



Air Departure Tax (Scotland) Act 2017

2017 asp 2

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 20th June 2017 and received Royal Assent on 25th July 2017

An Act of the Scottish Parliament to make provision for a tax on the carriage of passengers by air from airports in Scotland.

PROSPECTIVE

PART 1

AIR DEPARTURE TAX

1 Air departure tax

- (1) A tax (to be known as air departure tax)—
- (a) is to be charged for the carriage of passengers on any flight that begins at an airport in Scotland (see section 18),
 - (b) is to apply only in relation to the carriage of chargeable passengers (see section 2) on chargeable aircraft (see section 8), and
 - (c) is to be payable by the aircraft operator (see section 19).
- (2) Revenue Scotland is responsible for the collection and management of the tax.

Status: This version of this Act contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the Air Departure Tax (Scotland) Act 2017. (See end of Document for details)

PROSPECTIVE

PART 2

KEY CONCEPTS

Chargeable passengers and exemptions

2 Meaning of chargeable passenger

- (1) Every person carried on a flight that begins at an airport in Scotland is a chargeable passenger unless—
 - (a) the person is working during the flight, or
 - (b) the person is a non-chargeable passenger in relation to the flight under any of sections 3 to 7 or regulations made under section 15.
- (2) A person is to be regarded as working during a flight only if the person is carried on the flight for the sole purpose of doing any of the following during the flight—
 - (a) acting as a member of the flight crew or as a cabin attendant,
 - (b) ensuring the hygienic preparation and handling of food and drink,
 - (c) carrying out work relating to the safety or security of the aircraft or of passengers or goods carried on the aircraft (which includes escorting a passenger or goods),
 - (d) carrying out repairs or maintenance on the aircraft.

3 Passengers not carried for reward

- (1) A passenger is a non-chargeable passenger in relation to a flight if—
 - (a) the passenger is carried on the flight in one of the circumstances set out in subsection (2), and
 - (b) the passenger is not carried for reward.
- (2) The circumstances are—
 - (a) the aircraft operator is required by an enactment to carry the passenger (for example, where immigration legislation requires the operator to repatriate a person who is refused entry to the United Kingdom),
 - (b) the aircraft operator carries the passenger to facilitate an inspection, by the passenger, of the aircraft or its flight crew (for example, where the person is a Civil Aviation Authority flight operations inspector),
 - (c) the flight lands within the period of 72 hours before the passenger starts working in relation to any aircraft, and the passenger is carried on the flight for the sole purpose of positioning the passenger to undertake the work,
 - (d) the flight departs within the period of 72 hours after the passenger finishes working in relation to any aircraft, and the passenger is carried on the flight for the sole purpose of repositioning the passenger to where the passenger ordinarily operates or is ordinarily stationed.
- (3) A person is to be regarded as working in relation to an aircraft only if—

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- (a) the passenger is working during a flight of the aircraft (as defined in section 2(2)), or
 - (b) the passenger is doing anything specified in section 2(2)(b) to (d) in relation to the aircraft before or after a flight of the aircraft.
- (4) In this section, “reward”, in relation to the carriage of a passenger, includes any form of consideration received or to be received wholly or partly in connection with the carriage, irrespective of the person by whom or to whom the consideration has been or is to be given.

4 Passengers under the age of 16

A passenger is a non-chargeable passenger in relation to a flight if—

- (a) the passenger is a child who—
 - (i) has not reached the age of 2 before the departure date of the flight, and
 - (ii) is not allocated a separate seat before first boarding the aircraft, or
- (b) the passenger is a child who—
 - (i) has not reached the age of 16 before the departure date of the flight,
 - (ii) is issued with a ticket for the flight and for every other flight (if any) that is covered by the same agreement for carriage, and
 - (iii) will, according to the agreement for carriage, have standard class travel on every flight covered by the agreement for carriage.

5 Passengers carried on connected flights

If a passenger is carried on two or more connected flights, the passenger is a non-chargeable passenger in relation to the second connected flight and each subsequent connected flight.

6 NATO passengers

- (1) A passenger is a non-chargeable passenger in relation to a flight if—
- (a) the passenger is a NATO passenger who is carried on the flight in that capacity,
 - (b) one of the following applies—
 - (i) the aircraft operator is a NATO visiting force or NATO IMHQ,
 - (ii) the passenger is carried on a charter flight, where the aircraft and its crew have been chartered by a NATO visiting force or NATO IMHQ, or
 - (iii) the passenger is carried on any other flight under an agreement for carriage, and
 - (c) if paragraph (b)(ii) or (iii) applies, the charter agreement or agreement for carriage is accompanied by a declaration that complies with subsection (2).
- (2) The declaration must—
- (a) identify the flight that will carry passengers for whom the exemption under this section is claimed,
 - (b) in the case of the situation referred to in subsection (1)(b)(iii), identify each passenger for whom the exemption is claimed,
 - (c) certify that the passengers for whom the exemption is claimed are NATO passengers,

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(d) certify that the carriage of the NATO passengers on the flight is for official purposes, and

(e) be signed by an authorised officer of the NATO visiting force or NATO IMHQ.

