Revenue Scotland and Tax Powers Act 2014:

A Consultation on Proposed Subordinate Legislation
REVENUE SCOTLAND AND TAX POWERS ACT 2014: A CONSULTATION ON PROPOSED SUBORDINATE LEGISLATION.

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Introduction

The Revenue Scotland and Tax Powers Act 2014 ("the RSTP A 2014") obtained Royal Assent on 24 September 2014. The Act is the third of three related pieces of tax legislation which, taken together, pave the way for the introduction of two new devolved taxes on 1 April 2015: Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT).

The detail of the first two taxes was set out in the Land and Building Transaction Tax (Scotland) Act 2013 LBTT(S)A 2013 and the Landfill Tax (Scotland) Act 2014 LT(S)A 2014. Separate consultations have been published on subordinate legislation under each of these first two Acts and can be found on the ‘Publications’ section of the Scottish Government’s website at:

http://www.scotland.gov.uk/Publications/2014/05/8387
http://www.scotland.gov.uk/Publications/2014/05/3748

The main purposes of the RSTPA 2014 are:

- To establish Revenue Scotland as the tax authority with responsibility for the collection and management of the devolved taxes;

- To establish a statutory framework for the collection and management of the devolved taxes including arrangements for tax returns, enquiries and assessments; investigatory powers for Revenue Scotland; penalties for non-compliance; and a system for the review, mediation and appeal of Revenue Scotland decisions;

- to establish the Scottish Tax Tribunals to hear appeals against decisions taken by Revenue Scotland;

The RSTPA 2014 contains a significant number of powers for Scottish Ministers which enable them to specify how aspects of the legislation will operate in practice. Orders made under these powers are subject to the scrutiny of the Scottish Parliament. The Government indicated during the passage of the Bill that in respect of each of the enabling powers which it intended to exercise by 1 April 2015 it would publish and invite comments on draft Scottish Statutory Instruments (SSIs) and this consultation paper discharges that commitment.

The consultation paper provides a brief overview of each of the powers which the Government intends to exercise together with drafts of the relevant SSIs. To provide as much clarity as possible, different powers have been grouped together where they relate to the same subject matter. For completeness, a list of the powers which the Government does not intend to exercise at the outset (although they may be needed at some future date) is set out at Annex A.
Tribunal Rules

Section 51 of the RSTPA 2014 provides that there are to be rules regulating the practice and procedure of the First-tier and Upper Tax Tribunals for Scotland. The Tribunal Rules are to be made by the Scottish Ministers by regulations, and before making such regulations the Scottish Ministers must consult the President of the Scottish Tribunals and such other persons as they consider appropriate.

Given the specific statutory requirements relating to Tribunal Rules, these will be the subject of a separate consultation. Draft Tribunal Rules will be sent to the President of the Scottish Tribunals and other interested parties. The draft Tribunal Rules will also be published on the Scottish Government’s website at www.scotland.gov.uk/Publications/Recent inviting comments by Friday 9 January 2015.

Specific Equality Duties

The Equality Act 2010 (Specific Duties)(Scotland) Regulations 2012, which came into force on 27 May 2012, impose additional duties in relation to equality upon public authorities listed in the Schedule to the regulations. These include duties:

- to report progress on mainstreaming the equality duty;
- to publish equality outcomes and report on progress against them;
- to assess and review the impact of new policies and practices;
- to gather and use employee information to better perform the equality duty and to publish gender gap information and statements setting out policy on equal pay.

The Government proposes to designate Revenue Scotland as a ‘listed authority’ which will therefore be subject to the ‘specific duties’ set out in the 2012 regulations.

Proceeds of Crime Act 2002

The Proceeds of Crime Act 2002 (Disclosure of Information to and by Lord Advocate and Scottish Ministers) Order 2003 provides for the disclosure of information to and by the Lord Advocate and the Scottish Ministers in connection with their functions under the Proceeds of Crime Act 2002. The Government proposes to amend this order to include appropriate references to Revenue Scotland.

The effect of this would be to facilitate the exchange of information between agencies in cases involving tax evasion, and therefore common law fraud and associated criminality. It would therefore have no application in relation to the generality of tax cases which involve no element of criminality.

Conclusion

With one exception, comments on the questions raised in this consultation paper are requested by Friday 9 January 2015. The SSIs will then be finalised in the light of responses and laid before the Scottish Parliament in February 2015 and if approved will come into force on 1 April 2015.
However comments are requested on the draft Scottish Tax Tribunals (Eligibility for Appointment) Regulations 2014 by **Friday 31 October**, as the intention is to lay these regulations before the Scottish Parliament in November to facilitate the appointment of members of the Scottish Tax Tribunals.

Comments should be sent to Gordon.Johnstone@scotland.gsi.gov.uk using the Respondent Information Form attached to this consultation paper or by post to:

Gordon Johnstone  
Fiscal Responsibility Division  
Scottish Government  
Area 3–B South  
Victoria Quay  
EDINBURGH  
EH6 6QQ
Planning period for Revenue Scotland’s first corporate plan

Enabling power under the RSTPA 2014

The order-making power at section 11(7) allows the Scottish Ministers to set the period that Revenue Scotland’s first corporate plan will cover. The corporate plan will set out Revenue Scotland’s main objectives, the outcomes that would demonstrate achievement of these objectives and the activities that Revenue Scotland expects to undertake.

How the Government proposes to exercise the enabling power

Revenue Scotland will be responsible for the collection and management of devolved taxes from 1 April 2015. The board of Revenue Scotland will need time to prepare, consider and consult on its first corporate plan so it is unlikely to be possible to produce the corporate plan and secure the approval of Scottish Ministers, as Revenue Scotland are required to, by 1 April 2015. These regulations therefore provide that the period of Revenue Scotland’s first Corporate Plan will be from 1 June 2015 to 31 March 2018.

Summary

This order will provide that the planning period for Revenue Scotland’s first corporate plan will run from 1 June 2015 to 31 March 2018.

Question 1 – Planning period for Revenue Scotland’s first corporate plan.

Do you agree with the Scottish Government’s proposed approach in relation to setting the planning period for Revenue Scotland’s first corporate plan?

Yes ☐ No ☐

If you have any comments, please provide them on the Respondent Information Form.
The Scottish Tax Tribunals – voting, time limits and offences

Enabling powers under the RSTPA 2014

Section 32
Sections 29 and 30 make provision about how decisions in the Scottish Tax Tribunals are to be made. The power in section 32 allows the Scottish Ministers to provide for how decisions are to be voted for when the First-tier or the Upper Tribunal is composed of two or more members, for example by giving a chairing member a casting vote in the event of a tie or for a decision to be made unanimously or by majority.

Section 39
This provision allows the Scottish Ministers to set a time limit for an appellant to seek permission for an onward appeal. For a case originally heard in the First-tier Tribunal, permission for an onward appeal has to be sought from the First-tier Tribunal and, if that is not forthcoming, from the Upper Tribunal. For a case heard in the Upper Tribunal, permission for an onward appeal has to be sought from the Upper Tribunal and, if that is not forthcoming, from the Court of Session.

Section 50
The power at Section 50 allows the Scottish Ministers by regulation to create offences and criminal penalties in connection with proceedings before the Scottish Tax Tribunals. It also provides that the Scottish Ministers can specify circumstances where a person could refuse to give or produce evidence and sets out a maximum level for the associated penalties that may be prescribed in regulations.

How the Government proposes to exercise the enabling powers

In relation to section 32, where a taxpayer is in dispute with Revenue Scotland, the RSTPA 2014 offers the opportunity to resolve the dispute through either review or mediation. Where however the dispute cannot be resolved through these methods, the RSTPA 2014 establishes independent Scottish Tax Tribunals to hear appeals against decisions taken by Revenue Scotland in relation to the devolved taxes.

The Government proposes that if a panel in either the First-tier Tax Tribunal or the Upper Tribunal is made up of two or more members, then if not unanimous decisions should be made by majority and if there is a tie the member chairing the panel should have the casting vote. Tribunal Rules will set out arrangements for choosing a member to chair a panel in either Tribunal.

In relation to section 39, the Government proposes that the time limit for seeking permission for an onward appeal should be 30 days. The 30 day period would run from the date on which the decision appealed against was sent to the appellant or the date on which the statement of reasons for decisions was issued, whichever is the later. If permission is refused, the appellant would have 30 days from the date on which notice of the decision was sent to seek permission from the Upper Tribunal or Court of Session as appropriate.
In relation to section 50, we believe that the Scottish Tax Tribunals should have power to deal with cases where a person attempts to mislead the Tribunals; or fails to attend or give evidence; or seeks to destroy or conceal evidence.

We therefore propose that it should be an offence to:

- make a false statement in an application in a case;
- fail to attend, or give evidence, when required to do so by Tribunal Rules; or
- alter, conceal or destroy, or fail to produce, something that is required to be produced by Tribunal Rules.

The draft regulations also provide that a person found guilty of such an offence would be liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both).

The regulations also make it clear when a person would be able to refuse to give or produce evidence, including when evidence or material is legally privileged.

Summary

These regulations will provide that where a panel is made up of two or more members and a decision is not unanimous it will be made by a majority, and if there is a tie by the chair having the casting vote. Where a right of onward appeal exists a 30 day time limit will apply. The regulations also create offences relating to the procedures of the Scottish Tax Tribunals including associated penalties; and also make provision for when an individual will not be required to give or produce evidence.

