

# **A consultation on a Scottish replacement to Air Passenger Duty**

**March 2016**

## MINISTERIAL FOREWORD



In the modern global economy international connectivity is vital to economic growth and plays an important role in facilitating trade, tourism and investment. Scotland is already an attractive destination for business and inbound tourism, and remains the most successful part of the UK outside London in attracting foreign direct investment. It is important for the Scottish economy and her people that we continue to open Scotland up to key and emerging markets in order to further capitalise on the opportunities that exist.

One way in which we will achieve this is by using the expected devolution of Air Passenger Duty (APD) to the Scottish Parliament to put in place new arrangements which better support our objective, as set out in Scotland's Economic Strategy<sup>1</sup>, to boost Scotland's international air connectivity and generate new direct routes to strategically important destinations.

UK APD is one of the most expensive taxes of its kind in the world. It continues to act as a barrier to Scotland's ability to secure new direct international routes and maintain existing ones. Our plan to begin reducing a Scottish replacement by 50% from April 2018, implement that reduction in full by the end of the next Scottish Parliament and then abolish it entirely when public finances allow is a fundamental component to improving Scotland's international air connectivity.

This consultation paper seeks your views and suggestions on how a Scottish replacement to APD should be structured and operate, in accordance with the Scottish approach to taxation, in order to help achieve our international connectivity objective.

In recognition of the important environmental issues that need to be considered we have also published a Strategic Environmental Assessment Screening and Scoping Report. This provides an early opportunity to seek views on the likely environmental issues that may arise and the approach to the proposed assessment of these. An Environmental Report setting out the results of this assessment, including mitigation, will subsequently be available for further consultation.

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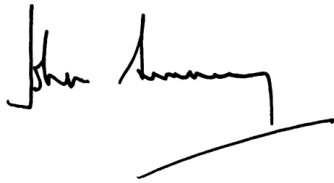
<sup>1</sup> <http://www.gov.scot/Resource/0047/00472389.pdf>

The publication of both these papers, and the establishment of an APD stakeholder forum<sup>2</sup> to help support the policy development process, continues the consultative and collaborative approach we took when successfully designing and implementing the first two taxes set by a Scottish Parliament in over 300 years, Land and Buildings Transaction Tax and Scottish Landfill Tax. It also demonstrates we are continuing to move ahead with pace and purpose in order to ensure we are ready to begin using Scotland's new powers once they are devolved to the Scottish Parliament.

In the light of responses to both papers, and subject to enactment of the Scotland Bill currently being considered at Westminster, we intend to bring forward for scrutiny a Bill establishing a Scottish replacement to APD early in the next parliamentary term.

The people of Scotland will have a further opportunity to comment on our proposals when the Parliamentary Committee responsible for scrutinising the Bill calls for evidence to help it in its task. This will provide an important opportunity for principles and approaches to be debated and to enable us to reach a consensus on important issues governing how a replacement to APD will be designed and run in Scotland.

We look forward to engaging with all interested individuals and groups around the country and beyond to help ensure that our plans for a Scottish replacement to APD deliver for Scotland.



John Swinney  
**Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy**



Keith Brown  
**Cabinet Secretary for Infrastructure, Investment and Cities**

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<sup>2</sup><http://www.gov.scot/Topics/Government/Finance/scottishapproach/airpassengerduty/APDstakeholderforum>

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# CHAPTER 1: INTRODUCTION

## Overview

- 1.1 This consultation paper seeks your views on how a Scottish replacement to UK Air Passenger Duty (APD) should be structured and operate in order to help achieve the Scottish Government's objective of boosting Scotland's international air connectivity and in accordance with the Scottish approach to taxation. The closing date for responses to this consultation paper is **Friday 3 June 2016**.
- 1.2 In recognition of the important environmental issues that need to be considered, a Strategic Environmental Assessment (SEA) Screening and Scoping Report has also been published. This provides an early opportunity to seek views on the likely environmental issues that may arise and the approach to the proposed assessment of these. Subsequently an Environmental Report setting out the results of this assessment, including mitigation, will be available for further consultation. The Screening and Scoping Report can be accessed here:
- <https://consult.scotland.gov.uk/fiscal-responsibility/air-passenger-duty>
- 1.3 A Business and Regulatory Impact Assessment and Equality Impact Assessment will be published at a future date to coincide with the introduction of a Bill before the Scottish Parliament to legislate for a Scottish replacement to APD.

## Assumptions and definitions

- 1.4 For the purposes of this consultation paper we have assumed the following:
- the Scotland Bill<sup>3</sup> currently being considered at Westminster will be enacted and the power to charge a tax 'on the carriage of passengers by air from airports in Scotland' will be devolved to the Scottish Parliament;
  - Revenue Scotland<sup>4</sup>, Scotland's tax authority for devolved taxes, will be responsible for the collection and management of a Scottish replacement to APD; and
  - the legislative framework for the collection and management of a Scottish replacement to APD will be the Revenue Scotland and Tax Powers Act 2014<sup>5</sup> (RSTPA), subject to any modifications which are proposed or arise out of this consultation document. The RSTPA, amongst other things, establishes the collection and management framework for devolved taxes.
- 1.5 A glossary of commonly used terms in this paper is provided at [Annex C](#).

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<sup>3</sup> <http://services.parliament.uk/bills/2015-16/scotland.html>

<sup>4</sup> <https://www.revenue.scot/>

<sup>5</sup> <http://www.legislation.gov.uk/asp/2014/16>

## Background

### Devolution of APD

- 1.6 The Scottish Government has long called for the devolution of APD to the Scottish Parliament, believing it to be an increasing burden on airports, airlines and passengers and a barrier to air route development in Scotland. The devolution of APD formed one of the recommendations of the Calman Commission report published on 15 June 2009, but the then UK Government did not accept that recommendation and it was not devolved in the subsequent Scotland Act 2012<sup>6</sup>.
- 1.7 The Smith Commission report<sup>7</sup>, published on 27 November 2014, recommended, amongst other things, further devolution over elements of taxation and public spending to the Scottish Parliament. Paragraph 86 of the report recommended that “the power to charge tax on air passengers leaving Scottish airports will be devolved to the Scottish Parliament. The Scottish Government will be free to make its own arrangements with regard to the design and collection of any replacement tax, including consideration of the environmental impact.”
- 1.8 This proposal, and others contained in that report, is the subject of the Scotland Bill currently being considered at Westminster and the Scottish Government is now taking forward plans for a Scottish replacement to APD. The Scottish Parliament will be able to legislate for a replacement tax only once the Scotland Bill has been enacted. The Scottish and UK Governments agreed in the fiscal framework<sup>8</sup> accompanying the Scotland Bill that powers over APD will be devolved in April 2018.
- 1.9 In the Programme for Government 2015-16<sup>9</sup> (PfG) the Scottish Government announced that it will reduce the burden of APD in Scotland by 50% by the end of the next Scottish Parliament, with the reduction beginning when a Scottish replacement to APD is introduced in April 2018. The Scottish Government plans to abolish the tax completely when resources allow.

### Devolved taxes and the Scottish approach to taxation

- 1.10 The Scotland Act 2012 delivered modest taxation and borrowing powers to the Scottish Parliament, including the power to legislate for Scottish replacements to Stamp Duty Land Tax and Landfill Tax.
- 1.11 Following legislation introduced by the Scottish Government and passed by the Scottish Parliament, the first two taxes set by a Scottish Parliament in over 300 years came into operation on 1 April 2015 - Land and Buildings Transaction Tax (LBTT) and Scottish Landfill Tax (SLfT). Both LBTT and SLfT are collected and managed by Revenue Scotland, Scotland’s tax authority for devolved taxes and a Non-Ministerial Department accountable to the Scottish Parliament.

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<sup>6</sup> <http://www.legislation.gov.uk/ukpga/2012/11/contents>

<sup>7</sup> <https://www.smith-commission.scot/smith-commission-report/>

<sup>8</sup> <http://www.gov.scot/Publications/2016/02/3623>

<sup>9</sup> <http://www.gov.scot/Publications/2015/09/7685/4>



1.12 The devolved taxes are underpinned by a distinctive Scottish approach to taxation. This approach has three key features:

- Adam Smith’s four principles or ‘maxims’ of certainty, convenience, efficiency and proportionate to the ability to pay. Although these maxims were first set out in the 18th century, they have stood the test of time and point towards a system that will meet the needs of a modern, 21st century Scotland which is grounded on solid foundations;
- a collaborative approach to stakeholder engagement. Aligned with its broad approach and principles, Scotland’s devolved tax system has and will continue to be supported by regular and engaged consultation with taxpayers, industry representatives and professional bodies. The Scottish Government has already established a Scottish APD stakeholder forum<sup>10</sup> (see [Annex D](#)); and
- taking a tough but fair approach to tax avoidance (see [Chapter 10](#)) based on straightforward, common sense tests that ordinary taxpayers can understand and endorse. The Scottish Government wants to encourage a culture of responsible taxpaying where the burden of tax is shared equally and people and companies pay their tax as Parliament intended.

1.13 Each of these have been, and continue to be, a hallmark of the Scottish Government’s approach to designing and implementing LBTT and SLfT and will form the basis for future devolved taxes, including a Scottish replacement to APD.

## Next steps

1.14 We will consider our proposals for a Scottish replacement to APD in light of the responses to both this consultation and the SEA Report. Subject to enactment of the Scotland Bill and devolution of APD to the Scottish Parliament, we will then introduce a Bill before the next Scottish Parliament for its consideration.

1.15 We are keen to hear views from as wide a variety of individuals and organisations as possible, in particular those involved or with an interest in the aviation, business, environmental, transport, tax accountancy and legal sectors. We have included consultation questions throughout this paper and a [full list](#) is provided at the end.

