

REVENUE SCOTLAND AND TAX POWERS BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Revenue Scotland and Tax Powers Bill introduced in the Scottish Parliament on 12 December 2013:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 43–PM.

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

BACKGROUND

3. The Revenue Scotland and Tax Powers Bill is the third of three related Bills being brought forward as a consequence of measures enacted in the Scotland Act 2012. It follows two tax-specific Bills, the Land and Buildings Transaction Tax (Scotland) Act 2013 that received Royal Assent on 31 July 2013 and the Landfill Tax (Scotland) Bill which is currently being considered by the Parliament.

4. The Bill makes provisions for a Scottish tax system to enable the collection and management of Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT) - “the devolved taxes”. It establishes Revenue Scotland as a new non-ministerial department which will be the tax authority responsible for collecting Scotland’s devolved taxes from 1 April 2015. It puts in place a statutory framework which will apply to the devolved taxes and sets out in clear terms the relationship between the tax authority and taxpayers in Scotland, including the relevant powers, rights and duties.

THE BILL

OVERVIEW

5. The Bill comprises 225 sections and five schedules and is divided into 12 Parts as follows:

- **PART 1** provides an overview of the Bill’s structure in relation to the different Parts and schedules.
- **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** sets out in detail the composition and operational arrangements of the new two-tier Scottish Tax Tribunals.
- **PART 5** outlines the general anti-avoidance rule applying to avoidance of the two devolved taxes.
- **PART 6** sets out the powers and duties of taxpayers and Revenue Scotland, outlines the arrangements and time limits for taxpayer self-assessments and Revenue

Scotland assessments and the arrangements for handling of double or overpayment 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 and on penalties.
- **PART 10** contains provisions on debt enforcement by Revenue Scotland.
- **PART 11** sets out the reviews and appeals process.
- **PART 12** outlines final provisions including an index of defined expressions, subordinate legislation and ancillary powers.

PART 1 – OVERVIEW OF BILL

6. Section 1 sets out the content of the Bill and provides a brief description of what each Part does.

PART 2 - REVENUE SCOTLAND

7. Part 2 formally establishes Revenue Scotland and introduces schedule 1. It sets out Revenue Scotland's functions, its independence from and relationship with the Scottish Ministers in the exercise of those functions, including the payment of tax receipts into the Scottish Consolidated Fund, its powers of delegation, and procedures for the publication and reporting of its Charter of standards and values, corporate plan and annual report.

Establishment of Revenue Scotland

Section 2 - Revenue Scotland

8. This section establishes Revenue Scotland as a corporate body with a separate legal personality to that of the Scottish Ministers¹. Revenue Scotland's Gaelic name (Teachd-a-steach Alba) has equal legal status. Section 2 also introduces schedule 1 which is concerned with the membership, procedures and staffing of Revenue Scotland.

9. Revenue Scotland will have the status of a non-ministerial department, as distinct from the status of a non-departmental public body. As with other devolved non-ministerial departments, Revenue Scotland will be a Crown body. Revenue Scotland is expected to have the status of an office-holder in the Scottish administration, within the meaning of section 126(8) of the Scotland Act 1998, by virtue of an order under that Act.

Functions of Revenue Scotland

Section 3 - Functions of Revenue Scotland

10. Subsection (1) sets out Revenue Scotland's general function as the collection and management of the devolved taxes (devolved taxes having the meaning given by section 80A(4) of the Scotland Act 1998). By virtue of section 51(3) of the Commissioners for Revenue and

¹ Revenue Scotland in its current form is an administrative Division of the Scottish Government.

Customs Act 2005 (c.11), the reference to collection and management has the same meaning as references to care and management in older tax statutes. This means that a jurisprudence concerning the proper bounds of the tax authority's role is imported into the devolved tax system. This jurisprudence includes not only case law from the UK jurisdictions but other English-speaking jurisdictions².

11. Subsection (2) sets out the particular functions relating to Revenue Scotland as:
- the provision of information, advice and assistance to the Scottish Ministers on matters concerning tax; reflecting that the Scottish Ministers will lead on devolved tax policy development and future legislation;
 - the provision of information, assistance and advice to enable other persons, for example taxpayers and their agents, to comply with the requirements of the devolved taxes;
 - the efficient resolution of disputes on matters of tax liability or compliance; and
 - the protection of the revenue against tax fraud (that is to say, tax evasion) and tax avoidance; Revenue Scotland might do this through robust whilst proportionate compliance activity, through application of Targeted Anti-Avoidance Rules (TAARs) or through application of the General Anti-Avoidance Rule (see Part 5 of the Bill).

Delegation of functions by Revenue Scotland

Section 4 - Delegation of functions by Revenue Scotland

12. Subsection (1) provides a power for Revenue Scotland to delegate any of its functions to the Keeper of the Registers of Scotland (RoS) with respect to LBTT and to the Scottish Environment Protection Agency (SEPA) with respect to the Scottish Landfill Tax (although Revenue Scotland will retain responsibility and accountability for the collection and management of both devolved taxes). Subsection (2) provides that in the delegation of these functions, both RoS and SEPA must comply with any directions Revenue Scotland gives to each regarding how to carry out the functions. Subsection (3) gives Revenue Scotland the power to change or revoke anything regarding the delegation or directions of these functions at any time.

13. Subsection (4) provides that Revenue Scotland must publish information regarding any delegation or directions of its functions and must also lay a copy of this information before the Scottish Parliament (subsection (5)), unless it considers that to do so would impact upon the ability to carry out its functions effectively. RoS and SEPA may be reimbursed by Revenue Scotland for any expenditure incurred in exercising its delegated functions in accordance with subsection (8).

² The leading English case is the "Fleet Street casuals case"; *Inland Revenue v National Federation of Self-employed and Small Businesses Ltd* [1982] A.C. 617.

Money

Section 5 – Payments into the Scottish Consolidated Fund

14. This section provides that, subject to deduction of payments in connection with repayments, interest on repayments and payments treated as repayments, Revenue Scotland must pay money received in the exercise of its functions into the Scottish Consolidated Fund. This is consistent with the general position of Scottish Administration bodies set out in section 64(3) of the Scotland Act 1998. Paragraph 1 of schedule 4 (minor and consequential modifications) makes a consequential amendment to section 9 of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) so that RoS may direct LBTT receipts to the Scottish Consolidated Fund.

Section 6 – Rewards

15. This section provides that Revenue Scotland may pay a reward to a person for a service relating to a function of Revenue Scotland, an example being information which leads to the collection of undeclared tax.

Independence of Revenue Scotland

Section 7 - Independence of Revenue Scotland

16. This section makes provision for Revenue Scotland's independence in that the Scottish Ministers must not direct or otherwise seek to control Revenue Scotland in the exercise of its functions. Revenue Scotland's independence is, however, subject to any contrary provisions made in this or any other enactment of the Scottish Parliament.

Ministerial guidance

Section 8 - Ministerial guidance

17. This section sets out that the Scottish Ministers may give guidance to Revenue Scotland about the exercise of its functions and that Revenue Scotland must have regard to that guidance. The guidance provided must be published, as considered appropriate by Ministers, unless the Scottish Ministers consider that to do so would impact upon the ability to carry out its functions effectively.

Provision of information, advice or assistance to Ministers

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

18. This section sets out that Revenue Scotland must provide the Scottish Ministers with information or advice relating to its functions when required to do so and in such format as Ministers may determine.

Charter of standards and values

Section 10 - Charter of standards and values

19. This section provides that Revenue Scotland must prepare and publish a Charter (including laying it before the Scottish Parliament) setting out: the standards of behaviour and

values it expects from its members and staff when dealing with taxpayers and their agents; and the standards of behaviour and values it expects from anyone it deals with. Revenue Scotland must review and revise the Charter as and when it considers it appropriate to do so.

Corporate plan

Section 11 - Corporate plan

20. This section provides that Revenue Scotland must prepare a corporate plan. Subsections (5), (7) and (8) relate specifically to the planning period for each corporate plan. Subsection (7) sets out that the first plan is to be published no later than a date to be appointed by an order made by the Scottish Ministers and that subsequent plans are to be submitted no later than the end date specified by that order and thereafter at three-yearly intervals. Subsection (5) provides that Revenue Scotland may review and submit a revised plan at any time for the approval of Ministers and subsection (8) enables Ministers by order to substitute such other period as they consider appropriate for the planning period .

21. The remaining subsections together set out procedures for the approval and publication of the corporate plan. The plan must describe Revenue Scotland's main objectives, the outcomes by which these objectives may be measured and its main activities for the duration of the planning period. Each plan must be submitted to the Scottish Ministers for approval, with approval being subject to any modifications as agreed between Ministers and Revenue Scotland. Following approval, a copy of the plan must be laid before the Scottish Parliament and published as Revenue Scotland considers appropriate.

Annual report

Section 12 - Annual report

22. This section sets out a requirement for Revenue Scotland to prepare and publish an annual report (including sending a copy of the report to the Scottish Ministers and laying it before the Scottish Parliament) as soon as possible after the end of each financial year. The annual report might contain, for example, details of how Revenue Scotland has demonstrated the standards of behaviour and values in the Charter of standards and values referred to in section 10. Revenue Scotland may also publish other reports and information it considers relevant and appropriate to the exercise of its functions.

23. On the basis that Revenue Scotland will be part of the Scottish Administration, the accountability and audit provisions of Part 2 of the Public Finance and Accountability (Scotland) Act 2000 will apply, including the duty to prepare accounts under section 19.

PART 3 – INFORMATION

Use of information by Revenue Scotland

Section 13 - Use of information by Revenue Scotland

24. Section 13 allows for information (whether taxpayer information or other information) to be shared freely within Revenue Scotland, subject to statutory or international prohibitions or restrictions on such sharing. Subsection (3) gives "Revenue Scotland" an expanded meaning

with the effect that delegates of Revenue Scotland (as is provided for in section 4) may participate in such sharing within their organisations and with Revenue Scotland.

Protected taxpayer information

Section 14 - Protected taxpayer information

25. Section 14 establishes the concept of “protected taxpayer information”. The special statutory protection for taxpayer information provided for in Part 3 of the Bill is additional to the existing legal protections that may apply to taxpayer and other forms of information, for example under the Data Protection Act 1998 (c.29) which includes as data protection principle seven that appropriate technical and organisational measures be taken to protect all personal data. “Protected taxpayer information” is identifiable information concerning taxpayers and other persons (for example their personal or business associates) that becomes held by Revenue Scotland in the exercise of its functions. “Revenue Scotland” in this context has the expanded meaning that it has in section 13.

Section 15 - Confidentiality of protected taxpayer information

26. Section 15 prohibits Revenue Scotland officials from disclosing taxpayer information unless the disclosure is expressly permitted in subsection (3). Breach of this requirement is a criminal offence (see section 17). The grounds for lawful disclosure in that subsection include disclosure with the consent of the person or persons to whom the protected taxpayer information relates, and disclosure in connection with legal proceedings (whether civil or criminal). Revenue Scotland may also disclose protected taxpayer information in accordance with existing or future statutory provisions such as Part 2A of the Public Finance and Accountability (Scotland) Act 2000 (data matching for the detection of fraud etc.).

27. Subsection (2) provides that ‘Revenue Scotland official’ has an expanded meaning covering individuals working for delegates of Revenue Scotland or otherwise exercising functions on behalf of Revenue Scotland, for example an advocate contracted to conduct litigation for Revenue Scotland in the higher courts.

Section 16 - Protected taxpayer information: declaration of confidentiality

28. Revenue Scotland officials, within the expanded meaning in section 15, must make a formal declaration acknowledging their statutory duty of confidentiality under section 15. Subsections (2) and (3) provide for when and how the declaration is to be made.

Section 17 - Wrongful disclosure of protected taxpayer information

29. Section 17 makes it a criminal offence to breach section 15, that is to say to disclose protected taxpayer information where there is not specific statutory authority under section 15(3). The penalty is imprisonment and/or a fine, with the length of sentence and the amount of the fine being higher on solemn prosecution (conviction on indictment) (see subsection (3)). It is a defence where a person reasonably believed that disclosure was lawful or the information disclosed had already lawfully been made public.

These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

30. Subsection (4) clarifies that other legal measures may be taken against a person who breaches section 15, for example disciplinary measures in terms of employment law or a breach of confidence action.

PART 4 – THE SCOTTISH TAX TRIBUNALS

CHAPTER 1 — INTRODUCTORY

Section 18 - Overview

31. This section provides an overview of Part 4 of the Bill which provides for the establishment of the Tax Tribunals to hear appeals and exercise other functions in relation to devolved taxes.

CHAPTER 2 — ESTABLISHMENT AND LEADERSHIP

Establishment

Section 19 - The First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland

32. This section provides for the establishment of the First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland, referred to as the First-tier Tribunal and the Upper Tribunal and collectively as the Tax Tribunals in this Bill.

Leadership

Section 20 - President of the Tax Tribunals

33. This section provides for the leadership of the Tax Tribunals. The Tax Tribunals will be led by the President of the Tax Tribunals who will be appointed by the Scottish Ministers. The section provides that the President of the Tax Tribunals is to be appointed on such terms and conditions that are determined by the Scottish Ministers.

Section 21 - Functions of the President of the Tax Tribunals

34. This section provides that the President of the Tax Tribunals is the senior member of the Tax Tribunals and has the functions laid out in this Act.

Section 22 - Business arrangements

35. This section sets out the President's functions in relation to the business of the Tax Tribunals and responsibility for the welfare of the members of the Tax Tribunals.

Section 23 - Temporary President

36. This section provides for the Scottish Ministers to appoint a temporary president. The temporary president will be appointed from the legal members of the Tax Tribunals. All functions of the President can be carried out by a Temporary President. As such, all reference to the President in this Bill can be taken as applying to a Temporary President.

CHAPTER 3 — MEMBERSHIP

Membership of Tax Tribunals

Section 24 - Members

37. This section provides that the First-tier Tribunal's membership will be made up of ordinary and legal members. The Upper Tribunal will be made up of legal members and Court of Session judges. Schedule 2 provides further details about ordinary and legal members.

Judicial members

Section 25 – Judicial members

38. This section provides that a Court of Session judge may sit as a member of the Upper Tribunal if authorised to do so by the President of the Tax Tribunals. Such an authorisation would have to be approved by the Lord President and by the person involved.

Status and capacity

Section 26 – Status and capacity of members

39. This section provides for the members of the Tax Tribunals to have judicial capacity for the purpose of making a decision on any case before the Tax Tribunals.

CHAPTER 4 — DECISION-MAKING AND COMPOSITION

Section 27 - Decisions in the First-tier Tribunal

40. This section sets out the composition of a panel hearing a case in the First-tier Tribunal and details the President's responsibility for selecting the size and composition of the panel and the individual members that are to sit on the panel. The President may choose him or herself.

Section 28 - Decisions in the Upper Tribunal

41. This section sets out the President's responsibility for selecting the individual legal member or Court of Session judge who will make up the panel in the Upper Tribunal. The President may choose him or herself.

Section 29 - Declining jurisdiction

42. This section provides that any of the members of the tax tribunal are still able to hear a case simply because they pay the tax in question.

Section 30 - Composition of the Tribunals

43. This section provides for the Scottish Ministers to make regulations regarding the composition of the Tax Tribunals and may differentiate between decision making on a case heard at first instance or on appeal.

CHAPTER 5 — APPEAL OF DECISIONS

Appeal from First-tier Tribunal

Section 31 - Appeal from the First-tier Tribunal

44. This section provides that any decision of the First-tier Tribunal can be appealed to the Upper Tribunal by a party in the case on a point of law. The appeal needs either the permission of the First-tier Tribunal or the Upper Tribunal.

Section 32 - Disposal of an appeal under section 31

45. This section provides for the Upper Tribunal's consideration of an appeal from the First-tier Tribunal. When reaching a decision the Upper Tribunal may quash the decision of the First-tier Tribunal, remake the decision or remit the case back to the First-tier Tribunal with any directions the Upper Tribunal sees fit.

Appeal from Upper Tribunal

Section 33 - Appeal from the Upper Tribunal

46. This section provides for an appeal from the Upper Tribunal to the Court of Session. Such an appeal would only be allowed on a point of law and would require the permission of the Upper Tribunal or the Court of Session.

Section 34 - Disposal of an appeal under section 33

47. This section provides for the Court of Session's consideration of an appeal from the Upper Tribunal. When reaching a decision, the Court of Session may quash the decision of the Upper Tribunal, remake the decision or remit the case back to the Upper Tribunal with any directions the Court of Session sees fit.

Section 35 - Procedure on second appeal

48. This section makes provision for "second appeals" – appeals to the Court of Session from the Upper Tribunal, where the decision being appealed was itself a decision on an appeal from the First-tier Tribunal. The Court has the powers of either tribunal if remaking the decision appealed. The Court may remit the case either to the Upper Tribunal or to the First-tier Tribunal. And where the Court remits the case to the Upper Tribunal, the Upper Tribunal may itself remit the case to the First-tier Tribunal. Where it does so, however, it must send to that tribunal any directions given by the Court of Session to the Upper Tribunal.

Further provision on permission to appeal

Section 36 - Process for permission

49. This section provides for the Scottish Ministers, by regulations, to specify a time limit within which permission for an appeal must be sought. A refusal to give permission is not appealable.

CHAPTER 6 — SPECIAL JURISDICTION

Section 37 - Judicial review cases

50. This section provides for judicial review. The Court of Session may remit such a petition for judicial review to the Upper Tribunal if the Court of Session is content that the petition does not seek anything other than the exercise of the Court's judicial review function and the petition falls within a category specified by an Act of Sederunt made by the Court for the purposes of this subsection. The Court of Session also has to be satisfied that the matter in question falls within the functions and expertise of the tribunal.

