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der Finanzen

Implementing Regulations to the German Aviation Tax Act

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1. General

(1) With the German Budget Act (“Haushaltsbegleitgesetz”) for 2011, the German Parliament also resolved to introduce a tax on aviation (“aviation tax”). The aim of the Aviation Tax Act (“Luftverkehrsteuergesetz” - abbreviated “LuftVStG”) is to extend mobility taxation so as to also include commercial passenger air transport and thus provide an incentive for behaviour which is more appropriate to the needs of the environment.

Air freight traffic is not subject to taxation.

1.1 Legal framework

1.1.1 Aviation Tax Act (LuftVStG)

(2) The German Aviation Tax Act (LuftVStG) appears under Art. 1 of the 2011 German Budget Act, which was promulgated on 14 December 2010 on page 1885 of the German Federal Gazette I (“Bundesgesetzblatt I”) and, pursuant to Art. 24 (1) Sentence 1 of the 2011 German Budget Act, came into force on 15 December 2010. Aviation tax is levied on all legal transactions concluded on or after 1 September 2010 that entitle a person or persons to depart from a German airport on or after 1 January 2011.

For the official justification for the law, see German Parliament Publication (“Bundestag Drucksache” - abbreviated “BT-Drs.”) No. 17/3030 of 27 September 2010 and 17/3452 of 27 October 2010.

(3) On 11 December 2012, the Act Amending the Energy Tax and Electricity Tax Act and also Amending the Aviation Tax Act (“Gesetz zur Änderung des Energiesteuer- und des Stromsteuergesetzes sowie zur Änderung des Luftverkehrsteuergesetzes”) of 5 December 2012 was promulgated on page 2436 of the German Federal Gazette I.

The changes detailed in Art. 3 of the Act Amending the Energy Tax and Electricity Tax Act and also amending the Aviation Tax Act came into force on 1 January 2013 and mainly comprise the following:

- Abolition of the duty to name a representative in tax matters for aviation enterprises domiciled in another EU Member State; and
- Permanent reduction in the rates of tax specified in § 11 (1) LuftVStG to the level of the rates of tax applicable in the calendar year 2012 of €7.50, €23.43 and €42.18.

For the official justification for the law, see BT-Drs. 17/11387 of 7 November 2012.

1.1.2 Aviation Tax Act Implementing Regulation (LuftVStDV)

(4) The Regulation Implementing the Aviation Tax Act (“Verordnung zur Durchführung des Luftverkehrsteuergesetzes” - abbreviated “LuftVStDV”), was promulgated on 30 August 2012 on page 1812 of the German Federal Gazette I and came into force on 1 September 2012.

The LuftVStDV refines the definition of an aviation enterprise (§ 1 LuftVStDV); it also contains a list of indicators which suggest that the tax may be endangered (§ 3 LuftVStDV) as well as regulations pertaining to the granting of a permit to act as a representative in tax matters (§ 2 LuftVStDV).

It also forms the legal basis for the introduction of a special IT procedure for levying the aviation tax and for filing the aviation tax returns electronically (§§ 4 to 6 LuftVStDV).

1.1.3 Setting of the rates of tax under § 11 (2) LuftVStG

(5) The authorization to reduce the rates of tax pursuant to § 11 (1) LuftVStG derives from § 11 (2) LuftVStG.

The relevant legal ordinances are issued annually by the Federal Ministry of Finance (BMF) in consultation with the Federal Ministry of the Environment, Nature Conservation and Nuclear Safety, the Federal Ministry of Transport, Building and Urban Development, and the Federal Ministry of Economics and Technology on the strength of inclusion of air traffic in the trade in greenhouse gas emission certificates.

(6) In order to lower the rates of tax in the **calendar year 2012**, the Regulation to Reduce the Tax Rates pursuant to § 11 (2) LuftVStG in the Year 2012 (“Luftverkehrsteuer-Absenkungsverordnung 2012” – abbreviated “LuftVStAbsenkV 2012”) was promulgated on 21 December 2011 on page 2732 of Federal Gazette I; it came into force on 1 January 2012 and expired at midnight on 31 December 2012. This regulation lowered the tax rates in 2012 to €7.50, €23.43 and €42.18.

(7) With the amendment to the LuftVStG which came into force on 1 January 2013, the rates of tax under § 11 (1) LuftVStG were permanently reduced (cf. Section 1.1.1 – Paragraph (3)). At the same time, the application of § 11 (2) LuftVStG was ruled out for the **calendar year 2013**.

(8) To set the tax rates for the **calendar year 2014**, the Regulation Setting the Aviation Tax Rates pursuant to § 11 (2) LuftVStG (“Luftverkehrsteuer-Festlegungsverordnung 2014” – abbreviated “LuftVStFestV 2014”) was promulgated on 30 December 2013 on page 4383 of Federal Gazette I and came into force on 1 January 2014. This regulation stipulated that the tax rates pursuant to § 11 (1) LuftVStG are to remain unchanged for the year 2014.

1.1.4 Applicability of other statutory regulations

(9) The provisions of the German Tax Code (“Abgabenordnung” - abbreviated “AO”) apply in respect of the transaction taxes.

1.2 Tax type

(10) Aviation tax is a **transaction tax**.

Transaction taxes are levied on legal deeds or legal transactions.

In the case of aviation tax, the tax is levied on the legal transaction that entitles a passenger to depart on an aircraft from a place of departure in Germany (see § 1 Abs. 1 LuftVStG und No 2.1 – Paragraph (14) – (19)).

1.3 Scope of application

(11) Aviation tax is applicable to legal transactions occurring on or after 1 September 2010, whereby the passenger is named to the aviation enterprise only on or after 1 September 2010 and the legal transaction entitles the passenger to depart from a place of departure in Germany on board an aeroplane or helicopter on or after 1 January 2011 (§ 1 (1) and §19 (1) LuftVStG).

The term “**Germany**” as used in the LuftVStG means the territory of the Federal Republic of Germany, encompassing the surface of the mainland, the surface of the islands and the territorial sea. The territorial sea as defined by the United Nations Convention on the Law of the Sea (UNCLOS) is a belt of coastal waters extending at most 12 nautical miles from the baseline (low-water mark along the coast) (Art. 2 to 5 UNCLOS). The exclusive economic zone pursuant to Art. 55 et seq. UNCLOS, on the other hand, is not part of Germany’s sovereign territory.

1.4 Demarcation between energy tax and aviation tax

(12) Since the introduction of aviation tax, all passenger transport by air, apart from the exemptions provided for in § 5 LuftVStG, is normally subject to taxation:

Pursuant to § 27 (2) No. 1 of the German Energy Tax Act (“Energiesteuergesetz” - abbreviated EnergieStG) in conjunction with § 60 (4) No. 1 of the Regulation Implementing the Energy Tax Act (“Verordnung zur Durchführung des Energiesteuergesetzes” - abbreviated “EnergieStV”), the commercial carriage of passengers is exempt from energy tax; it is, however, subject to aviation tax.

The non-commercial carriage of passengers by private persons or enterprises which are not licensed as aviation enterprises is subject to energy tax but not to aviation tax.

In cases where aviation enterprises carry their employees solely for internal purposes of the enterprise, the flights concerned may be subject to both energy tax and aviation tax, although an exemption from aviation tax may be available under § 5 No. 8 LuftVStG.

1.5 Report on the impact of the introduction of aviation tax on the aviation sector and the development in aviation tax revenues

(13) On 29 June 2012, the Federal Ministry of Finance – with the involvement of the Federal Ministry of the Environment, Nature Conservation and Nuclear Safety, the Federal Ministry of Transport, Building and Urban Development and the Federal Ministry of Economics and Technology – submitted a report to the German Parliament pursuant to § 19 (4) LuftVStG on the impact of the introduction of aviation tax on the aviation sector and on the development in the tax revenues deriving from aviation tax (BT-Drs. 17/10225 of 29 June 2012; Progress report for the first half of 2012: BT-Drs. 17/10985 of 12 October 2012).

2. Material basis of taxation and taxable event

2.1 Subject of taxation (§ 1 LuftVStG)

Legal transaction

(14) A legal transaction (§ 1 (1) LuftVStG) entitling a passenger to depart from a place of departure on board an aircraft may take the form, for example, of a contract of carriage concluded in return for payment, a benefit granted under an airline bonus scheme, a gift, the claim of a prize won in a competition or an employment contract between a flight crew member and an aviation enterprise.

A legal transaction may entitle the person concerned to several flights (e.g. a domestic feeder flight with connecting flight to a foreign country, or an outward and return flight).

A legal transaction may also form part of a contract bundle, e.g. in the case of package holidays.

The **flight ticket** (or plane ticket) is the document (including also in electronic form) that confirms conclusion of the contract of carriage. A plane ticket may cover up to four flights (a so-called “flight coupon”). If the contract of carriage provides for more than four flights, a so-called “conjunction ticket” will be issued. In such cases, the legal transaction (contract of carriage) is manifested on two conjoining flight tickets.

(15) The crucial factor in determining the existence of a legal transaction is the naming of the passenger to the aviation enterprise as this marks the time at which a concrete right to fly on board an aircraft has come into existence, and hence a taxable event within the meaning of the LuftVStG.

As a rule, the passenger is named to the aviation enterprise at the same time as the ticket booking is made.

Therefore, so-called **framework bookings and charter quota agreements** do not count as taxable legal transactions. By agreements of this kind concluded between travel companies and aviation enterprises, travel companies secure the availability of seats on certain flights, either with or without the possibility to hand back the seats if they are not needed. These agreements, therefore, merely ensure the possibility of departure for a certain number of passengers, but do not constitute a concrete right to fly for any specific passenger.

(16) It is the responsibility of the aviation enterprise, within the scope of its obligations to keep records under § 13 LuftVStG, to furnish evidence on whether the flight booking is based on only one legal transaction or several.

(17) Indications that a flight constitutes only a **single legal transaction** are:

- Single booking process (booking(s) made at the same time),
- Single ticket, with the right to transfer to another flight where appropriate (so-called “via ticket”),
- Issue of a single invoice,
- Checked-through baggage (exception: stopover flights - see Section 2.3.1 – Paragraphs (47) – (51)),
- Complete flight itinerary shown in the Passenger Name Record (PNR),

- Payment of the invoice to one aviation enterprise or settlement between aviation enterprises working in cooperation with each other.

The fulfilment of any one of the above criteria by itself is not sufficient to assume the existence of **one legal transaction**. Rather, all the circumstances of any particular case must be taken into account.

(18) Indications that a flight comprises **several legal transactions** are:

- Different booking times,
- The existence of several tickets for the whole itinerary,
- Separate invoices,
- Renewed check-in of the passenger with baggage (exception: stopover flights - see Section 2.3.1 – Paragraphs (47) – (51)).

(19) For the sake of linguistic simplification and easier understanding, the expressions “taxable/tax-exempt flight/departure” are used in some cases in the Implementing Regulations rather than the legally more accurate expressions “taxable/tax-exempt legal transaction entitling a passenger to depart on board an aircraft”.

Transitional provision under § 19 (1) LuftVStG

(20) For the taxability of departures on or after 1 January 2011, the **transitional provision under § 19 (1) LuftVStG** generally requires that passengers must be named to the aviation enterprise on or after 1 September 2010.

Details on application of the transitional provision under § 19 (1) LuftVStG can be found in the [Annex 1 – Application of the transitional provision under § 19 \(1\) LuftVStG](#).

Modification of the legal transaction

(21) Aviation tax is levied on a legal transaction in the form in which the transaction existed at the time of conclusion of the contract of carriage.