1.16 There will be a further opportunity for stakeholders to contribute their views on both the proposals for the tax and the Bill itself if the lead committee of the Scottish Parliament issues a call for written evidence following the introduction of a Bill in the next Parliament. The lead committee may also issue invitations for oral evidence to be provided at committee sessions to discuss the details of the

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<sup>10</sup> <http://www.gov.scot/Topics/Government/Finance/scottishapproach/airpassengerduty>

Bill. Further details on the Bill process can be found on the Scottish Parliament website<sup>11</sup>.

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<sup>11</sup> <http://www.scottish.parliament.uk/parliamentarybusiness/bills.aspx>

## **CHAPTER 2: IMPROVING SCOTLAND'S AIR CONNECTIVITY – STRATEGIC AND POLICY OBJECTIVES**

### **Scotland's air connectivity – current position**

- 2.1 In the modern global economy, international air connections are vital to economic growth. Reviewing the landscape of progress in Scotland's international air connectivity since 2000 can be described as a case of rapid growth followed by a period of more modest gains, consolidation and then a return to growth.
- 2.2 Prior to 2002 Scotland had experienced a situation not untypical to northern European countries with modest population levels, with supply and demand, longer sector lengths and the relative proximity of a global hub airport at Heathrow (at that time in dual ownership with Scotland's three largest airports at Edinburgh, Glasgow and Aberdeen) having hampered the ability to significantly improve Scotland's direct international service offering.
- 2.3 In November 2002 the then Scottish Executive introduced the Air Route Development Fund (ARDF), a scheme which enabled it to work with airlines and Scotland's airports to provide public funding incentives to initiate new direct air routes deemed to be of strategic importance to Scotland in economic terms. The ARDF challenged hub-and-spoke convention as the principal means for people to get to and from Scotland, and contributed to a dramatic improvement in Scotland's direct international air network by concentrating only on those routes that helped business and inbound tourism.
- 2.4 Over 50 new services were introduced as a result of the scheme, opening up Scotland to new destinations in North America and the Middle East and substantially growing passenger numbers on these new routes. Subsequent reform of the EU start-up aid rules in 2006 meant that the ARDF could no longer continue and it closed to new routes on 31 May 2007.
- 2.5 The momentum created by the ARDF helped ensure that Scotland's international air connectivity continued to grow in the years after its withdrawal and the Scottish Government continues to work with airports and airlines to incentivise new routes and support them in their early years through joint marketing activity. Good progress has been made from the relatively low base of short and long-haul direct services in 2002 to a point where, according to benchmarking analysis carried out on our behalf, Scotland is now performing only slightly below peer country competitors in both categories. Connections to short-haul destinations of economic importance, however, is an area where Scotland is somewhat below the peer average.

### **Scotland's air connectivity - looking to the future**

- 2.6 The Scottish Government has set an ambitious but pragmatic approach to growing Scotland's international air connectivity. Our objective is to enhance Scotland's connections to new point-to-point destinations as well as enhancing

services to key global hubs. This dual approach recognises that Scotland needs a strong mix of direct services combined with access to world hubs which open up a vast range of secondary destinations where a direct service with Scotland may not be sustainable. There are three key areas in which we can take action to achieve this objective.

- 2.7 Firstly, we need to continue to be alive to the constant and fast pace of change in the aviation industry. The evolution of the Middle-East market is changing how the global industry operates and the emerging economies of China and India have yet to fully mobilise in response. The long-haul opportunities westwards are also a fluid picture. Evolving aircraft technologies mean that very little remains off-limits for direct air connectivity from Scotland in distance terms. The cost of long-haul travel is also likely to become increasingly subject to downward pressure from the emergence of a low-cost long-haul model. Change is happening in short-haul markets too, with traditional low-cost carriers increasingly seeing the benefits of mixed business models with movement toward primary airports.
- 2.8 Secondly, we will continue working with Scotland's airports fairly and equitably to ensure that the new competitive spirit amongst the airports is maximised and focussed for the benefit of the airports and for Scotland. We believe that there are exciting new opportunities which would be of strategic benefit to Scotland and we are committed to working with Scottish airports in order to achieve our shared objective of boosting Scotland's international air connectivity. As with our current approach to route development, the decision about which Scottish airport to fly to remains one for the airline and we will not seek to influence that.
- 2.9 Thirdly, we need to make the financial conditions right for airlines to come to Scotland. We will strive collectively to put the best offers on the table for airlines and seek to influence their business planning decisions by demonstrating our long-term commitment to growing Scotland's international air connectivity. The devolution of APD to the Scottish Parliament is a significant step forward in this area, but more needs to be done to give Scotland a competitive edge on the global stage.

## **APD - the case for devolution**

- 2.10 UK APD was first introduced in 1994 and since then has undergone significant changes. It is now the highest tax of its type anywhere in the world. The Scottish Government has long called for the devolution of APD to the Scottish Parliament, believing the tax to be an increasing burden on airports, airlines and passengers and holding back air route development in Scotland.
- 2.11 Devolution of APD to the Scottish Parliament will enable us to carefully design and structure a replacement tax which boosts our international competitiveness and better supports our objective to grow Scotland's international air connectivity, encouraging the type of flights which benefit Scotland. A Scottish replacement to APD could help to generate new direct routes (which in turn might reduce the need for some passengers to connect through hub airports), sustain existing routes and increase inbound tourism.

2.12 The strategic context for our aims can be found in Scotland's Economic Strategy<sup>12</sup>, which sets out our ambition to create a more cohesive and resilient economy that improves the opportunities, life chances and wellbeing of every citizen in our country. Internationalisation is one of the four priorities for sustainable growth which underpins this strategy.

**QUESTIONS 1 AND 2 – IMPROVING SCOTLAND'S AIR CONNECTIVITY**

**Q1:**

**(a)** Do you agree with our strategic and policy objectives for improving Scotland's air connectivity? Please answer yes or no.

**(b)** Please explain your answer to Q1(a).

**Q2:** How could a Scottish replacement to APD help achieve these objectives?

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<sup>12</sup> <http://www.gov.scot/Resource/0047/00472389.pdf>

## CHAPTER 3: SCOPE AND STRUCTURE OF DUTY

### Scope of APD

3.1 UK APD is a duty which is levied on the carriage, from a UK airport, of 'chargeable passengers' on 'chargeable aircraft', which are defined as follows:

- a 'chargeable passenger' – is a person carried on a chargeable aircraft who is not covered by an exemption (see the '[Exemptions](#)' Chapter). It does not matter whether or not the passenger has paid for their transport, and the taxpayer (the aircraft operator) must be able to provide evidence to support why they have not accounted for APD on anyone travelling on an aircraft.
- 'chargeable aircraft' includes all fixed wing aircraft with an authorised take-off weight of 5.7 tonnes or more, fuelled by Avtur (aviation turbine fuel, defined for tax purposes as kerosene). 'Authorised take-off weight' is the maximum permitted weight of the aircraft and its contents at the point of take-off as outlined in the aircraft's certificate of airworthiness. Rotary aircraft such as helicopters are not chargeable. Certain flights are exempt from APD (see the '[Exemptions](#)' Chapter).

3.2 APD is charged on a per-passenger basis and is payable by the aircraft operator, who is the taxpayer for the purposes of APD. Aircraft operators generally pass the APD charge on to the passenger in the overall ticket price. The per-passenger APD amount is determined by the rate (see the '[Tax Rates](#)' section of this Chapter) appropriate for the place where the passenger's journey ends (see the '[Tax Bands](#)' section of this Chapter).

3.3 'Journey' normally means the journey from the passenger's original place of departure to the final place of destination marked on the ticket, but where a journey includes two or more flights and any of those flights is not followed by a connected flight then the journey for APD purposes is deemed to end where the first flight not followed by a connected flight ends (see the '[Connected Flights](#)' Chapter).

3.4 The previous UK Government looked into introducing a per-plane charging model with the aim of incentivising, amongst other things, flights with higher load factors (fuller flights) in order to provide a clearer link to the environmental impact of flights. It decided not to proceed with this policy following concerns that such a measure would likely contravene international law and aviation agreements such as the 1944 Convention on International Civil Aviation<sup>13</sup> (also known as the Chicago Convention).

3.5 As outlined in Chapter 1, under current proposals the Scottish Parliament will have the power to legislate for 'a tax charged on the carriage of passengers by air from airports in Scotland'. It will not therefore have the competence to

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<sup>13</sup> <http://www.icao.int/publications/pages/doc7300.aspx>

legislate for a tax charged on the carriage of air freight, but it will have the competence to charge a tax on the carriage of passengers by any type of aircraft.

3.6 The majority of the members of our stakeholder forum from the aviation industry expressed a preference for a Scottish tax having the same per-passenger charging model as UK APD, on the basis that it is relatively simple to understand and operate and transparent for passengers. Other alternatives, such as a per-plane model, were felt likely to be more complex and challenging to implement or might benefit some airlines whilst harming others.

3.7 We would welcome your views on the current scope of UK APD as well as your suggestions on what the scope of a Scottish replacement to APD should be, including the charging method.

### **QUESTIONS 3 AND 4 – SCOPE OF APD**

#### **Q3:**

**(a)** Taking into account the scope of the powers proposed to be devolved to the Scottish Parliament, should the UK APD definitions of ‘chargeable passenger’ and ‘chargeable aircraft’ be retained under a Scottish replacement tax? Please answer yes or no.

**(b)** If you answered no to Q3(a), please explain your answer.

#### **Q4:**

**(a)** Do you think that the current UK APD per-passenger charging model should be retained under a Scottish replacement tax? Please answer yes or no.

**(b)** If you answered no to Q4(a), please explain your answer. Subject to compliance with State Aid rules and current aviation agreements, what alternative charging model(s) should be considered?