Question 2 – The Scottish Tax Tribunals: voting for decisions.

Do you agree with the Scottish Government’s proposed approach in relation to voting for decisions in the Scottish Tax Tribunals?

Yes ☐ No ☐

If you have any comments, please provide them on the Respondent Information Form.

Question 3 – The Scottish Tax Tribunals: time limit for seeking permission for an onward appeal.

Do you agree with the Scottish Government’s proposed approach in relation to time limit for seeking permission for an onward appeal?

Yes ☐ No ☐

If you have any comments, please provide them on the Respondent Information Form.

Do you agree with the Scottish Government’s proposed approach in relation to the creation of offences in relation to proceedings?

Yes ☐ No ☐

If you have any comments, please provide them on the Respondent Information Form.
Duty to keep and preserve records, including in a non-notifiable LBTT transaction

Enabling powers under the RSTPA 2014

Section 74
Section 74 sets out the duty of a person required to make a return or register for tax in relation to devolved taxes to keep and preserve records that are needed to complete that return or comply with a requirement to notify Revenue Scotland of the person’s intention to carry out (or to cease to carry out) taxable activities. The section lists the types of records and supporting documents that generally need to be kept and sets out the maximum time period for which records need to be kept. Section 74(9) provides an order-making power for the Scottish Ministers to make regulations specifying records that do or do not have to be preserved under section 74. The regulations can also specify supporting documents that are required to be kept under section 74.

Section 81
Section 81 allows Scottish Ministers to make regulations that provide for the keeping and preservation of records in relation to LBTT land transactions that are not notifiable. The regulations may apply sections 74(2), (5), (7) and (8), and section 76 to 79 (with or without modification) to a buyer in such a transaction as those sections apply to a person required to make a tax return in relation to a devolved tax.

Schedule 3, paragraph 3(3)
Sections 106, 107 and 108 allow taxpayers to make a claim for relief from double assessment or overpayment of tax. Schedule 3, paragraph 3, requires such taxpayers to keep and preserve records to enable them to make a correct and complete claim for relief. The provision in schedule 3, paragraph 3(3), allows the Scottish Ministers to specify in regulations those records and supporting documents that must be kept and preserved under that paragraph.

How the Government proposes to exercise the enabling powers

In respect of section 74, the Scottish Ministers recognise that a wide range of records and supporting documents could be used to enable a person to make a return. Rather than attempt to provide a definitive list in the RSTPA 2014, the draft regulations would, in relation to Scottish landfill tax transactions, set out the records that would need to be preserved to comply with section 74 and paragraph 3 of schedule 3 to the RSTPA 2014.

The Government does not believe that it is necessary to exercise the power in relation to notifiable LBTT transactions.

Non-notifiable LBTT transactions are set out in section 30 of the LBTT Act. The proposed regulations would require the buyer in a land transaction that is not notifiable to keep and preserve records which are necessary to demonstrate that the transaction is not notifiable. Subsections (2), (5), (7) and (8) of section 74 and
sections 76 to 79 will apply to the buyer in the same manner as these provisions apply to a person mentioned in section 74(1).

Summary

These regulations set out the documents that should be kept and preserved in relation to SLfT in order to comply with section 74 and paragraph 3 of schedule 3 to the RSTPA 2014. The buyer in a LBTT transaction that is not notifiable will have to keep whatever records are necessary to demonstrate that the transaction is not notifiable.

Question 5 – Duty to keep and preserve records.

Do you agree with the Scottish Government’s proposed approach in relation to the duty to keep and preserve records?

Yes  [ ] No  [ ]

If you have any comments, please provide them on the Respondent Information Form.

Question 6 – Record keeping in relation to an LBTT transaction that is non-notifiable.

Do you agree with the Scottish Government’s proposed approach in relation to Record-keeping in respect of an LBTT transaction that is non-notifiable?

Yes  [ ] No  [ ]

If you have any comments, please provide them on the Respondent Information Form.
Prevention of a repayment of tax by Revenue Scotland that may lead to unjustified enrichment.

Enabling power under the RSTPA 2014

Section 111(1) allows the Scottish Ministers to make regulations to prevent any reimbursement by Revenue Scotland of tax where to do so would result in unjustified enrichment. Unjustified enrichment may occur where the taxpayer has not ultimately borne the cost of the tax but has already collected it from someone else. For example, if SLfT is repaid to the landfill site operator who has paid the tax, the operator will already have collected the tax from persons paying to deposit waste at the site. In these circumstances, a repayment of tax would “unjustifiably enrich” the landfill site operator. Section 109 provides that unjust enrichment would be a defence by the tax authority against a claim for repayment of tax. Section 112 provides that the regulations may make provision for penalties where a person breaches regulations under section 111.

How the Government proposes to exercise the enabling power

It is important that a claimant seeking a repayment of tax (and any interest due) is able to demonstrate that those who have ultimately borne the cost of paying the tax are reimbursed in a timely manner – meaning that the claimant himself or herself is not unjustifiably enriched in the process. We therefore propose a 90 day time limit for the completion of reimbursement arrangements made by the claimant, after which any amount not reimbursed to the original taxpayer must be repaid to Revenue Scotland.

The Government propose that the claimant should be unable to charge a fee for reimbursement or reduce in any other way the amount reimbursed to those who ultimately bore the cost of paying the tax. Interest included in any repayment should be handled in exactly the same way.

Prior to any repayment being made, the draft regulations propose that the claimant should provide Revenue Scotland with an undertaking that lays out how their reimbursement arrangements will comply with these regulations.

The claimant will be required to keep records for a period of three years showing who has been reimbursed, the total amount reimbursed, the amount of interest reimbursed and the date the reimbursement was made. The claimant will be required to produce these records upon receipt of a notice from Revenue Scotland.

Summary

A claimant seeking a repayment of tax and interest from Revenue Scotland will have to demonstrate how he or she would reimburse those who originally bore the cost of paying the tax. Any reimbursement arrangement would have to be completed within 90 days after which any amount that has not been reimbursed would have to be repaid to Revenue Scotland.
Question 7 – Prevention of a repayment of tax by Revenue Scotland that may lead to unjustified enrichment.

Do you agree with the Scottish Government’s proposed approach in relation to prevention of unjustified enrichment?

Yes ☐ No ☐

If you have any comments, please provide them on the Respondent Information Form.
Resolution of disputes relating to legal professional privilege

Enabling power under the RSTPA 2014

Section 138 allows the Scottish Ministers to make provision in relation to information notices for the resolution by the Scottish Tax Tribunals of disputes as to whether any information or document is privileged in connection with communications between legal advisers and clients. The regulations may also make provision as to the custody of a document while its status is being decided. For the purposes of these regulations “document” includes “information”.

How the Government proposes to exercise the enabling power

The proposed regulations deal with disputes between Revenue Scotland and a person about whether a document which is subject to an information notice is privileged or not. The notice can have been given either during correspondence or during the course of an inspection of premises.

Where an information notice has been served by correspondence and there is a dispute about whether a document is privileged, then the taxpayer, third party or agent must provide a list of the relevant documents with a description of their contents and serve that list on Revenue Scotland (provided that to so would not in itself give rise to a dispute over privilege). Within 20 days Revenue Scotland must notify the taxpayer, third party or agent of any documents that it requires to be produced and which it considers are not privileged. On receipt of this notification the taxpayer will have 20 days to make an application to the Scottish Tax Tribunals to consider and resolve the dispute.

Where a document comes to light during an inspection of premises the taxpayer and a dispute arises over whether it is privileged, the taxpayer, third party or agent must ensure that the document is sealed in an appropriate container (such as an envelope) which prevents the contents being visible, seal the container and sign it. The Revenue Scotland officer must then countersign the container and ensure that it is delivered to the First-tier Tribunal within 42 working days for the Tribunal to consider and resolve the dispute.

Summary

In a dispute as to whether a document is privileged, the regulations set out the procedure to be followed to allow the First-tier Tribunal to consider and resolve the dispute.
Question 8 – Resolution of disputes relating to legal professional privilege.

Do you agree with the Scottish Government's proposed approach in relation to resolution of disputes relating to legal professional privilege?

Yes ☐ No ☐

If you have any comments, please provide them on the Respondent Information Form.
Power to specify third parties in relation to inspections of business premises

Enabling power under the RSTPA 2014

Section 142(3) allows the Scottish Ministers to specify persons (or categories of persons) to be treated as “involved third parties”, where an inspection of their business premises is considered necessary by Revenue Scotland in order to check the tax position of another person. A “designated officer” of Revenue Scotland will have the power to inspect the overall premises and any business assets or relevant documents on the premises that are relevant to the investigation. The designated officer cannot enter or inspect any part of the business premises that is used solely as a dwelling.

How the Government proposes to exercise the enabling power

Section 142(3) of the RSTPA 2014 provides a power for the Scottish Ministers to specify by order a person, or category of persons, who are defined as being an “involved third party” for the purposes of section 142. That section provides a power for a designated officer to enter and inspect the business premises of the involved third party.

The Government proposes that an “involved third party” should be defined as a person involved (in any capacity) with any taxable disposal (as defined for the purposes of section 3(2) of the LT(S) Act 2014). Relevant documents are defined as documents relating to the taxable disposal. We do not propose to make any similar regulations relating to Land and Buildings Transaction Tax.

Summary

This order defines “an involved third party” for SLfT purposes in relation to inspections of business premises under section 142.

