period, and
  - (b) review the matter in question in accordance with section 238.
- (2) Subsection (1) does not apply if—
- (a) the appellant has already given notice of review under section 235 in relation to the same matter in question, or
  - (b) Revenue Scotland has concluded a review of the matter in question.
- (3) In this section “relevant period” means—
- (a) the period of 30 days beginning with the day on which Revenue Scotland receives the notice of review, or
  - (b) such longer period as is reasonable.

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

- (1) This section applies if Revenue Scotland is required by section 237 to review the matter in question.
- (2) The nature and extent of the review are to be such as appear appropriate to Revenue Scotland in the circumstances.
- (3) For the purpose of subsection (2), Revenue Scotland must, in particular, have regard to steps taken before the beginning of the review—
- (a) by Revenue Scotland in deciding the matter in question, and
  - (b) by any person in seeking to resolve disagreement about the matter in question.
- (4) The review must take account of any representations made by the appellant at a stage which gives Revenue Scotland a reasonable opportunity to consider them.

- (5) The review may conclude that Revenue Scotland's view of the matter in question is to be—
- (a) upheld,
  - (b) varied, or
  - (c) cancelled.

### **239 Notification of conclusions of review**

- (1) Revenue Scotland must notify the appellant of the conclusions of the review and its reasoning within—
- (a) the period of 45 days beginning with the relevant day, or
  - (b) such other period as may be agreed.
- (2) In subsection (1) “relevant day” means the day when Revenue Scotland notified the appellant of Revenue Scotland's view of the matter in question.
- (3) Where Revenue Scotland is required to undertake a review but does not give notice of the conclusions within the period specified in subsection (1), the review is treated as having concluded that Revenue Scotland's view of the matter in question (see section 237(1)) is upheld.
- (4) If subsection (3) applies, Revenue Scotland must notify the appellant of the conclusions which the review is treated as having reached.

### **240 Effect of conclusions of review**

- (1) If Revenue Scotland gives notice of the conclusions of a review (see section 239)—
- (a) the conclusions are to be treated as if they were contained in a settlement agreement (see section 246(2)), but
  - (b) section 246(4) (withdrawal from agreement) does not apply in relation to that notional agreement.
- (2) Subsection (1) does not apply to the matter in question if, or to the extent that—
- (a) the appellant and Revenue Scotland enter into mediation and conclude that mediation by entering into a settlement agreement, or
  - (b) the appellant gives notice of appeal under section 242.

## **CHAPTER 3**

### **APPEALS**

### **241 Right of appeal**

- (1) An appellant may appeal to the tribunal against an appealable decision.
- (2) An appellant may not give notice of appeal under section 242 if subsection (3), (4) or (5) applies.
- (3) This subsection applies where—

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- (a) the decision which the appellant seeks to appeal is a decision of Revenue Scotland to amend a self-assessment under section 87 while an enquiry is in progress, and
  - (b) the enquiry has not been completed.
- (4) This subsection applies where—
- (a) the appellant has given notice of review in relation to the same matter in question, and
  - (b) the review has not been concluded or treated as concluded.
- (5) This subsection applies where the appellant has entered into a settlement agreement with Revenue Scotland in relation to the same matter in question and has not withdrawn from the agreement under section 246(4).
- (6) This section does not prevent the matter in question from being dealt with in accordance with section 246(1) and (2) (settling matters in question by agreement).

## **242 Notice of appeal**

- (1) Notice of appeal must be given—
- (a) within 30 days of the specified date,
  - (b) to the tribunal.
- (2) In subsection (1) “specified date” means—
- (a) in a case to which section 241(3) applies—
    - (i) the date the appellant was given notice that the enquiry was completed, or
    - (ii) no such notice having been given, the date the enquiry is completed by virtue of section 93(1)(b),
  - (b) where the appellant does not request a review under section 234, the date on which the appellant was notified of the appealable decision,
  - (c) where the appellant requests such a review, the date on which the conclusions of review are notified to the appellant under section 239,
  - (d) where, following a review under section 237, the appellant and Revenue Scotland entered into mediation, the date either Revenue Scotland or the appellant gave notice of withdrawal from mediation,
  - (e) where the appellant and Revenue Scotland entered into a settlement agreement but the appellant withdrew from the agreement, the date of that withdrawal.
- (3) The notice of appeal must specify the grounds of appeal.