### **Tax bands**

3.8 Under UK APD, destinations are split into different bands based on the distance of the destination country’s capital city from London. The exception is the Russian Federation, which is split east and west of the Urals.

3.9 Since 1 April 2015 a two band structure has operated:

- Band A destinations - countries whose capital city is 2,000 miles or less from London (see [Annex A](#) for all Band A destinations) – this includes Europe and most of Northern African, but not Egypt or the Republic of the Sudan; and
- Band B destinations - countries whose capital city is more than 2,000 miles from London.

3.10 Destination based alternatives to the current UK APD model for a Scottish replacement tax could involve:

- banding based on the distance between the departure and destination airports, with tax amounts being progressively higher the further the distance and more in proportion to the distance travelled;
- banding based on a geographical or 'bloc'/'federation' basis, for example a lower charge band for all flights where the destination is within the UK, European Union, European Economic Area, European Free Trade Association or European Common Aviation Area, and one or more higher charge bands for flights to all other destinations; or
- having a similar banding system as UK APD, but based on the distance of the destination country's capital city from Edinburgh instead of London, and a possible modification to the 2,000 miles threshold to take into account this change.

3.11 The majority of our stakeholder forum members expressed a preference for a Scottish tax having the same two-band capital city model as UK APD, on the basis that it is relatively transparent and simple to understand and enables efficient administration of the tax.

3.12 We would welcome your views on what banding model (destination based or non-destination based) you think is most appropriate for a Scottish replacement tax.

#### **QUESTION 5 – TAX BANDS**

**Q5:**

**(a)** Do you think that the current UK APD destination based banding system should be retained under a Scottish replacement tax? Please answer yes or no.

**(b):**

- If you answered yes to Q5(a), should destination bands be defined by distance to capital cities or what alternative measures could be considered? What would be the optimum number and definition of bands to support the achievement of the Scottish Government's strategic objectives for a Scottish replacement tax, as outlined in Chapter 2?
- If you answered no to Q5(a), please explain your answer. What system do you think should be used instead?



## Tax rates

3.13 Under UK APD there are three rates for each destination band:

- **Reduced rates** apply where the passengers are carried in the lowest class of travel on any flight unless the seat pitch\* exceeds 1.016 metres (40 inches), in which case, whether there is only one class or there is more than one class of travel on the flight, the standard rates apply;
- **Standard rates** apply where passengers are carried in any class of travel other than the lowest or where the seat pitch\* exceeds 1.016 metres (40 inches), unless the conditions for the higher rate below are met;
- **Higher rates** apply if passengers are carried on aircraft with an authorised take-off weight of 20 tonnes or more and equipped to carry 18 or fewer passengers (excluding members of the flight crew and cabin attendants). The higher rate came into effect from 1 April 2013.

\* The seat pitch is the distance between a fixed point on one seat and the same fixed point on the seat immediately in front. Where there is no seat immediately in front of the seat, the seat is to be treated as having the same pitch as the seat immediately behind it. Separate rules exist for determining the pitch of seats on private jets that face each other, are bench seats or are side facing.

3.14 When determining the class of travel a number of factors are considered, including standards of comfort, service, privacy and amenities. The following rules generally apply:

- If all passengers on a flight enjoy the same standard of comfort, service, privacy and amenities, then they are considered to be in the same class of travel for APD purposes;
- If the passengers enjoy different standards of comfort, service, privacy or amenities, then they are considered to be in different classes of travel for APD purposes;
- If the aircraft has different cabins or seating areas, passengers in those areas are not considered to be in a higher class so long as:
  - there is no extra cost for a seat in the better cabin or seating area; and
  - the better cabin or seating area are available on a 'first come first served' basis (whether at the booking stage or upon boarding the aircraft);
- Seats purchased from a tour operator as part of a package are not (all things being equal) of a different class to seats purchased on a flight-only basis;

- The following in themselves do not affect the class of travel:
  - the purchase of goods and services on board (whether by way of a supplement), unless those goods or services amount to an upgrade;
  - paying extra for the right to choose a seat (so long as it is not a better class of seat);
  - paying extra for a seat with extra legroom, provided that seat is not separated from the ordinary seats in any way and provided there are no other benefits associated with the seat;
  - paying extra for benefits such as pre-booking, reduced check in times, fast track through security, priority boarding, access to VIP lounges, transport to or from the airport, superior baggage allowances;
  - paying extra to be seated next to an empty seat;
  - paying for an empty seat.
- If a passenger upgrades for a fee at any stage in the journey, it is considered that they are travelling in the higher class and that the agreement for carriage has been modified accordingly;
- The same applies to free upgrades if there is an element of entitlement or priority not enjoyed by other (standard class) passengers, for example in the case of 'perks' enjoyed by airline employees. It is only where the passenger has no expectation of, or entitlement to, a free upgrade that it will not take them out of standard class for APD purposes (for example where the passenger gets an upgrade solely because they have booked early). In the case of connected flights (see [Chapter 5](#)), it is the aircraft operator of the first flight who is liable for APD so that operator must be made aware of upgrades on any subsequent connected flights.

3.15 The majority of our stakeholder forum members expressed a preference for a Scottish tax having the same reduced, standard and higher rate model as UK APD, on the basis that the definitions are relatively clear, straightforward and relevant to the aviation industry. The tax treatment of premium economy was raised by some as an issue. Some airlines offer a premium economy cabin providing a slightly improved seat pitch, wider seats and a small menu upgrade. Although the passenger only pays a modest supplement for this, they attract the standard (not reduced) rate of UK APD under current rules.

3.16 We would welcome your views on whether or not the UK APD rates system (including the definitions used) should be retained under a Scottish replacement tax, as well as suggestions of any alternatives which might be more appropriate for Scotland. We would also welcome views on the impact that the higher rate has had since it was introduced in April 2013.

## QUESTIONS 6 AND 7 – TAX RATES

### Q6:

(a) Do you think that the reduced, standard and higher rates system used for UK APD should be retained under a Scottish replacement tax? Please answer yes or no.

### (b):

- If you answered yes to Q6(a), do the UK definitions remain appropriate for practices in the aviation industry in Scotland?
- If you answered no to Q6(a), please explain your answer. What system do you think should be used instead?

Q7: Can you provide any evidence on the impact of the introduction of the higher rate which came into effect from 1 April 2013?

## Reducing the tax burden

3.17 The Scottish Government announced in the Programme for Government 2015-16<sup>14</sup> that, in order to help achieve our strategic objectives for improving Scotland's air connectivity as set out in [Chapter 2](#), we will reduce the burden of APD in Scotland by 50% by the end of the next Scottish Parliament. The reduction will begin to be implemented when a Scottish replacement to APD is introduced in April 2018 and delivered in full by the end of the next Scottish Parliament, expected to be in 2021. We will also abolish the tax completely when resources allow.

3.18 Studies commissioned by the aviation industry have found that reducing or abolishing UK APD could have a net economic benefit in terms of economic growth, job creation and increased overall tax receipts. In Scotland, an Edinburgh Airport study of March 2015<sup>15</sup> found that, if APD was reduced by 50% in 2015, by 2020 it would have created up to 3,800 extra jobs and added £200 million per annum in Gross Value Added for the Scottish economy. The same study estimates that a 50% reduction in APD in 2015 would result in 0.9 million additional passengers through Scotland's airports by 2020.

3.19 Decisions have yet to be taken on how the 50% reduction will be delivered – including how the reduction may be distributed across tax rates and bands. There will be a number of relevant factors, including the Scottish Government's spending plans and the evidence available on how different combinations of rates and bands could maximise achievement against our strategic objectives.

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<sup>14</sup> <http://www.gov.scot/Publications/2015/09/7685/4>

<sup>15</sup> [https://s3-eu-west-1.amazonaws.com/edinburghairport/files/2015/03/20150308\\_Edinburgh\\_Airport\\_APD\\_study\\_March\\_2015.pdf](https://s3-eu-west-1.amazonaws.com/edinburghairport/files/2015/03/20150308_Edinburgh_Airport_APD_study_March_2015.pdf)

- 3.20 Proposed devolved tax rates and bands for the following financial year are usually set out in the Draft Budget (normally published every September) and considered by the Scottish Parliament as part of the Scottish Budget process. Legislation to introduce those tax rates and bands, if required, is then laid before the Scottish Parliament in February or March prior to coming into effect from 1 April.
- 3.21 The latest Government Expenditure for Revenue Scotland<sup>16</sup> report estimates that revenue from APD in Scotland was £309 million in 2014-15 (accounting for 9.7% of total UK receipts).
- 3.22 Members of our stakeholder forum from the aviation and travel industries expressed a strong preference for having as much advance certainty as possible of the tax rates that would apply to a Scottish tax from 1 April 2018, on the basis that prices, programmes and decisions on fleet deployment are typically set 12-18 months in advance. There was a general preference for a 50% reduction applied equally across all tax rates and bands from 1 April 2018. Environmental representatives on the forum were opposed to any reduction in the overall tax burden and to future abolition of the tax.

**QUESTION 8: APD – REDUCING THE TAX BURDEN**

Do you have any views on how and when the planned 50% reduction in the burden of APD should be implemented?

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<sup>16</sup> <http://www.gov.scot/Resource/0049/00495386.pdf>

## CHAPTER 4: EXEMPTIONS

4.1 For the purposes of this Chapter we have split out the current UK APD exemptions into two separate categories – passenger exemptions and flight exemptions. Members of our stakeholder forum expressed no strong views on these exemptions and in general did not support an exemption for new routes, on the basis that any short-term or time-specific measures to incentivise new routes carry the risk of the service being removed once the support measures were removed and would complicate what is an otherwise simple and efficient tax. We would appreciate your views on the current UK APD exemptions and also on what exemptions you think should exist under a Scottish replacement tax.

