

# REVENUE SCOTLAND AND TAX POWERS ACT 2014

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## EXPLANATORY NOTES

### THE ACT

#### Part 8 – Penalties

#### *Chapter 2 — Penalties for Failure to Make Returns Or Pay Tax*

#### Penalty for failure to make returns

#### *Section 159 – Penalty for failure to make returns*

202. This section provides that a person is liable to a penalty where they fail to make a tax return (defined in the provisions listed in the table) on or before the filing date (as defined in section 82). Where a person's failure either falls: a) within more than one provision listed in the table; or b) within more than one provision in sections 160 to 167, the person is liable to a penalty for each of those returns and failures. Sections 160 to 163 apply in relation to a return listed in the table which is connected to LBTT. Sections 164 to 167 apply in relation to a return listed in the table which is connected to SLfT.

#### Amounts of penalties: land and buildings transaction tax

#### *Sections 160 to 163 – Land and buildings transaction tax: first penalty for failure to make return; 3 month penalty for failure to make return; 6 month penalty for failure to make return; 12 month penalty for failure to make return*

203. **Section 160** provides that the penalty amount for a person who fails to make a LBTT tax return on time (under section 159) is a fixed £100. Sections 161 to 163 provide for additional (and higher) penalty amounts if the person has not submitted the return three, six and 12 months after the penalty date, which is defined in section 159(4) as the day after the filing date.

#### Amounts of penalties: Scottish landfill tax

#### *Sections 164 to 167 – Scottish landfill tax: first penalty for failure to make return; multiple failures to make return; 6 month penalty for failure to make return; 12 month penalty for failure to make return*

204. **Section 164** provides that the penalty amount for a person who fails to make a SLfT tax return on time (under section 159) is a fixed £100. Section 165 provides for additional (and higher) penalty amounts if the person fails to make other SLfT returns on time within a specified penalty period. A penalty period is one which is begun under section 165(1) and, unless extended under section 165(2)(c), ends 12 months after the filing date for the return.

205. [Sections 166](#) and [167](#) provide that a person is liable to further tax-geared penalties if the person's failure to make a return continues six and 12 months respectively after the penalty date, as defined in section 159(4).

## **Penalties for failure to pay tax**

### ***Section 168 – Failure to pay tax***

206. This section provides that a person is liable to a penalty where they fail to pay an amount of tax ("Amount of tax payable" in the table) on or before a certain date ("Date after which penalty incurred" in the table). Where a person's failure either falls: a) within more than one amount of tax payable listed in the table; or b) within more than one provision in sections 169 to 173, the person is liable to a penalty for each of those amounts of tax and failures. Section 169 applies in relation to LBTT and sections 170 to 173 apply in relation to SLfT.

### ***Section 169 – Land and buildings transaction tax: amounts of penalties for failure to pay tax***

207. This section provides that the penalty amount for a penalty under section 168 in relation to LBTT is 5% of the unpaid tax. If any amount of tax is still unpaid five months after the person first became liable to a penalty under section 159, the person is liable to a further penalty of 5% of the outstanding amount. If any amount of tax is still unpaid 11 months after the person first became liable to a penalty under section 159, the person is liable to a further penalty of 5% of the outstanding amount.

### ***Sections 170 to 173 – Scottish landfill tax: first penalty for failure to pay tax; penalties for multiple failures to pay tax; 6 month penalty for failure to pay tax; 12 month penalty for failure to pay tax***

208. [Section 170](#) provides that the penalty amount for a penalty under section 168 in relation to SLfT is 1% of the unpaid tax. [Section 171](#) provides for additional (and higher) penalty amounts if the person fails to pay further amounts of tax on time within a specified penalty period. A penalty period is one which is begun under section 168(3) and, unless extended under section 171(2)(c), ends 12 months after the filing date for the return.
209. [Sections 172](#) and [173](#) provide that a person is liable to further tax-geared penalties if any amount of tax remains unpaid six and 12 months after the penalty date, as defined in section 159(4).

## **Penalties under [Chapter 2](#): general**

### ***Section 174 – Interaction of penalties under [Chapter 2](#) with other penalties***

210. This section provides that any penalty applied as a result of a failure to make a tax return or failure to pay tax on time is reduced by the amount of any other penalty (which is not related to a failure to make a return on time or to pay tax on time) which is applied and determined by the same tax liability. In other words, for a reduction under this section to be possible, the other penalty amount must be calculated: a) against the same tax liability; and b) using 'tax-geared' or 'percentage-based' means (and so does not include a penalty where the amount is fixed or in a variable 'up to' category).