Question 9 – Power to specify third parties in relation to inspections of business premises.

Do you agree with the Scottish Government’s proposed approach in relation to the power to specify an “involved third party” in relation to inspections of business premises?

Yes [ ] No [ ]

If you have any comments, please provide them on the Respondent Information Form.
Interest on unpaid tax and rates of Interest

Enabling powers under the RSTPA 2014

Section 217 allows the Scottish Ministers to specify a relevant date from which interest is payable on the amount of any unpaid tax until such time as the amount is paid. The interest rate charged is set out in regulations made under section 220(1) and interest continues to be charged until such time as the tax is paid.

Section 220 allows the Scottish Ministers to specify the rates of interest applying to unpaid tax (section 217) or penalties (section 218) owed to Revenue Scotland or to any repayment of tax, penalties or interest owed by Revenue Scotland to the taxpayer (section 219). Different interest rates can be set for different devolved taxes and different penalties.

How the Government proposes to exercise the enabling powers

Section 217 provides for the setting of a relevant date, from which interest is payable on any unpaid tax. Our proposals are set out in the following table, which is included in the draft SSI.

<table>
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<tr>
<th>Tax to which unpaid tax relates</th>
<th>‘Relevant date’</th>
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<tbody>
<tr>
<td>1 All devolved taxes</td>
<td>(a) In relation to an amount, or additional amount, payable following an adjustment made under section 66 of the RSTPA 2014 (Counteracting tax advantages), the filing date* for the return or, if there is no return, the filing date* of the return that was required to have been made if the tax avoidance arrangement had not been entered into or carried out.</td>
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<td></td>
<td>(b) In relation to an amount, or additional amount, payable following a taxpayer amendment of a return under section 83 of the RSTPA 2014, the filing date* for that return.</td>
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<tr>
<td></td>
<td>(c) In relation to an amount, or additional amount, payable following a Revenue Scotland correction of a return under section 84 of the RSTPA 2014, the filing date* for that return.</td>
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<tr>
<td></td>
<td>(d) In relation to an amount, or additional amount, payable following a Revenue Scotland amendment of a return under section 87 of the RSTPA 2014, the filing date* for that return.</td>
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<tr>
<td></td>
<td>(e) In relation to an amount, or additional amount, payable following a Revenue Scotland determination under section 95 of the RSTPA 2014, the filing date* of the return that was required to have been made.</td>
</tr>
</tbody>
</table>
(f) In relation to an amount, or additional amount, payable following a Revenue Scotland assessment under section 98 of the RSTPA 2014, the filing date* for the return made by the taxpayer.

| 2 | Land and buildings transaction tax | (a) In the case of an amount payable because relief is withdrawn under —

(i) Part 3 of schedule 10 to the LBTT(S) Act 2013 (group relief)

(ii) Part 4 of schedule 11 to the LBTT(S) Act 2013 (reconstruction or acquisition relief), or

(iii) Schedule 11 to the LBTT(S) Act 2013 (charities relief),

30 days after the date of the disqualifying event.

- In relation to the withdrawal of group relief, the “disqualifying event” is the buyer ceasing to be a member of the same group as the seller (within the meaning of paragraph 14 of schedule 10 to the LBTT(S) Act 2013).

- In relation to the withdrawal of reconstruction or acquisition relief, the “disqualifying event” is the change of control of the acquiring company mentioned in paragraph 13 of schedule 11 to the LBTT(S) Act 2013.

In relation to the withdrawal of charities relief, the “disqualifying event” is defined in paragraph 5 of schedule 13 to the LBTT(S) Act 2013.

(b) In the case of a deferred payment under section 41 of the LBTT(S) Act 2013, the date when the deferred payment is due.

(c) In a case within sections 18, 19 or 20 of the LBTT(S) Act 2013 (contingent, uncertain or unascertained consideration) and where payment is not deferred under section 41 of that Act, the ‘relevant date’ for any interest payable on unpaid tax under a section 31 return of that Act (adjustment where contingency ceases or consideration is ascertained) is the filing date*.

(d) For any other return under the LBTT(S) Act 2013, the filing date.

| 3 | Scottish landfill tax | (a) In relation to a return made under regulations under section 25 of the LT(S) Act 2014, the filing date. |

* All references to a filing date are to its meaning as set out in section 82 of the RSTPA 2014.
Where a person has died before an amount of tax is payable we are proposing that the relevant date will be as set out above or 30 days from the date the executor has received the grant of confirmation, whichever is the later.

Section 220(1) of the RSTPA 2014 provides the Scottish Ministers with a power to specify in regulations the rate of interest that applies for the purposes of sections 217 (interest on unpaid tax), 218 (interest on penalties) and 219 (interest on repayment by Revenue Scotland of tax, penalties or interest).

The Government proposes that the late payment interest rate should be the Bank of England rate plus 2.5%. The proposed repayment rate would be the higher of 0.5% or the Bank of England rate minus 1%.

Any change of interest rate would apply from the relevant operative date and would apply to an amount owed to Revenue Scotland or by Revenue Scotland prior to the relevant operative date.

Summary

These draft regulations set the relevant date from which interest on unpaid tax would be due. We propose that different interest rates should be charged on late payment by a taxpayer of tax or penalties (on the one hand) and on repayment by Revenue Scotland of tax or penalties (on the other hand) as set out above.

Question 10 – Setting the relevant date from which interest on unpaid tax would be due.

Do you agree with the Scottish Government’s proposed approach to interest on unpaid tax?

Yes ☐ No ☐

If you have any comments, please provide them on the Respondent Information Form.

Question 11 – Rates of Interest.

Do you agree with the Scottish Government’s proposed approach in relation to rates of interest?

Yes ☐ No ☐

If you have any comments, please provide them on the Respondent Information Form.
Fees for Payment

Enabling power under the RSTPA 2014

Section 222 allows Scottish Ministers to specify details of a fee that must be paid when a person makes a payment to Revenue Scotland (or a person authorised by Revenue Scotland) using a method of payment set in regulations by Scottish Ministers (e.g. a credit card). The details of the fee that can be specified include the time and manner of the fee and whether it applies generally or for specified purposes. The fee provided for in these regulations must not exceed what is reasonable having regard to the costs incurred by Revenue Scotland in paying the fee charged.

How the Government proposes to exercise the enabling power

Section 222(1) of the RSTPA 2014 provides the Scottish Ministers with a regulation-making power which allows them to provide for a fee to be charged to a person making a payment to Revenue Scotland (or an authorised person) using a method of payment specified in the regulations. A fee can only be charged if Revenue Scotland itself incurs a fee or charge in relation to that payment method.

We propose that the level of the fee should be set at 1.4% of the total amount being paid, which is estimated to be the average credit card charge which would have to be met by Revenue Scotland. The fee would be added to the payments so that person would be required to make one overall payment.

Summary

We propose that Revenue Scotland should be able to charge a fee to taxpayers who wish to pay an amount of tax by credit card, but the fee will not exceed what is reasonable having regard to the costs incurred by Revenue Scotland in paying the fee charged.

Question 12 – Fees for payment by credit card.

Do you agree with the Scottish Government’s proposed approach in relation to fees for payment?

Yes □  No □

If you have any comments, please provide them on the Respondent Information Form.
Postponement of tax, interest and penalties pending a review or appeal

Enabling power under the RSTPA 2014

Section 245 provides that where there is a review or appeal any tax, penalty or interest due will remain payable as if there was no review or appeal. Section 245(2) allows the Scottish Ministers to make regulations that may include provision for: applications by appellants to postpone amounts of tax, penalties and interest (including setting out 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 Scottish Tax Tribunal for such postponement; and appeals against determinations by Revenue Scotland and decisions by the Scottish Tax Tribunal on such applications.

How the Government proposes to exercise the enabling powers

Section 245 provides that any postponement will relate to tax, penalties and interest; and that any postponement relate to a review or an appeal. Unless an application is made for postponement of sums due in tax, penalties or interest, Revenue Scotland would insist on payment of tax, plus any penalties and/or interest, prior to carrying out a review or to an appeal being heard.

The draft regulations provide that in exceptional circumstances application may be made for the postponement of tax, penalties and interest due under LBTT following a request for a review or an appeal. The draft regulations do not provide for postponement following a request for a review or an appeal in relation to SLfT, because in general a landfill site operator who is due to pay SLfT will already have collected tax due from persons depositing waste at the site in question.

Revenue Scotland may therefore agree to postpone tax, penalties and interest while a review or appeal relating to LBTT is pending, but only if Revenue Scotland is satisfied that there are exceptional circumstances which justify postponement. Where Revenue Scotland does not agree to postponement, the draft regulations give the taxpayer the right to apply to the Scottish Tax Tribunals for a ruling that the amount in question should be postponed; and the Tribunals should be able to do so if satisfied that there are exceptional circumstances which justify postponement.

Summary

We propose that Revenue Scotland should be able to consider an application for agree to a postponement of tax, interest or penalties pending a review or appeal, but only in exceptional circumstances and only in relation to LBTT decisions. Where Revenue Scotland do not agree to postpone tax, interest or penalties the taxpayer may appeal to the Scottish Tax Tribunals.
Question 13 – Postponement of tax, Interest and penalties pending a review or appeal.

Do you agree with the Scottish Government’s proposed approach in relation to postponement of tax, Interest and penalties pending a review or appeal?