### Passenger exemptions

4.2 As outlined in [Chapter 3](#), a ‘chargeable passenger’ for UK APD purposes is anyone carried on a chargeable aircraft from a UK airport that is not covered by an exemption. There are currently five circumstances in which a person departing on a chargeable aircraft from a UK airport is exempt from UK APD:

- passengers on connecting flights;
- children;
- transit passengers;
- persons carrying out certain duties; and
- passengers carried under a statutory obligation.

### Passengers on connecting flights

4.3 A passenger with a ticket is not a chargeable passenger on the second or subsequent flight of their journey if that flight and the previous flight are connected. Different criteria determine whether or not the second or subsequent flight is connected for UK APD purposes. These criteria are considered in detail in the [‘Connected Flights’](#) Chapter.

### Children

4.4 Children aged below two years who are not allocated a separate seat before boarding the aircraft are not chargeable passengers. A child allocated a seat for no charge after boarding the aircraft is exempt from tax. If a seat is purchased for the infant then APD is chargeable.

4.5 Since 1 March 2016 children aged below 16 years on the date of the flight and who travel in the lowest class of travel are not chargeable passengers and are not liable to APD. If such a child travels in any other class then they are a chargeable passenger for APD purposes. The purpose of this exemption is to

help families by lowering the cost of air travel for children travelling in the lowest class of travel.

### **Transit passengers**

4.6 When an aircraft makes a stop 'en route' (for example, to refuel) and passengers do not change aircraft then no additional APD is due for the leg of the journey immediately after the stop. The main purpose of this exemption is to ensure any APD liability applies to the journey as a whole.

### **Persons carrying out certain duties**

4.7 Certain categories of people are not regarded as chargeable passengers for the purposes of UK APD when they are engaged in duties on a flight. This means that such passengers are exempt from APD. The main purpose of this exemption is to ensure that airlines are not liable to pay APD for members of their staff who are either on-duty or flying for positioning purposes.

4.8 Such people are:

- flight crew;
- cabin attendants;
- persons not carried for reward who are:
  - escorting a passenger or goods;
  - undertaking repair, maintenance, safety or security work; and
  - ensuring the hygienic preparation and handling of food and drink.

4.9 These people are also exempt if, when flying for positioning purposes:

- they carry out the above duties within 72 hours of the flight ending; or
- begin a return journey within 72 hours after performing any of the above duties, provided that they are returning to the place where they are normally stationed or from where they normally operate.

4.10 These people are not exempt when they are travelling as passengers and are either:

- not engaged in these duties; or
- are returning to the place where they are normally stationed or from where they normally operate, having been engaged in such duties on a previous flight.

## Passengers carried under a statutory obligation

4.11 Under UK APD, passengers carried free of charge under a statutory obligation are not chargeable and are therefore exempt from APD. For example, persons refused admission to the UK and required to be repatriated at the airline's expense. Similarly persons travelling to inspect aircraft or crew, such as CAA flight operations inspectors, are not chargeable passengers and are therefore exempt from APD. The purpose of this exemption is to ensure that an airline, as the taxpayer, does not incur an APD charge when carrying non-paying passengers in compliance with a statutory obligation.

### QUESTION 9 – PASSENGER EXEMPTIONS

**Q9:**

**(a)** Do you think that the current UK APD passenger exemptions should be retained under a Scottish replacement tax? Please answer yes or no.

**(b):**

- If you answered yes to Q9(a), to what extent are the existing definitions appropriate for the Scottish industry?
- If you answered no to Q9(a), please explain your answer. Is there any evidence to support the introduction of any additional or alternative exemptions?

## Flight exemptions

4.12 As outlined in [Chapter 3](#), 'chargeable aircraft' for UK APD purposes includes all fixed wing aircraft with an authorised take-off weight of 5.7 tonnes or more, fuelled by Avtur. There are currently five main areas in which certain types of flights (and therefore passengers on those flights) are exempt for UK APD purposes:

- emergency and public service flights;
- short pleasure flights;
- circumstances beyond the control of the airline;
- NATO flights; and
- flights departing from an airport in the Scottish Highlands and Islands region.

## Emergency and public service flights

4.13 In order to comply with international legislation, aircraft whose operation is related to military flights performed by military aircraft, police, customs or search and rescue flights as defined in the EU Emissions Trading Scheme Directive are not chargeable aircraft for UK APD purposes and are therefore exempt.

4.14 The definitions are contained in the 'Aviation' category in Annex I to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 (as amended by Directive 2008/101/EC<sup>17</sup> of the European Parliament and of the Council of 19 November 2008), read in conjunction with paragraphs 2.2 to 2.5 of the Annex to Commission Decision 2009/450/EC<sup>18</sup> of 8 June 2009, and also include aircraft used for:

- humanitarian flights and authorised emergency medical service flights;
- flights operated under a public service obligation (under Article 16 of Regulation (EC) No 1008/2008<sup>19</sup> of the European Parliament and of the Council of 24 September 2008). In Scotland this includes flights between Glasgow and Barra, Tiree and Campbeltown that the Scottish Government subsidises, and flights operating within Shetland, Orkney, Comhairle nan Eilean Siar and Argyll and Bute Council that are subsidised by Scottish local authorities; and
- flights operated for research and training purposes.

### **Short pleasure flights**

4.15 Passengers carried on flights which are intended to be of 60 minutes duration or less and which begin and end at the same place are not chargeable passengers for UK APD purposes. The 60 minutes is measured from the time the aircraft doors close to the time the doors re-open (including taxiing time). The purpose of this exemption (originally provided by an extra-statutory concession) is to ensure that operators of short pleasure flights are not liable to pay UK APD.

### **Circumstances beyond the control of the airline**

4.16 If the flight details or destination changes due to circumstances beyond the control of the airline, such as bad weather or mechanical failure, then the UK APD liability remains the same as if the original planned event had taken place. For example, if the original flight destination was within Band A but due to bad weather the flight gets re-routed to a different destination within the higher charge Band B, the original Band A liability holds. The purpose of this exemption is to ensure that an airline, as the taxpayer, does not incur a higher APD charge as a result of circumstances which are outwith its control.

4.17 It can often be the case in these circumstances that passengers have to be transferred to another aircraft which is not necessarily operated by the same airline. Where this is the case a Flight Interruption Manifest (FIM) is prepared listing the passenger details and the new airline operator is responsible for paying any APD due.

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<sup>17</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:008:0003:0021:en:PDF>

<sup>18</sup> <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32009D0450>

<sup>19</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32008R1008>



## NATO flights

4.18 Flights made for official purposes by members of a NATO visiting force or members of a NATO International Military Headquarters (IMHQ) are exempt from UK APD under an extra-statutory concession (VAT Notice 48 paragraph 2.1<sup>20</sup>). An extra-statutory concession (ESC) is a relaxation from tax which gives taxpayers a reduction or exemption in their tax liability to which they would not be entitled under the strict letter of the law. ESCs are authorised when strict application of the law would create a disadvantage or the effect would not be the one intended.

4.19 Different processes apply in relation to the concession depending on whether or not the flight is a 'wet charter' (the aircraft and crew are chartered from a commercial carrier) or one where the individual(s) concerned are travelling on a normal scheduled or charter flight.

4.20 In relation to devolved taxes, section 23 of the Scotland Act 2012 inserted a new section 80A(3) into the Scotland Act 1998 which states that 'A devolved tax may not be imposed where to do so would be incompatible with any international obligations'. This applies in addition to the Scotland Act 1998 requirements to comply with EU law.

4.21 As it did with LBTT<sup>21</sup>, the Scottish Government will therefore be required to include a relief/exemption in the legislation for a Scottish replacement to APD for visiting forces and international military headquarters, in accordance with applicable international obligations such as the EU Status of Forces Agreement (EU SOFA, 2003/C 321/02)<sup>22</sup> and the NATO Status of Forces Agreement (NATO SOFA, 1951)<sup>23</sup>.

### QUESTION 10 – FLIGHT EXEMPTIONS

#### Q10:

(a) Do you think that the current UK APD flight exemptions should be retained under a Scottish replacement tax? Please answer yes or no.

#### (b):

- If you answered yes to Q10(a), to what extent are the existing definitions appropriate for the Scottish industry?
- If you answered no to Q10(a), please explain your answer. Is there any evidence to support the introduction of any additional or alternative exemptions?

<sup>20</sup> <https://www.gov.uk/government/publications/vat-notice-48-extra-statutory-concessions/vat-notice-48-extra-statutory-concessions>

<sup>21</sup> <http://www.legislation.gov.uk/ssi/2015/93/made>

<sup>22</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:321:0006:0016:EN:PDF>

<sup>23</sup> [http://www.nato.int/cps/en/natohq/official\\_texts\\_17265.htm](http://www.nato.int/cps/en/natohq/official_texts_17265.htm)

## **Flights departing from an airport in the Scottish Highlands and Islands region**

- 4.22 Passengers departing by air from an airport in the Scottish Highlands and Islands region are not chargeable passengers for the purposes of UK APD. The exemption was introduced in 2001 in recognition of the reliance on air travel by many people living in the Highlands and Islands region. The exemption is provided for by a legislative power allowing an exemption based on low regional population densities of 12.5 or fewer people per square kilometre.
- 4.23 The Highlands and Islands region is defined as:
- the Highland Region, Western Isles Islands Area, Orkney Islands Area, Shetland Islands Area, Argyll and Bute District, Arran, Great Cumbrae and Little Cumbrae; and
  - in the Moray District, the parishes of Aberlour, Cabrach, Dallas, Dyke, Edinkillie, Forres, Inveravon, Kinloss, Kirkmichael, Knockando, Mortlach, Rafford and Rothes.
- 4.24 Passengers carried on inbound flights from other areas of the UK to airports in the region are chargeable passengers and subject to APD at the appropriate rate.
- 4.25 The Scottish Government is committed to supporting regional development in Scotland. One of the current measures of travel support provided is the Air Discount Scheme<sup>24</sup> (ADS), an initiative introduced under the European Commission Aid of Social Charter Mechanism. The main purpose of the ADS is to make air services affordable for remote communities in the Highlands and Islands region and to facilitate accessibility and social inclusion by providing a discount of 50% on the core air fare on certain eligible routes.
- 4.26 All public airports in the Highlands and Islands region are operated and receive public subsidies as Services of General Economic Interest, either through Highlands and Islands Airports Limited on behalf of Scottish Ministers or local authorities. Separately, services between Glasgow and Barra, Tiree and Campbeltown for example are funded by the Scottish Government under a Public Service Obligation contract which includes capped fares. These routes are not eligible for the ADS as European rules prevent double subsidy, but are currently exempt from UK APD.
- 4.27 Reflecting our wider objectives for the Highlands and Islands, the Scottish Government's intention is to introduce an exemption for passengers departing by air from a Scottish Highlands and Islands airport.
- 4.28 We would welcome your views on the effectiveness of the current UK APD exemption as well as whether, and in what way, you think a Scottish replacement to APD should have a similar exemption.