(22) As a rule, **modification of the legal transaction** is brought about by changing the booking. If modification of the legal transaction takes place **in Germany prior to departure** from the place of departure in Germany, this has consequences in relation to the aviation tax:

Example:

Contract of carriage Berlin – Sydney; before departure from Berlin, the passenger modifies the contract of carriage by changing the booking and having a ticket Berlin – Dubai issued to him instead, as he no longer wishes to fly to Sydney; the tax is therefore incurred for a flight Berlin – Dubai.

(23) If **modification of the legal transaction** takes place **in Germany after departure** from a place of departure in Germany (e.g. if the original one legal transaction is split into two legal transactions), the legal transaction in the form that existed at the time of departure remains authoritative for the rate of tax.

Example:

“Original” contract of carriage Berlin – Frankfurt – Dubai; during the stopover in Frankfurt, the passenger alters the contract of carriage by changing the booking and having a new ticket Frankfurt – New York issued to him instead; tax is incurred both for the flight Berlin – Frankfurt – Dubai and for the flight Frankfurt – New York as well since a valid contract of carriage existed for the flight Berlin – Dubai at the time of departure from Berlin and a valid contract of carriage for the flight Frankfurt – New York also existed at the time of departure from Frankfurt.

If **modification of the legal transaction** takes place in **another country after departure** from a place of departure in Germany and results in a change of itinerary, this has no effect on the accrual of the tax or the level of the tax rate.

Example:

“Original” contract of carriage Frankfurt – Amsterdam – Dubai; during the stopover in Amsterdam, the passenger alters the contract of carriage by changing the booking and having a new ticket Amsterdam – New York issued to him instead; tax is incurred for the route Frankfurt – Dubai.

(24) If the place of destination changes after departure **without any modification of the legal transaction** taking place, the aviation tax accrues in the amount applicable for the destination specified at the time the contract of carriage came into existence. That means that also in this case the change in the itinerary has no effect on accrual of the tax.

Examples:

1. *Contract of carriage Frankfurt – Sydney; due to unforeseen circumstances (e.g. natural disaster, political unrest) the flight is terminated at Dubai; onward flight is not possible; tax accrues for the route Frankfurt – Sydney as Sydney was the scheduled destination for the flight.*

2. *Contract of carriage Leipzig – Frankfurt – Dubai; due to unforeseen circumstances (e.g. strike, sudden onset of winter weather) the flight already ends in Frankfurt after completion of only the first leg, i.e. Leipzig – Frankfurt; onward flight to Dubai is not possible; tax accrues for the route Leipzig – Dubai as Dubai was the destination of the flight as per the legal transaction.*

(25) The modification of a legal transaction that originally entitled the passenger to depart from a place of departure in another country and now entitles him to depart from a place in Germany also affects the aviation tax.

Example:

Contract of carriage Prague – Moscow; due to unforeseen circumstances (e.g. weather, strike) the passengers are taken by bus from Prague to Dresden, where they board a flight Dresden – Moscow. Through modification of the legal transaction, Dresden becomes the place of departure at which the flight begins.

Notional legal transaction

(26) The allocation of a passenger to a seat on an aeroplane or helicopter also counts as a legal transaction within the meaning of the LuftVStG even if it has not been preceded by any other legal transaction as defined in the LuftVStG (§ 1 (2))

LuftVStG). This clause (§ 1 (2) LuftVStG) serves as a catchall provision that only comes into play in cases where someone is being carried in the cabin of an aeroplane or helicopter without being in possession of entitlement through a preceding legal transaction (e.g. in cases of error, fraud or deception). Only then can a member of the flight personnel allocate the passenger to a seat, despite the passenger having no right to fly on board this flight.

Examples:

Passenger reports at the wrong gate and flight crew allocate him by mistake to a seat on the wrong aircraft;

Passenger deceives flight crew concerning his entitlement to board and is allocated to a seat as a result (e.g. through the use of a forged ticket);

Flight crew allocates passenger to a seat despite knowing that he has no entitlement to fly (e.g. on small aircraft in the charter business, carriage of additional passengers without valid contracts of carriage).

In the case of stowaways hiding without the knowledge of the crew in the cargo hold, landing gear compartments or passenger cabin, on the other hand, the criterion of seat allocation is missing, so that in these cases no event giving rise to liability for the tax pursuant to § 1 (1) and (2) LuftVStG exists.

Examples of taxable flights

(27) Tax pursuant to the German Aviation Tax Act (LuftVStG) is only levied on commercial passenger flights. Therefore, all flights in connection with commercial passenger air transport are subject to aviation tax. Flights of the following kinds also count as **flights in connection with passenger air transport**:

- Empty flights and ferry flights,
- Flights for instructing the aviation enterprise's own crew members in operation of other aircraft types in accordance with § 30 Abs. 2 of the German Air Transport Authorization Regulations ("Luftverkehrs-Zulassungs-Ordnung" - abbreviated "LuftVZO"),
- Flights for training own crew members pursuant to § 42 of the German Operating Regulations for Aeronautical Equipment ("Betriebsordnung für Luftfahrtgerät" - abbreviated "LuftBO"),
- Flights from and to maintenance facilities,
- Check or inspection flights,
- Demonstration and sales flights (e.g. at trade fairs and air shows).

Provided the preconditions of § 5 No. 8 LuftVStG are fulfilled, flights of the aforesaid kinds are normally exempt from aviation tax.

Flights on which, apart from the flight crew, only the owner and/or family members of an aviation entrepreneur are carried are normally subject to aviation tax.

If the aviation enterprise can furnish evidence that the flight was conducted not in the name of the aviation enterprise but as a private flight (e.g. by furnishing proof of taxation as a private flight with liability for energy tax), the flight counts for aviation tax purposes as having been conducted outside of the operating licence, with the result that it is not eligible for aviation tax (see also Section 1.4).

Demarcation of work/service flights

(28) The crucial distinguishing factor between passenger transport and service/work flights is whether the primary purpose of the flight is the carriage of passengers from one place to another or whether it is the performance of work or services.

The provisions of aviation law specify that on a service/work flight, **no more than six persons who are indispensable for the aerial work assignment concerned** – not including the flight crew as defined in § 2 No. 7 LuftVStG – may be carried on board. This criterion serves as a guide for distinguishing between passenger transport and service/work flights. However, it does not constitute grounds for refusing a flight recognition as a service flight if it is apparent from other circumstances of the specific case that the purpose of the flight is to perform a service.

The following table provides examples for the classification of certain flights as either “commercial passenger transport flights”, which are liable for aviation tax, or as “service/work flights”, which are not liable for aviation tax:

Nature of flight	Commercial passenger transport	Service / work flight
Surveying flights (e.g. on high-voltage power lines, gas and oil pipelines etc.)		x
Activities of commercial flying schools		x
Flights for dropping parachute jumpers		x
Aerial photography		x
Service for transferring marine pilots	x	
Search flights for missing persons using thermal imaging cameras, if no public service task is involved		x
Test flights for flying equipment (e.g. flying overalls)		x
Passenger transport to offshore wind turbines, production/research platforms, etc.	x	
Performance of work on offshore wind turbines, production/research platforms, etc. which is done from aeroplanes/helicopters		x
Training flights for practising the procedures for winching marine pilots and aircraft crews up/down		x
Fire-fighting flights, if no public service task is involved		x

Service/work flights are usually not performed by aviation enterprises and they are not liable for aviation tax.

If service/work flights are performed by an enterprise which is in possession of a valid operating licence or equivalent permit for commercial passenger transport, service/work flights are deemed for aviation tax purposes as performed outside of the operating licence or equivalent permit and are not liable for aviation tax.

2.2 Definitions (§ 1 and § 2 LuftVStG)

Passenger (§ 1 LuftVStG)

(29) A passenger as defined in § 1 LuftVStG is any person who, on the strength of an existing right to fly (§ 1 (1) LuftVStG) or on the strength of allocation to a seat (§ 1 (2) LuftVStG), is located in the cockpit or passenger cabin of an aircraft (passengers and flight crew).

Aeroplanes and helicopters (§ 1 LuftVStG)

(30) Only departures of **aeroplanes** and **helicopters** within the meaning of § 1 (2) Sentence 1 Nos. 1 and 2 of the German Aviation Act (LuftVG) are subject to aviation tax as aircraft of these types are regularly used for the commercial carriage of passengers. Helicopters are aircraft that receive their lift from at least one rotor rotating around a vertical axis. Not subject to aviation tax are aircraft pursuant to § 1 (2) Sentence 1 Nos. 3 to 11 LuftVG such as airships, gliders or motor gliders or aerial sports devices such as microlight aircraft and gyrocopters.

Place of departure (§ 2 No. 1 LuftVStG)

(31) A place of departure of relevance for aviation tax purposes is any airport, landing site or glider airfield as defined in § 6 (1) LuftVG as well as any site for which a permit pursuant to § 25 (1) Sentence 1 LuftVG is required.

Pursuant to § 6 (1) LuftVG, the creation and operation of aerodromes (airports, landing sites and glider airfields) is subject to a special permit. In the case of airports, a distinction is made between commercial airports and special airports; depending on the nature and scope of the intended flying operations, airports must be secured by a building restriction zone pursuant to § 12 LuftVG (§ 38 LuftVZO).

Ships, artificial islands, installations and building structures in or on water (e.g. oil rigs and offshore wind turbines) count as sites within the meaning of § 25 (1) Sentence 1 LuftVG. They count as domestic sites if they are located in coastal waters.

Aviation enterprise (§ 2 No. 2 LuftVStG)

(32) The flight must be conducted by an aviation enterprise (§ 2 No. 2 LuftVStG, § 1 LuftVStDV).

Aviation enterprises are all enterprises with a valid operating licence or equivalent permit under national, European or international aviation law entitling them to provide flights for the commercial carriage of persons.

Pursuant to § 1 LuftVStDV, enterprises that engage in the commercial carriage of persons and therefore require a licence pursuant to the provisions of the LuftVG or Regulation (EC) No. 1008/2008 also count as aviation enterprises. The provision set forth in § 1 LuftVStDV makes clear that enterprises which require an operating licence or equivalent permit count as aviation enterprises even if, in contravention of the aforesaid regulations, they are not in possession of such licence or permit.

(33) In conjunction with the term **aviation enterprise** as used in aviation law and energy tax law, this means that an aviation enterprise is an aviation enterprise which undertakes the commercial carriage of passengers.

(34) The following are valid as **operating licences** of aviation enterprises:

In the case of German enterprises:

- Operating licence issued by the aviation authority of a federal state pursuant to § 20 (1) Sentence 1 LuftVG (national licence for the commercial carriage of passengers, e.g. for sightseeing flights),
- Operating licence issued by the Federal Aviation Office (Luftfahrt-Bundesamt) pursuant to § 20 (4) LuftVG in conjunction with Art. 3 of Regulation (EC) No. 1008/2008 for all German aviation enterprises engaged in the commercial carriage of passengers, cargo or mail, regardless of the number of seats.

In the case of enterprises **from other EEA states** (EU Member States, Norway, Iceland, Liechtenstein) and **Switzerland**:

- Operating licence of the home state pursuant to Art. 3 of Regulation (EC) No. 1008/2008

In the case of enterprises **from non-EEA states**:

- (Operating License, Air Operator Certificate (AOC), Air Carrier Certificate (ACC), Operating Certificate,
- Scheduled air service permit of the Federal Aviation Office pursuant to § 21a LuftVG (aviation enterprises from non-EEA states which are in possession of an operating licence of their home state also require an operating licence under § 21a LuftVG if they enter Germany or fly from Germany to EEA or non-EEA states on scheduled flights).