Section 38 - Decision on remittal

51. This section sets out that, when considering a petition remitted from the Court of Session, the Upper Tribunal in determining the issues raised has the same powers as the Court of Session and will apply the same principles that the Court of Session would when considering a petition for judicial review. An order made by the Upper Tribunal in these circumstances will have the same effect as if it was made by the Court of Session. This section does not limit the right of appeal from the Upper Tribunal to the Court of Session.

Section 39 - Additional matters

52. This section sets out that any step or order made by the Court of Session in a remitted case is to be treated as if it was made by the Upper Tribunal, further provisions on cases remitted from the Court of Session to the Upper Tribunal may be made in the tribunal rules.

Section 40 - Meaning of judicial review

53. This section defines what is meant by a petition to the Court of Session for a judicial review and to exercise the Court of Session's judicial review function.

CHAPTER 7 — POWERS AND ENFORCEMENT

Section 41 - Venue for hearings

54. This section provides that the Tax Tribunals can sit where and when the President of the Tax Tribunals decides.

Section 42 - Conduct of cases

55. This section provides that the Tax Tribunals' powers, authority, rights and privileges in relation to the things set out in subsection (3) will be set out in tribunal rules and may reference any authority exercisable by a sheriff or the Court of Session.

Section 43 - Enforcement of decisions

56. This section provides that a decision of the Tax Tribunals will be enforceable by provisions laid out in the tribunal rules, by making reference to the means of enforcing an order from a sheriff or the Court of Session.

These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Section 44 - Award of expenses

57. This section sets out that the Tax Tribunals may award expenses as laid out in the Tribunal rules.

Section 45 - Additional powers

58. This section provides that the Scottish Ministers may, by regulations, confer on the Tax Tribunals additional powers necessary or expedient for the exercise of their functions.

CHAPTER 8 — PRACTICE AND PROCEDURE

Tribunal rules: general

Section 46 - Tribunal rules

59. This section provides for rules regulating the practice and procedure for both tiers of the Scottish Tax Tribunal to be established (subsection (1)), to be known as Scottish Tax Tribunal Rules (subsection (2)). Tribunal rules are to be made by the Court of Session by Act of Sederunt, as prescribed in subsection (3).

Section 47 - Exercise of functions

60. This section provides that tribunal rules may state, in relation to functions exercised by members of the Tax Tribunals, how and by whom a function is to be exercised. They may provide for something to require further authorisation, permit something to be done on a person's behalf and allow specified persons to make certain decisions.

Section 48 - Extent of rule-making

61. This section provides that tribunal rules may apply to both tribunals or specifically to one or other tribunal. They may make particular provision for different types of proceedings or purposes.

Particular matters

Section 49 - Proceedings and steps

62. This section sets out that tribunal rules may make provision for proceedings of a case before the tax tribunal. In particular, they may detail how a case is to be brought, allow for the withdrawal of a case, set time limits for applications and taking particular steps and specify when the tribunals may act on their own initiative.

Section 50 - Hearings in cases

63. This section sets out that tribunal rules may provide for when matters can be dealt with without a hearing, in a private hearing or at a public hearing. They will also detail when notice of a hearing has to be given, who may appear on behalf of a party in a case and who may attend to provide support to a party in a case or as a witness in a case. Tribunal rules will also detail when particular persons may appear or be represented at a hearing, and specify when a hearing may go ahead without notice in the absence of a particular member. Tribunal rules may also cover when a case may be adjourned to allow the parties to try and resolve the dispute by

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alternative dispute resolution methods. The tribunal rules will also set out when reporting restrictions may be imposed.

Section 51 - Evidence and decisions

64. This section sets out that tribunal rules will cover giving evidence and administering oaths. Tribunal rules will also provide for the payment of expenses to persons in certain defined circumstances. Rules might, for example, state that a document which had been posted to a person would be presumed to have been duly served on that person, unless the contrary was proved.

Issuing directions

Section 52 - Practice directions

65. This section sets out that the President of the Tribunals may issue directions relating to practice and procedure in both the First-tier and Upper Tribunal. Directions may include guidance and instruction on decision making, may revoke earlier directions and may make different provision for different purposes. Such directions may be published in a way the President thinks appropriate.

CHAPTER 9 — ADMINISTRATION

Section 53 - Administrative support

66. This section sets out the Scottish Ministers duty to provide for the property, services and personnel the Tribunals require to carry out their function. The Scottish Ministers must have regard to any representations from the President of the Tax Tribunals on matter concerning administrative support.

Section 54 - Guidance

67. This section sets out that the President of the Tax Tribunals may issue such guidance relating to the administration of the Tax Tribunals as the President of the Tax Tribunals sees fit.

Section 55 - Annual reporting

68. This section provides that the President must produce an annual report and provides details of what the annual report must cover. The report must be given to the Scottish Ministers at the end of each financial year. The Scottish Ministers have a duty to lay a copy of the report before the Parliament prior to publishing it.

CHAPTER 10 — INTERPRETATION

Section 56 - Interpretation

69. This section defines various expressions used in this Part, including “judicial member” and the “Lord President”.

PART 5 – THE GENERAL ANTI-AVOIDANCE RULE

Introductory

Section 57 - The general anti-avoidance rule: introductory

70. This section sets out the overall purpose of this Part of the Bill – to enable Revenue Scotland to counteract tax advantages in relation to the devolved taxes that arise from tax avoidance schemes that are artificial. Subsection (2) provides that the sections in this Part, taken together, are to be known as the general anti-avoidance rule (GAAR). Under UK legislation set out in the Finance Act 2013, provision is made for a general anti-abuse rule. Although the terms “avoidance” and “abuse” do not have exact definitions, avoidance generally refers to a spectrum of activities designed to reduce tax liability, while abuse is often used to describe highly contrived schemes. Subsection (3) defines an “authorised officer” as a person or category of persons authorised by Revenue Scotland to undertake work in connection with administering the GAAR. Subsequent sections in Part 5 define the terms used and provide more detail about how the provisions as a whole are to work. The GAAR is intended to operate in tandem with Targeted Anti-Avoidance Rules (TAARs) and the “Ramsay principle” of purposive statutory interpretation applied by the Scottish courts and tribunals.

Artificial tax avoidance arrangements

Section 58 - Tax avoidance arrangements

71. This section sets out the definition of a “tax avoidance arrangement”. Subsection (2) gives a broad definition of an “arrangement”, which includes transactions, schemes, agreements etc., either individually or combined in parts and stages. This definition is kept broad so that a wide range of arrangements can be considered to determine whether they are tax avoidance arrangements.

72. Subsection (1) defines a “tax avoidance arrangement” as an arrangement (defined in subsection (2)) which appears to have as its main purpose or one of its main purposes the obtaining of a “tax advantage”. The test for determining whether or not an arrangement has such a purpose is that it would be reasonable in all the circumstances to conclude that it did. Later sections define a tax advantage.

Section 59 - Meaning of “artificial”

73. This section sets out the definition of “artificial” in the context set out in section 57 – that the purpose of this Part of the Bill is to give power to counteract “tax avoidance schemes that are artificial”.

74. The section sets out two tests for deciding whether a tax avoidance scheme is artificial. An arrangement is artificial if it satisfies either test. The first test is set out in subsection (2). It is that the arrangement under consideration is artificial if, in all the circumstances, it is not a reasonable course of action in relation to the tax legislation in question. Subsections (2)(a) and (2)(b) make further provision to assist in determining the question, by reference to the substantive results of the arrangement. Subsection (2)(a) provides that if the substantive results of the arrangement are consistent with any principles on which the tax legislation in question is known to be based, and the results are consistent with the policy objectives of the legislation, this

would be a relevant factor in deciding that the course of action is reasonable in all the circumstances and, therefore, not artificial.

75. Subsection (2)(b) adds a further ground for determining reasonableness: whether the arrangement is intended to exploit any shortcomings in the tax legislation in question. Another way of describing this would be exploiting a ‘loophole’ or ‘loopholes’ in tax legislation. If an arrangement is intended to exploit shortcomings, the force of subsection (2)(b) is that such an arrangement would not be a reasonable course of action in all the circumstances and so is likely to be artificial.

76. The grounds for determining reasonableness set out in subsection (2) are not exhaustive, meaning that Revenue Scotland can take account of other factors in determining whether entering into a tax avoidance arrangement was a reasonable course of action or not.

77. The second test is set out in subsection (3). It is that a tax avoidance arrangement is artificial if the arrangement lacks commercial substance.

78. Subsection (4) then provides examples of characteristics of a tax avoidance arrangement that could indicate that an arrangement lacks commercial substance. These are where:

- the manner of carrying out the arrangement would not normally be employed in reasonable business conduct
- the legal characterisation of the steps in the arrangement is inconsistent with the legal substance of the arrangement as a whole
- elements in the arrangement effectively offset each other or cancel each other out
- the transactions are circular in nature.

79. These characteristics are not exhaustive but illustrative. They are intended to be helpful to taxpayers and to Revenue Scotland in determining under subsection (3) whether a tax avoidance arrangement is artificial.

80. Subsection (5) provides an example of characteristics of a tax avoidance arrangement that could indicate that the arrangement is not artificial. The example given is where:

- A tax avoidance arrangement accords with established practice and at the time the it was entered into, Revenue Scotland had indicated that it accepted this practice

81. As in subsection (4), this example is not exhaustive but illustrative. This subsection is only applicable where both conditions are fulfilled – that is, that a tax avoidance arrangement accords with established practice, and that Revenue Scotland had indicated its acceptance of that practice at the time it was entered into. It is expected that once Revenue Scotland is established, it will over time publish guidance about acceptance of established practice, either at its own initiative or in response to requests from taxpayers or agents.

82. Finally, subsection (7) provides that, where a tax avoidance arrangement forms part of any other arrangements, then in determining whether it is artificial or not these other arrangements must be considered.

Section 60 - Meaning of “tax advantage”

83. This section sets out the criteria for determining whether a tax advantage exists or not. A tax advantage could consist of:

- Relief or increased relief from tax
- Repayment or increased repayment of tax
- Avoidance or reduction of a charge to tax or an assessment to tax
- Avoidance of a possible assessment to tax
- Deferral of payment of tax or advancement of a repayment of tax.

84. These criteria are not exhaustive.

85. Subsection (2) provides that in determining whether a tax avoidance arrangement has resulted in a tax advantage, Revenue Scotland may take account of the amount of tax that would have been payable in the absence of the arrangement.

Counteracting tax advantages

Section 61 - Counteracting tax advantages

86. This section provides Revenue Scotland with the power to adjust the tax liability of a taxpayer who would otherwise benefit from a tax advantage in relation to the devolved taxes. Subsection (1) provides that Revenue Scotland may make any adjustments that it considers to be just and reasonable in order to counteract a tax advantage. Subsection (2) makes clear that these adjustments may be made in respect of the tax in relation to which a tax advantage has been gained, or in respect of any other tax.

87. Subsection (3) makes clear that the adjustments made to counteract a tax liability include adjustments that impose or increase a tax liability, and that tax is to be charged in accordance with the adjustment. Subsection (4) provides that the adjustment made to counteract a tax advantage may take the form of a tax assessment, a modification to an existing assessment, an amendment, or the disallowance of a claim (for a relief or reduction in tax).

88. Subsection (5) requires that in counteracting a tax advantage, Revenue Scotland is obliged to adhere to the procedures and steps set out in later sections in this Part of the Bill.

Section 62 - Proceedings in connection with the general anti-avoidance rule

89. This section makes provision in relation to court actions arising from the operation of the GAAR in relation to the devolved taxes. Subsection (1) provides that, where Revenue Scotland makes adjustments to counteract a tax advantage, the burden of proof is on it to demonstrate that there is a tax avoidance arrangement that is artificial, and that the adjustments made to counteract the tax advantage arising from the arrangement are just and reasonable.

90. Subsection (2) provides that, in determining any issues in connection with the GAAR, a court or tribunal is obliged to take account of guidance published by Revenue Scotland about the GAAR which was extant when the tax avoidance arrangement in question was entered into.

These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

91. Subsection (3) provides that a court or tribunal may also take account of guidance, statements or other material in the public domain at the time the tax avoidance arrangement in question was entered into, and may also take account of evidence of established practice at that time.

Section 63 - Notice to taxpayer of proposed counteraction of tax advantage

92. This section sets out Revenue Scotland's responsibility for notifying a taxpayer when it is intending to counteract a tax advantage in relation to the devolved taxes.

93. Subsection (1) provides that if a member of staff in Revenue Scotland who is designated to deal with GAAR issues ("an authorised officer") considers that a tax advantage has arisen from a tax avoidance arrangement that is artificial, and that the tax advantage should be counteracted, the authorised officer must notify the taxpayer in writing.

94. Subsection (2) specifies that a notification must include a statement of the tax avoidance arrangement and the tax advantage; an explanation of why the authorised officer considers that a tax advantage has arisen to the taxpayer from a tax avoidance arrangement that is artificial; a statement of the counteraction that Revenue Scotland intends to take; and a statement of the period of time that the taxpayer has for making representations (45 days under subsection (4)).

95. Subsection (3) provides that a notice to a taxpayer may also describe the steps that the taxpayer can take to avoid the proposed counteraction.

96. Subsection (4) provides that when a taxpayer receives a notice under this section, they have 45 days in which to respond to the notice by making written representations. Subsection (5) gives the authorised officer power to increase the number of days within which written representations may be made to more than 45 days, if the taxpayer makes a written request. Subsection (6) provides that the authorised officer must take account of any representations made by the taxpayer in response to the notification given under subsection (1) and (2).

Section 64 - Final notice to taxpayer of counteraction of tax advantage

97. This section provides that where a taxpayer has been sent a notice under section 63(1), after the period for making representations about the notice has expired, the authorised officer must provide the taxpayer with another written notice setting out whether or not the tax advantage arising from the tax avoidance arrangement is to be counteracted as proposed in the earlier notice.

98. Subsection (2) stipulates that if the tax advantage is to be counteracted, the notice must explain the adjustments required to give effect to the counteraction, and any steps required of the taxpayer in this regard.

Section 65 - Assumption of tax advantage

99. This section gives an authorised officer power to give a taxpayer a notice under section 63 and under section 64 where the authorised officer thinks that a tax advantage in relation to the devolved taxes might have arisen to the taxpayer. Subsection (2) makes clear that this enables an

authorised officer to send a notification to a taxpayer on the assumption that a tax advantage does arise.

General anti-avoidance rule: commencement and transitional provision

Section 66 - General anti-avoidance rule: commencement and transitional provision

100. This section makes provision relating to when the GAAR comes into effect and for transitional arrangements. Subsection (1) provides that the GAAR has effect in relation to a tax avoidance arrangement entered into on or after the date that the GAAR provisions come into force. Subsection (2) provides that where the tax avoidance arrangement forms part of another arrangement that was entered into before the GAAR came into force, this other arrangement is to be ignored for the purposes of section 59(7) (which provides that all parts of an arrangement of which a tax avoidance arrangement forms part are to be considered in deciding if a tax avoidance arrangement is artificial). Subsection (3) provides that the earlier arrangements should be taken into account, if, as a result of taking them into account, the tax avoidance arrangement would not be artificial.

PART 6 – TAX RETURNS, ENQUIRIES AND ASSESSMENTS

CHAPTER 1 — OVERVIEW

Section 67 - Overview

101. This section provides an overview of the matters that are dealt with in this Part of the Bill, namely the assessment of devolved tax.

CHAPTER 2 — TAXPAYER DUTIES

General taxpayer duties

Section 68 - Taxpayer duties

102. This section sets out the general duties of a taxpayer to keep adequate records and take reasonable care in self-assessing and paying their devolved tax liabilities. As these general duties are set out in more detail elsewhere in this Bill and other enactments, this provision also states that this general outline does not prejudice any of the specific detail that is provided for elsewhere.

Duty to keep records

Section 69 - Duty to keep and preserve records

103. This section sets out the duty of a person who is required to deliver a return in relation to devolved taxes to keep and preserve records that are needed to complete that return. It lists the types of records that generally need to be kept and sets out the maximum time period for which records need to be kept whilst permitting Revenue Scotland to specify an earlier date in writing.

104. It allows the Scottish Ministers to make regulations to specify the records and supporting documents that must be kept and preserved. The regulations may make reference to things

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specified in a notice published and not withdrawn by Revenue Scotland. Examples are given of documents that may be included in the term “supporting documents”.

Section 70 - Preservation of information etc.

105. This section provides for the preservation of information instead of original records. It permits records to be kept in an alternative form (such as microfiche or an electronic facsimile) as long as the information they contain is preserved.

Section 71 - Penalty for failure to keep and preserve records

106. This section provides for a penalty of a maximum of £3,000 for failure to keep and preserve records, with the exception that no penalty is incurred if the required facts which would have been demonstrated by the records are provided to Revenue Scotland by other documentary evidence.

Section 72 - Further provision: land and buildings transaction tax

107. This section relates to LBTT and sets out that the Scottish Ministers may make regulations to specify records and supporting documents that a buyer must keep and preserve in relation to land transactions that do not have to be notified. A land transaction may not initially be notifiable under the 2013 Act. But it can become notifiable later, for instance where a lease continues after the end of its original term.

108. Regulations under this section may apply the provisions concerning a taxpayer’s duty to keep and preserve records, that are set out in the previous sections 69 to 71, to a buyer in a land transaction that is not notifiable. Any expressions used in this section and in the Land and Buildings Transaction Tax (Scotland) Act 2013 have the meaning given in that Act.

