



T: 0131-244 7166
E: aidan.grisewood@gov.scot

Euan Donald
Clerk to the Delegated Powers and Law Reform
Committee
Room T1.01
Scottish Parliament
EDINBURGH
EH99 1SP

By email: DPLR.Committee@scottish.parliament.uk

13 February 2017

Dear Euan,

AIR DEPARTURE TAX (SCOTLAND) BILL

Thank you for the recent letter sent on behalf of the Delegated Powers and Law Reform Committee ("the Committee") requesting further explanation from the Scottish Government on the delegated powers contained in the Air Departure Tax (Scotland) Bill ("the Bill") as introduced.

The Scottish Government's responses to the Committee's five questions are set out below.

Section 7(2)(b) – Revenue Scotland guidance on determining the seat pitch of a passenger's carriage

Question 1: Please explain why the Scottish Government considers it appropriate for provision regarding the definition of seat pitch to be made in guidance issued by Revenue Scotland, as opposed to being contained in subordinate legislation. Please also indicate the type of provision it is anticipated that Revenue Scotland might make in exercise of this power.

Scottish Government response: In relation to question 1, the Scottish Government has proposed, in section 7(2)(a) of the Bill as introduced, a general statutory rule for determining the seat pitch of a passenger's carriage which it is expected will be relevant to the vast majority of seat layouts on aircraft departing from Scottish airports. However, as is the case with UK Air Passenger Duty ("APD"), it is expected that there will be a small number of situations where this general statutory rule will not be easily applicable, in particular for some seats on private jets which may be configured to face each other or are bench or side-facing seats that face onto an aisle.

The Scottish Government considers that for these types of seat arrangements, which may vary from aircraft to aircraft, it would be more appropriate and efficient to provide further clarity on determining the seat pitch in guidance issued by the body responsible for collecting and managing the tax, Revenue Scotland, and not in legislation. By providing guidance,



Revenue Scotland can also respond quickly to any changes in the aviation sector relating to seat arrangements that might create uncertainty about determining the seat pitch of a passenger's carriage.

Although the Scottish Government's proposal is that it would be for Revenue Scotland to determine what guidance (if any) is necessary for determining the seat pitch (beyond the general statutory provision in section 7(2)(a)), in making its determination it is likely that Revenue Scotland will have regard to the guidance that Her Majesty's Revenue and Customs ("HMRC") has already issued in this area for UK APD – see section 2.6.7 of HMRC's Excise Note 550 guidance on APD:

<https://www.gov.uk/government/publications/excise-notice-550-air-passenger-duty/excise-notice-550-air-passenger-duty#rates-and-structure-of-duty>.

Section 7(3) – Revenue Scotland guidance on determining the class of travel of a passenger's carriage

Question 2: Once again please explain why the Scottish Government considers it appropriate for provision regarding determination of the class of travel to be made in guidance issued by Revenue Scotland, as opposed to being contained in subordinate legislation. Please also indicate the type of provision it is anticipated that Revenue Scotland might make in exercise of this power.

Scottish Government response: In relation to question 2, in determining the class of travel of a person's carriage the Scottish Government's view is that the varied nature of the aviation sector's commercial offering to passengers would be impractical to exhaustively cover in legislation, and that it would instead be more appropriate to provide further clarity in guidance issued by the body responsible for collecting and managing the tax, Revenue Scotland.

The Scottish Government considers guidance to be the most efficient way to provide certainty and flexibility on this matter, because the range of variables that need to be addressed do not lend themselves to formulating general rules. By providing guidance, Revenue Scotland can respond quickly to changes in the aviation sector that create uncertainty about the rate of tax that should apply.

We would expect Revenue Scotland to give guidance on whether a person doing any of the following would be considered to be travelling in a higher class of travel:

- obtaining a better seat at no extra cost and on a first-come first-served basis;
- purchasing goods and services on board;
- paying extra for the right to choose a seat, for a seat with extra legroom, to be seated next to an empty seat or for an empty seat;
- paying extra for benefits such as pre-booking, reduced check-in times, priority boarding, access to a VIP lounge, additional bag allowances or for transport to and from the airport.