(35) A permit for entry pursuant to § 2 (7) LuftVG counts as an **equivalent permit**. Aviation enterprises from non-EEA states that do not conduct scheduled flights require a permit for entry for one-off flights, charter flights etc. if they carry out commercial carriage in Germany or from Germany to an EEA or non-EEA state.

If such enterprises conduct departures in Germany, these departures are liable for aviation tax.

No permit for entry is issued by the Federal Aviation Office for private flights and internal flights of business enterprises, empty flights or flights that involve only a technical stopover in Germany.

Special arrangements for non-ICAO states (e.g. the Isle of Man):

Enterprises from states that are not members of the ICAO, e.g. those registered on the Isle of Man, are issued with a permit for entry for both commercial and private flights. In this case, the possession of a permit for entry does not stand as proof that the enterprise is liable for aviation tax.

(36) Where passengers are not carried by aviation enterprises, e.g. in the case of so-called corporate flights whereby business enterprises have members of their workforce carried by air either on board their own aircraft or on chartered aircraft without being in possession of an operating licence as an aviation enterprise, the

flights concerned are not liable for aviation tax. Instead, the fuel consumed on such flights is generally subject to energy tax (see Section 1.4).

Departure (§ 2 No. 3 LuftVStG)

(37) The definition of “departure” serves to fix the time of accrual of the tax at the start of an air journey. Therefore, a second departure within Germany that follows on from a feeder flight does not count as a departure provided it is not the subject of a separate legal transaction (see Section 2.1).

The taking-on-board of passengers by a helicopter by winching them up from an aerodrome pursuant to § 6 (1) LuftVG or a site for which a permit pursuant to § 25 (1) Sentence 1 LuftVG is required also counts as a departure.

Destination (§ 2 No. 4 LuftVStG)

(38) A **domestic destination** is an aerodrome located within Germany pursuant to § 6 (1) LuftVG or a site for which a permit pursuant to § 25 (1) Sentence 1 LuftVG is required.

A **foreign destination** is an aerodrome or site which is licensed for the landing of aeroplanes or helicopters under the national regulations of the country of destination.

(39) **Ships, artificial islands, installations and building structures in or on water** (e.g. oil rigs and offshore wind turbines) count as sites pursuant to § 25 (1) Sentence 1 LuftVG. If a passenger (e.g. a marine pilot or mechanic) abseils down to one of the aforesaid sites in or on water, he reaches a destination within the meaning of § 2 No. 4 LuftVStG.

2.3 Accrual of the tax (§ 4 LuftVStG)

(40) The aviation tax is tied up to the legal transaction, and pursuant to § 4 LuftVStG accrues on departure (§ 2 No. 3 LuftVStG) of the passenger from a domestic place of departure (§ 2 No. 1 LuftVStG).

The time of actual departure from the domestic place of departure counts is authoritative for the time of accrual of the aviation tax.

(41) Outward and return flights within Germany are each subject to aviation tax as both the outward flight and the return flight have a designated destination (§ 2 Nr. 4 LuftVStG).

2.3.1 Flight interruptions

(42) A **flight interruption** is generally either a break in the journey undertaken by a passenger voluntarily and without being forced to do so by the flight schedules (**stopover**), an intermediate landing without a break in the journey (**transit**), or a scheduled interruption of the journey (**transfer**), in each case at places lying between the place of departure and the place of destination.

The opposite of these are unforeseen and unscheduled interruptions (e.g. due to weather, technical problems, strikes etc.).

Transit flights

(43) **German transit flights** are flights which have begun in another country and involve only an intermediate landing in Germany. Regardless of the ultimate destination, the onward flight from Germany is not liable for tax. This follows from the definitions of departure and destination contained in § 2 Nos. 3 and 4 LuftVStG.

The passenger must be in possession of a ticket that permits transfer in Germany, with the onward flight scheduled to take place soon (so-called “via ticket”, see Section 2.1 – Paragraph (17)).

(44) In the case of German transit flights, aviation tax accrues if the scheduled break in the journey on flights to a destination in any of the countries named in Annex 1 to the LuftVStG lasts more than 12 hours.

In the case of flights to a destination in any country not named in Annex 1 to the LuftVStG, aviation tax accrues if the scheduled break in the journey in Germany is more than 24 hours (§ 2 Nos. 4 and 5 LuftVStG).

Unforeseen, unscheduled interruptions to the flight and unscheduled delays in operating procedures that cause the aforesaid periods to be exceeded do not give rise to the accrual of tax.

If the onward flight following a layover in Germany is based on a separate legal transaction, e.g. if the onward flight is covered by a separately issued ticket, this departure will normally be liable for aviation tax.

Layover after feeder flights

(45) If an air journey originates in Germany and involves an intermediate landing in Germany, with or without transfer to another plane, the first leg of the journey constitutes a domestic feeder flight.

If both flights are based on a single legal transaction and the onward flight takes place within the time limits specified in § 2 No. 5 LuftVStG, aviation tax only accrues on the first departure (c.f. Section 2.1 – Paragraph (17)).

However, if each flight is the subject of a legal transaction (e.g. if a separate ticket has been issued for each one), the onward flight is liable for aviation tax.

(46) Section 2.3.1 – Paragraph (44) Sentences 1 and 2 also applies to feeder flights.

Intermediate landings in the context of stopover flights

(47) A **stopover flight** is a flight with a longish break in the journey either in the home country or another country, based on a single end-to-end contract of carriage and with one ticket for the entire itinerary.

(48) Criteria for stopover flights are:

- The transfer point must lie on the route to the final destination or at the hub airport used by the aviation enterprise;
- The break in the journey usually lasts more than 24 hours (possibly up to the maximum validity of the ticket);
- The aviation enterprise or the airline alliance to which the aviation enterprise belongs must fly from the starting point of the journey to the stopover point and from there onwards to the final destination.

(49) In terms of aviation tax, stopover flights must be treated differently depending on whether the break in the journey takes place in Germany or elsewhere. The rules outlined in Section 2.3.1 – Paragraph (44) Sentences 1 and 2 also apply analogously to stopover flights with a break in the journey in Germany.

(50) In the case of stopover flights with entitlement to a break in the journey at an intermediate destination in a country other than Germany, the final destination at which the air journey is scheduled to end is authoritative for the rate of tax. In the case of stopovers abroad, the duration of the break in the flight as well as the issue of whether or not the baggage is unloaded at the stopover airport is of no relevance for the rate of aviation tax (c.f. Section 2.1 – Paragraph (17)).

(51) A variant of stopover flights are so-called **multi-stop flights**, i.e. flights that allow several intermediate stops. In the case of multi-stop flights, the most distant airport is taken as the destination for purposes of determining the appropriate tax rate.

Example:

Frankfurt – Dubai – Colombo – Bangkok – Sydney – Frankfurt;

Sydney counts as the destination at which the journey will end as it is the longest distance away.

Intermediate landings in the case of aircraft charter

(52) In the case of charter, private or professional/business people hire aeroplanes or helicopters from aviation enterprises for the performance of flights. The aviation enterprise performs the flights with its own air crew personnel; the hirer specifies the departure and arrival time, the place of departure, possibly also the place for an intermediate refuelling stop, and also the place of destination.

If the plane lands at several aerodromes in sequence under one legal transaction, it can be assumed under a contract of this kind that with each landing, a destination is reached at which the journey is scheduled to end. The aviation tax accrues on each departure. A maximum of one refuelling stop only can be recognized as a scheduled intermediate stop for operational reasons and will therefore not be relevant for tax purposes.

2.4 Tax exemptions (§ 5 LuftVStG)

2.4.1 General

(53) The list of tax exemptions stated in § 5 LuftVStG is exhaustive. The exemptions are viewed as exceptional cases and are to be interpreted narrowly.

2.4.2 Departures serving military or official purposes (§ 5 No. 2 LuftVStG)

(54) A tax exemption can only be claimed under § 5 No. 2 LuftVStG if the aircraft for the flight concerned is used **exclusively** for military or other official purposes (e.g. if a commercial aircraft is chartered by the Bundeswehr (German Armed Forces) for the transport of military personnel). If persons travel on official or military business on scheduled flights, their departure is not tax-exempt.

(55) Flights by the **Bundeswehr (German Armed Forces)** and flights by the Bundeswehr air transportation corps which are carried out using Bundeswehr aircraft do not fall within the remit of the Aviation Tax Act (LuftVStG) as the Bundeswehr is not an aviation enterprise within the meaning of the LuftVStG.

(56) In its function as the national meteorological service, the **Deutsche Wetterdienst** (abbreviated: **DWD**) carries out official duties on islands within German coastal waters.

If the Bundeswehr or the DWD carries out flights using chartered aircraft, the flights are tax-exempt if they are conducted exclusively for military or official purposes.

(57) The professional activity of a **marine pilot** as defined in the corresponding law ("Seelotsengesetz") does not constitute an official duty. A tax exemption under § 5 No. 2 LuftVStG for flights carrying marine pilots to their next place of assignment is therefore not possible.

(58) In the case of flights conducted exclusively for military or other official purposes, the **onus of proof** that this is indeed the case lies with the aviation enterprise performing the flight.

The aviation enterprise must be instructed to submit a certification by the commissioning authority in which it is confirmed by the latter that the aviation enterprise performed the flight to its order exclusively for military purposes or exclusively for official purposes.

The certification must always state the number of flights and contain particulars on the times of the flights and the number of passengers carried on each flight.

2.4.3 Island flights pursuant to § 5 No. 4 LuftVStG

(59) By decision of 29 June 2011 [K (2011) 4488], the European Commission granted German permission for the exemption of flights pursuant to § 5 No. 4 LuftVStG (**flights as services in the general interest**) from aviation tax with effect as from 1 January 2011.

The exemption is a form of state aid of social character pursuant to Art. 107 Paragraph 2 Letter a) of the Treaty on the Functioning of the European Union (TFEU).

(60) In its decision, the European Commission made the following **additional stipulations**:

- The tax exemption must be passed on to the passengers in full.
- It must be indicated on the ticket that the departure is exempt from aviation tax.
- The aviation enterprise must demand proof of entitlement from the passengers (e.g. ID card or passport).
- Additional proof must be furnished in the case of flights for the provision of medical care and in the case of passengers who are going about official business.

Aviation enterprises who perform island flights pursuant to § 5 No. 4 LuftVStG must be informed of the foregoing requirements of the European Commission.

(61) In order to demarcate the geographical area covered by the exemption, the European Commission has precisely defined the **section of coast** to which § 5 No. 4 LuftVStG is applicable.

Accordingly, the place of departure or landing on the mainland must be located not more than 100 km in a straight line from the coastal strip of the North Sea coast lying between Leeuwarden (Netherlands) in the west and Esbjerg (Denmark) in the east or of the Baltic Sea coast lying between Kolobrzeg (Poland) in the east and Sonderborg (Denmark) in the west.

(62) **Coast** for purposes of § 5 No. 4 LuftVStG is the line separating the sea from the mainland at medium tide height. By way of exception to this, “coast” as applied to the mouths of German federal waterways is defined in § 1 Bundeswasserstrassengesetz [“German Federal Waterways Act”] as their seaward limitation as defined in Annex 1 to the Bundeswasserstrassengesetz.

(63) The tax exemption provided for in § 5 No. 4 LuftVStG is applicable to **German islands** which have no road or rail connection to the mainland that is above the high water line. These are **islands located in the North and Baltic Seas**. A list of the islands concerned is provided in Annex 2 – North Sea and Baltic Sea Islands.

