



# Revenue Scotland and Tax Powers Act 2014

2014 asp 16

## PART 7

### INVESTIGATORY POWERS OF REVENUE SCOTLAND

VALID FROM 01/04/2015

#### CHAPTER 1

##### INVESTIGATORY POWERS: INTRODUCTORY

###### *Overview*

#### **119 Investigatory powers of Revenue Scotland: overview**

This Part is arranged as follows—

- (a) Chapter 2 sets out Revenue Scotland's investigatory powers in relation to information and documents,
- (b) Chapter 3 contains restrictions on the powers in Chapter 2,
- (c) Chapter 4 sets out Revenue Scotland's investigatory powers in relation to premises and other property,
- (d) Chapter 5 sets out further investigatory powers,
- (e) Chapter 6 is about reviews and appeals against information notices, and
- (f) Chapter 7 sets out offences relating to information notices.

*Status: Point in time view as at 07/11/2014. This version of this part contains provisions that are not valid for this point in time.*

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### *Interpretation*

#### **120 Meaning of “tax position”**

- (1) In this Part unless otherwise stated “tax position”, in relation to a person, means the person's position as regards any devolved tax, including the person's position as regards—
- (a) past, present and future liability to pay any devolved tax,
  - (b) penalties and other amounts that have been paid, or are or may be payable, by or to the person in connection with any devolved tax, and
  - (c) claims, elections, applications and notices that have been or may be made or given in connection with the person's liability to pay any devolved tax,
- (and references to a person's position as regards a particular tax (however expressed) are to be interpreted accordingly).
- (2) References in this Part to the tax position of a person include the tax position of—
- (a) an individual who has died,
  - (b) a company that has ceased to exist.
- (3) References in this Part to a person's tax position are to the person's tax position at any time or in relation to any period, unless otherwise stated.
- (4) References to checking a person's tax position include carrying out an investigation or enquiry of any kind.

#### **121 Meaning of “carrying on a business”**

- (1) In this Part references to carrying on a business include—
- (a) the letting of property,
  - (b) the activities of a charity, and
  - (c) the activities of a local authority and any other public authority.
- (2) The Scottish Ministers may by regulations provide that for the purposes of this Part—
- (a) the carrying on of an activity specified in the regulations, or
  - (b) the carrying on of such an activity (or any activity) by a person specified in the regulations,
- is or is not to be treated as the carrying on of a business.

#### **122 Meaning of “statutory records”**

- (1) For the purposes of this Part information or a document forms part of a person's statutory records if it is information or a document which the person is required to keep and preserve by or under this Act, subject to subsections (2) and (3).
- (2) To the extent that any information or document that is required to be kept and preserved by or under this Act—
- (a) does not relate to the carrying on of a business, and
  - (b) is not also required to be kept or preserved by or under any other enactment relating to devolved tax,
- it forms part of a person's statutory records only to the extent that any accounting period or periods to which it relates has or have ended.

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- (3) Information and documents cease to form part of a person's statutory records when the period for which they are required to be preserved by or under this Act has expired.

VALID FROM 01/04/2015

## CHAPTER 2

### INVESTIGATORY POWERS: INFORMATION AND DOCUMENTS

#### **123 Power to obtain information and documents from taxpayer**

- (1) If the condition in subsection (2) is met, a designated officer may by notice require a person (“the taxpayer”)—
- (a) to provide information, or
  - (b) to produce a document.
- (2) That condition is that—
- (a) the information or document is reasonably required by the officer for the purpose of checking the taxpayer's tax position, and
  - (b) it is reasonable for the taxpayer to be required to provide the information or to produce the document.
- (3) In this Part “taxpayer notice” means a notice under this section.