### ***Section 175 – Reduction in penalty under [sections 159 to 167](#) for disclosure***

211. This section provides for Revenue Scotland to be able to reduce a penalty applied due to a failure to make a return. This applies only where a person discloses information to Revenue Scotland which has been previously withheld by the failure to submit a tax return. Any reductions applied may reflect whether or not the disclosure was unprompted (where the person has no reason to believe that Revenue Scotland is or is about to discover the information) and also the quality (timing, nature and extent) of the

information disclosed. By timing this refers to how promptly the disclosure was made; by nature this refers to the level of evidence provided and the degree of access to test the disclosure; by extent this means how complete the disclosure may be.

***Section 176 – Suspension of penalty under sections 168 to 173 during currency of agreement for deferred payment***

212. This section provides that a person who has failed to pay tax by the due date can make a request to Revenue Scotland to have the payment deferred and Revenue Scotland can then choose whether or not to agree to the deferral of payment for a specified period as well as specifying any conditions of that deferral.
213. If payment is deferred, any penalty the person might have incurred during the specified period for failing to pay tax is not applied. If the person breaks the agreement (by either failing to pay the tax due when the deferral period ends or failing to comply with any condition of that deferral) the person becomes liable for any penalty that Revenue Scotland issues a notice to the person about. If the deferral agreement is further varied the agreement applies until the end of the new agreement.

***Section 177 – Special reduction in penalty under Chapter 2***

214. This section provides that Revenue Scotland may in special circumstances reduce a penalty that has been applied due to either a failure to make a tax return or a failure to pay tax on or before the due date. The penalty can be suspended, remitted entirely or reduced following Revenue Scotland agreeing a compromise with the taxpayer in relation to the penalty proceedings. The special circumstances under which the penalty may be reduced cannot be related to the taxpayer's ability to pay or by the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another taxpayer. The ability of Revenue Scotland to apply this discretionary reduction in the penalty can still be made following a decision of the tribunal or court in relation to the penalty.

***Section 178 – Reasonable excuse for failure to make return or pay tax***

215. This section provides that if a person satisfies Revenue Scotland or the tribunal that there is reasonable excuse on the person's behalf for a failure to either make a return or make a payment, then the person is not liable to pay a penalty arising from that failure. The section also sets out some circumstances in which reasonable excuse does not apply.

***Section 179 – Assessment of penalties under Chapter 2***

216. Subsection (1) provides that where a person becomes liable for a penalty due to a failure to make a return or pay tax, Revenue Scotland must assess the penalty, notify the person that a penalty has been incurred, and state in the notice the period or transaction against which the penalty is assessed. Subsection (2) provides that the penalty must be paid within 30 days of Revenue Scotland issuing the penalty notification. Subsection (3) provides that the assessment of the penalty is to be treated for enforcement purposes as an assessment of tax and may be combined with an existing assessment to tax. Subsections (4) and (5) make provision for a supplementary and replacement assessments to be made in respect of a penalty applied under sections 159 to 167 and 168 to 173 respectively if the penalty was calculated in reference to the amount of tax the person was liable to pay or failed to pay and it subsequently becomes clear that this amount was an over or underestimate.

***Section 180 – Time limit for assessment of penalties under Chapter 2***

217. This section provides that assessment of a penalty due to a failure to make a return or pay tax must be made on or before the later of one of these two dates:

*These notes relate to the Revenue Scotland and Tax Powers Act 2014 (asp 16) which received Royal Assent on 24 September 2014*

- a) two years from the filing date (in the case of a failure to make a return) or the last date on which payment may be made without paying a penalty (in the case of failing to pay tax); or
- b) for a failure to make a tax return:
  - 12 months from either the end of the appeal period for the assessment of the liability to pay tax or, if there is no such assessment, 12 months from the date on which that liability is ascertained or that it is ascertained the liability is nil.
- for a failure to pay tax:
  - 12 months from either the end of the appeal period for the assessment of the liability to pay tax or, if there is no such assessment, 12 months from the date on which the amount of tax was ascertained.

***Section 181 – Power to change penalty provisions in Chapter 2***

218. This section provides a regulation-making power for the Scottish Ministers to make provision, or further provision, about penalties under Chapter 2 of Part 8. 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.