(64) A list of all aerodromes located on German North Sea and Baltic Sea islands and of all recognized German, Dutch, Danish and Polish aerodromes located on the mainland at a distance from the coast of not more than 100 kilometres in a straight line is provided in Annex 3 – Aerodromes in the Coastal Area.

(65) Re § 5 No. 4 Letter a) LuftVStG: **Principal residence**

Proof that the requirements for tax exemption were met can be furnished by the aviation enterprise by recording the name and principal residence of the passenger concerned and confirming that a check was conducted in order to verify the principal residence (by checking the details of the principal residence stated in the ID card). It is not necessary for copies of passengers’ ID cards to be preserved.

A registered second home cannot be recognized as the principal residence pursuant to § 5 No. 4 Letter a) LuftVStG.

(66) Re § 5 No. 4 Letter b) LuftVStG: **Medical care**

Departures of passengers who are flying in order to provide medical care for persons located on a German island are departures of

- medical personnel who are flying in exercise of their medical function from and to the German island concerned (e.g. physicians, nurses, doctor’s assistants, paramedics, physiotherapists, masseurs),
- persons who are staying temporarily on an island (e.g. tourists, seasonal workers, persons with a second home on an island) who are flying to the mainland temporarily in order to receive medical care; the outward flight to the mainland and the return flight to the island are both tax-exempt.

(67) If a sick child is accompanied by its parent or guardian on a flight from a German island to the mainland, the latter is, provided the other requirements are also fulfilled, likewise entitled to the tax exemption pursuant to § 5 No. 4 Letter b) LuftVStG. The **accompaniment** of a sick adult by another adult is only exempt from aviation tax under § 5 No. 4 Letter b) LuftVStG if the accompaniment is necessary.

Accompaniment is necessary if this is certified by the treating physician as being the case. A copy of the physician's certification must be preserved by the aviation enterprise for verification purposes.

(68) In the case of persons staying temporarily on an island who terminate their stay prematurely in order to undergo medical care on the mainland, the primary purpose of the flight is the return to the mainland. Aviation tax must therefore be levied.

(69) In the cases provided for under § 5 No. 4 Letter b) LuftVStG, proof of fulfilment of the requirements for tax exemption can be furnished by the aviation enterprise recording the name of the passenger and requesting to be presented with documents showing that the passengers are medical personnel or that medical treatment has taken place on the mainland (e.g. through presentation of a certification by the doctor; the medical indication need not be stated). A copy of the doctor's certification must be preserved by the aviation enterprise for verification purposes.

(70) Re § 5 No. 4 Letter c) LuftVStG: **Performance of official tasks**
Passengers performing an official task on a German island are:

- Public sector employees flying to or from a German island in the course of their official business in order to perform a short-term, medium-term or long-term official activity there. This also includes public officials who permanently perform their duties on a German island and return regularly, e.g. at weekends, to the mainland.
- Private persons to whom administrative powers have been assigned for the performance of duties under public law (e.g. civil-law notaries, TÜV (technical testing and certification service), district chimneysweeps) and who are flying from and to a German island in exercise of their official duties.

(71) In the cases detailed under § 5 No. 4 Letter c) LuftVStG, proof of fulfilment of the requirements for tax exemption can be furnished by the aviation enterprise recording the name and official duty of the person concerned or the official body by which he or she has been appointed.

2.4.4 Island flights pursuant to § 5 No. 5 LuftVStG

(72) Under the approval of the European Commission for state aid of social character, a reduced rate of tax applies in the cases detailed in § 5 No. 5 LuftVStG. Further information relating to island flights pursuant to § 5 No. 5 LuftVStG can be found in Section 2.6.2.

2.4.5 Departures for medical purposes (§ 5 No. 6 LuftVStG)

(73) A tax exemption can only be claimed under § 5 No. 6 LuftVStG if the aircraft for this flight is used **exclusively** for medical purposes. This tax exemption applies in particular to rescue operations, emergency medical care and flights for the transport of sick or injured persons who require medical treatment. Especially departures of commercial air rescue services using specially equipped aeroplanes or helicopters, departures of medically trained personnel to and from a place of deployment, departures of pastoral workers or psychotherapists who are assigned to provide

psychosocial crisis intervention in the case of emergencies as well as departures of medically trained personnel to and from manned dwelling units in offshore wind farms for the regular support of the personnel are exempt.

In some cases, the flights for these purposes are undertaken with aircraft chartered from an aviation enterprise.

Not exempt from tax is the carriage of a passenger due to illness or accident or the carriage of medically trained personnel, pastoral workers or psychotherapists together with other passengers on board an aeroplane or helicopter.

(74) If a sick person on a flight conducted exclusively for medical purposes is accompanied by other persons, the flight is deemed conducted exclusively for medical purposes if the **accompaniment** is necessary. Accompaniment is necessary if it is certified by the treating physician in writing as being so. A copy of the medical certification must be held available by the aviation enterprise for verification purposes.

(75) In the case of departures for the **return home of persons in medical treatment after the completion of treatment**, the tax exemption pursuant to § 5 No. 6 LuftVStG cannot be claimed as this flight is no longer exclusively for medical purposes.

(76) The LuftVStG does not provide for a tax exemption under § 5 No. 6 LuftVStG for flights for **humanitarian purposes**. This may refer, for example, to flights in connection with aid projects to affected countries or return flights of persons who have undergone medical treatment in Germany within the scope of aid projects.

2.4.6 Sightseeing flights (§ 5 No. 7 LuftVStG)

(77) A tax exemption can only be claimed under § 5 No. 7 LuftVStG if the flight is a **sightseeing flight (or “round flight”) within the meaning of § 2 No. 6 LuftVStG** and the **maximum takeoff weight** is not more than 2000 kilograms (in the case of aeroplanes) or 2500 kilograms (in the case of helicopters). For purposes of § 5 No. 7 LuftVStG, the maximum permitted takeoff weight is deemed the maximum takeoff weight. Information on the maximum permitted takeoff weight can be found in the aeroplane flight manual, or AFM, which must be carried on board during the flight.

2.4.7 Flight crews (§ 5 No. 8 LuftVStG)

(78) A tax exemption under § 5 No. 8 LuftVStG can only be claimed if the flight crew members are performing the activities defined in § 2 No. 7 LuftVStG **directly during the flight**.

(79) No tax exemption under § 5 No. 8 LuftVStG can be claimed for crew members who are not engaged during the flight in performance of any of the duties defined in § 2 No. 7 LuftVStG (e.g. pilots seated in the passenger cabin or stewardesses who are not engaged during the flight in performing their normal professional duties but are being flown to their place of deployment – a so-called “ferry flight”). If, however, a change of crew takes place in the course of the flight, the crew members are eligible for the exemption pursuant to § 5 No. 8 LuftVStG even if they only temporarily or occasionally perform the activities defined in § 2 No. 7 LuftVStG during the flight.

The tax exemption for flight crew members engaged in the care of the passengers (§ 2 No. 7 Letter d) LuftVStG) is only available provided other passengers are on board the aircraft in addition to the flight crew. Preparatory activities of the flight crew during a ferry flight, such as stowing the catering supplies, only indirectly serve the care of the passengers and are therefore not eligible for the tax exemption pursuant to § 5 No. 8 LuftVStG.

(80) Persons on board an aircraft who are entrusted with the security of the passengers – so-called **sky marshals** – are also eligible for the tax exemption (§ 2 No. 7 Letter c) LuftVStG). Sky marshals are specially trained plain-clothes officers who are usually members of a police force but in some countries may also belong to the intelligence service and whose task is to accompany passenger flights and ensure the safety and security of the passengers and crew and of the aircraft itself. Their primary mission is to prevent skyjacking and to combat acts of terrorism on board the aircraft. It is thereby immaterial that the sky marshal is not an employee of the airline.

No exemption can be claimed under § 5 No. 8 LuftVStG for departures of personnel of the German Federal Police or security escorts of an airline engaged in the repatriation of aliens under § 71 (3) AufenthG (German Residence Act). The persons concerned are in this case not covered by the definition in § 2 No. 7 Letter c) LuftVStG as the principal purpose for the security escort's flight is to be seen in the repatriation of the alien and not in ensuring the security of the passengers.

2.5 Tax debtor and liability for debts (§ 6 LuftVStG)

(81) Pursuant to § 6 (1) LuftVStG, the tax debtor is:

- the **aviation enterprise** which performs the passenger's departure from a place in Germany on the strength of the legal transaction which is subject to aviation tax and
- the **representative in tax matters** pursuant to § 8 LuftVStG.

(82) The **aviation enterprise** and the **representative in tax matters** are joint and several debtors pursuant to § 6 (1) LuftVStG in conjunction with § 44 AO. Pursuant to § 44 AO, each of the joint and several debtors owes the full payment due.

The attention of the representative in tax matters is drawn on issue of the permit, (Form 1046) and that of the aviation enterprise is drawn in the proof of registration (Form 1049) to the fact if the tax is not paid when due or if a tax notice is issued, recourse is generally had first of all to the representative in tax matters. An indication to this effect is also contained in Form (Form 1110).

2.5.1 Aviation enterprise as tax debtor

(83) The aviation enterprise that performs a departure pursuant to § 1 LuftVStG also always counts as the tax debtor, regardless of whether it has availed itself of the possibility of appointing a representative in tax matters or not or whether, in contravention of § 7 (2) Sentence 2 LuftVStG, it has not appointed a representative in tax matters.

(84) The crucial factor in determining the tax debtor status of an aviation enterprise is whether or not it has **actually performed the departure**. The aviation enterprise that has actually performed the flight pursuant to § 1 LuftVStG can be identified by the **Operating Flight Number**.

(85) In the case of **codesharing**, it can be seen from the flight plan, with the additional remark “operated by” or the Operating Flight Number included in it, by which aviation enterprise the flight was actually performed (the “operating carrier”). Codesharing is a procedure in air travel whereby a scheduled flight is shared by two or more aviation enterprises. This enables aviation enterprises to perform flights which they do not offer themselves.

As a result of codesharing, it is possible that a particular flight has not just one flight number, but several. The flight ticket, the flight notice boards and the passenger information systems show the flight number of the aviation enterprise that issued the ticket and with which, in many cases, the booking was also made (the “issuing carrier”). However, the operating carrier and the issuing carrier need not be identical.

(86) In the case of “**wet leases**”, aircraft are made available fully insured and fuelled – and in some cases also with personnel – to another enterprise, which then performs the actual flight.

Example:

Aviation enterprise A requires an aircraft at short notice to perform a flight under its Operating Flight Number. It charts the aircraft from aviation enterprise B.

For identification of the tax debtor, it is not the ownership of the aircraft that matters; what counts is the Operating Flight Number under which the flight was carried out.

Aviation enterprise A becomes the tax debtor by performing the flight, even if it is with an aircraft belonging to aviation enterprise B.

(87) In the case of “**interlining**”, the various legs of a flight with several intermediate stops are performed by different aviation enterprises.

If the air journey constitutes a single legal transaction, the aviation enterprise that performs the initial departure from a place of departure in Germany (i.e. the place where the air journey starts) is the tax debtor for the aviation tax incurred for the whole distance of the flight. This does not apply if, in the case of transfer within Germany, the scheduled transfer times pursuant to 2 No. 5 LuftVStG are exceeded.