Although the Scottish Government's proposal is that it would be for Revenue Scotland to determine what guidance (if any) is necessary for determining the class of travel on a person's carriage (beyond the general statutory provision in section 7(1)(b)), in making its determination it is likely that Revenue Scotland will have regard to the guidance that HMRC

has already issued in this area for APD – see sections 2.6.1 to 2.6.4 of HMRC’s Excise Note 550 guidance on APD: <https://www.gov.uk/government/publications/excise-notice-550-air-passenger-duty/excise-notice-550-air-passenger-duty#rates-and-structure-of-duty>.

Section 8(1) – Key concepts may be modified by regulations

Question 3: As the Government acknowledges in its Delegated Powers Memorandum, the concepts of chargeable passenger and chargeable aircraft are key to determining the basis on which liability for ADT will arise. Why is it considered appropriate in section 8(1) to take a power to make provision concerning who is a non-chargeable passenger and which aircraft are non-chargeable aircraft, and to create exemptions from being a chargeable passenger or chargeable aircraft, rather than making provision for such matters on the face of the Bill?

Scottish Government response: In relation to question 3, the Scottish Government is still considering its overall approach to chargeable passenger and chargeable aircraft exemptions under ADT, and will set out its detailed proposals in this area at a later date but well in advance of ADT coming into effect in Scotland on 1 April 2018. This will either be via Government amendments brought forward at Stage 2 or Stage 3 of the Bill process, or in subordinate legislation after enactment of the Bill.

In setting its legislative proposals for these exemptions the Scottish Government will take into account views expressed on exemptions by the Parliament during its consideration of the Bill and in the oral and written evidence given by stakeholders to the Finance and Constitution Committee during Stage 1.

As the UK Government has done several times with APD since it came into effect in 1994, once ADT has come into effect it will be necessary to have sufficient legislative flexibility to make changes to tax exemptions in order to continue to support key government priorities, to reflect changing market conditions (the aviation sector operates in a highly competitive and dynamic market and it will be important that tax exemptions for ADT are kept relevant and appropriate to the sector) or in light of Revenue Scotland’s operational experience of collecting and managing ADT.

The Scottish Government considers that it would be a more effective use of resources by the Scottish Parliament and the Scottish Government if this need for future flexibility was delivered through a subordinate legislation power which can, if considered necessary, amend primary legislation and is therefore appropriately subject in all circumstances to the affirmative procedure.

Section 10(1) and (2) – Tax bands and rate amounts to be set by regulations

Question 4: Section 10(2) enables the Scottish Ministers, by regulations, to make “other provision” concerning the structure of the tax (i.e. provision other than defining tax bands and setting the amount of tax for each tax rate as required by section 10(1)). Please explain how the power in section 10(2) is intended to be used and why it is considered to be an appropriate delegation of power?

Scottish Government response: In relation to question 4, the Scottish Government’s intention behind the scope of section 10(2) of the Bill as introduced is to provide sufficient flexibility to be able to make other provision relating to the core structure of ADT which does not relate to tax bands or tax rate amounts. Provisions in the Bill as introduced which fall into this category include the rates of tax (i.e. standard, premium and special) and the rules for

determining the final destination of a chargeable passenger. Definitions of terms used in section 10 may also need to be amended in a way that affects the structure of the tax.

It will be necessary to have sufficient legislative flexibility to make changes to provisions on the rates of tax and the determination of a chargeable passenger's final destination in order to continue to support key government priorities, to reflect changing market conditions (the aviation sector operates in a highly competitive and dynamic market and it will be important that rates of tax in particular are kept relevant and appropriate to the sector) or in light of Revenue Scotland's operational experience of collecting and managing ADT.

