

AIR DEPARTURE TAX (SCOTLAND) ACT 2017

EXPLANATORY NOTES

THE ACT

Overview

6. The Act comprises 49 sections and three schedules. The sections are arranged in five Parts, as follows:
 - Part 1 provides for a tax to be charged on the carriage of passengers on flights that begin in Scotland, payable by the aircraft operator;
 - Part 2 sets out the key concepts underlying the tax, including identifying the passengers and aircraft in respect of which the tax will be charged;
 - Part 3 sets out the structure of the tax, and provides for tax bands and tax rate amounts to be set by regulations;
 - Part 4 provides for administrative matters relating to the payment, collection and management of the tax, including registration, tax returns, a power to obtain security for payment of the tax and a requirement for aircraft operators based outside the European Economic Area (EEA) to appoint EEA-based tax representatives;
 - Part 5 contains final provisions, including an index of defined expressions, Crown application, subordinate legislation, ancillary and commencement powers.
7. The Act makes a number of consequential and technical amendments to the RSTPA 2014. These are set out in schedule 2.
8. The regime in this Act for charging ADT replaces the regime for APD that currently applies under Chapter IV of Part I and schedules 5A and 6 of the Finance Act 1994 (“FA 1994”) and various instruments of subordinate legislation.
9. The following summarises the effect of this Act on aircraft operators who operate flights from airports in Scotland:

Liability for tax

- aircraft operators that are currently liable for APD will continue to be subject to a tax on the carriage of chargeable passengers on a chargeable aircraft – ADT for flights that begin in Scotland and APD for flights that begin elsewhere in the UK;
- the aircraft operator will be the taxpayer for the purposes of the RSTPA 2014, but nothing in the Act prevents aircraft operators from passing the cost of the tax onto passengers (or requires them to do so);
- aircraft operators that are currently exempt from APD because they are part of the Crown may become subject to ADT: this is because this Act takes a different approach to Crown application (see the explanation of section 46);

Exemptions

- aircraft operators that are currently exempt from APD in relation to the carriage of passengers on round-trip flights lasting less than one hour (under section 31(4A) of the FA 1994) will be liable for ADT for carrying these passengers, as there is no equivalent exemption in the Act;
- the Act as introduced does not include an equivalent of section 31(4B) to (4D) of the FA 1994, which, together with The [Air Passenger Duty \(Designated Region of the United Kingdom\) Order 2001 \(S.I. 2001/808\)](#), creates an exemption from APD for the carriage of passengers from airports in the Highlands and Islands region – the Scottish Government’s view is that such an exemption has to be notified to and assessed by the European Commission under state aid rules before it is implemented, in compliance with European Union law – however, an exemption for passengers on Highlands and Islands flights may still apply if the flight is on a non-chargeable aircraft (see sections 9 and 10);
- the Act includes a regulation-making power under which further passenger and aircraft exemptions may be made, or existing exemptions modified (see section 15);

Tax rates

- the structure of ADT is similar to the structure of APD, in that the amount of tax incurred for the carriage of a chargeable passenger on a chargeable aircraft will depend on the passenger’s final destination and class of travel;
- the Act provides for the Scottish Ministers, by regulations, to define tax bands by reference to a passenger’s final destination and to set tax rate amounts according to the passenger’s class of travel. Detail on tax bands and tax rate amounts will be delivered at a later date in subordinate legislation (see section 17(1));

Collection and management of ADT

- Revenue Scotland will be responsible for the collection and management of ADT, so aircraft operators that carry, or expect to carry, chargeable passengers on chargeable aircraft on flights that begin in Scotland will need to make tax returns to Revenue Scotland;
- aircraft operators are required to register for ADT and make tax returns on a quarterly basis (under section 24), unless they are eligible to make occasional returns (under section 25);
- tax that is due will need to be paid at the same time as a return is made, although tax will be treated as paid if arrangements satisfactory to Revenue Scotland are made for payment of the tax;
- if an aircraft operator that is required to register for ADT is based outside the EEA, it will need to appoint a tax representative for the purposes of ADT. If the operator already has a fiscal representative for the purposes of APD, the Act does not prevent the same person being appointed to both roles but imposes eligibility requirements against which the ADT appointment would need to be assessed;
- failures to comply with obligations relating to ADT will incur penalties under the RSTPA 2014 (see the explanation in respect of schedule 2).