Example:

A passenger books an air journey (one legal transaction) which is carried out by two aviation enterprises. Airline A performs the flight from Stuttgart to Frankfurt. When the passengers have changed planes, airline B then performs the flight from Frankfurt to New York.

*The tax debtor is airline A as it performed the **first** departure from the place of departure in Germany and, pursuant to § 4 LuftVStG, the tax accrues on departure.*

Airline A must remit the aviation tax payable for the whole distance from Stuttgart to New York.

*The **second** departure in Germany, i.e. from Frankfurt, does not give rise to any further tax provided the scheduled break in the journey in Frankfurt does not exceed 24 hours.*

2.5.2 Representative in tax matters as the tax debtor

(88) By force of law, the representative in tax matters also becomes the tax debtor, alongside the aviation enterprise.

(89) For the period in which a representative in tax matters has become the tax debtor pursuant to § 6 (1) Sentence 2 LuftVStG, he continues to have a duty to assist, and recourse can be had to him, until the tax matter concerned has been finally settled, even if his permit has been revoked or his position as representative has ended in the meantime.

2.5.3 Liability for debts (§ 6 (2) LuftVStG)

(90) If, in contravention of § 7 (2) Sentence 3 LuftVStG, an aviation enterprise domiciled in a third country fails to appoint a representative in tax matters, both the **owner and operator** of the aeroplane or helicopter **are liable** for the aviation tax owed (§ 6 (2) Sentence 1 LuftVStG). This also applies in cases where the contractual relationship between an aviation enterprise and its representative in tax matters is terminated or the permit of the representative in tax matters is revoked (see also Section 4.3.2).

In this context, the claim to payment can be asserted directly against the owner or operator before any foreclosure has been made on the aviation enterprise's moveable assets.

2.6 Basis of assessment and rate of tax (§ 10 and § 11 LuftVStG)

(91) The basis of assessment for the amount of tax due is the number of passengers carried and the location of the chosen place of destination (§ 10 LuftVStG).

2.6.1 Rates of tax pursuant to § 11 (1) LuftVStG

(92) The rates of tax pursuant to § 11 (1) LuftVStG are based on the distance to the place of destination and are divided into **three distance bands**:

Distance band	Tax year	
	2011	2012 to 2014
	Tax rate in €	
Domestic flights, EU Member States, candidates for EU membership, EFTA member states and third countries lying within this distance band (in particular Turkey, Russia, Morocco, Tunisia, Algeria) -See List of Countries in Annex 1 to the LuftVStG-	8.00	7.50
Countries not named in Annex 1 at a distance of up to 6,000 km (other north and central African countries, Arabian countries, central Asian countries) -See List of Countries in Annex 2 to the LuftVStG-	25.00	23.43
Countries not named in Annex 1 or Annex 2	45.00	42.18

(93) For the classification of a destination country in a distance band, the distance between Frankfurt am Main, i.e. the site of Germany's biggest commercial airport, and the biggest commercial airport in the destination country is authoritative, not the actual distance between the place of takeoff and the place of destination.

(94) The distance band applicable for a particular country also applies to territories belonging to that country but geographically separate from it. That means, for example, that the distance band applicable to Spain under Annex 1 to the LuftVStG is also valid for territories belonging to Spain such as the Canary Islands, Ceuta and Melilla. The distance band applicable to Portugal under Annex 1 to the LuftVStG is also valid for the Azores and Madeira.

The distance bands applicable to the Netherlands, France, the United Kingdom and Denmark are also valid for the overseas countries and territories which belong to them and would otherwise fall within a different distance band.

A list of the British, Danish, French and Dutch **overseas countries and territories** can be found in Annex 4 – Overseas Countries and Territories.

(95) Flights to ships, artificial islands, installations and building structures in and on water which are located in the **Exclusive Economic Zone** of a country pursuant to Art. 55 UNCLOS are subject to the tax rate pursuant to § 11 (1) LuftVStG which is payable for the flights to a place of destination in the country holding the sovereign right pursuant to Art. 56 (1) Letter b) UNCLOS in the aforesaid zone. The Exclusive Economic Zone extends seawards for up to 200 nautical miles from the base line (Art. 57 SRÜ).

(96) Flights to ships, artificial islands, installations and building structures in or on water which are located on the High Seas outside the Exclusive Economic Zone are subject to the rate of tax pursuant to § 11 (1) No. 3 LuftVStG.

2.6.2 Reduced rate of tax for island flights pursuant to § 5 No. 5 LuftVStG

(97) On introduction of the LuftVStG, a notification procedure was initiated by the Federal Ministry of Finance under the European state aid control system in relation to the tax exemption (**flights for employees, service providers, business persons and tourists**) provided for under § 5 No. 5 LuftVStG. The tax exemption pursuant to § 5 No. 5 LuftVStG was suspended pending the issue of permission by the European Commission and the regular rate of tax pursuant to § 11 (1) No. 1 LuftVStG applied to such flights instead.

(98) By decision of 20 December 2012 [C (2012) 9451], the European Commission granted Germany permission to reduce the aviation tax on flights pursuant to § 5 No. 5 LuftVStG to 20% of the regular rate of tax pursuant to § 11 (1) No. 1 LuftVStG.

Accordingly, the arrangement provided for in § 5 No. 5 LuftVStG constitutes state aid of social character pursuant to Art. 107 Subsection 1 TFEUE, which pursuant to Art. 107 Subsection 3 Letter c) TFEUE is compatible with the Single Market.

(99) The **reduced rate of tax** approved by the European Commission is a modified form of the tax exemption for island flights provided for in § 5 No. 5 LuftVStG.

(100) The following **reduced rates of tax** apply retrospectively to all departures performed since 1 January 2011 pursuant to § 5 No. 5 LuftVStG:

Calendar year	Reduced rate of tax
2011	€1.60
2012 to 2014	€1.50

(101) The reduced rate of tax pursuant to § 5 No. 5 LuftVStG approved by the European Commission is applicable to flights from and to **German, Dutch and Danish North Sea islands**.

A list of the inhabited German, Danish and Dutch North Sea islands which have no road or rail connection to the mainland which is above the high water line and to which the reduced rate of tax applies can be found in Annex 2 – North and Baltic Sea Islands.

(102) To demarcate the geographical area to which the tax reduction applies on the mainland, the same definitions of the terms “coast” and “section of coast” are applicable as are used for defining the extent of the tax exemption pursuant to § 5 No. 4 LuftVStG (c.f. Section 2.4.3 – Paragraph (61) and (62)).

A list of all aerodromes on German, Danish and Dutch North Sea islands as well as all approved aerodromes on the German, Dutch, Danish and Polish mainland located not more than 100 kilometres in a straight line from the coast are to be found in Annex 3 – Aerodromes in the Coastal Region.

3. Jurisdiction (§ 3 LuftVStG)

3.1 Jurisdiction in practical matters

(103) Responsibility for the practical administration of the aviation tax is vested in the customs authorities (§ 3 (1) LuftVStG).

3.2 Local jurisdiction

General

(104) Local jurisdiction is governed by § 3 (2) LuftVStG.

(105) The local jurisdiction is determined primarily by the place from where the aviation enterprise is operated, where the representative in tax matters - if any is appointed - has his registered domicile, and in which main customs office area the initial departure took place.

(106) An enterprise is normally deemed to be **operated** from the place where the management is located. Pursuant to **§ 10 AO**, the location of the management is the centre point of the most senior business management. The decisions which govern the management are taken at the centre point of the most senior business management. This is the place at which the most important of the actual, organizational and legal acts which are incumbent upon the management and which

are associated with the normal running of the business (so-called “everyday business matters”).

If the bookkeeping of an enterprise is done at a different place, this is not decisive for determining the local jurisdiction.

The location of the management is therefore not necessarily identical with the **registered office of the enterprise** pursuant to **§ 11 AO**, which is determined by the law, the articles of association, the by-laws of the enterprise or such like.

Branch establishments of enterprises are permanent establishments within the meaning of § 12 AO which have no registered office pursuant to § 11 AO in Germany.

(107) The respective local jurisdiction pursuant to § 3 (2) LuftVStG is detailed in Annex 5 – Local Responsibilities.

Special jurisdiction arrangements

(108) In the case of aviation enterprises which only name a representative in tax matters after the initial departure has taken place, the local jurisdiction will change on the representative in tax matters being named from the main customs office in whose district the initial departure took place to the main customs office in whose district the representative in tax matters is domiciled.

Jurisdiction agreement

(109) The main customs office with local jurisdiction under the LuftVStG may differ from the main customs office which has local jurisdiction for the same enterprise in other matters.

In such cases, § 27 AO permits the local jurisdiction to be transferred, with the concurrence of the main customs office with local jurisdiction under the LuftVStG, to another main customs office provided that both the main customs offices concerned and also the aviation enterprise concerned or the representative in tax matters (if a representative in tax matters has been appointed) agree.

4. Registration, procedure for permit for the representative in tax matters (§ 7 and § 8 LuftVStG)

4.1 Registration (§ 7 LuftVStG)

(110) All aviation enterprises intending to perform more than two departures as defined in § 1 LuftVStG in any calendar year have a duty to register (§ 7 (1) LuftVStG). For aviation enterprises intending to perform not more than two departures in any calendar year, see Section 4.2.

(111) An application for registration must be made to the relevant main customs office (see Section 3.2) not later than three weeks prior to performance of the first departure. Should the departure take place earlier, a notification of the intended departures must be provisionally submitted (see Section 4.2).

(112) **Form 1164** should be used for the **application for registration**.

(113) Aviation enterprises with no registered office in Germany or another EU Member State have a duty to appoint and name a representative in tax matters pursuant to § 8 LuftVStG in the application for registration. Other aviation enterprises may name a representative in tax matters, but are not obliged to do so (§ 7 (2) Sentences 3 and 4 LuftVStG).

If the aviation enterprise names a representative in tax matters, it must, together with the application for registration, submit confirmation of the appointment of the representative in tax matters, using **Form 1169** for this purpose.

The duty pursuant to § 7 (2) Sentence 3 LuftVStG to appoint and name a representative in tax matters also applies to aviation enterprises which do not have their registered office in Germany or another EU Member State but have a branch office or other representation in Germany (c.f. Section 3.2 – Paragraph (106)).

(114) An application for registration is only deemed complete if all the particulars and all the documents specified in § 7 (2) LuftVStG are furnished and submitted and if an aviation enterprise that has a duty under § 7 (2) Sentence 3 LuftVStG to name a representative in tax matters has fulfilled this requirement.

(115) § 7 (3) LuftVStG stipulates that an aviation enterprise may be required to provide further information, e.g. a list of the aircraft operated by the aviation enterprise or details of the owner and operator of the aircraft as well as the annual financial statements, if this should appear necessary for safeguarding the tax revenue or for fiscal supervision purposes (§ 14 LuftVStG).

(116) **Proof of registration** is furnished in the shape of **Form 1049** and is only issued when a complete application for registration has been submitted.

4.2 Notification pursuant to § 7 (1) Sentence 2 LuftVStG

(117) In cases where a period of less than three weeks lies between the underlying legal transaction and the initial departure, the aviation enterprise concerned must provisionally submit a notification stating the departure date, the place of departure in Germany, the name of the enterprise, the registered office or home address and the legal form of the enterprise (§ 7 (1) Sentence 2 **No. 1** and (2) Sentence 1 LuftVStG). The registration, including the name of the representative in tax matters, if any, must then be submitted within three weeks from receipt of the notification (§ 7 (1) Sentences 2 and 3 and (2) Sentence 1 LuftVStG).