(3) In this section—

“authorised officer”, in relation to a NATO visiting force or NATO IMHQ, means a person whose status as an authorised contracting officer has been notified by the NATO visiting force or NATO IMHQ to Revenue Scotland and, in the situation referred to in subsection (1)(b)(iii), to the aircraft operator,

“NATO IMHQ” means a headquarters or organisation designated for the purposes of any provision of the International Headquarters and Defence Organisations Act 1964,

“NATO passenger” means a passenger on a flight—

(a) who is—

(i) for the purposes of any provision of the Visiting Forces Act 1952, a serving member of a NATO visiting force,

(ii) a person recognised by the Secretary of State as a member of a civilian component of a NATO visiting force, or

(iii) a military or civilian member of a NATO IMHQ, and

(b) who is not—

(i) a British citizen, a British overseas citizen, a British national (overseas), or a British overseas territories citizen (with those terms having the same meanings as in the British Nationality Act 1981),

(ii) a person who is settled in the United Kingdom (within the meaning of the Immigration Act 1971 – see section 33(2A) of that Act),

“NATO visiting force” means a visiting force of a country, other than the United Kingdom, which is a party to the North Atlantic Treaty,

“North Atlantic Treaty” means the North Atlantic Treaty signed at Washington on 4 April 1949.

7 Changes of circumstance beyond passengers' control

(1) A passenger is a non-chargeable passenger in relation to a flight if, but for a change of circumstances beyond the passenger's control, the passenger would be a non-chargeable passenger in relation to the flight under any of sections 3 to 6 or regulations made under section 15.

(2) Subsection (1) applies only if—

(a) the passenger has a ticket for the flight, and

(b) the change of circumstances arises after the ticket is issued or last amended.

(3) A passenger is a non-chargeable passenger in relation to a flight (“flight F”) if—

(a) the passenger is carried on flight F—

(i) because of a change of circumstances beyond the passenger's control, but

(ii) in the course of travel that is covered by an agreement for carriage,

(b) the passenger has a ticket for every flight that is covered by the same agreement for carriage, and

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- (c) the departure airport, date and time, and the arrival airport, for flight F are not shown on the ticket when the ticket is issued or last amended.
- (4) A change of circumstances is to be regarded as beyond a passenger's control if it is not attributable to an act or omission of the passenger.

Chargeable aircraft and exemptions

8 Meaning of chargeable aircraft

- (1) An aircraft is a chargeable aircraft in relation to a flight if it has the characteristics specified in subsection (2), unless the aircraft is a non-chargeable aircraft under section 9 or 10 or regulations made under section 15.
- (2) The characteristics are that the aircraft—
 - (a) is a fixed-wing aircraft designed or adapted to carry persons in addition to the flight crew,
 - (b) has a maximum take-off weight of 5.7 tonnes or more, and
 - (c) is fuelled by kerosene.

9 Aircraft used under public service obligation

- (1) An aircraft is a non-chargeable aircraft in relation to a flight if the flight is operated under a public service obligation.
- (2) In this section, “public service obligation” means an obligation imposed by a Member State of the European Union in accordance with Article 16 of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 (common rules for the operation of air services).

10 Aircraft used for military, emergency, training or research flights

- (1) An aircraft is a non-chargeable aircraft in relation to a flight if the flight is one described—
 - (a) under the heading “Aviation” in the Annex to the Directive identified in subsection (3), and
 - (b) in a paragraph under that heading that is specified in subsection (2).
- (2) The relevant paragraphs (which list aviation activities excluded from the greenhouse gas emission allowance trading scheme of the European Union) are—
 - (a) paragraph (b) (which covers military flights performed by military aircraft and customs and police flights),
 - (b) paragraph (c) (which covers flights related to search and rescue, fire-fighting flights, humanitarian flights and emergency medical service flights),
 - (c) paragraph (f) (which covers training flights performed exclusively for the purpose of obtaining a licence, or a rating in the case of cockpit flight crew where this is substantiated by an appropriate remark in the flight plan provided that the flight does not serve for the transport of passengers or cargo, or both, or for the positioning or ferrying of the aircraft),