CHAPTER 3 — TAX RETURNS

Filing dates

Section 73 - Dates by which tax returns must be made

109. This section provides a definition of “filing date”, being the date on which tax returns for the devolved taxes are due. It also provides that the Scottish Ministers may make regulations about the dates on which returns must be made to Revenue Scotland. These regulations may make different provisions for the different devolved taxes (by virtue of section 218(5)) and may modify any enactments.

Amendment and correction of returns

Section 74 - Amendment of return by taxpayer

110. This section provides for the amendment of a tax return by the taxpayer and allows Revenue Scotland to specify the form and content of any notice of such an amendment. It sets out that the taxpayer must make an amendment within 12 months of either the filing date (which is defined) or any other dates that the Scottish Ministers may prescribe (and different provision may be made for different devolved taxes).

Section 75 - Correction of return by Revenue Scotland

111. This section provides that Revenue Scotland may correct returns for obvious errors or omissions by notice to the taxpayer. The correction must be within three years from the date the return or amended return is delivered. The taxpayer may amend the return to reject the correction during the amendment period of 12 months from the filing date. However, if that period has expired, the taxpayer can amend the return within three months from the notice of correction from Revenue Scotland.

CHAPTER 4 — REVENUE SCOTLAND ENQUIRIES

Notice and scope of enquiry

Section 76 - Notice of enquiry

112. This section sets out that a designated officer (defined in section 216) may enquire into a tax return, provided that notice of intention to carry out an enquiry is given to the taxpayer or the person who submitted the return on their behalf within the period set out. It also limits the number of notices of enquiry that may be made in relation to any particular tax return.

Section 77 - Scope of enquiry

113. This section sets out the scope of an enquiry into a tax return and limits the scope of a subsequent enquiry on a return to amendments made after the completion of that enquiry, if that prior enquiry had been completed before the expiry of the initial twelve month period in which the taxpayer can make amendments to their return.

Amendment of return during enquiry

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

114. This section provides for the amendment of a tax return by a designated officer during the course of an enquiry to prevent loss of tax where the amount stated in the self-assessment contained in the return is insufficient. Where an enquiry is made into an amended return, it limits this to matters which are amended or affected by the amended return. The period in which an enquiry is in progress is defined for the purposes of this section and the following section 79.

Referral during enquiry

Section 79 - Referral of questions to appropriate tribunal during enquiry

115. This section provides for the referral of questions to the appropriate tribunal (defined in section 83) during an enquiry. It requires notice of the referral to be given jointly by the relevant person and the designated officer.

Section 80 - Withdrawal of notice of referral

116. This section provides for the withdrawal of a notice made under section 79 by a designated officer or the relevant person.

These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Section 81 - Effect of referral on enquiry

117. This section sets out the effect of referral under section 79 on an enquiry. It provides that a closure notice or an application for a closure notice cannot be made while proceedings under section 79 are in progress and defines what “in progress” means in this context.

Section 82 - Effect of determination

118. This section provides that the determination of any question by the appropriate tribunal under section 79 is binding on the parties. It requires the designated officer to take the determination into account when making any amendments to the return and limits the question determined from being reopened.

Section 83 - “Appropriate tribunal”

119. This section sets out which are the relevant tribunals for the referral of questions under section 79.

Completion of enquiry

Section 84 - Completion of enquiry

120. This section provides for completion of an enquiry. It requires a designated officer to issue a closure notice at the completion of an enquiry. A closure notice must state whether or not an amendment is required and make any amendment necessary. It also limits the period within which a closure notice must be issued.

Section 85 - Direction to complete enquiry

121. This section provides for the person who made the return to seek from a tribunal a direction that Revenue Scotland should issue a closure notice.

CHAPTER 5 — REVENUE SCOTLAND DETERMINATIONS

Section 86 - Determination of tax chargeable if no return made

122. This section sets out that, in the circumstances where a designated officer has reason to believe a person is liable for a tax charge, and that person has not filed a tax return with Revenue Scotland by the required date, Revenue Scotland may make a determination of the amount of tax to be charged. Notice of the determination must be given to the person believed to be liable for the chargeable tax, including a statement of the date on which the notice was issued. A determination cannot be made more than five years after the date on which a tax return should have been filed with Revenue Scotland.

Section 87 - Determination to have effect as a self-assessment

123. This section provides that a determination by Revenue Scotland has the same effect for enforcement purposes (i.e. the collection and recovery of tax as provided for in Part 11 of this Bill) as if it were a self-assessment made by the person liable for the chargeable tax. Under these provisions, a determination by Revenue Scotland does not affect a person’s liability to a penalty for failure to make a tax return.

Section 88 - Determination superseded by actual self-assessment

124. This section provides that, where a person makes a tax return after Revenue Scotland has made a determination of chargeable tax, the self-assessed tax return will supersede Revenue Scotland's determination. This provision does not apply when a person makes a tax return more than five years after the power to make the determination was first exercisable by Revenue Scotland, or more than three months after the date on which the determination was issued, whichever is the later. In instances where proceedings have commenced for the recovery of tax following a Revenue Scotland determination, and during those proceedings Revenue Scotland receives a self-assessment that supersedes its determination, the proceedings may continue as if they were for the recovery of so much of the self-assessed tax which remains due and not yet paid.

CHAPTER 6 — REVENUE SCOTLAND ASSESSMENTS

Assessment of loss of tax or of excessive repayments

Section 89 - Assessment where loss of tax

125. This section provides a designated officer with the power to make an assessment to make good a loss of tax where an amount that should have been assessed has not been, an amount assessed is less than it should be or relief that has been given is or has become excessive.

Section 90 - Assessment to recover excessive repayment of tax

126. This section provides for an assessment to be made to recover an excessive repayment of tax including any interest that may have been paid.

Section 91 - References to "Revenue Scotland assessment"

127. This section provides for references to "Revenue Scotland assessment" in the Bill to mean assessments made under section 89 or 90.

Section 92 - References to the "taxpayer"

128. This section provides that, in section 93, references to the "taxpayer" in relation to an assessment under section 89 mean the chargeable person and, in relation to an assessment under section 90, mean the person to whom the excessive repayment of tax was made.

Conditions for making Revenue Scotland assessments

Section 93 - Conditions for making Revenue Scotland assessments

129. This section limits the circumstances in which a Revenue Scotland assessment can be made under section 89 or 90 to situations which arose because of careless or deliberate behaviour by the taxpayer, a person acting on behalf of the taxpayer or a person who was a partner of the taxpayer at the relevant time. It also prohibits a "Revenue Scotland assessment" under those provisions if the situation was attributable to a mistake in the calculation of the tax liability that was in accordance with generally prevailing practice at the time the return was made.

Section 94 - Time limits for Revenue Scotland assessments

130. This section provides the time limits for Revenue Scotland assessments. The general time limit is five years from the “relevant” date. This time limit is extended to 20 years where the loss of tax is attributable to deliberate behaviour by the taxpayer or a “related person”. A Revenue Scotland assessment to recover excessive repayment of tax is not late if it is made within 12 months of that repayment. If a taxpayer has died, a Revenue Scotland assessment may be made on a taxpayer’s personal representatives within three years of death and is limited to “relevant dates” within five years of the death. It also sets out how any objection to a Revenue Scotland assessment on the basis of the time limits can be made and defines “relevant date” and “related person”.

Section 95 - Losses brought about carelessly or deliberately

131. This section provides the definition of a loss of tax or situation brought about carelessly or deliberately by or on behalf of a person for the purposes of sections 93 and 94.

Notice of assessment and other procedure

Section 96 - Assessment procedure

132. This section provides the procedure for making an assessment on a taxpayer and the required contents of a notice of assessment.

CHAPTER 7 — RELIEF IN CASE OF EXCESSIVE ASSESSMENT OR OVERPAID TAX

Double assessment

Section 97 - Relief in case of double assessment

133. This section provides that a taxpayer can make a claim to Revenue Scotland for relief if they believe they have been assessed more than once for the same matter.

Overpaid tax etc.

Section 98 - Claim for relief for overpaid tax etc.

134. This section provides that a taxpayer may make a claim to Revenue Scotland for repayment where they have paid tax that they believe was not chargeable. It also provides that, if an assessment or determination is made that a person is chargeable to an amount of tax and they believe the tax is not chargeable, they can make a claim for the tax to be discharged.

Order changing tax basis not approved

Section 99 - Claim for repayment if order changing tax basis not approved

135. This section relates to situations where an order intended to change the tax basis of a devolved tax by means of the provisional affirmative procedure applies for a period but is not subsequently approved by the Scottish Parliament within 28 days of it being laid.

136. When such an order is made, the changes to the tax basis set out in it (which might be changes to tax rates or bands, and in the case of Scottish Landfill Tax, changes to the definition of a disposal to landfill, changes to the definition of landfill site activities, or changes to the types of qualifying materials, the disposal of which is taxable) can apply immediately, so taxpayers' liability will change as soon as the order is made. If the proposed changes are not approved by Parliament within 28 days, then the Order falls. This section provides that in such a situation, a taxpayer can make a claim for repayment of the amount of additional tax paid during the period when the Order was in force.

137. Subsection (2) allows a taxpayer to make a claim to Revenue Scotland for the amount of additional tax paid because of the Order that fell, and any related penalty or interest. Subsection (3) sets out which Orders are relevant to this section. Subsection (5) provides that any claim must be made within two years of the 'relevant date' which is defined in subsection (6).

Defence of unjustified enrichment

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

138. This section provides that Revenue Scotland can reject a claim for relief on the basis that paying it would unjustly enrich the person making the claim. This would happen if the taxpayer was not the person who ultimately bore the cost of the tax. For example, for SLfT, while the tax is paid by the landfill site operator it is ultimately borne by those charged for depositing waste at the site.

Section 101 - Unjustified enrichment: further provision

139. This section explains circumstances in which a repayment would constitute unjustified enrichment where the payment of tax was made by someone other than the taxpayer. Loss or damage related to mistaken assumptions about tax made by a taxpayer should be excluded from consideration of whether a taxpayer would be unjustly enriched. The taxpayer may show that a certain amount would be appropriate compensation for the loss or damage resulting from the mistaken assumption and this may be taken into account.

Section 102 - Unjustified enrichment: reimbursement arrangements

140. This section provides that the Scottish Ministers may make regulations under which certain reimbursement arrangements may count for the purposes of section 100 (and so do not allow Revenue Scotland to defend the claim for repayment on the ground of unjust enrichment). The regulations may also provide for the conditions that such reimbursement arrangements must comply with, and for other reimbursement arrangements to be disregarded for the purpose of section 100 (so that the fact that the person claiming a repayment may be reimbursing others does not stop Revenue Scotland using the unjust enrichment defence). Subsection (2) defines "reimbursement arrangements" as arrangements made by the person claiming under which the repaid tax is passed on to the persons who actually bore the cost of paying the tax in the first place. For example, if a landfill site operator had overpaid tax, having collected that tax from the person who disposed of the waste, then to return an overpayment of tax to the landfill site operator may lead to the operator being unjustly enriched (if the person who disposed of the waste cannot be found to be reimbursed).

141. Subsection (3) sets out the elements of reimbursement arrangements which may be required by the regulations provided for in subsection (1). These arrangements include setting a period for reimbursement to take place, repayment to Revenue Scotland if reimbursement does not take place and requires interest paid by Revenue Scotland on a repayment to be treated in the same way as the repayment, as well as records to be kept and made available to Revenue Scotland on request that show how the arrangements for reimbursement were carried out.

Section 103 - Reimbursement arrangements: penalties

142. This section provides that regulations made under section 102 may make provision for penalties to be imposed where an obligation by virtue of subsection 102(4) is breached. Regulations may set out circumstances in which a penalty is payable, the amounts payable, and other arrangements for penalties, which may be different for different taxes. The regulations may not create criminal offences.

Other defences to claims

Section 104 - Cases in which Revenue Scotland need not give effect to a claim

143. This section provides a list of situations (other than unjust enrichment) in which Revenue Scotland does not need to make a repayment or discharge an assessment or determination. The situations are: where a mistake is made in a claim, or where a claim is made or not made by mistake; where other provisions in the Bill provide means of seeking relief; where a claimant could have sought relief under other provisions in the Bill but time limits on those provisions have expired; where the same matter has been put to a court or tribunal by the claimant, has been withdrawn from a court or tribunal, or time limits for putting it to a court or tribunal have passed; where the amount paid is the result of enforcement action or agreement between Revenue Scotland and the claimant; and where the amount paid is excessive but was calculated following normal procedures at the time, unless the tax charged was contrary to EU law.

Procedure for making claims

Section 105 - Procedure for making claims etc.

144. This section sets out that schedule 3 applies in relation to claims made under sections 97, 98 and 99.

Section 106 – Time-limit for making claims

145. This section provides that claims for relief from double assessment or overpayment of tax made under section 97 or 98 must be made within five years of the date the tax return was required and must be made separately from any tax return made to Revenue Scotland.

Section 107 - The claimant: partnerships

146. This section provides that, where an overpayment was made on behalf of a partnership, a claim for relief for overpayment can only be made by someone who is nominated to act on behalf of all partners who would have been liable for the tax if it had been correct.

Section 108 - Assessment of claimant in connection with claim

147. This section provides that, where a claim for relief for overpaid tax is made, and the grounds for that claim are also grounds for Revenue Scotland to make an assessment on the claimant in respect of the tax, then Revenue Scotland can disregard certain restrictions on its ability to make an assessment. These include disregarding the expiry of a time limit. It also provides that a claim for relief for overpayment is not finally determined until the amount to which it relates is final (e.g. following the result of a review or appeal).

Contract settlements

Section 109 - Contract settlements

148. This section makes provision for the effect of contract settlements (defined in subsection (8)). The effect of subsection (1) is that an overpayment of tax can still be reclaimed under section 98 or 99 even though it was paid under a contract settlement. Subsection (3) to (7) apply to situations where tax was paid by someone under a contract settlement but that person who was not the person from whom it was due. In this circumstance a claim for relief from overpayment can be made by the person who paid the amount. In such a case, however, the way some of the defences available to Revenue Scotland under section 104 operate is modified, as is section 108. And where such a claim is made, Revenue Scotland can set any amount repaid to the person who paid against any amount payable by the taxpayer.

PART 7 – INVESTIGATORY POWERS OF REVENUE SCOTLAND

CHAPTER 1 — INVESTIGATORY POWERS: INTRODUCTORY

Overview

Section 110 - Investigatory powers of Revenue Scotland: overview

149. This section sets out an overview of Part 7 of the Bill.

Interpretation

Section 111 – Designated investigation officers

150. This section sets out the definition of “designated investigation officers” who are staff of Revenue Scotland who are designated for the purposes of carrying out investigatory functions in this Part. This means that Revenue Scotland can designate that functions described in this Part should only be carried out by people in posts with the appropriate designation.

Section 112 - Meaning of “tax position”

151. This section sets out the definition of a “tax position” as referred to throughout this Part of the Bill. A tax position can include a person’s past, present and future liability to pay any devolved tax or associated penalties and also includes any claims, elections, applications and notices in connection with the liability to pay any devolved tax.

These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Section 113 – Meaning of “carrying on a business”

152. This section sets out the definition of a “carrying on a business” as referred to throughout this Part of the Bill. A business includes the letting of property, the activities of a charity, the activities of a local authority and also any other public authority. The section also confers powers on the Scottish Ministers to make further provision by regulations regarding what is or is not to be treated as carrying on a business in this Part of the Bill.

Section 114 – Meaning of “statutory records”

153. This section sets out the definition of “statutory records” as referred to throughout this Part of the Bill.

CHAPTER 2 — INVESTIGATORY POWERS: INFORMATION AND DOCUMENTS

Section 115 - Power to obtain information and documents from taxpayer

154. This section provides that where a designated officer reasonably requires a document or information to check a taxpayer’s position and considers it reasonable that the taxpayer should provide the document or information, the designated officer can write to a taxpayer and ask for that. Such a request is known as a ‘taxpayer notice’.

Section 116 - Power to obtain information and documents from third party, Section 117 - Approval of taxpayer notices and third party notices and Section 118 - Copying third party notice to taxpayer

155. These three sections provide that where the designated officer knows the identity of a taxpayer and wants to check that taxpayer’s tax position, the designated officer can issue a written notice to a third party requiring that party to provide information or document(s) for the purpose of checking the tax position of the taxpayer. Such a written notice is a “third party notice”. The taxpayer would have to agree to the third party notice or a tribunal would need to approve it, subject to certain conditions being met. The tribunal may also approve a third party notice that does not name the taxpayer if the tribunal accepts that having the taxpayer’s name in the third party notice might negatively affect tax assessment or collection. The designated officer would give a copy of the third party notice to the relevant taxpayer unless the tribunal decides that it is not required; this might be because it would negatively affect tax assessment or collection.

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

156. This section provides that where a designated investigation officer wants to check the tax position of a taxpayer, but does not know the taxpayer’s identity, the officer may give a notice requiring a person to produce a document or require information. If a designated officer wants to give such a notice that officer could ask the tribunal to approve a request in writing for information or documents, where the request meets certain conditions.

Section 120 – Third party notices and notices under section 119: groups of undertakings

157. This section provides for arrangements for third party notices or notices under section 119 where the tax authority wishes to check the tax position of either a parent undertaking or a subsidiary undertaking (for example either a parent company or a subsidiary company of the

parent company). Subsection (2) provides that such notices need only state the purpose of the notice, the name of the taxpayer and the name of the parent undertaking.