Yes □ No □

If you have any comments, please provide them on the Respondent Information Form.
The Scottish Tax Tribunals - Eligibility for appointment

Enabling powers under the RSTPA 2014

Schedule 2, paragraph 2(3)
The power at paragraph 2(3) of schedule 2 allows Scottish Ministers to prescribe the criteria in terms of qualifications, experience and training that a person needs to be eligible for appointment as an ordinary member of the First-tier Tribunal.

Schedule 2, paragraph 9(1)
The Scottish Ministers may by regulations make provisions relating to the calculation of the five year period of practice mentioned in paragraphs 4(1) and 8(3)(a) of schedule 2 or the ten year period mentioned in paragraphs 6(1) and 8(4)(a) of schedule 2. The regulations may, for example, make reference to recent or continuous time. The regulations may include provision relating to, for example, debarment from practice during the five or ten year periods and make further provision relating to the criteria for suitability and the nature of experience required.

How the Government proposes to exercise the enabling powers

The RSTPA 2014 provides for the establishment of Scottish Tax Tribunals to hear appeals against decisions relating to the devolved taxes, namely the First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland. A President will be appointed and both tribunals will have legal members, but the First-tier Tax Tribunal will also have ordinary members.

Paragraph 2(3) of schedule 2 to the RSTPA 2014 allows the Scottish Ministers to set the eligibility criteria for ordinary members of the First-tier Tribunal. We propose that members of the following accountancy bodies should be eligible to serve as an ordinary member in the First-tier Tribunal:

(a) the Institute of Chartered Accountants in Scotland;
(b) the Institute of Chartered Accountants in England and Wales;
(c) the Institute of Chartered Accountants in Ireland;
(d) the Institute of Certified Public Accountants in Ireland;
(e) the Association of Chartered Certified Accountants;
(f) the Chartered Institute of Management Accountants; or
(g) the Chartered Institute of Public Finance and Accountability.

We propose that persons with substantial experience in tax matters and related tax procedures, or business, trade, charity or not-for-profit organisations, should also be eligible to be ordinary members of the First-tier Tribunal.

Regulations 3 and 4 make it clear that the qualifying periods for legal members of the First-tier Tribunal and the Upper Tribunal, namely five and ten years respectively, need not be continuous.
Summary

We propose that the qualifying criteria for ordinary members of the First-tier Tribunal should be membership of one of the listed accountancy bodies or those with substantial experience in areas listed above. The five and ten year qualifying periods for legal members need not be continuous.

Question 14 – The Scottish Tax Tribunals eligibility criteria for ordinary members of the First-tier Tribunal.

Do you agree with the Scottish Government’s proposed approach in relation to eligibility criteria for ordinary members of the First-tier Tribunal?

Yes [ ] No [ ]

If you have any comments, please provide them on the Respondent Information Form.
<table>
<thead>
<tr>
<th>Section</th>
<th>Power</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 11(8)</td>
<td>The provision allows Scottish Ministers to vary the period covered by Revenue Scotland’s corporate plans after the first corporate plan.</td>
</tr>
<tr>
<td>Section 31(1)</td>
<td>The provision allows Scottish Ministers to determine the appropriate composition of panels sitting in the First-tier Tribunal or Upper Tribunal.</td>
</tr>
<tr>
<td>Section 40(4)</td>
<td>Section 37 makes provisions for the Court of Session to remit a petition for judicial review to the Upper Tribunal for determination. 37(4) confers a power on the Court of Session, by Act of Sederunt, to specify the category of petitions for judicial review which are appropriate to be remitted to the Upper Tribunal for determination.</td>
</tr>
<tr>
<td>Section 49(1)</td>
<td>Section 49(1) provides that the Scottish Ministers may, by regulations, confer such additional powers on the Scottish Tax Tribunals as are necessary or expedient for the proper exercise of their functions.</td>
</tr>
<tr>
<td>Section 75(b)</td>
<td>The provision allows the Scottish Ministers to make regulations to provide that the duty in section 74 to preserve records may be satisfied by preserving the information contained in the records in any form and by any means.</td>
</tr>
<tr>
<td>Section 80(1)</td>
<td>This power allows the Scottish Ministers to make provision, or further provision, about penalties for failure to keep and preserve records as required under section 74. Such provision can include the circumstances under which a penalty is payable, the penalty amounts, the procedure for issuing penalties and the assessment and enforcement rules and procedures.</td>
</tr>
<tr>
<td>Section 83(3)b</td>
<td>Section 83 provides that a taxpayer may amend a return within 12 months of the filing date, which is defined in section 82 as the date by which the return has to be made. The power allows the Scottish Ministers to prescribe another date.</td>
</tr>
<tr>
<td>Section 92(2)c</td>
<td>Section 88 provides that at any time during an enquiry into a tax return any question arising may be referred to the appropriate tribunal. Section 92(2)c provides that the appropriate tribunal may be the Lands Tribunal for Scotland, the First-tier Tribunal, the Upper Tribunal or any other court or tribunal specified by the Scottish Ministers by order.</td>
</tr>
<tr>
<td>Section 95(7)b</td>
<td>Section 95 provides for Revenue Scotland to make a determination of tax due where a person has failed to make a tax return by the required filing date. No Revenue Scotland determination can be made more than five years after the relevant date, which is the filing date or such other date that the Scottish Ministers may by order prescribe.</td>
</tr>
<tr>
<td>Section 121(2)</td>
<td>The provision allows the Scottish Ministers to stipulate activities or persons which are (and are not) to be treated for the purposes of Part 7 of the RSTPA 2014 as being involved in the carrying on of a business.</td>
</tr>
<tr>
<td>Section 133(1)</td>
<td>The provision allows the Scottish Ministers to set out conditions or exceptions applying to a situation where a person required by an information notice to produce a document wishes to comply with the</td>
</tr>
<tr>
<td>Section</td>
<td>Text</td>
</tr>
<tr>
<td>-----------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Section 134</td>
<td>The provision allows the Scottish Ministers to make further provision about powers relating to information notices, including their form and content and the time periods and manner of complying with such notices.</td>
</tr>
</tbody>
</table>
| Section 153 | This power allows the Scottish Ministers to modify section 152(2)-(8) to provide whether certain decisions or requirements relating to information notices are:  
  - appealable;  
  - appealable only on certain grounds or in certain circumstances; or  
  - not appealable. |
| Section 181(1) | This power allows the Scottish Ministers to make provision, or further provision, about penalties for failure to make a return by the filing date or failure to pay tax on time. Such provision can include the circumstances under which a penalty is payable, the penalty amounts, the procedure for issuing penalties and the assessment and enforcement rules and procedures. |
| Section 194(1) | This power allows the Scottish Ministers to make provision, or further provision, about penalties relating to a document containing an inaccuracy or failing to notify Revenue Scotland about a Revenue Scotland under-assessment of tax. |
| Section 208(1) | This power allows the Scottish Ministers to make provision, or further provision, about penalties which relate to investigations by Revenue Scotland. Such penalties include a failure (or continued failure) to comply with an information notice, obstruction (or continued obstruction) of an inspection and giving Revenue Scotland inaccurate information or documents in relation to an information notice. |
| Section 216(1) | This power allows the Scottish Ministers to make provision, or further provision, about penalties which relate to a failure to register or unregister for SLfT as required by sections 22 and 23 of the LT(S)A 2014. |
| Section 230 | This power allows Scottish Ministers to modify section 229(2) to make further provision about whether certain decisions or requirements relating to a notice under section 228 are: a) appealable; b) appealable only on certain grounds or in certain circumstances; or c) not appealable. |
| Section 233(6) | Section 233(1) sets out decisions of Revenue Scotland that are appealable; and section 233(4) lists decisions that are not appealable. Section 233(6) allows Scottish Ministers to amend the list of appealable and non-appealable decisions by adding a decision, varying the description of a decision or removing a decision from either subsection. |
| Schedule 1 para 1 (3) | The provision allows the Scottish Ministers to specify a different minimum or maximum number of members of Revenue Scotland. |
| Schedule 2 | Paragraph 4(2) of schedule 2 confers a power on the Scottish |
Annex A

Question 15 – Powers that Scottish Ministers do not intend to use prior to April 2015.

Do you agree with the Scottish Government’s proposed approach in relation to the powers we do not intend to use prior to April 2015?

Yes ☐ No ☐

If you have any comments, please provide them on the Respondent Information Form.
Revenue Scotland and Tax Powers Act 2014: A consultation on proposed subordinate legislation

RESPONDENT INFORMATION FORM

Please Note: this form must be returned with your response to ensure that we handle your response appropriately.

1. Name/Organisation
Organisation Name

Title  Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

Surname

Forename

2. Postal Address

Postcode  Phone  Email

3. Permissions - I am responding as…

Individual / Group/Organisation  Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?
   Please tick as appropriate  Yes  No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis
   Please tick ONE of the following boxes

(c) The name and address of your organisation will be made available to the public (in the Scottish Government library and/or on the Scottish Government web site).
   Are you content for your response to be made available?
   Please tick as appropriate  Yes  No
Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

☐ Yes

☐ No
List of Questions

Question 1 – Planning period for Revenue Scotland’s first corporate plan.

Do you agree with the Scottish Government’s proposed approach in relation to setting the planning period for Revenue Scotland’s first corporate plan?

Question 2 – The Scottish Tax Tribunals: voting for decisions

Do you agree with the Scottish Government’s proposed approach in relation to voting for decisions in the Scottish Tax Tribunals?

Question 3 – The Scottish Tax Tribunals: time limit for seeking permission for an onward appeal.

