

*N.B.: This translation into the English language of Germany's Aviation Tax Act (Luftverkehrsteuergesetz) is solely for purposes of information. Only the German text of the Act is legally authoritative.*

## **Article 1**

### **Aviation Tax Act**

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#### **Section 1**

##### **Taxable Event**

(1) The aviation tax is due on a legal transaction which entitles a passenger to depart from a German airport and to travel to a destination on an aeroplane or helicopter operated by an aviation enterprise.

(2) A legal transaction within the meaning of subsection 1 shall be taken to include assigning a seat to a passenger in an aeroplane or helicopter where no other legal transaction within the meaning of this Act has yet taken place.

## Section 2

### **Definitions**

For the purposes of this Act the following terms shall have the meanings indicated:

1. place of departure:

an airport, landing field or glider field pursuant to section 6 subsection 1 of the Aviation Act or a site for which a permit is needed pursuant to section 25 subsection 1 first sentence of the Aviation Act;

2. aviation enterprise:

an enterprise which holds a valid operating permit or equivalent permit authorising it to undertake the commercial carriage of passengers in an aeroplane or helicopter;

3. departure:

the takeoff of an aeroplane or a helicopter from a domestic or foreign place of departure with which the journey begins on the basis of the legal transaction;

4. place of destination:

the domestic or foreign place at which the passenger's journey is planned to end according to the legal transaction. If the journey is interrupted according to plan by a stopover as defined at No. 5 below at a domestic airfield pursuant to section 6 subsection 1 of the Aviation Act or at a site for which a permit is needed pursuant to section 25 subsection 1 first sentence of the Aviation Act, then the domestic airfield pursuant to section 6 subsection 1 of the Aviation Act or the site for which a permit is needed pursuant to section 25 subsection 1 first sentence of the Aviation Act at which the stopover is made shall be deemed to be the place of destination at which the passenger's journey ends, and the continuation of the flight shall be deemed to be a new departure to a place of destination within the meaning of section 4 below;

5. stopover:

Flight interruption:

- a) a) of more than twelve hours in the case of flights to a place of destination located in a country listed in Annex 1,
- b) b) of more than 24 hours to a place of destination located in a country not listed in Annex 1;

6. sight-seeing flight:

a flight in which the place of departure and the place of destination are identical and no other landing takes place;

7. flight crew:

all persons on board an aeroplane or helicopter who

- a) fly the aeroplane or helicopter,
- b) take care of its technical monitoring, maintenance or repair,
- c) are responsible for the safety and security of the passengers or
- d) take care of the passengers.

### Section 3

#### **Competent authority**

(1) The Main Customs Office is responsible for implementing this Act.

(2) The authority with local responsibility is the Main Customs Office from whose district the entrepreneur operates his aviation enterprise. If a representative in tax matters has been appointed, the Main Customs Office is locally responsible within whose district the representative in tax matters is domiciled. Issuing a permit pursuant to section 8 subsection 2 is the responsibility of the Main Customs Office in whose district the applicant is domiciled. In the case of aviation enterprises which are not operated in Germany and have not appointed a representative in tax matters, until such a representative is appointed local responsibility is held by the Main Customs Office in whose district the first departure takes place.

### Section 4

#### **Accrual of the tax**

The tax pursuant to section 1 falls due with the passenger's departure from a domestic place of departure.

## Section 5

### **Tax exemptions**

The following legal transactions which entitle passengers to depart from a domestic place of departure are exempt from taxation:

1. departures of passengers under two years of age who do not occupy a seat of their own;
2. departures of passengers in aeroplanes or helicopters when the flight serves exclusively military or other sovereign purposes;
3. renewed departures of passengers who due to an aborted flight have returned to the domestic place of departure from which the first departure took place or have been taken to another domestic airfield pursuant to section 6 subsection 1 of the Aviation Act or to a site for which a permit is needed pursuant to section 25 subsection 1 first sentence of the Aviation Act;
4. departures of passengers
  - a) whose main place of residence is located on a German island,
  - b) who perform medical care of persons who reside on a German island or
  - c) who perform sovereign tasks on a German island

to and from this German island, provided that the island does not have a rail or road connection to the mainland that is independent of the tides and the place of departure or destination is located on the mainland not more than 100 kilometres straight-line distance from the coast or is located on another German island;

