



# Revenue Scotland and Tax Powers Act 2014

2014 asp 16

## PART 7

### INVESTIGATORY POWERS OF REVENUE SCOTLAND

#### CHAPTER 3

##### RESTRICTIONS ON POWERS IN CHAPTER 2

#### **135 Information notices: general restrictions**

- (1) An information notice requires a person to produce a document only if it is in the person's possession or power.
- (2) An information notice may not require a person to produce a document if the whole of the document originates more than 5 years before the date of the notice, unless the notice is given with the approval of the tribunal.
- (3) An information notice given for the purposes of checking the tax position of a person who has died may not be given more than 3 years after the person's death.

#### **136 Types of information**

- (1) An information notice does not require a person to provide or produce—
  - (a) information that relates to the conduct of a pending review or appeal relating to tax (or any part of a document containing such information), or
  - (b) journalistic material (or information contained in such material).
- (2) In subsection (1)(b) "journalistic material" means material acquired or created for the purposes of journalism.
- (3) Material is to be treated as journalistic material if it is in the possession of someone who acquired or created it for the purposes of journalism.

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- (4) A person who receives material from someone who intends that the recipient will use it for the purposes of journalism is to be taken to have acquired it for those purposes.
- (5) An information notice does not require a person to provide or produce personal records or information contained in such records, subject to subsection (7).
- (6) In subsection (5) “personal records” means documentary and other records concerning an individual (“P”) (whether living or dead) who can be identified from them and relating—
  - (a) to P’s physical or mental health,
  - (b) to spiritual counselling or assistance given or to be given to P, or
  - (c) to counselling or assistance given or to be given to P, for the purposes of P’s personal welfare, by any voluntary organisation or by any individual who—
    - (i) by reason of an office or occupation has responsibilities for P’s personal welfare, or
    - (ii) by reason of an order of a court has responsibilities for P’s supervision.
- (7) An information notice may require a person—
  - (a) to produce documents (or copies of documents) that are personal records, omitting any information whose inclusion (whether alone or with other information) makes the original documents personal records (“personal information”), and
  - (b) to provide any information contained in such records that is not personal information.

### **137 Taxpayer notices following a tax return**

- (1) Where a person has made a tax return in relation to a devolved tax in relation to an accounting period, a taxpayer notice may not be given for the purpose of checking that person’s tax position in relation to that tax in relation to that accounting period.
- (2) Where a person has made a tax return in relation to a devolved tax in relation to a transaction, a taxpayer notice may not be given for the purpose of checking that person’s tax position in relation to that transaction.
- (3) Subsections (1) and (2) do not apply where (or to the extent that) either of condition A or B is met.
- (4) Condition A is that a notice of enquiry has been given in respect of—
  - (a) the return, or
  - (b) a claim or election (or an amendment of a claim or election) made by the person in relation to—
    - (i) the accounting period in respect of the tax (or one of the taxes) to which the return relates (“relevant tax”), or
    - (ii) the transaction to which the return relates,
 and the enquiry has not been completed.
- (5) Condition B is that, as regards the person, a designated officer has reason to suspect that—
  - (a) an amount that ought to have been assessed to relevant tax for the accounting period or, as the case may be, the transaction may not have been assessed,

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- (b) an assessment to relevant tax for the accounting period or, as the case may be, the transaction may be or have become insufficient, or
  - (c) relief from relevant tax given for the accounting period or, as the case may be, the transaction may be or have become excessive.
- (6) References in this section to the person who made the return are only to that person in the capacity in which the return was made.

### **138 Protection for privileged communications between legal advisers and clients**

- (1) An information notice does not require a person—
- (a) to provide privileged information, or
  - (b) to produce any part of a document that is privileged.
- (2) For the purposes of this Part, information or a document is privileged if it is information or a document in respect of which a claim to confidentiality of communications as between client and professional legal adviser could be maintained in legal proceedings.
- (3) The Scottish Ministers may by regulations make provision for the resolution by the tribunal of disputes as to whether any information or document is privileged.
- (4) The regulations may, in particular, make provision as to the custody of a document while its status is being decided.

### **139 Protection for auditors**

- (1) An information notice does not require a person who has been appointed as an auditor for the purpose of an enactment—
- (a) to provide information held in connection with the performance of the person's functions under that enactment, or
  - (b) to produce documents which are that person's property and which were created by that person or on that person's behalf for or in connection with the performance of those functions.
- (2) Subsection (1) has effect subject to section 140.

### **140 Auditors: supplementary**

- (1) Section 139(1) does not have effect in relation to—
- (a) information explaining any information or document which the person to whom the notice is given has, as tax accountant, assisted any client in preparing for, or delivering to, Revenue Scotland, or
  - (b) a document which contains such information.
- (2) In the case of a notice given under section 127, section 139(1) does not have effect in relation to—
- (a) any information giving the identity or address of a person to whom the notice relates or of a person who has acted on behalf of such a person, or
  - (b) a document which contains such information.

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- (3) Section 139 is not disappplied by subsection (1) or (2) if the information in question has already been provided, or a document containing the information has already been produced, to a designated officer.
- (4) Where section 139 is disappplied in relation to a document by subsection (1) or (2), an information notice that requires the document to be produced has effect as if it required any part or parts of the document containing the information mentioned in subsection (1) or (2) to be produced.