



# Air Departure Tax (Scotland) Act 2017

## 2017 asp 2

### PART 4

#### PAYMENT, COLLECTION AND MANAGEMENT OF TAX

##### *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),

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- (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—
    - (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),
  - (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,

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- (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,
  - (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.

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- (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.