5. departures of passengers who are not already exempted from the tax pursuant to No. 4 above to and from a German, Danish or Dutch North Sea island which does not have a rail or road connection to the mainland that is independent of the tides, provided that the place of departure or destination
  - a) is located on the mainland not more than 100 kilometres straight-line distance from the coast or
  - b) is located on another German, Danish or Dutch North Sea island;
6. departures of passengers in aeroplanes or helicopters which serve exclusively medical purposes;
7. departures of passengers for sight-seeing flights in aeroplanes with a maximum takeoff

weight of 2,000 kilogrammes or in helicopters with a maximum takeoff weight of 2,500 kilogrammes;

8. departures of flight crews.

#### Section 6

##### **Tax debtor**

(1) The tax debtor is the aviation enterprise which makes the departure pursuant to section 1. In addition, the representative in tax matters (section 8) is also the tax debtor. The aviation enterprise and the representative in tax matters are joint and several debtors.

(2) If a foreign aviation enterprise does not appoint any representative in tax matters, the owner and the registered user of the aeroplane or the helicopter are liable for the tax. Notwithstanding the provisions of section 210 of the Fiscal Code, the tax claim may be asserted against the persons who are legally liable for the tax even if no enforcement has previously been made against the tax debtor's movable property or it cannot be assumed that such enforcement would not lead to the desired result.

#### Section 7

##### **Registration**

(1) Aviation enterprises which wish to make departures within the meaning of section 1 above, must have themselves registered at the competent Main Customs Office in writing pursuant to subsection 2 first to third sentences at least three weeks before making the first departure from a domestic place of departure. Notwithstanding the provisions of the first sentence, the aviation enterprise must notify the competent Main Customs Office without delay of the information required under subsection 2 first sentence Nos. 1 to 3 below and of the date of departure and the intended domestic place of departure if

1. a period of less than three weeks will elapse between the underlying legal transaction and the first departure or
2. at most two departures per calendar year are made.

In the cases of the second sentence No. 1, the application for registration must be made retroactively within three weeks after the notification is received by the competent Main Customs Office.

(2) In the application for registration the aviation enterprise must state:

1. the name of the enterprise,
2. the business or residential address,
3. the legal form,
4. the alternative bookkeeping location and
5. the tax number assigned by the competent Tax Office and the VAT identification number, if issued (section 27a of the Turnover Tax Act).

The following documents must be submitted together with the application:

1. evidence of possession of an operating permit as an aviation enterprise,
2. a list of places in Germany from which it is intended to make departures,
3. in the case of enterprises which are entered in the Commercial Register, a current extract from that register and
4. a statement as to when the first departure is to take place.

Aviation enterprises which are not domiciled in Germany must in addition in the application for registration to the Main Customs Office appoint a representative in tax matters authorised pursuant to section 8 below and submit appropriate documentation of this. Other aviation enterprises may appoint a representative in tax matters pursuant to section 8 if they wish.

(3) The aviation enterprise must supply additional information as requested by the Main Customs Office where such information appears to be needed in order to safeguard tax revenue or for purposes of fiscal supervision (section 14).

(4) The aviation enterprise must without delay report to the Main Customs Office in writing any changes in the circumstances named in subsection 2 above as well as any overindebtedness, impending or actual insolvency, suspension of payment or application for opening of insolvency proceedings.

(5) The Main Customs Office shall furnish aviation enterprises with written evidence of registration.

## Section 8

### **Representatives in tax matters**

(1) Representatives in tax matters represent the aviation enterprise in the fulfilment of its rights and duties in tax matters pursuant to this Act. The representative in tax matters must fulfil the duties of the aviation enterprise under this Act as if they were his own. He has the

same rights and duties as the enterprise he represents.

(2) The activity as representative in tax matters of an aviation enterprise within the meaning of section 7 subsection 2 third sentence above must be authorised by the competent Main Customs Office. This authorisation is granted, upon application and subject to revocation, to persons who have their place of business in Germany, whose reliability in tax matters is unblemished and who – insofar as this is required of them under the German Commercial Code or the German Tax Code – keep proper commercial books of account and produce annual financial statements within the specified period of time.