Do you agree with the Scottish Government’s proposed approach in relation to time limit for seeking permission for an onward appeal?


Do you agree with the Scottish Government’s proposed approach in relation to the creation of offences in relation to proceedings?

Question 5 – Duty to keep and preserve records.

Do you agree with the Scottish Government’s proposed approach in relation to the duty to keep and preserve records?

Question 6 – Record keeping in relation to an LBTT transaction that is non-notifiable.

Do you agree with the Scottish Government’s proposed approach in relation to Record-keeping in respect of an LBTT transaction that is non-notifiable?

Question 7 – Prevention of a repayment of tax by Revenue Scotland that may lead to unjustified enrichment.

Do you agree with the Scottish Government’s proposed approach in relation to prevention of unjustified enrichment?

Question 8 – Resolution of disputes relating to legal professional privilege.

Do you agree with the Scottish Government’s proposed approach in relation to resolution of disputes relating to legal professional privilege?
Annex B

Question 9 – Power to specify third parties in relation to inspections of business premises.

Do you agree with the Scottish Government’s proposed approach in relation to the power to specify an “involved third party” in relation to inspections of business premises?

Question 10 – Setting the relevant date from which interest on unpaid tax would be due.

Do you agree with the Scottish Government’s proposed approach to interest on unpaid tax?

Question 11 – Rates of Interest.

Do you agree with the Scottish Government’s proposed approach in relation to rates of interest?

Question 12 – Fees for payment by credit card.

Do you agree with the Scottish Government’s proposed approach in relation to fees for payment?

Question 13 – Postponement of tax, Interest and penalties pending a review or appeal.

Do you agree with the Scottish Government’s proposed approach in relation to postponement of tax, Interest and penalties pending a review or appeal?

Question 14 – The Scottish Tax Tribunals eligibility criteria for ordinary members of the First-tier Tribunal.

Do you agree with the Scottish Government’s proposed approach in relation to eligibility criteria for ordinary members of the First-tier Tribunal?

Question 15 – Powers that Scottish Ministers do not intend to use prior to April 2015.

Do you agree with the Scottish Government’s proposed approach in relation to the powers we do not intend to use prior to April 2015?


Do you agree with the Scottish Government’s proposal that Revenue Scotland should be added to the list of bodies covered by the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 and should be included within the Proceeds of Crime Act 2002 (Disclosure of Information to and by Lord Advocate and Scottish Ministers) Order 2003?
The Scottish Ministers make the following Order in exercise of the powers conferred by section 11(7)(a) of the Revenue Scotland and Tax Powers Act 2014 (a).

Citation and commencement

1. This Order may be cited as the Revenue Scotland (First Planning Period) Order 2014 and comes into force on the same day as section 2 (establishment of Revenue Scotland) of the Revenue Scotland and Tax Powers Act 2014 comes into force.

Specification of planning period for Revenue Scotland’s first corporate plan

2. The period beginning on 1st June 2015 and ending on 31st March 2018 is specified as the first period for the purposes of section 11(7)(a) of the Revenue Scotland and Tax Powers Act 2014 (definition of “planning period” for the purposes of Revenue Scotland’s corporate planning).

A member of the Scottish Government

St Andrew’s House,
Edinburgh
2015
EXPLANATORY NOTE
(This note is not part of the Order)

The Revenue Scotland and Tax Powers Act 2014 establishes Revenue Scotland and makes provision about the collection and management of devolved taxes (within the meaning of section 80A(4) of the Scotland Act 1998). Revenue Scotland is known as Teachd-a-steach Alba in Gaelic.

This Order prescribes the period from 1st June 2015 to 31st March 2018 as the planning period for Revenue Scotland’s first corporate plan.
Draft Regulations laid before the Scottish Parliament under section 254(3)(b) and (d) of the Revenue Scotland and Tax Powers Act 2014, for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2015 No.

TRIBUNALS AND INQUIRIES

The Scottish Tax Tribunals (Voting, Time Limits and Offences etc.) Regulations 2015

Made - - - - 2015

Coming into force - - 1st April 2015

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 32, 39(1) and 50(1) of the Revenue Scotland and Tax Powers Act 2014(a) and all other powers enabling them to do so.

In accordance with section 50(3) of that Act the Scottish Ministers have obtained the approval of the Lord President of the Court of Session.

In accordance with section 254(3)(b) and (d) of that Act a draft of these Regulations has been laid before and approved by resolution the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Scottish Tax Tribunals (Voting, Time Limits and Offences etc.) Regulations 2015 and come into force on 1st April 2015.

Tribunal consisting of two or more members — voting

2.—(1) Where a matter is to be decided by two or more members of the First-tier Tax Tribunal for Scotland or of the Upper Tax Tribunal for Scotland, and the decision of the tribunal is not unanimous, the following provisions apply.

(2) The decision of the majority of the members is the decision of the tribunal.

(3) But in the event of a tie the chairing member has a casting vote.

Time limits for permission to appeal - application to decision making forum

3.—(1) For the purposes of the permissions mentioned in section 34(3)(a) (application for permission to appeal to the First-tier Tribunal) or 36(3)(a) (application for permission to appeal to the Upper Tribunal), the following time limit applies.

(a) 2014 asp 16.
An application for permission to appeal must be received by the First-tier Tax Tribunal for Scotland or the Upper Tax Tribunal for Scotland, as appropriate, within the period of 30 days from the relevant date.

(3) The relevant date is the later of—

(a) the date on which the decision appealed against was sent to the appellant;
(b) the date on which the statement of reasons for decisions was sent to the appellant.

Time limits for permission to appeal – application to appellate forum

4.—(1) For the purposes of the permissions mentioned in section 34(3)(b) (application for permission to appeal to the Upper Tribunal following refusal by First-tier Tribunal) or 36(3)(b) (application for permission to appeal to the Court of Session following refusal by the Upper Tribunal), the following time limits apply.

(2) An application for permission to appeal must be received by the Upper Tax Tribunal for Scotland or the General Department of the Court of Session, as appropriate, within the period of 30 days from the relevant date.

(3) The relevant date is the date on which notice of the relevant tribunal’s refusal of permission to appeal was sent to the appellant.

Offences in relation to proceedings before the Scottish Tax Tribunals

5.—(1) Subject to regulation 6, in any proceedings before the First-tier Tax Tribunal for Scotland or the Upper Tax Tribunal for Scotland it is an offence for any person to—

(a) make a false statement in an application in a case;
(b) fail to attend, or give evidence, when required to do so in accordance with tribunal rules; or
(c) alter, conceal or destroy, or fail to produce, something that is required to be produced in accordance with tribunal rules.

(2) A person who is guilty of an offence under paragraph (1) is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both).

Circumstances in which a person need not give evidence or produce something to the Scottish Tax Tribunals

6. In any proceedings before the First-tier Tax Tribunal for Scotland or the Upper Tax Tribunal for Scotland a person need not give evidence or produce something which the person would be entitled to refuse to give or produce in a case before the Sheriff Court or the Court of Session.

A member of the Scottish Government

St Andrew’s House, Edinburgh 2015
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations supplement the provisions of Part 4 of the Revenue Scotland and Tax Powers Act 2014 in connection with the Scottish Tax Tribunals provided for that Part. The Scottish Tax Tribunals comprise the First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland.

Regulation 2 provides for voting for decisions where a tribunal comprises more than one member.

Regulations 3 and 4 provide that applications for permission to appeal against decisions of the First-tier Tribunal and Upper Tribunal must be made within 30 days of the relevant date, as defined.

Regulation 5 provides for offences in relation to proceedings before the Scottish Tax Tribunals and the associated maximum penalties.

Regulation 6 provides for the circumstances in which a person need not give evidence or produce something to the Scottish Tax Tribunals. The circumstances include when evidence or material is privileged.
The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 74(9) and 81(2) of, and paragraph 3(3) of schedule 3 to, the Revenue Scotland and Tax Powers Act 2014(a) and all other powers enabling them to do so.

In accordance with section 254(3)(f) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, and commencement

1. These Regulations may be cited as the Revenue Scotland and Tax Powers Act (Record Keeping) Regulations 2015 and come into force on 1st April 2015

Interpretation


Records in respect of landfill tax

3.—(1) Every person referred to in section 74(1) and (3) of the Act shall, for the purpose of accounting for landfill tax under the LT(S) Act 2014, preserve the following—

(a) the person’s business and accounting records;
(b) the person’s landfill tax account;
(c) transfer notes and any other original or copy records in relation to material brought on to or removed from the landfill site;
(d) all invoices (including landfill invoices) and similar documents issued to the person and copies of such invoices and similar documents issued by the person;
(e) all credit or debit notes or other documents received by the person which evidence an increase or decrease in the amount of any consideration for a relevant transaction, and copies of such documents that are issued by the person;

(a) 2015 asp 16.
(f) such other records as Revenue Scotland may specify in a notice published by Revenue Scotland and not withdrawn by a further notice.

(2) The evidence required in support of claim detailed in regulation 21 of the Scottish Landfill Tax (Administration) Regulations 2014(a) and records required to be kept detailed in regulation 22 of those Regulations are respectively supporting documents specified as required to be kept under section 74 of the Act and records included in records required to be kept and preserved under that section.

(3) The evidence required in support of claim detailed in regulation 21 of the Scottish Landfill Tax (Administration) Regulations 2014 and records required to be kept detailed in regulation 22 of those Regulations are respectively supporting documents specified as required to be kept under paragraph 3 of Schedule 3 to the Act and records included in records required to be kept and preserved under that paragraph.

