



# Air Departure Tax (Scotland) Act 2017

## 2017 asp 2

PROSPECTIVE

### PART 1

#### AIR DEPARTURE TAX

#### 1 Air departure tax

- (1) A tax (to be known as air departure tax)—
  - (a) is to be charged for the carriage of passengers on any flight that begins at an airport in Scotland (see section 18),
  - (b) is to apply only in relation to the carriage of chargeable passengers (see section 2) on chargeable aircraft (see section 8), and
  - (c) is to be payable by the aircraft operator (see section 19).
- (2) Revenue Scotland is responsible for the collection and management of the tax.

PROSPECTIVE

### PART 2

#### KEY CONCEPTS

##### *Chargeable passengers and exemptions*

#### 2 Meaning of chargeable passenger

- (1) Every person carried on a flight that begins at an airport in Scotland is a chargeable passenger unless—
  - (a) the person is working during the flight, or

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- (b) the person is a non-chargeable passenger in relation to the flight under any of sections 3 to 7 or regulations made under section 15.
- (2) A person is to be regarded as working during a flight only if the person is carried on the flight for the sole purpose of doing any of the following during the flight—
- (a) acting as a member of the flight crew or as a cabin attendant,
  - (b) ensuring the hygienic preparation and handling of food and drink,
  - (c) carrying out work relating to the safety or security of the aircraft or of passengers or goods carried on the aircraft (which includes escorting a passenger or goods),
  - (d) carrying out repairs or maintenance on the aircraft.

### **3 Passengers not carried for reward**

- (1) A passenger is a non-chargeable passenger in relation to a flight if—
- (a) the passenger is carried on the flight in one of the circumstances set out in subsection (2), and
  - (b) the passenger is not carried for reward.
- (2) The circumstances are—
- (a) the aircraft operator is required by an enactment to carry the passenger (for example, where immigration legislation requires the operator to repatriate a person who is refused entry to the United Kingdom),
  - (b) the aircraft operator carries the passenger to facilitate an inspection, by the passenger, of the aircraft or its flight crew (for example, where the person is a Civil Aviation Authority flight operations inspector),
  - (c) the flight lands within the period of 72 hours before the passenger starts working in relation to any aircraft, and the passenger is carried on the flight for the sole purpose of positioning the passenger to undertake the work,
  - (d) the flight departs within the period of 72 hours after the passenger finishes working in relation to any aircraft, and the passenger is carried on the flight for the sole purpose of repositioning the passenger to where the passenger ordinarily operates or is ordinarily stationed.
- (3) A person is to be regarded as working in relation to an aircraft only if—
- (a) the passenger is working during a flight of the aircraft (as defined in section 2(2)), or
  - (b) the passenger is doing anything specified in section 2(2)(b) to (d) in relation to the aircraft before or after a flight of the aircraft.
- (4) In this section, “reward”, in relation to the carriage of a passenger, includes any form of consideration received or to be received wholly or partly in connection with the carriage, irrespective of the person by whom or to whom the consideration has been or is to be given.

### **4 Passengers under the age of 16**

A passenger is a non-chargeable passenger in relation to a flight if—

- (a) the passenger is a child who—
  - (i) has not reached the age of 2 before the departure date of the flight, and
  - (ii) is not allocated a separate seat before first boarding the aircraft, or

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- (b) the passenger is a child who—
  - (i) has not reached the age of 16 before the departure date of the flight,
  - (ii) is issued with a ticket for the flight and for every other flight (if any) that is covered by the same agreement for carriage, and
  - (iii) will, according to the agreement for carriage, have standard class travel on every flight covered by the agreement for carriage.

## **5 Passengers carried on connected flights**

If a passenger is carried on two or more connected flights, the passenger is a non-chargeable passenger in relation to the second connected flight and each subsequent connected flight.