(3) The application for authorisation to act as a representative in tax matters must contain the following information:

1. the applicant's name,
2. the place of business or residence,
3. the legal form,
4. the alternative bookkeeping location and
5. the tax number assigned by the competent Tax Office and the VAT identification number, if issued (section 27a of the Turnover Tax Act).

In the case of non-registered enterprises, the application for authorisation must be accompanied by a copy of the current acknowledgment of the business registration; in the case of enterprises which are entered in the register of companies, cooperatives or societies, the application must be accompanied by a current extract from that register. The applicant must supply additional information as requested by the Main Customs Office where such information appears to be needed in order to safeguard tax revenue or for purposes of fiscal supervision (section 14).

(4) In order to safeguard tax revenue, the representative in tax matters must without delay report to the Main Customs Office in writing any changes in the circumstances named in subsection 3 above as well as any overindebtedness, impending or actual insolvency, suspension of payment or application for opening of insolvency proceedings.

(5) The authorisation of the representative shall be revoked if any one of the preconditions named in subsection 2 second sentence above ceases to be met.

Section 9

**Security**

The Main Customs Office may require from the tax debtors security up to the amount of tax expected to arise for two calendar months if there are signs that the tax could be in jeopardy.

#### Section 10

##### **Tax base**

The tax is calculated according to the location of the place of destination and the number of passengers carried.

#### Section 11

##### **Tax rate**

(1) The tax per passenger is as follows depending on where the place of destination is located:

- |   |          |
|---|----------|
| 1. in a country listed in Annex 1 to this Act | 8 Euro,  |
| 2. in a country listed in Annex 2 to this Act | 25 Euro, |
| 3. in other countries                         | 45 Euro. |

(2) The Federal Ministry of Finance shall be authorised, in agreement with the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, the Federal Ministry of Transport, Building and Urban Affairs and the Federal Ministry for Economic Affairs and Technology to reduce the tax rates pursuant to subsection 1 above by a certain percentage with effect from the beginning of a calendar year by statutory order without the consent of the Upper House of the German Federal Parliament (Bundesrat). The percentage reduction shall be calculated from the relation of the respective receipts of the previous year from the involvement of air transport in trading with greenhouse gas emission certificates to one billion euros. The receipts from the involvement of air transport in trading with greenhouse gas emission certificates shall be estimated on the basis of the receipts of the respective first six months of the previous year. Notwithstanding the provisions of the third sentence, for the year 2012 the receipts from the involvement of air transport in trading with gas emission certificates shall be estimated on the basis of the estimated receipts of the year 2012. The reduced tax rate will be rounded off to the nearest cent.

#### Section 12

##### **Self-assessed tax return, due date**

(1) The tax debtor must file a tax return using the official form by the 10<sup>th</sup> day after the

end of the calendar month in which the tax accrued or in which a tax exemption pursuant to section 5 above was utilised in which the tax is computed by the filer of the return for the calendar month concerned (self-assessed tax return). The tax is due on the 20<sup>th</sup> day after the end of the calendar month in which it accrued.

(2) The tax debtor must file a self-assessed tax return by 22 December for the tax which accrued in the period from 1 to 18 December. The tax is due on 27 December. Subsection 1 above applies analogously to the tax which accrued in the period from 19 to 31 December or if a tax exemption pursuant to section 5 above was utilised in the period from 1 to 31 December.

(3) If no application for registration pursuant to section 7 subsection 1 above is made, the tax debtor must without delay file a self-assessed tax return for each departure. The tax is due immediately.

## Section 13

### **Obligation to keep records**

(1) The aviation enterprise is required to keep records pursuant to the second sentence and subsection 2 first sentence for the purposes of determining the tax, the bases of its calculation and for examining the preconditions for tax exemptions pursuant to section 5. The records must be of such a nature as to enable an outside expert to determine the bases of taxation within a reasonable period of time. If a representative in tax matters has been appointed pursuant to section 7 subsection 2 third and fourth sentences, the aviation enterprise must furnish him each month with the records pursuant to the first sentence for the previous calendar month. The representative in tax matters must hold the records ready and available for inspection.