Records in respect of land and buildings transaction tax/land transactions not notifiable

4.—(1) The buyer in a land transaction which is not notifiable must keep such records as may be needed to enable the buyer to demonstrate that the transaction is not notifiable.

(2) Sections 74(2), (5), (7) and (8), and 76 to 79 of the Act apply to a buyer mentioned in paragraph (1) as those sections apply to a person mentioned in section 74(1) of the Act.

A member of the Scottish Government

St Andrew’s House,
Edinburgh
2015

(a) S.S.I. 2014/ .
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations make certain provisions about records in relation to landfill tax and in relation to land and buildings transaction tax.
The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 111(1) of the Revenue Scotland and Tax Powers Act 2014(a) and all other powers enabling them to do so.

In accordance with section 254(3)(g) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, and commencement

1. These Regulations may be cited as the Revenue Scotland and Tax Powers Act (Reimbursement Arrangements) Regulations 2015 and come into force on 1st April 2015.

Interpretation

2. In these Regulations—

   “the Act” means the Revenue Scotland and Tax Powers Act 2014;
   “claim” means a claim made under section 107(2) of the Act for repayment of an amount paid to Revenue Scotland by way of tax which was not tax due to them; and “claimed” and “claimant” shall be construed accordingly;
   “reimbursement arrangements” means any arrangements for the purposes of a claim which—
   (a) are made by a claimant for the purpose of securing that he is not unjustly enriched by the repayment of any amount in pursuance of the claim; and
   (b) provide for the reimbursement of persons (consumers) who have, for practical purposes, borne the whole or any part of the cost of the original payment of that amount to Revenue Scotland;
   “relevant amount” means that part (which may be the whole) of the amount of a claim which the claimant has reimbursed or intends to reimburse to consumers.

(a) 2014 asp 16.
Reimbursement arrangements – general

3. For the purposes of section 109 of the Act (defence to certain claims for relief under sections 107 or 108) reimbursement arrangements made by a claimant shall be disregarded except where they—

(a) include the provisions described in regulation 4 below; and
(b) are supported by the undertakings described in regulation 8 below.

Reimbursement arrangements – provisions to be included

4. The provisions referred to in regulation 3(a) above are that—

(a) reimbursement for which the arrangements provide will be completed by no later than 90 days after the repayment to which it relates;
(b) no deduction will be made from the relevant amount by way of fee or charge (howsoever expressed or effected);
(c) reimbursement will be made only in cash or by cheque;
(d) any part of the relevant amount that is not reimbursed by the time mentioned in paragraph (a) above will be repaid by the claimant to Revenue Scotland;
(e) any interest paid by Revenue Scotland on any relevant amount repaid by them will also be treated by the claimant in the same way as the relevant amount falls to be treated under paragraphs (a) and (b) above; and
(f) the records described in regulation 6 below will be kept by the claimant and produced by him to Revenue Scotland, or to an officer of Revenue Scotland in accordance with regulation 7 below.

Repayments to Revenue Scotland

5. The claimant shall, without prior demand, make any repayment to Revenue Scotland that the claimant is required to make by virtue of regulation 4(d) and (e) above within 30 days of the expiration of the period of 90 days referred to in regulation 4(a) above.

Records

6. The claimant shall keep for three years from the date of reimbursement records of the following matters—

(a) the names and addresses of those consumers whom the claimant has reimbursed or whom the claimant intends to reimburse;
(b) the total amount reimbursed to each such consumer, including in all cases receipts from those reimbursed acknowledging how much has been reimbursed and giving the date of reimbursement;
(c) the amount of interest included in each total amount reimbursed to each consumer;
(d) the date that each reimbursement is made.

Production of records

7.(1) Where a claimant is given notice in accordance with paragraph (2) below, the claimant shall in accordance with such notice produce to Revenue Scotland, or to an officer of Revenue Scotland, the records that the claimant is required to keep pursuant to regulation 6 above.

(2) A notice given for the purposes of paragraph (1) above shall—

(a) be in writing;
(b) state the place and time at which, and the date on which the records are to be produced;
(c) be signed and dated by Revenue Scotland, or by an officer of Revenue Scotland, and may be given before or after, or both before and after, Revenue Scotland has paid the relevant amount to the claimant.

**Undertakings**

8.—(1) The undertakings referred to in regulation 3(b) above shall be given to Revenue Scotland by the claimant no later than the time at which the claimant makes the claim for which the reimbursement arrangements have been made.

(2) The undertakings shall be in writing, shall be signed and dated by the claimant, and shall be to the effect that—

(a) at the date of the undertakings the claimant is able to identify the names and addresses of those consumers whom the claimant has reimbursed or whom the claimant intends to reimburse;

(b) the claimant will apply the whole of the relevant amount repaid to the claimant, without any deduction by way of fee or charge or otherwise, to the reimbursement in cash or by cheque, of such consumers by no later than 90 days after the claimant’s receipt of that amount (except insofar as the claimant has already so reimbursed them);

(c) the claimant will apply any interest paid to the claimant on the relevant amount repaid to the claimant wholly to the reimbursement of such consumers by no later than 90 days after the claimant’s receipt of that interest;

(d) the claimant will repay to Revenue Scotland without demand the whole or such part of the relevant amount repaid to the claimant or of any interest paid to the claimant as the claimant fails to apply in accordance with the undertakings mentioned in sub-paragraphs (b) and (c) above;

(e) the claimant will keep the records described in regulation 7 above; and

(f) the claimant will comply with any notice given to the claimant in accordance with regulation 7 above concerning the production of such records.

(3) The claimant shall submit to Revenue Scotland an amended undertaking (to reflect the correction or amendment) within [14] days of—

(a) the claimant amending a claim under paragraph 10(1) of Schedule 3 to the Act;

(b) Revenue Scotland amending a claim under paragraph 14(3)(b) of Schedule 3 to the Act.

**Penalties**

9.—(1) The provisions in paragraphs 5 to 8 of Schedule 3 to the Act shall apply to a failure to comply with regulation 6 of these Regulations as they apply to a failure to comply with paragraph 3 of Schedule 3 to the Act.

(2) The penalty for failure to comply with a notice given under regulation 7(1) is £300 and a further penalty not exceeding £60 for each subsequent day on which the failure continues.

(3) A claimant who fails to comply with regulation 5 of these Regulations is liable to a penalty of 100% of the amount of any repayment to Revenue Scotland that the claimant is required to make by virtue of regulation 5(d) and (e) of these Regulations but section 218 of the Act shall not apply to such a penalty.

A member of the Scottish Government

St Andrew’s House, Edinburgh 2015
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations come into force on 1st April 2015. They describe the provisions that must be included in reimbursement arrangements made by a person making a claim under section 107 of the Act (recovery of overpaid tax), the undertakings that the person must give and the other requirements with which the person must comply, in order that his reimbursement arrangements are not to be disregarded for the purposes of determining whether the person would be unjustly enriched if the person’s claim is met.

Regulation 2 defines certain terms used in the Regulations.

Regulation 3 describes, in general terms, the provisions which a claimant’s reimbursement arrangements must include, and the undertakings which he must give, in order that his arrangements are not to be disregarded when determining whether he would be unjustly enriched if his claim is met.

Regulation 4 describes the detailed provisions that must be included in reimbursement arrangements, in order that the arrangements are not to be disregarded when determining whether a claimant would be unjustly enriched if the claimant’s claim is met.

Regulation 5 requires a claimant to repay to Revenue Scotland any amount which he received in order to reimburse consumers, but which the claimant had failed to apply to that purpose within 30 days of his receipt of that amount.

Regulation 6 describes the records that the claimant must keep relating to his reimbursement arrangements.

Regulation 7 provides for the production of such records.

Regulation 8 describes in detail the undertakings that the claimant must give to comply with the claimant’s reimbursement arrangements.

Regulation 9 makes provisions in respect of penalties.
The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 138(3) of the Revenue Scotland and Tax Powers Act 2014(a) and all other powers enabling them to do so.

**Citation, and commencement**

1. These Regulations may be cited as the Revenue Scotland and Tax Powers Act (Privileged Communications) Regulations 2015 and come into force on 1st April 2015.

**Interpretation**

2. In these Regulations—

   “the Act” means the Revenue Scotland and Tax Powers Act 2014;

   “document” means information, a document or part of a document;

   a “document in dispute” is a document over which there is a dispute between Revenue Scotland and a person who has been given an information notice as to whether the document is privileged;

   “designated officer” has the meaning in section 252 of the Act;

   a “person acting on behalf of” a taxpayer or a third party means any person who is acting on behalf of a taxpayer or third party in relation to an information notice;

   “information notice” means an information notice as defined in section 131 of the Act;

   “Part 7” means Part 7 of the Act;

   “taxpayer” means a person who is given a notice under section 123 of the Act;

   “third party” means a person who is given a notice under section 124 of the Act;

   “working day” means any day except a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(b).

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(a) 2014 asp 16.
(b) 1971 c.80.
Application of Regulations

3. These Regulations apply where there is a dispute between Revenue Scotland and a person to whom an information notice has been given either—
   (a) during the course of correspondence, or
   (b) during the course of an inspection of premises under Part 7,
as to whether a document is privileged.