158. Subsection (4) provides that a third party notice given to a parent undertaking for the purpose of checking the tax position of more than one subsidiary undertaking need only state that purpose and the name of the taxpayer. Subsections (5) and (6) clarify how the provisions of other related sections apply to such notices.

159. Subsection (7) provides that the meanings of parent and subsidiary undertakings reflect those set out in sections 1161-1162 and Schedule 7 of the Companies Act 2006.

Section 121 – Third party notices and notices under section 119: partnerships

160. This section provides for arrangements for third party notices or notices under section 119 where the tax authority wishes to check the tax position of one or more persons in a business partnership.

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

161. This section allows a designated investigation officer of Revenue Scotland to issue a written notice to someone requiring them to provide information about a taxpayer in order to establish the taxpayer's identity. Subsections (2) to (6) set out the conditions that must be met for this section to apply. Under this section, the designated investigation officer may obtain a name, and/or last known address, and/or date of birth from someone else who obtained the information from the course of their business.

Section 123 - Notices

162. This section sets out the definition of an information notice as a notice which is issued under sections 115, 116, 119 and 122 of this Bill. An information notice may specify or describe the information or documents to be provided and must state the notice has been issued with the approval of a tribunal where this is the case.

Section 124 - Complying with information notices

163. This section sets out that a person issued with an information notice must provide the required information or documents at a time or location as specified in the information notice.

Section 125 - Producing copies of documents

164. This section provides that where an information notice requires the person to produce a document, the person may be able to submit a copy of the document (unless the notice specifically requests the original document) subject to conditions set out in regulations made by the Scottish Ministers which are subject to the negative procedure.

Section 126 - Further provision about powers relating to information notices

165. This section provides the Scottish Ministers with a power to make regulations regarding the form and content of information notices and the manner and time period for complying with such notices. Such regulations are subject to the negative procedure.

CHAPTER 3 — RESTRICTIONS ON POWERS IN CHAPTER 2

Section 127 - Information notices: general restrictions

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

Section 128 - Types of information

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

Section 129 - Taxpayer notices following a tax return

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

Section 130 - Protection for privileged communications between legal advisers and clients

169. This section provides that information notices (a term defined in section 123) do not require a person to provide privileged information or parts of documents that are privileged. This refers to information or documents that benefit from the confidentiality that arises in information or documents between a professional legal adviser and a client. The section gives the Scottish Ministers a power to make provision by regulations for the tribunal to resolve disputes as to whether or not information or documents are privileged. Such regulations are subject to the negative procedure.

Section 131 - Protection for auditors

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

Section 132 - Auditors: supplementary

171. This section sets out the circumstances in which an information notice to an auditor would apply. Subsection (1) requires the auditor to comply with an information notice where information explaining any information or document given to any client in the role of tax accountant has assisted the client in preparing for, or delivering a document to, Revenue Scotland. Subsection (2) requires the auditor to comply with a notice under section 119 requiring the auditor to provide information or document about the identity or address of a taxpayer.

Subsection (3) allows the auditor not to comply with subsections (1) and (2) if the information or documents have already been provided to a designated officer.

CHAPTER 4 — INVESTIGATORY POWERS: PREMISES AND OTHER PROPERTY

Inspection of business premises

Section 133 - Power to inspect business premises

172. This section provides that a designated officer can enter a business premises and inspect the premises (including buildings, structures, land and transport), assets and documents where it is reasonable to do so to check a person's tax position. The designated officer would not be able to enter or inspect any part of those premises that was used solely as a dwelling.

Section 134 - Powers to inspect business premises of involved third parties

173. This section provides that a designated officer can enter a business premises of an involved third party and inspect the premises, assets and documents where it is reasonable to do so to check a position in regard to a devolved tax, whether the person's identity was known or not. The designated officer would not be able to enter or inspect any part of those premises that was used solely as a dwelling.

Section 135 - Carrying out inspections under section 133 or 134

174. This section sets out conditions for inspections on business premises as provided for under sections 133 and 134. Subsections (1) and (2) provide that such inspections may only be carried out at a time agreed with the occupier of the premises or at any reasonable time if the occupier of the premises is given seven days' notice of the time of inspection or the inspection is carried out by or with the agreement of a designated investigation officer of Revenue Scotland.

175. Subsection (3) provides that where an inspection is to be carried out by, or with the agreement of a designated investigation officer, a written notice must be provided to the occupier or someone else who appears to be in charge of the premises at the time. If no one is present at the time, the notice must be left in a prominent place on the premises. Subsection (4) provides that such a notice must state the possible consequences of obstructing the designated officer from exercising the power to carry out the inspection (see section 167).

Inspection for valuation etc.

Section 136 - Power to inspect property for valuation etc. and Section 137 - Carrying out of inspections under section 136

176. These sections provide that a designated officer may enter and inspect premises for the purpose of valuing the premises if it is reasonably required to check a person's tax position. Section 137 sets out the conditions under which such an inspection can be carried out.

Approval of tribunal for premises inspections

Section 138 - Approval of tribunal for premises inspections

177. This section provides that a designated officer make ask the tribunal to approve an inspection under sections 133, 134 or 136 (as long as the application is made by a designated investigation officer and the tribunal is satisfied the inspection is justified). This application to the tribunal can be made without notice, subject to some conditions as set out in the section.

Other powers in relation to premises

Section 139 - Power to mark assets and to record information

178. This section provides that while inspecting premises, assets or documents (for valuation and/or for checking a tax position), assets can be marked to show that they have been inspected and relevant information can be obtained and recorded.

Section 140 - Power to take samples

179. This section provides for a designated officer to be able to enter premises and take samples of material on the premises if they have reason to believe that it is reasonably required to allow the person's tax position to be checked.

Restriction on inspection of documents

Section 141 - Restriction on inspection of documents

180. This section sets out that a designated officer may not inspect a document if an information notice given at the time of the inspection could not require the occupier to produce the document (for example, if the document is legally privileged).

CHAPTER 5 — FURTHER INVESTIGATORY POWERS

Section 142 - Power to copy and remove documents

181. Section 142 provides a power to a designated officer to copy, make extracts and remove documents. The officer may also retain the document for a reasonable period of time. Subsection (3) allows the person who produced the document to request a receipt for it and a copy of it. Subsection (4) clarifies that the designated officer may not charge for providing either the receipt of the copy.

182. Subsection (6) provides that where a document that has been removed 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.

Section 143 - Computer records

183. This section applies to any provision of this Part of the Bill or Part 8 that relates to the production of documents or the inspection, copying or removal of documents. Subsection (3) allows a designated officer at a reasonable time to obtain access to, inspect, and check the operation of any computer or other equipment used in connection with a relevant document. Subsection (4) clarifies that a relevant document is a document that someone is required to

produce or which may be inspected, copied or removed by a designated officer. Subsection (5) allows the designated officer to require the person in charge of the computer to provide help to fulfil the requirements of subsection (3). Subsection (6) provides that if someone obstructs the officer or does not assist the officer within a reasonable time, then that person may have to pay a financial penalty of £300.

CHAPTER 6 — REVIEWS AND APPEALS AGAINST INFORMATION NOTICES

Section 144 - Review or appeal against information notices

184. This section provides for the taxpayer to have a right to request a review or an appeal against a taxpayer notice but that taxpayer cannot appeal against providing information or documents that would be part of the taxpayer's statutory record. A taxpayer also cannot appeal if the taxpayer notice had been approved by a tribunal. A person can appeal against a third party notice only on the grounds that it would be unduly onerous to comply with the notice. A notice of review or appeal can be given in any circumstances if it is issued under sections 120(4) (third party notice given to the parent undertaking for the purpose of checking the tax position of more than one subsidiary undertaking), 120(6) (a notice given under section 119 to the parent undertaking for the purpose of checking the tax position of one or more subsidiary undertakings whose identities are not known to the officer giving the notice), 121(5) (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) or 121(6) (a notice 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) of this Bill.

Section 145 – Disposal of reviews and appeals in relation to information notices

185. This section provides that a person who has requested a review or an appeal in relation to a decision arising from an information notice must comply, where the information notice is upheld or varied, with the conclusion or requirements of the review or appeal.

CHAPTER 7 — OFFENCES RELATING TO INFORMATION NOTICES

Section 146 (Offence of concealing etc. documents following information notice) and Section 147 (Offence of concealing etc. documents following information notification)

186. These two sections provide for the creation of offences relating to concealing, destroying or otherwise disposing of documents required by an information notice and approved by the tribunal, or likely to be required by an information notice and there is an intention to seek the tribunal's approval for a notice. If a person is convicted of an offence in this chapter then that person would be liable to a fine not exceeding the statutory maximum on summary conviction, or being imprisoned for up to two years and/or a fine on conviction on indictment.

PART 8 – PENALTIES

CHAPTER 1 — PENALTIES: INTRODUCTORY

Overview

Section 148 - Penalties: overview

187. This section provides an overview of the structure of Part 8 of the Bill.

Double jeopardy

Section 149 - Double jeopardy

188. This section provides that a person is not liable to pay any penalty outlined in Part 8 of the Bill if the person has already been convicted of an offence relating to the matter which triggered the penalty.

CHAPTER 2 — PENALTIES FOR FAILURE TO MAKE RETURNS OR PAY TAX

Section 150 - Penalty for failure to make returns and Section 151 - Penalty for failure to pay tax

189. These two sections provide that a person is liable to pay a penalty where they have failed to submit a tax return on or before the filing date and/or have failed to pay any or all tax due before the date the payment was due.

190. The two sections also confer powers on the Scottish Ministers to make regulations setting out the following: the circumstances in which a penalty is payable; the penalty amounts; whether a penalty is fixed, daily or proportionate (i.e. calculated by reference to the amount of tax due or outstanding) in nature; the penalty-issuing process; appeal of penalties; and enforcement of penalties. Such regulations cannot create criminal offences. The regulations are subject to the affirmative procedure.

Section 152 - Interaction of penalties under section 150 with other penalties and Section 153 - Interaction of penalties under section 151 with other penalties

191. These two sections provide that any penalty applied as a result of either section 150 or 151 is reduced by the amount of any other penalty applied and determined by the same tax liability and which is not covered under section 150 or 151 (i.e. any other penalty which is not due to either a failure to make a return or to pay tax).

Section 154 - Reduction in penalty under section 150 for disclosure

192. This section provides for Revenue Scotland to be able to reduce a penalty applied due to a failure to make a return. This applies only where a person discloses information to Revenue Scotland which has been previously withheld by the failure to submit a tax return. Any reductions applied may reflect whether or not the disclosure was unprompted (where the person has no reason to believe that Revenue Scotland is or is about to discover the information) and also the quality (timing, nature and extent) of the information disclosed. By timing this refers to how promptly the disclosure was made; by nature this refers to the level of evidence provided and the degree of access to test the disclosure; by extent this means how complete the disclosure may be.

Section 155 - Suspension of penalty under section 151 during currency of agreement for deferred payment

193. This section sets out that a person who has failed to pay tax by the due date can make a request to Revenue Scotland to have the payment deferred and Revenue Scotland can then choose whether or not to agree to the deferral of payment for a specified period as well as specifying any conditions of that deferral.

194. If payment is deferred, any penalty the person might have incurred during the specified period for failing to pay tax is not applied. If the person breaks the agreement (by either failing to pay the tax due when the deferral period ends or failing to comply with any condition of that deferral) the person becomes liable for any penalty that Revenue Scotland issues a notice to the person about. If the deferral agreement is further varied the agreement applies until the end of the new agreement.

Section 156 - Special reduction in penalty under sections 150 and 151

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

Section 157 - Reasonable excuse for failure to make return or pay tax

196. This section provides that if a person satisfies Revenue Scotland or the tribunal that there is reasonable excuse on the person's behalf for a failure to either make a return or make a payment, then the person is not liable to pay a penalty arising from that failure. The section also clarifies some circumstances in which reasonable excuse does not apply.

Section 158 - Assessment of penalties under sections 150 and 151

197. Subsection (1) provides that where a person becomes liable for a penalty due to a failure to make a return or pay tax, Revenue Scotland must assess the penalty, notify the person that a penalty has been incurred, and state in the notice the period or transaction against which the penalty is assessed. Subsection (2) provides that the penalty must be paid within 30 days of Revenue Scotland issuing the penalty notification. Subsection (3) provides that the assessment of the penalty is to be treated for enforcement purposes as an assessment of tax and may be combined with an existing assessment to tax. Subsections (4) and (5) make provision for a supplementary and replacement assessments to be made in respect of a penalty applied under this sections 150 and 151 if the penalty was calculated in reference to the amount of tax the person was liable to pay or failed to pay and it subsequently becomes clear that this amount was an over or under estimate.

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

198. This section provides that assessment of a penalty due to a failure to make a return or pay tax must be made on or before the later of one of these two dates:

a) two years from the filing date (in the case of a failure to make a return) or the last date on which payment may be made without paying a penalty (in the case of failing to pay tax); or

b) for a failure to make a tax return:

- 12 months from either the end of the appeal period or if there is no such assessment, 12 months from the date on which that liability is ascertained or that it is ascertained the liability is nil.

for a failure to pay tax:

- 12 months from either the end of the appeal period or if there is no such assessment, 12 months from the date on which the amount of tax was ascertained.

CHAPTER 3 — PENALTIES RELATING TO ERRORS

Section 160 - Penalty for error in taxpayer document

199. This section provides that a penalty is payable by a person for taxpayer document error(s) submitted to Revenue Scotland, subject to two conditions being met. The first condition is that the error amounts or leads to either an understatement of the tax liability, a false or inflated statement of a loss or a false or inflated claim for relief or repayment of tax. The second condition is that in Revenue Scotland's judgement the error is either careless or deliberate on the person's behalf. A penalty is payable for each error. The section also provides the Scottish Ministers with the power to make by regulations further provision about penalties due to taxpayer document error(s). Such regulations are subject to the affirmative procedure.

Section 161 - Suspension of penalty for careless inaccuracy under section 160

200. This section provides that Revenue Scotland may, by means of a written notice, suspend all or part of a penalty which is applied where a taxpayer submits a document to Revenue Scotland containing an error and which is due to careless behaviour by the taxpayer. Subsection (2) requires that a notice served by Revenue Scotland must specify what part of the penalty is being suspended, a period not exceeding two years and the conditions of suspension with which the taxpayer must comply. Subsection (3) allows Revenue Scotland to suspend all or part of a penalty only if it meant that if a taxpayer complied with the condition of suspension the taxpayer would avoid liability to further penalties incurred under section 160 for careless inaccuracy.

Section 162 - Penalty for error in taxpayer document attributable to another person

201. This section provides that a penalty is payable where a person submits a document to Revenue Scotland containing an error attributable to another person either deliberately supplying the first person with false information or deliberately withholding information from them with the intention of creating the error(s). Where this happens and there is either an understatement in the tax liability or a false/inflated claim for loss or repayment of tax, the person attributable for the error is liable to pay a penalty. The section also provides the Scottish Ministers with the power to make by regulations further provision about penalties applying to errors in taxpayer

documents attributable to another person. Such regulations are subject to the affirmative procedure.

Section 163 - Under-assessment by Revenue Scotland

202. This section provides that a penalty is payable by a person where an assessment issued by Revenue Scotland understates the tax liability and the person has failed to take reasonable steps to inform Revenue Scotland within 30 days of receiving the understatement. Revenue Scotland must consider whether the person knew or should reasonably have known about the under-assessment. The section also provides the Scottish Ministers with the power to make by regulations further provision about penalties due to an under-assessment by Revenue Scotland. Such regulations are subject to the affirmative procedure.

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

203. This section provides that Revenue Scotland may reduce a penalty (including any interest applied) if it thinks it reasonable to do so because of special circumstances and the penalty is applied under sections 160, 162 and 163. A person's ability to pay tax or the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment of another are not reasons under which the penalty can be reduced.

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

204. This section provides for Revenue Scotland to be able to reduce a penalty applied due to sections 160, 162 and 163. Any reductions applied may reflect whether or not the disclosure was unprompted (where the person has no reason to believe that Revenue Scotland is or is about to discover the information) and also the quality (timing, nature and extent) of the information disclosed. By timing this refers to how promptly the disclosure was made; by nature this refers to the level of evidence provided and the degree of access to test the disclosure; by extent this means how complete the disclosure may be.

Section 166 - Assessment of penalties under sections 160, 162 and 163

205. This section provides that where a person becomes liable for a penalty under sections 160, 162 and 163, Revenue Scotland must assess the penalty and then notify the person of this, including making clear the period against which the penalty is being assessed. The penalty must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person and this may be combined with an existing assessment to tax.

206. The assessment of a penalty due to an error in a taxpayer document attributable to either the taxpayer or another person must be made within 12 months of either the end of the appeal period for the decision correcting the inaccuracy or the date on which the inaccuracy is corrected, whichever applies. The assessment of a penalty due to an under-assessment of tax by Revenue Scotland must be made within 12 months of either the end of the appeal period for the assessment of tax which corrected the under-statement or the date on which the understatement is corrected, whichever applies.

CHAPTER 4 — PENALTIES RELATING TO INVESTIGATIONS

Section 167 - Penalties for failure to comply or obstruction

207. This section provides that a person is liable to pay a fixed penalty for either failing to comply with an information notice or deliberately obstructing a designated officer in the course of an inspection approved by the tribunal. Failing to comply with an information notice includes concealing, destroying or disposing of a document in breach of the provisions under sections 171 and 172.

