

# REVENUE SCOTLAND AND TAX POWERS ACT 2014

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## EXPLANATORY NOTES

### THE ACT

#### **Part 6 – Tax Returns, Enquiries and Assessments**

#### *Chapter 2 — Taxpayer Duties to Keep and Preserve Records*

#### **Duties to keep records**

#### *Section 74 – Duty to keep and preserve records*

110. This section sets out the duty of a person who is required to deliver a return in relation to devolved taxes to keep and preserve records that are needed to complete that return. In addition, a person who is liable to be registered for a devolved tax must: a) keep and preserve any records that may be needed to enable the person to notify Revenue Scotland about their intention to carry out, or to cease to carry out, taxable activities; b) make and preserve records relating to material at a landfill site. It lists the types of records that generally need to be kept and sets out the maximum time period for which records need to be kept whilst permitting Revenue Scotland to specify an earlier date.
111. It allows the Scottish Ministers to make regulations to specify the records and supporting documents that must be kept and preserved. The regulations are subject to negative procedure and may make reference to things specified in a notice published and not withdrawn by Revenue Scotland. Examples are given of documents that may be deemed as “supporting documents”.

#### *Section 75 – Preservation of information etc.*

112. This section provides that the duty in section 74 to preserve records under that section may be satisfied by preserving records (or the information contained in them) in an alternative form (such as microfiche or an electronic facsimile) and by any means. This is subject to any conditions or exceptions that may be prescribed by the Scottish Ministers in regulations. Such regulations are subject to the negative procedure.

#### **Penalties for failing to keep and preserve records**

#### *Section 76 – Penalty for failure to keep and preserve records*

113. This section provides for a penalty of a maximum of £3,000 for a failure to comply with section 74 (duty to keep and preserve records), with the exception that no penalty is incurred if Revenue Scotland is satisfied that the required facts which would have been demonstrated by the records are provided to Revenue Scotland by other documentary evidence.

***Section 77 – Reasonable excuse for failure to keep and preserve records***

114. This section provides that, if a person satisfies Revenue Scotland (or on appeal the tribunal) that there is reasonable excuse on the person's behalf for a failure to comply with section 74, then the person is not liable to pay a penalty arising from that failure. The section also set out some circumstances in which reasonable excuse does not apply.

***Section 78 – Assessment of penalties under section 76***

115. This section provides that, where a person becomes liable for a penalty under section 76, Revenue Scotland must assess the penalty and then notify the person of this. The assessment of the penalty must be made within 12 months of the person becoming liable to the penalty.

***Section 79 – Enforcement of penalties under section 76***

116. This section provides that a penalty under section 76 must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person. If a notice of review or appeal against the penalty is given (under section 235 or 242 respectively), the penalty must be paid within 30 days of the review being concluded or the appeal determined or withdrawn, whichever applies. If mediation has been entered into following review, the penalty must be paid within 30 days of notice of withdrawal from mediation being given (if this applies).

***Section 80 – Power to change penalty provisions in sections 76 to 79***

117. This section provides a regulation-making power for the Scottish Ministers to make provision, or further provision, about penalties under Chapter 2 of Part 6. Such regulations are subject to the affirmative procedure, may not create criminal offences but may modify any enactment. Regulations under this section do not apply to a failure which began before the date on which the regulations came into force.

**Duty to keep and preserve records: further provision**

***Section 81 – Further provision: land and buildings transaction tax***

118. This section applies to LBTT and sets out that the Scottish Ministers may make regulations (subject to affirmative procedure) to specify records and supporting documents that a buyer must keep and preserve in relation to land transactions that do not have to be notified. A land transaction may not initially be notifiable under the LBTT(S)A 2013, but it can become notifiable later, for instance where a lease continues after the end of its original term.
119. Regulations under this section may apply the provisions in sections 74 to 79 (concerning a taxpayer's duty to keep and preserve records and the associated penalty for failing to comply with the duty) to a buyer in a land transaction that is not notifiable. Any expressions used in this section and in LBTT(S)A 2013 have the meaning given in that Act.