One example relating to the rates of tax which might involve the need for future legislative change is the issue of whether the provision of a premium economy class by some airlines should be treated as a distinct rate of tax or be incorporated within the lower charge standard rate of tax (under the Bill as introduced the premium rate of tax will be applied to chargeable passengers travelling in this class of travel). For reasons outlined in paragraphs 58 to 60 of the Policy Memorandum the Scottish Government has chosen not to take this matter forward for the moment, but will continue to monitor it after ADT has come into effect.

The Scottish Government considers that it would be a more effective use of resources by the Scottish Parliament and the Scottish Government if this need for future flexibility was delivered through a subordinate legislation power which can, if considered needed, amend primary legislation and is therefore appropriately subject in all circumstances to the affirmative procedure.

Section 34(1) – Administrative provisions may be modified by regulations

Question 5: Please provide further justification for the taking of such a wide power to alter the detailed machinery which has been set out on the face of the Bill. Please also provide examples of the sorts of changes which might be made in exercise of the power.

Scottish Government response: Unlike APD, where payment, collection and management provisions are set out in both primary and subordinate legislation, the Scottish Government chose to place the vast majority of such provisions for ADT in primary legislation in order to maximise Parliamentary scrutiny of this important and detailed area and to make these provisions more accessible. In order to ensure that this power does not enable the modification of provisions which are fundamental to the nature of the tax (what and who is taxable), regulations under this power cannot modify section 11 (taxable activity) and section 12 (taxable persons).

In relation to question 5, the Scottish Government's view is that the provisions in the Bill relating to the payment, collection and management of ADT (predominantly contained within Part 4 of the Bill) are sufficiently inter-linked with each other that a single regulation making power, rather than multiple such powers, is a more appropriate and efficient means of providing the legislative flexibility required to add to, change or remove these provisions after ADT has come into effect in 1 April 2018.

The Scottish Government does not anticipate using this power before ADT comes into effect. However, after this point it may be necessary to make changes in light of Revenue Scotland's operational experience of collecting and managing the tax, to reflect changing market conditions (the aviation sector operates in a highly competitive and dynamic market and it will be important that the administration and compliance arrangements for ADT are kept relevant and appropriate to any changes in the sector), as a consequence of the

passage of new legislation or to reflect amendments to existing legislation referred to in the Bill.

Examples of the sorts of changes which might be made in exercise of the power include:

- changing the tax registration system (provided for across multiple sections in the Bill – sections 13-15 and 37 and schedule 3 of the Bill) to, for example:
 - modify provisions relating to the ADT register which Revenue Scotland is required to keep, such as specifying particular information which the register must include;
 - modify provisions relating to the duty to register for ADT, such as changing the period by which aircraft operators are required to have applied to register with Revenue Scotland;
 - modify provisions relating to the duty to deregister for ADT, such as extending the duty to aircraft operators making occasional returns.

- changing the tax return system (provided for across multiple sections in the Bill – sections 14-19, 21, 24 and 37 and schedule 3 of the Bill) to, for example:
 - provide more tax return options for taxable persons beyond the proposed quarterly and occasional return;
 - modifying the frequency of tax returns;
 - modifying the criteria and rules for occasional returns;

- changing the system of tax representatives (provided for across multiple sections in the Bill – sections 19-29, 31, 33 and 37 and schedule 3 of the Bill) to, for example:
 - provide for additional types of tax representatives beyond the fiscal and administrative tax representatives contained in the Bill at introduction;
 - modify the duties placed on either or both of taxable persons and tax representatives when complying with an appointment;
 - modify the eligibility conditions for tax representative appointments;
 - modify the conditions regarding the duration of tax representative appointments;
 - modify the rules regarding the requirement to provide security to Revenue Scotland in certain circumstances;

- changing the definition of a handling agent and the rules determining the tax liability, in certain circumstances, of such agents;

- making new administrative provision to improve the efficiency of systems for the payment, management and collection of the tax.

Conclusion

I hope this response is helpful, and the Scottish Government looks forward to receiving a copy of the Committee's report on the Bill in due course.

I am copying this letter to Jim Johnston, Clerk to the Finance and Constitution Committee.

Aidan Grisewood
Deputy Director, Fiscal Responsibility Division
Scottish Government