



# Air Departure Tax (Scotland) Act 2017

## 2017 asp 2

PROSPECTIVE

### PART 4

#### PAYMENT, COLLECTION AND MANAGEMENT OF TAX

##### *Liability for tax*

#### **18 Taxable activity**

- (1) The carriage of a chargeable passenger on a chargeable aircraft, on any flight that begins at an airport in Scotland, is a taxable activity.
- (2) The tax is incurred when the aircraft first takes off on the passenger's flight.

#### **19 Taxable persons**

- (1) Every aircraft operator that carries out a taxable activity is a taxable person.
- (2) The taxable person is the taxpayer (for the purposes of the Revenue Scotland and Tax Powers Act 2014), irrespective of whether that person recovers from chargeable passengers all or any part of the cost of the tax.

##### *Registration*

#### **20 Revenue Scotland to keep ADT register**

- (1) Revenue Scotland must keep a register (to be known as the ADT register) for the purpose of collecting and managing the tax.
- (2) The register is to be kept in the form that Revenue Scotland thinks fit.
- (3) Revenue Scotland must promptly make any changes to the register that appear to Revenue Scotland to be required for the purpose of keeping the register up to date.

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- (4) Revenue Scotland may publish, in the manner it thinks fit, any information derived from the register.

## **21 Duty to register for tax**

- (1) This section applies to an aircraft operator if the operator—
- (a) is not registered for the tax, and
  - (b) either—
    - (i) becomes liable to make quarterly returns under section 24, or
    - (ii) forms an intention to do something, or to stop doing something, that will result in the operator becoming liable to make quarterly returns under section 24.
- (2) The aircraft operator must, no later than 30 days after a situation described in subsection (1) arises, apply to Revenue Scotland to register for the tax.
- (3) An aircraft operator is registered for the tax if Revenue Scotland has included the operator's details in the ADT register.

## **22 Duty to deregister for tax**

- (1) Subsection (2) applies to an aircraft operator if the operator—
- (a) is registered for the tax, and
  - (b) either—
    - (i) ceases to be liable to make quarterly returns under section 24, or
    - (ii) forms an intention to do something, or to stop doing something, that will result in the operator ceasing to be liable to make quarterly returns under section 24.
- (2) The aircraft operator must, no later than 30 days after a situation described in subsection 1(b) arises, apply to Revenue Scotland to deregister for the tax.
- (3) An aircraft operator is deregistered for the tax if Revenue Scotland has removed the operator's details from the ADT register.

### *Tax returns*

## **23 Duty to make returns and pay tax**

- (1) A taxable person must make tax returns in accordance with—
- (a) section 24 (quarterly returns), or
  - (b) section 25 (occasional returns).
- (2) Where a return is made under section 24 or 25, or amended under section 83 of the Revenue Scotland and Tax Powers Act 2014, any tax payable as a result of the return or amendment must be paid at the same time as the return or amendment is made.
- (3) For the purpose of subsection (2), tax is treated as paid if arrangements satisfactory to Revenue Scotland are made for payment of the tax.

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## **24 Quarterly returns**

- (1) Every taxable person that is not making occasional returns must make quarterly returns.
- (2) Quarterly returns are due no later than 30 days after the end of each accounting period.
- (3) In this section, “accounting period” means—
  - (a) the period—
    - (i) beginning on the date on which the person becomes a taxable person, and
    - (ii) ending on whichever of the dates mentioned in paragraph (b) occurs next, and
  - (b) each subsequent period of 3 months ending on 31 March, 30 June, 30 September, or 31 December.
- (4) A taxable person that is making quarterly returns—
  - (a) may notify Revenue Scotland that the person intends to make occasional returns instead of quarterly returns, and
  - (b) unless subsection (5) applies, is entitled to start making occasional returns instead of quarterly returns from the beginning of—
    - (i) the next accounting period to begin after the date on which Revenue Scotland receives the notice, or
    - (ii) an alternative accounting period specified by Revenue Scotland by written notice to the person.
- (5) If Revenue Scotland is not satisfied that a person giving notice under subsection (4) (a) is eligible to make occasional returns, Revenue Scotland may, by written notice, require the person to continue to make quarterly returns.