Section 168 - Daily default penalties for failure to comply or obstruction

208. This section provides that a person is liable to a further fixed penalty for each subsequent day they continue to fail to comply with an information notice or deliberately obstructs a designated officer in the course of an inspection approved by the tribunal.

Section 169 - Penalties for inaccurate information or documents

209. This section provides that a person is liable in certain circumstances to pay a fixed penalty if, in the course of complying with an information notice, they submit a document which contains an error. The circumstances in which the penalty is payable are: if the error is due to careless or deliberate behaviour; if the person is aware of the error at the time of submitting the document but fails to tell Revenue Scotland; or if the person discovers the error after submitting the document but fails to take reasonable steps to inform Revenue Scotland. Where there is more than one error in a document, a fixed penalty is payable for each error.

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

210. This section confers on the Scottish Ministers the power to change by order the amounts of the penalties applying in sections 167, 168 and 169 where it appears to Ministers that there has been a change in the value of money since either this section came into force or the relevant penalty was last changed. Such orders are subject to the affirmative procedure.

Section 171 - Concealing, destroying etc. documents following information notice

211. This section provides that a person must not generally conceal, destroy or otherwise dispose of a document that is the subject of an information notice addressed to them, unless particular circumstances apply as set out in subsections 2 and 3.

Section 172 - Concealing, destroying etc. documents following information notification

212. This section provides that a person must not generally conceal, destroy or otherwise dispose of a document if a designated officer has informed the person that the document is, or is likely to be, the subject of an information notice addressed to that person. This section does not apply if the person acts after either at least six months since the person received the last such notification from an officer or if an information notice has been issued.

Section 173 - Failure to comply with time limit

213. This section provides that a penalty is not payable by a person failing to comply with an information notice or obstructing an officer during an investigation if a designated officer allows them further limited time to correct the failure and the person then does so.

These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Section 174 - Reasonable excuse for failure to comply or obstruction

214. This section provides for a person not being liable to a fixed or daily penalty for failure to comply with an information notice or obstructing an officer during an inspection, if the person satisfies Revenue Scotland or the tribunal that there is reasonable excuse. The section defines some circumstances which would not be accepted as reasonable excuse.

Section 175 - Assessment of penalties under sections 167, 168 and 169

215. This section provides that where a person becomes liable for a penalty under section 167, 168 or 169, Revenue Scotland must assess the penalty and then notify the person of this. The assessment of a fixed or daily penalty arising from a failure to comply with an information notice or obstructing an officer during an inspection must be made within 12 months of the person becoming liable to the penalty. An assessment of a penalty due to an error in a taxpayer document submitted following an information notice must be made within 12 months on the date that the error first came to the attention of a designated officer and within six years of the date on which the person became liable to the penalty.

Section 176 - Enforcement of penalties under sections 167, 168 and 169

216. This section provides that a penalty under section 167, 168 or 169 must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person. If a notice of review is given against the penalty, the penalty must be paid within 30 days of the review being concluded. If mediation is entered into following a review, the penalty must be paid within 30 days of the person or Revenue Scotland giving notice of withdrawal from mediation (where this is the case). If notice of an appeal against the penalty is given, the penalty must be paid within 30 days of the appeal being determined or withdrawn.

Section 177 - Increased daily default penalty

217. This section provides that where a person continues to fail to comply with an information notice or obstructs an inspection and the daily default penalty has been applied for more than 30 days, a designated officer may make an application to the tribunal for an increase in the daily penalty. The tribunal may approve an increased amount up to a maximum of £1,000 for each applicable day and must have regard to factors including the likely cost of complying with the notice and the benefits to the person or anyone else arising from the non-compliance. If the tribunal approves the request, the increased daily penalty would then apply from the date of the tribunal's decision until such time as the person complies with the information notice or inspection.

Section 178 - Enforcement of increased daily default penalty

218. This section provides that an increased daily default penalty must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person.

Section 179 - Tax-related penalty

219. This section provides that, where certain criteria apply, a person can be made liable for an additional penalty whose amount is decided by the Upper Tribunal. The criteria are that: a person is liable to a penalty under section 167; the person continues to fail to comply with an information notice or continues to obstruct an investigation; a designated officer believes that the amount of tax the person has paid or is likely to pay is significantly less than it would have been

if they had complied; a designated officer makes an application to the Upper Tribunal for an additional penalty to be imposed; and the Upper Tribunal decides it is appropriate to do so. In determining the amount of the penalty, the Upper Tribunal must factor in the amount of tax which has not been, or is not likely to be, paid by the person. Any additional penalty imposed by a decision of the Upper Tribunal against this section is additional to the fixed and daily penalties already applied as a result of a continued failure to comply with an information notice or obstruction to an officer carrying out an inspection.

Section 180 - Enforcement of tax-related penalty

220. This section provides that a penalty applied under section 179 must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person.

CHAPTER 5 — OTHER ADMINISTRATIVE PENALTIES

Section 181 - Penalty for failure to register for tax

221. This section provides that a penalty is payable where a person fails to register for Scottish Landfill Tax as required by section 22 or 23 of the primary legislation for Scottish Landfill Tax. The section also confers powers on the Scottish Ministers to make further provision by regulations about a penalty applied under this section. Such regulations are subject to the affirmative procedure.

PART 9 – INTEREST ON PAYMENTS DUE TO OR BY REVENUE SCOTLAND

Section 182 - Interest on unpaid tax

222. This section provides that interest is payable by the taxpayer on unpaid tax. Interest is payable from the end of the period of 30 days after the date for payment of the tax until the tax is paid. Subsection (2) confers a power on the Scottish Ministers to make, by regulations, further provision to specify the date for payment of the devolved tax. Such regulations are subject to the negative procedure. If the taxpayer lodges an amount of money with Revenue Scotland in respect of the tax payable then the amount on which interest is payable is reduced by the amount lodged. Regulations made by the Scottish Ministers under section 185 will specify the rate at which interest will be calculated.

Section 183 - Interest on penalties

223. This section provides that interest is payable by the taxpayer on unpaid penalties. If penalties are not paid on the date they are due, then interest is payable from that date until the penalty is paid. Regulations made by the Scottish Ministers under section 185 will specify the rate at which interest will be calculated.

Section 184 - Interest on repayment of tax overpaid etc.

224. This section provides that interest is payable by Revenue Scotland to the taxpayer on any repayment of tax, repayment on penalties or repayment of interest (on either tax or penalties). Interest also applies to repayment of any amount lodged with Revenue Scotland by the taxpayer in respect of the tax payable. Regulations made under section 185 will set out the rate at which interest on repayment will be calculated.

These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Section 185 - Rates of interest

225. This section provides that Ministers will specify the rate of interest to be paid in sections 182, 183 and 184 in regulations subject to the affirmative procedure. Different rates may be set for different taxes or different penalties.

PART 10 – ENFORCEMENT OF PAYMENT OF TAX

CHAPTER 1 — ENFORCEMENT: GENERAL

Issue of tax demands and receipts

Section 186 - Issue of tax demands and receipts

226. This section provides Revenue Scotland with a power to demand a sum of tax that is due and payable from a taxpayer. If the taxpayer requests a receipt in relation to the payment of tax, Revenue Scotland must provide one.

Fees for payment

Section 187 - Fees for payment

227. This section provides the Scottish Ministers with a power to make regulations specifying any fee associated with particular methods of payment (such as credit cards). Such regulations are subject to the negative procedure. The fee charged to the person making the payment must not exceed what is reasonable to do so with regards to the costs incurred by Revenue Scotland (or a person authorised by it) in accepting or processing the payment.

Certificates of debt

Section 188 - Certificates of debt

228. This section provides for certificates of debt which are statements prepared by a designated officer that there is an outstanding debt owed to Revenue Scotland by a taxpayer. Their purpose is to provide evidence to the court in support of any debt Revenue Scotland administers, avoiding the need for lengthy documentation. The decision whether to accept such evidence is for the court.

Court proceedings

Section 189 - Court proceedings

229. This section provides that a taxpayer may be sued in order to recover tax that is due and payable.

Summary warrant

Section 190 - Summary warrant

230. This section provides that a designated officer may apply to the sheriff for a summary warrant where a person does not pay an amount due. The application to the sheriff must include a certificate which states that the sum due has been requested and has remained unpaid for at least 14 days. The sheriff must then issue the summary warrant which authorises the recovery of

the sum payable by the means set out in subsection (6). In addition to the sum of tax due, the sheriff officers' fees and expenses reasonably incurred are also chargeable against the taxpayer.

Recovery of penalties and interest

Section 191 - Recovery of penalties and interest

231. This section provides that any penalty or interest payable is to be treated as though it was an amount of unpaid tax.

CHAPTER 2 — ENFORCEMENT: POWERS TO OBTAIN CONTACT DETAILS FOR DEBTORS

Section 192 - Requirement for contact details for debtor

232. This section provides that sections 193, 194 and 195 apply where Revenue Scotland is owed money by a debtor but has no contact details and an authorised officer reasonably believes that a third party (which must be a company or local authority and cannot be a charity or an organisation operating on behalf of a charity) holds the contact details.

Section 193 - Power to obtain details

233. This section provides an authorised officer of Revenue Scotland with a power, by means of a written notice, to require the third party to provide the contact details of the debtor outlined in section 192. The notice must name the debtor. The third party is obliged to provide contact details of the debtor in accordance with the timescale and in the form set out in the notice.

Section 194 – Reviews and appeals against notices or requirements

234. This section provides the third party with a right of review or appeal against the notice but only on the basis that it would be unduly onerous to comply.

Section 195 - Penalty and Section 196 - Power to change amount of penalty under section 195

235. These two sections provide that in the event that the third party fails to comply with the notice, a £300 penalty would apply. Section 196 confers the Scottish Ministers with a power to change the amount of the penalty by order if it appears to Ministers that there has been a change in the value of money since the last relevant date (either when this section came into force or on previous dates when this penalty has been changed). Such orders are subject to the affirmative procedure.

PART 11 – REVIEWS AND APPEALS

CHAPTER 1 — INTRODUCTORY

Overview

Section 197 - Overview

236. This section sets out an overview of the provisions of this Part of the Bill relating to the review and appeal of certain decisions of Revenue Scotland.

Appealable decisions

Section 198 - Appealable decisions

237. This section sets out the types of decision by Revenue Scotland which can be reviewed and appealed, and types of decision which cannot. It also states that the Scottish Ministers may, by order, add, change or remove a type of decision from either of the lists in subsections (1) and (4).

CHAPTER 2 — REVIEWS

Review of appealable decisions

Section 199 - Right to request review

238. This section provides a right to a taxpayer to request that Revenue Scotland should review a decision. It states that no steps of a review will be undertaken until the end of any existing enquiry process.

Section 200 - Notice of review

239. This section provides for giving notice of review. Someone who wishes to ask Revenue Scotland to review a decision must do so within 30 days of being told about that decision. The notice should be in writing to Revenue Scotland and must state the grounds of the review.

Section 201 - Late notice of review

240. This section provides the rules for a review requested outside the time limits. Notice of review may be given after the time limit if Revenue Scotland agrees or where the tribunal gives permission for the late notice. Subsection (3) requires Revenue Scotland to agree to the notice of review being given outside the time limit if the notice is in writing and Revenue Scotland agrees that there was a reasonable excuse for the notice of review being late and that there had been no unreasonable delay to the issue of the notice. Subsection (4) requires Revenue Scotland to notify the appellant of its decision about whether to agree to the request.

Section 202 - Duty of Revenue Scotland to carry out review

241. This section sets out the duties of Revenue Scotland to initiate a review by giving the appellant notice within 30 days, or within a reasonable period where 30 days is insufficient, of its view on the matter in question. Subsection (2) disapplies subsection (1) if the appellant has already given a notice of review in relation to the same matter or if Revenue Scotland has concluded a review of the matter already.

Section 203 - Nature of review etc.

242. This section provides for the carrying out of reviews by Revenue Scotland. Revenue Scotland will take into account any steps taken before in deciding the matter in question, and any evidence provided by the taxpayer at a reasonable stage. The review may determine that Revenue Scotland's view of the matter in question is upheld, varied or cancelled.

Section 204 - Notification of conclusions of review

243. This section requires Revenue Scotland to notify the appellant of the result of the review within 45 days (or within another agreed period) of the appellant being notified under section 202 of Revenue Scotland's view on the matter in question. Subsection (3) provides that, where Revenue Scotland does not give notice of its conclusion about the review within the required time period, the review is treated as having concluded that Revenue Scotland's view (given under section 202) is upheld. Subsection (4) provides that in such circumstances, Revenue Scotland must notify the appellant of the conclusions which the review is treated as having reached.

Section 205 - Effect of conclusions of review

244. This section sets out that the conclusion of the review has the effect of a settlement agreement unless the taxpayer enters into mediation with Revenue Scotland or gives notice of appeal to the tribunal.

CHAPTER 3 — APPEALS

Section 206 - Right of appeal

245. This section provides a right of appeal to the tribunal, and states that an appellant may not appeal to the tribunal if a review is ongoing, an enquiry is in progress, or the appellant has entered into a settlement agreement with Revenue Scotland.

Section 207 - Notice of appeal

246. This section sets out the way in which an appeal can be raised. An appellant must give notice in writing to Revenue Scotland within 30 days of the completion of an enquiry, of being notified of the decision they wish to appeal, of the conclusion of a review, of a decision to withdraw from mediation, or of a decision to withdraw from a settlement agreement.

Section 208 - Late notice of appeal

247. This section applies where no notice of appeal has been given before the relevant time limit. Notice of appeal may be given after the time limit if Revenue Scotland agrees or where the tribunal may give permission for the late notice. Subsection (3) requires Revenue Scotland to agree to the notice of appeal being given outside the time limit if the notice is in writing and Revenue Scotland agrees that there was a reasonable excuse for the notice of appeal being late and that there had been no unreasonable delay to the issue of the notice. Subsection (4) requires Revenue Scotland to notify the appellant of its decision about whether to agree to the request.

Section 209 - Disposal of appeal

248. This section provides that the tribunal should determine in an appeal whether Revenue Scotland's view of the matter being appealed should be upheld, varied, or cancelled. Part 4 of the Bill contains further provision about appeals to the tribunal, and about appeals from the tribunal to the Court of Session.

CHAPTER 4 — SUPPLEMENTARY

Section 210 – Reviews and appeals not to postpone recovery of tax

249. Subsection (1) provides that where a review or appeal takes place, any tax charged or interest or penalty continues to apply and remains payable as if there had been no review or appeal. Subsection (2) gives the Scottish Ministers a power to make regulations for the postponement of any tax, penalty or interest pending reviews or appeals. Regulations may include provision about: applications by appellants to postpone amounts of tax, penalties and interest; the effect of any determination by Revenue Scotland on such applications; agreements between appellants and Revenue Scotland about the postponement of amounts of tax, penalties and interest; applications to the tribunal for such postponement; and appeals against determinations by Revenue Scotland and decisions by the tribunal on such applications. Such regulations are subject to the affirmative procedure.

Section 211 - Settling matters in question by agreement

250. This section sets out the rules by which reviews, mediation and appeals can be settled by agreement between the appellant and Revenue Scotland, including the time limit for the appellant to withdraw from such an agreement. Subsection (1) defines what is meant by a ‘settlement agreement’. Subsection (2) provides that the consequences of a settlement agreement are to be the same as if the tribunal had determined the outcome of an appeal, unless the appellant notifies Revenue Scotland within 30 days that the appellant wishes to withdraw from the agreement (subsection (3)). Subsection (4)(a) provides that where the settlement agreement is not in writing, subsection (2) does not apply unless the fact that the agreement was reached is confirmed in writing by Revenue Scotland to the appellant or by the appellant to Revenue Scotland. Subsection (4)(b) provides that if the agreement is not in writing, then the date that the conformation notice was given is to be taken as the date of the agreement between Revenue Scotland and the appellant.

Section 212 - Application of this Part to joint buyers

251. This section provides for situations when one or some (but not all) the buyers in a land transaction seek a review, mediation or appeal of a tax assessment in relation to LBTT. In this situation, in accordance with subsection (2), Revenue Scotland must notify all the buyers whose identity is known of the review, mediation or appeal; any of the buyers may participate in the review, mediation or appeal; and the agreement of all the buyers is required before Revenue Scotland can enter into a settlement agreement. Subsection (4)(e) provides that in the case of an appeal relating to the transaction, the tribunal’s decision binds all of the buyers.

Section 213 - Application of this Part to trustees

252. This section provides for situations when the buyer in relation to LBTT is a trust, and where one or some (but not all) of the trustees seek a review, mediation or appeal of a tax assessment. In a review or mediation, Revenue Scotland must notify all the trustees whose identity is known of the review or mediation; any of the trustees may participate in the review or mediation; and the agreement of all the trustees is required before Revenue Scotland can enter into a settlement agreement. In an appeal, the trustee bringing the appeal must inform the other trustees, all trustees may take part in the appeal, and the decision of the tribunal is binding on all trustees.

These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Section 214 - References to the “tribunal”

253. This section sets out the definition of the term “the tribunal” for the purposes of this Part of the Bill to mean the First-tier Tribunal or the Upper Tribunal (where determined by tribunal rules).

Section 215 - Interpretation

254. This section defines expressions used in this Part of the Bill and makes other interpretative provision, including about the meaning of the term “matter in question”. It also makes clear that a reference to a notification means a notification in writing and that a reference to an appellant includes a person acting on behalf of the appellant except in certain circumstances.

PART 12 – FINAL PROVISIONS

Interpretation

Section 216 – General Interpretation

255. This section provides a list and explanation of general terms which are used throughout the Bill.

Section 217 – Index of defined expressions

256. This section introduces schedule 5 which contains an index of the main expressions defined or explained in the Bill.