#### **124 Power to obtain information and documents from third party**

- (1) If the condition in subsection (2) is met, a designated officer may by notice require a person—
- (a) to provide information, or
  - (b) to produce a document.
- (2) That condition is that—
- (a) the information or document is reasonably required by the officer for the purpose of checking the tax position of another person whose identity is known to the officer (“the taxpayer”), and
  - (b) it is reasonable for the person to be required to provide the information or to produce the document.
- (3) A notice under this section must name the taxpayer to whom it relates, unless the tribunal has approved the giving of the notice and disapplied this requirement under section 125.
- (4) In this Part “third party notice” means a notice under this section.

#### **125 Approval of taxpayer notices and third party notices**

- (1) A designated officer may not give a third party notice without—
- (a) the agreement of the taxpayer, or

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(b) the approval of the tribunal.

- (2) A designated officer may ask for the approval of the tribunal to the giving of any taxpayer notice or third party notice (and for the effect of obtaining such approval see sections 152 and 155).
- (3) An application for approval under this section may be made without notice (except as required under subsection (4)).
- (4) The tribunal may not approve the giving of a taxpayer notice or third party notice unless—
  - (a) the tribunal is satisfied that, in the circumstances, the officer giving the notice is justified in doing so,
  - (b) the person to whom the notice is to be addressed has been told that the information or documents referred to in the notice are required and has been given a reasonable opportunity to make representations to a designated officer,
  - (c) the tribunal has been given a summary of any representations made by that person, and
  - (d) in the case of a third party notice, the taxpayer has been given a summary of the reasons why a designated officer requires the information and documents.
- (5) Paragraphs (b) to (d) of subsection (4) do not apply to the extent that the tribunal is satisfied that taking the action specified in those paragraphs might prejudice the assessment or collection of tax.
- (6) Where the tribunal approves the giving of a third party notice under this paragraph, it may also disapply the requirement to name the taxpayer in the notice if it is satisfied that the designated officer has reasonable grounds for believing that naming the taxpayer might seriously prejudice the assessment or collection of tax.

#### **126 Copying third party notice to taxpayer**

- (1) A designated officer who gives a third party notice must give a copy of the notice to the taxpayer to whom it relates, unless the tribunal has disapplied this requirement.
- (2) The tribunal may not disapply that requirement unless the tribunal is satisfied that the officer applying has reasonable grounds for believing that giving a copy of the notice to the taxpayer might prejudice the assessment or collection of tax.

#### **127 Power to obtain information and documents about persons whose identity is not known**

- (1) If the conditions in subsection (2) are met, a designated officer may by notice require a person—
  - (a) to provide information, or
  - (b) to produce a document.
- (2) Those conditions are—
  - (a) that the information or document is reasonably required by the officer for the purpose of checking the tax position of—
    - (i) a person whose identity is not known to the officer, or

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- (ii) a class of persons whose individual identities are not known to the officer, and
  - (b) the tribunal has approved the giving of the notice.
- (3) An application for approval may be made without notice.
- (4) The tribunal may not approve the giving of a notice under this section unless it is satisfied that—
  - (a) the notice would meet the condition in subsection (2)(a),
  - (b) there are reasonable grounds for believing that the person or any of the class of persons to whom the notice relates may have failed or may fail to comply with any provision of the law relating to a devolved tax,
  - (c) any such failure is likely to have led or to lead to serious prejudice to the assessment or collection of tax, and
  - (d) the information or document to which the notice relates is not readily available from another source.

