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An Act of the Scottish Parliament to establish Revenue Scotland; to establish Scottish tax tribunals; to put in place a general anti-avoidance rule; to make provision about the collection and management of devolved taxes; and for connected purposes.

### PART 1

#### OVERVIEW OF ACT

1 **Overview of Act**

This Act is arranged as follows—

- Part 2 establishes Revenue Scotland and provides for its general functions and responsibilities,

- Part 3 makes provision about the use and protection of taxpayer and other information,

- Part 4 establishes the Scottish Tax Tribunals,

- Part 5 puts in place a general anti-avoidance rule,

- Part 6 contains provisions on the self-assessment system, the checking of tax returns by Revenue Scotland and claims for repayment of tax,

- Part 7 makes provision for Revenue Scotland’s investigatory powers,

- Part 8 sets out the matters in relation to which penalties may be imposed,

- Part 9 makes provision about the interest payable on unpaid tax, on penalties and on tax repayments,

- Part 10 contains provisions on debt enforcement by Revenue Scotland,

- Part 11 sets out the system for the review, mediation and appeal of Revenue Scotland decisions, and

- Part 12 contains general and final provisions.
PART 2
REVENUE SCOTLAND

Establishment of Revenue Scotland

2 Revenue Scotland

(1) There is established a body corporate to be known as Revenue Scotland.

(2) In Gaelic, Revenue Scotland is to be known as Teachd-a-steach Alba.

(3) Schedule 1 makes further provision about the membership, procedures and staffing of Revenue Scotland.

Functions of Revenue Scotland

3 Functions of Revenue Scotland

(1) Revenue Scotland’s general function is the collection and management of the devolved taxes.

(2) Revenue Scotland has the following particular functions—

   (a) providing information, advice and assistance to the Scottish Ministers relating to tax,

   (b) providing information and assistance to other persons relating to the devolved taxes,

   (c) efficiently resolving disputes relating to the devolved taxes,

   (d) protecting the revenue against tax fraud and tax avoidance.

(3) “Devolved taxes” has the meaning given by section 80A(4) of the Scotland Act 1998 (c.46).

Delegation of Revenue Scotland functions

4 Delegation of functions by Revenue Scotland

(1) Revenue Scotland may delegate—

   (a) any of its functions relating to land and buildings transaction tax to the Keeper of the Registers of Scotland (“the Keeper”),

   (b) any of its functions relating to Scottish landfill tax to the Scottish Environment Protection Agency (“SEPA”).

(2) Revenue Scotland may give directions to the Keeper or to SEPA as to how a delegated function is to be exercised and the Keeper and SEPA must comply with any such direction.

(3) Delegations or directions under this section may be varied or revoked at any time.

(4) Revenue Scotland must publish information about—

   (a) delegations under this section, and

   (b) directions given under this section.

(5) Revenue Scotland must lay before the Scottish Parliament a copy of information published under subsection (4).
(6) Subsections (4) and (5) do not apply to the extent that Revenue Scotland considers that publication of the information would prejudice the effective exercise of its functions.

(7) Delegation of a function under this section does not affect—
   (a) Revenue Scotland’s ability to exercise that function,
   (b) Revenue Scotland’s responsibility for that function.

(8) Revenue Scotland may reimburse the Keeper or SEPA for any expenditure incurred which is attributable to the exercise by the Keeper or SEPA of functions delegated under this section.

Money

5 Payments into the Scottish Consolidated Fund

(1) Revenue Scotland must pay money received in the exercise of its functions into the Scottish Consolidated Fund.

(2) But Revenue Scotland may do so after deduction of payments in connection with repayments, including payments of interest on—
   (a) repayments, or
   (b) payments treated as repayments.

6 Rewards

Revenue Scotland may pay a reward to a person in return for a service which relates to a function of Revenue Scotland.

Independence of Revenue Scotland

7 Independence of Revenue Scotland

(1) The Scottish Ministers must not—
   (a) give directions relating to, or
   (b) otherwise seek to control,
   the exercise by Revenue Scotland of its functions.

(2) This section is subject to any contrary provision made by or under this Act or any other enactment.

Ministerial guidance

8 Ministerial guidance

(1) The Scottish Ministers may give guidance to Revenue Scotland about the exercise of its functions.

(2) Revenue Scotland must have regard to any guidance given by Ministers.

(3) Ministers must publish any guidance given to Revenue Scotland under this section as they consider appropriate.

(4) Subsection (1) does not apply to the extent that Ministers consider that publication of the guidance would prejudice the effective exercise by Revenue Scotland of its functions.
Provision of information, advice or assistance to Ministers

9 Provision of information, advice or assistance to the Scottish Ministers

(1) Revenue Scotland must provide the Scottish Ministers with such information, advice or assistance relating to its functions as Ministers may from time to time require.

(2) The information, advice or assistance must be provided in such form as Ministers determine.

Charter of standards and values

10 Charter of standards and values

(1) Revenue Scotland must prepare a Charter.

(2) The Charter must include—

(a) standards of behaviour and values which Revenue Scotland will aspire to when dealing with people in the exercise of its functions, and
(b) standards of behaviour and values which Revenue Scotland expects people to aspire to when dealing with Revenue Scotland.

(3) Revenue Scotland must—

(a) publish the Charter as it considers appropriate,
(b) review the Charter from time to time, and
(c) revise the Charter when it considers it appropriate to do so.

(4) Revenue Scotland must lay the first Charter and any revised Charter before the Scottish Parliament.

Corporate plan

11 Corporate plan

(1) Revenue Scotland must, before the beginning of each planning period, prepare a corporate plan and submit it for approval by the Scottish Ministers.

(2) The corporate plan must set out—

(a) Revenue Scotland’s main objectives for the planning period,
(b) the outcomes by reference to which the achievement of the main objectives may be measured, and
(c) the activities which Revenue Scotland expects to undertake during the planning period.

(3) Ministers may approve the corporate plan subject to such modifications as may be agreed between them and Revenue Scotland.

(4) If Ministers approve a corporate plan, Revenue Scotland must—

(a) publish the plan as Revenue Scotland considers appropriate, and
(b) lay a copy of the plan before the Scottish Parliament.

(5) During the planning period to which a corporate plan relates, Revenue Scotland may review the plan and submit a revised corporate plan to Ministers for approval.
(6) Subsections (2) to (4) apply to a revised corporate plan as they apply to a corporate plan.

(7) “Planning period” means—
   (a) a first period specified by the Scottish Ministers by order, and
   (b) each subsequent period of 3 years.

(8) The Scottish Ministers may by order substitute for the period for the time being specified in subsection (7)(b) such other period as they consider appropriate.

Annual report

12 Annual report

(1) As soon as possible after the end of each financial year, Revenue Scotland must—
   (a) prepare and publish a report on the exercise of its functions during that year,
   (b) send a copy of the report to the Scottish Ministers, and
   (c) lay a copy of the report before the Scottish Parliament.

(2) “Financial year” means—
   (a) the period beginning with the establishment of Revenue Scotland and ending on 31 March in the following year, and
   (b) each subsequent period of a year ending on 31 March.

(3) Revenue Scotland may publish such other reports and information on matters relevant to its functions as it considers appropriate.

PART 3

INFORMATION

Use of information by Revenue Scotland

13 Use of information by Revenue Scotland

(1) Revenue Scotland may use information held by it in connection with a function in connection with any other function.

(2) Subsection (1) is subject to any provision which prohibits or restricts the use of information and which is contained in—
   (a) this Act,
   (b) any other enactment,
   (c) an international or other agreement to which the United Kingdom, Her Majesty’s Government or the Scottish Ministers is or are party.

(3) In this section and section 14 “Revenue Scotland” includes any or all of the following persons—
   (a) Revenue Scotland,
   (b) a member of Revenue Scotland,
   (c) a committee of Revenue Scotland (and a member of any committee),
   (d) the chief executive or any other member of staff of Revenue Scotland,
(e) a person to whom Revenue Scotland has delegated any of its functions.

(4) In this section and section 14 references to a “function” are references to—

(a) a function of any of the persons mentioned in subsection (3)(a) to (d),

(b) in the case of a person mentioned in subsection (3)(e)—

(i) a function which Revenue Scotland has delegated to the person, and

(ii) a function under any other enactment.

Protected taxpayer information

(1) “Protected taxpayer information” means information relating to a person—

(a) which is held by Revenue Scotland in connection with a function of Revenue Scotland, and

(b) by which a person may be identified.

(2) Subsection (1)(a) does not apply to information about internal administrative arrangements of Revenue Scotland (whether the information relates to members or staff of Revenue Scotland or to others).

(3) For the purposes of subsection (1)(b), a person may be identified by information if—

(a) the person’s identity is specified in the information, or

(b) the person’s identity can be deduced from the information (whether from that information on its own or from that information taken together with other information disclosed by or on behalf of Revenue Scotland).

Confidentiality of protected taxpayer information

(1) A Revenue Scotland official must not disclose protected taxpayer information unless the disclosure is permitted by subsection (3).

(2) In this section and section 16 “Revenue Scotland official” means any individual who is or was—

(a) a member of Revenue Scotland,

(b) a member of a committee of Revenue Scotland,

(c) the chief executive or any other member of staff of Revenue Scotland,

(d) exercising functions on behalf of Revenue Scotland.

(3) A disclosure is permitted by this subsection if—

(a) it is made with the consent of each person to whom the information relates,

(b) it is made in accordance with any provision made by or under this Act or any other enactment requiring or permitting the disclosure,

(c) it is made for the purposes of civil proceedings,

(d) it is made for the purposes of a criminal investigation or criminal proceedings or for the purposes of the prevention or detection of crime,

(e) it is made in pursuance of an order of a court or tribunal,
(f) it is made to a person to whom Revenue Scotland has delegated any of its functions for the purposes of those functions,

(g) it is made to a person exercising functions on behalf of Revenue Scotland (other than a person mentioned in paragraph (f)) for the purposes of those functions.

16 Protected taxpayer information: declaration of confidentiality

(1) Each Revenue Scotland official must make a declaration acknowledging the obligation of confidentiality under section 15.

(2) A declaration must be made—

(a) as soon as reasonably practicable following the person’s appointment, and

(b) in such form and manner as Revenue Scotland may determine.

(3) For the purposes of subsection (2)(a)—

(a) the renewal of a fixed term appointment is not to be treated as an appointment,

(b) a person mentioned in section 15(2)(d) is to be treated as appointed when the person begins to exercise functions on behalf of Revenue Scotland.

17 Wrongful disclosure of protected taxpayer information

(1) A person commits an offence if the person discloses protected taxpayer information contrary to section 15(1).

(2) It is a defence for a person charged with an offence under subsection (1) to prove that the person reasonably believed—

(a) that the disclosure was lawful under section 15, or

(b) that the information had already lawfully been made available to the public.

(3) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

(4) This section does not affect the pursuit of any remedy or the taking of any action in relation to a contravention of section 15(1).
(a) the leadership of those tribunals,
(b) the appointment, conduct, fitness and removal of members of those tribunals,
(c) the taking of decisions by and composition of those tribunals,
(d) appeals to and from, and other proceedings before, those tribunals, and
(e) the procedure before and administration of those tribunals (including the making of tribunal rules).

CHAPTER 2
ESTABLISHMENT AND LEADERSHIP

Establishment

The First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland

19 (1) There is established a tribunal to be known as the First-tier Tax Tribunal for Scotland.
(2) The First-tier Tax Tribunal for Scotland is to exercise the functions conferred on it by or under this Act.
(3) There is also established a tribunal to be known as the Upper Tax Tribunal for Scotland.
(4) The Upper Tax Tribunal for Scotland is to exercise the functions conferred on it by or under this Act.
(5) In this Act—
   (a) the First-tier Tax Tribunal for Scotland is referred to as the First-tier Tribunal,
   (b) the Upper Tax Tribunal for Scotland is referred to as the Upper Tribunal, and
   (c) collectively, they are referred to as the Tax Tribunals.

Leadership

President of the Tax Tribunals

20 (1) The Scottish Ministers must appoint a person as President of the Tax Tribunals.
(2) Before appointing such a person, the Scottish Ministers must consult the Lord President.
(3) The President of the Tax Tribunals is appointed on such terms and conditions as the Scottish Ministers may determine.

Functions of the President of the Tax Tribunals

21 (1) The President of the Tax Tribunals is the senior member of the Tax Tribunals.
(2) The President has the functions exercisable by him or her by or under this Act.

Business arrangements

22 (1) The President of the Tax Tribunals is responsible for making and maintaining appropriate arrangements for securing the efficient disposal of business in the Tax Tribunals.
(2) The President is responsible for ensuring that appropriate arrangements are made and maintained as to the welfare of the members of the tribunals.

23 Temporary President

(1) If there is a vacancy in the presidency of the Tax Tribunals, the Scottish Ministers may appoint a person as Temporary President during the vacancy.

(2) A person is eligible to be appointed as Temporary President only if the person is—
   (a) a legal member of the Tax Tribunals, or
   (b) eligible to be appointed as such a member.

(3) The functions of the President of the Tax Tribunals are exercisable by the Temporary President.

(4) Except where the context otherwise requires, a reference in or under this Part to the President includes the Temporary President.

(5) For the purposes of subsection (1) “vacancy” includes where the President of the Tax Tribunals has been suspended under paragraph 36(2) or 37(2) of schedule 2 (by virtue of paragraphs 29(2) and 41 of that schedule).

CHAPTER 3

MEMBERSHIP

Membership of Tax Tribunals

24 Members

(1) The First-tier Tribunal is to consist of its ordinary and legal members.

(2) The Upper Tribunal is to consist of its legal and judicial members.

(3) The President of the Tax Tribunals is, by virtue of holding that position, a member of both the First-tier Tribunal and the Upper Tribunal.

(4) Schedule 2 contains the following further provision about members of the Tax Tribunals—
   (a) Part 1 contains provisions about the eligibility for and appointment to—
      (i) the position of President of the Tax Tribunals,
      (ii) ordinary and legal membership of the First-tier Tribunal,
      (iii) legal membership of the Upper Tribunal,
   (b) Part 2 contains provision about the terms and conditions on which members of the tribunals hold office,
   (c) Part 3 contains provision about investigation of members’ conduct and imposition of disciplinary measures, and
   (d) Part 4 contains provision about the assessment of members’ fitness and removal from position.
Revenue Scotland and Tax Powers Bill
Part 4—The Scottish Tax Tribunals
Chapter 4—Decision-making and composition

Judicial members

25 Judicial members

(1) A judge of the Court of Session (including a temporary judge but not the Lord President) is, by reason of holding judicial office, eligible to act as a member of the Upper Tribunal.

(2) Such a judge may act as a member of the Upper Tribunal only if authorised by the President of the Tax Tribunals to do so.

(3) An authorisation for the purpose of subsection (2) requires—

(a) the Lord President’s approval (including as to the judge to be authorised), and

(b) the agreement of the judge concerned.

(4) An authorisation for the purpose of subsection (2) remains in effect until such time as the President of the Tax Tribunals may determine (with the same approval and agreement requirements as are mentioned in subsection (3) applying accordingly).

Status and capacity

26 Status and capacity of members

(1) A member of either of the Tax Tribunals, whether that membership is as an ordinary or as a legal member, has judicial status and capacity for the purpose mentioned in subsection (3).

(2) For the avoidance of doubt, a judicial member of the Upper Tribunal has judicial status and capacity for the purpose mentioned in subsection (3) by reason of holding judicial office.

(3) The purpose referred to in subsections (1) and (2) is the purpose of holding the position and acting as member of the First-tier Tribunal or (as the case may be) the Upper Tribunal.

Chapter 4

Decision-making and composition

27 Decisions in the First-tier Tribunal

(1) The First-tier Tribunal’s function of deciding any matter in a case before the tribunal is to be exercised by—

(a) two or more members of the tribunal, presided over by a legal member, or

(b) a legal member sitting alone.

(2) The member or members are to be chosen by the President of the Tax Tribunals (who may choose himself or herself).

(3) The President’s discretion in choosing the member or members is subject to—

(a) any relevant provisions in regulations made under section 30(1),

(b) any relevant directions given by virtue of section 32(5)(b).
28 Decisions in the Upper Tribunal

(1) The Upper Tribunal’s function of deciding any matter in a case before the tribunal is to be exercised by a single member chosen by the President of the Tax Tribunals (who may choose himself or herself).

(2) The President’s discretion in choosing the member is subject to—
   (a) any relevant provisions in regulations made under section 30(1),
   (b) any relevant directions given by virtue of section 34(5)(b).

29 Declining jurisdiction

(1) A member of either of the Tax Tribunals is not incapable of acting as such in any proceedings by reason of being, as one of a class of taxpayers or persons of any other description, liable in common with others to pay, or contribute to, or benefit from, any tax which may be increased, reduced or in any way affected by those proceedings.

(2) In this section “tax” includes—
   (a) any fund formed from the proceeds of any such tax, and
   (b) any fund applicable for purposes the same as, or similar to, those for which the proceeds of any such tax are or might be applied.

30 Composition of the Tribunals

(1) The Scottish Ministers may by regulations make provision for determining the composition of—
   (a) the First-tier Tribunal,
   (b) the Upper Tribunal,
when convened to decide any matter in a case before the tribunal.

(2) Regulations under subsection (1) may treat separately the tribunal’s decision-making functions—
   (a) at first instance,
   (b) on appeal.

CHAPTER 5

APPEAL OF DECISIONS

31 Appeal from the First-tier Tribunal

(1) A decision of the First-tier Tribunal in any matter in a case before the tribunal may be appealed to the Upper Tribunal.

(2) An appeal under this section is to be made—
   (a) by a party in the case,
   (b) on a point of law only.

(3) An appeal under this section requires the permission of—
(a) the First-tier Tribunal, or
(b) if the First-tier Tribunal refuses its permission, the Upper Tribunal.

(4) Such permission may be given in relation to an appeal under this section only if the First-tier Tribunal or (as the case may be) the Upper Tribunal is satisfied that there are arguable grounds for the appeal.

(5) This section is subject to section 36(2) and to sections 123(4), 138(6) and 145(5).

32 Disposal of an appeal under section 31

(1) In an appeal under section 31, the Upper Tribunal may uphold or quash the decision on the point of law in question.

(2) If the Upper Tribunal quashes the decision, it may—
   (a) re-make the decision,
   (b) remit the case to the First-tier Tribunal, or
   (c) make such other order as the Upper Tribunal considers appropriate.

(3) In re-making the decision, the Upper Tribunal may—
   (a) do anything that the First-tier Tribunal could do if re-making the decision,
   (b) reach such findings in fact as the Upper Tribunal considers appropriate.

(4) In remitting the case, the Upper Tribunal may give directions for the First-tier Tribunal’s reconsideration of the case.

(5) Such directions may relate to—
   (a) issues of law or fact (including the Upper Tribunal’s opinion on any relevant point),
   (b) procedural issues (including as to the members to be chosen to reconsider the case).

33 Appeal from the Upper Tribunal

(1) A decision of the Upper Tribunal in any matter in a case before the tribunal may be appealed to the Court of Session (sitting as the Court of Exchequer).

(2) An appeal under this section is to be made—
   (a) by a party in the case,
   (b) on a point of law only.

(3) An appeal under this section requires the permission of—
   (a) the Upper Tribunal, or
   (b) if the Upper Tribunal refuses its permission, the Court of Session.

(4) Such permission may be given in relation to an appeal under this section only if the Upper Tribunal or (as the case may be) the Court of Session is satisfied that—
   (a) there are arguable grounds for the appeal, and
(b) in relation to the matter in question—
   (i) the appeal would raise an important issue of principle or practice, or
   (ii) there is another compelling reason for allowing the appeal to proceed.

(5) This section is subject to section 36(2) and to sections 123(4), 138(6) and 145(5).

34 Disposal of an appeal under section 33

(1) In an appeal under section 33, the Court of Session may uphold or quash the decision on
   the point of law in question.

(2) If the Court quashes the decision, it may—
   (a) re-make the decision,
   (b) remit the case to the Upper Tribunal, or
   (c) make such other order as the Court considers appropriate.

(3) In re-making the decision, the Court may—
   (a) do anything that the Upper Tribunal could do if re-making the decision,
   (b) reach such findings in fact as the Court considers appropriate.

(4) In remitting the case, the Court may give directions for the Upper Tribunal’s
   reconsideration of the case.