Subordinate legislation

Section 218 – Subordinate legislation

257. This section sets out the parliamentary procedure to which the various delegated powers will be subject.

Ancillary provision

Section 219 – Ancillary provision

258. This section provides a power for the Scottish Ministers to make ancillary provision in relation to the Bill.

Modifications of enactments

Section 220 – Minor and consequential modifications of enactments

259. This section introduces schedule 4 which sets out minor and consequential amendments and repeals of enactments made as a result of the provisions in the Bill.

Crown application

Section 221 – Crown application: criminal offences

260. The Bill applies to the Crown by virtue of section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). In line with usual practice for Acts of the Scottish Parliament, section 221 has effect that the Crown cannot be found criminally liable in terms of the offences created by the Bill, such as those set out in sections 146 (offence of concealing etc. documents following information notice) and 147 (offence of concealing etc. documents following information notification). However, through the mechanism in subsection (2) any unlawful conduct on the part of Crown bodies can be declared unlawful. Subsection (3) clarifies that section 221 does not exempt civil servants from criminal prosecution; this has particular relevance to the offence in section 17 (wrongful disclosure of protected taxpayer information).

Section 222 – Crown application: powers of entry

261. This section provides that power of entry in relation to Crown land can be granted only with the consent of the appropriate authority. The section sets out a table defining for the purposes of this Bill what is considered “Crown land” and who the relevant authority is.

Section 223 – Crown application: Her Majesty

262. This section provides that nothing in this Bill affects Her Majesty in Her private capacity.

Commencement and short title

Section 224 – Commencement

263. This section sets out those sections which will come into force on the day after Royal Assent and states that the other provisions come into force at a time specified in order(s) made by the Scottish Ministers.

Section 225 – Short title

264. This section provides that the short title of the Bill, once passed, would be the Revenue Scotland and Tax Powers Act 2014.

SCHEDULE 1 – REVENUE SCOTLAND

265. This schedule is introduced by section 2 and makes further provisions on the membership, procedures and staffing of Revenue Scotland.

Revenue Scotland

Membership

266. Paragraph 1 sets out provisions for the membership of Revenue Scotland. No fewer than five and no more than nine members are to be appointed by the Scottish Ministers, one of whom is to be appointed to the role of Chair. The minimum and maximum number of members may be amended by an order made by Ministers. Ministers will determine the period and terms of appointment of members of Revenue Scotland, and may reappoint those who already are or may

have been members. A member may resign from Revenue Scotland by giving written notice to Ministers.

Disqualification

267. Paragraph 2 sets out those persons to be disqualified from becoming members or holding membership of Revenue Scotland. These persons are defined as Ministers, elected members of the Scottish, UK and European Parliaments, local authority councillors, officers of the Crown and civil servants. A person would also be disqualified if they are or have been insolvent, disqualified as a company director under the Company Directors Disqualification Act 1986 (c.46), or disqualified as a charity trustee under the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

Removal of members

268. Paragraph 3 provides that the Scottish Ministers can remove a member should that member become disqualified as described above. Ministers may also remove a member if that member has been absent from meetings of Revenue Scotland for a period longer than six months without permission from Revenue Scotland, or Ministers consider that the member is otherwise unfit to be a member or is unable to carry out their functions as a member. Ministers are required to give a member written notice of their removal from Revenue Scotland.

Remuneration and expenses

269. Paragraph 4 makes provision for Revenue Scotland, with the approval of Ministers, to determine the remuneration of its members and members of its committees, and for the reimbursement of expenses incurred by those members when carrying out their functions.

Committees

270. Paragraph 5 makes provision for Revenue Scotland to establish committees for any purpose relating to its functions. Revenue Scotland may also determine the composition of its committees and appoint persons to those committees who are not members of Revenue Scotland. Persons appointed as a member of a committee, but who are not members of Revenue Scotland, are not entitled to a vote at the meetings of the committee.

Procedure

271. Paragraph 6 sets out that Revenue Scotland may regulate its own procedures and that of its committees. The validity of proceedings set by Revenue Scotland and its committees is not affected by any membership vacancy, any defect in the appointment of a member or the subsequent disqualification of a member after appointment.

Internal delegation by Revenue Scotland

272. Paragraph 7 provides that Revenue Scotland may authorise a member, a committee, the chief executive or any other member of staff to exercise its functions. Internal delegation of authority does not affect Revenue Scotland's responsibility for the exercise of those functions. "External" delegation of functions is provided for in section 4 of the Bill.

Chief Executive and other staff

273. Paragraph 8 provides for Revenue Scotland to employ a chief executive and that the person holding this position may not be a member of Revenue Scotland. The Scottish Ministers may appoint the first chief executive of Revenue Scotland through consultation with the Chair (should a person hold that position at the time of appointment of the chief executive). Each subsequent chief executive may be appointed by Revenue Scotland, with approval of Ministers, on such terms as it may determine. Revenue Scotland may also, again with approval of Ministers, appoint other members of staff on such terms as it may determine.

Powers

274. Paragraph 9 provides Revenue Scotland with powers to do what it considers necessary or expedient in connection with the exercise of its functions, or incidental or conducive to the exercise of those functions.

SCHEDULE 2 – THE SCOTTISH TAX TRIBUNALS

Part 1 – Appointment of members

President of the Tax Tribunals: eligibility for appointment

275. Paragraph 1 sets out that a person, to be appointed as President of the Tax Tribunals, must satisfy the Scottish Ministers that their experience and training is appropriate. An individual must have been practising for 10 years as a solicitor or advocate in Scotland or as a solicitor or barrister in England, Wales or Northern Ireland.

First-tier Tribunal: ordinary members

276. Paragraph 2 provides that the Scottish Ministers must appoint ordinary members of the First-tier Tribunal and will, by regulations, define the experience, qualifications and training required to be appointed as an ordinary member of the First-tier Tribunal.

First-tier Tribunal: legal members

277. Paragraphs 3 and 4 provide that the Scottish Ministers must appoint legal members of the First-tier Tribunal. To be appointed a person must have the experience, qualifications and training in relation to tax law and practice that the Scottish Ministers consider appropriate, be practising and have at least five years' experience as a solicitor or advocate in Scotland or as a solicitor or barrister in England, Wales or Northern Ireland. A person meets the criteria set out in subparagraphs (3) and (4) if the person meets a description to be specified by the Scottish Ministers in regulations.

Upper Tribunal: legal members

278. Paragraphs 5 and 6 provide that the Scottish Ministers must appoint legal members of the Upper Tribunal. To be appointed a person must have the experience, qualifications and training in relation to tax law and practice that the Scottish Ministers consider appropriate, be practising and have at least 10 years' experience as a solicitor or advocate in Scotland or as a solicitor or barrister in England, Wales or Northern Ireland. A person meets the criteria set out in subparagraphs (5) and (6) if the person meets a description to be specified by the Scottish Ministers in regulations.

These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Disqualification from office

279. Paragraph 7 lists positions that would disqualify a person from being President or a member of the Tax Tribunals.

Eligibility under regulations

280. Paragraphs 8 and 9 provide further detail about the content of the regulations that can be made under paragraphs 4(2) and 6(2)

Part 2 – Conditions of membership etc.

Application of this Part

281. Paragraph 10 sets out that this Part will apply to ordinary and legal members of the Tax Tribunals, but not judicial members and also details the paragraphs that apply to the President of the Tax Tribunals.

Initial period of office

282. Paragraph 11 allows that a person appointed to the Tax Tribunals holds the position for five years.

Reappointment

283. Paragraphs 12, 13 and 14 allow for the re appointment of members of the Tax Tribunal for a period of five years and sets out the exceptions that would prevent reappointment.

Termination of appointment

284. Paragraph 15 sets out the three ways a member of the Tax Tribunals can cease to hold the position.

Pensions etc.

285. Paragraph 16 provides for the Scottish Ministers to make arrangements in relation to pensions, allowances and gratuities.

Oaths

286. Paragraph 17 sets out that all Members of the Tax Tribunals must swear an oath in the presence of the President of the Tax Tribunals

Other conditions

287. Paragraph 18 provided that Scottish Minister may set the terms and conditions on which members of the Tax Tribunal hold the position.

Part 3 - Conduct and discipline

Application of this Part

288. Paragraph 19 sets out that this Part will apply to ordinary and legal members of the Tax Tribunals, but not judicial members and also details the paragraphs that apply to the President of the Tax Tribunals.

Conduct rules

289. Paragraphs 20, 21 and 22 set out the Scottish Ministers' responsibility for the conduct of members of the Tax Tribunals, provides for the power for Ministers to make regulations regarding the conduct and details what these regulations may contain.

Reprimand etc.

290. Paragraphs 23 and 24 provide for disciplinary action to be taken against members of the Tax Tribunal by the President of the Tax Tribunals.

Suspension of membership

291. Paragraphs 25 and 26 provide for the suspension of members of the Tax Tribunal by the President of the Tax Tribunals.

Judicial Complaints Reviewer

292. Paragraphs 27 and 28 set out the role of the Judicial Complaints Reviewer, established under the Judiciary and Courts (Scotland) Act 2008 (asp 6), in relation to the Tax Tribunals.

Part 4 – Fitness and removal

Application of this Part

293. Paragraph 29 sets out that this Part will apply to ordinary and legal members of the Tax Tribunals, but not judicial members and also details the paragraphs that apply to the President of the Tax Tribunals.

Constitution and procedure

294. Paragraphs 30 and 31 set out the arrangements that relate to a fitness assessment tribunal. The purpose of the fitness assessment tribunal is to determine whether a member of the Tax Tribunal is fit to hold the position of member of the tribunals, as set out in subparagraph 30(3).

Composition and remuneration

295. Paragraphs 32 and 33 provide for who will sit on a fitness assessment tribunal and their remuneration.

Proceedings before fitness assessment tribunal

296. Paragraphs 34 and 35 provide for the proceedings a fitness assessment tribunal will follow.

These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Suspension during investigation

297. Paragraphs 36, 37 and 38 provide for the suspension of a member of the Tax Tribunals at any time before a fitness assessment tribunal reports.

Report and removal

298. Paragraphs 39 and 40 set out the reporting arrangements of a fitness assessment panel and allow for the removal of a member of the Tax Tribunals if the member is found to be unfit.

Application of this Part to the President of the Tax Tribunals

299. Paragraph 41 sets out which paragraphs of Part 4 of Schedule 1 apply to the President of the Tax Tribunals.

Interpretation

300. Paragraph 42 sets out how unfitness to hold a position as a member of the Tax Tribunals should be interpreted.

SCHEDULE 3 – CLAIMS FOR RELIEF FROM DOUBLE ASSESSMENT AND FOR REPAYMENT

Introduction

301. As set out in paragraph 1, this schedule applies to a claim under section 97, 98 or 99 of this Bill.

Making of claims

302. Paragraph 2 provides for the process by which someone may make a claim for relief for overpayment. Revenue Scotland may determine the form by which a claim must be made. Making a claim requires evidence that the tax has been paid.

Duty to keep and preserve records

303. Paragraph 3 provides that records must be kept to support a claim for relief for overpayment, and describes the requirements for preserving those records.

Preservation of information etc.

304. Paragraph 4 provides that records may be kept in any form, but that Revenue Scotland may specify conditions or exceptions.

Penalty for failure to keep and preserve records

305. Paragraph 5 provides that there is a penalty for failing to keep records, but that the penalty is not incurred if other documentary evidence can show the same information.

Amendment of claim by claimant

306. Paragraph 6 provides that a claimant can amend their claim within 12 months, unless Revenue Scotland gives notice during that period that it is carrying out an enquiry.

These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

Correction of claim by Revenue Scotland

307. Paragraph 7 provides that Revenue Scotland may correct obvious errors or omissions in a claim, within nine months of the claim being made. The claimant may reject this correction within three months.

Giving effect to claims and amendments

308. Paragraph 8 provides that Revenue Scotland should make repayment or discharge a determination as soon as practicable after a claim is made. Revenue Scotland may give effect to this on a provisional basis.

Notice of enquiry

309. Paragraph 9 provides that Revenue Scotland may enquire into a claim or amendment of a claim. Revenue Scotland must give the claimant notice that it is going to carry out an enquiry within three years of the claim being made or amended. A claim or amendment may only be subject to one notice of enquiry.

Completion of enquiry

310. Paragraph 10 provides that Revenue Scotland will notify a claimant when its enquiries have been completed and state the conclusions of the enquiry. The closure notice must be issued within three years of the date of the claim and must state either that no amendment is required, or that the claim is insufficient or excessive and amend it to reflect this.

Direction to complete enquiry

311. Paragraph 11 provides that a claimant may apply to the tribunal for a direction that Revenue Scotland issue a closure notice, and completes its enquiry, within a specified period. The tribunal must give a direction unless there are reasonable grounds for not giving a closure notice within a specified period.

Giving effect to amendments under paragraph 10

312. Paragraph 12 provides that, once a closure notice has been issued, Revenue Scotland must carry out an assessment, make a repayment or discharge a determination within 30 days.

Appeals against amendments under paragraph 10

313. Paragraph 13 provides that a claimant may appeal against a closure notice, and sets out the procedure by which that appeal must be made.

SCHEDULE 4 – MINOR AND CONSEQUENTIAL MODIFICATIONS

314. Schedule 4 makes consequential amendments to listed Acts of the Scottish Parliament. One of the effects is that Revenue Scotland is made subject to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7) and the other Acts generally applicable to devolved public bodies³. Further, the legislation for LBTT and SLfT is amended in consequence of the

³ Some such requirements apply automatically to Scottish Administration bodies.

These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

provisions of the Bill, for example to repeal the provisions relating to reviews and appeals made there.

SCHEDULE 5 – INDEX OF DEFINED EXPRESSIONS

315. Schedule 5 provides an index to definitions used in the Bill.

FINANCIAL MEMORANDUM

BACKGROUND

1. The Bill is the third of three related Bills being brought forward as a consequence of measures enacted in the Scotland Act 2012. The Bill follows two tax-specific Bills, the Land and Buildings Transaction Tax (Scotland) Act 2013 that received Royal Assent on 31 July 2013 and the Landfill Tax (Scotland) Bill which is currently being considered by the Scottish Parliament.

2. The Bill makes provisions for a Scottish tax system to enable the collection and management of Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT) - “the devolved taxes”. It establishes Revenue Scotland as a new non-ministerial department which will be the tax authority responsible for collecting Scotland's devolved taxes from 1 April 2015. It puts in place a statutory framework which will apply to the devolved taxes; and sets out in clear terms the relationship between the tax authority and taxpayers in Scotland, including the relevant powers, rights and duties.

3. The estimated costs set out in this Financial Memorandum are for the existing devolved taxes. If any further taxes are devolved in the future, then those would require additional primary legislation. The additional costs associated with collecting those further taxes would be set out in Financial Memoranda for that legislation.

I. Costs to the Scottish Government of establishing and running Revenue Scotland

4. The Scottish Government will meet the costs of establishing and running Revenue Scotland, including those incurred by the Keeper of the Registers of Scotland (RoS) and the Scottish Environment Protection Agency (SEPA) in the administration of the two devolved taxes.

5. The estimated costs of establishing Revenue Scotland and of administering the two devolved taxes have been referenced in:

- the Cabinet Secretary for Finance, Employment and Sustainable Growth’s statement to the Scottish Parliament of 7 June 2012⁴;
- the Financial Memorandum to the LBTT Bill which formed part of the Explanatory Notes⁵; and
- the Policy Memorandum to the SLfT Bill⁶ and the Financial Memorandum which formed part of the Explanatory Notes⁷.

⁴ Available at: <http://www.scotland.gov.uk/News/Speeches/taxation07062012>

⁵ Available at: http://www.scottish.parliament.uk/S4_Bills/Land%20and%20Buildings%20Transaction%20Tax%20Bill/b19s4-introd-en.pdf

⁶ Available at: [http://www.scottish.parliament.uk/S4_Bills/Landfill Tax Bill/b28s4-introd-pm.pdf](http://www.scottish.parliament.uk/S4_Bills/Landfill_Tax_Bill/b28s4-introd-pm.pdf)

⁷ Available at: [http://www.scottish.parliament.uk/S4_Bills/Landfill Tax Bill/b28s4-introd-en.pdf](http://www.scottish.parliament.uk/S4_Bills/Landfill_Tax_Bill/b28s4-introd-en.pdf)

6. The estimated costs were provided to the Scottish Parliament in June 2012 and placed in the Scottish Parliament Information Centre (SPICe). The estimated costs set out in those previous statements came to a total of **£16.7m** for the period from July 2013 to March 2020. These costs were based upon information available at the time and related specifically to the basic set-up and operational running costs for the collection and management of the devolved taxes.

7. This £16.7m included:

- estimated costs for staff in Revenue Scotland, RoS and SEPA to manage the set-up phase between July 2013 and March 2015;
- estimated costs of IT development between July 2013 and March 2015 for front-end systems in RoS and SEPA to enable taxpayers to submit tax returns and make payments;
- estimated costs for non-staff expenditure in Revenue Scotland, RoS and SEPA between July 2013 and March 2015, including communications activity and staff training;
- estimated annual running costs for staff in Revenue Scotland, RoS and SEPA from April 2015 to March 2020; and
- estimated costs for non-staff running costs in Revenue Scotland, RoS and SEPA from April 2015 to March 2020, including communications activity, staff training, IT maintenance, and legal advice and other costs associated with debt management and appeals.