## **6 NATO passengers**

- (1) A passenger is a non-chargeable passenger in relation to a flight if—
  - (a) the passenger is a NATO passenger who is carried on the flight in that capacity,
  - (b) one of the following applies—
    - (i) the aircraft operator is a NATO visiting force or NATO IMHQ,
    - (ii) the passenger is carried on a charter flight, where the aircraft and its crew have been chartered by a NATO visiting force or NATO IMHQ, or
    - (iii) the passenger is carried on any other flight under an agreement for carriage, and
  - (c) if paragraph (b)(ii) or (iii) applies, the charter agreement or agreement for carriage is accompanied by a declaration that complies with subsection (2).
- (2) The declaration must—
  - (a) identify the flight that will carry passengers for whom the exemption under this section is claimed,
  - (b) in the case of the situation referred to in subsection (1)(b)(iii), identify each passenger for whom the exemption is claimed,
  - (c) certify that the passengers for whom the exemption is claimed are NATO passengers,
  - (d) certify that the carriage of the NATO passengers on the flight is for official purposes, and
  - (e) be signed by an authorised officer of the NATO visiting force or NATO IMHQ.
- (3) In this section—
  - “authorised officer”, in relation to a NATO visiting force or NATO IMHQ, means a person whose status as an authorised contracting officer has been notified by the NATO visiting force or NATO IMHQ to Revenue Scotland and, in the situation referred to in subsection (1)(b)(iii), to the aircraft operator,
  - “NATO IMHQ” means a headquarters or organisation designated for the purposes of any provision of the International Headquarters and Defence Organisations Act 1964,
  - “NATO passenger” means a passenger on a flight—
    - (a) who is—
      - (i) for the purposes of any provision of the Visiting Forces Act 1952, a serving member of a NATO visiting force,

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- (ii) a person recognised by the Secretary of State as a member of a civilian component of a NATO visiting force, or
- (iii) a military or civilian member of a NATO IMHQ, and
- (b) who is not—
  - (i) a British citizen, a British overseas citizen, a British national (overseas), or a British overseas territories citizen (with those terms having the same meanings as in the British Nationality Act 1981),
  - (ii) a person who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 – see section 33(2A) of that Act),

“NATO visiting force” means a visiting force of a country, other than the United Kingdom, which is a party to the North Atlantic Treaty,

“North Atlantic Treaty” means the North Atlantic Treaty signed at Washington on 4 April 1949.

## 7 Changes of circumstance beyond passengers' control

- (1) A passenger is a non-chargeable passenger in relation to a flight if, but for a change of circumstances beyond the passenger's control, the passenger would be a non-chargeable passenger in relation to the flight under any of sections 3 to 6 or regulations made under section 15.
- (2) Subsection (1) applies only if—
  - (a) the passenger has a ticket for the flight, and
  - (b) the change of circumstances arises after the ticket is issued or last amended.
- (3) A passenger is a non-chargeable passenger in relation to a flight (“flight F”) if—
  - (a) the passenger is carried on flight F—
    - (i) because of a change of circumstances beyond the passenger's control, but
    - (ii) in the course of travel that is covered by an agreement for carriage,
  - (b) the passenger has a ticket for every flight that is covered by the same agreement for carriage, and
  - (c) the departure airport, date and time, and the arrival airport, for flight F are not shown on the ticket when the ticket is issued or last amended.
- (4) A change of circumstances is to be regarded as beyond a passenger's control if it is not attributable to an act or omission of the passenger.

### *Chargeable aircraft and exemptions*

## 8 Meaning of chargeable aircraft

- (1) An aircraft is a chargeable aircraft in relation to a flight if it has the characteristics specified in subsection (2), unless the aircraft is a non-chargeable aircraft under section 9 or 10 or regulations made under section 15.
- (2) The characteristics are that the aircraft—
  - (a) is a fixed-wing aircraft designed or adapted to carry persons in addition to the flight crew,

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- (b) has a maximum take-off weight of 5.7 tonnes or more, and
- (c) is fuelled by kerosene.

## **9 Aircraft used under public service obligation**

- (1) An aircraft is a non-chargeable aircraft in relation to a flight if the flight is operated under a public service obligation.
- (2) In this section, “public service obligation” means an obligation imposed by a Member State of the European Union in accordance with Article 16 of Regulation [\(EC\) No 1008/2008](#) of the European Parliament and of the Council of 24 September 2008 (common rules for the operation of air services).