## **243 Late notice of appeal**

- (1) This section applies in a case where—
- (a) notice of appeal may be given to the tribunal under this Part, but
  - (b) no notice is given before the relevant time limit.
- (2) Notice may be given after the relevant time limit if—
- (a) Revenue Scotland agrees, or
  - (b) where Revenue Scotland does not agree, the tribunal gives permission.

- (3) Revenue Scotland must agree to notice being given after the relevant time limit if the appellant has requested that Revenue Scotland does so and Revenue Scotland is satisfied—
  - (a) that there was reasonable excuse for not giving the notice before the relevant time limit, and
  - (b) that the request has been made without unreasonable delay.
- (4) If a request of the kind referred to in subsection (3) is made, Revenue Scotland must notify the appellant whether or not Revenue Scotland agrees to the request.
- (5) A decision of the tribunal under subsection (2)(b) is final.
- (6) In this section “relevant time limit”, in relation to notice of appeal, means the time before which the notice is to be given (but for this section).

#### **244 Disposal of appeal**

- (1) This section applies if notice of appeal is given under section 242.
- (2) The tribunal is to determine the matter in question and may conclude that Revenue Scotland's view of the matter in question is to be—
  - (a) upheld,
  - (b) varied, or
  - (c) cancelled.

### **CHAPTER 4**

#### **SUPPLEMENTARY**

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

- (1) Where there is a review or appeal under this Part, any tax charged or penalty or interest imposed remains due and payable as if there had been no review or appeal.
- (2) The Scottish Ministers may by regulations make provision for the postponement of any such tax, penalty or interest pending reviews or appeals, including provision—
  - (a) for applications by appellants to Revenue Scotland for postponement of amounts of tax, penalty and interest,
  - (b) for the effect of any determination by Revenue Scotland on such applications,
  - (c) for agreements between appellants and Revenue Scotland as to postponement of amounts of tax, penalty and interest,
  - (d) for applications to the tribunal for such postponement,
  - (e) for appeals in relation to such determinations by Revenue Scotland and decisions by the tribunal on such applications.
- (3) Regulations under subsection (2) may modify any enactment (including this Act).
- (4) Subsection (1) is subject to sections 79(1) and 203(1) and to paragraph 8(1) of schedule 3.

**246 Settling matters in question by agreement**

- (1) In relation to a review, mediation or an appeal under this Part, “settlement agreement” means an agreement between the taxpayer and Revenue Scotland that is—
- (a) entered into—
    - (i) before the review is concluded,
    - (ii) as the conclusion of the mediation, or
    - (iii) before the appeal is determined, and
  - (b) to the effect that the decision reviewed, taken to mediation or appealed should be upheld without variation, varied in a particular manner or cancelled.
- (2) Where a settlement agreement is entered into in relation to a review, mediation or an appeal, the consequences are to be the same (for all purposes) as if, at the time the agreement was entered into, the tribunal had determined an appeal in relation to the matter in question and had upheld the decision without variation, varied it in that manner or cancelled it, as the case may be.
- (3) But a settlement agreement is not to be treated as a decision of the tribunal for the purposes of section 34 or 36.
- (4) Subsection (2) does not apply if, within 30 days from the date when the settlement agreement was entered into, the appellant gives notice to Revenue Scotland that the appellant wishes to withdraw from the agreement.
- (5) Where a settlement agreement is not in writing—
- (a) subsection (2) does not apply unless the fact that an agreement was entered into, and the terms agreed, are confirmed by notice in writing given by Revenue Scotland to the appellant or by the appellant to Revenue Scotland, and
  - (b) the references in subsections (2) and (4) to the time when the agreement was entered into are to be read as references to the time when the notice of confirmation was given.
- (6) References in this section to an agreement being entered into with an appellant, and to the giving of notice by or to the appellant, include references to an agreement being entered into, or notice being given by or to, a person acting on behalf of the appellant in relation to the review, mediation or appeal.

