

# **AIR DEPARTURE TAX (SCOTLAND) ACT 2017**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 4 – Payment, Collection and Management of Tax**

43. **Part 4** sets out a range of provisions for collecting and managing ADT, and is designed to operate under the tax collection regime set up by the RSTPA 2014, which provides the general collection and management framework for devolved taxes in Scotland.

#### **Sections 18 and 19 (taxable activities and taxable persons)**

44. These sections define taxable activity and taxable person. Their combined effect is that every aircraft operator that carries a chargeable passenger on a chargeable aircraft on a flight that begins at an airport in Scotland is a taxable person. Section 19(2) clarifies that the aircraft operator, and not the passenger, is the taxpayer.

#### **Sections 20 to 22 (registration)**

45. These sections relate to registration. Section 20 requires Revenue Scotland to keep a register (the “ADT register”) for the purpose of collecting and managing the tax. Section 20(4) gives Revenue Scotland a discretionary power to publish any, some or all of the information in the ADT register. However, this will be subject to existing restrictions on the publication of certain information (for example, under the Data Protection Act 1998).
46. **Sections 21 and 22** impose obligations on taxable persons to register and deregister for the tax. Whether a taxable person is required to register (or deregister) for the tax is determined by whether the person is required (or ceases to be required) to make quarterly returns. The registration and deregistration requirements are also triggered if the taxable person forms an intention to do something, or to stop doing something, that will alter whether or not the person is required to make quarterly returns.

#### **Sections 23 to 27 (tax returns)**

47. These sections relate to tax returns. Every taxable person must make tax returns – either quarterly under section 24 or on an occasional basis under section 25. Quarterly returns are due no later than 30 days after the end of each quarter (1 January to 31 March; 1 April to 30 June; 1 July to 30 September; 1 October to 31 December). Occasional returns for any taxable activity are due no later than 30 days after the date of that activity.
48. The eligibility of a taxable person to make occasional returns is re-assessed each time the taxable person carries out a taxable activity; eligibility is based on the intended level of taxable activity during the next 12 months and the amount of tax expected to be incurred during that period. If Revenue Scotland is not satisfied that a taxable person is eligible to make occasional returns, Revenue Scotland may require the person to make quarterly returns instead.

49. Before switching from quarterly returns to occasional returns, or vice versa, a taxable person must notify Revenue Scotland.
50. [Section 23\(2\)](#) requires tax to be paid at the same time as a return is made under section 24 or 25 or amended under section 83 of the RSTPA 2014.
51. [Section 26](#) concerns the form and content of tax returns. Section 26(1) requires tax returns to include a declaration about the accuracy and completeness of the return, with the nature of the declaration determined by whether the return is made by the taxable person personally or by an agent (who may or may not be a tax representative) acting on the taxable person's behalf. This provides equivalency with the legislation for LBTT and SLfT (see section 36(2)(a) of the LBTT(S)A 2013 and regulations 11(4)-(5) of [The Scottish Landfill Tax \(Administration\) Regulations 2015, S.S.I. 2015/3](#) as amended).
52. [Section 26\(2\)](#) requires returns to otherwise be made in the form that is specified by Revenue Scotland; this is consistent with the approach to other devolved taxes (see section 25A of the LT(S)A 2014 and section 35 of the LBTT(S)A 2013, as inserted by the RSTPA 2014).
53. [Section 27](#) allows for taxable persons to agree with Revenue Scotland a special accounting scheme. This would enable the taxable person to make tax returns based on information about chargeable passengers that is calculated in accordance with the special accounting scheme rather than from records of actual passenger numbers. Approval to use a special accounting scheme will only be given if Revenue Scotland considers that it is appropriate having regard to the difficulties that the person has encountered or expects to encounter in obtaining or recording information about passengers and their agreements for carriage.