(5) Such directions may relate to—
   (a) issues of law or fact (including the Court’s opinion on any relevant point),
   (b) procedural issues (including as to the member to be chosen to reconsider the
       case).

35 Procedure on second appeal

(1) Section 34 is subject to subsections (2) and (3) as regards a second appeal.

(2) For the purpose of subsection (1), subsections (2)(b) and (3)(a) of section 34 have effect
   in relation to a second appeal as if the references in them to the Upper Tribunal include,
   as alternative references, references to the First-tier Tribunal.

(3) Where, in exercising the choice arising by virtue of subsection (2) (and instead of re-
    making the decision in question), the Court of Session remits the case to the Upper
    Tribunal rather than the First-tier Tribunal—
    (a) the Upper Tribunal, instead of reconsidering the case itself, may remit the case to
        the First-tier Tribunal,
    (b) if the Upper Tribunal does so, it must send to the First-tier Tribunal any directions
        accompanying the Court’s remittal of the case to the Upper Tribunal.

(4) In this section “second appeal” means appeal under section 33 against a decision in an
   appeal under section 31.
Further provision on permission to appeal

36 Process for permission

(1) The Scottish Ministers may by regulations specify a time limit within which the permission required by section 31(3) or 33(3) must be sought.

(2) A refusal to give the permission required by section 31(3) or 33(3) is not appealable under section 31 or 33.

CHAPTER 6

SPECIAL JURISDICTION

37 Judicial review cases

(1) Subsection (2) applies where a petition is made to the Court of Session for judicial review.

(2) The Court may by order remit the petition to the Upper Tribunal if—

(a) both of conditions A and B are met, and

(b) having regard to the functions and expertise of the Tribunal in relation to the subject-matter of the petition, the Court considers that it is appropriate to do so.

(3) Condition A is that the petition does not seek anything other than the exercise of the Court’s judicial review function.

(4) Condition B is that the petition falls within a category specified by an Act of Sederunt made by the Court for the purpose of this subsection.

38 Decision on remittal

(1) The Upper Tribunal is to determine the issues raised in each petition remitted to it under section 37.

(2) In relation to a petition so remitted, the Upper Tribunal—

(a) has the same powers as the Court of Session has on a petition to it for judicial review,

(b) is to apply the same principles as the Court applies in the exercise of its judicial review function.

(3) An order made by the Upper Tribunal on a petition so remitted has the same effect as an order made by the Court of Session on a petition for judicial review (and the order is therefore enforceable accordingly).

(4) Subsection (3) does not limit the operation of section 33 in connection with a determination under subsection (1).

39 Additional matters

(1) Where a petition is remitted to the Upper Tribunal under section 37, any order made or step taken by the Court of Session in relation to the petition is to be treated as if made or taken by the tribunal (except the order by which the petition is so remitted (or an associated step)).
(2) Tribunal rules may make further provision with respect to the exercise by the Upper Tribunal of its functions under this Chapter.

40 Meaning of judicial review

In this Chapter—

5 (a) a reference to a petition to the Court of Session for judicial review is to an application to the supervisory jurisdiction of the Court,

(b) a reference to the exercise of the Court of Session’s judicial review function is to the exercise of the Court’s supervisory jurisdiction (and includes the making of any order in connection with or in consequence of the exercise of that function).

CHAPTER 7

POWERS AND ENFORCEMENT

41 Venue for hearings

The Tax Tribunals are to sit at such times and in such places as the President of the Tax Tribunals may determine.

42 Conduct of cases

(1) In relation to the things mentioned in subsection (3), each of the First-tier Tribunal and the Upper Tribunal has such powers, rights, privileges and other authority with respect to any case before it as are provided for in tribunal rules.

(2) Rules making provision for the purpose of subsection (1) may (in particular) do so in relation to any kind of authority by reference to any authority of a relevant description exercisable by the sheriff or the Court of Session.

(3) The things are—

(a) the attendance or examination of witnesses,

(b) the recovery, production or inspection of relevant materials,

(c) the commissioning of reports of any relevant type,

(d) other procedural, evidential or similar measures.

(4) In subsection (3)(b) “materials” means documents and other items.

43 Enforcement of decisions

(1) A decision made by the First-tier Tribunal or the Upper Tribunal in any matter in a case before it is enforceable by the means provided for in tribunal rules.

(2) Subsection (1) applies to a decision—

(a) on the merits of such a case,

(b) as to—

(i) payment of a sum of money, or

(ii) expenses by virtue of section 44, or
(c) otherwise affecting the rights, obligations or interests of a party in such a case.

(3) Rules making provision for the purpose of subsection (1) may (in particular) do so in relation to a relevant order by reference to the means of enforcing an order of the sheriff or the Court of Session.

(4) In subsection (3), “relevant order” means an order of either of the Tax Tribunals giving effect to a decision to which subsection (1) applies.

44 **Award of expenses**

(1) In connection with proceedings in a case before the First-tier Tribunal or the Upper Tribunal, the tribunal may award expenses so far as allowed in accordance with tribunal rules.

(2) Where such expenses are awarded, the awarding tribunal may specify by and to whom they are to be paid (and to what extent).

(3) Tribunal rules may make provision—

   (a) for scales or rates of such expenses,

   (b) for—

      (i) such expenses to be set-off against any relevant sums,

      (ii) interest at the specified rate to be chargeable on such expenses where unpaid,

   (c) for—

      (i) disallowing any wasted expenses,

      (ii) requiring a person who has given rise to any wasted expenses to meet them,

   (d) stating the general or particular factors to be taken into account when exercising discretion as to such expenses,

   (e) about such expenses in other respects.

(4) Rules making provision as described in subsection (3) may also prescribe meanings for “relevant sums”, “specified rate” and “wasted expenses” as used in that subsection.

45 **Additional powers**

(1) The Scottish Ministers may by regulations confer on the First-tier Tribunal and the Upper Tribunal such additional powers as are necessary or expedient for the proper exercise of their functions.

(2) Regulations under subsection (1) may include provision—

   (a) relying on the effect of an Act of Sederunt made by the Court of Session,

   (b) causing Part 1 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3) to apply to the making of a relevant Act of Sederunt as it does to the making of tribunal rules.
CHAPTER 8
PRACTICE AND PROCEDURE

Tribunal rules: general

46  Tribunal rules

(1) There are to be rules regulating the practice and procedure to be followed in proceedings at—
   (a) the First-tier Tribunal,
   (b) the Upper Tribunal.

(2) Rules of the kind mentioned in subsection (1) are to be known as Scottish Tax Tribunal Rules (and in this Act they are referred to as tribunal rules).

(3) Tribunal rules are to be made by the Court of Session by Act of Sederunt.

(4) Part 1 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (asp 3) includes further provision about the making of tribunal rules.

47  Exercise of functions

(1) Tribunal rules may, in relation to any functions exercisable by the members of the Tax Tribunals—
   (a) state—
      (i) how a function is to be exercised,
      (ii) who is to exercise a function,
   (b) cause something to require further authorisation,
   (c) permit something to be done on a person’s behalf,
   (d) allow a specified person to make a decision about any of those matters.

(2) Tribunal rules may make provision relying on the effect of directions issued, or to be issued, under section 52.

48  Extent of rule-making

(1) Tribunal rules may make—
   (a) provision applying—
      (i) equally to both of the First-tier Tribunal and the Upper Tribunal, or
      (ii) specifically to one of them,
   (b) particular provision for each of them about the same matter.

(2) Tribunal rules may make particular provision for different types of proceedings.

(3) Tribunal rules may make different provision for different purposes in any other respects.

(4) The generality of section 46 is not limited by—
   (a) sections 49 to 51, or
   (b) any other provisions of this Act about the content of tribunal rules.
Particular matters

49 Proceedings and steps

(1) Tribunal rules may make provision about proceedings in a case before the Tax Tribunals.

(2) Rules making provision as described in subsection (1) may (in particular)—

(a) provide for the form and manner in which a case is to be brought,

(b) allow for the withdrawal of a case (with or without restrictions on subsequent proceedings as respects the same matter),

(c) set time limits for—

(i) making applications,

(ii) taking particular steps,

(d) specify circumstances in which the tribunals may take particular steps on their own initiative.

50 Hearings in cases

(1) Tribunal rules may make provision about hearings in a case before the Tax Tribunals.

(2) Rules making provision as described in subsection (1) may (in particular)—

(a) provide for certain matters to be dealt with—

(i) without a hearing,

(ii) at a private hearing,

(iii) at a public hearing,

(b) require notice to be given of a hearing (and for the timing of such notice),

(c) specify persons who may—

(i) appear on behalf of a party in a case,

(ii) attend a hearing in order to provide support to a party or witness in a case,

(d) specify circumstances in which particular persons may appear or be represented at a hearing,

(e) specify circumstances in which a hearing may go ahead—

(i) at the request of a party in a case despite no notice of it having been given to another party in the case,

(ii) in the absence of a particular member chosen to exercise the function of deciding any matter in a case,

(f) allow for an adjournment of a hearing for the purpose of giving the parties in a case an opportunity to use a process of negotiation, mediation, arbitration or adjudication for resolving a dispute to which the case relates,

(g) allow for the imposition of reporting restrictions for particular reasons arising in a case.
Evidence and decisions

1. Tribunal rules may, in connection with proceedings before the Tax Tribunals—
   (a) make provision about the giving of evidence and the administering of oaths,
   (b) modify the application of any other rules relating to either of those matters so far as they would otherwise apply to such proceedings.

2. Tribunal rules may, in connection with proceedings before the Tax Tribunals, provide for the payment of expenses and allowances to a person who—
   (a) gives evidence,
   (b) produces a document, or
   (c) attends such proceedings (or is required to do so).

3. Tribunal rules may, in connection with proceedings before the Tax Tribunals, make provision by way of presumption (for example, as to the serving of something on somebody).

4. Tribunal rules may make provision about decisions of the Tax Tribunals (in particular, as to the recording and publication of such decisions).

Issuing directions

52. Practice directions

1. The President of the Tax Tribunals may issue directions as to the practice and procedure to be followed in proceedings in—
   (a) the First-tier Tribunal,
   (b) the Upper Tribunal.

2. Directions under subsection (1) may include instruction or guidance on the manner of making of any decision in a case.

3. Directions under subsection (1) may—
   (a) vary or revoke earlier such directions,
   (b) make different provision for different purposes (in the same respects as tribunal rules).

4. Directions under subsection (1) must be published in such manner as the President of the Tax Tribunals considers appropriate.

CHAPTER 9
ADMINISTRATION

Administrative support

1. The Scottish Ministers must ensure that the Tax Tribunals are provided with such property, services and personnel as the Scottish Ministers consider to be reasonably required for the proper operation of the tribunals.

2. The Scottish Ministers must have regard to any representations made to them by the President of the Tax Tribunals in relation to the fulfilment of the duty under subsection (1).
(3) In fulfilling the duty under subsection (1), the Scottish Ministers may—
   (a) fund or supply property, services and personnel for use by the tribunals,
   (b) appoint persons as members of staff of the tribunals.

(4) The Scottish Ministers may make arrangements as to—
   (a) the payment of remuneration or expenses to or in respect of persons so appointed,
   (b) the payment of pensions, allowances and gratuities to or in respect of persons so appointed,
   (c) contributions or other payments towards provision of such pensions, allowances and gratuities.

(5) The references in subsection (4) to pensions, allowances and gratuities include pensions, allowances and gratuities to be paid by way of compensation for loss of office.

54 Guidance
The President of the Tax Tribunals may issue such guidance about the administration of the Tax Tribunals as appears to the President to be necessary or expedient for the purpose of securing that the functions of the tribunals are exercised efficiently and effectively.

55 Annual reporting
(1) The President of the Tax Tribunals is to prepare an annual report about the operation and business of the Tax Tribunals.

(2) An annual report is to be given to the Scottish Ministers at the end of each financial year.

(3) An annual report—
   (a) must explain how the Tax Tribunals have exercised their functions during the financial year,
   (b) may contain such other information as—
       (i) the President of the Tax Tribunals considers appropriate, or
       (ii) the Scottish Ministers require to be covered.

(4) The Scottish Ministers must—
   (a) publish each annual report in a manner suitable for bringing it to the attention of persons having an interest in the operation and business of the Tax Tribunals,
   (b) before so publishing it, lay a copy of the report before the Scottish Parliament.

CHAPTER 10
INTERPRETATION

56 Interpretation
In this Part—
a reference to—

(a) a legal member of the Tax Tribunals is to a person who is appointed under paragraph 3(1) or 5(1) of schedule 2,

(b) a judicial member of the Upper Tribunal is to a person who is authorised for the purpose of section 25(2),

(c) an ordinary member of the First-tier Tribunal is to a person who is appointed under paragraph 2(1) of schedule 2,

the “Lord President” means the Lord President of the Court of Session.

PART 5

THE GENERAL ANTI-AVOIDANCE RULE

Introductory

57 The general anti-avoidance rule: introductory

(1) This Part has effect for the purpose of counteracting tax advantages arising from tax avoidance arrangements that are artificial.

(2) The rules in this Part are collectively to be known as “the general anti-avoidance rule”.

(3) In this Part “authorised officer” means a member of staff of Revenue Scotland or other person who is, or a category of members or other persons who are, authorised by Revenue Scotland for the purposes of the general anti-avoidance rule.

Artificial tax avoidance arrangements

58 Tax avoidance arrangements

(1) An arrangement (or series of arrangements) is a tax avoidance arrangement if, having regard to all the circumstances, it would be reasonable to conclude that obtaining a tax advantage is the main purpose, or one of the main purposes, of the arrangement.

(2) An “arrangement”—

(a) includes any transaction, scheme, action, operation, agreement, grant, understanding, promise, undertaking or event (whether legally enforceable or not), and

(b) may comprise one or more stages or parts.

59 Meaning of “artificial”

(1) A tax avoidance arrangement is artificial if condition A or B is met.

(2) Condition A is met if the entering into or carrying out of the arrangement is not a reasonable course of action in relation to the tax provisions in question having regard to all the circumstances, including—

(a) whether the substantive results of the arrangement are consistent with—

(i) any principles on which those provisions are based (whether express or implied), and

(ii) the policy objectives of those provisions,
(b) whether the arrangement is intended to exploit any shortcomings in those provisions.

(3) Condition B is met if the arrangement lacks commercial substance.

(4) Each of the following is an example of something which might indicate that a tax avoidance arrangement lacks commercial substance—

(a) whether the arrangement is carried out in a manner which would not normally be employed in reasonable business conduct,

(b) whether the legal characterisation of the steps in the arrangement is inconsistent with the legal substance of the arrangement as a whole,

(c) whether the arrangement includes elements which have the effect of offsetting or cancelling each other,

(d) whether transactions are circular in nature.

(5) The fact that—

(a) a tax avoidance arrangement accords with established practice, and

(b) Revenue Scotland had, at the time the arrangement was entered into, indicated its acceptance of that practice,

is an example of something that might indicate that the arrangement is not artificial.

(6) The examples given in subsections (4) and (5) are not exhaustive.

(7) Where a tax avoidance arrangement forms part of any other arrangements, regard must also be had to those other arrangements.

60 Meaning of “tax advantage”

(1) A “tax advantage” includes in particular—

(a) relief or increased relief from tax,

(b) repayment or increased repayment of tax,

(c) avoidance or reduction of a charge to tax or an assessment to tax,

(d) avoidance of a possible assessment to tax, and

(e) deferral of a payment of tax or advancement of a repayment of tax.

(2) In determining whether a tax avoidance arrangement has resulted in a tax advantage, regard may be had to the amount of tax that would have been payable in the absence of the arrangement.

Counteracting tax advantages

61 Counteracting tax advantages

(1) Revenue Scotland may make such adjustments as it considers just and reasonable to counteract the tax advantages that would (ignoring this Part) arise from a tax avoidance arrangement that is artificial.

(2) The adjustments may be made in respect of the tax in question or any other devolved tax.
(3) The adjustments that may be made include those that impose or increase a liability to tax in any case where (ignoring this Part) there would be no liability or a smaller liability, and tax is to be charged in accordance with any such adjustment.

(4) Any adjustments required to be made under this section (whether by Revenue Scotland or the person to whom the tax advantage would arise) may be made by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.

(5) No steps may be taken by Revenue Scotland unless the procedural requirements of sections 63 and 64 have been complied with.

62 Proceedings in connection with the general anti-avoidance rule

(1) In proceedings before a court or tribunal in connection with the general anti-avoidance rule, Revenue Scotland must show—

(a) that there is a tax avoidance arrangement that is artificial, and

(b) that the adjustments made to counteract the tax advantages arising from the tax avoidance arrangement are just and reasonable.

(2) In determining any issue in connection with the general anti-avoidance rule, a court or tribunal must take into account any guidance published by Revenue Scotland about the general anti-avoidance rule (at the time the tax avoidance arrangement was entered into).

(3) In determining any issue in connection with the general anti-avoidance rule, a court or tribunal may take into account—

(a) guidance, statements or other material (whether by Revenue Scotland or anyone else) that was in the public domain at the time the tax avoidance arrangement was entered into, and

(b) evidence of established practice at that time.

63 Notice to taxpayer of proposed counteraction of tax advantage

(1) If an authorised officer considers—

(a) that a tax advantage has arisen to a person (“the taxpayer”) from a tax avoidance arrangement that is artificial, and

(b) that the advantage should be counteracted under section 61,

the officer must give the taxpayer a written notice to that effect.

(2) The notice must—

(a) specify the tax avoidance arrangement and the tax advantage,

(b) explain why the officer considers that a tax advantage has arisen to the taxpayer from a tax avoidance arrangement that is artificial,

(c) set out the counteraction that the officer considers should be taken, and

(d) inform the taxpayer of the period under subsection (4) for making representations.

(3) The notice may set out the steps that the taxpayer may take to avoid the proposed counteraction.
PART 6
TAX RETURNS, ENQUIRIES AND ASSESSMENTS

CHAPTER 1
OVERVIEW

This Part makes provision about the assessment of devolved taxes including—
(a) taxpayers’ duties in relation to devolved taxes,
(b) the timing of tax returns,
(c) amendment and correction of tax returns by taxpayers and Revenue Scotland,
(d) enquiries by Revenue Scotland into taxpayers’ self-assessments,
5  (e) determination by Revenue Scotland of tax due where no return is made,
(f) assessment by Revenue Scotland of tax due outwith enquiries where tax losses or other situations are brought about by taxpayers carelessly or deliberately, and
(g) claims for relief from double assessment and for repayment of tax.

CHAPTER 2

TAXPAYER DUTIES

General taxpayer duties

68 Taxpayer duties

(1) Taxpayers must—
(a) notify Revenue Scotland of any taxable activities undertaken by them,
(b) inform Revenue Scotland if tax is due,
(c) make tax returns on time,
(d) take reasonable care to ensure that the information made in tax returns is accurate and complete,
(e) assess any tax due to Revenue Scotland,
(f) pay any tax due when required to do so, and
(g) keep adequate records relating to tax.

(2) Subsection (1) is without prejudice to any provision made by or under this Act or any enactment.

Duties to keep records

69 Duty to keep and preserve records

(1) A person who is required to make a tax return in relation to a devolved tax must—
(a) keep any records that may be needed to enable the person to make a correct and complete return, and
(b) preserve those records in accordance with this section.

(2) The records must be preserved until the end of the later of the relevant day and the date on which—
(a) an enquiry into the return is completed, or
(b) if there is no enquiry, a designated officer no longer has power to enquire into the return.

(3) “The relevant day” means—
(a) the fifth anniversary of the day on which the return is made or, if the return is amended, the day notice of the amendment is given under section 74, or
(b) any earlier day that may be specified in writing by Revenue Scotland.

(4) Different days may be specified for different purposes under subsection (3)(b).

(5) The records required to be kept and preserved under this section include—

(a) details of any relevant transaction (including relevant instruments relating to any transaction, in particular, any contract or conveyance, and any supporting maps, plans or similar documents),
(b) details of any relevant taxable activity,
(c) records of relevant payments, receipts and financial arrangements.

(6) The Scottish Ministers may by regulations—

(a) provide that the records required to be kept and preserved under this section do, or do not, include records specified in the regulations, and
(b) specify supporting documents that are required to be kept under this section.

(7) Regulations under this section may make provision by reference to things specified in a notice published by Revenue Scotland in accordance with the regulations (and not withdrawn by a subsequent notice).

(8) “Supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.