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<sup>24</sup> <http://www.airdiscountscheme.com/>

## **QUESTIONS 11 AND 12 – SCOTTISH HIGHLANDS AND ISLANDS EXEMPTION**

**Q11:** What are the benefits to the local economy and residents of the Scottish Highlands and Islands region from the current UK APD exemption for passengers departing from airports in the region?

**Q12:**

- **(a)** Do you think the current exemption for outbound flights from the Highlands and Islands region should be retained or modified under a Scottish replacement tax? Please answer 'retained' or 'modified'.
- **(b)** If you answered 'modified' to Q12(a), please explain your answer. In what way should it be modified?

## **CHAPTER 5: CONNECTED FLIGHTS**

- 5.1 The Scottish Government supports the general principles behind the connected flight rules for UK APD, which determine that a passenger with a ticket is not a chargeable passenger on the second or subsequent flight of their journey if that flight and the previous flight are connected.
- 5.2 The main purpose of this exemption is to ensure that, subject to certain conditions, APD is not charged more than once where passengers are transiting through a UK airport to another domestic or international airport. More specifically, the exemption protects the hub status of UK airports by making the tax liability of connected flights the same as direct flights (so passengers are not discouraged to transit through UK hub airports compared to non-UK hub airports) and reduces the tax burden on UK passengers who are not able to get a direct flight to their final destination (as airlines commonly pass on the cost of APD to passengers).
- 5.3 There is the potential for these rules to form a baseline for the connected flight rules for a Scottish replacement tax and the Scottish Government recognises that UK APD taxpayers already have systems and processes in place to comply with the connected flight rules for that tax. In designing new rules for a Scottish replacement tax we will work with the UK Government to avoid double taxation and, as far as possible, will ensure they are consistent with the Adam Smith principles of certainty, convenience and efficiency.
- 5.4 The majority of our stakeholder forum members expressed a preference for a Scottish tax having the same connected flight rules as UK APD on the basis that, although they are relatively lengthy and complex and can result in similar overall journeys ending up with vastly different tax charges, they represent the best available solution for now whilst technological barriers in particular prevent reform.

### **UK APD connected flight rules**

- 5.5 Under UK APD connected flights are treated as one journey and, provided that the flights are connected, APD is charged according to the passenger's final destination irrespective of the number of flights that they take to reach this destination. In the case of all connected flights, the aircraft operator of the first flight is the operator liable to account and pay for any APD due.
- 5.6 If the first flight of a connected journey is made on a non-chargeable aircraft, on an exempt flight or one which is outside the scope of APD, then the whole journey is exempt from APD. For example, no APD is due in relation to a passenger departing from an airport in the exempt Highlands and Islands region and then flying on one or more connecting flights to eventually arrive at an airport in New York.

5.7 In addition to certain ticketing requirements (see the ‘Tickets’ section of this Chapter), there are two main sets of rules covering connecting flights for UK APD purposes:

- Case A covers domestic connections (a flight connecting through the UK to another flight to a UK destination); and
- Case B covers international connections (a flight connecting through the UK to another flight to an international destination).

5.8 The following table outlines how these two sets of rules affect the APD due.

<b>Type of connection</b>	<b>Case A or Case B rules</b>	<b>APD Liability</b>
Domestic (UK flight) to domestic (UK flight)	Case A	APD is due at the relevant Band A rate for the whole journey, depending on the class of travel
International flight to domestic (UK flight)	Case A	No APD due
Domestic (UK flight) to international flight	Case B	Rate of APD due dependent on the final destination and class of travel
International flight to international flight	Case B	No APD due

### **Case A rule - Domestic connections**

5.9 There are three rules in relation to Case A domestic connections, which vary according to the scheduled arrival time of the first connected flight. These rules are:

- if flight A (the first of the connected flights) is scheduled to arrive before 5pm then flight B (the second and a UK domestic flight) is treated as connected if the booked time of departure falls within 6 hours of the scheduled time of arrival of flight A;
- if flight A is scheduled to arrive between 5pm and midnight, Flight B is treated as connected if the departure is at or before 10am on the following day;
- if flight A is scheduled to arrive between midnight and 4am, flight B is treated as connected if the booked time of departure is at or before 10am on the same day.

5.10 For domestic connections, as long as the normal conditions for connected flights are met, flights A and B are connected even if the UK arrival airport for flight A and the UK departure airport of flight B are different.

5.11 Where the airport of arrival of flight B is the same airport of departure of Flight A, and it is a domestic connection, the flights are not connected. Passengers travelling from and returning to the same UK airport on separate domestic flights are therefore chargeable passengers on both flights for APD purposes.

### **Case B rule - International connections**

5.12 Where the second of two flights (flight B) is an international flight (that is, a flight from the UK to an international destination), flight B is treated as connected if the booked time of departure falls within 24 hours of the scheduled time of arrival of the first flight.

5.13 If two or more international flights are connected (because the booked time of departure is within 24 hours of the scheduled time of arrival of the previous flight), the final destination of the connected flight determines the UK APD liability. If two or more international flights are not connected, then the UK APD liability is determined by the last destination not followed by a connected flight.

5.14 This means, for example, that a passenger whose ultimate destination is in Band B will be liable to the lower Band A if the passenger stops en-route at a destination in a band A destination country for longer than 24 hours. Likewise, a passenger whose ultimate destination is in a lower rate country will be liable to the higher rate duty if the passenger stops en-route at a Band B destination country for longer than 24 hours.

5.15 Where the airport of arrival of flight B is in the same country as the airport of departure of flight A, and it is an international connection through a UK airport, the flights are not regarded as being connected. In this case, the passenger is a chargeable passenger for APD purposes on flight B but not on flight A.

### **Tickets**

5.16 In addition to the Case A and Case B time-related criteria, in order to be considered as connected flights the agreement for carriage must be evidenced by a ticket showing the:

- airport from which the passenger intends to depart;
- date and time of the passenger's intended departure; and
- airport at which the passenger intends to arrive.

5.17 Connected flights must be detailed on either the same ticket or conjunction tickets. Tickets are only regarded as conjunction tickets if:

- they are in one booklet; or
- where they are in separate booklets:
  - each refers to the other and states that they are to be read in conjunction; and
  - there is a summary of the flights constituting the passengers journey including the flights in question.

5.18 Flights will only be considered as connected flights if the connection is appropriately evidenced on the ticket or a flight summary. If it is not appropriately evidenced it does not qualify as a connected flight, even if the other time-related criteria are met.

#### **QUESTION 13 – CONNECTED FLIGHT RULES**

**Q13:**

- **(a)** Do you think that the current UK APD rules relating to connected flights should form a baseline position for a Scottish replacement tax? Please answer yes or no.
- **(b)** If you answered no to Q13(a), please explain your answer. What rules do you think should be considered instead?

#### **Avoiding double taxation**

5.19 It is important that, as far as possible, the connected flights rules for both UK APD and a Scottish replacement tax do not result in double taxation where that is not the policy intention. The Scottish Government will work with the UK Government to ensure that passengers travelling on connected flights from airports in both Scotland and the rest of the UK are only chargeable passengers under one of the taxes, where that is consistent with the policy intention.

5.20 We would be grateful for your views on what situations may result in double taxation, as well as your suggestions on how double taxation could be avoided.

#### **QUESTION 14 – AVOIDING DOUBLE TAXATION**

**Q14:** What situations do you think could result in double taxation after a Scottish replacement to APD is introduced, and how might double taxation in such situations be avoided?

## CHAPTER 6: REGISTRATION

### Taxpayer registration

- 6.1 Under UK APD anyone operating chargeable aircraft for the carriage of chargeable passengers from a UK airport must apply by post to be registered for APD. An Occasional Operator Scheme is also available for airlines with very low numbers of flights and a low APD liability - see further below.
- 6.2 The application to be registered must be received no later than seven days after a chargeable flight has taken place and can be made before any chargeable flights commence. Unless later de-registered, there is no need to register more than once. If the application to be registered is approved, the registration becomes effective from the first day of the month in which a chargeable flight takes place.
- 6.3 If approved, within 28 days of receiving the completed registration application form the applicant is provided with a certificate of registration containing, amongst other things, a unique reference number and the accounting periods for which an APD return is required. Once registered, taxpayers are required to inform HMRC of any changes to the registration details.
- 6.4 The Scottish Government proposes that anyone forming (or continuing to have) the intention to operate chargeable aircraft used for the carriage of chargeable passengers from Scottish airports from 1 April 2018 will be required to be registered for a Scottish replacement to APD.
- 6.5 The application for registration will be able to be submitted either online or by post and, similar to arrangements put in place prior to the introduction of SLfT, will be due within 30 days of the earliest date after 18 February 2018 on which the taxpayer formed (or continued to form) the intention to operate taxable activities from 1 April 2018 in relation to the new tax.
- 6.6 Registered taxpayers will also be required to give notification when they cease to have the intention to operate such chargeable aircraft, in order that they can be de-registered for tax purposes. A person who fails to give notification about their liability to be registered or de-registered will be liable to a penalty (see the '[Penalties](#)' Chapter).
- 6.7 A taxpayer who successfully applies to be registered will receive a unique registration number but no registration certificate, and will be added to a list of registered taxpayers which Revenue Scotland will be required to publish.