## **128 Third party notices and notices under section 127: groups of undertakings**

- (1) This section applies where an undertaking is a parent undertaking in relation to another undertaking (a “subsidiary undertaking”).
- (2) Where a third party notice is given to any person for the purpose of checking the tax position of the parent undertaking and any of its subsidiary undertakings—
  - (a) section 124(3) only requires the notice to state this and name the parent undertaking, and
  - (b) the references in section 125(6) to naming the taxpayer are to making that statement and naming the parent undertaking.
- (3) In relation to such a notice—
  - (a) in sections 125 and 126 (approval of notices and copying third party notices), the references to the taxpayer have effect as if they were references to the parent undertaking, but
  - (b) in section 152(2)(b) (no review or appeal in relation to taxpayer's statutory records), the reference to the taxpayer has effect as if it were a reference to the parent undertaking and each of its subsidiary undertakings.
- (4) Where a third party notice is given to the parent undertaking for the purpose of checking the tax position of more than one subsidiary undertaking—
  - (a) section 124(3) only requires the notice to state this, and
  - (b) the references in section 125(6) to naming the taxpayer are to making that statement.
- (5) In relation to such a notice—
  - (a) in section 125 (approval of notices), subsections (1) and (4)(d) do not apply,
  - (b) section 126(1) (copying third party notices to taxpayer) does not apply,
  - (c) section 137 (restriction on giving taxpayer notice following a tax return) applies as if the notice was a taxpayer notice or taxpayer notices given to each subsidiary undertaking (or, if the notice names the subsidiary undertakings to which it relates, to each of those undertakings), and

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(d) in section 152(2)(b) (no review or appeal in relation to a taxpayer's statutory records), the reference to the taxpayer has effect as if it were a reference to the parent undertaking or any of its subsidiary undertakings.

(6) In this section “parent undertaking”, “subsidiary undertaking” and “undertaking” have the meanings given in sections 1161 and 1162 of, and schedule 7 to, the Companies Act 2006 (c.46).

### **129 Third party notices and notices under section 127: partnerships**

(1) This section applies where a business is carried on by two or more persons in partnership.

(2) Where, in respect of a taxable event entered into or undertaken by or on behalf of the members of the partnership, any partner has made a tax return, section 137 has effect as if that return had been made by each of the partners.

(3) Where a third party notice is given for the purpose of checking the tax position of more than one of the partners (in their capacity as such)—

- (a) section 124(3) only requires the notice to state this and give a name by which the partnership is known or under which it is registered for any purpose, and
- (b) the references in section 125(6) to naming the taxpayer are to making that statement and naming the partnership.

(4) In relation to such a notice given to a person other than one of the partners—

- (a) in sections 125 and 126 (approval of notices and copying third party notices), the references to the taxpayer have effect as if they were references to at least one of the partners, and
- (b) in section 152(2)(b) (no review or appeal in relation to taxpayer's statutory records), the reference to the taxpayer has effect as if it were a reference to any of the partners in the partnership.

(5) In relation to a third party notice given to one of the partners for the purpose of checking the tax position of one or more of the other partners (in their capacity as such)—

- (a) in section 125 (approval of notices), subsections (1) and (4)(d) do not apply,
- (b) section 126(1) (copying third party notices to taxpayer) does not apply, and
- (c) in section 152(2)(b) (no review or appeal in relation to a taxpayer's statutory records), the reference to the taxpayer has effect as if it were a reference to any of the partners in the partnership.

### **130 Power to obtain information about persons whose identity can be ascertained**

(1) A designated officer may by notice require a person (“P”) to provide relevant information about another person (“the taxpayer”) if the tribunal approves the giving of the notice.

(2) The tribunal may not approve the giving of a notice under this section unless satisfied that conditions A to D are met.

(3) Condition A is that the information is reasonably required by the officer for the purpose of checking the tax position of the taxpayer.

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- (4) Condition B is that—
  - (a) the taxpayer's identity is not known to the officer, but
  - (b) the officer holds information from which the taxpayer's identity can be ascertained.
- (5) Condition C is that the officer has reason to believe that—
  - (a) P will be able to ascertain the taxpayer's identity from the information held by the officer, and
  - (b) P obtained relevant information about the taxpayer in the course of carrying on a business.
- (6) Condition D is that the taxpayer's identity cannot readily be ascertained by other means from the information held by the officer.
- (7) “Relevant information” means all or any of the following—
  - (a) name,
  - (b) last known address, and
  - (c) date of birth (in the case of an individual).
- (8) This section applies for the purpose of checking the tax position of a class of persons as for the purpose of checking the tax position of a single person (and references to “taxpayer” are to be read accordingly).