70 Preservation of information etc.

The duty under section 69 to preserve records may be satisfied—

(a) by preserving them in any form and by any means, or
(b) by preserving the information contained in them in any form and by any means, subject to any conditions or exceptions specified in writing by Revenue Scotland.

71 Penalty for failure to keep and preserve records

(1) A person who fails to comply with section 69 in relation to a devolved tax is liable to a penalty not exceeding £3,000, subject to the following exception.

(2) No penalty is incurred if Revenue Scotland is satisfied that any facts that it reasonably requires to be proved, and that would have been proved by the records, are proved by other documentary evidence provided to Revenue Scotland.

72 Further provision: land and buildings transaction tax

(1) This section applies in relation to land and buildings transaction tax.

(2) The Scottish Ministers may by regulations make provision for the keeping and preservation of records in relation to land transactions that are not notifiable.

(3) Regulations under this section may require the buyer in a land transaction which is not notifiable to—

(a) keep such records as may be needed to enable the buyer to demonstrate that the transaction is not notifiable, and
(b) preserve those records in accordance with the regulations.

(4) The regulations may apply sections 69 to 71 (with or without modifications) to a buyer mentioned in subsection (3) as those sections apply to a person mentioned in section 69(1).

(5) Expressions used in this section and in the 2013 Act have the meanings given in that Act.

CHAPTER 3
TAX RETURNS
Filing dates

73 Dates by which tax returns must be made
(1) The Scottish Ministers may make regulations about the dates by which tax returns must be made to Revenue Scotland.
(2) Regulations under subsection (1) may modify any enactment (including this Act).
(3) In this Act “the filing date” in relation to a tax return is the date by which that return requires to be made (whether by virtue of regulations under subsection (1) or by or under any other enactment).

Amendment and correction of returns

74 Amendment of return by taxpayer
(1) A person (the “taxpayer”) who has made a tax return may amend the return by notice to Revenue Scotland.
(2) Revenue Scotland may require that notices under this section—
   (a) are in a specified form,
   (b) contain specified information.
(3) An amendment under this section must be made by the end of the period of 12 months beginning with the relevant date (the “amendment period”).
(4) The relevant date is—
   (a) the filing date, or
   (b) such other date as the Scottish Ministers may by order prescribe.

75 Correction of return by Revenue Scotland
(1) Revenue Scotland may correct any obvious error or omission in a tax return.
(2) A correction under this section—
   (a) is made by notice in writing to the taxpayer, and
   (b) is regarded as effecting an amendment of the return.
(3) The reference in subsection (1) to an error includes, for instance, an arithmetical mistake or an error of principle.
(4) A correction under this section must be made by the end of the period of 3 years beginning with the day on which the return was made.

(5) A correction under this section has no effect if the taxpayer rejects it by—
   (a) during the amendment period, amending the return so as to reject the correction, or
   (b) after that period, giving a notice rejecting the correction.

(6) A notice under subsection (5)(b) must be given to Revenue Scotland before the end of the period of 3 months beginning with the date of issue of the notice of correction.

**CHAPTER 4**

**REVENUE SCOTLAND ENQUIRIES**

**Notice and scope of enquiry**

**76** Notice of enquiry

(1) A designated officer may enquire into a tax return if subsection (2) has been complied with.

(2) Notice of the intention to make an enquiry must be given—
   (a) to the person by whom or on whose behalf the return was made (“the relevant person”),
   (b) before the end of the period of 3 years after the relevant date.

(3) The relevant date is—
   (a) the filing date, if the return was made on or before that date, or
   (b) the date on which the return was made, if the return was made after the filing date.

(4) A return that has been the subject of one notice under this section may not be the subject of another, except a notice given in consequence of an amendment of the return under section 74.

(5) A notice under this section is referred to as a “notice of enquiry”.

**77** Scope of enquiry

(1) An enquiry extends to anything contained in the tax return, or required to be contained in the return, that relates—
   (a) to the question whether the relevant person is chargeable to the devolved tax to which the return relates, or
   (b) to the amount of tax chargeable on the relevant person.

(2) Subsection (3) applies if the notice of enquiry is given as a result of the amendment of a return under section 74 after an enquiry into the return has been completed.

(3) The enquiry is limited to—
   (a) matters to which the amendment relates, and
   (b) matters affected by the amendment.
Amendment of return during enquiry

78 Amendment of self-assessment during enquiry to prevent loss of tax

(1) If, at a time when an enquiry is in progress into a tax return, a designated officer forms the opinion—
   (a) that the amount stated in the self-assessment contained in the return as the amount of tax payable is insufficient, and
   (b) that unless the assessment is immediately amended there is likely to be a loss of tax to the Crown,

the officer may by notice in writing to the relevant person amend the assessment to make good the deficiency.

(2) If the enquiry is one that is limited by section 77(2) and (3) to matters arising from an amendment of the return, subsection (1) applies only so far as the deficiency is attributable to the amendment.

(3) For the purposes of this section and section 79 the period during which an enquiry is in progress is the whole of the period—
   (a) beginning with the day on which the notice of enquiry is given, and
   (b) ending with the day on which the enquiry is completed.

Referral during enquiry

79 Referral of questions to appropriate tribunal during enquiry

(1) At any time when an enquiry is in progress into a tax return any question arising in connection with the subject-matter of the return may be referred to the appropriate tribunal for determination.

(2) Notice of the referral must be given to the appropriate tribunal jointly by the relevant person and a designated officer.

(3) More than one notice of referral may be given under this section in relation to an enquiry.

80 Withdrawal of notice of referral

A designated officer or the relevant person may withdraw a notice of referral under section 79.

81 Effect of referral on enquiry

(1) While proceedings on a referral under section 79 are in progress in relation to an enquiry—
   (a) no closure notice may be given in relation to the enquiry, and
   (b) no application may be made for a direction to give a closure notice.

(2) Proceedings on a referral are “in progress” where—
   (a) notice of referral has been given and has not been withdrawn, and
   (b) the question referred has not been finally determined.
(3) A question referred has been “finally determined” when—
   (a) it has been determined by the appropriate tribunal, and
   (b) there is no further possibility of the determination being varied or set aside
       (disregarding any power to grant permission to appeal out of time).

82 Effect of determination

(1) A determination under section 79 is binding on the parties to the referral in the same way, and to the same extent, as a decision on a preliminary plea in an appeal.

(2) The designated officer conducting the enquiry must take the determination into account—
   (a) in reaching conclusions on the enquiry, and
   (b) in the formulation of any amendments of the tax return that may be required to give effect to those conclusions.

(3) The question determined may not be reopened on an appeal, except to the extent that it could be reopened if it had been determined as a preliminary plea in that appeal.

83 “Appropriate tribunal”

(1) Where the question to be referred under section 79 is of the market value of any land, the appropriate tribunal is the Lands Tribunal for Scotland.

(2) In any other case a referral under section 79 is to be made to—
   (a) the First-tier Tribunal,
   (b) where determined by or under tribunal rules, the Upper Tribunal, or
   (c) any other court or tribunal specified by the Scottish Ministers by order.

(3) References to the “appropriate tribunal” in sections 79 and 81 are to be read accordingly.

Completion of enquiry

84 Completion of enquiry

(1) An enquiry under section 76 is completed when a designated officer informs the relevant person by a notice in writing (a “closure notice”) that the enquiry is complete and states the conclusions reached in the enquiry.

(2) A closure notice must be given no later than 3 years after the relevant date.

(3) A closure notice must either—
   (a) state that in the officer’s opinion no amendment of the tax return is required, or
   (b) make the amendments of the return required to give effect to the officer’s conclusions.

(4) A closure notice takes effect when it is issued.

(5) In subsection (2) “relevant date” has the same meaning as in section 76.
Chapter 5—Revenue Scotland determinations

85 Direction to complete enquiry

(1) The relevant person may apply to the tribunal for a direction that a closure notice is to be given within a specified period.

(2) The tribunal hearing the application must give a direction unless satisfied that Revenue Scotland has reasonable grounds for not giving a closure notice within that period.

(3) In this paragraph “the tribunal” means—
   (a) the First-tier Tribunal, or
   (b) where determined by or under tribunal rules, the Upper Tribunal.

Chapter 5

Revenue Scotland determinations

86 Determination of tax chargeable if no return made

(1) This section applies where—
   (a) Revenue Scotland has reason to believe that a person (“P”) is chargeable to a devolved tax,
   (b) P has not made a tax return in relation to that liability, and
   (c) the relevant filing date has passed.

(2) “The relevant filing date” means the date by which Revenue Scotland believes a return was required to be made.

(3) Revenue Scotland may make a determination (a “Revenue Scotland determination”) to the best of its information and belief of the amount of tax to which P is chargeable.

(4) Notice of the determination must be given to P and must state the date on which it is issued.

(5) No Revenue Scotland determination may be made more than 5 years after the relevant date.

(6) The relevant date is—
   (a) the relevant filing date, or
   (b) such other date as the Scottish Ministers may by order prescribe.

87 Determination to have effect as a self-assessment

(1) A Revenue Scotland determination has effect for enforcement purposes as if it were a self-assessment made by P.

(2) In subsection (1) “for enforcement purposes” means for the purposes of Part 10.

(3) Nothing in this section affects any liability of a person to a penalty for failure to make a tax return.
Determination superseded by actual self-assessment

(1) If, after a Revenue Scotland determination has been made, P makes a tax return with respect to the tax in question, the self-assessment included in that return supersedes the determination.

(2) Subsection (1) does not apply to a return made—

(a) more than 5 years after the power to make the determination first became exercisable, or

(b) more than 3 months after the date of the determination, whichever is the later.

(3) Where—

(a) proceedings have been begun for the recovery of any tax charged by a Revenue Scotland determination, and

(b) before the proceedings are concluded the determination is superseded by a self-assessment,

the proceedings may be continued as if they were proceedings for the recovery of so much of the tax charged by the self-assessment as is due and payable and has not yet been paid.

Assessment where loss of tax or of excessive repayment

(1) This section applies if a designated officer comes to the view honestly and reasonably that—

(a) an amount of devolved tax that ought to have been assessed as tax chargeable on a person has not been assessed,

(b) an assessment of the tax chargeable on a person is or has become insufficient, or

(c) relief has been claimed or given that is or has become excessive.

(2) The designated officer may make an assessment of the amount or further amount that ought in the officer’s opinion to be charged in order to make good to the Crown the loss of tax.

Assessment to recover excessive repayment of tax

(1) If an amount of tax has been, but ought not to have been, repaid to a person that amount may be assessed and recovered as if it were unpaid tax.

(2) If the repayment was made with interest, the amount assessed and recovered may include the amount of interest that ought not to have been paid.
References to “Revenue Scotland assessment”
In this Act “Revenue Scotland assessment” means an assessment under section 89(2) or 90(1), as the case may be.

References to the “taxpayer”
In sections 93 to 96 “taxpayer” means—
(a) in relation to an assessment under section 89, the person chargeable to the tax,
(b) in relation to an assessment under section 90, the person mentioned in section 90(1).

Conditions for making Revenue Scotland assessments

(1) A Revenue Scotland assessment may be made only where the situation mentioned in section 89(1) or 90(1) was brought about carelessly or deliberately by—
(a) the taxpayer,
(b) a person acting on the taxpayer’s behalf, or
(c) a person who was a partner of the taxpayer.

(2) But no Revenue Scotland assessment may be made if—
(a) the situation mentioned in section 89(1) or 90(1) is attributable to a mistake in the return as to the basis on which the tax liability ought to have been calculated, and
(b) the return was in fact made on the basis prevailing, or in accordance with the practice generally prevailing, at the time it was made.

Time limits for Revenue Scotland assessments

(1) The general rule is that no Revenue Scotland assessment may be made more than 5 years after the relevant date.

(2) An assessment of a person in any case involving a loss of tax or a situation brought about deliberately by the taxpayer or a related person may be made up to 20 years after the relevant date.

(3) An assessment under section 90 (assessment to recover excessive repayment of tax) is not out of time if it is made within the period of 12 months beginning with the date on which the repayment in question was made.

(4) If the taxpayer has died—
(a) any assessment on the personal representatives must be made within 3 years after the death, and
(b) an assessment is not to be made by virtue of subsection (1) in respect of a relevant date more than 5 years before the death.

(5) Any objection to the making of an assessment on the ground that the time limit for making it has expired can only be made on a review or appeal against the assessment.

(6) In this section—
“related person”, in relation to the taxpayer, means—

(a) a person acting on the taxpayer’s behalf, or

(b) a person who was the partner of the taxpayer,

“relevant date” means—

(a) the filing date, or

(b) the date on which the return was made, if the return was made after the filing date.

95 Losses brought about carelessly or deliberately

(1) This section applies for the purposes of sections 93 and 94.

(2) A loss of tax or a situation is brought about carelessly by a person if the person fails to take reasonable care to avoid bringing about that loss or situation.

(3) Subsection (4) applies where—

(a) information is provided to Revenue Scotland,

(b) the person who provided the information, or the person on whose behalf the information was provided, discovers some time later that the information was inaccurate, and

(c) that person fails to take reasonable steps to inform Revenue Scotland.

(4) Any loss of tax or situation brought about by the inaccuracy is to be treated as having been brought about carelessly by that person.

(5) References to a loss of tax or to a situation brought about deliberately by a person include a loss of tax or situation brought about as a result of a deliberate inaccuracy in a document given to Revenue Scotland by or on behalf of that person.

96 Assessment procedure

(1) Notice of a Revenue Scotland assessment must be served on the taxpayer.

(2) The notice must state—

(a) the tax due,

(b) the date on which the notice is issued, and

(c) the time within which any review or appeal against the assessment must be requested.

(3) After notice of the assessment has been served on the taxpayer, the assessment may not be altered except in accordance with the express provisions of this Part or of Part 5.

(4) Where a designated officer has decided to make an assessment to tax, and has taken all other decisions needed for arriving at the amount of the assessment, the officer may entrust to some other designated officer the responsibility for completing the assessing procedure, whether by means involving the use of a computer or otherwise, including responsibility for serving notice of the assessment.
CHAPTER 7

RELIEF IN CASE OF EXCESSIVE ASSESSMENT OR OVERPAID TAX

Double assessment

97 Relief in case of double assessment
A person who believes that tax has been assessed on that person more than once in respect of the same matter may make a claim to Revenue Scotland for relief against any double charge.

Overpaid tax etc.

98 Claim for relief for overpaid tax etc.

10 (1) This section applies where—
(a) a person has paid an amount by way of tax but believes the tax was not chargeable, or
(b) a person has been assessed as chargeable to an amount of tax, or a determination has been made that a person is chargeable to an amount of tax, but the person believes the tax is not chargeable.

(2) The person may make a claim to Revenue Scotland for the amount to be repaid or discharged.

(3) Where this section applies, Revenue Scotland is not liable to give relief, except as provided in this Part or by or under any other provision of this Act.

(4) For the purposes of this section and sections 100 to 109, an amount paid by one person on behalf of another is treated as paid by the other person.

Order changing tax basis not approved

99 Claim for repayment if order changing tax basis not approved

(1) This section applies where a relevant order has ceased to have effect by virtue of a relevant provision and—
(a) a person has paid an amount by way of tax that would not have been payable but for the order, or
(b) a person has been assessed as chargeable to an amount of tax, or a determination has been made that a person is chargeable to an amount of tax, that would not have been chargeable but for the order.

(2) The person may make a claim to Revenue Scotland—
(a) for the amount of tax, and
(b) any related penalty or interest,
to be repaid or discharged to the extent that it was paid, or assessed or determined as chargeable, in consequence of the relevant order.

(3) A “relevant order” is an order mentioned in column 1, and a “relevant provision”, in relation to such an order, is the provision mentioned in the corresponding entry in column 2, of the following table.
\[
\begin{array}{|l|}
\hline
\text{Relevant orders} \\
\hline
\text{Under the 2013 Act—} \\
\hspace{1cm} (a) a second or subsequent order under section 24(1), \\
\hspace{1cm} (b) a second or subsequent order under paragraph 3(1) of schedule 19. \\
\hline
\text{Under the 2014 Act—} \\
\hspace{1cm} (a) an order under section 5(5) providing for anything which would otherwise not be a disposal of material by way of landfill to be such a disposal, \\
\hspace{1cm} (b) an order under section 6(1) which produces the result that a landfill site activity which would otherwise not be prescribed for the purposes of section 6 is so prescribed, \\
\hspace{1cm} (c) a second or subsequent order under section 13(2) or (5), \\
\hspace{1cm} (d) an order under section 13(4), \\
\hspace{1cm} (e) an order under section 14(7) other than one which provides only that an earlier order under section 14(7) is not to apply to material. \\
\hline
\end{array}
\]

<table>
<thead>
<tr>
<th>Relevant orders</th>
<th>Relevant provisions</th>
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<tbody>
<tr>
<td>Under the 2013 Act—</td>
<td>Section 68(4)(b) of that Act</td>
</tr>
<tr>
<td>(a) a second or subsequent order under section 24(1),</td>
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<td>(b) a second or subsequent order under paragraph 3(1) of schedule 19.</td>
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<tr>
<td>Under the 2014 Act—</td>
<td>Section 41(3)(b) of that Act</td>
</tr>
<tr>
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<td>(c) a second or subsequent order under section 13(2) or (5),</td>
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<tr>
<td>(e) an order under section 14(7) other than one which provides only that an earlier order under section 14(7) is not to apply to material.</td>
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</tbody>
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(4) A penalty or interest is related to an amount of tax to the extent that it—
(a) is attributable to the amount, and
(b) would not have been incurred but for the relevant order.

(5) A claim for repayment must be made before the end of the period of 2 years after the relevant date.

(6) The relevant date is—
(a) the filing date, or
(b) the date on which the tax return was made, if the return was made after the filing date.

(7) For the purposes of this section and sections 100 to 103, 105, 107 and 109, an amount paid by one person on behalf of another is treated as paid by the other person.

(8) Expressions used in this section and in the 2014 Act have the meanings given in that Act.

\[\text{Defence of unjustified enrichment}\]

100 **Defence to certain claims for relief under section 98 or 99**

It is a defence to a claim for relief made under section 98 or 99 that repayment or, as the case may be, discharge of the amount would unjustly enrich the claimant.
101  Unjustified enrichment: further provision

(1) This section applies where—

(a) there is an amount paid by way of tax which (apart from section 100) would fall to be repaid or discharged to any person (“the taxpayer”), and

(b) the whole or a part of the cost of the payment of that amount to Revenue Scotland has, for practical purposes, been borne by a person other than the taxpayer.

(2) Where, in a case to which this section applies, loss or damage has been or may be incurred by the taxpayer as a result of mistaken assumptions made in the taxpayer’s case about the operation of any provisions relating to a tax, that loss or damage is to be disregarded, except to the extent of the quantified amount, in the making of any determination—

(a) of whether or to what extent the repayment or discharge of an amount to the taxpayer would enrich the taxpayer, or

(b) of whether or to what extent any enrichment of the taxpayer would be unjust.

(3) In subsection (2) “the quantified amount” means the amount (if any) which is shown by the taxpayer to constitute the amount that would appropriately compensate the taxpayer for loss or damage shown by the taxpayer to have resulted, for any business carried on by the taxpayer, from the making of the mistaken assumptions.

(4) The reference in subsection (2) to provisions relating to a tax is a reference to any provisions of—

(a) any enactment, subordinate legislation or EU legislation (whether or not still in force) which relates to that tax or to any matter connected with it, or

(b) any notice published by Revenue Scotland under or for the purposes of any such enactment or subordinate legislation.

102  Unjustified enrichment: reimbursement arrangements

(1) The Scottish Ministers may by regulations make provision for reimbursement arrangements made by any person to be disregarded for the purposes of section 100 except where the arrangements—

(a) contain such provision as may be required by the regulations, and

(b) are supported by such undertakings to comply with the provisions of the arrangements as may be required by the regulations to be given to Revenue Scotland.

(2) In this section “reimbursement arrangements” means any arrangements for the purposes of a claim under section 98 or 99 which—

(a) are made by any person for the purpose of securing that the person is not unjustly enriched by the repayment or discharge of any amount in pursuance of the claim, and

(b) provide for the reimbursement of persons who have for practical purposes borne the whole or any part of the cost of the original payment of that amount to Revenue Scotland.
(3) Without prejudice to the generality of subsection (1) above, the provision that may be required by regulations under this section to be contained in reimbursement arrangements includes—

(a) provision requiring a reimbursement for which the arrangements provide to be made within such period after the repayment to which it relates as may be specified in the regulations,

(b) provision for the repayment of amounts to Revenue Scotland where those amounts are not reimbursed in accordance with the arrangements,

(c) provision requiring interest paid by Revenue Scotland on any amount repaid by it to be treated in the same way as that amount for the purposes of any requirement under the arrangements to make reimbursement or to repay Revenue Scotland,

(d) provision requiring such records relating to the carrying out of the arrangements as may be described in the regulations to be kept and produced to Revenue Scotland, or to a designated officer.