Requirement to provide information and produce documents not in dispute

4. Nothing in these Regulations shall affect—
   (a) the requirement under an information notice to provide information or produce a document which is not in dispute; or
   (b) the power under Part 7 to inspect premises.

Procedure where information notice given in correspondence is in dispute

5.—(1) The following procedure applies where there is a dispute falling within regulation 3(a).
   (2) On receipt of the information notice, the taxpayer, third party or person acting on their behalf shall—
      (a) by the date given in the notice for providing information or producing documents, specify in a list each document required under the information notice which is in dispute, with a description of the nature and contents of that document;
      (b) serve that list on Revenue Scotland.
   (3) But no description of a document or type of document is required where such description would itself give rise to a dispute over privilege.
   (4) Within twenty working days of receiving the list referred to in sub-paragraph (2), Revenue Scotland must notify the person who served the list of any documents on the list that it requires to be produced and which it considers are not privileged.
   (5) On receipt of notification under paragraph (4), the taxpayer, third party or person acting on their behalf must make an application to the tribunal to consider and resolve the dispute and must include copies of the documents which remain in dispute with that application.
   (6) The taxpayer, third party or person acting on their behalf shall provide Revenue Scotland with proof of service under paragraph (2)(b).
   (7) Service for the purposes of paragraph (2)(b) must take place within a reasonable time to be agreed between the taxpayer, third party or person acting on their behalf and Revenue Scotland but in any event no later than twenty working days after the date given in the notice for providing information or producing documents.
   (8) An application under paragraph (5) must be made within a reasonable time to be agreed between the taxpayer, third party or person acting on their behalf and Revenue Scotland but in any event no later than twenty working days of the date of the notification required under paragraph (4).

Procedure where information notice given during inspection of premises is in dispute

6.—(1) The following procedure applies where there is a dispute falling within regulation 3(b).
   (2) On receipt of the information notice, the taxpayer, third party or person acting on their behalf shall indicate to the officer carrying out the inspection each document, required under the information notice, which is in dispute.
   (3) The taxpayer, third party or person acting on their behalf must place the document or documents in dispute, or a copy of such document or documents, in an appropriate container which prevents the contents being visible.
(4) The container shall be—
   (a) sealed, labelled and signed by that person;
   (b) countersigned by the officer; and
   (c) given into the custody of the designated officer.
(5) The designated officer shall deliver the container to the tribunal with the seal intact within forty-two working days of having taken custody of it together with an application to the tribunal to consider and resolve the dispute.

Compliance with information notice

7.—(1) Where a taxpayer or third party who has received an information notice, or a person acting on their behalf, complies with the procedure set out in regulation 5 or, as the case may be, regulation 6, those persons shall be treated as having complied with the information notice in relation to the documents in dispute until the tribunal decides the status of the document or until an agreement has been reached under regulation 9.

Finding of the tribunal

8.—(1) When an application is made under regulation 5(5) or 6(5), the tribunal shall—
   (a) resolve the dispute by confirming whether and to what extent the document, is or is not privileged;
   (b) direct which part or parts of a document (if any) shall be disclosed.
(2) The tribunal must ensure that any document in dispute, or any copy of such document, is not inappropriately disclosed to any person pending the tribunal’s consideration of the status of the document.

Resolution of disputes by agreement

9. A dispute falling within regulation 3 may be resolved at any time by Revenue Scotland and the person to whom an information notice has been given reaching an agreement, whether in writing or otherwise.
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations set out the procedures which apply for referring to the tribunal a dispute as to whether information or a document required under an information notice is subject to legal professional privilege. There are separate procedures depending on whether the notice is given in the course of correspondence or in the course of an inspection under that Part. In this respect the detail of regulations 5 and 6 differ slightly to reflect the different circumstances of the requests for information or documents.

Regulation 2 defines certain terms used in the Regulations.

Regulation 4 makes it clear that any information or documents requested under Part 7, and which are not in dispute, must be provided to Revenue Scotland in accordance with the original notice requesting them.

Regulation 5 sets out procedures and time limits for referring disputes to the tribunal which arise in the course of correspondence. The regulation requires the taxpayer to compile a list of the documents which they consider are covered by privilege. This list is then sent to Revenue Scotland to give them the opportunity to specify which documents are in dispute. This procedure is intended to reduce the number of documents which the Tribunal eventually needs to consider. The time for referring the matter to the tribunal is split in regulation 5 to allow for the exchange of details by correspondence. The time allowed also includes the original time for complying with the notice.

Regulation 6 sets out procedures where the dispute arises in the course of an inspection visit. The regulation contains rules for removing documents during an inspection. These rules protect the person providing the information by ensuring that Revenue Scotland designated officers cannot see that information in advance of the tribunal’s decision. The rules also protect Revenue Scotland by ensuring that the documents agreed on are not changed. Regulation 5 does not contain a requirement to produce a list as the nature and contents of documents can be discussed at the inspection visit and then only the disputed documents need to be put into a sealed container and delivered to the Tribunal.

In regulation 6 the time allowed for referral to the tribunal is longer. This is because the request and removal of documents is more immediate and the longer time ensures that both Revenue Scotland and the person providing the documents have a similar time to reflect on whether the items actually need to be referred to the tribunal.

Regulation 7 makes it clear that where information or documents are referred to the tribunal under these regulations the notice under Part 7 will be treated as having been complied with until such time as the tribunal makes a decision about the status of the information or documents.

Regulation 8 makes it clear that the tribunal may either direct that the whole of a document is covered by privilege or that part of it is so covered. It also provides that the tribunal must direct which part or parts of a document (if any) may be disclosed. It also provides for the security of any document pending the determination of its status by the tribunal.

Regulation 9 allows for a dispute to be resolved by agreement at any time, including after the document or information has been delivered to the tribunal.
The Scottish Ministers make the following Order in exercise of the power conferred by section 142(3) of the Revenue Scotland and Tax Powers Act 2014(a) and all other powers enabling them to do so.

Citation and commencement

1. This Order may be cited as the Revenue Scotland and Tax Powers Act (Involved Third Party) Order 2015 and comes into force on 1st April 2015.

Involved third parties – Scottish landfill tax

2. For the purposes of Scottish landfill tax—

(a) an “involved third party” is any person involved (in any capacity) with a taxable disposal as defined in section 3(2) of the Landfill Tax (Scotland) Act 2014(b); and

(b) “relevant documents” are documents relating to the taxable disposal mentioned in paragraph (a).

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St Andrew’s House,
Edinburgh
2015

(a) 2014 asp 16.
(b) 2014 asp 2.
EXPLANATORY NOTE
(This note is not part of the Order)

This Order comes into force on 1st April 2015. It specifies, using the power in section 142(3) of the Revenue Scotland and Tax Powers Act 2014, for the purposes of Scottish landfill tax who is an involved third party and what documents are relevant documents in relation to such persons.
The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 217(2) and 220(1) of the Revenue Scotland and Tax Powers Act 2014(a) and all other powers enabling them to do so.

In accordance with section 254(3)(m) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, and commencement

1. These Regulations may be cited as the Revenue Scotland and Tax Powers Act (Interest on Unpaid Tax and Interest Rates in General) Regulations 2015 and come into force on 1st April 2015.

Interpretation


PART 1

Interest on unpaid tax

Interpretation of Part 1

3. In this Part, the “disqualifying event” means—

(a) in relation to the withdrawal of group relief, the buyer ceasing to be a member of the same group as the seller in terms of paragraph 14 of Schedule 10 to the LBTT(S) Act 2013;

(a) 2014 asp 16.
(b) in relation to the withdrawal of reconstruction or acquisition relief, the change of control of the acquiring company in terms of paragraph 13 of Schedule 11 to the LBTT(S) Act 2013;

c) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraph 5 of Schedule 13 to the LBTT(S) Act 2013;

the “filing date” means the filing date as defined in section 82 of the Act.

Relevant date

4.—(1) The “relevant date” for the purposes of section 217(1) in respect of the taxes listed in Column 1 of the table below is the date specified in Column 2 of the table corresponding with the taxes listed in Column 1.

<table>
<thead>
<tr>
<th>Tax to which unpaid tax relates</th>
<th>‘Relevant date’</th>
</tr>
</thead>
</table>
| 1 All devolved taxes          | (a) in relation to an amount, or additional amount, payable following an adjustment made under section 66(1) of the Act, the filing date for the return or, if there is no return, the filing date of the return that would have been required to have been made, had the tax avoidance arrangement not been entered into or carried out;
|                               | (b) in relation to an amount, or additional amount, payable following a taxpayer amendment of a return under section 83 of the Act, the filing date for that return;
|                               | (c) in relation to an amount, or additional amount, payable following a Revenue Scotland correction of a return under section 75 of the Act, the filing date for that return;
|                               | (d) in relation to an amount, or additional amount, payable following a Revenue Scotland amendment of a return under section 87 of the Act, the filing date for that return;
|                               | (e) in relation to an amount, or additional amount, payable following a Revenue Scotland assessment under section 93 of the Act, the filing date for the return;
|                               | (f) in relation to an amount, or additional amount, payable following a Revenue Scotland completion of enquiry under section 95 of the Act, the relevant filing date of the return as defined in section 95(2) of that Act;
|                               | (g) in relation to an amount, or additional amount, payable following a Revenue Scotland assessment under section 98 of the Act, the filing date for the return made by the taxpayer where there is a return; otherwise the date when a return should have been made;
| 2 Land and buildings transaction tax | (a) in the case of an amount payable because relief is withdrawn under—
|                               | (i) Part 3 of Schedule 10 to the LBTT(S) Act 2013 (group relief),
|                               | (ii) Part 4 of Schedule 11 to the LBTT(S) Act 2013 (reconstruction or acquisition relief), or
|                               | (iii) Schedule 11 to the LBTT(S) Act 2013 (charities relief),
|                               | 30 days after the date of the disqualifying event.
(b) in the case of a deferred payment under section 41 of the LBTT(S) Act 2013, the date when the deferred payment is due;
(c) in a case within sections 18 or 19 of the LBTT(S) Act 2013 (contingent, uncertain or unascertained consideration) where an amount, or additional amount, is payable to Revenue Scotland, is the filing date in terms of section 31(3) of that Act;
(d) in the case where payment is not deferred under section 41 of that Act, the filing date;
(e) for any other return under the LBTT(S) Act 2013, the filing date.

| 3 | Scottish landfill tax | In relation to a return made under regulations made under section 25 of the LT(S) Act 2014, the filing date. |

(2) Where a person chargeable to an amount of tax dies before the amount becomes due and payable, and the executor is unable to pay the amount before obtaining confirmation, the relevant date is the later of the date which would be the relevant date apart from this paragraph and the day after the end of the period of 30 days beginning with the grant of confirmation.