(118) Aviation enterprises intending to perform not more than two departures in any calendar year (§ 7 (1) Sentence 2 **No. 2** LuftVStG) are not required to register. They must submit a notification for each calendar year stating the information specified in Section 4.2 – Paragraph (117). Aviation enterprises which are not required to register also have no duty to name a representative in tax matters.

(119) **Form 1163** should be used for the notifications specified in Section 4.2 – Paragraphs (117) and (118).

(120) No written proof of receipt is issued in response to the submission of a notification pursuant to § 7 (1) Sentence 2 Nos. 1 and 2 LuftVStG.

4.3 Representative in tax matters (§ 8 LuftVStG)

(121) The representative in tax matters pursuant to § 8 LuftVStG has different legal status from that of the “representative” (“Beauftragter”) referred to in § 214 AO.

(122) In the performance of his function, the representative in tax matters enters into and assumes all the rights and duties in relation to tax of the aviation enterprise which he represents. The representative in tax matters is wholly and fully included in the aviation enterprise’s tax liability (§ 8 (1) LuftVStG). See also the information provided in Section 2.5.2.

(123) Representatives in tax matters are contact persons for the responsible main customs office. Therefore, letters and official acts addressed to an aviation enterprise must generally always be sent to the representative in tax matters as the aviation enterprise’s representative. For this purpose, there is no need for the representative in tax matters also to be named as the aviation enterprise’s authorized recipient pursuant to § 123 AO. If the representative in tax matters is notified of an official act, this has the same legal effect on the aviation enterprise as if the aviation enterprise had been notified instead.

4.3.1 Application for and issue of a permit (§ 8 (2) LuftVStG)

(124) Anyone wishing to act as a representative in tax matters pursuant to § 8 LuftVStG requires a permit. A representative in tax matters can act for several aviation enterprises, even if these are not yet known at the time when the application for a permit is submitted. **Form 1162** should be used for the **application for a permit**.

(125) The **permit is granted** by the issue of **Form 1046**. It may be made subject to any of the collateral clauses detailed in § 120 (2) AO (§ 2 (2) LuftVStDV).

(126) The following applies with regard to the requirements for the issue of a permit pursuant to § 8 (2) LuftVStG:

1. A permit to act as a representative in tax matters may only be issued to persons whose **registered office pursuant to § 11 AO is in Germany**. Branches in Germany of aviation enterprises that have no registered office in Germany cannot act as representatives in tax matters since a branch is not able to establish a registered office in Germany within the meaning of § 11 AO.
2. The function of a representative in tax matters can only be performed by a person engaged in a **commercial or professional activity**. A permit to act as a representative in tax matters may not be granted to a **private person**.
3. A permit may only be granted to persons whose **fiscal reliability** is not subject to any doubt.
4. **Good accounting and bookkeeping** is defined in Part Four, Section 2, Subsection 1 (§§ 140 et seq.) of the AO, §§ 238 et seq. of the German Commercial Code (“Handelsgesetzbuch” – abbreviated “HGB”) and the

income tax guidelines in the version in force at any time. Electronic accounting and bookkeeping must be in compliance with the Principles of Good DP-aided Accounting and Bookkeeping – GoBS – (E-VSF S 0937). Provided the applicant has furnished all the particulars required by the application form, these must normally be recognized unless any discernible grounds exist for not doing so.

5. The applicant must draw up **annual financial statements in a timely manner**. This is deemed to be the case if the annual financial statements of stock corporations (“Kapitalgesellschaften”) for the previous financial year are drawn up within the first three months of a financial year, those of small stock corporations (“kleine Kapitalgesellschaften”) (§ 267 (1) HGB) within the first six months of a financial year – provided this is compatible with the regular course of business – and those of cooperative societies within the first five months of a financial year (§ 264 (1) and § 336 (1) HGB). In the case of sole traders and business partnerships, the annual financial statements must be drawn up as soon as possible – taking all circumstances into account and especially also the circumstances of the enterprise – after the close of the year, though within one year at most. On granting of a permit, information of the applicant relating to the annual financial statements can be assumed to be correct. In the case of any indications that tax matters may be in jeopardy, or in the case of any doubt, current annual financial statements must be demanded.

Pursuant to § 8 (3) Sentence 3 LuftVStG, the applicant may be requested to furnish further information (e.g. an extract from the central register of businesses pursuant to § 150 GewO) if this is deemed necessary for safeguarding the tax revenues or for fiscal supervision purposes (§ 14 LuftVStG).

Further information may be demanded pursuant to § 8 (3) LuftVStG if, for example:

- doubts exist regarding the fiscal reliability of the applicant;
- indications already exist that the tax may be in jeopardy (such indications would, in particular, be the cases referred to in § 3 No. 1a and No. 10 LuftVStDV);
- outstanding claims are not being settled.

(127) In the case of relocation of the representative in tax matters’ registered office to the district of another main customs office, a permit which has already been issued shall remain in force unchanged and without restriction and with all the rights and duties appurtenant to it.

4.3.2 Termination of representation/Revocation of permit

(128) Pursuant to § 7 (4) LuftVStG, **termination of the representation relationship** between the representative in tax matters and the aviation enterprise must be notified to the main customs office without delay in writing either by the aviation enterprise or the representative in tax matters.

Termination of the representation will become effective towards the main customs office on receipt by the latter at the earliest

(129) A permit to act as a representative in tax matters must be **revoked** (§ 8 (5) LuftVStG) if the requirements specified in § 8 (2) Sentence 2 LuftVStG for granting the permit are no longer fulfilled or if security requested under § 9 LuftVStG is not furnished.

(130) **Revocation of the permit** will cause the representation relationship between the representative in tax matters and the aviation enterprise to end.

(131) If an aviation enterprise fails to name a new representative in tax matters within a period of two months from being called upon to do so, the aviation enterprise will be deemed incompletely registered.

On expiry of the aforesaid period, the deadlines allowed for prompt submission of the tax return pursuant to § 12 (3) LuftVStG will apply (c.f. Section 5.1.1 – Paragraph (137)).

Until a new representative in tax matters has been named, local jurisdiction continues to lie with the main customs office in whose district the former representative in tax matters was domiciled.

5. Tax return, due date, tax assessment, security, duty to keep records

5.1 Tax return/Due date/Tax assessment (§ 12 LuftVStG)

(132) For the sake of greater linguistic clarity, the term “tax return” as used in Section 5.1 also includes “tax corrections”.

5.1.1 Tax return and due date

(133) Tax declarations pursuant to § 12 LuftVStG as well as any tax corrections relating to them are tax returns pursuant to § 150 (1) Sentence 3 AO as the tax debtor is required to compute the tax himself.

(134) The **tax return** must be submitted using the officially specified form. If the tax return is filed in paper copy, **Form 1110** (Aviation Tax Return) should be used. Tax returns printed out by data processing equipment or produced in any other way must be recognized if they correspond in essence to Form 1110 and are indicated as being tax returns. The tax return can also be transmitted by the submitting party via telefax or scanned and sent by email or scanned and sent to a fax machine or sent from a fax machine to a computer.

The written declaration on the form that the information contained in the tax return is true to the best of the submitter’s knowledge and belief must be signed. Without the signature, the tax return is fundamentally invalid. For electronic use, the “**Internet-Luftverkehrsteueranmeldung**” (Internet Aviation Tax Return Form) - abbreviated ILA - is available (see Section 9.1).

(135) If a change of local jurisdiction has taken place, the main customs office has jurisdiction that had local jurisdiction for the return period for submitting returns pursuant to § 12 LuftVStG.

(136) A tax return must be submitted pursuant to § 12 (1) Sentence 1 LuftVStG even if only tax exemptions pursuant to § 5 LuftVStG have been claimed.

(137) The **deadlines for submission of the tax returns and for payment** of the aviation tax are stated in § 12 LuftVStG. Attention is drawn in particular to the December arrangement specified in § 12 (2) LuftVStG.

The deadlines pursuant to § 12 (3) LuftVStG apply if an aviation enterprise with a duty to register pursuant to § 7 (1) LuftVStG has submitted no application for registration at all or only an incomplete application and in the case of aviation enterprises who have submitted a notification pursuant to § 7 (1) Sentence 2 Nos. 1 and 2 LuftVStG.

5.1.2 Submission of documents

(138) For further verification of tax returns, the main customs office may demand the submission of further documents in substantiation of them. Records maintained pursuant to § 13 (1) Sentence 1 LuftVStG and § 13 (2) Sentence 2 LuftVStG count as substantiating documents.

In accordance with § 17 (1) and (2) LuftVStG, the main customs office may also request information from aerodrome operators, the Federal Aviation Office, the Federal Police and the air traffic control authorities (see also Section 9.3 on this).

5.1.3 Tax assessment

(139) Abstract **judicial review proceedings** are currently pending at the Federal Constitutional Court (“Bundesverfassungsgericht”) to establish whether the LuftVStG is compatible with the Constitution (1 BvF 3/11). Until the court has ruled in this matter, all tax assessments are to be deemed **provisional** pursuant to § 165 (1) Sentence 2 No. 3 AO.

(140) The **assessment period** for aviation tax is four years (§ 169 (2) Sentence 1 No. 2 AO). Attention is drawn to the start of the assessment period pursuant to § 170 (2) Sentence 1 No. 1 AO.

(141) In the absence of any regulation in the LuftVStDV, § 156 (1) AO is not applicable in relation to aviation tax (small amounts clause).

Pursuant to § 156 (2) AO, the assessment of sums of low value can be waived if the preconditions detailed in AO-DV Zoll No. 5 relating to § 156 are fulfilled. Claims for relief of a party arising from changes to or corrections of tax assessments are always assessed.

5.1.3.1 Refunds to parties in other EU Member States

(142) In the case of refund of taxes or duties to a person whose domicile or establishment is located in another EU Member State, § 6 (2) EUBetrG (German EU

Tax Recovery Act) stipulates that the other Member State must be informed of the intended refund if it relates to taxes or duties as defined in § 4 (1) No. 2 EUBetrG. In view of the fact that, pursuant to § 4 (1) No. 2 Letter e) EUBetrG in conjunction with § 3 LuftVStG, aviation tax falls within the remit of the customs administration, § 6 (2) EUBetrG applies.

(143) If an aviation tax refund is made to a person whose establishment or domicile is located in another EU Member State, other Member States are informed without any prior request.

(144) If claims arising from the tax liability are offset in full against other claims by the main customs offices (§ 226 AO), no notification is made to the other Member State.

(145) § 14 (1) EUBetrG does not provide for any small-amounts limit below which the exchange of information can be waived.

(146) Without prejudice to § 37 (2) AO, the following applies:

If an aviation enterprise domiciled in another EU Member State appears as the declarant in a tax return which results in a refund, § 6 (2) EUBetrG shall generally apply regardless of to whom and to which country the refund is paid.

If the representative in tax matters of an aviation enterprise domiciled in another EU Member State appears as the declarant, § 6 EUBetrG shall generally not apply. This shall also apply in cases where the representative in tax matters as the recipient of the refund payment names the aviation enterprise represented by him and domiciled in another EU Member State.

5.1.3.2 Tax notice based on estimate

(147) Aviation enterprises that fail to fulfil their duties under § 12 LuftVStG may be issued with tax notices based on an estimate pursuant to § 162 AO.

(148) If it is found that aviation enterprises are no longer fulfilling their duty to submit tax returns but are nevertheless still performing departures which are liable for tax, the aviation enterprises concerned will be reminded of their duty to file tax returns.

If this still fails to elicit the submission of a tax return, a tax notice will be issued on the basis of an estimate.