(4) Regulations under this section may impose obligations on such persons as may be specified in the regulations—

(a) to make the repayments to Revenue Scotland that they are required to make in pursuance of any provisions contained in any reimbursement arrangements by virtue of subsection (3)(b) or (c),

(b) to comply with any requirements contained in any such arrangements by virtue of subsection (3)(d).

(5) Regulations under this section may make provision for the form and manner in which, and the times at which, undertakings are to be given to Revenue Scotland in accordance with the regulations and any such provision may allow for those matters to be determined by Revenue Scotland in accordance with the regulations.

103 Reimbursement arrangements: penalties

(1) Regulations under section 102 may make provision for penalties where a person breaches an obligation imposed by virtue of section 102(4).

(2) The regulations may in particular make provision including provision—

(a) about the circumstances in which a penalty is payable,

(b) about the amounts of penalties,

(c) for fixed penalties, daily penalties and penalties calculated by reference to the amount of repayments which the person would have been liable to make to Revenue Scotland if the obligation had been breached,

(d) about the procedure for issuing penalties,

(e) about appealing penalties,

(f) about enforcing penalties.

(3) But the regulations may not create criminal offences.

(4) Regulations made by virtue of this section may amend any enactment (including this Act).
Cases in which Revenue Scotland need not give effect to a claim

(1) Revenue Scotland need not give effect to a claim under section 98 if or to the extent that the claim falls within a case described in this section.

(2) Case A is where the amount of tax paid, or liable to be paid, is excessive because of—
   (a) a mistake in a claim, or
   (b) a mistake consisting of making, or failing to make, a claim.

(3) Case B is where the claimant is or will be able to seek relief by taking other steps under this Part of this Act.

(4) Case C is where the claimant—
   (a) could have sought relief by taking such steps within a period that has now expired, and
   (b) knew or ought reasonably to have known, before the end of that period, that such relief was available.

(5) Case D is where the claim is made on grounds that—
   (a) have been put to a court or tribunal in the course of an appeal by the claimant relating to the amount paid or liable to be paid, or
   (b) have been put to Revenue Scotland in the course of a review or appeal by the claimant relating to that amount that is treated as having been determined by the tribunal by virtue of section 211 (settling matters in question by agreement).

(6) Case E is where the claimant knew, or ought reasonably to have known, of the grounds for the claim before the latest of the following—
   (a) the date on which a relevant appeal in the course of which the ground could have been put forward was determined by a court or tribunal (or is treated as having been so determined),
   (b) the date on which the claimant withdrew a relevant appeal to a court or tribunal,
   (c) the end of the period in which the claimant was entitled to make a relevant appeal to a court or tribunal.

(7) In subsection (6) “relevant appeal” means an appeal by the claimant relating to the amount paid or liable to be paid.

(8) Case F is where the amount in question was paid or is liable to be paid—
   (a) in consequence of proceedings enforcing the payment of that amount brought against the claimant by Revenue Scotland, or
   (b) in accordance with an agreement between the claimant and Revenue Scotland settling such proceedings.

(9) Case G is where—
   (a) the amount paid, or liable to be paid, is excessive by reason of a mistake in calculating the claimant’s liability to tax, and
   (b) liability was calculated in accordance with the practice generally prevailing at the time.
(10) Case G does not apply where the amount paid, or liable to be paid, is tax which has been charged contrary to EU law.

(11) For the purposes of subsection (10), an amount of tax is charged contrary to EU law if, in the circumstances in question, the charge to tax is contrary to—

(a) the provisions relating to the free movement of goods, persons, services and capital in Titles II and IV of Part 3 of the Treaty on the Functioning of the European Union, or

(b) the provisions of any subsequent treaty replacing the provisions mentioned in paragraph (a).

Procedure for making claims

105 Procedure for making claims etc.
Schedule 3 applies in relation to claims under sections 97 to 99.

106 Time-limit for making claims

(1) A claim under section 97 or 98 must be made within the period of 5 years after the date by which the tax return, to which the payment by way of tax, or the assessment or determination relates, required to be made.

(2) A claim under section 98 may not be made by being included in a return.

107 The claimant: partnerships

(1) This section is about the application of sections 98 and 99 in a case where either—

(a) (in a case falling within section 98(1)(a) or 99(1)(a)) the person paid the amount in question in the capacity of a responsible partner or representative partner, or

(b) (in a case falling within section 98(1)(b) or 99(1)(b)) the assessment was made on, or the determination related to the liability of, the person in such a capacity.

(2) In such a case, only a relevant person who has been nominated to do so by all of the relevant persons may make a claim under section 98 or 99 in respect of the amount in question.

(3) The relevant persons are all the persons who would have been liable as responsible partners to pay the amount in question had the payment been due or (in a case falling within section 98(1)(b) or 99(1)(b)) had the assessment or determination been correctly made.

108 Assessment of claimant in connection with claim

(1) This section applies where—

(a) a claim is made under section 98,

(b) the grounds for giving effect to the claim also provide grounds for a Revenue Scotland assessment on the claimant in respect of the tax, and

(c) such an assessment could be made but for a relevant restriction.
(2) In a case falling within section 107(1)(a) or (b), the reference to the claimant in subsection (1)(b) of this section includes any relevant person (as defined in section 107(3)).

(3) The following are relevant restrictions—

(a) the restrictions in section 93 (conditions for assessment where return has been delivered),

(b) the expiry of a time limit for making a Revenue Scotland assessment.

(4) Where this section applies—

(a) the relevant restrictions are to be disregarded, and

(b) the Revenue Scotland assessment is not out of time if it is made before the final determination of the claim.

(5) A claim is not finally determined until it, or the amount to which it relates, can no longer be varied (whether on review, appeal or otherwise).

**Contract settlements**

109

(1) In sections 98(1)(a) and 99(1)(a) the reference to an amount paid by a person by way of tax includes an amount paid by a person under a contract settlement in connection with tax believed to be due.

(2) Subsections (3) to (7) apply if the person who paid the amount under the contract settlement (“the payer”) and the person from whom the tax was due (“the taxpayer”) are not the same person.

(3) In relation to a claim under section 98 in respect of that amount—

(a) the references to the claimant in section 104(5), (6) and (8) (Cases D, E and F) have effect as if they included the taxpayer,

(b) the reference to the claimant in section 104(9) (Case G) has effect as if it were a reference to the taxpayer, and

(c) the reference to the claimant in section 108(1)(b) has effect as if it were a reference to the taxpayer.

(4) In relation to a claim under section 98 or 99 in respect of that amount, references to tax in schedule 3 (as it applies to a claim under section 98 or 99) include the amount paid under the contract settlement.

(5) Subsection (6) applies where the grounds for giving effect to a claim by the payer in respect of the amount also provide grounds for a Revenue Scotland assessment on the taxpayer in respect of the tax.

(6) Revenue Scotland may set any amount repayable to the payer as a result of the claim against any amount payable by the taxpayer as a result of the assessment.

(7) The obligations of Revenue Scotland and the taxpayer are discharged to the extent of any set-off under subsection (6).

(8) “Contract settlement” means an agreement made in connection with any person's liability to make a payment to Revenue Scotland by or under this Act or any other enactment.
PART 7
INVESTIGATORY POWERS OF REVENUE SCOTLAND

CHAPTER 1
INVESTIGATORY POWERS: INTRODUCTORY

Overview

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.

Interpretation

Designated investigation officers

In this Part “designated investigation officer” means a member of staff of Revenue Scotland or other person who is, or a category of members or other persons who are, designated by Revenue Scotland for the purposes of this Part.

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.

113 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.

114 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.

(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.

CHAPTER 2

INVESTIGATORY POWERS: INFORMATION AND DOCUMENTS

115 Power to obtain information and documents from taxpayer

(1) If the condition in subsection (2) is met, a designated officer may by notice in writing require a person (“the taxpayer”)—
   (a) to provide information, or
   (b) to produce a document.

(2) That condition is that—
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(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.

116 Power to obtain information and documents from third party

(1) If the condition in subsection (2) is met, a designated officer may by notice in writing 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 disapproved this requirement under section 117.

(4) In this Part “third party notice” means a notice under this section.

117 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

(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 144 and 146).

(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) an application for approval is made by, or with the agreement of, a designated investigation officer,

(b) the tribunal is satisfied that, in the circumstances, the officer giving the notice is justified in doing so,

(c) 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,
(d) the tribunal has been given a summary of any representations made by that person, and

(e) 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 (c) to (e) 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.

118 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 disapproved this requirement.

(2) The tribunal may not disapprove that requirement unless—

(a) an application for approval is made by, or with the agreement of, a designated investigation officer, and

(b) 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.

119 Power to obtain information and documents about persons whose identity is not known

(1) If the condition in subsection (2) is met, a designated investigation officer may by notice in writing require a person—

(a) to provide information, or

(b) to produce a document.

(2) That condition is that the information or document is reasonably required by the officer for the purpose of checking the tax position of—

(a) a person whose identity is not known to the officer, or

(b) a class of persons whose individual identities are not known to the officer.

(3) A designated officer may also give such a notice but only with the approval of the tribunal.

(4) An application for approval may be made without notice.

(5) The tribunal may not approve the giving of a notice under subsection (3) unless it is satisfied that—

(a) the notice would meet the condition in subsection (2),

(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.

120 Third party notices and notices under section 119: 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 116(3) only requires the notice to state this and name the parent undertaking, and

(b) the references in section 117(6) to naming the taxpayer are to making that statement and naming the parent undertakings.

(3) In relation to such a notice—

(a) in sections 117 and 118 (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 144(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 116(3) only requires the notice to state this, and

(b) the references in section 117(6) to naming the taxpayer are to making that statement.

(5) In relation to such a notice—

(a) in section 117 (approval of notices), subsections (1) and (4)(e) do not apply,

(b) section 118(1) (copying third party notices to taxpayer) does not apply,

(c) section 129 (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

(d) in section 144(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) Where a notice is given under section 119 to the 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, subsections (3) and (5) of that section (approval of tribunal) have effect as if they permitted (but did not require) the officer to obtain the approval of the tribunal.
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(7) 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).

121 Third party notices and notices under section 119: partnerships

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

(2) Where, in respect of a transaction entered into as buyer by or on behalf of the members of the partnership, any partner has made a tax return, section 129 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 116(3) only requires the notice to state this and give a name in which the partnership is registered for any purpose, and
   (b) the references in section 117(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 117 and 118 (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 144(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 117 (approval of notices), subsections (1) and (4)(e) do not apply,
   (b) section 118(1) (copying third party notices to taxpayer) does not apply, and
   (c) in section 144(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.

(6) Where a notice is given under section 119 to one of the 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, subsections (3) and (5) of that section (approval of tribunal) have effect as if they permitted (but did not require) the officer to obtain the approval of the tribunal.

122 Power to obtain information about persons whose identity can be ascertained

(1) A designated investigation officer may by notice in writing require a person (“P”) to provide relevant information about another person (“the taxpayer”) if conditions A to D are met.

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

(3) 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.

(4) 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.

(5) Condition D is that the taxpayer’s identity cannot readily be ascertained by other means from the information held by the officer.

(6) “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).

(7) 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).

123 Notices

(1) In this Part, “information notice” means a notice under section 115, 116, 119 or 122.

(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 117, 118 or 119 is final.

124 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.
125 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 in writing 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.

126 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

127 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 by, or with the agreement of, a designated investigation officer.

(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 4 years after the person’s death.

128 Types of information

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

(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.

129 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—

(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.

130 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.

131 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

(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 132.

132 Auditors: supplementary

(1) Section 131(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 119, section 131(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 131 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 131 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

133 Power to inspect business premises

15 (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.

(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.

134 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—
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(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.

135 Carrying out inspections under section 133 or 134

(1) An inspection under section 133 or 134 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 of the time of the inspection (whether in writing or otherwise), or
(b) the inspection is carried out by, or with the agreement of, a designated investigation officer.

(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 (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 (3) is given in respect of an inspection approved by the tribunal (see section 138), it must state that the inspection has been so approved.
136 **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.

137 **Carrying out inspections under section 136**

(1) An inspection under section 136 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 138), it must state that the inspection has been so approved.

(7) A designated officer seeking to carry out an inspection under section 136 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.
Approval of tribunal for premises inspections

138 Approval of tribunal for premises inspections

(1) A designated officer may ask the tribunal to approve an inspection under section 133, 134 or 136 (and for the effect of obtaining such approval see section 167 (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 133 or 134 unless—
   (a) an application for approval is made by, or with the agreement of, a designated investigation officer, and
   (b) the tribunal is satisfied that, in the circumstances, the inspection is justified.

(4) The tribunal may not approve an inspection under section 136 unless—
   (a) an application for approval is made by, or with the agreement of, a designated investigation officer,
   (b) 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,
   (c) the occupier of the premises has been given a reasonable opportunity to make such representations,
   (d) the tribunal has been given a summary of any representations made, and
   (e) the tribunal is satisfied that, in the circumstances, the inspection is justified.

(5) Subsection (4)(c) 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.

Other powers in relation to premises

139 Power to mark assets and to record information

The powers under sections 133 to 137 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.

140 Power to take samples

(1) If the condition in subsection (2) is met, a designated officer may enter premises and take samples of material on the premises.

(2) That condition is that the designated officer has reason to believe that the taking of the sample is reasonably required for the purpose of checking a person’s tax position.
(3) The powers under this section do not include power to enter any part of the premises that is used as a dwelling.

(4) Any sample taken under this section is to be disposed of in such manner as Revenue Scotland may determine.

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.

CHAPTER 5

FURTHER INVESTIGATORY POWERS

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) if the document is reasonably required for any purpose, 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.

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,
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(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

(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,

25 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),

30 is liable to a penalty of £300.

(7) Section 149 and sections 174 to 176 (assessment and enforcement of penalties) apply in relation to a penalty under this section as they apply in relation to a penalty under section 167.
CHAPTER 6

REVIEWS AND APPEALS AGAINST INFORMATION NOTICES

144 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 198(1)(f) —

(a) a decision to give a taxpayer notice or third party notice if the tribunal approved the giving of the notice under section 117,

(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 120(4) or 121(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 119 or 122, 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 section 120(6) or 121(6) 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 119—

(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) In subsection (6)(b)(i), “parent undertaking”, “subsidiary undertaking” and “undertaking” have the same meanings as in section 120.

145 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.

(2) Where the conclusions of the review under section 203 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 in writing by a designated officer.
But subsection (2) does not apply where section 205(2) applies (conclusions of review not to have effect of settlement agreement if mediation entered into or notice of appeal given). 

Where the tribunal, under section 209 (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 in writing by a designated officer following the tribunal’s decision.

A decision of the tribunal on an appeal to which this section applies is final.

**CHAPTER 7**

**OFFENCES RELATING TO INFORMATION NOTICES**

146 **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,

(b) the tribunal approved the giving of the notice in accordance with section 117 or 119, and

(c) 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 in writing 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 125 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 125(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).

147 **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 informed by a designated officer in writing 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 intends to seek the approval of the tribunal to the giving of the notice under section 117 or 119 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).

PART 8

Penalties

CHAPTER 1

Penalties: introductory

Overview

This Part is arranged as follows—

Chapter 2 sets out penalties relating to failure to make tax returns or to pay tax,
Chapter 3 sets out penalties relating to errors,
Chapter 4 sets out penalties relating to investigations, and
Chapter 5 sets out other administrative penalties.

Double jeopardy

A person is not liable to a penalty under this Part in respect of anything in respect of which the person has been convicted of an offence.

CHAPTER 2

Penalties for failure to make returns

(1) A penalty is payable by a person (“P”) where P fails to make a tax return on or before the filing date (see section 73).

(2) The Scottish Ministers may by regulations make further provision about penalties under this section, including provision—
   (a) about the circumstances in which a penalty is payable,
   (b) about the amounts of penalties,
   (c) for fixed penalties, daily penalties and penalties calculated by reference to the amount of tax which P would have been liable to pay if the return had been made,
(d) about the procedure for issuing penalties,
(e) about appealing penalties,
(f) about enforcing penalties.

(3) Regulations under subsection (2) may not create criminal offences.

(4) Regulations under subsection (2) may modify any enactment (including this Act).

151 **Penalty for failure to pay tax**

(1) A penalty is payable by a person (“P”) where P fails to pay tax on or before the date payment was due.

(2) The Scottish Ministers may by regulations make further provision about penalties under this section, including provision—

(a) about the circumstances in which a penalty is payable,
(b) about the amounts of penalties,
(c) for fixed penalties, daily penalties and penalties calculated by reference to the amount of tax which the person has failed to pay,
(d) about the procedure for issuing penalties,
(e) about appealing penalties,
(f) about enforcing penalties.

(3) Regulations under subsection (2) may not create criminal offences.

(4) Regulations under subsection (2) may modify any enactment (including this Act).

152 **Interaction of penalties under section 150 with other penalties**

(1) Where P is liable to a penalty under any provision made under section 150 which is determined by reference to a liability to tax, the amount of that penalty is to be reduced by the amount of any other penalty incurred by P, if the amount of the penalty is determined by reference to the same liability to tax.

(2) In subsection (1) the reference to “any other penalty” does not include—

(a) a penalty under any other provision made under section 150, or
(b) a penalty under any provision made under section 151.

153 **Interaction of penalties under section 151 with other penalties**

(1) Where P is liable to a penalty under any provision made under section 151 which is determined by reference to a liability to tax, the amount of that penalty is to be reduced by the amount of any other penalty incurred by P, if the amount of the penalty is determined by reference to the same liability to tax.

(2) In subsection (1) the reference to “any other penalty” does not include—

(a) a penalty under any other provision made under section 151, or
(b) a penalty under any provision made under section 150.
Reduction in penalty under section 150 for disclosure

(1) Revenue Scotland may reduce a penalty under provision made under section 150 where P discloses information which has been withheld by a failure to make a return (“relevant information”).

(2) P discloses relevant information by—
   (a) telling Revenue Scotland about it,
   (b) giving Revenue Scotland reasonable help in quantifying any tax unpaid by reason of its having been withheld, and
   (c) allowing Revenue Scotland access to records for the purpose of checking how much tax is so unpaid.

(3) Reductions under this section may reflect—
   (a) whether the disclosure was prompted or unprompted, and
   (b) the quality of the disclosure.

(4) Disclosure of relevant information—
   (a) is “unprompted” if made at a time when P has no reason to believe that Revenue Scotland has discovered or is about to discover the relevant information, and
   (b) otherwise, is “prompted”.

(5) In relation to disclosure, “quality” includes timing, nature and extent.

Suspension of penalty under section 151 during currency of agreement for deferred payment

(1) This section applies if—
   (a) P fails to pay an amount of tax when it becomes due and payable,
   (b) P makes a request to Revenue Scotland that payment of the amount of tax be deferred, and
   (c) Revenue Scotland agrees that payment of that amount may be deferred for a period (“the deferral period”).

(2) If P would (ignoring this subsection) become liable, between the date on which P makes the request and the end of the deferral period, to a penalty under provision made under section 151 for failing to pay that amount, P is not liable to that penalty.

(3) But if—
   (a) P breaks the agreement, and
   (b) Revenue Scotland serves on P a notice specifying any penalty to which P would become liable (ignoring subsection (2)),

P becomes liable to that penalty at the date of the notice.

(4) P breaks an agreement if—
   (a) P fails to pay the amount of tax in question when the deferral period ends, or
   (b) the deferral is subject to P complying with a condition (including a condition that part of the amount be paid during the deferral period) and P fails to comply with it.
(5) If the agreement mentioned in subsection (1)(c) is varied at any time by a further agreement between P and Revenue Scotland, this section applies from that time to the agreement as varied.

156 Special reduction in penalty under sections 150 and 151

5 (1) Revenue Scotland may reduce a penalty under any provision made under section 150 or 151 if it thinks it right to do so because of special circumstances.

(2) In subsection (1) “special circumstances” does not include—

(a) ability to pay, or

(b) the fact that a potential loss of revenue from one taxpayer is balanced by a
team over-payment by another.