## **10 Aircraft used for military, emergency, training or research flights**

- (1) An aircraft is a non-chargeable aircraft in relation to a flight if the flight is one described—
  - (a) under the heading “Aviation” in the Annex to the Directive identified in subsection (3), and
  - (b) in a paragraph under that heading that is specified in subsection (2).
- (2) The relevant paragraphs (which list aviation activities excluded from the greenhouse gas emission allowance trading scheme of the European Union) are—
  - (a) paragraph (b) (which covers military flights performed by military aircraft and customs and police flights),
  - (b) paragraph (c) (which covers flights related to search and rescue, fire-fighting flights, humanitarian flights and emergency medical service flights),
  - (c) paragraph (f) (which covers training flights performed exclusively for the purpose of obtaining a licence, or a rating in the case of cockpit flight crew where this is substantiated by an appropriate remark in the flight plan provided that the flight does not serve for the transport of passengers or cargo, or both, or for the positioning or ferrying of the aircraft),
  - (d) paragraph (g) (which covers flights performed exclusively for the purpose of scientific research or for the purpose of checking, testing or certifying aircraft or equipment whether airborne or ground-based).
- (3) The Directive referred to in subsection (1) is Directive [2003/87/EC](#) of the European Parliament and of the Council of 13 October 2003 as interpreted in accordance with paragraphs 2.2 to 2.5 of the Annex to Commission Decision [2009/450/EC](#) of 8 June 2009.

### *Other key concepts*

## **11 Meaning of flight**

- (1) In this Act, “flight”, in relation to a person, means the person's carriage on an aircraft.
- (2) For the purpose of this Act, a person's flight is to be regarded as—
  - (a) beginning when the person first boards the aircraft, and
  - (b) ending when the person finally disembarks from the aircraft.

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## **12 Meaning of carriage and agreement for carriage**

(1) In this Act—

“agreement for carriage”, in relation to a person, means any agreement or arrangement under which the person is carried, irrespective of—

- (a) whether the carriage is by a single carrier or successive carriers,
- (b) whether the agreement or arrangement was made by or on behalf of the person,
- (c) whether the person is carried for reward (as defined in section 3(4)),
- (d) whether the agreement or arrangement is in writing, and
- (e) whether a ticket is issued for any flights covered by the agreement or arrangement,

“carriage” means carriage wholly or partly by air, and “carried” has a corresponding meaning.

(2) For the purpose of section 4(b)(ii) (chargeable passenger exemption for children under 16), section 7(3)(b) (changes of circumstance beyond passengers' control) and schedule 1 (connected flight rules), two or more flights are to be regarded as being covered by the same agreement for carriage only if—

- (a) a ticket is issued for all the flights (whether a single ticket for all the flights or separate tickets), and
- (b) the departure time, departure airport and arrival airport for each flight are specified—
  - (i) if a single ticket is issued, on the ticket, or
  - (ii) if separate tickets are issued, on a written summary that forms part of the agreement for carriage.

## **13 Meaning of maximum passenger capacity and maximum take-off weight**

(1) In this Act—

“maximum passenger capacity”, in relation to an aircraft, means the allowable maximum number of persons who may be seated on the aircraft, excluding members of the flight crew and cabin attendants,

“maximum take-off weight”, in relation to an aircraft, means the allowable maximum weight of the aircraft and its contents when taking off (assuming the most favourable circumstances for take-off).

(2) The allowable maximums referred to in subsection (1) must ordinarily be determined by reference to the certificate of airworthiness that is in force for the aircraft.

(3) However, if an allowable maximum referred to in subsection (1) is stated in a notice published by Revenue Scotland in relation to a class or description of aircraft, or in a notice issued by Revenue Scotland to an aircraft operator in relation to a particular aircraft, the allowable maximum is as stated in the notice.

