

REVENUE SCOTLAND AND TAX POWERS ACT 2014

EXPLANATORY NOTES

THE ACT

Part 7 – Investigatory Powers of Revenue Scotland

Chapter 3 — Restrictions on Powers in Chapter 2

Section 135 – Information notices: general restrictions

177. This section provides for some general restrictions on information notices, including that a person is required to produce a document only if it is in their possession or power. Furthermore, unless the tribunal has given its approval, an information notice may not require a person to produce a document if the whole of it originates more than five years before the date of the notice. An information notice issued to check the tax position of someone who has died cannot be given more than 3 years after the death.

Section 136 – Types of information

178. This section sets out provision on types of information that an information notice cannot require, including journalistic material, information that relates to the conduct of a pending review or appeal in relation to tax and also information contained in certain types of personal records. Information in personal records covered by this exclusion provision relates to a person's health and/or different types of counselling or assistance given to that person.

Section 137 – Taxpayer notices following a tax return

179. This section sets out restrictions on when taxpayer notices may be given. A taxpayer notice cannot be given in relation to a transaction or an accounting period (to check the tax position for those) where a person has made a tax return in relation to that transaction or accounting period. However, a taxpayer notice could be given where a notice of enquiry had been given and the enquiry was not completed or where a designated officer suspected an issue with the assessed tax liability (including any reliefs) for the transaction or accounting period.

Section 138 – Protection for privileged communications between legal advisers and clients

180. This section provides that information notices (a term defined in section 131) do not require a person to provide privileged information or parts of documents that are privileged. This refers to information or documents that benefit from the confidentiality that arises in information or documents between a professional legal adviser and a client. The section gives the Scottish Ministers a power to make provision by regulations for the tribunal to resolve disputes as to whether or not information or documents are privileged. Such regulations are subject to the negative procedure.

Section 139 – Protection for auditors

181. This section provides that an information notice does not require an auditor to provide any information held or to produce documents where that information or those documents relate to the function or role of an auditor.

Section 140 – Auditors: supplementary

182. This section sets out the circumstances in which an information notice to an auditor would apply. Subsection (1) requires the auditor to comply with an information notice where information explaining any information or document given to any client in the role of tax accountant has assisted the client in preparing for, or delivering a document to, Revenue Scotland. Subsection (2) requires the auditor to comply with a notice under section 127 requiring the auditor to provide information or document about the identity or address of a taxpayer. Subsection (3) allows the auditor not to comply with subsections (1) and (2) if the information or documents have already been provided to a designated officer.