

# REVENUE SCOTLAND AND TAX POWERS ACT 2014

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## EXPLANATORY NOTES

### THE ACT

#### **Part 8 – Penalties**

#### *Chapter 5 — Other Administrative Penalties*

#### *Section 209 – Penalty for failure to register for tax etc.*

247. This section provides that a penalty is payable where a person fails to comply with a requirement imposed by or under section 22 or 23 of the LT(S)A 2014 (deemed as a “relevant requirement”) and that failure was careless or deliberate. The section also defines what is meant by a failure which is careless.

#### *Section 210 – Amount of penalty for failure to register for tax etc.*

248. This section provides the penalty amounts for a penalty under section 209. Different amounts apply depending on whether the failure was careless or deliberate (as determined under section 209(2) and are calculated with reference to the potential lost revenue. Potential lost revenue is defined as the amount of tax (if any) for which the person is liable in the period between the date from which they were liable to be registered for tax and the date on which Revenue Scotland received notification of (or became aware of) the person’s liability to be registered.

#### *Section 211 – Interaction of penalties under section 209 with other penalties*

249. This section provides that the amount of any penalty under section 209 is to be reduced by the amount of any other penalty (apart from any penalty relating to failure to make a return on time or failure to pay tax on time) if it is applied and determined by reference to the same tax liability. In other words, for a reduction under this section to be possible the other penalty amount must be calculated: a) against the same tax liability; and b) using ‘tax-geared’ or ‘percentage-based’ means (and so does not include a penalty where the amount is fixed or in a variable ‘up to’ category).

#### *Section 212 – Reduction in penalty under section 209 for disclosure*

250. This section provides for Revenue Scotland to be able to reduce a penalty applied due to a failure to comply with a “relevant requirement” (as specified in section 209(1) (a)). The section applies when the person liable to the penalty discloses the failure to Revenue Scotland. Any reductions applied may reflect whether or not the disclosure was unprompted (where the person has no reason to believe that Revenue Scotland has discovered or is about to discover the information) and also the quality (timing, nature and extent) of the information disclosed. By timing this refers to how promptly the disclosure was made; by nature this refers to the level of evidence provided and the

degree of access to test the disclosure; by extent this means how complete the disclosure may be.

***Section 213 – Special reduction in penalty under section 209***

251. This section provides that Revenue Scotland may in special circumstances reduce a penalty that has been applied under section 209. The penalty can be suspended, remitted entirely or reduced following Revenue Scotland agreeing a compromise with the taxpayer in relation to the penalty proceedings. The special circumstances under which the penalty may be reduced cannot be related to the taxpayer's ability to pay or by the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another taxpayer. The ability of Revenue Scotland to apply this discretionary reduction in the penalty can still be made following a decision of the tribunal or court in relation to the penalty.

***Section 214 – Reasonable excuse for failure to register for tax etc.***

252. This section provides that if a person satisfies Revenue Scotland (or on appeal the tribunal) that there is reasonable excuse on the person's behalf for a failure to comply with a "relevant requirement" (as specified in section 209(1)(a)), then the person is not liable to pay a penalty arising from that failure. The section also sets out some circumstances in which reasonable excuse does not apply.

***Section 215 – Assessment of penalties under section 209***

253. This section provides that where a person becomes liable for a penalty under section 209, Revenue Scotland must assess the penalty and then notify the person of this, including making clear the period against which the penalty is being assessed. The penalty must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person and this may be combined with an existing assessment to tax.
254. The assessment of a penalty under section 209 must be made within 12 months of either the end of the appeal period for the assessment of unpaid tax related to the failure to comply with the 'relevant requirement' or, if there is no such assessment, the date on which the amount of unpaid tax is ascertained.

***Section 216 – Power to change penalty provisions in Chapter 5***

255. This section provides a regulation-making power for the Scottish Ministers to make provision, or further provision, about penalties under Chapter 5 of Part 8. Such regulations are subject to the affirmative procedure, may not create criminal offences but may modify any enactment. Regulations under this section do not apply to a failure which began before the date on which the regulations came into force.