#### ***Sections 28 to 34 (tax representatives)***

54. These sections require taxable persons not based in an EEA State (as defined in section 44) to appoint an EEA-based tax representative and notify the details of the appointment to Revenue Scotland. Taxable persons based in an EEA State may appoint a tax representative if they wish to do so, but the appointment does not have effect for the purpose of ADT unless the details of the appointment are notified to Revenue Scotland. A tax representative may be any person (whether an individual, a partnership, a body corporate or an unincorporated body) that meets the eligibility requirements set out in section 32.
55. There are two types of tax representative: fiscal and administrative (see section 29). A fiscal tax representative is the more onerous role. The person effectively stands in the shoes of the taxable person, and is liable to Revenue Scotland, jointly and severally with the taxable person, for ADT (see section 30). This joint and several liability continues after the fiscal tax representative's appointment ends, but extends only to liabilities arising from failures to comply that occurred during the period that the fiscal tax representative was appointed (see section 30(3)).
56. An administrative tax representative is a less onerous role and is mainly for keeping and preserving records for ADT, and is not liable for ADT. The record-keeping requirements for ADT will be set out in regulations to be made under section 74 of the RSTPA 2014<sup>1</sup>. A taxable person is authorised to appoint an administrative, rather than a fiscal, tax representative only if the taxable person provides the amount of security (if any) that is required by Revenue Scotland. Directions made by Revenue Scotland under section 35 or 36 may specify the amount of security that is required to validate the appointment of an administrative tax representative. To ensure that the appointment of an administrative tax representative continues to be valid, a taxable person must comply with directions issued under section 35 or 36 after the appointment is made.

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<sup>1</sup> <http://www.legislation.gov.uk/asp/2014/16/section/74>

57. Nothing in the Act prevents a tax representative from making a tax return as an agent for a taxable person; however, neither a fiscal nor an administrative tax representative is authorised to make a declaration, in or relating to a tax return, that section 26 requires to be made by the taxable person.
58. [Section 33](#) clarifies when the appointment of a tax representative begins and ends, to provide certainty about the extent of the tax representative's obligations.
59. [Section 34](#) places a duty on taxable persons and tax representatives to notify Revenue Scotland, and each other, if the appointment is to cease to have effect for any reason.

### ***Sections 35 and 36 (security)***

60. These sections empower Revenue Scotland to issue directions requiring taxable persons (and, in some circumstances, fiscal tax representatives) to provide security for the payment of any tax that may become due. Revenue Scotland has the power to specify what type of security is appropriate, but it is expected that a written guarantee from a financial institution (such as a bank) will normally be acceptable.
61. A direction under section 35 applies to an individual taxable person or fiscal tax representative. A direction under this section may:
- require a taxable person or fiscal tax representative to provide security, or
  - identify the amount of security that a taxable person would be required to provide to validate the appointment of an administrative tax representative (see section 29(2) (b) or (c)).
62. A direction under section 36 applies to taxable persons generally. It may specify the amount of security, or a method for calculating the amount of security, that taxable persons are required to provide to validate the appointment of an administrative tax representative. In respect of any particular taxable person, an individual direction under section 35 prevails over a general direction under section 36.

### ***Sections 37 and 38 (handling agents)***

63. A handling agent for ADT purposes is someone that has an agreement with an aircraft operator to arrange seat allocation, baggage handling or boarding for passengers carried by the aircraft operator. Section 38 enables Revenue Scotland to put a handling agent on notice that it will be jointly and severally liable with the aircraft operator, while the notice is in effect, for ADT incurred by the aircraft operator for carrying passengers handled by the handling agent. The joint liability extends to certain tax-related penalties and interest (section 38(5)).
64. [Section 38\(2\)](#) enables Revenue Scotland to issue a notice to a handling agent only when an aircraft operator has fallen into tax arrears or failed to appoint a tax representative when required to do so. Section 38(3)(a) prevents Revenue Scotland from issuing a notice to a handling agent who is an individual. Section 38(4)(a) ensures that a notice under this section cannot take effect before it has been received by the handling agent. The meaning of "handle" and "handling agent" are set out in section 37.

### ***Section 39 and 40 (communications with, and inaccuracies provided to, Revenue Scotland)***

65. These sections are self-explanatory.

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

66. This section provides for regulations to make other provision relating to the payment, collection and management of the tax (other than to amend the meaning of taxable activity in section 18 or the meaning of taxable person in section 19). Regulations under

*These notes relate to the Air Departure Tax (Scotland) Act  
2017 (asp 2) which received Royal Assent on 25 July 2017*

this section will be subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act, and the negative procedure if they do not (see section 42(1)(c) and (2)(a)).