(3) In subsection (1) the reference to reducing a penalty includes a reference to—

(a) remitting a penalty entirely,

(b) suspending a penalty, and

(c) agreeing a compromise in relation to proceedings for a penalty.

15 (4) In this section references to a penalty include references to any interest in relation to the

penalty.

(5) The powers in this section also apply after a decision of a tribunal or a court in relation
to the penalty.

157 Reasonable excuse for failure to make return or pay tax

20 (1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable

excuse for a failure to make a return, liability to a penalty under provision made under

section 150 does not arise in relation to that failure.

(2) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable

excuse for a failure to make a payment, liability to a penalty under provision made under

section 151 does not arise in relation to that failure.

(3) For the purposes of subsections (1) and (2)—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events

outside P’s control,

(b) where P relies on any other person to do anything, that is not a reasonable excuse

unless P took reasonable care to avoid the failure, and

(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to

be treated as having continued to have the excuse if the failure is remedied

without unreasonable delay after the excuse ceased.

158 Assessment of penalties under sections 150 and 151

35 (1) Where P becomes liable to a penalty under provision made under section 150 or 151, Revenue Scotland must—

(a) assess the penalty,

(b) notify the person, and
(c) state in the notice the period, or the transaction, in respect of which the penalty is assessed.

(2) A penalty under provision made under section 150 or 151 must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

(3) An assessment of a penalty under provision made under section 150 or 151—
   (a) is to be treated for enforcement purposes as an assessment to tax, and
   (b) may be combined with an assessment to tax.

(4) In relation to penalties under provision made under section 150—
   (a) a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of the liability to tax which would have been shown in a return,
   (b) a replacement assessment may be made in respect of a penalty if an earlier assessment operated by reference to an overestimate of the liability to tax which would have been shown in a return.

(5) In relation to penalties under provision made under section 151—
   (a) a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of an amount of tax which was owing,
   (b) if an assessment in respect of a penalty is based on an amount of tax owing that is found by Revenue Scotland to be excessive, Revenue Scotland may by notice to P amend the assessment so that it is based on the correct amount.

(6) An amendment made under subsection (5)(b)—
   (a) does not affect when the penalty must be paid,
   (b) may be made after the last day on which the assessment in question could have been made under section 159.

159 Time limit for assessment of penalties under sections 150 and 151

(1) An assessment of a penalty under provision made under section 150 or 151 in respect of any amount must be made on or before the later of date A and (where it applies) date B.

(2) Date A is the last day of the period of 2 years beginning with—
   (a) in the case of failure to make a return, the filing date, or
   (b) in the case of failure to pay tax, the last date on which payment may be made without paying a penalty.

(3) Date B is the last day of the period of 12 months beginning with—
   (a) in the case of provision made under section 150—
      (i) the end of the appeal period for the assessment of the liability to tax which would have been shown in the return, or
      (ii) if there is no such assessment, the date on which that liability is ascertained or it is ascertained that the liability is nil, or
   (b) in the case of provision made under section 151—
(i) the end of the appeal period for the assessment of the amount of tax in respect of which the penalty is assessed, or
(ii) if there is no such assessment, the date on which that amount of tax is ascertained.

(4) In subsection (3)(a)(i) and (b)(i) “appeal period” means the period during which—
(a) an appeal could be brought, or
(b) an appeal that has been brought has not been determined or withdrawn.

CHAPTER 3

Penalties relating to errors

160 Penalty for error in taxpayer document

(1) A penalty is payable by a person (“P”) where—
(a) P gives Revenue Scotland a relevant document (see subsection (7)), and
(b) conditions A and B below are met.

(2) Condition A is that the document contains an inaccuracy which amounts to, or leads to—
(a) an understatement of a liability to tax,
(b) a false or inflated statement of a loss, exemption or relief, or
(c) a false or inflated claim for relief or to repayment of tax.

(3) Condition B is that the inaccuracy was—
(a) deliberate on P’s part (“a deliberate inaccuracy”), or
(b) careless on P’s part (“a careless inaccuracy”).

(4) An inaccuracy is careless if it is due to a failure by P to take reasonable care.

(5) An inaccuracy in a document given by P to Revenue Scotland, which was neither deliberate nor careless on P’s part when the document was given, is to be treated as careless if P—
(a) discovered the inaccuracy at some later time, and
(b) did not take reasonable steps to inform Revenue Scotland.

(6) Where a document contains more than one inaccuracy, a penalty is payable for each inaccuracy.

(7) The Scottish Ministers may by regulations make further provision about penalties under this section, including provision—
(a) about what are relevant documents,
(b) about the amounts of penalties,
(c) for different amounts of penalties for deliberate inaccuracies and careless inaccuracies,
(d) about the procedure for issuing penalties,
(e) about appealing penalties,
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(f) about enforcing penalties.

(8) Regulations under subsection (7) may not create criminal offences.

(9) Regulations under subsection (7) may modify any enactment (including this Act).

161 Suspension of penalty for careless inaccuracy under section 160

(1) Revenue Scotland may suspend all or part of a penalty for a careless inaccuracy under section 160 by notice in writing to P.

(2) A notice must specify—

(a) what part of the penalty is to be suspended,
(b) a period of suspension not exceeding 2 years, and
(c) conditions of suspension to be complied with by P.

(3) Revenue Scotland may suspend all or part of a penalty only if compliance with a condition of suspension would help P to avoid becoming liable to further penalties under section 160 for careless inaccuracy.

(4) A condition of suspension may specify—

(a) action to be taken, and
(b) a period within which it may be taken.

(5) On the expiry of the period of suspension—

(a) if P satisfies Revenue Scotland that the conditions of suspension have been complied with, the suspended penalty or part is cancelled, and

(b) otherwise, the suspended penalty or part becomes payable.

(6) If, during the period of suspension of all or part of a penalty under section 160, P becomes liable for another penalty under that section, the suspended penalty or part becomes payable.

162 Penalty for error in taxpayer document attributable to another person

(1) A penalty is payable by a person (“T”) where—

(a) another person (“P”) gives Revenue Scotland a relevant document (see subsection (4)),

(b) the document contains a relevant inaccuracy, and

(c) the inaccuracy was attributable—

(i) to T deliberately supplying false information to P (whether directly or indirectly), or

(ii) to T deliberately withholding information from P, with the intention of the document containing the inaccuracy.

(2) A “relevant inaccuracy” is an inaccuracy which amounts to, or leads to—

(a) an understatement of a liability to tax,

(b) a false or inflated statement of a loss, exemption or relief, or
(c) a false or inflated claim for relief or to repayment of tax.

(3) A penalty is payable by T under this section in respect of an inaccuracy whether or not P is liable to a penalty under section 160 in respect of the same inaccuracy.

(4) The Scottish Ministers may by regulations make further provision about penalties under this section, including provision about—

   (a) what are relevant documents,
   (b) the amounts of penalties,
   (c) the procedure for issuing penalties,
   (d) appealing penalties,
   (e) enforcing penalties.

(5) Regulations under subsection (4) may not create criminal offences.

(6) Regulations under subsection (4) may modify any enactment (including this Act).

163 Under-assessment by Revenue Scotland

(1) A penalty is payable by a person (“P”) where—

   (a) a Revenue Scotland assessment understates P’s liability to a relevant tax, and
   (b) P has failed to take reasonable steps to notify Revenue Scotland, within the period of 30 days beginning with the date of the assessment, that it is an under-assessment.

(2) In deciding what steps (if any) were reasonable, Revenue Scotland must consider—

   (a) whether P knew, or should have known, about the under-assessment, and
   (b) what steps would have been reasonable to take to notify Revenue Scotland.

(3) The Scottish Ministers may by regulations make further provision about penalties under this section, including provision about—

   (a) what are relevant taxes,
   (b) the amounts of penalties,
   (c) the procedure for issuing penalties,
   (d) appealing penalties,
   (e) enforcing penalties.

(4) Regulations under subsection (3) may not create criminal offences.

(5) Regulations under subsection (3) may modify any enactment (including this Act).

(6) In this section—

   (a) “Revenue Scotland assessment” includes “Revenue Scotland determination”, and
   (b) accordingly, references to an under-assessment include an under-determination.

164 Special reduction in penalty under sections 160, 162 and 163

(1) Revenue Scotland may reduce a penalty under any provision made under section 160, 162 or 163 if it thinks it right to do so because of special circumstances.
(2) In subsection (1) “special circumstances” does not include—
   (a) ability to pay, or
   (b) the fact that a potential loss of revenue from one taxpayer is balanced by a
       potential over-payment by another.

(3) In subsection (1) the reference to reducing a penalty includes a reference to—
   (a) remitting a penalty entirely,
   (b) suspending a penalty, and
   (c) agreeing a compromise in relation to proceedings for a penalty.

(4) In this section references to a penalty include references to any interest in relation to the
    penalty.

(5) The powers in this section also apply after a decision of a tribunal or a court in relation to
    the penalty.

**165 Reduction in penalty under sections 160, 162 and 163 for disclosure**

(1) Revenue Scotland may reduce a penalty under provision made under sections 160, 162 or 163 where a
    person makes a qualifying disclosure.

(2) A “qualifying disclosure” means disclosure of—
   (a) an inaccuracy,
   (b) a supply of false information or withholding of information, or
   (c) a failure to disclose an under-assessment.

(3) A person makes a qualifying disclosure by—
   (a) telling Revenue Scotland about it,
   (b) giving Revenue Scotland reasonable help in quantifying the inaccuracy, the inaccuracy attributable to
       the supply of false information or withholding of information, or the under-assessment, and
   (c) allowing Revenue Scotland access to records for the purpose of ensuring that the inaccuracy, the inaccuracy
       attributable to the supply of false information or withholding of information, or the under-assessment is fully corrected.

(4) Reductions under this section may reflect—
   (a) whether the disclosure was prompted or unprompted, and
   (b) the quality of the disclosure.

(5) Disclosure of relevant information—
   (a) is “unprompted” if made at a time when the person making it has no reason to believe that Revenue
       Scotland has discovered or is about to discover the inaccuracy, the supply of false information or withholding of information, or the under-assessment, and
   (b) otherwise, is “prompted”.

(6) In relation to disclosure, “quality” includes timing, nature and extent.
166 Assessment of penalties under sections 160, 162 and 163

(1) Where a person becomes liable to a penalty under provision made under section 160, 162 or 163, Revenue Scotland must—

(a) assess the penalty,

(b) notify the person, and

(c) state in the notice the period in respect of which the penalty is assessed.

(2) A penalty under provision made under section 160, 162 or 163 must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

(3) An assessment of a penalty under provision made under section 160, 162 or 163—

(a) is to be treated for enforcement purposes as an assessment to tax, and

(b) may be combined with an assessment to tax.

(4) An assessment of a penalty under section 160 or 162 must be made before the end of the period of 12 months beginning with—

(a) the end of the appeal period for the decision correcting the inaccuracy, or

(b) if there is no assessment to the tax concerned within paragraph (a), the date on which the inaccuracy is corrected.

(5) An assessment of a penalty under section 163 must be made before the end of the period of 12 months beginning with—

(a) the end of the appeal period for the assessment of tax which corrected the understatement, or

(b) if there is no assessment within paragraph (a), the date on which the understatement is corrected.

(6) In subsections (4) and (5) “appeal period” means the period during which—

(a) an appeal could be brought, or

(b) an appeal that has been brought has not been determined or withdrawn.

(7) Subject to subsections (4) and (5), a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of potential lost revenue.

CHAPTER 4

PENALTIES RELATING TO INVESTIGATIONS

167 Penalties for failure to comply or obstruction

(1) This section applies to a person who—

(a) fails to comply with an information notice, or

(b) deliberately obstructs a designated officer in the course of an inspection that has been approved by the tribunal under section 138.

(2) The person is liable to a penalty of £300.
(3) The reference to a person who fails to comply with an information notice includes a person who conceals, destroys or otherwise disposes of (or arranges for the concealment, destruction or disposal of) a document in breach of section 171 or 172.

168 Daily default penalties for failure to comply or obstruction

(1) This section applies if the failure or obstruction mentioned in section 167(1) continues after the date on which a penalty is imposed under that section in respect of the failure or obstruction.

(2) The person is liable to a further penalty or penalties not exceeding £60 for each subsequent day on which the failure or obstruction continues.

169 Penalties for inaccurate information or documents

(1) This section applies if—

(a) in complying with an information notice, a person provides inaccurate information or produces a document that contains an inaccuracy, and

(b) condition A, B or C is met.

(2) Condition A is that the inaccuracy is careless or deliberate.

(3) An inaccuracy is careless if it is due to a failure by the person to take reasonable care.

(4) Condition B is that the person knows of the inaccuracy at the time the information is provided or the document produced but does not inform Revenue Scotland at that time.

(5) Condition C is that the person—

(a) discovers the inaccuracy some time later, and

(b) fails to take reasonable steps to inform Revenue Scotland.

(6) The person is liable to a penalty not exceeding £3,000.

(7) Where the information or document contains more than one inaccuracy, a penalty is payable for each inaccuracy.

170 Power to change amount of penalties under sections 167, 168 and 169

(1) If it appears to the Scottish Ministers that there has been a change in the value of money since the last relevant date, they may by order substitute for the sums for the time being set out in sections 167(2), 168(2) and 169(6) such other sums as appear to them to be justified by the change.

(2) In subsection (1), in relation to a specified sum, “relevant date” means—

(a) the date on which this section came into force, and

(b) each date on which the power conferred by subsection (1) has been exercised in relation to that sum.

(3) An order under this section does not apply to—

(a) any failure or obstruction which began before the date on which it comes into force, and

(b) an inaccuracy in any information or document provided to Revenue Scotland before that date.
171 Concealing, destroying etc. documents following information notice

(1) A person must not conceal, destroy or otherwise dispose of (or arrange for the concealment, destruction or disposal of) a document that is the subject of an information notice addressed to the person, unless subsection (2) or (3) applies.

(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 in writing 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 125 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 produced in accordance with that section unless, before the expiry of that period, a designated officer made a request for the original document under section 125(2)(b).

172 Concealing, destroying etc. documents following information notification

(1) A person must not conceal, destroy or otherwise dispose of (or arrange for the concealment, destruction or disposal of) a document if a designated officer has informed the person that the document is to be, or is likely to be, the subject of an information notice addressed to that person, unless subsection (2) applies.

(2) Subsection (1) does not apply 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.

173 Failure to comply with time limit

A failure by a person to do anything required to be done within a limited period of time does not give rise to liability to a penalty under section 167 or 168 if the person did it within such further time (if any) as a designated officer may have allowed.

174 Reasonable excuse for failure to comply or obstruction

(1) Liability to a penalty under section 167 or 168 does not arise if the person satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for the failure or the obstruction of a designated officer.

(2) For the purposes of this section—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person’s control,

(b) where the person relies on another person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure or obstruction, and

(c) where the person had a reasonable excuse for the failure or obstruction but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied, or the obstruction stops, without unreasonable delay after the excuse ceased.
175 Assessment of penalties under sections 167, 168 and 169

(1) Where a person becomes liable for a penalty under section 167, 168 or 169 Revenue Scotland must—

(a) assess the penalty, and

(b) notify the person.

(2) An assessment of a penalty under section 167 or 168 must be made within the period of 12 months beginning with the date on which the person became liable to the penalty, subject to subsection (3).

(3) In a case involving an information notice against which a person may appeal, an assessment of a penalty under section 167 or 168 must be made within the period of 12 months beginning with the latest of the following—

(a) the date on which the person became liable to the penalty,

(b) the end of the period in which notice of an appeal against the information notice could have been given, and

(c) if notice of such an appeal is given, the date on which the appeal is determined or withdrawn.

(4) An assessment of a penalty under section 169 must be made—

(a) within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of a designated officer, and

(b) within the period of 6 years beginning with the date on which the person became liable to the penalty.

176 Enforcement of penalties under sections 167, 168 and 169

(1) A penalty under section 167, 168 or 169 must be paid—

(a) before the end of the period of 30 days beginning with the date on which the notification under section 175 was issued,

(b) if a notice of review against the penalty is given, before the end of the period of 30 days beginning with the date on which the review is concluded,

(c) if, following review, mediation is entered into, before the end of the period of 30 days beginning with the date either Revenue Scotland or the person who gave the notice of review gave notice of withdrawal from mediation, or

(d) if a notice of an appeal against the penalty is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.

(2) A penalty under section 167, 168 or 169 is to be treated for enforcement purposes as an assessment to tax.

177 Increased daily default penalty

(1) This section applies if—

(a) a penalty under section 168 is assessed under section 175 in respect of a person’s failure to comply with a notice under section 119,
(b) the failure continues for more than 30 days beginning with the date on which notification of that assessment was issued, and

(c) the person has been told that an application may be made under this section for an increased daily penalty to be imposed.

(2) If this section applies, a designated officer may make an application to the tribunal for an increased daily penalty to be imposed on the person.

(3) If the tribunal decides that an increased daily penalty should be imposed, then for each applicable day on which the failure continues—

(a) the person is not liable to a penalty under section 168 for the failure, and

(b) the person is liable instead to a penalty under this section of an amount determined by the tribunal.

(4) The tribunal may not determine an amount exceeding £1,000 for each applicable day.

(5) In determining the amount the tribunal must have regard to—

(a) the likely cost to the person of complying with the notice,

(b) any benefits to the person of not complying with it, and

(c) any benefits to anyone else resulting from the person’s non-compliance.

(6) Section 170 applies in relation to the sum specified in subsection (4) as it applies in relation to the sums mentioned in section 170(1).

(7) If a person becomes liable to a penalty under this section, Revenue Scotland must notify the person.

(8) The notification must specify the day from which the increased penalty is to apply.

(9) That day and any subsequent day is an “applicable day” for the purposes of subsection (3).

178 Enforcement of increased daily default penalty

(1) A penalty under section 177 must be paid before the end of the period of 30 days beginning with the date on which the notification of the penalty is issued.

(2) A penalty under section 177 is to be treated for enforcement purposes as an assessment to tax.

179 Tax-related penalty

(1) This section applies where—

(a) a person becomes liable to a penalty under section 167,

(b) the failure or obstruction continues after a penalty is imposed under that section,

(c) a designated officer has reason to believe that, as a result of the failure or obstruction, the amount of tax that the person has paid, or is likely to pay, is significantly less than it would otherwise have been,

(d) before the end of the period of 12 months beginning with the relevant date, a designated officer makes an application to the Upper Tribunal for an additional penalty to be imposed on the person, and
(e) the Upper Tribunal decides that it is appropriate for an additional penalty to be imposed.

(2) The person is liable to a penalty of an amount decided by the Upper Tribunal.

(3) In deciding the amount of the penalty, the Upper Tribunal must have regard to the amount of tax which has not been, or is not likely to be, paid by the person.

(4) Where a person becomes liable to a penalty under this section, Revenue Scotland must notify the person.

(5) Any penalty under this section is in addition to the penalty or penalties under section 167 or 168.

(6) In subsection (1)(d), the “relevant date” means—

(a) in a case involving an information notice against which a person may appeal, the latest of—

(i) the date on which the person became liable to the penalty under section 167,

(ii) the end of the period in which notice of an appeal against the information notice could have been given, and

(iii) if notice of such an appeal is given, the date on which the appeal is determined or withdrawn, and

(b) in any other case, the date on which the person became liable to the penalty under section 167.

**CHAPTER 5**

**OTHER ADMINISTRATIVE PENALTIES**

**181 Penalty for failure to register for tax**

(1) A penalty is payable by a person where the person fails to comply with a requirement imposed by or under section 22 or 23 of the 2014 Act.

(2) The Scottish Ministers may by regulations make further provision about penalties under this section, including provision about—

(a) the amounts of penalties,

(b) the procedure for issuing penalties,

(c) appealing penalties,

(d) enforcing penalties.

(3) Regulations under subsection (2) may not create criminal offences.

(4) Regulations under subsection (2) may modify any enactment (including this Act).
PART 9

INTEREST ON PAYMENTS DUE TO OR BY REVENUE SCOTLAND

182 Interest on unpaid tax

(1) Interest is payable on the amount of any unpaid tax from the end of the period of 30 days after the relevant date until the tax is paid.

(2) For the purposes of this section, the “relevant date” is the date for payment of the tax which is specified by the Scottish Ministers in regulations.

(3) If an amount is lodged with Revenue Scotland in respect of the tax payable on a transaction, the amount on which interest is payable is reduced by that amount.

