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## SCHEDULE 2

(introduced by section 45)

### MINOR AND CONSEQUENTIAL MODIFICATIONS TO REVENUE SCOTLAND AND TAX POWERS ACT 2014

- 1 This schedule amends the Revenue Scotland and Tax Powers Act 2014.
- 2 (1) Section 141 (power to inspect business premises) is amended as follows.
- (2) After subsection (3) insert—
- “**(3A)** In this Chapter, “business premises”—
- (a) in relation to a person, means premises (or any part of premises) that a designated officer has reason to believe are (or is) used in connection with the carrying on of a business by or on behalf of the person, but
- (b) in relation to a taxable person under the ADT(S) Act 2017, does not include the premises of any tax representative or handling agent of the person, within the meaning of that Act.
- (3B) Subsection (3A)(b) does not prevent tax representatives or handling agents, or any category of tax representatives or handling agents, from being specified under section 142 as involved third parties for the purposes of that section.”.
- (3) In subsection (4), repeal the definition of “business premises”.
- 3 (1) Section 159 (penalty for failure to make returns) is amended as follows.
- (2) In subsection (1), at the end of the table add—
- |     |                   |  |
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| “3. | Air departure tax | Return under section 24 or 25 of the ADT(S) Act 2017”. |
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- (3) In subsection (6), after “item 2” insert “or 3”.
- 4 In the italic heading before section 164, after “*Scottish landfill tax*” insert “*and air departure tax*”.
- 5 (1) Section 164 (Scottish landfill tax: first penalty for failure to make return) is amended as follows.
- (2) In the section title, after “**Scottish landfill tax**” insert “**and air departure tax**”.
- (3) In subsection (1), after “item 2” insert “or 3”.
- 6 In section 165 (Scottish landfill tax: multiple failures to make return), in the section title, after “**Scottish landfill tax**” insert “**and air departure tax**”.
- 7 In section 166 (Scottish landfill tax: 6 month penalty for failure to make return), in the section title, after “**Scottish landfill tax**” insert “**and air departure tax**”.
- 8 In section 167 (Scottish landfill tax: 12 month penalty for failure to make return), in the section title, after “**Scottish landfill tax**” insert “**and air departure tax**”.
- 9 (1) Section 168 (penalty for failure to pay tax) is amended as follows.
- (2) In subsection (1), for the table substitute—

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	<i>“Taxes to which payment relates</i>	<i>Amount of tax payable</i>	<i>Date after which penalty incurred</i>
1.	Land and buildings transaction tax	Amount payable under section 40 of the LBTT(S) Act 2013.  (See also item 4, below)	The date falling 30 days after the date by which the amount must be paid.
2.	Scottish landfill tax	Amount payable under regulations made under section 25 of the LT(S) Act 2014.  (See also item 4, below)	The date by which the amount must be paid.
3.	Air departure tax	Amount payable under section 23(2) of the ADT(S) Act 2017 as a result of a return under section 24 or 25 of that Act.  (See also item 4, below)	The date by which the amount must be paid.
4.	Land and buildings transaction tax, Scottish landfill tax and air departure tax	(a) Additional amount payable as a result of an adjustment under section 66 of this Act. (b) Additional amount payable as a result of an amendment under section 83 of this Act. (c) Additional amount payable as a result of an amendment under section 87 of this Act.	(a) The date by which the amount must be paid. (b) The date by which the amount must be paid. (c) The date falling 30 days after the date by which the amount must be paid. (d) The date by which the amount must be paid. (e) The date falling 30 days after the date by which the amount must be paid.

<i>“Taxes to which payment relates</i>	<i>Amount of tax payable</i>	<i>Date after which penalty incurred</i>
	(d) Additional amount payable as a result of an amendment under section 93 of this Act.	(f) The date by which the amount must be paid.”.
	(e) Amount assessed under section 95 of this Act in the absence of a return.	
	(f) Amount payable as a result of an assessment under section 98 of this Act.	

- (3) In subsection (4), for “payment falling within item 1 of the table” substitute “payment relating to land and buildings transaction tax”.
- (4) In subsection (5), for “payment falling within item 2 of the table” substitute “payment relating to Scottish landfill tax or air departure tax
- 10 In section 169 (land and buildings transaction tax: amounts of penalties for failure to pay tax), in subsection (1), for “payment of tax falling within item 1 of the table in section 168” substitute “payment referred to in section 168(1) and relating to land and buildings transaction tax”.
- 11 In the italic heading before section 170, after “*Scottish landfill tax*” add “*and air departure tax*”.
- 12 (1) Section 170 (Scottish landfill tax: first penalty for failure to pay tax) is amended as follows.
- (2) In the section title, after “**Scottish landfill tax**” insert “**and air departure tax**”.
- (3) In subsection (1), for “payment of tax falling within item 2 of the table in section 168” substitute “payment referred to in section 168(1) and relating to Scottish landfill tax or air departure tax”.
- 13 (1) Section 171 (Scottish landfill tax: penalties for multiple failures to pay tax) is amended as follows.
- (2) In the section title, after “**Scottish landfill tax**” insert “**and air departure tax**”.
- (3) In subsection (1)(b), for “payment (“payment B”) falling within the same item in the table in section 168 as payment A” substitute “payment referred to in section 168(1) (“payment B”) that relates to the same type of tax as payment A”.

