

REVENUE SCOTLAND AND TAX POWERS ACT 2014

EXPLANATORY NOTES

THE ACT

Part 3 – Information

Use of information by Revenue Scotland etc.

Section 13 – Use of information by Revenue Scotland and other persons

24. **Section 13** allows for information (whether taxpayer information or other information) to be disclosed and used within and between Revenue Scotland, RoS and SEPA. In the case of Revenue Scotland, this would allow information obtained in relation to one devolved tax to be used in the context of another devolved tax. RoS and SEPA may only participate in information sharing if there has been a delegation under section 4, in which case they may use tax information for land registration and environmental purposes respectively (and vice versa). But section 13 does not extend to sharing outside of Revenue Scotland, RoS and SEPA (for which see section 15(3)).

Protected taxpayer information

Section 14 – Protected taxpayer information

25. **Section 14** establishes the concept of “protected taxpayer information”. “Protected taxpayer information” is information about identifiable taxpayers and other persons (for example their personal or business associates) that becomes held by Revenue Scotland, RoS or SEPA in the exercise of tax functions. “Person” includes both natural and legal persons, so individuals and corporations are equivalently protected. Identifiable information not concerning tax functions (for example information about staff or contractors) is not “protected taxpayer information”.

Section 15 – Confidentiality of protected taxpayer information

26. **Section 15** prohibits Revenue Scotland officials from disclosing protected taxpayer information unless the disclosure is expressly permitted by subsection (3). Breach of this requirement is a criminal offence (see section 19). The grounds for lawful disclosure in that subsection include disclosure with the consent of the person or persons to whom the protected taxpayer information relates, and disclosure in connection with legal proceedings (whether civil or criminal). Revenue Scotland may also disclose protected taxpayer information in accordance with existing or future statutory provisions such as Part 2A of the Public Finance and Accountability (Scotland) Act 2000 (data matching for the detection of fraud etc.).
27. **Section 15** applies not only to Revenue Scotland staff but also to individuals working for delegates of Revenue Scotland or otherwise exercising functions on behalf of Revenue

Scotland, for example an advocate engaged to conduct litigation for Revenue Scotland in the higher courts.

Section 16 – Protected taxpayer information: declaration of confidentiality

28. Revenue Scotland officials (and the other individuals mentioned in paragraph 27) must make a formal declaration acknowledging their statutory duty of confidentiality under section 15. Subsections (2) and (3) provide for when and how the declaration is to be made.

Other limits on use and disclosure of information

Section 17 – Disclosure of information prohibited or restricted by statute or agreement

29. **Section 17** reflects that the special statutory protection for taxpayer information provided for in Part 3 of the Act is additional to the existing legal protections that may apply to taxpayer and other forms of information, for example the Data Protection Act 1998 which includes as data protection principle seven that appropriate technical and organisational measures be taken to protect all personal data. Accordingly, the permissive effect of sections 13(1) and 15(3) is subject to any prohibitions or restrictions provided for in other enactments or agreements.

Section 18 – Protected taxpayer information: use by the Keeper

30. **Section 18** specifically addresses the position of RoS and prohibits RoS from making use of protected taxpayer information in connection with RoS' power to provide consultancy, advisory or other commercial services. See also paragraph 2 of schedule 4 which makes specific provision about protected taxpayer information and SEPA.

Offence of wrongful disclosure

Section 19 – Wrongful disclosure of protected taxpayer information

31. **Section 19** makes it a criminal offence to breach section 15, that is to say to disclose protected taxpayer information where there is not specific statutory authority under section 15(3). The penalty is imprisonment and/or a fine, with the length of sentence and the amount of the fine being higher on solemn prosecution (conviction on indictment) (see subsection (3)). There is a defence where a person reasonably believed that disclosure was lawful or the information disclosed had already lawfully been made public.
32. Subsection (4) sets out that other legal measures may also be taken against a person who breaches section 15, for example disciplinary measures in terms of employment law or a breach of confidence action may be taken despite the criminal prosecution.