

REVENUE SCOTLAND AND TAX POWERS ACT 2014

EXPLANATORY NOTES

THE ACT

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 make 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.