## **25 Occasional returns**

- (1) A taxable person is eligible to make occasional returns instead of quarterly returns if, on each day on which the person carries out a taxable activity, the person—
  - (a) intends to carry out taxable activities on no more than 12 days in total in the 12-month period beginning on that day, and
  - (b) expects to incur liability, in that 12-month period, for no more than £20,000 of the tax.
- (2) Occasional returns for any taxable activity are due no later than 30 days after the date of the taxable activity.
- (3) If Revenue Scotland receives an occasional return and is not satisfied that the person making the return is eligible to make occasional returns, Revenue Scotland may, by written notice, require the person to make quarterly returns.
- (4) Despite subsection (1), a taxable person that is required under subsection (3) to make quarterly returns—
  - (a) is not eligible to make occasional returns until Revenue Scotland rescinds the requirement by written notice, but
  - (b) may at any time apply to Revenue Scotland for the requirement to be rescinded.
- (5) A taxable person that is making occasional returns—

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- (a) is not required to make quarterly returns unless Revenue Scotland requires the person to do so under subsection (3), but
- (b) may notify Revenue Scotland that the person intends to make quarterly returns instead of occasional returns, in which case the person may move to making quarterly returns from the beginning of—
  - (i) the next accounting period to begin after the date on which Revenue Scotland receives the notice, or
  - (ii) an alternative accounting period specified by Revenue Scotland by written notice to the person.
- (6) To avoid doubt, a taxable person that is required under subsection (3) to make quarterly returns, or that intends to move to making quarterly returns (see subsection (5)(b)), must comply with section 21 (duty to register for the tax).

## 26 Form and content of returns

- (1) A return must include—
  - (a) a declaration made by the taxable person that the return is, to the best of that person's knowledge, correct and complete, or
  - (b) where the taxable person authorises an agent to complete the return, a declaration by the agent that the taxable person has declared to the agent that the information provided in the return is, to the best of the taxable person's knowledge, correct and complete.
- (2) The return must be in the form, contain the information and be made in the manner that is specified by Revenue Scotland.
- (3) Revenue Scotland may specify different forms, information, and manners of return for different purposes.
- (4) A return is treated as containing any information provided by the person making it for the purpose of completing the return.

## 27 Special accounting schemes

- (1) If a taxable person encounters or expects to encounter difficulties in obtaining and recording information about passengers and their agreements for carriage—
  - (a) the person may apply to Revenue Scotland for approval to use a special accounting scheme for the tax, and
  - (b) Revenue Scotland may approve the use of a special accounting scheme if it considers it appropriate to do so having regard to the difficulties that the person has encountered or expects to encounter.
- (2) A special accounting scheme is a scheme—
  - (a) whose details are agreed between Revenue Scotland and a taxable person, and
  - (b) that makes provision for methods of calculating how many passengers are to be regarded—
    - (i) as chargeable passengers carried on chargeable aircraft operated by the person, and
    - (ii) as chargeable at each tax rate.
- (3) Revenue Scotland—

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- (a) may set terms and conditions that apply generally to the use of a special accounting scheme, and
  - (b) must publish any such terms and conditions.
- (4) If a taxable person is using an approved special accounting scheme, the number of chargeable passengers carried by the person and the tax rate chargeable for the carriage of those passengers are to be regarded as the number and rate calculated in accordance with—
- (a) the details of the special accounting scheme, and
  - (b) any general terms and conditions published under subsection (3).
- (5) Revenue Scotland may, by written notice to a taxable person, withdraw its approval for the person's use of a special accounting scheme—
- (a) at any time, on Revenue Scotland's initiative, or
  - (b) on the application of the person.
- (6) A notice under subsection (5) has effect from the date specified in the notice.

#### *Tax representatives*

### **28 Duty to have tax representative**

- (1) A taxable person that does not have a business establishment or other fixed establishment in an EEA State must have a tax representative, unless the person is making occasional returns under section 25.
- (2) A person that is required by subsection (1) to have a tax representative must—
- (a) appoint a tax representative by written notice no later than 7 days after—
    - (i) the date on which the person becomes subject to the requirement, and
    - (ii) each subsequent date (if any) on which an existing appointment of a tax representative by the person ceases to have effect (see section 33(3)), and
  - (b) notify Revenue Scotland of the details of the appointment no later than 7 days after the appointment is made.
- (3) A taxable person that is not required by subsection (1) to appoint a tax representative may appoint one voluntarily, but the appointment does not have effect for the purposes of this Act unless the details of the appointment are notified to Revenue Scotland.
- (4) A tax representative—
- (a) must be a person eligible under section 32 to hold that position, and
  - (b) may be appointed as a fiscal or an administrative tax representative (see section 29).
- (5) An appointment notice must—
- (a) specify whether the tax representative is appointed as a fiscal or an administrative tax representative,
  - (b) identify the powers, duties and liabilities of the tax representative, as set out in section 30 or 31 or regulations made under section 41 (as applicable),
  - (c) identify the duty on the parties to the appointment to notify Revenue Scotland if the appointment ceases to have effect, as set out in section 34,

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- (d) be dated and signed by or on behalf of the taxable person and the tax representative, and
- (e) if the tax representative is to be an administrative tax representative, comply with section 29(2)(a).

