

REVENUE SCOTLAND AND TAX POWERS ACT 2014

EXPLANATORY NOTES

THE ACT

Part 8 – Penalties

Chapter 4 — Penalties Relating to Investigations

Section 195 – Penalties for failure to comply or obstruction

233. This section provides that a person is liable to pay a fixed penalty for either failing to comply with an information notice or deliberately obstructing a designated officer in the course of an inspection or exercise of a power that has been approved by the tribunal under section 147. Failing to comply with an information notice includes concealing, destroying or disposing of a document in breach of the provisions under sections 198 and 199.

Section 196 – Daily default penalties for failure to comply or obstruction

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

Section 197 – Penalties for inaccurate information or documents

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

Section 198 – Concealing, destroying etc. documents following information notice

236. This section provides that a person must not generally conceal, destroy or otherwise dispose of a document that is the subject of an information notice addressed to them, unless particular circumstances apply as set out in subsections (2) and (3). A person in breach of section 198 is liable to a penalty under section 195 on the grounds that the breach is deemed as a failure to comply with an information notice for the purposes of determining liability to the penalty.

Section 199 – Concealing, destroying etc. documents following information notification

237. This section provides that a person must not generally conceal, destroy or otherwise dispose of a document if a designated officer has informed the person that the document is, or is likely to be, the subject of an information notice addressed to that person. This section does not apply if the person acts after either at least six months since the person received the last such notification from an officer or if an information notice has been issued. A person in breach of section 199 is liable to a penalty under section 195 on the grounds that the breach is deemed as a failure to comply with an information notice for the purposes of determining liability to the penalty.

Section 200 – Failure to comply with time limit

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

Section 201 – Reasonable excuse for failure to comply or obstruction

239. This section provides for a person not being liable to a fixed or daily penalty (under section 195 and 196) for failure to comply with an information notice or obstructing a designated officer (or a person authorised by that officer) during an inspection, if the person satisfies Revenue Scotland or (on appeal) the tribunal that there is reasonable excuse. The section defines some circumstances which would not be accepted as reasonable excuse.

Section 202 – Assessment of penalties under sections 195, 196 and 197

240. This section provides that where a person becomes liable for a penalty under section 195, 196 or 197, Revenue Scotland must assess the penalty and then notify the person of this. The assessment of a fixed or daily penalty arising from a failure to comply with an information notice or obstructing an officer during an inspection must be made within 12 months of the person becoming liable to the penalty. An assessment of a penalty due to an error in a taxpayer document submitted following an information notice must be made within 12 months on the date that the error first came to the attention of a designated officer and within six years of the date on which the person became liable to the penalty.

Section 203 – Enforcement of penalties under sections 195, 196 and 197

241. This section provides that a penalty under section 195, 196 or 197 must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person. If a notice of review is given against the penalty, the penalty must be paid within 30 days of the review being concluded. If mediation is entered into following a review, the penalty must be paid within 30 days of the person or Revenue Scotland giving notice of withdrawal from mediation (where this is the case). If notice of an appeal against the penalty is given, the penalty must be paid within 30 days of the appeal being determined or withdrawn.

Section 204 – Increased daily default penalty

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

tribunal's decision until such time as the person complies with the information notice or inspection.

Section 205 – Enforcement of increased daily default penalty

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

Section 206 – Tax-related penalty

244. This section provides that, where certain criteria apply, a person can be made liable for an additional penalty whose amount is decided by the Upper Tribunal. The criteria are that: a person is liable to a penalty under section 195; the person continues to fail to comply with an information notice or continues to obstruct an investigation; a designated officer believes that the amount of tax the person has paid or is likely to pay is significantly less than it would have been if they had complied; a designated officer makes an application to the Upper Tribunal for an additional penalty to be imposed; and the Upper Tribunal decides it is appropriate to do so. In determining the amount of the penalty, the Upper Tribunal must factor in the amount of tax which has not been, or is not likely to be, paid by the person. Any additional penalty imposed by a decision of the Upper Tribunal against this section is additional to the fixed and daily penalties already applied as a result of a continued failure to comply with an information notice or obstruction to an officer carrying out an inspection.

Section 207 – Enforcement of tax-related penalty

245. This section provides that a penalty applied under section 206 must be paid within 30 days of Revenue Scotland issuing the penalty notification to the person.

Section 208 – Power to change penalty provisions in Chapter 4

246. This section provides a regulation-making power for the Scottish Ministers to make provision, or further provision, about penalties under Chapter 4 of Part 8. Such regulations are subject to the affirmative procedure, may not create criminal offences but may modify any enactment. Regulations under this section do not apply to a failure which began before the date on which the regulations came into force.