

# REVENUE SCOTLAND AND TAX POWERS ACT 2014

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## EXPLANATORY NOTES

### THE ACT

#### **Part 2 - Revenue Scotland**

7. **Part 2** formally establishes Revenue Scotland and introduces schedule 1. It sets out Revenue Scotland's functions, its independence from and relationship with the Scottish Ministers in the exercise of those functions, including the payment of tax receipts into the Scottish Consolidated Fund, its powers of delegation, and procedures for the publication and reporting of its Charter of standards and values, corporate plan and annual report.

#### **Establishment of Revenue Scotland**

##### *Section 2 – Revenue Scotland*

8. This section establishes Revenue Scotland as a corporate body with a separate legal personality to that of the Scottish Ministers<sup>1</sup>. Revenue Scotland's Gaelic name (Teachd-a-steach Alba) has equal legal status. Section 2 also introduces schedule 1 which is concerned with the membership, procedures and staffing of Revenue Scotland.
9. Revenue Scotland is part of the Scottish Administration, within the meaning of section 126(8) of the Scotland Act 1998, by virtue of an order under section 104 of that Act<sup>2</sup>.

#### **Functions of Revenue Scotland**

##### *Section 3 – Functions of Revenue Scotland*

10. Subsection (1) sets out Revenue Scotland's general function as the collection and management of the devolved taxes (devolved taxes having the meaning given by section 80A(4) of the Scotland Act 1998). By virtue of section 51(3) of the Commissioners for Revenue and Customs Act 2005, the reference to collection and management has the same meaning as references to care and management in older tax statutes. The effect of this is that jurisprudence concerning the proper bounds of the tax authority's role is imported into the devolved tax system. This jurisprudence includes not only case law from the UK jurisdictions but other English-speaking jurisdictions<sup>3</sup>.
11. Subsection (2) sets out the particular functions relating to Revenue Scotland as:

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<sup>1</sup> Revenue Scotland was previously an administrative Division of the Scottish Government.

<sup>2</sup> [The Revenue Scotland and Tax Powers Act 2014 \(Consequential Provisions and Modifications Order 2014 \(2014 No. 3294\)\)](#)

<sup>3</sup> The leading English case is the "Fleet Street casuals case"; *Inland Revenue v National Federation of Self-employed and Small Businesses Ltd* [1982] A.C. 617.

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

- the provision of information, advice and assistance to the Scottish Ministers on matters concerning tax; reflecting that the Scottish Ministers will lead on devolved tax policy development and future legislation;
- the provision of information, assistance and advice to enable taxpayers, their agents and other persons to comply with the requirements of the devolved taxes;
- the efficient resolution of disputes on matters of tax liability or compliance, including by mediation (other forms of dispute resolution being review and appeal under Part 11 of the Act); and
- the protection of the revenue against tax fraud (that is to say, tax evasion)<sup>4</sup> and tax avoidance. Revenue Scotland might do this through robust while proportionate compliance activity, through application of Targeted Anti-Avoidance Rules (TAARs) or through application of the General Anti-Avoidance Rule (see Part 5 of the Act).

## **Delegation of functions by Revenue Scotland**

### ***Section 4 – Delegation of functions by Revenue Scotland***

12. Subsection (1) provides a power for Revenue Scotland to delegate any of its functions to the Keeper of the Registers of Scotland (RoS) with respect to LBTT and to the Scottish Environment Protection Agency (SEPA) with respect to SLfT (although Revenue Scotland will retain responsibility and accountability for the collection and management of both devolved taxes). Subsection (2) provides that in the delegation of these functions, both RoS and SEPA must comply with any directions Revenue Scotland gives to each regarding how to carry out the functions. Subsection (3) gives Revenue Scotland the power to change or revoke anything regarding the delegation or directions of these functions at any time. Subsection (7) makes it clear that delegation of a function does not affect Revenue Scotland's ability to exercise it or responsibility for it.
13. Subsection (4) provides that Revenue Scotland must publish information regarding any delegation or directions of its functions and must also lay a copy of this information before the Scottish Parliament (subsection (5)), unless it considers that to do so would impact upon the ability to carry out its functions effectively (subsection (6)). RoS and SEPA may be reimbursed by Revenue Scotland for any expenditure incurred in exercising its delegated functions (subsection (8)).