### **131 Notices**

- (1) In this Part “information notice” means a notice under section 123, 124, 127 or 130.
- (2) An information notice may specify or describe the information or documents to be provided or produced.
- (3) If an information notice is given with the approval of the tribunal, it must state that it is given with that approval.
- (4) A decision of the tribunal under section 125, 126, 127 or 130 is final.

### **132 Complying with information notices**

- (1) Where a person is required by an information notice to provide information or produce a document, the person must do so—
  - (a) within such period, and
  - (b) at such time, by such means and in such form (if any), as is reasonably specified or described in the notice.
- (2) Where an information notice requires a person to produce a document, it must be produced—
  - (a) at a place agreed to by that person and a designated officer, or
  - (b) at such place as a designated officer may reasonably specify.
- (3) A designated officer must not specify for the purposes of subsection (2)(b) a place that is used solely as a dwelling.
- (4) The production of a document in compliance with an information notice is not to be regarded as breaking any lien claimed on the document.

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### **133 Producing copies of documents**

- (1) Where an information notice requires a person to produce a document, the person may comply with the notice by producing a copy of the document, subject to any conditions or exceptions set out in regulations made by the Scottish Ministers.
- (2) Subsection (1) does not apply where—
  - (a) the notice requires the person to produce the original document, or
  - (b) a designated officer subsequently makes a request to the person for the original document.
- (3) Where a designated officer requests a document under subsection (2)(b), the person to whom the request is made must produce the document—
  - (a) within such period, and
  - (b) at such time and by such means (if any),
 as is reasonably requested by the designated officer.

### **134 Further provision about powers relating to information notices**

The Scottish Ministers may by regulations make further provision about—

- (a) the form and content of information notices,
- (b) the time periods for complying with information notices, and
- (c) the manner of complying with information notices.

## **CHAPTER 3**

### **RESTRICTIONS ON POWERS IN CHAPTER 2**

VALID FROM 01/04/2015

### **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.

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### **136 Types of information**

- (1) An information notice does not require a person to provide or produce—



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- (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.
- (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.

VALID FROM 01/04/2015

### **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—

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- (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,
  - (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.

#### Commencement Information

**II** S. 138 in force at 7.11.2014 for specified purposes by S.S.I. 2014/278, art. 2, sch.

VALID FROM 01/04/2015

### 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

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- (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.

VALID FROM 01/04/2015

#### **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.
- (3) Section 139 is not disapplied 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 disapplied 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.

### **CHAPTER 4**

#### **INVESTIGATORY POWERS: PREMISES AND OTHER PROPERTY**

##### *Inspection of business premises*

VALID FROM 01/04/2015

#### **141 Power to inspect business premises**

- (1) If the condition in subsection (2) is met, a designated officer may enter a person's business premises and inspect—
  - (a) the premises,
  - (b) business assets that are on the premises,
  - (c) business documents that are on the premises.

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- (2) That condition is that the designated officer has reason to believe that the inspection is reasonably required for the purpose of checking the person's tax position.
- (3) The powers under this section do not include power to enter or inspect any part of the premises that is used solely as a dwelling.
- (4) In this Chapter—
  - “business assets” means assets that a designated officer has reason to believe are owned, leased or used in connection with the carrying on of a business by any person (but does not include documents),
  - “business documents” means documents or copies of documents—
    - (a) that relate to the carrying on of a business by any person, and
    - (b) that form part of any person's statutory records,
  - “business premises”, in relation to a person, means premises (or any part of premises) that a designated officer has reason to believe are (or is) used in connection with the carrying on of a business by or on behalf of the person,
  - “premises” includes any building or structure, any land and any means of transport.