(2) The records must show at least the following information:

1. the number of passengers on each aeroplane or helicopter departing from a domestic place of departure,
2. the place of departure and place of destination of the aeroplane or helicopter,
3. the time of departure from a domestic place of departure.

The Main Customs Office may require additional records to be kept or issue special instructions regarding the records where such information appears to be needed in order to safeguard tax revenue or for purposes of fiscal supervision.

## Section 14

### **Fiscal supervision**

The facts relevant to the aviation tax are subject to fiscal supervision pursuant to section 209 subsection 3 of the Fiscal Code. The right of the revenue authorities to enter property and premises includes the right to board the aeroplane or helicopter belonging to the aviation enterprise which is subject to fiscal supervision, as well as the right to enter the property and premises on or in which the aeroplane or helicopter is located.

## Section 15

### **Business statistics**

(1) As stipulated by the Federal Ministry of Finance, the Main Customs Offices may for statistical purposes conduct surveys of transport data relevant to taxation under this Act and communicate the results to the Federal Statistical Office for evaluation.

(2) The revenue authorities may also transmit data which have already been prepared to the Federal Statistical Office for presentation and publication for general purposes.

## Section 16

### **Administrative fines**

(1) An offence shall be deemed to be committed by whoever intentionally or through gross negligence

1. contrary to section 7 subsection 1 first sentence does not have himself registered, or does not have himself registered on time,
2. contrary to section 7 subsection 1 second sentence fails to communicate any of the information mentioned there, or fails to communicate it correctly, completely, in the prescribed manner and on time,
3. contravenes an order pursuant to section 7 subsection 3, section 8 subsection 3 third sentence, section 9 or section 13 subsection 2 second sentence,
4. contrary to section 7 subsection 4 or section 8 subsection 4 fails to report a change in the circumstances, or fails to report it correctly, completely, in the prescribed manner and on time or
5. contrary to section 13 subsection 1 first sentence fails to keep a record, or fails to keep it correctly and completely.

(2) The offence may be punished with a monetary fine of up to ten thousand euros.

## Section 17

### **Exchange of data and obligation to provide information**

(1) Upon request, the airfield operators shall report to the competent Main Customs Office all departures, giving the date and time of departure, the place of destination, the flight number and the identification number of the aeroplane or helicopter and the name of the aviation enterprise which makes the departure from a domestic place of departure. Over and above that, the Main Customs Office may require additional information about facts relevant to taxation.

(2) The Federal Office of Civil Aviation, the Federal Police and the agencies responsible for air traffic control must upon request communicate to the competent Main Customs Office the information which is relevant to the determination of the taxation.

(3) The competent Main Customs Office may provide the Federal Office of Civil Aviation with information from the tax proceedings which is needed in order to judge whether an aviation enterprise has the reliability required under air transport regulations, either upon request or as seems indicated in the case at hand.

## Section 18

### **Authorisations**

(1) The Federal Ministry of Finance shall be authorised to enact by statutory order, without the consent of the Upper House of the German Federal Parliament (Bundesrat), provisions concerning sections 1, 3, 4, 6 through 15 and 17 subsection 1 for the implementation of this Act for the purposes of procedural simplification and to ensure uniformity of taxation and tax revenue and in particular

1. to enact provisions for the implementation of tax exemptions

- a) a) under Article XI of the Agreement of 19 June 1951 between the Parties to the North Atlantic Treaty regarding the Status of their Forces (Federal Law Gazette 1961 II p. 1183, 1190) in the respective applicable version and Articles 65 through 67 of the Agreement of 3 August 1959 to Supplement the Agreement of 19 June 1951 between the Parties to the North Atlantic Treaty regarding the Status of their Forces with respect to Foreign Forces Stationed in the Federal Republic of Germany (Federal Law Gazette 1961 II p. 1183, 1218) in the respective applicable

