

REVENUE SCOTLAND AND TAX POWERS ACT 2014

EXPLANATORY NOTES

THE ACT

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) disappplies 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.