#### **142 Power to inspect business premises of involved third parties**

- (1) If the condition in subsection (2) is met, a designated officer may enter business premises of an involved third party and inspect—
  - (a) the premises,
  - (b) business assets that are on the premises, and
  - (c) relevant documents that are on the premises.
- (2) That condition is that the designated officer has reason to believe that the inspection is reasonably required for the purpose of checking the position of any person or class of persons as regards a relevant devolved tax.
- (3) In this section—
  - “involved third party” means a person who is, or a category of persons who are, specified by the Scottish Ministers by order,
  - “relevant documents” means such documents as may be so specified,
  - “relevant devolved tax” means such devolved tax as may be so specified.
- (4) The powers under this section may be exercised whether or not the identity of that person is, or the individual identities of those persons are, known to the designated officer.
- (5) The powers under this section do not include power to enter or inspect any part of the premises that is used solely as a dwelling.

#### **Commencement Information**

**I2** S. 142 in force at 7.11.2014 for specified purposes by S.S.I. 2014/278, art. 2, **sch.**

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### **143 Carrying out inspections under section 141 or 142**

- (1) An inspection under section 141 or 142 may be carried out only—
  - (a) at a time agreed to by the occupier of the premises, or
  - (b) if subsection (2) is satisfied, at any reasonable time.
- (2) This subsection is satisfied if—
  - (a) the occupier of the premises has been given at least 7 days' notice in writing of the time of the inspection, or
  - (b) the officer has reasonable grounds for believing that giving notice of the inspection would seriously prejudice the assessment or collection of tax.
- (3) A designated officer seeking to carry out an inspection under subsection (2)(b) must provide a notice in writing as follows—
  - (a) if the occupier of the premises is present at the time the inspection is to begin, the notice must be provided to the occupier,
  - (b) if the occupier of the premises is not present but a person who appears to the officer to be in charge of the premises is present, the notice must be provided to that person,
  - (c) in any other case, the notice must be left in a prominent place on the premises.
- (4) The notice referred to in subsection (2)(a) or (3) must state the possible consequences of obstructing the designated officer in the exercise of the power.
- (5) If a notice referred to in subsection (2)(a) or (3) is given in respect of an inspection approved by the tribunal (see section 147), it must state that the inspection has been so approved.

VALID FROM 01/04/2015

### **144 Carrying out inspections under section 141 or 142: further provision**

- (1) A designated officer carrying out an inspection under section 141 or 142 has the following powers.
- (2) On entering the premises, the officer may take any person authorised by the officer and, if the officer has reasonable cause to apprehend any serious obstruction in the execution of the inspection, a constable.
- (3) Subject to subsection (9), on entering the premises, the officer or a person authorised by the officer may take any equipment or materials required for any purpose for which the inspection is being carried out.
- (4) The officer may make such examination or investigation the officer considers to be necessary in the circumstances.
- (5) The officer may direct that the premises or any part of them, or anything in them, be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any such examination or investigation.

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- (6) The officer or a person authorised by the officer may take samples of material on the premises.
- (7) The power to take samples mentioned in subsection (6) includes power—
  - (a) to carry out experimental borings or other works on the premises, and
  - (b) to install, keep or maintain monitoring and other apparatus there.
- (8) Any sample taken under subsections (6) and (7) is to be disposed of in such manner as Revenue Scotland may determine.
- (9) An officer or authorised person may exercise the power mentioned in subsection (3) only—
  - (a) at a time agreed to by the occupier of the premises, or
  - (b) if subsection (10) is satisfied, at any reasonable time.
- (10) This subsection is satisfied if—
  - (a) in a case where notice was given under section 143(2)(a), that the notice informed the occupier of the premises that the officer or authorised person intended to exercise the power mentioned in subsection (3), or
  - (b) the officer has reasonable grounds for believing that giving notice of the exercise of that power would seriously prejudice the assessment or collection of tax.
- (11) Section 143(3) to (5) apply to the exercise of the power mentioned in subsection (3) by virtue of subsection (10)(b) as they apply to an inspection carried out by virtue of section 143(2)(b).