## **QUESTION 15 – TAX REGISTRATION**

### **Q15:**

- **(a)** Do you agree with our proposals regarding registration for a Scottish replacement to APD? Please answer yes or no.
- **(b)** If you answered no to Q15(a), please explain your answer.

## **Occasional Operator Scheme**

6.8 Under UK APD an Occasional Operator Scheme is available for taxpayers operating 12 or fewer flights a year from UK-based airports and whose estimated APD liability for the year is less than or equal to £5,000. This is a simplified combined payment and notification process whereby airlines can register and pay on a flight by flight basis.

6.9 Under this Scheme, taxpayers can pay APD for flights made over a 24 hour period by completing a combined registration and notification form. The notification and payment must be received within seven days of the departure date of the relevant flight. Payment by Direct Debit or at a bank or building society is not permissible for taxpayers using this Scheme.

## **QUESTION 16 – OCCASIONAL OPERATOR SCHEME**

### **Q16:**

- **(a)** Do you currently use the Occasional Operator Scheme for UK APD? Please answer yes or no.
- **(b)** If you answered yes to Q16(a), what impact does this have on your organisation? What grounds are there to introduce a similar Occasional Operator Scheme for a Scottish replacement tax?

# CHAPTER 7: FISCAL AND ADMINISTRATIVE REPRESENTATIVES

## Fiscal representatives

7.1 Under UK APD taxpayers liable to be registered for APD but with no business or other fixed establishment in the UK must appoint a fiscal representative to act on their behalf. The fiscal representative must be based in the UK and only one fiscal representative can be appointed at a time. A taxpayer who fails to appoint a fiscal representative as required is liable to a penalty.

7.2 A fiscal representative can either be:

- responsible for ensuring that the taxpayer meets all of their obligations and discharges all liabilities in relation to APD. If the taxpayer fails to meet these requirements, the fiscal representative is held responsible as if all APD obligations and liabilities were imposed jointly and severally on both parties; or
- responsible only for keeping records and accounts on the taxpayer's behalf. In this case, the fiscal representative is referred to as an 'administrative representative' (see the ['Administrative Representatives'](#) section).

7.3 The taxpayer must provide details of any fiscal representative as part of the initial registration process (the fiscal representative may complete the registration application on the taxpayer's behalf, but the taxpayer must sign it). The latest a fiscal representative can be appointed is within seven days of a chargeable flight taking place, although taxpayers are recommended to appoint a representative before operating a chargeable flight. Once the tax authority receives notification of a fiscal representative's appointment by a taxpayer, the name of the representative is included in the entry in the register relating to that taxpayer.

7.4 The fiscal representative must also notify the tax authority of their appointment within seven days of being appointed, providing specified information such as trading name, contact details, the taxpayer they represent and the date from which the appointment is effective. If the representative fails to do this then they are liable to a penalty.

7.5 If a fiscal representative ceases to act for the taxpayer, another representative must be appointed by the taxpayer within seven days of the date the previous representative ceased to act for the taxpayer.

7.6 Where the fiscal representative appointed is not an administrative representative, security may be required from either the taxpayer or the fiscal representative if it is considered that any amount of tax, penalty or interest in relation to APD is at risk of being unpaid. This security may be in addition to security required in relation to the appointment of an administrative

representative. Further information on the UK APD security requirements in relation to fiscal representatives is provided at [Annex B](#).

## **QUESTION 17 – FISCAL REPRESENTATIVES**

### **Q17:**

- **(a)** Do you currently use a fiscal representative for UK APD? Please answer yes or no.
- **(b)** If you answered yes to Q17(a), what impact does this have on your organisation? What would be the advantages and disadvantages of retaining a similar fiscal representative system under a Scottish replacement tax? How could the existing UK system be improved upon?

## **Administrative representatives**

7.7 An administrative representative is a fiscal representative appointed by the taxpayer solely for keeping records and accounts on behalf of the taxpayer. An administrative representative can only be appointed on condition that the taxpayer provides security for APD (but no security is required where the taxpayer's estimated APD liability over a 12 month period is less than £25,000). The taxpayer cannot appeal against the requirement to provide security.

7.8 Taxpayers who are already registered for APD and wish to restrict their fiscal representatives to those of an administrative representative must provide security as a pre-condition. Until security is given, the fiscal representative remains liable for payment of tax. Taxpayers who are not registered for APD and who intend to operate chargeable flights and appoint a fiscal representative for administrative purposes only, must provide security within seven days of a chargeable flight taking place.

7.9 An administrative representative is not generally liable for payment of APD but may become liable, however, if the taxpayer contravenes their security requirements such as: failing to provide the required security; initially providing the required amount of security but subsequently cancelling the agreement (or reducing the amount of security without prior agreement from the tax authority).

7.10 Where this is the case, a written notice is issued to the administrative representative stating that, with effect from seven days of that notification, the representative will become jointly and severally liable for APD until such time as the taxpayer complies with the security requirements. The taxpayer is also liable to a penalty for contravening the security requirements.

7.11 An administrative representative who knows that a taxpayer's security does not comply with requirements, or who is responsible for the security ceasing, is immediately liable to APD. Further information on the UK APD security requirements in relation to administrative representatives is provided at [Annex B](#).

## **QUESTION 18 – ADMINISTRATIVE REPRESENTATIVES**

### **Q18:**

- **(a)** Do you currently use an administrative representative for UK APD? Please answer yes or no.
- **(b)** If you answered yes to Q18(a), what impact does this have on your organisation? What would be the advantages and disadvantages of retaining a system of administrative representatives under a Scottish replacement tax? How could the existing UK system be improved upon?

## CHAPTER 8: TAX RETURNS AND PAYMENT

8.1 It is important that the process for completing and submitting tax returns and paying tax is efficient and convenient for both taxpayers and the tax authority.

8.2 The following sections outline the Scottish Government's proposals on how the system for tax returns and payment of tax would be structured and operate in relation to a Scottish replacement tax, and we would be grateful for your views on these proposals.

### Content of tax return

8.3 The Scottish Government recognises that taxpayers already have systems in place to accommodate the UK APD tax return. It is important in designing the tax return for a Scottish replacement tax that it facilitates efficient and effective compliance of that tax, as well as making the transition for taxpayers as easy as possible.

8.4 The UK APD tax return<sup>25</sup> requires taxpayers to provide, amongst other things, the following information for the period covered by the return:

- for each tax rate within the two Bands, the total number of chargeable passengers travelling on chargeable aircraft and the consequential total amount of tax;
- the total amount of exempt passengers and total amount of passengers overall;
- under-declarations and over-declarations from previous periods;
- whether a special accounting scheme is being used (see the '[Special Accounting Scheme](#)' section of this Chapter); and
- a declaration from the person submitting the return that the information provided is true and complete.

### QUESTION 19 – CONTENT OF TAX RETURN

**Q19:** What are your views on the current level of information required in the UK APD tax return? What additional information, if any, do you think it would be beneficial to collect on a Scottish tax return in order to ensure efficient and effective compliance of that tax?

<sup>25</sup> <https://www.gov.uk/government/publications/air-passenger-duty-example-return-and-completion-notes-apd2>

## Special Accounting Scheme

8.5 Under UK APD in certain circumstances a taxpayer can apply to use a special accounting scheme, which is an agreed method of estimating APD exemptions and/or calculating APD liabilities for the purposes of completing an APD tax return. A special accounting scheme cannot be used without prior approval, and a taxpayer using such a scheme must indicate this on the tax return (see previous section).

8.6 A special accounting scheme may be considered for approval if:

- it is not possible or not practical to identify different APD exemptions and liabilities from the taxpayer's transaction-based systems;
- the complexity of the taxpayer's business is such that an individual passenger transaction-by-transaction approach would be impractical because of the time required to identify the correct amounts of APD; or
- the nature of the business is such that passenger numbers are not normally recorded. This can often be the case with smaller aircraft operators, where the business model is based on the charter of an entire aircraft and not the number of individual passengers carried.

8.7 In these circumstances an approved special accounting scheme provides the taxpayer with the option of using additional information from other systems, statistical sampling, and/or passenger surveys to help calculate APD exemptions and/or liabilities for the purposes of completing the APD tax return. A special accounting scheme can apply percentages to calculate the number of passengers who are liable to, and exempt from, APD. Once these percentages have been calculated they are applied to the actual number of passengers uplifted from UK airports during the relevant accounting period.

8.8 We are interested to hear your views on the current UK APD Special Accounting Scheme system, and whether a similar scheme should be considered for a Scottish replacement tax.

### QUESTION 20 – SPECIAL ACCOUNTING SCHEME

#### Q20:

- **(a)** Do you currently use a special accounting scheme system for UK APD? Please answer yes or no.
- **(b)** If you answered yes to Q20(a), why and what impact does this have on your organisation? What would be the advantages and disadvantages of allowing similar special accounting schemes under a Scottish replacement tax?

## Frequency of tax return

8.9 Under UK APD newly registered taxpayers are automatically placed on a monthly return cycle. In order to reduce the administrative burdens on small businesses, taxpayers with an expected annual APD liability of less than £500,000 can apply to HMRC to use an annual return cycle instead.

