



# Revenue Scotland and Tax Powers Act 2014

2014 asp 16

## PART 6

### TAX RETURNS, ENQUIRIES AND ASSESSMENTS

#### CHAPTER 2

##### TAXPAYER DUTIES TO KEEP AND PRESERVE RECORDS

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

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

- (1) A person who is required to make a tax return in relation to a devolved tax must—
  - (a) keep any records that may be needed to enable the person to make a correct and complete return, and
  - (b) preserve those records in accordance with this section.
- (2) The records mentioned in subsection (1) must be preserved until the end of the later of the relevant day and the date on which—
  - (a) an enquiry into the return is completed, or
  - (b) if there is no enquiry, a designated officer no longer has power to enquire into the return.
- (3) A person who is liable to be registered for tax (a “registrable person”) must—
  - (a) keep any records that may be needed to enable the registrable person to comply with a requirement to notify Revenue Scotland of the person’s intention—
    - (i) to carry out taxable activities, or
    - (ii) to cease to carry out taxable activities,
  - (b) make records relating to material at a landfill site or part of a landfill site, and
  - (c) preserve those records in accordance with this section.

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- (4) The records mentioned in subsection (3) must be preserved until the end of the relevant day.
- (5) “The relevant day” in relation to records mentioned in subsection (1) means—
  - (a) the fifth anniversary of the day on which the return is made or, if the return is amended, the day notice of the amendment is given under section 83, or
  - (b) any earlier day that may be specified by Revenue Scotland.
- (6) The “relevant day” in relation to records mentioned in subsection (3) means—
  - (a) in the case of records mentioned in subsection (3)(a), the fifth anniversary of the day on which the notice was given,
  - (b) in the case of records mentioned in subsection (3)(b), the fifth anniversary of the day on which the record was made, or
  - (c) in either case, any earlier day that may be specified by Revenue Scotland.
- (7) Different days may be specified for different purposes under subsection (5)(b) or (6)(c).
- (8) The records required to be kept and preserved under subsection (1) include—
  - (a) details of any relevant transaction (including relevant instruments relating to any transaction, in particular, any contract or conveyance, and any supporting maps, plans or similar documents),
  - (b) details of any relevant taxable activity,
  - (c) records of relevant payments, receipts and financial arrangements.
- (9) The Scottish Ministers may by regulations—
  - (a) provide that the records required to be kept and preserved under this section do, or do not, include records specified in the regulations, and
  - (b) specify supporting documents that are required to be kept under this section.
- (10) Regulations under this section may make provision by reference to things specified in a notice published by Revenue Scotland in accordance with the regulations (and not withdrawn by a subsequent notice).
- (11) “Supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.

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

The duty under section 74 to preserve records may be satisfied—

- (a) by preserving them in any form and by any means, or
- (b) by preserving the information contained in them in any form and by any means, subject to any conditions or exceptions prescribed by the Scottish Ministers by regulations.

*Penalties for failing to keep and preserve records*

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

- (1) A person (“P”) who fails to comply with section 74 in relation to a devolved tax is liable to a penalty not exceeding £3,000, subject to the following exception.

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- (2) No penalty is incurred if Revenue Scotland is satisfied that any facts that it reasonably requires to be proved, and that would have been proved by the records, are proved by other documentary evidence provided to Revenue Scotland.

#### **77 Reasonable excuse for failure to keep and preserve records**

- (1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to comply with section 74, liability to a penalty under section 76 does not arise in relation to that failure.
- (2) For the purposes of subsection (1)—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,
  - (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
  - (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

#### **78 Assessment of penalties under section 76**

- (1) Where a person becomes liable to a penalty under section 76, Revenue Scotland must—
- (a) assess the penalty, and
  - (b) notify the person.
- (2) An assessment of a penalty under section 76 must be made within the period of 12 months beginning with the date on which the person became liable to the penalty.

#### **79 Enforcement of penalties under section 76**

- (1) A penalty under section 76 must be paid—
- (a) before the end of the period of 30 days beginning with the date on which the notification under section 78 was issued,
  - (b) if a notice of review against the penalty is given, before the end of the period of 30 days beginning with the date on which the review is concluded,
  - (c) if, following review, mediation is entered into, before the end of the period of 30 days beginning with the date either Revenue Scotland or the person who gave the notice of review gave notice of withdrawal from mediation, or
  - (d) if a notice of an appeal against the penalty is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.
- (2) A penalty under section 76 is to be treated for enforcement purposes as an assessment to tax.

#### **80 Power to change penalty provisions in sections 76 to 79**

- (1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter.

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- (2) Provision under subsection (1) includes provision—
  - (a) about the circumstances in which a penalty is payable,
  - (b) about the amounts of penalties,
  - (c) about the procedure for issuing penalties,
  - (d) about appealing penalties,
  - (e) about enforcing penalties.
- (3) Regulations under subsection (1) may not create criminal offences.
- (4) Regulations under subsection (1) may modify any enactment (including this Act).
- (5) Regulations under subsection (1) do not apply to a failure which began before the date on which the regulations come into force.

*Duty to keep and preserve records: further provision*

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

- (1) This section applies in relation to land and buildings transaction tax.
- (2) The Scottish Ministers may by regulations make provision for the keeping and preservation of records in relation to land transactions that are not notifiable.
- (3) Regulations under this section may require the buyer in a land transaction which is not notifiable to—
  - (a) keep such records as may be needed to enable the buyer to demonstrate that the transaction is not notifiable, and
  - (b) preserve those records in accordance with the regulations.
- (4) The regulations may apply sections 74 to 79 (with or without modifications) to a buyer mentioned in subsection (3) as those sections apply to a person mentioned in section 74(1).
- (5) Expressions used in this section and in the LBTT(S) Act 2013 have the meanings given in that Act.