VALID FROM 01/04/2015

*Inspection for valuation etc.*

**145 Power to inspect property for valuation etc.**

- (1) A designated officer may enter and inspect premises for the purpose of valuing the premises if the valuation is reasonably required for the purpose of checking any person's tax position.
- (2) A designated officer may enter premises and inspect—
  - (a) the premises,
  - (b) any other property on the premises,
 for the purpose of valuing, measuring or determining the character of the premises or property.
- (3) Subsection (2) only applies if the valuation, measurement or determination is reasonably required for the purposes of checking any person's tax position.
- (4) A person who the designated officer considers is needed to assist with the valuation, measurement or determination may enter and inspect the premises or property with the officer.

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#### **146 Carrying out inspections under section 145**

- (1) An inspection under section 145 may be carried out only if condition A or B is met.
- (2) Condition A is that—
  - (a) the inspection is carried out at a time agreed to by a relevant person, and
  - (b) the relevant person has been given notice in writing of the agreed time of the inspection.
- (3) “Relevant person” means—
  - (a) the occupier of the premises, or
  - (b) if the occupier cannot be identified or the premises are vacant, a person who controls the premises.
- (4) Condition B is that—
  - (a) the inspection has been approved by the tribunal, and
  - (b) any relevant person specified by the tribunal has been given at least 7 days' notice in writing of the time of the inspection.
- (5) A notice under subsection (4)(b) must state the possible consequences of obstructing the officer in the exercise of the power.
- (6) If a notice is given under this section in respect of an inspection approved by the tribunal (see section 147), it must state that the inspection has been so approved.
- (7) A designated officer seeking to carry out an inspection under section 145 must produce evidence of authority to carry out the inspection if asked to do so by—
  - (a) the occupier of the premises, or
  - (b) any other person who appears to the officer to be in charge of the premises or property.

VALID FROM 01/04/2015

#### *Approval of tribunal for premises inspections*

#### **147 Approval of tribunal for premises inspections**

- (1) A designated officer may ask the tribunal—
  - (a) to approve an inspection under section 141, 142 or 145, or
  - (b) to approve the exercise, in relation to an inspection under section 141 or 142, of any of the powers mentioned in section 144,(and for the effect of obtaining such approval see section 195 (penalties for failure to comply or obstruction)).
- (2) An application for approval under this section may be made without notice (except as required under subsection (4)).
- (3) The tribunal may not approve an inspection under section 141 or 142 unless the tribunal is satisfied that, in the circumstances, the inspection is justified.
- (4) The tribunal may not approve an inspection under section 145 unless—

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- (a) the person whose tax position is the subject of the proposed inspection has been given a reasonable opportunity to make representations to the designated officer about that inspection,
  - (b) the occupier of the premises has been given a reasonable opportunity to make such representations,
  - (c) the tribunal has been given a summary of any representations made, and
  - (d) the tribunal is satisfied that, in the circumstances, the inspection is justified.
- (5) Subsection (4)(b) does not apply if the tribunal is satisfied that the occupier of the premises cannot be identified.
- (6) A decision of the tribunal under this section is final.

VALID FROM 01/04/2015

*Other powers in relation to premises*

**148 Power to mark assets and to record information**

The powers under sections 141 to 146 include—

- (a) power to mark business assets, and anything containing business assets, for the purpose of indicating that they have been inspected, and
- (b) power to obtain and record information (whether electronically or otherwise) relating to the premises, property, assets and documents that have been inspected.

VALID FROM 01/04/2015

*Restriction on inspection of documents*

**149 Restriction on inspection of documents**

A designated officer may not inspect a document under this Chapter if (or to the extent that), by virtue of Chapters 2 and 3, an information notice given at the time of the inspection to the occupier of the premises could not require the occupier to produce the document.