## **29 Fiscal and administrative tax representatives**

- (1) Any tax representative not appointed in accordance with subsection (2) is a fiscal tax representative.
- (2) A tax representative is an administrative tax representative only if—
  - (a) the tax representative's notice of appointment contains a statement that the appointment is made for administrative purposes only,
  - (b) the taxable person making the appointment has provided to Revenue Scotland the amount of security (if any) that, at the time the appointment is made, is—
    - (i) specified in an individual direction issued by Revenue Scotland under section 35(1)(b), or
    - (ii) if sub-paragraph (i) does not apply, determined in accordance with a general direction issued by Revenue Scotland under section 36(1), and
  - (c) the taxable person has provided to Revenue Scotland any security or additional security that, at any time after the appointment is made, is—
    - (i) required under section 35(5)(b) (for compliance with an individual direction issued under 35(1)(b)), or
    - (ii) if sub-paragraph (i) does not apply, required under section 36(4) (for compliance with a general direction issued under section 36(1)).

## **30 Fiscal tax representatives: powers, duties and liabilities**

- (1) The fiscal tax representative of a taxable person—
  - (a) may act on the taxable person's behalf in relation to the tax,
  - (b) must ensure (by acting on the taxable person's behalf, where appropriate) that the taxable person complies with any duties relating to the tax, and discharges any liabilities relating to the tax, that arise under—
    - (i) this Act or any regulations made under this Act, or
    - (ii) the Revenue Scotland and Tax Powers Act 2014 or any orders or regulations made under that Act, and
  - (c) is liable to Revenue Scotland jointly and severally with the taxable person for the tax (including any penalty or interest that is recoverable as if it were an amount of the tax).
- (2) To avoid doubt, subsection (1)(a) does not authorise a fiscal tax representative, in relation to any tax return that is required by section 23, to make a declaration that the taxable person is required to make under section 26(1)(a) or (b).
- (3) The joint and several liability of a fiscal tax representative under subsection (1)(c)—
  - (a) continues after the tax representative's appointment ceases to have effect, but
  - (b) applies only in relation to tax (including any penalty or interest that is recoverable as if it were an amount of the tax) that is incurred during the period for which the fiscal tax representative's appointment has effect.

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### **31 Administrative tax representatives: powers, duties and limits on liability**

- (1) The administrative tax representative of a taxable person—
  - (a) must ensure (by acting on the taxable person's behalf, where appropriate) that the taxable person complies with duties that arise in relation to the tax under section 74 of the Revenue Scotland and Tax Powers Act 2014 (duty to keep and preserve records) or any regulations made under that section, and
  - (b) may otherwise act on the taxable person's behalf for any purpose agreed between the taxable person and the representative, subject to subsection (2).
- (2) An administrative tax representative—
  - (a) is not authorised, in relation to any tax return that is required by section 23, to make a declaration that the taxable person is required to make under section 26(1)(a) or (b),
  - (b) is not required to ensure that the taxable person pays any amount of the tax which is or may become due from the taxable person,
  - (c) is not personally liable to pay an amount of the tax (including any penalty or interest that is recoverable as if it were an amount of the tax) or for a failure by the taxable person to pay that amount, and
  - (d) is not required to provide any security that may be required under section 29(2)(b), section 35(5)(b) or section 36(4).

