

AIR DEPARTURE TAX (SCOTLAND) ACT 2017

EXPLANATORY NOTES

THE ACT

Part 3 – Tax Rates

33. **Part 3** provides for the structure of the tax. The rate of ADT incurred for the carriage of a chargeable passenger on a chargeable aircraft will depend on three variables:
- the final destination of the flight, which will determine which tax band applies (tax bands are to be defined by the Scottish Ministers by regulations under section 17);
 - whether the aircraft is a special category aircraft, which will determine whether the “special rate” applies (see section 16(3)(a)). A special category aircraft is essentially a large aircraft that is configured to carry only a small number of passengers;
 - whether the passenger is travelling in standard class travel for all flights covered by his or her agreement for carriage, which will determine whether the “standard” or “premium” rate applies (see section 16(3)(b)).
34. **Section 17(1)** requires Scottish Ministers to make regulations for two specific and limited purposes—
- to define tax bands by reference to a passenger’s final destination (as defined in section 16(5)); and
 - to set the amount of the standard, premium and special tax rates for each band (as those rates are defined in section 16(3)).
35. Setting tax bands and tax rate amounts in subordinate legislation is consistent with the approach so far adopted in relation to other devolved taxes in Scotland – see section 24 and paragraph 3 of schedule 19 of the Land and Buildings Transaction Tax (Scotland) Act 2013¹ (“LBTT(S)A 2013”) and section 13 of the Landfill Tax (Scotland) Act 2014² (“LT(S)A 2014”).
36. The exercise of the section 17(1) power is mandatory because section 16 of the Act is drafted in such a way that no ADT can be collected unless tax bands and tax rate amounts are prescribed.
37. Regulations defining tax bands and setting tax rate amounts will be subject to the affirmative procedure (see section 42(1)).
38. **Section 17(2)** places a duty on Scottish Ministers, when preparing draft regulations under section 17(1), to have regard to the economic, environmental and social impacts of the proposed tax bands and tax rate amounts.

¹ <http://www.legislation.gov.uk/asp/2013/11/contents>

² <http://www.legislation.gov.uk/asp/2014/2/section/13>

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

39. [Section 17\(3\)](#) places a duty on Scottish Ministers to keep under review the economic, environmental and social impacts of tax bands and tax rate amounts provided for in regulations made under section 17(1).
40. In contrast to section 17(1), section 17(4) provides a discretionary power which enables Scottish Ministers to make other adjustments to the structure of the tax. Provision which could be made under section 17(4) but not under 17(1) might include, for example—
- amending section 16(3) to add or remove a tax rate category – e.g. by adding an additional tax rate for passengers travelling in premium economy, or to replace the standard and premium rates with a single flat rate (the section 17(1) power would be used to set the new tax rate amount);
 - amending the scope of a tax rate category – e.g. by adjusting the definition of a term used in a tax rate description, such as “special category aircraft” or “standard class travel”;
 - changing the meaning of other terms used in section 16 of the Act – e.g. the definition of “final destination” in section 16(5) or the connected flight rules in schedule 1;
 - amending sections 16 and 17(1) to alter the factor by reference to which tax bands are defined – e.g. if it were considered appropriate to set tax bands by reference to the size of aircraft on which a passenger is carried rather than by the passenger’s final destination.
41. The scope of the power under section 17(4) is not unlimited. Regulations must concern the structure of the tax and cannot be used to alter the nature of the tax. The nature of the tax – i.e. a tax on the carriage of passengers by air from airports in Scotland – is protected by sections 1 and 18 of this Act and section 80L of the Scotland Act 1998.
42. Regulations under section 17(4) will be subject to the affirmative procedure (see section 42(1)).