

REVENUE SCOTLAND AND TAX POWERS ACT 2014

EXPLANATORY NOTES

THE ACT

Part 11 – Reviews and Appeals

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.