PART 2
Rates of interest in general

Interpretation

5. In this Part:
“Bank of England rate” means the official bank rate as announced at the relevant meeting;
“operative date” means the 13th working day following the relevant meeting;
“relevant meeting” means the first meeting of the Bank of England Monetary Policy Committee after the coming into force of these Regulations(a); and
“working day” means any day other than a non-business day within the meaning of section 92 of the Bills of Exchange Act 1882(b).

Late payment interest rate

6.—(1) Except where regulation 8 applies, the late payment of tax or penalties interest rate for the purposes of section 217 (interest on unpaid tax) and section 218 of the Act (interest on penalties), is the percentage per annum found by applying the following formula—

\[
\text{Bank of England rate} + 2.5.
\]

(2) The interest rate found under paragraph (1) applies on and after the operative date.

(a) The Monetary Policy Committee was constituted on a statutory basis by section 13 of the Bank of England Act 1998 (c.11).
(b) 1882 c. 61; section 92 was amended by sections 3(1) and (3) and 4(4) of the Banking and Financial Dealings Act 1971 (c.80).
Repayment interest rate

7.—(1) The repayment interest rate for the purposes of section 219 of the Act (interest on repayment of tax overpaid etc.), is the higher of—

(a) 0.5% per annum; and

(b) the percentage per annum found by applying the following formula—


(2) The interest rate found under paragraph (1) applies on and after the operative date.

Initial rates of interest

8.—(1) This regulation applies immediately on the coming into force of these Regulations until the first operative date after the coming into force of these Regulations.

(2) The late payment interest rate and repayment interest rate shall be the respective percentages per annum found by applying regulation 6(1) and regulation 7(1) as if the references to the relevant meeting is a reference to the meeting of the Bank of England Monetary Policy Committee on, or most recently before, the 13th working day before the coming into force of these Regulations.

Effect of change in rates of interest

9. Where the late payment interest rate or repayment interest rate changes in accordance with these Regulations with effect from an operative date, the change has effect in respect of interest running from before that date as well as interest running from or after that date.

St Andrew’s House,  
Edinburgh  
2015
EXPLANATORY NOTE

(This note is not part of the Order)

Part 1 of these Regulations sets out the relevant dates from which interest on tax is payable including in a case where a taxpayer has died.

Part 2 of these Regulations specifies the rate of interest payable by the taxpayer on late payment of tax and penalties and the rate of interest payable to the taxpayer by Revenue Scotland on overpaid tax.
The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 222(1) of the Revenue Scotland and Tax Powers Act 2014(a) and all other powers enabling them to do so.

Citation and commencement
1. These Regulations may be cited as the Revenue Scotland and Tax Powers Act (Fees for Payment) Regulations 2015 and come into force on 1st April 2015.

Interpretation
2. In these Regulations—
   “credit card” means a card which—
   (a) is a credit-token within section 14(1)(b) of the Consumer Credit Act 1974(b); or
   (b) would be a credit-token falling within that enactment were the card to be given to an individual; and
   “internet authorisation” means authorisation given by a credit card issuer via the internet.

Fees for payment by credit card
3.—(1) This regulation shall apply to any payment in respect of tax or interest or penalties to Revenue Scotland or a person authorised by Revenue Scotland made by credit card where internet authorisation is given to make that payment.
   (2) Where paragraph (1) applies, the person must also pay a fee of 1.4% of the amount of that payment.

(a) 2014 asp 16.
(b) 1974 c.39.
(3) The fee must be paid by being added to the payment (so that, accordingly, the person must make a single overall payment, consisting of the payment and the fee).

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2015
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations provide that where a payment is made to Revenue Scotland by credit card in respect of tax, interest or penalties a fee must also be paid which is to be aggregated with the payment to make one composite payment. The rate is to be 1.4% of the amount of the payment.
The Scottish Ministers make the following Regulations in exercise of the power conferred by section 245(2) of the Revenue Scotland and Tax Powers Act 2014(a) and all other powers enabling them to do so.

In accordance with section 254(3)(p) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, and commencement

1. These Regulations may be cited as the Revenue Scotland and Tax Powers Act (Postponement of Tax Pending a Review or Appeal) Regulations 2015 and come into force on 1st April 2015.

Interpretation


Postponement of payment of tax pending an appeal

3.—(1) Notwithstanding the terms of section 245 of the Act, where there is a review or appeal under this Part 11 of the Act, the appellants may make an application to Revenue Scotland for postponement of payment of amounts of tax, penalty and interest due under the Land and Buildings Transaction Tax (Scotland) Act 2013(b).

(2) Where on receipt of an application under paragraph (1) Revenue Scotland are satisfied that there are exceptional circumstances obtaining in relation to the application, which would warrant postponement, Revenue Scotland may grant the application in whole or in part and subject to any further conditions Revenue Scotland considers it appropriate to impose.

(a) 2014 asp 16.
(b) 2013 asp 11.
(3) A decision of Revenue Scotland shall be an appealable decision under section 233(1) of the Act.

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Edinburgh
2015

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EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations provide that where an review or appeal is in progress, a taxpayer may make an application to Revenue Scotland to postpone the payment of tax, interest or penalty in relation to a liability for land and building transaction tax, notwithstanding the provision in section 245 of the Act that in such a situation tax penalty and interest are due and payable. A postponement can be granted if Revenue Scotland considers they should do so because of exceptional circumstances. Their decision is appealable to the tribunal.
The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraphs 2(3) and 9(1)(a) and (b) of schedule 2 to the Revenue Scotland and Tax Powers Act 2014.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Scottish Tax Tribunals ( Eligibility for Appointment ) Regulations 2014 and come into force on [  ].

(2) In these Regulations, “the Act” means the Revenue Scotland and Tax Powers Act 2014.

Eligibility for appointment as ordinary member of the First-tier Tax Tribunal for Scotland

2.—(1) A person is eligible for appointment as an ordinary member of the First-tier Tax Tribunal for Scotland if paragraph (2) or (3) applies.

(2) This paragraph applies to a person who is an accountant who is a member of—

(a) the Institute of Chartered Accountants in Scotland;
(b) the Institute of Chartered Accountants in England and Wales;
(c) the Institute of Chartered Accountants in Ireland;
(d) the Institute of Certified Public Accountants in Ireland;
(e) the Association of Chartered Certified Accountants;
(f) the Chartered Institute of Management Accountants; or
(g) the Chartered Institute of Public Finance and Accountability.

(3) This paragraph applies to a person who has substantial experience—

(a) in tax matters and related tax procedures; or
(b) in a business, trade, charity or not-for-profit organisation.
Means of calculating 5-year period of legal practice in connection with eligibility for appointment as legal member of the First-tier Tax Tribunal for Scotland

3.—(1) For the purposes of calculating the 5-year period mentioned paragraph 4(1) of schedule 2 to the Act, the following applies.

(2) The period of 5 years practice need not be continuous.

Means of calculating 10-year period of legal practice in connection with eligibility for appointment as President of the Tax Tribunals or appointment as legal member of the Upper Tax Tribunal for Scotland

4.—(1) For the purposes of calculating the 10-year period mentioned paragraphs 1(2) and 6(1) of schedule 2 to the Act, the following applies.

(2) The period of 10 years practice need not be continuous.

St Andrew’s House,
Edinburgh
2014

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations supplement the provisions of schedule 2 to the Revenue Scotland and Tax Powers Act 2014 (“the Act”) in connection with eligibility for appointment to the Scottish Tax Tribunals provided for in Part 4 of the Act. The Scottish Tax Tribunals comprise the First-tier Tax Tribunal for Scotland and the Upper Tax Tribunal for Scotland.

Regulation 2 prescribes criteria for qualifications, experience and training in relation to eligibility for appointment as an ordinary member of the First-tier Tax Tribunal for Scotland.

Regulation 3 provides for the calculation of the 5-year period of legal practice in connection with eligibility for appointment as a legal member of the First-tier Tax Tribunal for Scotland.

Regulation 4 provides for the calculation of the 10-year period of legal practice in connection with eligibility for appointment as President of the Tax Tribunals or appointment as legal member of the Upper Tax Tribunal for Scotland.