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VALID FROM 01/04/2015

## CHAPTER 5

### FURTHER INVESTIGATORY POWERS

#### 150 Power to copy and remove documents

- (1) Where a document is produced to, or inspected by, a designated officer, the officer may take copies of, or make extracts from, the document.
- (2) Where a document is produced to, or inspected by, a designated officer, the officer may—
  - (a) remove the document at a reasonable time, and
  - (b) retain it for a reasonable period, if it appears to the officer to be necessary to do so.
- (3) Where a document is removed in accordance with subsection (2), the person who produced the document may request—
  - (a) a receipt for the document, and
  - (b) a copy of the document.
- (4) A designated officer must comply with a request under subsection (3) without charge.
- (5) The removal of a document under this section is not to be regarded as breaking any lien claimed on the document.
- (6) Where a document removed under this section is lost or damaged, Revenue Scotland is liable to compensate the owner of the document for any expenses reasonably incurred in replacing or repairing the document.
- (7) In this section references to a document include a copy of a document.

#### 151 Computer records

- (1) This section applies to any provision of this Part or Part 8 (penalties) that—
  - (a) requires a person to produce a document or cause a document to be produced,
  - (b) requires a person to permit a designated officer—
    - (i) to inspect a document, or
    - (ii) to make or take copies of or extracts from or remove a document,
  - (c) makes provision about penalties or offences in connection with the production or inspection of documents, including with the failure to produce or permit the inspection of documents, or
  - (d) makes any other provision in connection with a requirement mentioned in paragraph (a) or (b).
- (2) A provision to which this section applies has effect as if—
  - (a) any reference in the provision to a document were a reference to anything in which information of any description is recorded, and

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- (b) any reference in the provision to a copy of a document were a reference to anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.
- (3) A designated officer may, at any reasonable time, obtain access to, inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with a relevant document.
- (4) In subsection (3) “relevant document” means a document that a person has been, or may be, required by or under a provision of this Part—
  - (a) to produce or cause to be produced, or
  - (b) to permit a designated officer—
    - (i) to inspect,
    - (ii) to make or take copies of or extracts from, or
    - (iii) to remove.
- (5) A designated officer may require—
  - (a) the person by whom or on whose behalf the computer is or has been so used, or
  - (b) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,
 to provide the designated officer with such reasonable assistance as may be required for the purposes of subsection (3).
- (6) A person who—
  - (a) obstructs the exercise of a power conferred by this section, or
  - (b) fails to comply within a reasonable time with a requirement under subsection (5),
 is liable to a penalty of £300.
- (7) Sections 201 to 203 (assessment and enforcement of penalties) apply in relation to a penalty under this section as they apply in relation to a penalty under section 195.

VALID FROM 01/04/2015

## CHAPTER 6

### REVIEWS AND APPEALS AGAINST INFORMATION NOTICES

#### **152 Review or appeal against information notices**

- (1) This section applies where a person seeks, under Part 11, to have a decision in relation to the giving of an information notice or in relation to any requirement in such a notice reviewed or appealed.
- (2) The following are not appealable decisions for the purposes of section 233(1)(h)—
  - (a) a decision to give a taxpayer notice or third party notice if the tribunal approved the giving of the notice under section 125,

