

2015 No. 38

TAXES

The Revenue Scotland and Tax Powers Act (Privileged Communications) Regulations 2015

Made - - - - - *29th January 2015*

Laid before the Scottish Parliament *2nd February 2015*

Coming into force - - - *1st April 2015*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 138(3) of the Revenue Scotland and Tax Powers Act 2014(a) and all other powers enabling them to do so.

Citation, and commencement

1. These Regulations may be cited as the Revenue Scotland and Tax Powers Act (Privileged Communications) Regulations 2015 and come into force on 1st April 2015.

Interpretation

2. In these Regulations—

“the Act” means the Revenue Scotland and Tax Powers Act 2014;

“document” means information, a document or part of a document;

“document in dispute” is a document over which there is a dispute between Revenue Scotland and a person who has been given an information notice as to whether the document is privileged;

“person acting on behalf of” a taxpayer or a third party means any person who is acting on behalf of a taxpayer or third party in relation to an information notice;

“taxpayer” means a person who is given a notice under section 123 of the Act;

“third party” means a person who is given a notice under section 124 of the Act;

“working day” means any day except a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(b).

Application

3. These Regulations apply where there is a dispute between Revenue Scotland and a person to whom an information notice has been given either—

(a) during the course of correspondence; or

(a) 2014 asp 16.

(b) 1971 c.80.

(b) during the course of an inspection of premises under Part 7 of the Act, as to whether a document is privileged.

Requirement to provide information and produce documents not in dispute

4. Nothing in these Regulations shall affect—

- (a) the requirement under an information notice to provide information or produce a document which is not in dispute; or
- (b) the power under Part 7 of the Act to inspect premises.

Procedure where information notice given in correspondence is in dispute

5.—(1) The following procedure applies where there is a dispute falling within regulation 3(a).

(2) On receipt of the information notice, the taxpayer, third party or person acting on their behalf shall—

- (a) by the date given in the notice for providing information or producing documents, specify in a list each document required under the information notice which is in dispute, with a description of the nature and contents of that document; and
- (b) serve that list on Revenue Scotland.

(3) But no description of a document or type of document is required where such description would itself give rise to a dispute over privilege.

(4) Within twenty working days of receiving the list referred to in sub-paragraph (2), Revenue Scotland must notify the person who served the list of any documents on the list that it requires to be produced and which it considers are not privileged.

(5) On receipt of notification under paragraph (4), the taxpayer, third party or person acting on their behalf (unless he or she agrees that every document notified under paragraph (4) is not privileged) must make an application to the tribunal to consider and resolve the dispute and must include copies of the documents which remain in dispute with that application.

(6) The taxpayer, third party or person acting on their behalf shall provide Revenue Scotland with proof of service under paragraph (2)(b).

(7) Service for the purposes of paragraph (2)(b) must take place within a reasonable time to be agreed between the taxpayer, third party or person acting on their behalf and Revenue Scotland but in any event no later than twenty working days after the date given in the notice for providing information or producing documents.

(8) An application under paragraph (5) must be made within a reasonable time to be agreed between the taxpayer, third party or person acting on their behalf and Revenue Scotland but in any event no later than twenty working days of the date after the notification required under paragraph (4).

Procedure where information notice given during inspection of premises is in dispute

6.—(1) The following procedure applies where there is a dispute falling within regulation 3(b).

(2) On receipt of the information notice, the taxpayer, third party or person acting on their behalf shall indicate to the designated officer carrying out the inspection each document, required under the information notice, which is in dispute.

(3) The taxpayer, third party or person acting on their behalf must place the document or documents in dispute, or a copy of such document or documents, in an appropriate container which prevents the contents being visible.

(4) The container shall be—

- (a) sealed, labelled and signed by that person;
- (b) countersigned by the officer; and

(c) given into the custody of a designated officer.

(5) The designated officer shall deliver the container to the tribunal with the seal intact within forty working days of having taken custody of it together with an application to the tribunal to consider and resolve the dispute.

(6) The designated officer, at the same time as delivering an application to the tribunal under paragraph (5), must send a copy of that application to the person to whom an information notice has been given that is subject to the dispute falling within regulation 3(b).

Compliance with information notice

7. Where a taxpayer or third party who has received an information notice, or a person acting on their behalf, complies with the procedure set out in regulation 5 or, as the case may be, regulation 6, those persons shall be treated as having complied with the information notice in relation to the documents in dispute until the tribunal decides the status of the document or until an agreement has been reached under regulation 9.

Finding of the tribunal

8.—(1) When an application is made under regulation 5(5) or 6(5), the tribunal shall—

- (a) resolve the dispute by confirming whether and to what extent the document is or is not privileged; and
- (b) direct which part or parts of a document (if any) shall be disclosed.

(2) The tribunal must ensure that any document in dispute, or any copy of such document, is not inappropriately disclosed to any person pending the tribunal's consideration of the status of the document.

Resolution of disputes by agreement

9. A dispute falling within regulation 3 may be resolved at any time by Revenue Scotland and the person to whom an information notice has been given reaching an agreement, whether in writing or otherwise.

JOHN SWINNEY

A member of the Scottish Government

St Andrew's House,
Edinburgh
29th January 2015

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the procedures which apply for referring to the tribunal a dispute as to whether information or a document required under an information notice is subject to legal professional privilege. There are separate procedures depending on whether the notice is given in the course of correspondence or in the course of an inspection under Part 7 of the Revenue Scotland and Tax Powers Act 2014. In this respect the details of regulations 5 and 6 differ slightly to reflect the different circumstances of the requests for information or documents.

Regulation 2 defines certain terms used in the Regulations.

Regulation 4 makes it clear that any information or documents requested under Part 7, and which are not in dispute, must be provided to Revenue Scotland in accordance with the original notice requesting them.

Regulation 5 sets out procedures and time limits for referring disputes to the tribunal which arise in the course of correspondence. The regulation requires the taxpayer to compile a list of the documents which that person considers are covered by privilege. This list is then sent to Revenue Scotland to give it the opportunity to specify which documents are in dispute. This procedure is intended to reduce the number of documents which the Tribunal eventually needs to consider. The time for referring the matter to the tribunal is split in regulation 5 to allow for the exchange of details by correspondence. The time allowed also includes the original time for complying with the notice.

Regulation 6 sets out procedures where the dispute arises in the course of an inspection visit. The regulation contains rules for removing documents during an inspection. These rules protect the person providing the information by ensuring that Revenue Scotland designated officers cannot see that information in advance of the tribunal's decision. The rules also protect Revenue Scotland by ensuring that the documents agreed on are not changed. Regulation 5 does not contain a requirement to produce a list as the nature and contents of documents can be discussed at the inspection visit and then only the disputed documents need to be put into a sealed container and delivered to the tribunal.

In regulation 6 the time allowed for referral to the tribunal is longer. This is because the request and removal of documents is more immediate and the longer time ensures that both Revenue Scotland and the person providing the documents have a similar time to reflect on whether the items actually need to be referred to the tribunal.

Regulation 7 makes it clear that where information or documents are referred to the tribunal under these Regulations the notice under Part 7 will be treated as having been complied with until such time as the tribunal makes a decision about the status of the information or documents.

Regulation 8 makes it clear that the tribunal may either direct that the whole of a document is covered by privilege or that part of it is so covered. It also provides that the tribunal must direct which part or parts of a document (if any) may be disclosed. It also provides for the security of any document pending the determination of its status by the tribunal.

Regulation 9 allows for a dispute to be resolved by agreement at any time, including after the document or information has been delivered to the tribunal.

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