5.2 Security for tax payments (§ 9 LuftVStG)

(149) if there are any indications to suggest that the tax payments may be in jeopardy, the main customs office may demand that tax debtors furnish security in an amount equivalent to the tax that is expected to accrue during a period of two calendar months (§ 9 LuftVStG and § 3 LuftVStDV).

5.3 Duty to maintain records (§ 13 LuftVStG)

(150) Pursuant to § 13 (1) Sentence 1 LuftVStG, every aviation enterprise has a duty to maintain records for assessment of the tax and the basis on which it was computed and for verifying the justification for tax exemptions under § 5 LuftVStG. § 13 (1) Sentence 2 LuftVStG stipulates that the records must be such that it is

possible for a third party with the necessary professional knowledge to establish the basis for taxation within a reasonable period of time.

(151) With regard to the basis of computation of the tax, the records must include at least the information specified in § 13 (2) Sentence 1 LuftVStG.

Special aspects of the records relating to avilment of the tax exemptions under § 5 LuftVStG can be taken in detail from Paragraphs (58), (65), (67), (69), (71) and (74).

(152) A main customs office may also demand **additional records** pursuant to **§ 13 (2) Sentence 2 LuftVStG** if and insofar as this appears necessary for safeguarding the tax revenues or for fiscal supervision purposes.

(153) A main customs office may also impose special requirements (e.g. type, form, duration of submission) concerning the records requested if this appears necessary for safeguarding the tax revenues or for fiscal supervision purposes.

(154) The records are used as the basis for verification in the context of fiscal supervision measures or external audits or also as substantiating documents for the tax returns (c.f. Section 5.1.2).

(155) The representative in tax matters must hold the records available for auditing purposes and should not be obligated to maintain records as well as the aviation enterprise. The information needed for this is generally only available to the aviation enterprise. The relevant records must be provided to the representative in tax matters by the aviation enterprise.

The aviation enterprise must submit the records pursuant to § 13 (1) Sentence 1 LuftVStG every month for the preceding month. The aviation enterprise must make other records pursuant to § 13 (2) Sentence 2 LuftVStG as well as substantiating documents available to the representative in tax matters for verification or auditing purposes without delay.

(156) As documents of relevance for taxation, the records must be preserved for six years (§ 147 (1) No. 5 AO in conjunction with § 13 LuftVStG).

6. Fiscal supervision (§ 14 LuftVStG), external audits

(157) The matters of significance for aviation tax are subject to **fiscal supervision** pursuant to § 209 (3) AO in conjunction with § 14 Sentence 1 LuftVStG. Attention is drawn to the right of access pursuant to § 14 Sentence 2 LuftVStG.

(158) **External audits** pursuant to § 193 AO relate exclusively to the tax affairs of aviation enterprises.

7. Penalties for infringements

(159) Infringements of the duty to submit tax returns pursuant to § 12 LuftVStG which result in the understatement of aviation tax as defined in § 370 (4) AO may be punished either as a criminal tax offence (tax evasion pursuant to § 370 (1) AO if committed wilfully, c.f. AO-DV Zoll No. 3.2 re § 370) or as a summary (minor) tax offence (negligent understatement of tax pursuant to § 378 AO if committed

negligently, c.f. AO-DV Zoll No. 6 re § 377 to § 384) . The mere jeopardizing of aviation tax through infringement of the duty to maintain records (§ 13 LuftVStG) or through breaches of special requirements which have been imposed (§ 13 (2) Sentence 2 and § 14 Sentence 1 LuftVStG) can be punished as a summary (minor) tax offence pursuant to § 379 (1) Sentence 1 No. 3 or (3) AO (c.f. AO-DV Zoll re § 379).

Additionally, in § 16, the LuftVStG itself lists a number of infringements, especially in connection with registration duties (§ 7 LuftVStG) and duties to maintain records (§ 13 LuftVStG), which can be punished as summary (tax) offences.

8. Mutual assistance (application of EUAHiG)

(160) The legal basis for **mutual official assistance** between the EU Member States in the field of aviation tax is the EU-Amtshilfegesetz (EU Official Assistance Act - abbreviated EUAHiG) of 26 June 2013 (BGBl. I, p. 1809), through which Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (Official Journal L 64 of 11 March 2011) was translated into national law.

9. Internet aviation tax returns, forms, data exchange

9.1 Internet Aviation Tax Return (ILA)

(161) On the launch of real-life operation of the special IT system AVIATA on 1 September 2012, the **portal for Internet aviation tax returns (ILA portal)** became available to commercial operators.

The ILA portal can be accessed on the Internet via the link <https://ila.zoll.de> and enables aviation enterprises and their representatives in tax matters to handle the electronic data capture and subsequent transmission of the aviation tax return to the competent main customs office via the Internet (ILA is an acronym formed from **Internet-Luftverkehrsteueranmeldung** (Internet Aviation Tax Return)). The data is transmitted to AVIATA in a signed, standardized message format.

(162) For authentication (registration) purposes on the ILA portal and for signature of the data for transmission to AVIATA, both the aviation tax number and a valid **ELSTER certificate** are required.

(163) Further details on the use of ILA, its mode of operation and special process handling information are contained in the procedural instructions for the electronic capture and subsequent transmission of aviation tax returns by ILA users to the competent main customs office.

9.2 Forms

(164) The following forms are available for aviation tax purposes:

Form No.	Title
1164	Antrag – Registrierung eines Luftverkehrsunternehmens [Application for Registration as an Aviation Enterprise] (§ 7 (1) Sentence 1 LuftVStG)
1163	Anzeige gem. § 7 Abs. 1 Satz 2 LuftVStG [Notification pursuant to § 7 (1) Sentence 2 LuftVStG]
1049	Registrierungsnachweis nach dem LuftVStG [Proof of Registration under the Aviation Act] (§ 7 (5) LuftVStG)
1162	Antrag – Steuerlicher Beauftragter von Luftverkehrsunternehmen [Application - Representative in Tax Matters for an Aviation Enterprise] (§ 8 (2) LuftVStG)
1046	Erlaubnis – Steuerlicher Beauftragter von Luftverkehrsunternehmen [Permit - Representative in Tax Matters for an Aviation Enterprise (§ 8 (2) LuftVStG)]
1169	Bestätigung der Benennung als steuerlicher Beauftragter von Luftverkehrsunternehmen [Confirmation of Appointment as a Representative in Tax Matters for an Aviation Enterprise (§ 7 LuftVStG)]
1110	Aviation Tax Return (§ 12 LuftVStG)

The forms must be used in the version in force at any time.

(165) The forms to be completed by the parties are available on the Internet at www.zoll.de via a link to the Form Management System (FMS).

(166) Forms 1110, 1163 and 1164 are also available in English-language versions as a translation aid; they are included among the German forms in the FMS and can be accessed via the button “English translation aid”.

For submitting applications, however, only the German-language forms may be used.

9.3 Data exchange and disclosure duties (§ 17 LuftVStG)

(167) § 17 LuftVStG regulates the collaboration with official bodies and institutions. Collaboration is necessary in particular for enabling tax returns to be reviewed for completeness and correctness or for establishing whether and to what extent an aviation enterprise is subject to the provisions of the LuftVStG at all. In particular cases, therefore, further information on facts of relevance for tax may be obtained.

9.3.1 Collaboration with aerodrome operators

(168) Aerodrome operators count as persons who have a duty to provide information pursuant to § 93 AO in conjunction with § 17 (1) LuftVStG.

(169) The main customs offices may use the data held by aerodrome operators to verify whether flights actually took place, whether they were cargo or passenger flights and/or whether the operating carrier stated actually performed the flight. In

some cases, aerodrome operators also hold information on the number of passengers on individual flights.

9.3.2 Collaboration with the Federal Aviation Office

(170) Pursuant to § 17 (2) LuftVStG, information may be obtained from the Federal Aviation Office (Luftfahrt-Bundesamt) relating to the aircraft deployed by German aviation enterprises (type, registration number, maximum number of passenger seats).

(171) Ad-hoc reports pursuant to § 17 (3) LuftVStG must be submitted to the Federal Aviation Office in the case of findings of fact in connection with

- outstanding claims arising from tax liability,
- prosecutions for tax offences,
- indications of financial difficulties or impending insolvency,
- indications of flights without a necessary permit,

which may be necessary for assessing the reliability of an aviation enterprise as required by aviation law.

9.3.3 Collaboration with DFS Deutsche Flugsicherung GmbH

(172) All departures from places of departure in Germany are recorded by DFS Deutsche Flugsicherung GmbH, the German air traffic control body, and information on them can be obtained by the main customs offices on request for establishing the basis for taxation.

10. List of abbreviations / Glossary

Abbreviation/ Expression	Meaning of abbreviation	Explanation (if not self-explanatory)
ACC	Air Carrier Certificate	The ACC is comparable to an AOC and is issued primarily in the USA.
TFEUE	Treaty on the Functioning of the European Union	
AFM	Aeroplane Flight Manual	
OJ	Official Journal of the European Union	
AOC	Air Operator Certificate	
AO	Abgabenordnung	German Fiscal Code
AO-DV Zoll	Dienstvorschrift zur Anwendung der Abgabenordnung im Bereich der Zollverwaltung	Service Regulation on Application of the Fiscal Code in the Field of Customs Administration
AufenthG	Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz)	German Act on Residence, Gainful Employment and Integration of Foreigners in Germany

AVIATA	IT-Fachverfahren AVIATA (Aviation Tax)	Special IT procedure for levying aviation tax (AVIATA)
BGBI.	Bundesgesetzblatt	Official Gazette of the Federal Republic of Germany
BMF	Bundesministerium der Finanzen	Federal Ministry of Finance
BT-Drs.	Bundestagsdrucksache	German Parliament Publication
DWD	Deutscher Wetterdienst	German Meteorological Service
EFTA	European Free Trade Association	
ELSTER	elektronische Steuererklärung	Electronic tax declaration
EnergieStG	Energiesteuergesetz	German Energy Tax Act
EnergieStV	Verordnung zur Durchführung des Energiesteuergesetzes (Energiesteuer-Durchführungsverordnung)	Regulation on Implementation of the German Energy Tax Act
EU	European Union	
EUAHiG	Gesetz über die Durchführung der gegenseitigen Amtshilfe in Steuersachen zwischen den Mitgliedstaaten der Europäischen Union (EU-Amtshilfegesetz)	German Act on the Implementation of Mutual Assistance in Tax Matters between Member States of the European Union (EU Official Assistance Act)
EUBeitrG	Gesetz über die Durchführung der Amtshilfe bei der Beitreibung von Forderungen in Bezug auf bestimmte Steuern, Abgaben und sonstige Maßnahmen zwischen den Mitgliedstaaten der Europäischen Union (EU-Beitreibungsgesetz)	German Act on the Implementation of Official Assistance in the Collection of Claims to Certain Taxes, Duties and Other Measures between the Member States of the European Union (German EU Tax Recovery Act)
E-VSF	Elektronische Vorschriftensammlung Bundesfinanzverwaltung	Electronic collection of regulations of the German Federal Revenue Administration
EEA	European Economic Area	
FMS	Formular-Management-System	Form Management System
GewO	Gewerbeordnung	Trade Regulations
GoBS	Grundsätze ordnungsmäßiger DV-gestützter Buchführungssysteme	Principles of Good DP-aided Accounting and Bookkeeping Systems
HGB	Handelsgesetzbuch	German Commercial Code
HZA/HZÄ	Hauptzollamt/Hauptzollämter	Main customs office(s)
ICAO	International Civil Aviation Organization	
ILA	Internet-Luftverkehrsteueranmeldung	Internet aviation tax return(s)
ILA-Portal	Portal für die Internet-Luftverkehrsteueranmeldung	Portal for Internet aviation tax returns
IT	Informationstechnik	Information technology