version,

- b) b) under Article 15 of the Agreement of 13 March 1967 between the Federal Republic of Germany and the Supreme Headquarters Allied Powers Europe on the special conditions applicable to the establishment and operation of International Military Headquarters in the Federal Republic of Germany (Federal Law Gazette 1969 II p. 1997, 2009) in the respective applicable version,
  - c) c) under Articles III through V of the Agreement between the Federal Republic of Germany and the United States of America of 15 October 1954 concerning tax relief to be accorded by the Federal Republic to United States expenditures in the interest of the common defence (Federal Law Gazette 1955 II p. 821, 823) in the respective applicable version,
  - d) d) in the form of reciprocity for diplomatic and consular missions and
  - e) e) under international conventions for international institutions,
2. to regulate the details of the registration procedure pursuant to section 7 above,
  3. to regulate the details of the authorisation procedure pursuant to section 8 above,
  4. to define the signs that the tax could be in jeopardy pursuant to section 9 above,
  5. to enact procedural rules for determining and collecting the tax, in particular for the self-assessed tax return, for the calculation and payment of the tax,
  6. permit that instead of the tax to be reported pursuant to section 12 subsection 2 first sentence an average amount based on the self-assessed tax return of the month of November of the same year shall be reported and its calculation used and
  7. to determine the details about how the obligations to keep records pursuant to section 13 above are to be fulfilled and the cases in which facilities may be accorded for the fulfilment of these obligations.

(2) The Federal Ministry of Finance shall be authorised to enact by statutory order, without the consent of the Bundesrat and in agreement with the Federal Ministry of Transport, Building and Urban Affairs, provisions concerning sections 2, 5 and 17 subsections 2 and 3 for the purposes of procedural simplification and to ensure uniformity of taxation and tax revenue and in particular

1. to define in more detail the terms used in section 2 Nos. 2 through 7 and in section 5 and
2. to determine the details of the type, contents and form of the data and information to be

exchanged among the Main Customs Office, the Federal Office of Civil Aviation, the Federal Police, and the agencies responsible for air traffic control, as well as to require additional information about facts which are relevant to taxation pursuant to section 17 subsections 2 und 3.

(3) The Federal Ministry of Finance shall be authorised to provide, by statutory order without the consent of the Bundesrat, for the facilitation and simplification of the automated taxation procedure, that tax returns, self-assessed tax returns and other data needed for the taxation procedure may be communicated by remote data transmission, and in particular to regulate

1. the preconditions for the application of the procedure,
2. details of the form, contents, processing and security of the data to be transmitted,
3. the ways and means of the data transmission,
4. who is responsible for receiving the data which has to be transmitted,
5. the obligations of third parties to co-operate with the authorities and their liability for taxes which are evaded or tax advantages which are obtained as a result of data being incorrectly collected, processed or transmitted,
6. the scope and the form of the special disclosure obligations needed for this procedure which shall be required of the taxpayer or of the person reporting the information and
7. to permit, in agreement with the Federal Ministry of the Interior, as an alternative to the qualified electronic signature, another secure procedure which guarantees the authenticity and the integrity of the electronic document to be transmitted and
8. to grant exceptions to the obligation to use a qualified electronic signature or another secure procedure pursuant to No. 7 above. For the regulation of the data transmission, reference may be made in the statutory order to publications of expert agencies ; in that case, the statutory order shall state the date of publication and where the publication may be obtained, as well as a place where the publication is kept in a secure archive.

## Section 19

### **Application provisions and transitional provisions**

(1) This Act shall apply to legal transactions conducted from 1 September 2010 onwards in which the passenger's name is not known to the aviation enterprise before 1 September 2010 and which entitle the passenger to a departure on or after 1 January 2011.

(2) Notwithstanding the provisions of section 7 subsection 1 above, aviation enterprises which make their first departure in the period from 1 January to 28 February 2011 may have themselves registered by 14 February 2011. In that case the three-week period does not have to be respected.

(3) The Tax Data Transmission Ordinance of 28 January 2003 (Federal Law Gazette I p. 139), which was last amended by Article 2 of the Ordinance of 8 January 2009 (Federal Law Gazette I p. 31), shall not apply to the declaration and transmission obligations under this Act.

(4) The Federal Ministry of Finance, with the participation of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, the Federal Ministry of Transport, Building and Urban Affairs and the Federal Minister for Economic Affairs and Technology shall submit to the Lower House of the German Federal Parliament (Bundestag) by 30 June 2012 a report on the effects which the introduction of the Aviation Tax Act has had on the air transport industry and on the tax revenue which has been collected from the aviation tax.