8. HMRC provided a high-level estimate of **£22.3m**, covering the same period, to administer ‘like for like’ taxes to the two UK taxes (Stamp Duty Land Tax (SDLT) and UK Landfill Tax (LfT)) on behalf of the Scottish Ministers. This £22.3m covered similar activity to the fields of cost set out above – set-up and annual running costs for staff and non-staff expenditure.

9. The Scottish Government’s estimate of the basic set-up and running costs of administering the devolved taxes in Scotland was 25% less than HMRC’s estimated costs. The creation of Revenue Scotland as the Tax Authority for the collection and management of the devolved taxes also provided scope to set distinctively Scottish policy directions for the administration of the devolved taxes, which would not have been possible were HMRC to have administered ‘like for like taxes’ within the costs they estimated.

10. As understanding has increased of the legislative requirements and the additional benefits to be derived from developing a distinctively Scottish system of tax administration, the initial estimates of the costs of establishing and running the devolved taxes have been reviewed and revised. As was indicated during the Finance Committee’s consideration of the LBTT Bill, any revised costs were to be presented in the Financial Memorandum to the Revenue Scotland and Tax Powers Bill.

11. There has been some revision to the composition of the previously estimated costs – for example, changes in the estimates of staffing costs in Revenue Scotland during the set-up phase, and changes to the expectations of the grading and team structure that is most appropriate within

Revenue Scotland from April 2015 onwards. The total for the areas of cost set out at paragraph 7 above remains **£16.7m**. The revised costs are directly comparable with HMRC's estimate for administering two 'like for like' taxes to SDLT and LfT and continue to reflect the 25% saving originally identified by the Scottish Government.

12. Alongside those revisions to previously estimated costs, additional costs have been identified in relation to three areas not included in previous cost estimates, and outwith the scope of HMRC's comparable estimate:

- Increased investigation and compliance activity gives scope to identify additional tax liability and increase revenue. Experience in other tax authorities has shown that a modest increase in investment in compliance activity can lead to significant increases in revenue, more than offsetting the additional cost. This Financial Memorandum describes initial investment of £230k from April 2015 to March 2016. The impact of this investment will be reviewed in light of success in generating additional tax revenue to inform the Scottish Ministers' decisions about any further investment;
- Some IT development within Revenue Scotland, to allow taxpayer data to be held securely and to sustain the administration of a distinct Scottish approach to taxation. This Financial Memorandum sets out initial investment of £1m between December 2013 and March 2015, and a corresponding estimated IT maintenance cost of £100k per year from April 2015 to March 2020 – totalling £1.5m; and
- Other costs associated with policy development in the course of preparing the three pieces of tax legislation, including this Bill. These costs include the establishment of Scottish Tax Tribunals to hear formal dispute cases on the devolved taxes, and costs to SEPA of processing and administering the tax liability which arises from illegal dumping of waste materials. This Financial Memorandum sets out initial investment of £120k to set up the Scottish Tax Tribunal between December 2013 and March 2015, and £135k per year annual running costs, totalling £730k as explained in Table 12. Annual running costs to SEPA associated with compliance arising from the illegal dumping of waste are estimated at £210k, totalling £1.05m as explained in Table 13.

13. The costs of increased investigation and compliance activity, of developing IT capacity within Revenue Scotland, of establishing Scottish Tax Tribunals and of processing tax liability arising from illegal dumping are described in more detail under section II of this Memorandum. These costs fall outside of the scope of the original HMRC and Scottish Government estimate costs for setting up and running the devolved taxes which were on a 'like for like' basis in connection with a more limited proposition.

14. These estimated costs are based on the assumption that the number of transactions made will remain broadly similar to those made for the existing UK taxes. While SLfT has a small and relatively stable tax base, LBTT is more volatile, and the numbers of returns would be expected to vary from year to year mirroring the performance of the property market. This has limited impact on the staffing resource estimated below. The majority of cases will be straightforward and dealt with electronically, so an increase in numbers of cases would not have a significant impact on staff resources. Staff resources will be focused on investigation, compliance, and non-standard cases. This work will be targeted at complex or high-value cases; in the first instance, increases in number of cases would be addressed by prioritisation within existing resources.

15. Table 1 below gives a summary of the costs set out in this Financial Memorandum, and shows that the total costs which correspond to previous estimates in the Financial Memoranda for the Land and Buildings Transaction Tax Bill and the Scottish Landfill Tax Bill remain at £16.7m. It also summarises the estimated costs of additional activity not included in previous estimates nor in HMRC's comparable estimate of £22.3m.

Table 1 - Summary of costs

Purpose	Total cost over period July 2013-March 2020 (£000)
Revenue Scotland staff set-up	1,810
Revenue Scotland non-staff set-up	455
Revenue Scotland staff running costs	6,550
Revenue Scotland non-staff running costs	3,700
RoS staff set-up	250
RoS non-staff set-up	85
RoS staff running costs	1,200
RoS non-staff running costs	425
SEPA set-up	625
SEPA running costs	1,600
Total for revisions of costs previously estimated for LBTT and SLfT	16,700
ESTIMATES FOR NEW ACTIVITY	
Additional compliance activity in FY 2015-16	230
IT investment in Revenue Scotland	1,500
Set-up and running of Scottish Tax Tribunals	730
Costs to SEPA of processing and administering SLfT from illegal dumping	1,050
Total estimate for new activity	3,510
Total	20,210

Revenue Scotland set-up costs

16. The estimated set-up costs for Revenue Scotland cover the period from July 2013 to March 2015 and are categorised as staff and non-staff costs. Staff costs are based on average costs for Scottish Government staff for 2013 and include average basic salary for the grades concerned, Accruing Superannuation Liability Charge, Earnings-Related National Insurance Contribution and any non-consolidated pay awards.

17. Staff set-up costs have been re-profiled from previous estimates and now reflect the recruitment of additional staff required for the set-up phase from October 2013 to March 2015 and the appointment of permanent staff for Revenue Scotland from October 2014 to facilitate training and familiarisation on the legislation and operational systems, processes and procedures prior to the commencement date for the collection of the devolved taxes.

These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

18. Non-staff set-up costs now reflect an additional set-up charge from the Scottish Government's Information Technology service provider for the provision of Revenue Scotland's standard desktop IT equipment and telephony.

19. The total estimated set-up costs incurred for Revenue Scotland functions are summarised in **Tables 2 and 3**.

Table 2 - Revenue Scotland estimated staff set-up costs (Scottish Government pay grades)

Function	Cost per year (£000)	Period	Total cost (£000)	Assumptions
Senior Management	130	July 2013 to March 2015	230	Head of Revenue Scotland (0.3 fte SCS Pay Band 2), Chief Operating Officer (SCS Pay Band 1)
Tax Administration Programme	115	July 2013 to March 2015	200	Programme Manager (Band C) and Programme Officer (Band B)
Revenue Scotland Development	370	July 2013 to March 2015	645	2 Band C and 7 Band B, developing internal systems, procedures, policies, capacity and communications
Administrative Support	20	July 2013 to March 2015	40	1 Band A
Revenue Scotland Appeals, Disputes, Compliance and Corporate Support		October 2014 to March 2015	405	Recruitment of Revenue Scotland staff for training and familiarisation prior to operational live date – 20 staff consisting of 5 Band C, 12 Band B and 3 Band A
IT Development		October 2013 to March 2015	230	Band B Business Analyst July 2013 – March 2015 and Band C IT Project Manager December 2013 – March 2015
Band C Change Managers		April to June 2015	60	3 Band C to provide continuity from set-up through to live operation
Total			1,810	VAT non-chargeable

Table 3 - Revenue Scotland estimated non-staff set-up costs

Function	Set-up Cost (£000)	Assumptions
Systems	80	Includes establishing the website and providing basic IT systems. Central database development is discussed below.
Communications and branding	75	Need to promote awareness of Revenue Scotland and devolved taxes.
Standard running costs for unit from June 2013 to 31 March 2015	200	Training, travel and subsistence and accommodation costs for staff.
IT Desktop and Telephony Set-up costs	100	
Totals	455	Excluding VAT – assumed to be non-chargeable or recoverable

Revenue Scotland running costs

20. Staff running costs have been revised to reflect an updated operating model and organisational design for Revenue Scotland, with some adjustments to post grading and staff numbers.

21. Original cost estimates for non-staff running costs included basic allowances for corporate functions, including estates and IT, but not a comprehensive re-charge from Scottish Government to Revenue Scotland for the provision of corporate support services. Estimates of these costs including standard IT and telephony systems, Human Resource functions, payroll, accounting systems and estates services under Shared Service Arrangements are included in the revised estimates. Total estimated annual running costs incurred from April 2015 onwards for all Revenue Scotland functions are listed in the **Tables 4 and 5**.

Table 4 - Revenue Scotland estimated staff running costs (Scottish Government Pay Grades)

Function	Running Cost (£000)	Assumptions
Senior Management	90	Chief executive Officer SCS Pay Band 1.
Compliance and debt management	390	Team of 9 staff, assume 1 Band C, 8 Band B.
Disputes and Appeals	200	Team of 6 staff, assume 4 Band B and 2 Band A.
Operational Policy	200	Team of 5 staff, assume 1 Band C and 4 Band B.
Corporate and Business Services	430	Team of 9 staff, assume 3 Band C, 4 Band B and 2 Band A to cover corporate and business planning, financial management, legal advice, web and print communications, limited helpline and complaints, business planning and reporting.
Total	1,310	VAT non-chargeable
Total from April 2015 to March 2020	6,550	

Table 5 - Revenue Scotland estimated non-staff running costs

Function	Running Cost (£000)	Assumptions
Shared Services	230	Provision of accommodation, desktop IT support and telephony, HR services
Professional Services	220	Provision of legal fees, mediation services, debt recovery, valuations and external audit.
Administration	115	To meet Board member fees, travel and subsistence costs and general administration outgoings and materials.
Communications and branding	75	To promote awareness of Revenue Scotland and devolved taxes
IT systems support	50	Assume that receipts will be remitted direct to Scottish Government by collection agents; basic systems required for case management, appeals administration, performance management of contracts
Website maintenance and production and updating of on-line guidance	50	
Total	740	Excluding VAT – assumed to be non-chargeable or recoverable
Total from April 2015 to March 2020	3,700	

Costs to the Scottish Government of RoS collecting LBTT

22. It is the Scottish Government’s announced intention that Revenue Scotland will delegate operational responsibility for the collection of LBTT to RoS. RoS currently collects a proportion of SDLT on behalf of HMRC under a service level agreement.

23. RoS costs, like those for Revenue Scotland, have been broken down under two headings, set-up costs incurred in the period July 2013 to March 2015 and running costs (i.e. the costs of collecting LBTT from 1 April 2015). The costs identified by RoS have been prepared on the following assumptions:

- that it will have a basic compliance role, with the bulk of responsibility for compliance resting with Revenue Scotland (work continues to be carried out by Revenue Scotland and RoS to map out compliance activity and define respective roles in detail);
- that the tax will be introduced as planned in 2015 and as currently legislated for; and
- that at least 90% of LBTT will be processed online.

24. Changes that affect these assumptions may lead to lower or greater actual costs. RoS operates as a Trading Fund and is self-financing from the income it receives for the services it provides. It, therefore, requires to cover the costs it incurs in respect of the LBTT service it will

provide. These estimated costs will be agreed with and met by the Scottish Government and are summarised estimates in **Tables 6 and 7** below.

Table 6 - RoS estimated set-up costs

Function	Set-up Costs (£000)	Details	Comments
Staff costs			
Staff costs of planning, overseeing, and implementing changes prior to April 2015	250	1.5 Grade 7 (C1 equivalent), 1 SEO (B3 equivalent), 1 HEO (B2 equivalent) and 0.3 EO (B1 equivalent)	Includes system preparation, project planning and management costs, and covers work-package effort for legislation and policy, IT, Finance, Registration and implementation. It does not include costs for preparing for compliance and enforcement work - assumed under Revenue Scotland
Total	250		Excluding VAT – assumed to be non-chargeable or recoverable Excluding VAT
Non-staff costs			
Familiarisation of solicitors with new systems	10		Training and publicity for solicitors and other users to ensure full and effective take up
Build cost of new LBTT system	75		This represents the capital costs of building the system
Total	85		Excluding VAT – assumed to be non-chargeable or recoverable Excluding VAT

Table 7 - RoS estimated running costs

Function	Running Cost (£000)	Details	Comments
Staff costs			
e-Services Helpdesk	130	1 EO (B1 equivalent) and 3 x AOs (A4 equivalent)	Estimate is based on providing administrative advice (but not tax advice) to 100 calls per day.
Provision of complex enquiry helpdesk	60	1 SEO (B3 equivalent)	Referral point from e-Services Helpdesk for complex cases.
Additional costs associated with system support and new chargeable transactions	20	0.5 HEO (B2 equivalent)	Figure is an estimate to cover system support and possible tax changes.

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Function	Running Cost (£000)	Details	Comments
Intake process cost	30	1.3 AA (A3 equivalent)	Cost of intake processes in respect of paper applications
Total	240		Excluding VAT: chargeable and recoverable.
Total from April 2015 to March 2020	1200		
Non-staff costs			
Additional IT maintenance and support costs	20		Costs associated with IT and e-Services support.
Annual cost of providing data to HMRC	15		UK Government requirement.
Additional costs associated with new chargeable transactions	50		Figure is an estimate to cover possible changes.
Total	85		Excluding VAT – assumed to be non-chargeable or recoverable
Total from April 2015 to March 2020	425		

25. These costs have been estimated on the basis that major system changes are being introduced as a result of the Land Registration etc. (Scotland) Act 2012, and that the costs of these changes are unavoidable. By building in LBTT requirements from the outset in designing the new systems, the additional cost in respect of LBTT has been minimised. As a result, the set-up and running costs for RoS, including in relation to IT developments for LBTT, are lower than would otherwise have been the case. RoS already undertakes processing and collection of SDLT on behalf of HMRC, and consequently has considerable knowledge and experience of requirements.

Costs to the Scottish Government of SEPA collecting SLfT

26. The intention is for Revenue Scotland to delegate operational responsibility for the collection of Scottish Landfill Tax to SEPA. Estimated costs for SEPA, like those for Revenue Scotland, have been broken down under two headings, set-up costs (incurred between July 2013 and March 2015) and running costs (i.e. the costs of collecting SLfT from 1 April 2015). The costs identified by SEPA have been prepared on the following assumptions:

These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced in the Scottish Parliament on 12 December 2013

- that it will have a collection and compliance role (work continues to be carried out by Revenue Scotland and SEPA to map out detailed systems and processes and agree their respective roles in relation to collection and compliance activity);
- that the tax will be introduced as planned in 2015 without significant change to the legislative scheme set out in the Bill introduced in April 2013.

27. SEPA is partially self-financing from the income it receives from the environmental protection services it provides. The additional costs of administering SLfT will be agreed with and met by the Scottish Government. **Tables 8 and 9** set out the estimated set-up and running costs (incurred from 1 April 2015 onwards) for SEPA.

Table 8 - SEPA estimated set-up costs (SEPA Grades)

Function	Set-up Cost (£000)	Assumptions
Bill Development, Business Development, Operational Guidance	55	Band C - Input to policy discussions, legislative assessment, consultation, guidance and codes of practise.
SLfT Management Band B	40	SLfT Project Management input. Attending Tax Administration Programme Board, informing SEPA Agency Board and developing relationships with Revenue Scotland, HMRC and Industry
SLfT Specialist	55	Band D - Technical landfill and waste management industry advice. Input to policy discussions, legislative assessment, consultation, guidance and codes of practise.
Project Management	90	Band D - Ensuring managed delivery of project across SEPA.
Information Systems	350	Full time Business Analyst, systems analysis, specification and design. system and software development including testing, hardware, integration with SEPA financial system
Training	15	Internal Online Training, SLfT Staff Development and possible HMRC work shadowing. External Operator Workshops
Corporate Legal Support	20	0.5 Band B - Privacy Impact Assessment, Data Sharing Agreement/MOUs, legal advice on competence, Data Processing Notice/Terms and Conditions for web service/data processing
Total	625	Excluding VAT - assumed to be non-chargeable or recoverable.

Table 9 - SEPA estimated running costs (SEPA Grades)

Function	Running Cost (£000)	Assumptions
Quarterly waste data SLfT tax return processing and initial sense check	30	1 FTE Assistant Scientist Band F
Finance/Payment issues/reconciliation	0	Assumes no debt management and use of current accounting system
Enquiries, Registration, Compliance checking. Checking correct use of two rates, waste types and exemption claims.	35	1 FTE Scientist Band E
SLfT Specialists Site audits, policy decisions/Revenue Scotland liaison/ external liaison. Supervising compliance checks. Processing tax exemption claims. Resolving first level compliance disputes. More detailed enquiries.	85	2 FTE Band D
Staff management. Managing liaison with Revenue Scotland and HMRC.	30	0.5 FTE Band C
Management liaison with Revenue Scotland and HMRC at senior level	35	0.5 FTE Band B
Training and Development (team and SEPA wide)	20	
Administrative Officer, Office support to entire team	25	1 FTE Band G
IS costs ongoing, licensing, software development and hardware maintenance/upgrading	60	1 IS FTE
Total	320	Excluding VAT – assumed to be non-chargeable or recoverable.
Total from April 2015 to March 2020	1600	

28. By drawing on SEPA's existing knowledge and expertise in managing permits for landfill sites, this approach to administration will afford opportunities to deliver significant efficiencies and other operational benefits. For instance, SEPA will be able to draw on existing enforcement staff and site visits to streamline processes and reduce administrative burdens on landfill

operators. Furthermore, SEPA plan to build a tax return and collection system that links in with its existing permit and data returns systems.