(4) Interest under this section is calculated at the rate specified in provision made under section 185.

183 Interest on penalties

(1) Interest is payable on the amount of any unpaid penalty from the date on which the penalty is due to be paid until it is paid.

(2) Interest under this section is calculated at the rate specified in provision made under section 185.

184 Interest on repayment of tax overpaid etc.

(1) A repayment by Revenue Scotland to which this section applies must be made with interest for the period between the relevant date and the date when the repayment is issued.

(2) This section applies to—

(a) any repayment of tax,

(b) any repayment of a penalty, and

(c) any repayment of interest (whether on tax or penalty).

(3) In the cases mentioned in subsection (2), the “relevant date” is the date on which the payment of the tax, penalty or interest was made.

(4) This section also applies to a repayment by Revenue Scotland of an amount lodged with it in respect of the tax payable in respect of a transaction.

(5) In the case mentioned in subsection (4), the “relevant date” is the date on which the amount was lodged with Revenue Scotland.

(6) Interest under this section is calculated at the rate specified in provision made under section 185.

185 Rates of interest

(1) The rate of interest that applies for the purposes of sections 182, 183 and 184 is the rate specified by the Scottish Ministers in regulations.

(2) Regulations under subsection (1) may—

(a) provide for different rates for different devolved taxes or different penalties,
(b) provide for circumstances in which alteration of a rate of interest is or is not to take place,

(c) provide that alterations of rates are to have effect for periods beginning on or after a day determined in accordance with the regulations in relation to interest running from before that day as well as from or from after that day.

**PART 10**

**ENFORCEMENT OF PAYMENT OF TAX**

**CHAPTER 1**

**ENFORCEMENT: GENERAL**

**Issue of tax demands and receipts**

186 **Issue of tax demands and receipts**

(1) Where tax is due and payable, Revenue Scotland may demand the sum charged from the person liable to pay it.

(2) On payment of the tax, Revenue Scotland must give a receipt, if requested to do so.

**Fees for payment**

187 **Fees for payment**

(1) The Scottish Ministers may by regulations provide that, where a person makes a payment to Revenue Scotland or a person authorised by Revenue Scotland using a method of payment specified in the regulations, the person must also pay a fee specified in, or determined in accordance with, the regulations.

(2) A method of payment may only be specified in regulations under this section if Revenue Scotland expects that it, or the person authorised by it, will be required to pay a fee or charge (however described) in connection with amounts paid using that method of payment.

(3) The fee provided for in regulations under this section must not exceed what is reasonable having regard to the costs incurred by Revenue Scotland, or a person authorised by it, in paying the fee or charge mentioned in subsection (2).

(4) Regulations under this section—

(a) may make provision about the time and manner in which the fee must be paid,

(b) may make provision generally or only for specified purposes.

**Certificates of debt**

188 **Certificates of debt**

(1) A certificate of a designated officer that, to the best of that officer’s knowledge and belief, a relevant sum has not been paid is sufficient evidence that the sum mentioned in the certificate is unpaid.

(2) In subsection (1) “relevant sum” means a sum payable to Revenue Scotland by or under this Act or any other enactment or under a contract settlement or a settlement agreement.
(3) Any document purporting to be such a certificate is to be treated as if it were such a certificate until the contrary is proved.

# Court proceedings

189 Court proceedings

Tax due and payable may be sued for and recovered from the person liable to pay it as a debt due to the Crown by proceedings—

(a) in the sheriff court, or

(b) in the Court of Session (sitting as the Court of Exchequer).

# Summary warrant

190 Summary warrant

(1) This section applies if a person does not pay an amount that is payable by that person to Revenue Scotland by or under this Act or any other enactment or under a contract, settlement or a settlement agreement.

(2) A designated officer may apply to the sheriff for a summary warrant.

(3) An application under subsection (2) must be accompanied by a certificate which—

(a) complies with subsection (4), and

(b) is signed by the officer.

(4) A certificate complies with this subsection if—

(a) it states that—

(i) none of the persons specified in the application has paid the sum payable by that person,

(ii) the officer has demanded payment from each such person of the sum payable by that person, and

(iii) the period of 14 days beginning with the day on which the demand is made has expired without payment being made, and

(b) it specifies the sum payable by each person specified in the application.

(5) The sheriff must, on an application by a designated officer under subsection (2), grant a summary warrant in (or as nearly as may be in) the form prescribed by Act of Sederunt.

(6) A summary warrant granted under subsection (5) authorises the recovery of the sum payable by—

(a) attachment,

(b) money attachment,

(c) earnings arrestment,

(d) arrestment and action of forthcoming or sale.

(7) Subject to subsection (8) and without prejudice to section 39(1) of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) (expenses of attachment)—

(a) the sheriff officer’s fees, and
(b) any outlays reasonably incurred by that officer,
in connection with the execution of a summary warrant are to be chargeable against the
person in relation to whom the summary warrant was granted.

(8) No fees are to be chargeable by the sheriff officer against the person in relation to whom
the summary warrant was granted for collecting, and accounting to Revenue Scotland
for, sums paid to that officer by that person in respect of the sum payable.

Recovery of penalties and interest

191 Recovery of penalties and interest
The provisions of this Chapter have effect in relation to the recovery of any unpaid
amount by way of—

(a) penalty, or
(b) interest (whether on unpaid tax or penalty),
as though that amount were an amount of unpaid tax.

Chapter 2

192 Requirement for contact details for debtor

(1) This Chapter applies where—
(a) a sum is payable by a person (“the debtor”) to Revenue Scotland by or under this
   Act or any other enactment or under a contract settlement or a settlement
   agreement,
(b) a designated officer reasonably requires contact details for the debtor for the
   purpose of collecting that sum,
(c) the officer has reasonable grounds to believe that a person (“the third party”) has
   any such details, and
(d) the condition in subsection (2) is met.

(2) The condition is that—
(a) the third party is a company or a local authority, or
(b) the officer has reasonable grounds to believe that the third party obtained the
details in the course of carrying on a business.

(3) This Chapter does not apply if—
(a) the third party is a charity and obtained the details in the course of providing
   services free of charge, or
(b) the third party is not a charity but obtained the details in the course of providing
   services on behalf of a charity that are free of charge to the recipient of the
   service.

(4) In this Chapter—
   “business” includes—
(a) a profession, and
(b) a property business (within the meaning of section 263(6) of the Income Tax (Trading and Other Income) Act 2005 (c.5)),

“contact details”, in relation to a person, means the person’s address and any other information about how the person may be contacted.

193  Power to obtain details

(1) A designated officer may by notice in writing require the third party to provide the contact details.

(2) The notice must name the debtor.

(3) If a notice is given under subsection (1), the third party must provide the details—

(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.

194  Reviews and appeals against notices or requirements

(1) This section applies where a third party seeks, under Part 11, to have a decision in relation to the giving of a notice under section 193 or in relation to any requirement in such a notice reviewed or appealed.

(2) A third party may give notice of review or notice of appeal in relation to a decision to give a 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.

195  Penalty

(1) This section applies if the third party fails to comply with the notice.

(2) The third party is liable to a penalty of £300.

(3) Section 149 and sections 174 to 176 (assessment and enforcement of penalties) apply in relation to a penalty under this section as they apply in relation to a penalty under section 167 (and references in those provisions to an information notice include a notice under this Chapter).

196  Power to change amount of penalty under section 195

(1) If it appears to the Scottish Ministers that there has been a change in the value of money since the last relevant date, they may by order substitute for the sum for the time being set out in section 195 such other sum as appears to them to be justified by the change.

(2) In subsection (1) “relevant date” means—

(a) the date on which this section came into force, and
(b) each date on which the power conferred by subsection (1) has been exercised.

(3) An order under this section does not apply to any failure which began before the date on which it comes into force.
PART 11
REVIEW AND APPEALS

CHAPTER 1
INTRODUCTORY

Overview

This Part makes provision about the review and appeal of certain decisions of Revenue Scotland including—

(a) which decisions are, and which are not, reviewable and appealable,

(b) the taxpayer’s right to have decisions reviewed and the nature and conduct of those reviews,

(c) the option of mediation following a review that doesn’t settle the matter in question,

(d) the taxpayer’s right to appeal decisions to the tribunal, whether following review or otherwise, and

(e) settling tax disputes by agreement and other supplementary matters.

Appealable decisions

The following decisions of Revenue Scotland are appealable decisions—

(a) a decision which affects whether a person is chargeable to tax,

(b) a decision which affects the amount of tax to which a person is chargeable,

(c) a decision which affects the amount of tax a person is required to pay,

(d) a decision which affects the date by which any amount by way of tax, penalty or interest must be paid,

(e) a decision in relation to the imposition of a penalty,

(f) subject to subsection (2), a decision in relation to the giving of an information notice or in relation to the use of any of the other investigatory powers in Part 7,

(g) subject to subsection (3), a decision in relation to the giving of a notice under section 193.

(2) See section 144 for decisions in relation to the giving of information notices that are not appealable or are appealable only on certain grounds and in certain circumstances.

(3) See section 194 for the grounds on which decisions in relation to the giving of notices under section 193 are appealable.

(4) The following decisions of Revenue Scotland are not appealable decisions—

(a) the making of a Revenue Scotland determination,

(b) a decision to give a notice of enquiry under section 76 or paragraph 9 of schedule 3.
(5) The decisions mentioned in subsection (1) are appealable whether they are decisions under this Act or any other enactment.

(6) The Scottish Ministers may by order modify subsection (1) or (4) to—
   (a) add a decision to either subsection,
   (b) vary the description of a decision,
   (c) remove a decision from either subsection.

CHAPTER 2

REVIEWS

Review of appealable decisions

199 Right to request review

(1) A person aggrieved by an appealable decision (the “appellant”) may request Revenue Scotland to review the decision.

(2) An appellant may not request review where—
   (a) the decision which the appellant seeks to review is a decision of Revenue Scotland to amend a self-assessment under section 78 while an enquiry is in progress, and
   (b) the enquiry has not been completed.

(3) This section does not prevent the matter in question from being dealt with in accordance with section 211(1) and (2) (settling matters in question by agreement).

200 Notice of review

(1) Notice of review under section 199 must be given—
   (a) in writing,
   (b) within 30 days after the specified date,
   (c) to Revenue Scotland.

(2) In subsection (1) “specified date” means—
   (a) the date on which the appellant was notified of the appealable decision, or
   (b) in a case to which section 199(2) applies, the date the appellant was given notice that the enquiry was completed.

(3) The notice of review must specify the grounds of review.

201 Late notice of review

(1) This section applies in a case where—
   (a) notice of review may be given to Revenue Scotland under this Part, but
   (b) no notice is given before the relevant time limit.

(2) Notice may be given after the relevant time limit if—
   (a) Revenue Scotland agrees, or
(b) where Revenue Scotland does not agree, the tribunal gives permission.

(3) Revenue Scotland must agree to notice being given after the relevant time limit if the appellant has requested in writing that Revenue Scotland does so and Revenue Scotland is satisfied—

(a) that there was reasonable excuse for not giving the notice before the relevant time limit, and

(b) that the request has been made without unreasonable delay.

(4) If a request of the kind referred to in subsection (3) is made, Revenue Scotland must notify the appellant whether or not Revenue Scotland agrees to the request.

(5) In this section “relevant time limit”, in relation to notice of review, means the time before which the notice is to be given (but for this section).

202 Duty of Revenue Scotland to carry out review

(1) If the appellant gives Revenue Scotland notice of review, Revenue Scotland must—

(a) notify the appellant of Revenue Scotland's view of the matter in question within the relevant period, and

(b) review the matter in question in accordance with section 203.

(2) Subsection (1) does not apply if—

(a) the appellant has already given notice of review under section 200 in relation to the same matter in question, or

(b) Revenue Scotland has concluded a review of the matter in question.

(3) In this section “relevant period” means—

(a) the period of 30 days beginning with the day on which Revenue Scotland receives the notice of review, or

(b) such longer period as is reasonable.

203 Nature of review etc.

(1) This section applies if Revenue Scotland is required by section 202 to review the matter in question.

(2) The nature and extent of the review are to be such as appear appropriate to Revenue Scotland in the circumstances.

(3) For the purpose of subsection (2), Revenue Scotland must, in particular, have regard to steps taken before the beginning of the review—

(a) by Revenue Scotland in deciding the matter in question, and

(b) by any person in seeking to resolve disagreement about the matter in question.

(4) The review must take account of any representations made by the appellant at a stage which gives Revenue Scotland a reasonable opportunity to consider them.

(5) The review may conclude that Revenue Scotland's view of the matter in question is to be—

(a) upheld,
204 **Notification of conclusions of review**

(1) Revenue Scotland must notify the appellant of the conclusions of the review and its reasoning within—

(a) the period of 45 days beginning with the relevant day, or

(b) such other period as may be agreed.

(2) In subsection (1) “relevant day” means the day when Revenue Scotland notified the appellant of Revenue Scotland’s view of the matter in question.

(3) Where Revenue Scotland is required to undertake a review but does not give notice of the conclusions within the period specified in subsection (1), the review is treated as having concluded that Revenue Scotland’s view of the matter in question (see section 202(1)) is upheld.

(4) If subsection (3) applies, Revenue Scotland must notify the appellant of the conclusions which the review is treated as having reached.

205 **Effect of conclusions of review**

(1) If Revenue Scotland gives notice of the conclusions of a review (see section 204)—

(a) the conclusions are to be treated as if they were contained in a settlement agreement (see section 211(2)), but

(b) section 211(3) (withdrawal from agreement) does not apply in relation to that notional agreement.

(2) Subsection (1) does not apply to the matter in question if, or to the extent that—

(a) the appellant and Revenue Scotland enter into mediation and conclude that mediation by entering into a settlement agreement, or

(b) the appellant gives notice of appeal under section 207.

206 **Right of appeal**

(1) An appellant may appeal to the tribunal against an appealable decision.

(2) An appellant may not give notice of appeal under section 207 if subsection (3), (4) or (5) applies.

(3) This subsection applies where—

(a) the decision which the appellant seeks to appeal is a decision of Revenue Scotland to amend a self-assessment under section 78 while an enquiry is in progress, and

(b) the enquiry has not been completed.

(4) This subsection applies where—
(a) the appellant has given notice of review, and
(b) the review has not been concluded or treated as concluded.

(5) This subsection applies where the appellant has entered into a settlement agreement with Revenue Scotland and has not withdrawn from the agreement under section 211(3).

(6) This section does not prevent the matter in question from being dealt with in accordance with section 211(1) and (2) (settling matters in question by agreement).

207 Notice of appeal

(1) Notice of appeal must be given—
(a) in writing,
(b) within 30 days of the specified date,
(c) to Revenue Scotland.

(2) In subsection (1) “specified date” means—
(a) in a case to which section 206(3) applies, the date the appellant was given notice that the enquiry was completed,
(b) where the appellant does not request a review under section 199, the date on which the appellant was notified of the appealable decision,
(c) where the appellant requests such a review, the date on which the conclusions of review are notified to the appellant under section 204,
(d) where, following a review under section 202, the appellant and Revenue Scotland entered into mediation, the date either Revenue Scotland or the appellant gave notice of withdrawal from mediation,
(e) where the appellant and Revenue Scotland entered into a settlement agreement but the appellant withdrew from the agreement, the date of that withdrawal.

(3) The notice of appeal must specify the grounds of appeal.

208 Late notice of appeal

(1) This section applies in a case where—
(a) notice of appeal may be given to Revenue Scotland under this Part, but
(b) no notice is given before the relevant time limit.

(2) Notice may be given after the relevant time limit if—
(a) Revenue Scotland agrees, or
(b) where Revenue Scotland does not agree, the tribunal gives permission.

(3) Revenue Scotland must agree to notice being given after the relevant time limit if the appellant has requested in writing that Revenue Scotland does so and Revenue Scotland is satisfied—
(a) that there was reasonable excuse for not giving the notice before the relevant time limit, and
(b) that the request has been made without unreasonable delay.
If a request of the kind referred to in subsection (3) is made, Revenue Scotland must notify the appellant whether or not Revenue Scotland agrees to the request.

In this section “relevant time limit”, in relation to notice of appeal, means the time before which the notice is to be given (but for this section).

209 Disposal of appeal

(1) This section applies if notice of appeal is given under section 207.

(2) The tribunal is to determine the matter in question and may conclude that Revenue Scotland’s view of the matter in question is to be—

- (a) upheld,
- (b) varied, or
- (c) cancelled.

CHAPTER 4
SUPPLEMENTARY

210 Reviews and appeals not to postpone recovery of tax

(1) Where there is a review or appeal under this Part, any tax charged or penalty or interest imposed remains due and payable as if there had been no review or appeal.

(2) The Scottish Ministers may by regulations make provision for the postponement of any such tax, penalty or interest pending reviews or appeals, including provision—

- (a) for applications by appellants to Revenue Scotland for postponement of amounts of tax, penalty and interest,
- (b) for the effect of any determination by Revenue Scotland on such applications,
- (c) for agreements between appellants and Revenue Scotland as to postponement of amounts of tax, penalty and interest,
- (d) for applications to the tribunal for such postponement,
- (e) for appeals in relation to such determinations by Revenue Scotland and decisions by the tribunal on such applications.

(3) Regulations under subsection (2) may modify any enactment (including this Act).

211 Settling matters in question by agreement

(1) In relation to a review, mediation or an appeal under this Part, “settlement agreement” means an agreement between the taxpayer and Revenue Scotland that is—

- (a) entered into—
  - (i) before the review is concluded,
  - (ii) as the conclusion of the mediation, or
  - (iii) before the appeal is determined, and
- (b) to the effect that the decision reviewed, taken to mediation or appealed should be upheld without variation, varied in a particular manner or cancelled.
(2) Where a settlement agreement is entered into in relation to a review, mediation or an appeal, the consequences are to be the same (for all purposes) as if, at the time the agreement was entered into, the tribunal had determined an appeal in relation to the matter in question and had upheld the decision without variation, varied it in that manner or cancelled it, as the case may be.

(3) Subsection (2) does not apply if, within 30 days from the date when the settlement agreement was entered into, the appellant gives notice in writing to Revenue Scotland that the appellant wishes to withdraw from the agreement.

(4) Where a settlement agreement is not in writing—

(a) subsection (2) does not apply unless the fact that an agreement was entered into, and the terms agreed, are confirmed by notice in writing given by Revenue Scotland to the appellant or by the appellant to Revenue Scotland, and

(b) the references in subsections (2) and (3) to the time when the agreement was entered into are to be read as references to the time when the notice of confirmation was given.

(5) References in this section to an agreement being entered into with an appellant, and to the giving of notice by or to the appellant, include references to an agreement being entered into, or notice being given by or to, a person acting on behalf of the appellant in relation to the review.

212 Application of this Part to joint buyers

(1) This section applies where, in relation to land and buildings transaction tax, there are two or more buyers who are or will be jointly entitled to the interest acquired by the land transaction.

(2) In a case where some (but not all) of the buyers give notice of review under section 200—

(a) notification of the review must be given by Revenue Scotland to each of the other buyers whose identity is known to it,

(b) any of the other buyers may be a party to the review if they notify Revenue Scotland in writing,

(c) the agreement of all the buyers is required if the review is to be settled by agreement,

(d) if the review is not settled, notice of Revenue Scotland’s conclusions must be given to each of the other buyers whose identity is known to Revenue Scotland, and

(e) section 205 (effect of conclusions of review) applies in relation to all of the buyers.

(3) In a case where the buyers and Revenue Scotland agree to enter into mediation—

(a) notification of the agreement must be given by Revenue Scotland to each of the buyers whose identity is known to it,

(b) any of the buyers may be a party to the mediation if they notify Revenue Scotland, and
(c) the agreement of all the buyers is required if the mediation is to be settled by agreement.

(4) In the case of an appeal relating to the transaction—

(a) the appeal may be brought by any of the buyers,

(b) notice of the appeal must be given by the buyers bringing the appeal to each of the other buyers,

(c) the agreement of all the buyers is required if the appeal is to be settled by agreement,

(d) if the appeal is not settled, any of the buyers are entitled to be parties to the appeal, and

(e) the tribunal's decision on the appeal binds all of the buyers.

(5) This section has effect subject to—

(a) the provisions of schedule 17 to the 2013 Act (relating to partnerships), and

(b) the provisions of schedule 18 to that Act (relating to trustees).