LuftBO	Betriebsordnung für Luftfahrtgerät	Operating Regulations for Aeronautical Equipment
Luftverkehrssteuernummer		The Aviation Tax Number is allocated to each aviation enterprise and representative in tax matters and serves as a unique identification feature for use of the ILA.
LuftVG	Luftverkehrsgesetz	Aviation Tax Act
LuftVSt	Luftverkehrsteuer	Aviation tax
LuftVStAbsenkV	Luftverkehrsteuer-Absenkungsverordnung	Aviation Tax Reduction Regulation
LuftVStDV	Luftverkehrsteuer-Durchführungsverordnung	Aviation Tax Act Implementing Regulation
LuftVStFestV	Luftverkehrsteuer-Festlegungsverordnung	Regulation Setting the Aviation Tax Rates
LuftVStG	Luftverkehrsteuergesetz	Aviation Tax Act
LuftVZO	Luftverkehr-Zulassungs-Ordnung	German Air Transport Authorization Regulations
PNR	Passenger Name Record	
UNCLOS	United Nations Convention on the Law of the Sea	
TÜV	Technischer Überwachungsverein	German technical testing and certification service

Annex 1

Application of the Transitional Arrangements pursuant to § 19 (1) LuftVStG

Pursuant to § 19 (1) LuftVStG, the law is only applicable to legal transactions occurring on or after 1 September 2010 and as a result of which the passenger is named to the aviation enterprise only on or after 1 September 2010 for a departure to take place on or after 1 January 2011. Under the transitional regulation, a departure on or after 1 January 2011 is taxable only on condition that the passenger was named to the aviation enterprise only on or after 1 September 2010. This arrangement had the purpose of preventing anticipatory effects, and hence loss of the corresponding tax revenues, that otherwise would most likely have occurred as a result of the announcement on 1 September 2010 of the German cabinet decision to introduce an aviation tax in 2011.

“Travel or flight bookings” completed before 1 September 2010 (i.e. the customer booking has been finalized) remain unaffected by the new tax, in particular because - in contrast to bookings made after 1 September 2010 - the new aviation tax could not be taken into account in the agreement on the travel price. Consequently, § 19 (1) LuftVStG does not apply to flights or package holidays involving air travel which were booked by a customer before 1 September 2010, e.g. in a travel agency or through the Internet; these bookings are therefore not subject to tax under the LuftVStG. All flights or package holidays involving air travel which were booked by a customer after 1 September 2010, on the other hand, *do* normally result in a taxable legal transaction. If, however, a customer booking is not made directly with the travel company who is actually providing the holiday but first of all through some kind of intermediary (e.g. an insurance company, newspaper, gaming enterprise, night school, church body), the customer booking is only deemed to have been finally made at the time when it is received by the travel company actually providing the holiday.

Records for auditing purposes

The aviation enterprises must maintain appropriate records for verification/auditing purposes to show that the legal transactions concerned were concluded before 1 September 2010 (e.g. through records of the travel company showing a package holiday to have been booked by the flight passenger before 1 September 2010).

Proof that legal transactions were concluded before 1 September 2010 must normally be furnished by aviation enterprises for individual or group bookings as follows:

General:

The date of issue of the airline ticket is not authoritative in either case.

Presentation of a corresponding written confirmation of a booking by the travel company is normally sufficient proof that a customer booking was made before 1 September 2010. The additional submission of invoice copies or copies of the booking confirmations is not necessary.

Individual bookings:

In the case of individual bookings, the date of creation of the PNR (= Passenger Name Record) should normally be taken as the time of the customer booking since it can be assumed that on creation of the PNR a legal transaction has taken place which entitles the passenger to depart and that the individual passenger concerned has been named to the aviation enterprise.

In the case of creation of the PNR with entry of the passenger name in the PNR system before 1 September 2010, no further proof that a customer booking took place is necessary on the part of the travel company.

In particular cases, however, a customer booking may already have been made before creation of the PNR. If the PNR, with entry of the name in the PNR system, was created after 1 September 2010 but a customer booking already existed beforehand without a PNR having been created, evidence of the actual date of the customer booking that differs from the PNR creation date must be furnished to the aviation enterprise through a corresponding confirmation by the travel company.

Group bookings:

In the case of group bookings, it is normal for the name of the passenger not to be entered in the PNR system immediately at the time of creation of the PNR. The aviation enterprise can therefore not see whether a customer booking had already been made at the time of creation of the PNR. In cases of this kind, the date of creation of the non-individualized PNR cannot be taken as the time of the customer booking. Therefore, the procedure in the case of group bookings differs from that of individual bookings, and is as follows:

If a PNR was created, without entry of the name in the PNR system, before 1 September 2010, with the name of the passenger only being made known to the aviation enterprise after 1 September 2010, the time of the customer booking must be evidenced to the aviation enterprise through a corresponding confirmation by the travel company. If, however, the customer booking was made before 1 September 2010 and the name of the passenger was also made known to the aviation enterprise before 1 September 2010, then - as in the case of individual bookings - no additional confirmation by the travel company that the customer booking was made before 1 September 2010 is necessary.

Annex 2

Inhabited North Sea and Baltic Sea islands with no road or rail connection to mainland above the high water line	§ 5 No. 4 LuftVStG (German North Sea and Baltic Sea islands)	§ 5 No. 5 LuftVStG (Danish, Dutch or German North Sea islands)
<i>Name of island</i>	<i>Marked with cross if applicable</i>	<i>Marked with cross if applicable</i>
Baltrum	X	X
Borkum	X	X
Juist	X	X
Langeoog	X	X
Norderney	X	X
Wangerooge	X	X
Spiekeroog (N. ae.)	X	X
Hiddensee (N.ae.)	X	
Vilm (N. ae.)	X	X
Amrum (N. ae.)	X	X
Gröde (N. ae.)	X	X
Hooge (N. ae.)	X	X
Langeness (N. ae.)	X	X
Oland (N. ae.)	X	X
Pellworm	X	X
Föhr	X	X
Helgoland	X	X
Neuwerk (N. ae.)	X	X
Fanø (DK, N. ae.)		X
Mandø (DK, N. ae.)		X
Texel (NL)		X
Vlieland (NL, N. ae.)		X
Terschelling (NL, N. ae.)		X
Ameland (NL)		X
Schiermonnikoog (NL, N. ae.)		X

The list also includes islands that have no recognized aerodrome pursuant to § 6 (1) LuftVG as aviation enterprises also land on sites pursuant to § 25 (1) Sentence 1 LuftVG which are normally approved ad hoc and at short notice by the aviation authorities of the federal states concerned.

Legend:

DK = Denmark
 NL = Netherlands
 N. ae. = No aerodrome

Annex 3

Aerodromes in the Coastal Area - § 5 No. 4 and No. 5 LuftVStG

German federal state or country	Island	Mainland (not more than 100 km from the coast)
Bremen		Bremen
		Bremerhaven-Luneort
Hamburg		Hamburg-Fuhlsbüttel
Mecklenburg-Vorpommern	Güttin/Rügen*1*2	Anklam
	Heringsdorf/Usedom*1*2	Barth
	Peenemünde/Usedom*1*2	Güstrow
		Neubrandenburg
		Neustadt-Glewe
		Parchim
		Pasewalk
		Pinnow
		Purkshof
		Rechlin-Lärz
		Rerik-Zweedorf
		Rostock
		Schmoldow
		Tutow
		Waren/Vielist
	Wismar-Müggenburg	
Lower Saxony	Baltrum	Ahlhorn
	Borkum	Barssel
	Juist	Blexen
	Langeoog	Diepholz
	Norderney	Emden
	Wangerooge	Ganderkesee
		Harle
		Hüttenbusch
		Karlshöfen
		Kührstedt-Bederkesa
		Lauenbrück
		Leer-Papenburg
		Lemwerder
		Lüneburg
		Norden-Norddeich
		Cuxhaven-Nordholz
		Oldenburg-Hatten
		Quakenbrück
		Rotenburg (Wümme)
	Seedorf	
	Stade	
	Varrelbusch	
	Verden-Scharnhorst	

		Weser-Wümme
		Westerstede-Felde
		Wiefelstede/Conneforde
		Wilhelmshaven
Schleswig-Holstein	Fehmarn- Neujellingsdorf*1*2	Ahrenlohe
	Helgoland-Düne	Bredstedt
	Sylt*1	Flensburg-Schäferhaus
	Wyk a. Föhr	Grube
	Pellworm	Uetersen-Heist
		Hartenholm
		Heide-Büsum
		Husum-Schwesing
		Itzehoe, Hungriger Wolf
		Kiel-Holtenau
		Kropp
		Lübeck-Blankensee
		Neumünster
		Rendsburg-Schachtholm
		Sierksdorf/Hof Altona
		Sommerland
		St. Michaelisdonn
		St. Peter-Ording
		Wahlstedt
Denmark		Esbjerg
		Haderslev
		Krusa-Padborg
		Lojtved
		Nordborg
		Ribehøj
		Rodekro
		Sonderborg
		Tonder
		Torsbol
		Kolding, Vamdrup
		Vojens/Skrydstrup
Netherlands	Ameland	Drachten
	Texel	Emmer Compascuum
		Groningen/Eelde
		Hoogeveen
		Leeuwarden
		Middenmeer
		Winschoten/Oostwold
		Stadskanaal
Poland		Kolobrzeg, Bagicz
		Ploty, Makowice
		Szczecin), Goleniów

*1 Has a road or rail connection above the high water line

*2 Tax-exempt flights pursuant to § 5 No. 5 LuftVStG are not possible to and from this Baltic Sea island

Annex 4

Overseas Countries and Territories

British overseas territories	Anguilla
	Bermuda
	British Antarctic Territory
	British Virgin Islands
	British Territory in the Indian Ocean
	Falkland Islands
	Gibraltar
	Cayman Islands
	Montserrat
	Pitcairn Islands
	St. Helena, Ascension, Tristan da Cunha
	South Georgia and South Sandwich Islands
	Turks and Caicos Islands
Danish overseas territories	Faroes
	Greenland
French overseas territories	French Guiana
	French Polynesia
	French South and Antarctic Lands
	Guadeloupe
	Martinique
	Mayotte
	Miquelon
	New Caledonia
	Réunion
	Saint Barthélemy
	Saint Martin
	Saint Pierre
Wallis and Futuna	
Dutch overseas territories	Aruba
	Bonaire
	Curacao
	Saba
	Sint Maarten
	St. Eustatius

Annex 5

Main Customs Office with Local Jurisdiction pursuant to § 3 (2) LuftVStG

Competent main customs office →	Main customs office from within whose district the aviation enterprise operates its business (§ 10 AO)	Main customs office within whose district the representative in tax matters / applicant is domiciled (§ 11 AO)	Main customs office within whose district the initial departure takes place
Possible constellation of circumstances ↓			
German aviation enterprise with no representative in tax matters	Competent		
German aviation enterprise with a representative in tax matters		Competent	
Foreign aviation enterprise with no representative in tax matters			Competent
Foreign aviation enterprise with a representative in tax matters		Competent	
Aviation enterprise with its registered office in another EU member state that revokes the appointment of a representative in tax matters		Competent	
Issue of permit to act as a representative in tax matters pursuant to § 8 LuftVStG		Competent	