29. There will be potential for enhanced support to taxpayers by SEPA during the transition to the Scottish tax system as SEPA has contact with taxpayers through its existing environment work. Revenue Scotland and SEPA will undertake extra awareness raising and engagement work in the period leading up to the tax going live, to help taxpayers familiarise themselves with the new system.

II. Scope to increase tax revenue through additional investment in compliance and investigation

30. The costs set out by HMRC at £22.3m, and the corresponding estimate of £16.7m costs for a Scottish approach to tax collection, are based on a system which is designed to allow the large majority of taxpayers – those who understand their liability and wish to comply – to do so. Those costs also include some investment in compliance and investigation activity, some of which is focused on identifying tax liability which has not been declared or disputing the level of liability.

31. Experience in HMRC and in other countries has shown that a modest increase in resources focused on tax compliance and investigation can generate significant increases in tax revenue, more than offsetting the increased investment.

32. These extra resources would be focused on identifying and pursuing the ‘tax gap’. A tax gap is the difference between the maximum amount of tax that could, in theory, be due, and the amount that is actually collected. A tax gap can arise from many causes, including criminal activity, non-payment of tax due, deliberate (and illegal) evasion, the use of schemes designed to avoid tax, error and lack of care by taxpayers in completing their tax returns as well as different interpretations of the tax effects of complex transactions.

Potential tax gap for LBTT

33. The most recent published estimate of the UK tax gap for SDLT in 2011/12 is £200m. (However, it is important to note that whilst these figures are HMRC’s best estimates based on the information available, there are many sources of uncertainty and potential error.) HMRC has recently estimated that Scottish SDLT receipts represent about 4.5% of the UK total. If the tax gap proportion in Scotland is at the same level as in the UK, this would suggest a potential annual tax gap of £9m if SDLT were to have been retained in Scotland.

34. Some of the SDLT tax gap is due to features of the design of SDLT which have been addressed in the development of LBTT – such as the absence of a sub-sale rule and other improvements designed to reduce risks of non-collection. These policy changes are likely to reduce the tax gap as they reduce the scope for non-compliant behaviour. Assuming that the policy differences between LBTT and SDLT reduce that tax gap by 50%, a conservative estimate of the remaining tax gap for LBTT could be in the region of £4.5m a year.

Potential for additional revenue from SLfT

35. SEPA currently uses some resource in identifying illegal waste sites. This activity is funded through its core Grant in Aid and is subject to prioritisation due to various demands on SEPA resources across its full range of environmental duties. As an illustrative example – not intended as a forecast of future impact – two of the larger-scale investigations that SEPA has carried out in recent years would have given rise to cumulative SLfT liability – if it had been chargeable at the time – of over £20m.

36. There are some resource implications arising from the assessment and processing of the tax liability arising from illegal waste sites; these are explored in section IV below. However, additional resources directed at investigation could identify additional illegal waste sites and therefore additional tax liability.

37. While additional investigation would of course support SEPA's broader environmental interests, a focus on illegal sites would allow additional tax liability to be established and additional tax revenue to be collected.

Additional compliance activity

38. Modest additional investment in compliance activity – tax analysis and investigation which leads to the identification and collection of additional tax – can generate significant increases in revenue.

39. Proposed additional investment in compliance and investigatory staff are summarised in **Table 10 below**. This investment would be made with a target for Revenue Scotland and SEPA of collecting tax due to at least offset the additional cost.

40. Performance will be readily tracked against this additional investment as it will be clear when additional liability has been identified as a result of compliance activity, and when additional revenue has been collected. This will need to be tracked across more than one year at a time, as in some cases there will be a substantial time lag between identifying potential additional tax due and receiving any money. Revenue Scotland will carry out an annual review to compare additional tax collected as a result of compliance activity with the additional administrative cost, and will publish details of this in its annual report. This investment is expected to be reviewed on an annual basis so this Financial Memorandum contains only the cost committed in FY 2015-16. No further investment will be made unless the Scottish Ministers are satisfied that additional revenue is generated as expected.

41. Scottish Government will be able to agree with Revenue Scotland and SEPA to scale up or down the investment in additional compliance work in light of performance in collecting additional tax due.

Table 10 - Estimated costs of proposed additional compliance activity

Function	Annual running Costs (£000)
Revenue Scotland compliance Staff	150
SEPA investigations Staff	80
Total Cost (Excluding VAT - assumed non-chargeable or recoverable)	230

III. Costs of IT investment in Revenue Scotland

42. The original estimates assumed that IT development would be limited to basic functionality to develop systems to receive online tax returns and electronic payments by RoS and SEPA, linked to their existing interactions with taxpayers and their agents, with no proposals for any IT development in Revenue Scotland. The Financial Memoranda for the LBTT Act and the SLfT Bill noted that the costs set out therein did not include IT development costs in Revenue Scotland, and that a different design might be chosen and costs only known following detailed design and procurement.

43. It is proposed that Revenue Scotland will develop a central IT system which will include a data repository and case management system to hold taxpayer information drawn from RoS and SEPA. This is driven primarily by the need for a robust approach to tackling tax avoidance, by points raised by both stakeholders and the Scottish Parliament Finance Committee on standards of service to taxpayers and by the need to provide for features of LBTT and SLfT that differ from SDLT and LfT.

Tackling tax avoidance

44. The Cabinet Secretary for Finance, Employment and Sustainable Growth has indicated his strong intention – echoed by key stakeholders, including the Tax Consultation Forum, and supported by members of the Finance Committee in previous discussion – to combat tax avoidance – through, for example, the proposed Scottish general anti-avoidance rule (GAAR). The extent to which Revenue Scotland can tackle tax avoidance will depend on the analysis of robust information about complex transactions.

45. As well as consideration of particular tax returns, Revenue Scotland will need the capability to consider wider patterns of behaviour across similar transactions. While some transactions for the devolved taxes will be relatively straightforward and one-off, Revenue Scotland will require (particularly for LBTT) capacity to carry out some complex analysis, where transactions are linked over time and where different taxpayers are linked to one another. The data to be analysed will need to be kept secure at all times. It is the Scottish Government's view that this analysis can most effectively and securely be done by developing a central IT system within Revenue Scotland itself.

Service standards

46. In working with RoS and SEPA, Revenue Scotland is committed to convenience for the taxpayer and efficiency in the tax collection system. This is partly dependent on a robust approach to taxpayer contact – through the agreed roles of each organisation, initial contact through the online systems that will allow taxpayers to make tax returns, contact centres and other forms of direct support and help.

47. It has become apparent, through discussion with stakeholders, that ensuring taxpayers and their agents are able to speak to someone with the appropriate technical knowledge to answer more difficult questions is a key concern. Inability to do this has been commonly cited as a cause of frustration with the existing UK taxes and something that the Finance Committee has rightly focused on in its consideration of LBTT and SLfT.

48. Investing in a case management system within Revenue Scotland will allow a seamless transmission of data across Revenue Scotland, SEPA and RoS – so that if a member of staff on a helpline needs to transfer a call elsewhere to answer a more technical or unusual question, the next person to speak to the taxpayer or agent can easily have access to all the necessary information, including copies of any relevant correspondence. It also means that long term record of data submitted by taxpayers using RoS or SEPA's online systems can be held together in one secure location.

Tax policy development

49. A key principle underpinning the development of the devolved taxes has been to provide certainty to the taxpayer. One of the examples of this approach is the simplification of the devolved taxes in comparison to the equivalent UK taxes, such as stripping out many of the complexities of SDLT to create a simpler and clearer LBTT. However, during the development of that approach, representations by stakeholders made it clear that there were some areas where the most appropriate approach involved some additional administrative effort to achieve a better outcome for the taxpayer.

50. The Scottish Government's approach to LBTT with regard to commercial leases is an example of this, where – in contrast to the UK approach – the tax liability will be reviewed on every third anniversary of the lease. This policy had not yet been developed when the original costings were developed, but the complexity of the transactions involved and the time periods over which they require to be monitored requires IT capacity to support the analysis. The Scottish Government considers that this IT capacity could most effectively be developed within a central Revenue Scotland system.

Central IT system

51. The estimated additional investment in information technology and associated services (such as scanning) required to support enhanced investigative and compliance activity (countering both evasion and avoidance), provide a more effective service to taxpayers and their agents and provide additional capability to support new features of Scottish taxes is set out in the table below. This financial memorandum also proposes some changes to previous assumptions on staffing numbers to release resources to support this IT investment, including an IT project manager, within the base set up and operating costs described above.

Table 11 – Revenue Scotland IT costs

Function	Set-up costs (£000)	Annual running Costs (£000)	Total costs April 2015 to March 2020 (£000)
Revenue Scotland IT Development	1,000	0	1,000
Revenue Scotland IT maintenance	0	100	500
TOTAL			1,500

IV. Additional costs arising from policy development

52. The estimate of £22.3m given by HMRC covered HMRC’s costs to set up ‘like for like’ Scottish equivalents of SDLT and LfT and operate them for five years. Under any arrangement with HMRC, there would have been some additional costs of operating a Scottish tax system. These include the cost of Scottish Tax Tribunals to deal with disputes arising from the devolved taxes. They also include any additional administrative costs which would have fallen to HMRC due to fundamental differences between LBTT and SLfT compared to SDLT and LfT respectively. The key costs which fall in the latter category for consideration of this Bill are SEPA’s administration costs arising from the proposal to charge to tax the illegal dumping of waste materials. There is no equivalent power for HMRC to recover LfT from those involved in illegal dumping, so there was no allowance for this additional task within HMRC’s original cost estimate.

Scottish Tax Tribunal

53. The estimated costs of setting up and running Scottish Tax Tribunals are summarised in **Table 12**. The Scottish Tax Tribunals (First-tier and Upper) will be administered by the Scottish Tribunal Service and will make use of their existing premises. The tax tribunals will not charge a fee for an appeal to be heard. The administrative costs and legal fees incurred by Revenue Scotland in relation to appeals to the tax tribunals are detailed in Tables 2 and 4.

54. The costs summarised in table 12 are based upon the following assumptions:

- The set-up costs include £18k for IT costs, including costs for a case management system and a website. Recruitment and training of members will cost £30k. The salaries of administrative staff during the set up phase will cost £26k, based on one B1 and A3 members of staff working on the set-up of the tax tribunals for six months;
- The numbers of SDLT and LfT cases heard by the UK tribunals is small. Given that the two devolved taxes are new taxes and are different to the existing UK taxes, although a significant increase in the number of appeals is not anticipated, it does not follow that there will be the same small number of appeals;
- Although the size and composition of panels will be a matter for tribunal rules and the President of the tax tribunals the cost estimate is based on both tiers of the

Tribunal having one legal member and with the first tier also having two ordinary members;

- The daily fees members attract are based on the current rates members of the UK Tax Tribunals receive. As such a legal member sitting in the upper tribunal will receive a daily rate of £569 and £549 if sitting in the first-tier tribunal. An ordinary member will receive a daily rate of £265.
- As the taxes are new, it is not expected that any cases will reach formal appeals during the first six months of 2015-16. Costs for 2015-16 are therefore estimated at 50% of the proposed annual cost;
- In steady state, both first-tier and second-tier Tribunals will sit for two days per month;
- Two days per month will be sufficient time to hear the number of cases to be considered; and
- Costs do not include any staff costs incurred through considering further policy issues arising from setting up the proposed Tribunal.

Table 12 - Scottish Tax Tribunals estimated cost

Function	Estimated Cost (£000)
Set-up of Tribunals	120
Annual running costs at steady state	135
Total running costs to March 2020 (some reduced costs in 2015-16, given lead-in time before cases begin)	610
Total Costs (set-up and running costs to March 2020)	730

55. Were the UK Tax Tribunals to take on jurisdiction for hearing appeals against decisions taken in respect of the devolved taxes, some set-up costs would be incurred and the running costs would be broadly similar to those to be incurred by Scottish Tax Tribunals as proposed in this Bill. Consequently, there is unlikely to be a material difference between the cost to the Scottish Government of establishing and running separate devolved Scottish Tax Tribunals compared to jurisdiction resting with the existing UK Tribunals.

Collection of tax from illegal disposals

56. SEPA currently deploys resource, funded through its grant in aid allocation, towards the identification of illegal waste sites and illegal disposals generally.

57. It is intended that illegal disposals of waste will also be liable to SLfT. Administering, pursuing and reporting on the collection of tax from illegal waste sites presents additional work to that which SEPA is currently doing on the identification and investigation of such sites. The estimated costs of collecting tax revenue from the illegal dumping of waste materials are summarised in **Table 13**.

Table 13 - SEPA estimated administration and reporting costs for tax on illegal waste sites

Function	Annual running costs	Running costs April 2015 to March 2020 (£000)	Assumptions
Investigation and reporting	90	450	2 FTE Band D - Illegal landfill site initial investigation and reporting for the purposes of Scottish Landfill Tax.
Site returns and subsequent investigation and reporting.	90	450	2 FTE Band D - Checking registered Paragraph 9 and 19 Waste Management Exempt sites against site returns and subsequent investigation and reporting. Also, initial investigation and reporting of illegal landfill site for the purposes of landfill tax.
Unit Manager	30	150	0.5 FTE Band C
Total annual running costs	210	1,050	Excluding VAT – assumed to be non-chargeable or recoverable.

V. COSTS ON LOCAL AUTHORITIES AND OTHER PUBLIC BODIES

58. The only costs which the Scottish Government has identified for local authorities are those costs associated with the role of local authorities as taxpayers. There are no additional responsibilities or duties for local authorities that would result in additional cost.

59. Local authorities will be subject to the two devolved taxes and the Financial Memoranda for the two relevant bills explain in detail how the amount of tax paid by local authorities might be affected.

60. The Scottish Government does not expect local authorities to incur any additional administrative costs in complying with the new system. Specific costs that may be attributed to the Bill include any additional costs incurred as a result of complying with a new tax system, and possible costs for those operating across the UK or complying with two separate tax systems. However, the Scottish Government does not expect that there will be a material change in administrative costs as a result of having to comply with the new tax system instead of the existing UK system. Revenue Scotland, SEPA and RoS are consulting with end-users of the new system to design an efficient system with an easy to use online system that will help to minimise administrative costs.

VI. COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

61. Costs to businesses are also examined in the Business and Regulatory Impact Assessment (“BRIA”) which will be published shortly. Individuals and businesses affected would include anyone with an interest in land and property purchase, and anyone impacted by the change from LfT to SLfT.

62. Costs to other bodies, individuals and businesses will mainly be incurred as a result of complying with the specific devolved taxes. As with local authorities, specific costs that may be attributed to the Bill include any additional costs incurred as a result of complying with a new tax system, and possible costs for those operating across the UK or complying with two separate tax systems. However, the Scottish Government does not expect that there will be a material change in administrative costs as a result of having to comply with the new tax system instead of the existing UK system.

63. The Bill makes provision for taxpayers (and third parties in certain circumstances) to be liable for civil penalties for non-compliance in relation to the devolved taxes. Some of the financial penalty amounts are outlined in the Bill and others will be included in secondary legislation to be set by the Scottish Ministers in due course. Interest rates will be applicable to tax or penalties owed to Revenue Scotland and also to tax, penalties or interest (on tax or penalties) which is repaid by Revenue Scotland. The different interest rates are not outlined in the Bill and will similarly be set by the Scottish Ministers in secondary legislation in due course. The interest rate(s) applying to repayment of money by Revenue Scotland is expected to be set at a level which discourages taxpayers lodging money with Revenue Scotland in order to get more favourable rates than can be obtained in the marketplace. In the UK this is currently the Bank of England base rate. In relation to the application of civil penalties and interest on sums owed to Revenue Scotland it is not possible to provide an estimate on either the impact on individuals or as to how much money will be generated. This will largely be determined by the behaviour and compliance levels of taxpayers with the system of collection and management for the devolved taxes.

64. The Bill includes a power for the Scottish Ministers to make regulations for Revenue Scotland to charge a fee to the taxpayer in connection with certain forms of payment. The costs may 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. The costs to taxpayers will depend on the number of occasions that these forms of payment are used but it is not expected that they will be significantly different to those associated with the equivalent UK taxes. Revenue Scotland, SEPA and RoS are consulting with end-users of the new system to design an efficient system with an easy to use online system that will help to minimise administrative costs.

65. The Financial Memorandum for the LBTT Bill identified individuals and businesses affected by the tax, including anyone with an interest in land and property purchase and leases. The Scottish Government does not expect that there will be a material change in administrative costs as a result of having to comply with LBTT instead of the existing SDLT. However, the amount of tax payable by individuals or businesses will be dependent on the rates and bands set for LBTT, which have not yet been set.

66. The Financial Memorandum for the Landfill Tax (Scotland) Bill identified the persons affected by SLfT. It explained that the Scottish Government does not expect SLfT to create any significant additional administrative costs for landfill operators that could be passed on to waste producers.

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

On 12 December 2013, the Cabinet Secretary for Finance, Employment and Sustainable Growth (John Swinney MSP) made the following statement:

“In my view, the provisions of the Revenue Scotland and Tax Powers Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

On 12 December 2013, the Presiding Officer (Rt Hon Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Revenue Scotland and Tax Powers Bill would be within the legislative competence of the Scottish Parliament.”

*These documents relate to the Revenue Scotland and Tax Powers Bill (SP Bill 43) as introduced
in the Scottish Parliament on 12 December 2013*

REVENUE SCOTLAND AND TAX POWERS BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

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