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- (b) a decision to include a requirement in such a notice if it is a requirement to provide any information, or produce any document, that forms part of a taxpayer's statutory records.
- (3) A person may give notice of review or notice of appeal in relation to a decision to give a third party notice, or in relation to a requirement in such a notice, only on the ground that it would be unduly onerous to comply with the notice or the requirement in it.
- (4) But in a case to which section 128(4) or 129(5) applies, a notice of review or notice of appeal may be given on any grounds.
- (5) A person may give notice of review or notice of appeal in relation to a decision to give a notice under section 127 or 130, or in relation to a requirement in such a notice, only on the ground that it would be unduly onerous to comply with the notice or the requirement in it.
- (6) But in a case to which subsection (7) applies—
  - (a) a notice of review or notice of appeal may be given on any grounds,
  - (b) a notice of review or notice of appeal may not be given in relation to a decision to include a requirement in a notice under section 127—
    - (i) if it is a requirement to provide any information, or produce any document, that forms part of the statutory records of the parent undertaking or any of its subsidiary undertakings, or
    - (ii) if it is a requirement to provide any information, or produce any document, that forms part of the partner's statutory records.
- (7) This subsection applies where notice is given under section 127—
  - (a) to a parent undertaking for the purposes of checking the tax position of one or more subsidiary undertakings whose identities are not known to the officer giving the notice, or
  - (b) to one or more partners for the purpose of checking the tax position of one or more of the other partners whose identities are not known to the officer giving the notice.
- (8) In this section “parent undertaking”, “subsidiary undertaking” and “undertaking” have the same meanings as in section 128.

### **153 Power to modify section 152**

The Scottish Ministers may by order modify section 152(2) to (8) to provide for certain decisions in relation to the giving of information notices or in relation to any requirement in such notices—

- (a) to be appealable for the purposes of section 233(1)(h),
- (b) to be appealable for the purposes of that paragraph on certain grounds or in certain circumstances only,
- (c) to not be appealable.

### **154 Disposal of reviews and appeals in relation to information notices**

- (1) This section applies where a person gives notice of review or notice of appeal in relation to a decision relating to an information notice or a requirement in it.

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- (2) Where the conclusions of the review under section 238 uphold or vary the information notice or requirement, the person to whom the information notice was given must comply with the notice or requirement within such period as is reasonably specified by a designated officer.
- (3) But subsection (2) does not apply where section 240(2) applies (conclusions of review not to have effect of settlement agreement if mediation entered into or notice of appeal given).
- (4) Where the tribunal, under section 244 (disposal of appeals), upholds or varies the information notice or requirement, the person to whom the information notice was given must comply with the notice or requirement—
  - (a) within the period specified by the tribunal, or
  - (b) if the tribunal does not specify a period, within such period as is reasonably specified by a designated officer following the tribunal's decision.
- (5) A decision of the tribunal on an appeal to which this section applies is final.

VALID FROM 01/04/2015

## CHAPTER 7

### OFFENCES RELATING TO INFORMATION NOTICES

#### 155 Offence of concealing etc. documents following information notice

- (1) A person commits an offence if—
  - (a) the person is required to produce a document by an information notice the giving of which was approved by the tribunal, and
  - (b) the person conceals, destroys or otherwise disposes of (or arranges for the concealment, destruction or disposal of) that document.
- (2) Subsection (1) does not apply if the person acts after the document has been produced to a designated officer in accordance with the information notice, unless a designated officer has notified the person that the document must continue to be available for inspection (and has not withdrawn the notification).
- (3) Subsection (1) does not apply, in a case to which section 133 applies, if the person acts after the expiry of the period of 6 months beginning with the day on which a copy of the document was so produced unless, before the expiry of that period, a designated officer made a request for the original document under section 133(2)(b).
- (4) A person who commits an offence under subsection (1) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

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## **156 Offence of concealing etc. documents following information notification**

- (1) A person commits an offence if the person conceals, destroys or otherwise disposes of (or arranges for the concealment, destruction or disposal of) a document after the person has been notified by a designated officer that—
  - (a) the document is to be, or is likely to be, the subject of an information notice addressed to that person, and
  - (b) a designated officer either intends, under section 125, or is required, under section 127 or 130, to seek the approval of the tribunal to the giving of the notice in respect of the document.
- (2) A person does not commit an offence under this section if the person acts after—
  - (a) at least 6 months has expired since the person was (or was last) so informed, or
  - (b) an information notice has been given to the person requiring the document to be produced.
- (3) A person who commits an offence under subsection (1) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

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