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- 14 In section 172 (Scottish landfill tax: 6 month penalty for failure to pay tax), in the section title, after “**Scottish landfill tax**” insert “**and air departure tax**”.
- 15 In section 173 (Scottish landfill tax: 12 month penalty for failure to pay tax), in the section title, after “**Scottish landfill tax**” insert “**and air departure tax**”.
- 16 (1) Section 182 (penalty for inaccuracy in taxpayer document) is amended as follows.  
 (2) In subsection (6), at the end of the table add—

“3.	Air departure tax	(a) Return under section 24 or 25 of the ADT(S) Act 2017. (b) Application to use special accounting scheme under section 27 of the ADT(S) Act 2017. (c) Amended return under section 83 of this Act. (d) Claim under section 106, 107 or 108 of this Act.”.
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- (3) In subsection (7), for “item 1 or 2” substitute “any item”.
- 17 In the italic heading before section 209, for “*register for tax etc.*” substitute “*comply with relevant requirement*”.
- 18 (1) Section 209 (penalty for failure to register for tax etc.) is amended as follows.  
 (2) In the section title, for “**register for tax etc.**” substitute “**comply with relevant requirement**”.  
 (3) In subsection (1), for paragraph (a) substitute—
- “(a) P fails to comply with a requirement imposed by or under any of the following provisions (“a relevant requirement”)
- (i) section 22 or 23 of the LT(S) Act 2014 (registration and information required to keep register up to date),  
 (ii) section 21(2) of the ADT(S) Act 2017 (registration),  
 (iii) section 28(2)(a) of the ADT(S) Act 2017 (tax representatives), or  
 (iv) section 35(4) of the ADT(S) Act 2017 (security for payment of air departure tax), and”.
- 19 (1) Section 210 (amount of penalty for failure to register for tax etc.) is amended as follows.  
 (2) In the section title, for “**failure to register for tax etc.**” substitute “**failure to comply with relevant requirement**”.  
 (3) For subsection (4) substitute—

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- “(4) The potential lost revenue is the amount of tax (if any) for which P is liable for the following period—
- (a) in the case of the relevant requirement specified in section 209(1)(a)(i) or (ii) (relating to registration), the period—
    - (i) beginning on the date with effect from which P is required in accordance with that requirement to be registered, and
    - (ii) ending on the date on which Revenue Scotland received notification of, or otherwise became fully aware of, P’s liability to be registered,
  - (b) in the case of the relevant requirement specified in section 209(1)(a)(iii) (relating to tax representatives for air departure tax), the period—
    - (i) beginning on the date with effect from which P is required in accordance with that requirement to appoint a tax representative, and
    - (ii) ending on the date on which Revenue Scotland received notification, or otherwise became fully aware, that P had appointed a tax representative, and
  - (c) in the case of the relevant requirement specified in section 209(1)(a)(iv) (security for air departure tax), the period—
    - (i) beginning on the date with effect from which P is required in accordance with that requirement to provide security, and
    - (ii) ending on the date on which Revenue Scotland received the security.”.

20 In the italic heading before section 211, for “*Chapter 5*” substitute “*section 209*”.

21 After section 215 (assessment of penalties under section 209), insert—

*“Tax-related penalty: air departure tax*

#### **215A Tax-related penalty**

- (1) This section applies if—
  - (a) a person becomes liable to a penalty under section 209(1)(a)(iii) or (iv) (tax representatives or security for the payment of air departure tax),
  - (b) the failure continues after a penalty is imposed under that section,
  - (c) a designated officer has reason to believe that, as a result of the failure, the amount of tax that the person has paid, or is likely to pay, is significantly less than it would otherwise have been,
  - (d) before the end of the period of 12 months beginning with the date on which the person became liable to the penalty under section 209(1)(a)(iii) or (iv), a designated officer makes an application to the Upper Tribunal for an additional penalty to be imposed on the person, and
  - (e) the Upper Tribunal decides that it is appropriate for an additional penalty to be imposed.
- (2) The person is liable to a penalty of an amount decided by the Upper Tribunal.