213 Application of this Part to trustees

(1) This section applies where, in relation to land and buildings transaction tax, the buyers in the land transaction are a trust.

(2) In a case where some (but not all) of the trustees give notice of review under section 200—

(a) notification of the review must be given by Revenue Scotland to each of the other relevant trustees whose identity is known to it,

(b) any of the other relevant trustees may be a party to the review if they notify Revenue Scotland in writing,

(c) the agreement of all the relevant trustees is required if the review is to be settled by agreement,

(d) if the review is not settled, notice of Revenue Scotland’s conclusions must be given to each of the relevant trustees whose identity is known to Revenue Scotland, and

(e) section 205 (effect of conclusions of review) applies in relation to all of the relevant trustees.

(3) In a case where the trust and Revenue Scotland agree to enter into mediation—

(a) notification of the agreement must be given by Revenue Scotland to each of the relevant trustees whose identity is known to it,

(b) any of the relevant trustees may be a party to the mediation if they notify Revenue Scotland, and

(c) the agreement of all the relevant trustees is required if the mediation is to be settled by agreement.

(4) In the case of an appeal relating to the transaction—

(a) the appeal may be brought by any of the relevant trustees,
(b) notice of the appeal must be given by the trustee or trustees bringing the appeal to each of the other relevant trustees,

(c) the agreement of all the relevant trustees is required if the appeal is to be settled by agreement,

(d) if the appeal is not settled, any of the relevant trustees are entitled to be parties to the appeal, and

(e) the tribunal's decision on the appeal binds all of the relevant trustees.

(5) In this section “relevant trustees” has the meaning given by paragraph 16 of schedule 18 to the 2013 Act.

(6) This section has effect subject to the provisions of schedule 18 to the 2013 Act (relating to trustees).

214 **References to the “tribunal”**

In this Part “the tribunal” means—

(a) the First-tier Tribunal,

(b) where determined by or under tribunal rules, the Upper Tribunal.

215 **Interpretation**

(1) In this Part—

(a) “matter in question” means the matter to which a review, mediation or appeal relates,

(b) a reference to a notification is a reference to a notification in writing.

(2) In this Part, a reference to the appellant includes a person acting on behalf of the appellant except in relation to—

(a) notification of Revenue Scotland’s view under section 202(1), and

(b) notification of the conclusions of a review under section 204.

(3) But if a notification falling within paragraph (a) or (b) of subsection (2) is given to the appellant, a copy of the notification may also be given to a person acting on behalf of the appellant.

**PART 12**

**FINAL PROVISIONS**

**Interpretation**

216 **General interpretation**

In this Act—

“the 2013 Act” means the Land and Buildings Transaction Tax (Scotland) Act 2013 (asp 11),

“the 2014 Act” means the Landfill Tax (Scotland) Act 2014 (asp 00),
“designated officer” means a member of staff of Revenue Scotland or other person who is, or a category of members of staff or other persons who are, designated by Revenue Scotland for the purposes of this Act.

“notice of appeal” means a notice under section 207,

“notice of review” means a notice under section 200,

“Revenue Scotland determination” means a determination under section 86,

“tribunal” has the meaning given by section 214.

## Index of defined expressions

Schedule 5 contains an index of expressions defined or otherwise explained in this Act.

### Subordinate legislation

(1) Orders and regulations under this Act are subject to the negative procedure.

(2) Subsection (1) does not apply to—

   (a) orders and regulations for which provision is made in subsection (3) or (4),

   (b) orders under section 224(2).

(3) Orders and regulations under the following provisions are subject to the affirmative procedure—

   (a) section 30(1),

   (b) section 45(1),

   (c) section 72(2),

   (d) section 73(1),

   (e) section 150(2),

   (f) section 151(2),

   (g) section 160(7),

   (h) section 162(4),

   (i) section 163(3),

   (j) section 170(1),

   (k) section 181(2),

   (l) section 185(1),

   (m) section 196(1),

   (n) section 198(6),

   (o) section 210(2).

(4) Orders and regulations under the following provisions which contain provision which adds to, replaces or omits any part of the text of an Act are also subject to the affirmative procedure—

   (a) section 102(1),
(b) section 219(1).

(5) Orders and regulations under this Act may—
(a) make different provision for different purposes (including for different devolved
taxes),
(b) contain incidental, supplementary, consequential, transitional, transitory or saving
provision.

(6) Subsection (5)(b) does not apply to orders under section 219(1).

Ancillary provision

219 Ancillary provision

(1) The Scottish Ministers may by order make such incidental, supplementary,
consequential, transitional, transitory or saving provision as they consider appropriate
for the purposes of, in connection with, or for giving full effect to, this Act or any
provision of it.

(2) An order under subsection (1) may modify any enactment (including this Act).

Modification of enactments

220 Minor and consequential modifications of enactments

Schedule 4 makes minor and consequential amendments and repeals of enactments.

Crown application

221 Crown application: criminal offences

(1) No contravention by the Crown of any provision of or made under this Act makes the
Crown criminally liable.

(2) But the Court of Session may, on the application of the Lord Advocate, declare unlawful
any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (1), this Act applies to persons in the public service of the Crown as
it applies to other persons.

222 Crown application: powers of entry

(1) A power of entry conferred by or under this Act is exercisable in relation to Crown land
only with the consent of the appropriate authority.

(2) The following table determines what is “Crown land” and who the “appropriate
authority” is in relation to each kind of Crown land.

<table>
<thead>
<tr>
<th>Crown land</th>
<th>Appropriate authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land an interest in which belongs to Her Majesty in right of the Crown and which forms part of the Crown estate</td>
<td>The Crown Estate Commissioners</td>
</tr>
<tr>
<td>Other land an interest in which belongs to Her Majesty in right of the Crown</td>
<td>The office-holder in the Scottish Administration or the Government department having the management of the land</td>
</tr>
</tbody>
</table>
Crown land

| Land an interest in which belongs to an office-holder in the Scottish Administration | The relevant office-holder in the Scottish Administration |
| Land an interest in which belongs to a Government department | The relevant Government department |
| Land an interest in which is held in trust for Her Majesty for the purposes of the Scottish Administration | The relevant office-holder in the Scottish Administration |
| Land an interest in which is held in trust for Her Majesty for the purposes of a Government department | The relevant Government department |

(3) “Government department” means a department of the Government of the United Kingdom”.

223 Crown application: Her Majesty

Nothing in this Act affects Her Majesty in Her private capacity.

Commencement and short title

224 Commencement

(1) This section and sections 218, 219, 221, 222, 223 and 225 come into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may include transitional, transitory or saving provision.

225 Short title

The short title of this Act is the Revenue Scotland and Tax Powers Act 2014.
SCHEDULE 1
(introduced by section 2(3))

REVENUE SCOTLAND

Membership

1
(1) Revenue Scotland is to consist of no fewer than 5 and no more than 9 members appointed by the Scottish Ministers.

(2) Ministers are to appoint one of the members to chair Revenue Scotland (“the Chair”).

(3) Ministers may by order amend sub-paragraph (1) so as to substitute a different number for the minimum or maximum number of members for the time being specified there.

(4) Membership of Revenue Scotland is for such period and on such terms as Ministers may determine.

(5) A member may resign by giving notice in writing to Ministers.

(6) A person who is (or who has been) a member may be reappointed.

Disqualification

2
(1) A person may not be appointed as a member of Revenue Scotland (and may not continue as a member) if that person—

(a) is (or becomes)—

(i) a member of the Scottish Parliament,

(ii) a member of the House of Commons,

(iii) a member of the European Parliament,

(iv) a councillor of any local authority,

(v) a member of the Scottish Government,

(vi) a Minister of the Crown,

(vii) an office-holder of the Crown in right of Her Majesty’s Government in the United Kingdom,

(viii) an office-holder in the Scottish Administration,

(ix) a civil servant,

(b) is (or has been) insolvent,

(c) is (or has been) disqualified as a company director under the Company Directors Disqualification Act 1986 (c.46) (or any analogous disqualification provision, anywhere in the world), or

(d) is (or has been) disqualified as a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) (or any analogous disqualification provision, anywhere in the world).

(2) For the purposes of sub-paragraph (1)(b) a person is (or has been) insolvent if—

(a) the person’s estate is or has been sequestrated,

(b) the person has granted a trust deed for creditors or has made a composition or arrangement with creditors,
(c) the person is (or has been) the subject of any other kind of arrangement analogous to those described in paragraphs (a) and (b), anywhere in the world.

**Removal of members**

3 The Scottish Ministers may, by giving notice in writing, remove a member if—

(a) any of sub-paragraphs (1)(a) to (d) of paragraph 2 apply to the member,

(b) the member has been absent from meetings of Revenue Scotland for a period longer than 6 months without permission from Revenue Scotland, or

(c) Ministers consider that the member is otherwise unfit to be a member or is unable to carry out the member’s functions.

**Remuneration and expenses**

4 (1) Revenue Scotland may pay to—

(a) its members, and

(b) the members of any committee established by it,

such remuneration as it may, with the approval of the Scottish Ministers, determine.

15 (2) Revenue Scotland may pay to—

(a) its members, and

(b) the members of any committee established by it,

such sums as it may, with the approval of Ministers, determine by way of reimbursement of expenses incurred by them in carrying out their functions.

**Committees**

5 (1) Revenue Scotland may establish committees for any purpose relating to its functions.

(2) Revenue Scotland may determine the composition of its committees.

(3) Revenue Scotland may appoint persons who are not members of Revenue Scotland to be members of a committee, but those persons are not entitled to vote at meetings of the committee.

**Procedure**

6 (1) Revenue Scotland may regulate its own procedure (including quorum) and that of any committee.

(2) The validity of any proceedings or acts of Revenue Scotland (or of any committee) is not affected by—

(a) any vacancy in its membership,

(b) any defect in the appointment of a member, or

(c) disqualification of a person as a member after appointment.
Internal delegation by Revenue Scotland

7 (1) Revenue Scotland may authorise—
   (a) a member,
   (b) a committee, or
   (c) the chief executive or any other member of staff,
   to exercise such of its functions (and to such extent) as it may determine.

(2) Sub-paragraph (1) does not affect Revenue Scotland’s responsibility for the exercise of its functions.

Chief executive and other staff

8 (1) Revenue Scotland is to employ a chief executive.

(2) The person employed as chief executive may not be a member of Revenue Scotland.

(3) The first person employed as chief executive is to be appointed by the Scottish Ministers on such terms as they may determine.

(4) Before appointing the first chief executive, Ministers must consult the Chair (if a person holds that position).

(5) Each subsequent chief executive is to be appointed by Revenue Scotland on such terms as it may, with the approval of Ministers, determine.

(6) Revenue Scotland may appoint other members of staff on such terms as it may, with the approval of Ministers, determine.

Powers

9 In addition to any other powers it has, Revenue Scotland may do anything which it considers—
   (a) necessary or expedient in connection with the exercise of its functions,
   (b) incidental or conducive to the exercise of those functions.

SCHEDULE 2
(introduced by section 24(4))

THE SCOTTISH TAX TRIBUNALS

PART 1

APPOINTMENT OF MEMBERS

President of the Tax Tribunals: eligibility for appointment

1 (1) A person is eligible for appointment as President of the Tax Tribunals only if qualifying under sub-paragraphs (2) and (3).

(2) The person qualifies under this sub-paragraph if the person is practising, and has practised for a period of not less than 10 years, as—
   (a) a solicitor or advocate in Scotland, or
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Part 1—Appointment of members

(b) a solicitor or barrister in England, Wales or Northern Ireland.

(3) The person qualifies under this sub-paragraph if the person has the qualifications, experience and training in relation to tax law and practice that the Scottish Ministers consider appropriate.

First-tier Tribunal: ordinary members

2 (1) The Scottish Ministers must appoint persons as ordinary members of the First-tier Tribunal.

(2) A person is eligible for appointment only if the person meets the criteria as to qualifications, experience and training that the Scottish Ministers prescribe by regulations.

First-tier Tribunal: legal members

3 (1) The Scottish Ministers must appoint persons as legal members of the First-tier Tribunal.

(2) A person is eligible for appointment only if the person—

(a) has the qualifications, experience and training in relation to tax law and practice that the Scottish Ministers consider appropriate, and

(b) meets the criteria in either sub-paragraph (1) or (2) of paragraph 4.

4 (1) A person meets the criteria in this sub-paragraph if the person is practising, and has practised for a period of not less than 5 years, as—

(a) a solicitor or advocate in Scotland, or

(b) a solicitor or barrister in England, Wales or Northern Ireland.

(2) The person meets the criteria in this sub-paragraph if the person falls within a description specified by the Scottish Ministers in regulations.

Upper Tribunal: legal members

5 (1) The Scottish Ministers must appoint persons as legal members of the Upper Tribunal.

(2) A person is eligible for appointment only if the person—

(a) has the qualifications, experience and training in relation to tax law and practice that the Scottish Ministers consider appropriate, and

(b) meets the criteria in either sub-paragraph (1) or (2) of paragraph 6.

6 (1) A person meets the criteria in this sub-paragraph if the person is practising, and has practised for a period of not less than 10 years, as—

(a) a solicitor or advocate in Scotland, or

(b) a solicitor or barrister in England, Wales or Northern Ireland.

(2) The person meets the criteria in this sub-paragraph if the person falls within a description specified by the Scottish Ministers in regulations.
Disqualification from office

7 A person is disqualified from appointment, and from holding a position, as President of the Tax Tribunals or as a member of the Tax Tribunals if the person is or becomes—
   (a) a member of the House of Commons,
   (b) a member of the Scottish Parliament,
   (c) a member of the European Parliament,
   (d) a Minister of the Crown,
   (e) a member of the Scottish Government,
   (f) a civil servant.

Eligibility under regulations

8 (1) Regulations under paragraph 4(2) may describe a person by reference to the matters mentioned in sub-paragraph (3) or (6).
   (2) Regulations under paragraph 6(2) may describe a person by reference to the matters mentioned in sub-paragraph (4) or (6).

15 (3) The matters referred to in sub-paragraph (1) are—
   (a) previous practice for a period of not less than 5 years as—
      (i) a solicitor or advocate in Scotland, or
      (ii) a solicitor or barrister in England, Wales or Northern Ireland, and
   (b) subsequent engagement in any of the activities listed in sub-paragraph (5).

20 (4) The matters referred to in sub-paragraph (2) are—
   (a) previous practice for a period of not less than 10 years as—
      (i) a solicitor or advocate in Scotland, or
      (ii) a solicitor or barrister in England, Wales or Northern Ireland, and
   (b) subsequent engagement in any of the activities listed in sub-paragraph (5).

25 (5) The activities referred to in sub-paragraph (3)(b) and (4)(b) are—
   (a) exercising judicial functions in any court or tribunal,
   (b) practice or employment as a lawyer of any kind,
   (c) whether or not in the course of practice or employment as a lawyer—
      (i) advising on the application of the law,
      (ii) drafting documents intended to affect rights or obligations under the law,
      (iii) assisting persons involved in a legal or other process for the resolution of disputes as to the law,
      (iv) acting as a mediator or arbitrator for the purpose of resolving disputes that are (or could be) the matter of legal proceedings,
   (d) teaching or researching law at or for an educational institution.
(6) The other matters referred to in sub-paragraphs (1) and (2) are suitability attributable to experience in law through engagement in—
   (a) any of the activities listed in sub-paragraph (5), or
   (b) an activity that is of a broadly similar nature to any of the activities listed in that sub-paragraph.

9 (1) The Scottish Ministers may by regulations make provision—
   (a) as regards the calculation of the 5-year period mentioned in paragraph 4(1) or 8(3)(a) (for example, by reference to recent or continuous time),
   (b) as regards the calculation of the 10-year period mentioned in paragraph 6(1) or 8(4)(a) (for example, by reference to recent or continuous time),
   (c) to which paragraph 8(3)(a) or 8(4)(a) is subject (for example, by reference to debarment from practice),
   (d) for the purpose of paragraph 8(6), about—
      (i) the criteria for suitability (for example, by reference to equivalence to past or present practice as a solicitor),
      (ii) the nature of experience required (for example, by reference to engagement for a particular period of time (within the United Kingdom or elsewhere)).

(2) The Scottish Ministers may by regulations modify the list in paragraph 8(5).

**PART 2**

**CONDITIONS OF MEMBERSHIP ETC.**

**Application of this Part**

10 (1) This Part of this schedule applies in relation to the positions of ordinary member and legal member of the Tax Tribunals (but not the position of judicial member of the tribunals).

25 (2) The following paragraphs of this Part also apply in relation to the position of President of the Tax Tribunals—
   (a) paragraph 15 (with the modification that the reference in paragraph 15(c) to the President of the Tax Tribunals is to be read as a reference to the Scottish Ministers), and
   (b) paragraph 16.

**Initial period of office**

11 A person who is appointed to a position as a member of the Tax Tribunals holds the position for the period of 5 years beginning with the date of the appointment.

**Reappointment**

35 12 (1) Unless sub-paragraph (3) applies, a member of the Tax Tribunals is to be reappointed as such at the end of each period for which the position is held.
(2) Reappointment under sub-paragraph (1) is to the position for the period of 5 years beginning with the date of the reappointment.

(3) This sub-paragraph applies if—

(a) the member has declined to be reappointed,

(b) the member is ineligible for reappointment,

(c) the President of the Tax Tribunals has recommended to the Scottish Ministers that the member should not be reappointed.

(4) In sub-paragraph (1) the reference to the period for which a position is held is to—

(a) the period for which the position is held in accordance with paragraph 11, or

(b) any further period for which the position is held by virtue of reappointment in accordance with sub-paragraphs (1) and (2).

For the purpose of paragraph 12(3)(b), a member is ineligible for reappointment only if the member would not be eligible for appointment to the position in accordance with the relevant provisions of Part 1 of this schedule were the member being appointed to the position for the first time.

For the purpose of paragraph 12(3)(c), the President of the Tax Tribunals may recommend to the Scottish Ministers that a member should not be reappointed only if satisfied that—

(a) the member has failed to comply with—

(i) any of the relevant terms and conditions of membership, or

(ii) any other requirement imposed on the member by or under this Act, or

(b) the tribunal concerned no longer requires—

(i) a member with the qualifications, experience and training of that member, or

(ii) the same number of members for the efficient disposal of its business.

Termination of appointment

A member of the Tax Tribunals ceases to hold the position to which the member was appointed if the member—

(a) becomes disqualified from holding the position (see paragraph 7),

(b) is removed from the position under paragraph 40, or

(c) resigns the position by giving notice in writing to the President of the Tax Tribunals.

Pensions etc.

The Scottish Ministers may make arrangements as to—

(a) the payment of pensions, allowances and gratuities to or in respect of members of the Tax Tribunals or former members,

(b) contributions or other payment towards provision for such pensions, allowances and gratuities.
(2) The references in sub-paragraph (1) to pensions, allowances and gratuities include pensions, allowances and gratuities paid by way of compensation for loss of office.

Oaths

17 (1) Each of the members of the Tax Tribunals must take the required oaths in the presence of the President of the Tax Tribunals.

(2) In this paragraph, “the required oaths” means the oath of allegiance and the judicial oath as set out in the Promissory Oaths Act 1868 (c.72).

Other conditions

18 (1) Other than as provided for in this Act, the Scottish Ministers may determine the terms and conditions on which a member of the Tax Tribunals holds the position.

(2) Under sub-paragraph (1), the determination may (in particular)—

(a) include provision for sums to be payable by way of remuneration, allowances and expenses,

(b) make different provision for different categories of member or other different purposes.

**PART 3**

**CONDUCT AND DISCIPLINE**

Application of this Part

19 (1) This Part of this schedule applies in relation to the positions of ordinary member and legal member of the Tax Tribunals (but not the position of judicial member of the tribunals).

(2) Paragraphs 20 to 22 also apply to the position of the President of the Tax Tribunals.

Conduct Rules

20 The Scottish Ministers are responsible for making and maintaining appropriate arrangements for the things for which rules under paragraph 21(1) may make provision.

21 (1) The Scottish Ministers may make rules for the purposes of or in connection with—

(a) the investigation and determination of any matter concerning the conduct of members of the Tax Tribunals,

(b) the review of any such determination.