### **32 Eligibility to be tax representative**

- (1) A person is eligible to be a tax representative if—
  - (a) the person has a business establishment or other fixed establishment in an EEA State, and
  - (b) none of the disqualifications in subsection (2) applies to the person.
- (2) The following persons may not be appointed as a tax representative—
  - (a) a body corporate—
    - (i) that is in liquidation,
    - (ii) that is in administration under Part 2 of the Insolvency Act 1986 or Part 3 of the Insolvency (Northern Ireland) Order 1989,
    - (iii) for which an administrative receiver (as defined in section 251 of the Insolvency Act 1986) has been appointed,
  - (b) an individual—
    - (i) who is subject to a bankruptcy restrictions order under section 155 of the Bankruptcy (Scotland) Act 2016,
    - (ii) who is incapacitated (within the meaning of the Adults with Incapacity (Scotland) Act 2000),
    - (iii) who is serving a sentence of imprisonment (including any period of early release in relation to that sentence) or remanded in custody in the United Kingdom,
    - (iv) who is detained in hospital under the Mental Health (Care and Treatment) (Scotland) Act 2003,
  - (c) an individual or partnership—
    - (i) whose estate is sequestrated under the Bankruptcy (Scotland) Act 2016,



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- (ii) whose estate is subject to a protected trust deed (see section 163 of the Bankruptcy (Scotland) Act 2016),
- (d) a body corporate, individual or partnership to which circumstances in any jurisdiction apply that are analogous to any of the circumstances described in paragraphs (a) to (c).

### **33 Duration of tax representative appointments**

- (1) The appointment of a tax representative by a taxable person has effect from the beginning of—
  - (a) where the appointment is required by section 28(1), the day on which the notice of appointment is signed by or on behalf of the taxable person and the person being appointed,
  - (b) where the appointment is made by the taxable person voluntarily, rather than being required by section 28(1), the day on which the details of the appointment are notified to Revenue Scotland, or
  - (c) in either case, any later date specified in the notice of appointment.
- (2) The appointment may be terminated by either party to the appointment giving to the other party at least 7 days' written notice of the termination.
- (3) The appointment ceases to have effect on whichever of the following dates occurs first—
  - (a) the termination date notified to a party to the appointment under subsection (2),
  - (b) the date on which the tax representative ceases to be eligible under section 32 to hold that position,
  - (c) the date immediately before the date on which an appointment by the taxable person of another tax representative takes effect,
  - (d) in the case of an administrative tax representative, the date on which the taxable person ceases to comply with section 29(2)(b) or (c) (requirement to provide security to Revenue Scotland),
  - (e) if the tax representative is a company, a partnership or an unincorporated body, the date on which the company, partnership or body—
    - (i) ceases to carry on business, or
    - (ii) is dissolved,
  - (f) if the tax representative is an individual, the date on which the individual dies.

### **34 Duty to notify Revenue Scotland if appointment ceases to have effect**

- (1) This section applies if a person that is a party to the appointment of a tax representative becomes aware that the appointment is to cease to have effect for any of the reasons set out in section 33(3).
- (2) The person must, within 7 days after becoming aware of that fact, notify Revenue Scotland of—
  - (a) the reason that the appointment will cease to have effect, and
  - (b) the date on which the appointment ceases to have effect.
- (3) A person notifying Revenue Scotland under subsection (2) must at the same time notify the other party to the appointment, in writing, of the reason and the date.



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### *Provision of security*

#### **35 Security required by individual directions**

- (1) Revenue Scotland may issue a direction—
  - (a) requiring a taxable person or a fiscal tax representative to provide any security that Revenue Scotland considers appropriate,
  - (b) specifying the amount of security that a taxable person is required to provide to validate the appointment of an administrative tax representative (see section 29(2)(b)(i) and (c)(i)).
- (2) Revenue Scotland—
  - (a) may attach to a direction under this section any conditions it thinks fit, and
  - (b) may vary or revoke an earlier direction or the conditions attached to it.
- (3) A person is not required to comply with a direction under this section unless Revenue Scotland has—
  - (a) served notice of the direction on the person, or
  - (b) taken all such other steps as appear to Revenue Scotland to be reasonable for bringing the direction to the person's attention.
- (4) If Revenue Scotland issues a direction to a taxable person or fiscal tax representative under subsection (1)(a), that person must provide the required security to Revenue Scotland by the date specified by Revenue Scotland.
- (5) If Revenue Scotland issues a direction to a taxable person under subsection (1)(b)—
  - (a) if the direction specifies an amount of security that is different to the amount that the taxable person would be required to provide according to a general direction under section 36, the direction under this section prevails, and
  - (b) if the effect of the direction is that the taxable person must provide security or additional security to ensure that the appointment of an administrative tax representative continues to be valid, the taxable person must provide the security or additional security to Revenue Scotland by the date specified by Revenue Scotland (which may be specified in the direction or by notice to the taxable person).
- (6) In this Act, “security” means security for the payment of any amount of the tax which is or may become due from a taxable person (including any penalty or interest that is recoverable as if it were an amount of the tax).

