



# Revenue Scotland and Tax Powers Act 2014

2014 asp 16

## PART 4

### THE SCOTTISH TAX TRIBUNALS

## CHAPTER 5

### APPEAL OF DECISIONS

#### *Appeal from First-tier Tribunal*

#### **34 Appeal from the First-tier Tribunal**

- (1) A decision of the First-tier Tribunal in any matter in a case before the tribunal may be appealed to the Upper Tribunal.
- (2) An appeal under this section is to be made—
  - (a) by a party in the case,
  - (b) on a point of law only.
- (3) An appeal under this section requires the permission of—
  - (a) the First-tier Tribunal, or
  - (b) if the First-tier Tribunal refuses its permission, the Upper Tribunal.
- (4) Such permission may be given in relation to an appeal under this section only if the First-tier Tribunal or (as the case may be) the Upper Tribunal is satisfied that there are arguable grounds for the appeal.
- (5) This section is subject to section 39(2) and to sections 131(4), 147(6), 154(5) and 243(5).

*Status: Point in time view as at 01/04/2017.*

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**Commencement Information**

**I1** S. 34 in force at 1.4.2015 by S.S.I. 2015/110, art. 2(1)

**35 Disposal of an appeal under section 34**

- (1) In an appeal under section 34, the Upper Tribunal may uphold or quash the decision on the point of law in question.
- (2) If the Upper Tribunal quashes the decision, it may—
  - (a) re-make the decision,
  - (b) remit the case to the First-tier Tribunal, or
  - (c) make such other order as the Upper Tribunal considers appropriate.
- (3) In re-making the decision, the Upper Tribunal may—
  - (a) do anything that the First-tier Tribunal could do if re-making the decision,
  - (b) reach such findings in fact as the Upper Tribunal considers appropriate.
- (4) In remitting the case, the Upper Tribunal may give directions for the First-tier Tribunal’s reconsideration of the case.
- (5) Such directions may relate to—
  - (a) issues of law or fact (including the Upper Tribunal’s opinion on any relevant point),
  - (b) procedural issues (including as to the members to be chosen to reconsider the case).

**Commencement Information**

**I2** S. 35 in force at 1.4.2015 by S.S.I. 2015/110, art. 2(1)

*Appeal from Upper Tribunal*

**36 Appeal from the Upper Tribunal**

- (1) A decision of the Upper Tribunal in any matter in a case before the tribunal may be appealed to the Court of Session (sitting as the Court of Exchequer).
- (2) An appeal under this section is to be made—
  - (a) by a party in the case,
  - (b) on a point of law only.
- (3) An appeal under this section requires the permission of—
  - (a) the Upper Tribunal, or
  - (b) if the Upper Tribunal refuses its permission, the Court of Session.
- (4) Such permission may be given in relation to an appeal under this section only if the Upper Tribunal or (as the case may be) the Court of Session is satisfied that there are arguable grounds for the appeal.

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- (5) This section is subject to section 39(2) and to sections 131(4), 147(6), 154(5) and 243(5).

**Commencement Information**

**I3** S. 36 in force at 1.4.2015 by [S.S.I. 2015/110](#), [art. 2\(1\)](#)

**37 Disposal of an appeal under section 36**

- (1) In an appeal under section 36, the Court of Session may uphold or quash the decision on the point of law in question.
- (2) If the Court quashes the decision, it may—
- (a) re-make the decision,
  - (b) remit the case to the Upper Tribunal, or
  - (c) make such other order as the Court considers appropriate.
- (3) In re-making the decision, the Court may—
- (a) do anything that the Upper Tribunal could do if re-making the decision,
  - (b) reach such findings in fact as the Court considers appropriate.
- (4) In remitting the case, the Court may give directions for the Upper Tribunal's reconsideration of the case.
- (5) Such directions may relate to—
- (a) issues of law or fact (including the Court's opinion on any relevant point),
  - (b) procedural issues (including as to the member to be chosen to reconsider the case).

**Commencement Information**

**I4** S. 37 in force at 1.4.2015 by [S.S.I. 2015/110](#), [art. 2\(1\)](#)

**38 Procedure on second appeal**

- (1) Section 36(4) is subject to subsections (3) and (4) as regards a second appeal.
- (2) Section 37 is subject to subsections (5) and (6) as regards a second appeal.
- (3) For the purpose of subsection (1), the Upper Tribunal or (as the case may be) the Court of Session may not give its permission to the making of a second appeal unless also satisfied that subsection (4) applies.
- (4) This subsection applies where, in relation to the matter in question—
- (a) a second appeal would raise an important point of principle or practice, or
  - (b) there is some other compelling reason for allowing a second appeal to proceed.
- (5) For the purpose of subsection (2), subsections (2)(b) and (3)(a) of section 37 have effect in relation to a second appeal as if the references in them to the Upper Tribunal include, as alternative references, references to the First-tier Tribunal.

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- (6) Where, in exercising the choice arising by virtue of subsection (5) (and instead of re-making the decision in question), the Court of Session remits the case to the Upper Tribunal rather than the First-tier Tribunal—
- (a) the Upper Tribunal, instead of reconsidering the case itself, may remit the case to the First-tier Tribunal,
  - (b) if the Upper Tribunal does so, it must send to the First-tier Tribunal any directions accompanying the Court’s remittal of the case to the Upper Tribunal.
- (7) In this section “second appeal” means appeal under section 36 against a decision in an appeal under section 34.

#### Commencement Information

**I5** S. 38 in force at 1.4.2015 by [S.S.I. 2015/110](#), **art. 2(1)**

#### *Further provision on permission to appeal*

### **39 Process for permission**

- (1) The Scottish Ministers may by regulations specify a time limit within which the permission required by section 34(3) or 36(3) must be sought.
- (2) A refusal to give the permission required by section 34(3) or 36(3) is not appealable under section 34 or 36.

#### Commencement Information

**I6** [S. 39\(1\)](#) in force at 7.11.2014 for specified purposes by [S.S.I. 2014/278](#), **art. 2, sch.**

**I7** [S. 39\(1\)](#) in force at 1.4.2015 in so far as not already in force by [S.S.I. 2015/110](#), **art. 2(1)**

**I8** [S. 39\(2\)](#) in force at 1.4.2015 by [S.S.I. 2015/110](#), **art. 2(1)**

**Status:**

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**Changes to legislation:**

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