## **Money**

### ***Section 5 – Payments into the Scottish Consolidated Fund***

14. This section provides that, subject to deduction of payments in connection with repayments, interest on repayments and payments treated as repayments, Revenue Scotland must pay money received in the exercise of its functions into the Scottish Consolidated Fund. This is consistent with the general position of Scottish Administration bodies set out in section 64(3) of the Scotland Act 1998. Paragraph 3 of schedule 4 (minor and consequential modifications) makes a consequential amendment to section 9 of the Public Finance and Accountability (Scotland) Act 2000 so that RoS may direct receipts in connection with LBTT to the Scottish Consolidated Fund.

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<sup>4</sup> Tax evasion by taxpayers or agents is a criminal offence at common law; *Strathern v Fogal* 1922 J.C. 73; *HM Advocate v Turnbull (Robert S)* 1951 J.C. 96.

### ***Section 6 – Rewards***

15. This section provides that Revenue Scotland may pay a reward to a person for a service relating to a function of Revenue Scotland, an example being information which leads to the collection of undeclared tax.

## **Independence of Revenue Scotland**

### ***Section 7 – Independence of Revenue Scotland***

16. This section makes provision for Revenue Scotland's independence in that the Scottish Ministers must not direct or otherwise seek to control Revenue Scotland in the exercise of its functions. Revenue Scotland's independence is, however, subject to any contrary provisions made in this Act or any other enactment.

## **Ministerial guidance**

### ***Section 8 – Ministerial guidance***

17. This section sets out that the Scottish Ministers may give guidance to Revenue Scotland about the exercise of its functions and that Revenue Scotland must have regard to that guidance. The guidance provided must be published, as considered appropriate by Ministers, and laid before the Scottish Parliament unless the Scottish Ministers consider that to do so would impact upon the ability of Revenue Scotland to carry out its functions effectively.

## **Provision of information, advice or assistance to Ministers**

### ***Section 9 – Provision of information, advice or assistance to the Scottish Ministers***

18. This section sets out that Revenue Scotland must provide the Scottish Ministers with information or advice relating to its functions when required to do so, in such form as Ministers may determine.

## **Charter of standards and values**

### ***Section 10 – Charter of standards and values***

19. This section provides that Revenue Scotland must prepare and publish a Charter (including laying it before the Scottish Parliament) setting out the standards of behaviour and values its members and staff are expected to adhere to when dealing with taxpayers, their agents and other persons; and the standards of behaviour and values it expects such persons themselves to adhere to when dealing with Revenue Scotland. Revenue Scotland must consult on the Charter and review and revise it as and when it considers it appropriate to do so.

## **Corporate plan**

### ***Section 11 – Corporate plan***

20. This section provides that Revenue Scotland must prepare a corporate plan. Subsections (5), (7) and (8) relate specifically to the planning period for each corporate plan. Subsection (7) sets out that the first plan is to be published no later than a date to be appointed by an order made by the Scottish Ministers and that subsequent plans are to be submitted no later than the end date specified by that order and thereafter at three-yearly intervals. Subsection (5) provides that Revenue Scotland may review and submit a revised plan at any time for the approval of Ministers and subsection (8) enables Ministers by order to substitute such other period as they consider appropriate for the planning period.

21. The remaining subsections set out procedures for the approval and publication of the corporate plan. The plan must describe Revenue Scotland's main objectives, the outcomes by which these objectives may be measured and its main activities for the duration of the planning period. Each plan must be submitted to the Scottish Ministers for approval, with approval being subject to any modifications as agreed between Ministers and Revenue Scotland. Following approval, a copy of the plan must be laid before the Scottish Parliament and published as Revenue Scotland considers appropriate.

## **Annual report**

### ***Section 12 – Annual report***

22. This section sets out a requirement for Revenue Scotland to prepare and publish an annual report (including sending a copy of the report to the Scottish Ministers and laying it before the Scottish Parliament) as soon as possible after the end of each financial year. The annual report might contain, for example, details of how Revenue Scotland has demonstrated the standards of behaviour and values in the Charter of standards and values referred to in section 10. Revenue Scotland may also publish other reports and information it considers relevant and appropriate to the exercise of its functions.
23. On the basis that Revenue Scotland will be part of the Scottish Administration, the accountability and audit provisions of Part 2 of the Public Finance and Accountability (Scotland) Act 2000 will apply, including the duty to prepare accounts under section 19.