## **14 Meaning of standard class travel**

(1) For the purposes of this Act, carriage on a flight is to be regarded as standard class travel if—

- (a) the seats for passengers whose agreement for carriage provides for that class of travel have a pitch no greater than 1.016 metres, and

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- (b) the class of travel is the only, or the most basic, class of travel available on the flight.
- (2) The pitch of a seat (“seat A”)—
  - (a) is the distance between a fixed point on seat A and the same point on—
    - (i) the seat immediately in front of seat A, or
    - (ii) if there is no seat immediately in front of seat A, the seat immediately behind seat A, and
  - (b) if there is no seat immediately in front of or behind seat A, is to be determined with regard to any guidance issued by Revenue Scotland for that purpose.
- (3) Whether a class of travel is the only, or the most basic, class of travel available on a flight is to be determined with regard to any guidance issued by Revenue Scotland for that purpose.

#### *Modification of key concepts*

### **15 Key concepts may be modified by regulations**

- (1) The Scottish Ministers may by regulations make other provision concerning—
  - (a) who is a chargeable passenger,
  - (b) who is a non-chargeable passenger,
  - (c) which aircraft are chargeable aircraft,
  - (d) which aircraft are non-chargeable aircraft.
- (2) Regulations under this section—
  - (a) may add, change or remove—
    - (i) any exemption from being a chargeable passenger or chargeable aircraft, and
    - (ii) any provision that defines or otherwise explains a term or expression, and
  - (b) may modify this Act.

PROSPECTIVE

## **PART 3**

### TAX RATES

### **16 Tax structure**

- (1) The carriage of a chargeable passenger on a chargeable aircraft incurs tax at a rate that is determined by the passenger's final destination and class of travel.
- (2) The passenger's final destination determines which tax band applies (see section 17).
- (3) The passenger's class of travel determines which rate of tax applies within the applicable band, as follows—
  - (a) the special rate applies if the aircraft is a special category aircraft,

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- (b) if the aircraft is not a special category aircraft—
  - (i) the standard rate applies if the passenger's agreement for carriage provides for standard class travel on every flight covered by the agreement,
  - (ii) the premium rate applies in any other case.
- (4) The amount of each tax rate is the amount set for that rate by the Scottish Ministers by regulations under section 17.
- (5) The final destination of a chargeable passenger carried on a flight—
  - (a) is the place—
    - (i) where the flight ends, or
    - (ii) if the flight and one or more subsequent flights are connected flights, where the last connected flight ends, and
  - (b) is to be determined by reference to the passenger's ticket (if any) as it stands immediately before the flight takes off.
- (6) An aircraft is to be regarded as a special category aircraft if it has—
  - (a) a maximum take-off weight of 20 tonnes or more, and
  - (b) a maximum passenger capacity of no more than 18 passengers.

## **17 Tax bands and tax rate amounts to be set by regulations**

- (1) The Scottish Ministers must by regulations—
  - (a) define one or more tax bands by reference to the final destination (as defined in section 16(5)) of a chargeable passenger carried on a chargeable aircraft, and
  - (b) for each band defined in accordance with paragraph (a), set the amount, or the method for calculating the amount, of each tax rate described in section 16(3).
- (2) In preparing a draft of any regulations under subsection (1), the Scottish Ministers must have regard to the projected economic, environmental and social impacts of the proposed tax bands and tax rate amounts.
- (3) The Scottish Ministers must keep under review the economic, environmental and social impacts of the tax bands defined and tax rate amounts set by regulations under subsection (1).
- (4) The Scottish Ministers may by regulations make other provision concerning the structure of the tax.
- (5) Regulations under this section—
  - (a) may add, change or remove the description of any tax band, tax rate or any provision that defines or otherwise explains a term or expression, and
  - (b) may modify this Act.



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## 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.
- (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.

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- (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.

## **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—

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- (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—
- (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).

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## **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—
  - (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.

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- (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,
  - (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—

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- (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.

### **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),

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- (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,
    - (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,

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- (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.

#### *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—



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- (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
  - (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).

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### *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.
- (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.