**247 Application of this Part to joint buyers**

- (1) This section applies where, in relation to land and buildings transaction tax, there are two or more buyers who are or will be jointly entitled to the interest acquired by the land transaction.
- (2) In a case where some (but not all) of the buyers give notice of review under section 235—
- (a) notification of the review must be given by Revenue Scotland to each of the other buyers whose identity is known to it,
  - (b) any of the other buyers may be a party to the review if they notify Revenue Scotland,
  - (c) the agreement of all the buyers is required if the review is to be settled by agreement,



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- (d) if the review is not settled, notice of Revenue Scotland's conclusions must be given to each of the other buyers whose identity is known to Revenue Scotland, and
  - (e) section 240 (effect of conclusions of review) applies in relation to all of the buyers.
- (3) In a case where the buyers and Revenue Scotland agree to enter into mediation—
- (a) notification of the agreement must be given by Revenue Scotland to each of the buyers whose identity is known to it,
  - (b) any of the buyers may be a party to the mediation if they notify Revenue Scotland, and
  - (c) the agreement of all the buyers is required if the mediation is to be settled by agreement.
- (4) In the case of an appeal relating to the transaction—
- (a) the appeal may be brought by any of the buyers,
  - (b) notice of the appeal must be given by the buyers bringing the appeal to each of the other buyers,
  - (c) the agreement of all the buyers is required if the appeal is to be settled by agreement,
  - (d) if the appeal is not settled, any of the buyers are entitled to be parties to the appeal, and
  - (e) the tribunal's decision on the appeal binds all of the buyers.
- (5) This section has effect subject to—
- (a) the provisions of schedule 17 to the LBTT(S) Act 2013 (relating to partnerships), and
  - (b) the provisions of schedule 18 to that Act (relating to trustees).

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

- (1) This section applies where, in relation to land and buildings transaction tax, the buyers in the land transaction are a trust.
- (2) In a case where some (but not all) of the trustees give notice of review under section 235—
- (a) notification of the review must be given by Revenue Scotland to each of the other relevant trustees whose identity is known to it,
  - (b) any of the other relevant trustees may be a party to the review if they notify Revenue Scotland,
  - (c) the agreement of all the relevant trustees is required if the review is to be settled by agreement,
  - (d) if the review is not settled, notice of Revenue Scotland's conclusions must be given to each of the relevant trustees whose identity is known to Revenue Scotland, and
  - (e) section 240 (effect of conclusions of review) applies in relation to all of the relevant trustees.
- (3) In a case where the trust and Revenue Scotland agree to enter into mediation—
- (a) notification of the agreement must be given by Revenue Scotland to each of the relevant trustees whose identity is known to it,

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- (b) any of the relevant trustees may be a party to the mediation if they notify Revenue Scotland, and
  - (c) the agreement of all the relevant trustees is required if the mediation is to be settled by agreement.
- (4) In the case of an appeal relating to the transaction—
- (a) the appeal may be brought by any of the relevant trustees,
  - (b) notice of the appeal must be given by the trustee or trustees bringing the appeal to each of the other relevant trustees,
  - (c) the agreement of all the relevant trustees is required if the appeal is to be settled by agreement,
  - (d) if the appeal is not settled, any of the relevant trustees are entitled to be parties to the appeal, and
  - (e) the tribunal's decision on the appeal binds all of the relevant trustees.
- (5) In this section “relevant trustees” has the meaning given by paragraph 16 of schedule 18 to the LBTT(S) Act 2013.
- (6) This section has effect subject to the provisions of schedule 18 to the LBTT(S) Act 2013 (relating to trustees).

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

In this Part “the tribunal” means—

- (a) the First-tier Tribunal,
- (b) where determined by or under tribunal rules, the Upper Tribunal.

#### **250 Interpretation**

- (1) In this Part “matter in question” means the matter to which a review, mediation or appeal relates.
- (2) In this Part a reference to the appellant includes a person acting on behalf of the appellant except in relation to—
- (a) notification of Revenue Scotland's view under section 237(1), and
  - (b) notification of the conclusions of a review under section 239.
- (3) But if a notification falling within paragraph (a) or (b) of subsection (2) is given to the appellant, a copy of the notification may also be given to a person acting on behalf of the appellant.