(2) Rules under sub-paragraph (1) may include provision about (in particular)—

(a) the circumstances in which an investigation must or may be undertaken,

(b) the making of a complaint by any person,

(c) the steps that are to be taken by a person making a complaint before it is to be investigated,

(d) the carrying out of an investigation (including any steps to be taken by the member whom it concerns or by any other person),
(e) the time limits for taking steps and procedures for extending such time limits,

(f) the person by whom an investigation (or part of an investigation) is to be carried out,

(g) the matters to be determined by the person carrying out an investigation (or part of an investigation), the President of the Tax Tribunals or any other person,

(h) the making of recommendations by the person carrying out an investigation (or part of one),

(i) the obtaining of information relating to a complaint,

(j) the keeping of a record of an investigation,

(k) the confidentiality of communications or proceedings,

(l) the publication of information or its supply to any person.

22 Rules under paragraph 21(1)—
(a) may make different provision for different purposes,
(b) are to be published in such manner as the Scottish Ministers may determine.

Reprimand etc.

23 (1) Where the condition in sub-paragraph (2) is met in relation to a member of the Tax Tribunals, the President of the Tax Tribunals may, for disciplinary purposes, give the member—
(a) formal advice,
(b) a formal warning, or
(c) a reprimand.

(2) The condition is that—
(a) an investigation has been carried out with respect to the member in accordance with rules made under paragraph 21(1), and
(b) the person carrying out the investigation has recommended that the President exercise the power conferred by sub-paragraph (1).

24 Paragraph 23 does not limit what the President of the Tax Tribunals may do—
(a) informally,
(b) for other purposes, or
(c) where no advice or warning is given in a particular case.

Suspension of membership

25 (1) If the President of the Tax Tribunals considers that it is necessary for the purpose of maintaining public confidence in the Tax Tribunals, the President may suspend a member of the tribunals.

(2) Suspension under sub-paragraph (1)—
(a) is for such period as the President may specify when suspending the member,
(b) may be revoked or extended subsequently by the President.

26 Suspension under paragraph 25(1) does not affect any remuneration payable to, or in respect of, the member concerned during the period of suspension.

Judicial Complaints Reviewer

5 27 (1) The Judicial Complaints Reviewer has the functions mentioned in sub-paragraph (2).

(2) The functions are—

(a) on the request of a relevant person, to review the handling of an investigation carried out in accordance with rules made under paragraph 21(1) to consider whether the investigation has been carried out in accordance with the rules,

(b) in any case where the Reviewer considers that such an investigation has not been carried out in accordance with such rules, to refer the case to the Scottish Ministers,

(c) as directed by the Scottish Ministers, to prepare and publish reports on the investigations carried out in pursuance of such rules, and

(d) to make written representations to the Scottish Ministers about procedures for handling the investigation of matters concerning the conduct of members of the Tax Tribunals.

(3) The Scottish Ministers are to have regard to any written representations made under sub-paragraph (2)(d).

(4) In sub-paragraph (2)(a), “relevant person” means—

(a) the person whose complaint led to the carrying out of the investigation, or

(b) the member of the Tax Tribunals with respect to whom the investigation has been carried out.

28 (1) Sub-paragraph (2) applies where a case is referred to the Scottish Ministers by the Judicial Complaints Reviewer under paragraph 27(2)(b).

(2) The Scottish Ministers may—

(a) vary or revoke wholly or partly the determination made in the case to which the investigation relates,

(b) cause a fresh investigation to be carried out,

(c) confirm the determination in the case, or

(d) deal with the referral in such other way as the Scottish Ministers consider appropriate.

PART 4

FITNESS AND REMOVAL

35 Application of this Part

29 (1) This Part of this schedule applies in relation to the positions of ordinary member and legal member of the Tax Tribunals (but not the position of judicial member of the tribunals).
(2) This Part also applies to the position of the President of the Tax Tribunals subject to the modifications mentioned in paragraph 41.

Constitution and procedure

30 (1) The Scottish Ministers must constitute a fitness assessment tribunal when requested to do so by the President of the Tax Tribunals.

(2) The Scottish Ministers may constitute a fitness assessment tribunal—
(a) in such other circumstances as they think fit, and
(b) following consultation with the President.

(3) The function of a fitness assessment tribunal is to investigate and report on whether a member of the Tax Tribunals is unfit to hold the position of member of the tribunals.

31 The Scottish Ministers may make rules as to the procedure to be followed in proceedings at a fitness assessment tribunal.

Composition and remuneration

32 (1) A fitness assessment tribunal is to consist of—
(a) one person who is, or has been—
(i) a judge of the Court of Session (except a temporary judge), or
(ii) a sheriff (except a part-time sheriff),
(b) one person who is—
(i) where the person under investigation is an ordinary member, another ordinary member,
(ii) where the person under investigation is a legal member, another legal member, and
(c) one person who does not fall (and has never fallen) within a category of person referred to in paragraph (a) or (b).

(2) The selection of persons to be members of the fitness assessment tribunal is to be made by the Scottish Ministers with the agreement of the Lord President.

33 (1) The Scottish Ministers—
(a) must pay such expenses as they consider are reasonably required to be incurred to enable a fitness assessment tribunal to carry out its functions,
(b) may pay such remuneration to, and expenses of, any member of such a tribunal as they think fit.

(2) Sub-paragraph (1)(b) does not apply in relation to such a member if the member is a sheriff or a judge of the Court of Session.

Proceedings before fitness assessment tribunal

34 (1) A fitness assessment tribunal may require any person—
(a) to attend its proceedings for the purpose of giving evidence,
(b) to produce documents in the person’s custody or under the person’s control.

(2) A person on whom such a requirement is imposed is not obliged to answer any question or produce any document which the person would be entitled to refuse to answer or produce in a court of law in Scotland.

35 (1) Sub-paragraph (2) applies where a person on whom a requirement has been imposed under paragraph 34(1)—

(a) refuses or fails, without reasonable excuse—

(i) to comply with the requirement,

(ii) while attending the tribunal proceedings to give evidence, to answer any question,

(b) deliberately alters, conceals or destroys any document which the person is required to produce.

(2) The Court of Session may, on an application made to it by the tribunal—

(a) make such order for enforcing compliance or otherwise as it thinks fit, or

(b) deal with the matter as if it were a contempt of the Court.

Suspension during investigation

36 (1) Sub-paragraph (2) applies if the President of the Tax Tribunals requests the Scottish Ministers to constitute a fitness assessment tribunal to investigate whether a member of the Tax Tribunals is unfit to hold the position of member of the tribunals.

(2) The President may suspend the member from the position at any time before the fitness assessment tribunal submits its report as required by paragraph 39(2).

(3) Suspension under sub-paragraph (2) lasts until (whichever is earlier)—

(a) the President revokes it, or

(b) the report is laid as required by paragraph 39(3).

37 (1) Sub-paragraph (2) applies if a fitness assessment tribunal—

(a) recommends that a member of the Tax Tribunals who is subject to its investigation should be suspended from the position as member of the tribunals,

(b) does so in writing at any time before the fitness assessment tribunal submits its report as required by paragraph 39(2).

(2) The Scottish Ministers may suspend the member from the position at any time before laying the report as required by paragraph 39(3).

(3) Suspension under sub-paragraph (2) lasts until (whichever is earlier)—

(a) the Scottish Ministers revoke it, or

(b) the report is laid as required by paragraph 39(3).

38 Suspension under paragraph 36(2) or 37(2) does not affect any remuneration payable to, or in respect of, the member concerned during the period of suspension.
**Report and removal**

39 (1) A report by a fitness assessment tribunal must—
   
   (a) be in writing, and
   
   (b) contain reasons for its conclusions.

(2) As soon as reasonably practicable after it is completed, such a report must be submitted by the fitness assessment tribunal to—
   
   (a) the Scottish Ministers, and
   
   (b) the President of the Tax Tribunals.

(3) The Scottish Ministers must lay before the Scottish Parliament each report submitted under sub-paragraph (2).

40 (1) If the relevant condition is met, the Scottish Ministers may remove a member of the Tax Tribunals from the position of member of the tribunals.

(2) The relevant condition is that a fitness assessment tribunal has submitted a report under paragraph 39(2) concluding that the member is unfit to hold the position of member of the Tax Tribunals.

**Application of this Part to the President of the Tax Tribunals**

41 (1) This Part of this schedule applies in relation to the President of the Tax Tribunals with the following modifications.

(2) In paragraph 30, sub-paragraphs (1) and (2)(b) do not apply.

(3) Paragraph 32 is to apply in relation to a fitness assessment tribunal constituted to investigate and report on whether the President is unfit to hold that position as it applies to a legal member of the Tax Tribunals.

(4) In paragraph 36—
   
   (a) sub-paragraph (1) does not apply,
   
   (b) the references in sub-paragraphs (2) and (3)(a) to the President are to be read as references to the Scottish Ministers.

(5) Paragraph 39(2)(b) does not apply.

**Interpretation**

42 In this Part of this schedule, the references to unfitness to hold the position of member of the Tax Tribunals are to unfitness by reason of inability, neglect of duty or misbehaviour.

**SCHEDULE 3**

*(introduced by section 105)*

**CLAIMS FOR RELIEF FROM DOUBLE ASSESSMENT AND FOR REPAYMENT**

**Introduction**

1 This schedule applies to a claim under section 97, 98 or 99.
Making of claims

2 (1) A claim must be made in such form as Revenue Scotland may determine.

(2) The form of claim must provide for a declaration to the effect that all the particulars given in the form are correctly stated to the best of the claimant's information and belief.

(3) The form of claim may require—
(a) a statement of the amount of tax that will be required to be discharged or repaid in order to give effect to the claim,
(b) such information as is reasonably required for the purpose of determining whether and, if so, the extent to which the claim is correct,
(c) the delivery with the claim of such statements and documents, relating to the information contained in the claim, as are reasonably required for the purpose mentioned in paragraph (b).

(4) A claim for repayment of tax may not be made unless the claimant has documentary evidence that the tax has been paid.

Duty to keep and preserve records

3 (1) A person who wishes to make a claim must—
(a) keep such records as may be needed to enable the person to make a correct and complete claim, and
(b) preserve those records in accordance with this paragraph.

(2) The records must be preserved until the latest of the following times—
(a) the end of the period of 3 years beginning with the day on which the claim was made,
(b) where there is an enquiry into the claim, or into an amendment of the claim, the time when the enquiry is completed,
(c) where the claim is amended and there is no enquiry into the amendment, the time when Revenue Scotland no longer has power to enquire into the amendment.

(3) The Scottish Ministers may by regulations—
(a) provide that the records required to be kept and preserved under this paragraph include, or do not include, records specified in the regulations, and
(b) provide that those records include supporting documents so specified.

(4) Regulations under this paragraph may make provision by reference to things specified in a notice published by Revenue Scotland in accordance with the regulations (and not withdrawn by a subsequent notice).

(5) "Supporting documents" includes accounts, books, deeds, contracts, vouchers and receipts.

Preservation of information etc.

4 The duty under paragraph 3 to preserve records may be satisfied—
(a) by preserving them in any form and by any means, or
(b) by preserving the information contained in them in any form and by any means, subject to any conditions or exceptions specified in writing by Revenue Scotland.

**Penalty for failure to keep and preserve records**

5 (1) A person who fails to comply with paragraph 3 in relation to a claim that the person makes is liable to a penalty not exceeding £3,000, subject to the following exception.

(2) No penalty is incurred if Revenue Scotland is satisfied that any facts that it reasonably requires to be proved, and that would have been proved by the records, are proved by other documentary evidence provided to it.

**Amendment of claim by claimant**

6 (1) The claimant may amend the claim by notice in writing to Revenue Scotland.

(2) No such amendment may be made—

(a) more than 12 months after the day on which the claim was made, or

(b) if Revenue Scotland gives notice under paragraph 9 (notice of enquiry), during the period—

(i) beginning with the day on which notice is given, and

(ii) ending with the day on which the enquiry under that paragraph is completed.

**Correction of claim by Revenue Scotland**

7 (1) Revenue Scotland may by notice in writing to the claimant amend a claim so as to correct obvious errors or omissions in the claim (whether errors of principle, arithmetical mistakes or otherwise).

(2) No such correction may be made—

(a) more than 9 months after the day on which the claim was made, or

(b) if Revenue Scotland gives notice under paragraph 9 (notice of enquiry), during the period—

(i) beginning with the day on which notice is given, and

(ii) ending with the day on which the enquiry under that paragraph is completed.

(3) A correction under this paragraph is of no effect if, within 3 months from the date of issue of the notice of correction, the claimant gives notice rejecting the correction.

(4) Notice under sub-paragraph (3) must be given to Revenue Scotland.

**Giving effect to claims and amendments**

8 (1) As soon as practicable after a claim is made, amended or corrected under paragraph 6 or 7, Revenue Scotland must give effect to the claim or amendment by discharge or repayment of tax.

(2) Where Revenue Scotland enquires into a claim or amendment—
Revenue Scotland and Tax Powers Bill
Schedule 3—Claims for relief from double assessment and for repayment

(a) sub-paragraph (1) does not apply until a closure notice is given under paragraph 10 (completion of enquiry), and then it applies subject to paragraph 12 (giving effect to amendments under paragraph 10), but

(b) Revenue Scotland may at any time before then give effect to the claim or amendment, on a provisional basis, to such extent as it thinks fit.

Notice of enquiry

9 (1) Revenue Scotland may enquire into a person’s claim or amendment of a claim if it gives the claimant notice of its intention to do so (“notice of enquiry”) before the end of the period of 3 years after the day on which the claim was made.

(2) A claim or amendment that has been the subject of one notice of enquiry may not be the subject of another.

Completion of enquiry

10 (1) An enquiry under paragraph 9 is completed when Revenue Scotland by notice (a “closure notice”) informs the claimant that it has completed its enquiries and states its conclusions.

(2) A closure notice must be given no later than 3 years after the date on which the claim was made.

(3) A closure notice must either—

(a) state that in the opinion of Revenue Scotland no amendment of the claim is required, or

(b) if in Revenue Scotland’s opinion the claim is insufficient or excessive, amend the claim so as to make good or eliminate the deficiency or excess.

(4) In the case of an enquiry into an amendment of a claim, sub-paragraph (3)(b) applies only so far as the deficiency or excess is attributable to the amendment.

(5) A closure notice takes effect when it is issued.

Direction to complete enquiry

11 (1) The claimant may apply to the tribunal for a direction that Revenue Scotland gives a closure notice within a specified period.

(2) Any such application is to be subject to the relevant provisions of tribunal rules.

(3) The tribunal must give a direction unless satisfied that Revenue Scotland has reasonable grounds for not giving a closure notice within a specified period.

Giving effect to amendments under paragraph 10

12 (1) Within 30 days after the date of issue of a notice under paragraph 10(3)(b) (closure notice that amends claim), Revenue Scotland must give effect to the amendment by making such adjustment as may be necessary, whether—

(a) by way of assessment on the claimant, or

(b) by discharge or repayment of tax.
(2) An assessment made under sub-paragraph (1) is not out of time if it is made within the time mentioned in that sub-paragraph.

**Appeals against amendments under paragraph 10**

13 (1) An appeal may be brought against a conclusion stated or amendment made by a closure notice.

(2) Notice of the appeal must be given—
   (a) in writing,
   (b) within 30 days after the date on which the closure notice was issued,
   (c) to Revenue Scotland.

(3) The notice of appeal must specify the grounds of appeal.

(4) Part 11 (reviews and appeals) applies in relation to an appeal under this paragraph as it applies in relation to an appeal under that Part.

(5) On an appeal against an amendment made by a closure notice, the tribunal may vary the amendment appealed against whether or not the variation is to the advantage of the appellant.

(6) Where any such amendment is varied, whether by the tribunal or by the order of a court, paragraph 12 (giving effect to amendments under paragraph 10) applies (with the necessary modifications) in relation to the variation as it applied in relation to the amendment.

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**SCHEDULE 4**

(introduced by section 220)

**MINOR AND CONSEQUENTIAL MODIFICATIONS**

*Public Finance and Accountability (Scotland) Act 2000*

1 In section 9(1) of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) (Keeper of the Registers of Scotland: financial arrangements), after “Sums” insert “(other than payments of land and buildings transaction tax)”.

*Ethical Standards in Public Life etc. (Scotland) Act 2000*

2 In the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7), in schedule 3 (devolved public bodies), at the appropriate place in alphabetical order insert—
   “Revenue Scotland”.

*Freedom of Information (Scotland) Act 2002*

3 In the Freedom of Information (Scotland) Act 2002 (asp 13), in Part 2 of schedule 1 (Scottish public authorities), at the appropriate place in alphabetical order insert—
   “Revenue Scotland”.

Public Appointments and Public Bodies etc. (Scotland) Act 2003

4 In the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), in schedule 2 (the specified authorities), under the heading “Executive bodies” at the appropriate place in alphabetical order insert—

“Revenue Scotland”.

Public Services Reform (Scotland) Act 2010

5 In the Public Services Reform (Scotland) Act 2010 (asp 8), in schedule 8 (listed public bodies), at the appropriate place in alphabetical order insert—

“Revenue Scotland”.

Public Records (Scotland) Act 2011

6 In the Public Records (Scotland) Act 2011 (asp 12), in the schedule, under the heading “Scottish Administration” at the appropriate place in alphabetical order insert—

“Revenue Scotland”.

Land and Buildings Transaction Tax (Scotland) Act 2013

7 (1) The 2013 Act is amended as follows.

(2) In section 35 (form and content of returns), in subsection (1)—

(a) the word “and” after paragraph (a) is repealed,

(b) after paragraph (b) insert “, and

(c) be made in such manner as specified by the Tax Authority.”.

(3) In section 48 (joint buyers), after subsection (3) insert—

“(3A) See also section 212 of the Revenue Scotland and Tax Powers Act 2014 (asp 00) (reviews, appeals etc. where joint buyers).”.

(4) In section 50 (trusts), after subsection (2) insert—

“(3) See also section 213 of the Revenue Scotland and Tax Powers Act 2014 (asp 00) (reviews, appeals etc.: trustees).”.

(5) In section 54 (the Tax Authority)—

(a) in subsection (1), for “the Scottish Ministers” substitute “Revenue Scotland”,

(b) subsection (2) is repealed.

(6) Section 55 (delegation of functions to Keeper) is repealed.

(7) Section 56 (review and appeal) is repealed.

(8) In section 68 (subordinate legislation)—

(a) in subsection (2), paragraph (h) is repealed,

(b) in subsection (3), paragraph (c) is repealed,

(c) after subsection (6) insert—

“(6A) Subsection (4)(b) is without prejudice to—
(a) anything previously done by reference to an order mentioned in subsection (5), or
(b) the making of a new order.”.

(9) In section 70(1) (commencement), “55,” is repealed.

5 Landfill Tax (Scotland) Act 2014

8 (1) The 2014 Act is amended as follows.
(2) In section 25 (accounting for tax and time for payment), for paragraph (b) substitute—
“(b) make returns in relation to such accounting periods,”.
(3) After section 25 insert—

“25A Form and content of returns
(1) A return under this Act must—
(a) be in the form specified by the Tax Authority,
(b) contain such information specified by the Tax Authority, and
(c) be made in such manner as specified by the Tax Authority.
(2) The Tax Authority may specify different forms and information for different kinds of return.
(3) A return is treated as containing any information provided by the person making it for the purpose of completing the return.”.

(4) Section 29 (recovery of overpaid tax) is repealed.
(5) In section 34 (the Tax Authority)—
(a) in subsection (1), for “the Scottish Ministers” substitute “Revenue Scotland”,
(b) subsection (2) is repealed.
(6) Section 35 (delegation of functions to SEPA) is repealed.
(7) Section 36 (review and appeal) is repealed.
(8) In section 41 (subordinate legislation)—
(a) in subsection (2), paragraph (b) is repealed,
(b) in subsection (7), paragraph (e) is repealed (but not the word “and” immediately following it).
(9) In section 42 (commencement), “35,” is repealed.

30 Tribunals (Scotland) Act 2014

9 (1) The Tribunals (Scotland) Act 2014 (asp 00) is amended as follows.
(2) In schedule 1 (listed tribunals), in Part 1, after paragraph 10 (the entry for “A Police Appeals Tribunal”) insert—

“10A The First-tier Tax Tribunal for Scotland
10B The Upper Tax Tribunal for Scotland”.
### SCHEDULE 5
(introduced by section 217)

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Revenue Scotland and Tax Powers Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to establish Revenue Scotland; to establish Scottish tax tribunals; to put in place a general anti-avoidance rule; to make provision about the collection and management of devolved taxes; and for connected purposes.

Introduced by: John Swinney
On: 12 December 2013
Bill type: Government Bill