#### **36 Security required by general directions**

- (1) Revenue Scotland may issue a direction specifying the amount of security (as defined in section 35(6)), or a method for determining the amount of security, that taxable persons must provide to Revenue Scotland to validate the appointment of an administrative tax representative (see section 29(2)(b)(ii) and (c)(ii)).
- (2) A direction under this section—
  - (a) applies to taxable persons generally,
  - (b) may specify any conditions for the provision of security that Revenue Scotland thinks fit,
  - (c) may vary or revoke an earlier direction, and

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- (d) must be published by Revenue Scotland.
- (3) Subsection (4) applies if—
  - (a) a taxable person has appointed an administrative tax representative, and
  - (b) a direction issued under this section has the effect of requiring the taxable person to provide security or additional security to ensure that the appointment continues to be valid.
- (4) The taxable person must provide the security or additional security to Revenue Scotland by the date specified by Revenue Scotland (which may be specified in the direction or by notice to the taxable person).

### *Handling agents*

#### **37 Meaning of handle and handling agent**

In this Act—

“handle”, in relation to passengers carried on an aircraft, means to make arrangements for—

- (a) the allocation of seats to the passengers,
- (b) the handling of the baggage of the passengers, or
- (c) the supervision of the boarding of the passengers,

“handling agent”, in relation to a taxable person, means a person who, under an agreement with the taxable person, handles passengers carried on aircraft operated by the taxable person.

#### **38 Liability of handling agents**

- (1) A handling agent of a taxable person is jointly and severally liable with the taxable person for the payment of tax that is incurred by the taxable person—
  - (a) during the period that a notice under this section has effect, and
  - (b) for the carriage of passengers handled by the handling agent.
- (2) Revenue Scotland may give notice to a handling agent of a taxable person only if—
  - (a) an amount of the tax which is due from the taxable person is not paid within the period of 90 days beginning with the earliest time at which any part of that amount became due, or
  - (b) the taxable person, if required to have a tax representative, fails to appoint one within the period specified in section 28(2).
- (3) However, Revenue Scotland—
  - (a) must not give notice under this section to a handling agent who is an individual, and
  - (b) must not give notice on the ground referred to in subsection (2)(a) unless Revenue Scotland considers it necessary for the protection of the revenue.
- (4) A notice under this section—
  - (a) has effect on the later of the date specified in the notice and the time when the notice is received by the handling agent,
  - (b) continues to have effect until withdrawn, and
  - (c) may at any time be withdrawn by Revenue Scotland.

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- (5) In subsection (1), the reference to tax incurred during a period includes any penalty or interest—
- (a) to which the taxable person becomes liable during that period,
  - (b) that relates to the tax incurred during that period, and
  - (c) that is recoverable as if it were an amount of the tax.

#### *Communications with Revenue Scotland*

### **39 Communications with Revenue Scotland**

- (1) If a person is required or permitted by or under this Act to communicate with Revenue Scotland, whether by way of a notice, application or any other means of communication, the communication must be in the form, contain the information and be made in the manner that is specified by Revenue Scotland.
- (2) Subsection (1) is subject to any different provision made in or under this Act.
- (3) Revenue Scotland may specify different forms, information and manners of communication for different purposes.

### **40 Inaccuracies in information provided to Revenue Scotland**

- (1) This section applies if a person, whether a taxable person or a tax representative, becomes aware of a material inaccuracy in information that the taxable person or tax representative has provided to Revenue Scotland under section 21(2) (registering for tax), 28(2)(b) or (3) (details of tax representative appointments) or 34(2) (changes to tax representative appointments).
- (2) The person must give Revenue Scotland written notice of the inaccuracy no later than 30 days after the date on which the person becomes aware of it.
- (3) For the purpose of this section, an inaccuracy is material if it affects Revenue Scotland's ability—
  - (a) to collect and manage the tax, or
  - (b) to protect the revenue against tax fraud and tax avoidance.

#### *Modification of administrative provisions*

### **41 Administrative provisions may be modified by regulations**

- (1) The Scottish Ministers may by regulations make other provision concerning the payment, collection and management of the tax.
- (2) Regulations under this section—
  - (a) may add, change or remove any provision concerning the payment, collection and management of the tax or any provision that defines or otherwise explains a term or expression, and
  - (b) may modify this Act.
- (3) However, regulations under this section must not modify section 18 or 19.

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