- (3) In deciding the amount of the penalty, the Upper Tribunal must have regard to the amount of tax which has not been, or is not likely to be, paid by the person.
- (4) If a person becomes liable to a penalty under this section, Revenue Scotland must notify the person.
- (5) Any penalty under this section is in addition to the penalty or penalties under section 209.

### **215B Enforcement of tax-related penalty**

- (1) A penalty under section 215A must be paid before the end of the period of 30 days beginning with the date on which the notification of the penalty is issued.
- (2) A penalty under section 215A is to be treated for enforcement purposes as an assessment to tax.

*Penalties for failures to notify Revenue Scotland: air departure tax*

### **215C Penalties for failures to notify Revenue Scotland**

- (1) This section applies to a person who fails to comply with any of the following provisions of the ADT(S) Act 2017—
  - (a) section 22(2) (requirement to deregister on ceasing to be a taxable person under that Act),
  - (b) section 28(2)(b) (requirement to notify Revenue Scotland of details of tax representative appointment),
  - (c) section 34(2) (requirement to notify Revenue Scotland if appointment of tax representative is to cease to have effect),
  - (d) section 40(2) (requirement to notify Revenue Scotland of inaccuracies in information provided to Revenue Scotland).
- (2) The person is liable to a penalty of £300.

### **215D Failure to comply with time limit**

A failure by a person to do anything required to be done within a limited period of time does not give rise to liability to a penalty under section 215C if the person did it within such further time (if any) that a designated officer may have allowed.

*Penalties under section 215C: general*

### **215E Reasonable excuse for failure to comply**

- (1) Liability to a penalty under section 215C does not arise if the person satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for the failure to comply.
- (2) For the purposes of this section—

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- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control,
- (b) if the person relies on another person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure to comply, and
- (c) if the person had a reasonable excuse for the failure to comply but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

### **215F Assessment of penalties under section 215C**

- (1) If a person becomes liable to a penalty under section 215C, Revenue Scotland must—
  - (a) assess the penalty, and
  - (b) notify the person.
- (2) An assessment of a penalty under section 215C must be made no later than 12 months after the date on which the person became liable to the penalty.

### **215G Enforcement of penalties under sections 215C**

- (1) A penalty under section 215C must be paid—
  - (a) before the end of the period of 30 days beginning with the date on which the notification under section 215F was issued,
  - (b) if a notice of review against the penalty is given, before the end of the period of 30 days beginning with the date on which the review is concluded,
  - (c) if, following review, mediation is entered into, before the end of the period of 30 days beginning with the date on which either Revenue Scotland or the person who gave the notice of review gave notice of withdrawal from mediation, or
  - (d) if a notice of an appeal against the penalty is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.
- (2) A penalty under section 215C is to be treated for enforcement purposes as an assessment to tax.”.

22 Before section 216, insert—

*“Power to change penalty provisions in Chapter 5”.*

23 In section 216 (power to change penalty provisions in Chapter 5), at the end of subsection (1) insert “(other than penalties under section 215A)”.

24 In section 223 (certification of matters by Revenue Scotland), in subsection (1), after paragraph (c) insert—

- “(d) that an aircraft is or is not, in relation to a specified flight, a chargeable aircraft for the purposes of the ADT(S) Act 2017,
- (e) that a passenger on an aircraft is or is not, in relation to a specified flight, a chargeable passenger for the purposes of the ADT(S) Act 2017,”.

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- 25 (1) Section 233 (appealable decisions) is amended as follows.
- (2) In subsection (1), after paragraph (i) insert—
- “(j) subject to subsection (3A), a decision which affects—
- (i) whether a person is required to provide security for the payment of air departure tax,
- (ii) the amount of security a person is required to provide for the payment of air departure tax,
- (iii) any other matter relating to the provision of security for the payment of air departure tax.”.
- (3) After subsection (3), insert—
- “(3A) Subsection (1)(j)—
- (a) does not entitle a person to appeal a decision of Revenue Scotland to issue a direction under section 36 of the ADT(S) Act 2017 (relating to the security required to validate the appointment of an administrative tax representative), or the contents of such a direction, but
- (b) does entitle a person to appeal any decision of Revenue Scotland about how a direction is applied in a particular case.”.
- 26 In section 252 (general interpretation), before the definition of “the LBTT(S) Act 2013” insert—
- ““the ADT(S) Act 2017” means the Air Departure Tax (Scotland) Act 2017,”.
- 27 (1) Schedule 5 (index of defined expressions) is amended as follows.
- (2) Before the item relating to the LBTTS(S) Act 2013, insert—
- |                  |               |
|------------------|---------------|
| “ADT(S) Act 2017 | section 252”. |
|------------------|---------------|
- (3) In the entry relating to the expression “business premises”, in the second column, for “section 141(4)” substitute “section 141(3A)”.