8.10 A taxpayer who cannot account for APD on the basis of calendar months can apply to HMRC for returns to match the airline's accounting periods. These 'non-standard' accounting periods may not exceed 5 weeks in duration and there may be no more than 12 accounting periods in any financial year.

8.11 In order to minimise the administrative burden to airlines from the introduction of a Scottish replacement to APD, the Scottish Government proposes to introduce a standard quarterly tax return cycle, covering the following return periods:

- Quarter 1: 1 April – 30 June;
- Quarter 2: 1 July to 30 September;
- Quarter 3: 1 October to 31 December;
- Quarter 4: 1 January to 31 March.

8.12 A standard quarterly tax return cycle is also consistent with the quarterly tax return period currently used for SLFT and will reduce the number of legislative amendments to the RSTPA 2014 required to implement the civil penalty proposals in [Chapter 12](#).

### QUESTIONS 21 AND 22 – FREQUENCY OF TAX RETURN:

#### Q21:

- **(a)** Do you agree with our proposal for a standard quarterly tax return cycle under a Scottish replacement to APD? Please answer yes or no.
- **(b)** If you answered no to Q21(a), please explain your answer.

#### Q22:

- **(a)** Do you think taxpayers should be able to apply to use an alternative annual tax return cycle or non-standard accounting period? Please answer yes or no.
- **(b)** Please explain your answer to Q22(a).

## Submitting a tax return

- 8.13 Under UK APD a hard copy of the APD return is posted by HMRC to taxpayers (or their fiscal representative) registered for APD. The completed return must be posted back and reach HMRC by the due date indicated on the front of the tax return. This will normally be the 22nd day of the following month. If the due date is a bank holiday or weekend, the return and payment must reach HMRC by the last working day before the deadline.
- 8.14 An important aspect of Revenue Scotland's approach to encouraging compliance is ensuring that taxpayers are provided with effective and user-friendly ways to access and send information. Following discussion with Revenue Scotland, the Scottish Government therefore proposes that the tax return for a Scottish replacement to APD will be able to be submitted either online or by post. This proposal was supported by members of our stakeholder forum. As taxpayers become familiar with the new process we would expect the vast majority of tax returns to be submitted online.
- 8.15 The Scottish Government proposes that the due date for receipt of a tax return should be 30 days after the end of the relevant return period. For example, under a standard quarterly return period the first tax return must be received no later than 30 July. A taxpayer failing to submit a tax return on time or, in certain circumstances, submitting a return with an inaccuracy may be liable to a penalty (see the ['Penalties'](#) Chapter).

### QUESTION 23 – SUBMITTING A TAX RETURN

#### Q23:

- **(a)** Do you agree with our proposal for tax returns for a Scottish replacement to APD being able to be submitted both online and by post, and having to be received no later than 30 days after the end of the relevant return period? Please answer yes or no.
- **(b)** If you answered no to Q23(a), please explain your answer.

## Taxpayer amendment

- 8.16 Under UK APD taxpayers can amend an error in a previously submitted tax return up to four years from the date of submission and can also, subject to certain limits, use the tax return to adjust the total APD due by stating an under-declaration or over-declaration of tax in a previous accounting period which has not previously been adjusted or declared.
- 8.17 The Scottish Government proposes that, once a tax return has been submitted, taxpayers will ordinarily be able to amend that return (either online or by post) up to 12 months from the filing date by which the tax return was due, as provided for under section 83 of the RSTPA 2014<sup>26</sup>. A taxpayer will not be able to amend the return if the tax authority has itself amended the return either during

<sup>26</sup> <http://www.legislation.gov.uk/asp/2014/16/section/83>



or at the closure of an enquiry, as provided for under section 87(3) and 93(4) of the RSTPA 2014<sup>27</sup>.

8.18 Taxpayers wishing to make a claim for repayment or relief from tax outwith this 12 month taxpayer amendment period will be able to make a claim in writing up to five years from the date of payment (see the '[Claims for repayment and relief](#)' section of this Chapter).

8.19 As taxpayers will be able to amend previously submitted returns, there will be no provision to adjust for under-declarations and over-declarations in later tax returns. This will ensure that the rules regarding taxpayer amendments of tax returns are consistent with the other devolved taxes.

#### QUESTIONS 24 AND 25 – TAXPAYER AMENDMENT

##### Q24:

- (a) Do you agree with our proposal for taxpayers, subject to certain conditions, being able to amend previously submitted tax returns either online or by post under a Scottish replacement to APD? Please answer yes or no.
- (b) If you answered no to Q24(a), please explain your answer.

Q25: What impact, if any, will there be on your organisation in not being able to adjust for under-declarations and over-declarations in later tax returns?

### Paying tax

8.20 Under UK APD a number of different payment arrangements are available including cheque, CHAPS, BACS, Direct Debit, bank transfer at a bank or building society (with a paying-in slip) and Faster Payment (online or telephone banking).

8.21 Payment of any tax due must generally be received by HMRC by the due date indicated on the return. If paying by cheque, the cheque must be included with the submitted return. If paying by BACS, CHAPS, Direct Debit or at a bank or building society the payment deadline is extended by seven days from the due date on the return.

8.22 The Scottish Government proposes that a taxpayer choosing to submit a tax return online (see the '[Submitting a Tax Return](#)' section of this Chapter) will also be able to pay any tax due electronically via the same online system. The payment methods available to a taxpayer submitting an online return will be Direct Debit, BACS, CHAPS and Faster Payments.

8.23 If paying by BACS, CHAPS or Faster Payments then payment must be received by the earlier of five working days from the date the return is submitted and the last working day which is, or precedes, the thirtieth calendar day after the end of the period to which the return relates.

<sup>27</sup> <http://www.legislation.gov.uk/asp/2014/16/part/6/chapter/4>

8.24 As is currently the case for LBTT and SLfT, the only payment method possible for a taxpayer submitting a tax return by post will be cheque payment. Cheques must be received by the tax authority within three working days of submission of the tax return.

8.25 A taxpayer who fails to pay any tax due on time may be liable to interest and a penalty (see the '[Penalties](#)' and '[Interest](#)' Chapters).

#### QUESTION 26 – PAYING TAX

##### Q26:

- (a) Do you agree with our proposals regarding payment methods and time limits for a Scottish replacement to APD? Please answer yes or no.
- (b) If you answered no to Q26(a), please explain your answer.

#### Claims for repayment and relief

8.26 Under UK APD taxpayers have four years from the date of payment to make a claim for amounts wrongly paid and can also, subject to certain limits, use the UK APD tax return to adjust the total APD due by stating an over-declaration of tax in a previous accounting period which has not previously been adjusted or declared.

8.27 The Scottish Government proposes that, where taxpayers feel that they have paid too much tax, have been double charged or that their assessed tax liability is greater than it should be, taxpayers will have the right to make a claim for this amount to either be repaid or discharged.

8.28 The taxpayer will be able to make the claim by amending their tax return (see the '[Taxpayer Amendment](#)' section of this Chapter) or, if outwith the 12 month taxpayer amendment period, by making a written claim to Revenue Scotland under section 106, 107 or 108 of the RSTPA 2014<sup>28</sup>. A five year time limit applies to making a claim under section 106 or 107 and a two year time limit applies to making a claim under section 108. An amendment to section 108(3) of that Act will eventually be required to take into account a future order-making power allowing Scottish Ministers to set tax rates for a Scottish replacement to APD.

8.29 Revenue Scotland will have the power, in certain circumstances, to refuse a claim, for example where repaying or discharging an amount of tax would unjustly enrich the taxpayer. The taxpayer will be able to give a notice of review or appeal against such a decision (see [Chapter 14](#)). Revenue Scotland will also have the power to open an enquiry into any such claim, or correct it for an obvious error or omission.

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<sup>28</sup> <http://www.legislation.gov.uk/asp/2014/16/part/6/chapter/7>

**QUESTION 27 – CLAIMS FOR REPAYMENT AND RELIEF**

**Q27:**

- **(a)** Do you agree with our proposals regarding claims for repayment or relief from tax? Please answer yes or no.
- **(b)** If you answered no to Q27(a), please explain your answer.

## CHAPTER 9: RECORD KEEPING

9.1 Under UK APD taxpayers and appointed fiscal or administrative representatives must keep and preserve certain types of records and accounts for up to six years in order to demonstrate that the information provided on the APD tax return is accurate. In certain circumstances a request can be made to store records for less than six years, but this request must be agreed to before any such records are destroyed. If the taxpayer applies to use a special accounting scheme, the period of retention of records is agreed as part of the scheme.

9.2 The records can be kept anywhere (including abroad) but must be produced upon request, including at the taxpayer's registered address. The records can be kept and stored in any format, provided that copies can be easily produced and are easily accessible.