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### *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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## PART 5

### FINAL PROVISIONS

#### 42 Regulations

- (1) Regulations under the following provisions are subject to the affirmative procedure—
  - (a) section 15 (modifying key concepts),
  - (b) section 17 (setting tax bands and tax rate amounts or making other provision concerning the structure of the tax),
  - (c) section 41 (modifying administrative provisions), if the regulations add to, replace or omit any part of the text of an Act,
  - (d) section 43 (dealing with ancillary matters), if the regulations add to, replace or omit any part of the text of an Act.
- (2) Regulations under the following provisions are subject to the negative procedure—
  - (a) section 41 (modifying administrative provisions), unless the regulations add to, replace or omit any part of the text of an Act,
  - (b) section 43 (dealing with ancillary matters), unless the regulations add to, replace or omit any part of the text of an Act,
  - (c) section 44(2) (updating references in this Act to other enactments).
- (3) Any power conferred by this Act on the Scottish Ministers to make regulations includes the power to make—
  - (a) different provision for different cases or descriptions of case or for different purposes, and
  - (b) such incidental, supplementary, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient.
- (4) Subsection (3) does not apply to regulations made under section 48 (commencement).

#### 43 Ancillary provision

- (1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.
- (2) Regulations under this section may modify any enactment (including this Act).

#### 44 Interpretation

- (1) In this Act—
  - “administrative tax representative” means a tax representative that is appointed as described in section 29(2),
  - “ADT register” means the register kept under section 20,
  - “airport” means an aerodrome as defined in section 105(1) of the Civil Aviation Act 1982,
  - “certificate of airworthiness” has the same meaning as in the Air Navigation Order 2016 (S.I. 2016/765),

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“connected flights” means flights that are connected in terms of the rules that are set out in schedule 1,

“EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2 May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17 March 1993, as modified or supplemented from time to time,

“EEA State” means—

- (a) a member State of the EU, or
- (b) any other State that is a party to the EEA agreement,

“exemption” means any provision for—

- (a) a passenger carried on an aircraft to be a non-chargeable passenger (see sections 3 to 7 and 15), or
- (b) an aircraft to be a non-chargeable aircraft (see sections 9, 10 and 15),

“fiscal tax representative” means a tax representative that is not an administrative tax representative,

“flight crew” includes the pilot, flight navigator, flight engineer and flight radiotelephony operator for a flight, but does not include a cabin attendant,

“kerosene” has the meaning given in section 1(8) of the Hydrocarbon Oil Duties Act 1979,

“non-chargeable aircraft” means an aircraft on which the aircraft operator may carry passengers without incurring tax,

“non-chargeable passenger” means a passenger whom the aircraft operator may carry on an aircraft without incurring tax,

“occasional return” means a tax return made under section 25,

“operator”, in relation to an aircraft, means the person having the management of the aircraft,

“passenger” means a person who—

- (a) is carried on a flight, and
- (b) is not working during the flight (as defined in section 2(2)),

“quarterly return” means a tax return made under section 24,

“tax” means air departure tax,

“tax representative” means a tax representative appointed under section 28 (which may be a fiscal tax representative or an administrative tax representative),

“ticket” means a document which—

- (a) is issued to a passenger for one or more flights, and
- (b) specifies the departure airport, date and time, and the arrival airport, for each flight.

(2) If an enactment referred to in a definition in this section, or in any other provision of this Act, is repealed and re-enacted (with or without modification)—

- (a) the reference to the enactment must be construed as a reference to the re-enacted enactment unless the Scottish Ministers by regulations provide otherwise, and
- (b) the Scottish Ministers may by regulations amend the definition so that it refers to the re-enacted enactment.

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PROSPECTIVE

**45 Minor and consequential modifications**

Schedule 2 makes minor and consequential modifications to the Revenue Scotland and Tax Powers Act 2014.

**46 Crown application**

Her Majesty in Her private capacity is not a taxable person.

**47 Index of defined expressions**

Schedule 3 contains an index of expressions defined or otherwise explained in this Act.

**48 Commencement**

- (1) This section and sections 42, 43, 44, 46, 47 and 49 come into force on the day after Royal Assent.
- (2) The rest of this Act comes into force on such day as the Scottish Ministers may by regulations appoint.
- (3) Regulations under this section may—
  - (a) include transitional, transitory or saving provision,
  - (b) make different provision for different purposes.

**49 Short title**

The short title of this Act is the Air Departure Tax (Scotland) Act 2017.

**Status:**

This version of this Act contains provisions that are prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Air Departure Tax (Scotland) Act 2017.