9.3 The following table shows the main type of records that must be kept:

Record to be kept	Details
APD Account	<p>The APD Account is the main record that must be kept and preserved, and applies to all registered taxpayers and appointed fiscal or administrative representatives. It contains information in connection with the summary of passengers carried and the calculation of APD that is due. It must contain:</p> <ol style="list-style-type: none"> <li>1. Passenger Details: <ul style="list-style-type: none"> <li>• total number of passengers carried at reduced, standard and higher rate for each destination band;</li> <li>• number of passengers not chargeable because they are exempt, as outlined in <a href="#">Chapter 4</a>;</li> <li>• total number of passengers carried in the relevant accounting period, including those who are exempt.</li> </ul> </li> <li>2. APD declaration: <ul style="list-style-type: none"> <li>• total amount of APD due at each rate;</li> <li>• total amount of APD due;</li> <li>• amount, date and payment method of any APD paid.</li> </ul> </li> <li>3. Adjustments, including to correct or note any errors</li> </ol>

<p>Special Accounting Schemes (if applicable – see the '<a href="#">Special Accounting Scheme</a>' section)</p>	<p>The following records must be kept and preserved where a special accounting scheme has been agreed and entered into:</p> <ul style="list-style-type: none"> <li>• Agreement letter;</li> <li>• Copies of any passenger surveys undertaken;</li> <li>• Data used in compiling the scheme;</li> <li>• Any additional information collected during the operation of the scheme which may be used to carry out a retrospective adjustment based on that information (this provision must be included in the special scheme agreement);</li> <li>• All supporting calculations used to complete the APD return.</li> </ul>
<p>Other Records</p>	<ul style="list-style-type: none"> <li>• All documents that prove passengers are not chargeable for any reason;</li> <li>• Copies of any returns made to CAA and airport authorities relating to number of flights operated or number of passengers carried;</li> <li>• Voyage reports, load sheets, passenger manifests;</li> <li>• Flight interruption manifests;</li> <li>• CAA certificate of airworthiness;</li> <li>• Documents relating to any contractual arrangement for the leasing, hiring or chartering of aircraft by or to yourself;</li> <li>• Invoices relating to 'Time-saver Chequebook' type tickets;</li> <li>• Flight coupons.</li> </ul>

9.4 The Scottish Government proposes that persons required to make a tax return in relation to a Scottish replacement to APD, persons liable to be registered for tax and fiscal or administrative representatives will be required to keep and preserve certain types of records for five years, as provided for by sections 74 and 75 of the RSTPA 2014<sup>29</sup>. Members of our stakeholder forum

<sup>29</sup> <http://www.legislation.gov.uk/asp/2014/16/part/6/chapter/2/crossheading/duties-to-keep-records>

had no concerns with this proposal, on the basis that records for UK APD are required to be kept and preserved for a similar timeframe (six years).

9.5 The records required to be kept and preserved (such as those outlined in the table above for UK APD) will be specified in regulations made under section 74(9) of the RSTPA 2014 and will depend on the design of the Scottish tax and available exemptions. A person failing to keep and preserve these records as required may be liable to a penalty (see the '[Penalties](#)' Chapter). This will ensure consistency with the approach taken for the two existing devolved taxes.

9.6 We would welcome your views on our proposals.

#### **QUESTION 28 – RECORD KEEPING**

**Q28:**

- **(a)** Do you agree with our proposals regarding keeping and preserving records in relation to a Scottish replacement tax? Please answer yes or no.
- **(b)** If you answered no to Q28(a), please explain your answer.

## CHAPTER 10: TAX AVOIDANCE AND TAX EVASION

### Tax avoidance

10.1 The Scottish Government takes the toughest possible approach to tackling tax avoidance in relation to Scotland's devolved taxes. This approach is based on straightforward, common sense tests that ordinary taxpayers can understand and endorse. The Scottish Government wants to encourage a culture of responsible taxpaying where the burden of tax is shared equally and individuals and companies pay their tax as Parliament intended.

10.2 The Scottish General Anti-Avoidance Rule (GAAR) is established in Part 5 of the RSTPA 2014<sup>30</sup>. It allows Revenue Scotland to take counteraction against tax avoidance arrangements in relation to devolved taxes which it considers to be artificial, even if the arrangements otherwise operate within the letter of the law. The Scottish GAAR is significantly wider than the corresponding UK General Anti Abuse Rule which is based on a narrower test of 'abuse' rather than 'artificiality'. The Scottish Government proposes that the Scottish GAAR will also apply to a Scottish replacement to APD.

10.3 A tax avoidance arrangement is considered artificial if one or both of two conditions (A or B) are met:

- Condition A is met if, in all the circumstances, entering into or carrying out the arrangement is not a reasonable course of action in relation to the tax legislation in question;
- Condition B is met if the tax avoidance arrangement lacks economic or commercial substance.

10.4 Arrangements that are not artificial as defined by the RSTPA 2014 are not liable to counteraction under the Scottish GAAR.

10.5 In addition to the Scottish GAAR, and to further reduce the scope for avoidance activity, a number of Targeted Anti-Avoidance Rules have also been included in the tax-specific legislation already passed by the Scottish Parliament for the two existing devolved taxes.

10.6 It is the Scottish Government's view that it is not enough to legislate for specific anti-avoidance rules – the design of individual taxes needs to be such that the opportunities for avoidance are minimised from the outset. In particular, it is important to recognise that complexity in the tax system, including multiple reliefs and exemptions, creates opportunities for avoidance.

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<sup>30</sup> <http://www.legislation.gov.uk/asp/2014/16/part/5>

## QUESTIONS 29 – TAX AVOIDANCE

**Q29:** To what extent, and in what areas, do you think that artificial tax avoidance is or is not currently an issue with UK APD? If you think it is an issue, what measures could be taken to reduce the potential for such avoidance?

### Tax evasion

10.7 Tax evasion (also known as tax fraud) is the illegal non-payment or underpayment of tax, for example by deliberately misrepresenting or withholding information. Fraud (including fraud by agents) is already a common law offence in Scots law, for which the sanction can be an unlimited fine and/or an unlimited term of imprisonment. For this reason the Scottish Government did not introduce legislation via the RSTPA 2014 for a new offence of evasion of devolved taxes, and new legislation is not required to ensure that evasion of a Scottish replacement to APD will be an offence. Where it is suspected that evasion of a Scottish replacement to APD either has taken or is taking place, the matter will be referred to the appropriate authorities by Revenue Scotland for consideration.

## QUESTION 30 – TAX EVASION

**Q30:**

- **(a)** Do you agree with our intended approach to tackling tax avoidance and tax evasion in relation to a Scottish replacement tax? Please answer yes or no.
- **(b)** If you answered no to Q30(a), please explain your answer.



## CHAPTER 11: INVESTIGATORY AND ENFORCEMENT POWERS

- 11.1 In order to ensure that the correct amounts of tax are paid at the right time it is important that a range of investigative and enforcement powers, with appropriate safeguards in place, are available in relation to a Scottish replacement to APD.
- 11.2 Revenue Scotland has a range of investigative and enforcement powers in relation to the two existing devolved taxes, including powers to open enquiries, issue determinations, assessments and information notices, carry out inspections of business premises, and seek recovery of debt through the civil courts. These are in addition to the powers it has to impose civil penalties and interest (see the '[Penalties](#)' and '[Interest](#)' Chapters respectively).
- 11.3 The Scottish Government proposes that those same investigatory and enforcement powers will also be available to Revenue Scotland in relation to a Scottish replacement to APD.
- 11.4 The following sections outline each of these powers in more detail and we would be grateful for your views on them.

### Enquiries

- 11.5 The Scottish Government proposes that, subject to certain conditions and time limits set out under Part 6 Chapter 4 of the RSTPA 2014<sup>31</sup>, Revenue Scotland will have the power to open an enquiry into a tax return. The enquiry will be able to cover anything contained (or required to be contained) in the tax return relating to whether the taxpayer is liable to pay tax and/or the amount of tax which is liable to be paid.
- 11.6 An enquiry will not be permitted to be opened more than three years after the filing date (the date the tax return was due to be submitted) or, if the return was submitted late, more than three years after the date the return was originally submitted.
- 11.7 An enquiry will also not be able to be opened if the tax return has already been the subject of a previous enquiry. If, however, the taxpayer submits an amended tax return (see the '[Taxpayer Amendment](#)' section) then an enquiry can be opened into the amended return even if the original was the subject of a previous enquiry, but it will be limited to matters to which the amendment relates and matters affected by the amendment.
- 11.8 An enquiry will be completed:
- when the taxpayer is notified and informed that the enquiry is complete (a 'closure notice'), as well as being provided with the conclusions reached;

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<sup>31</sup> <http://www.legislation.gov.uk/asp/2014/16/part/6/chapter/4>

- automatically if no such notice has been given and three years after the filing date has passed; or
- if the return was made after the filing date, three years after the date on which the taxpayer originally submitted the return.

11.9 Revenue Scotland will, if it considers it necessary, have the power to amend the self-assessment contained in the tax return either during or at the end of the enquiry (for example if not enough, or too much, tax has been paid).

11.10 Revenue Scotland will have the power at any point during the enquiry to exercise any of its other investigative powers, such as issuing an information notice, carrying out an inspection.

## **Tax determinations, assessments and corrections**

11.11 The Scottish Government proposes that, subject to certain time limits and conditions set out under Part 6 Chapter 5 of the RSTPA 2014<sup>32</sup>, Revenue Scotland will have the power to issue a determination to a taxpayer where it has reason to believe that the taxpayer is liable to pay tax but has not made a tax return by the due date. The taxpayer will not be able to request a review or appeal in relation to the decision to issue them with the determination but they will be able to request a review or appeal in relation to the determination itself (see the '[Dispute Resolution](#)' section) or displace it by submitting a tax return within the time period allowed.

11.12 The Scottish Government also proposes that, subject to certain time limits and conditions set out under Part 6 Chapter 6 of the RSTPA 2014<sup>33</sup>, Revenue Scotland will have the power to issue an assessment to a taxpayer where it comes to the view honestly and reasonably that any of the following situations apply:

- an amount of tax that ought to have been assessed has not been assessed;
- an assessment is or has become insufficient (that is, Revenue Scotland is of the view that the taxpayer is liable to more tax than was previously thought); or
- any relief the taxpayer has claimed or been given is, or has, become excessive.

11.13 In both cases the determination or assessment will state, to the best of Revenue Scotland's information and belief, the amount of tax, penalties and interest which the taxpayer is liable to pay. This amount will be able to be recovered in the same manner as if it were unpaid tax.

<sup>32</sup> <http://www.legislation.gov.uk/asp/2014/16/part/6/chapter/5>

<sup>33</sup> <http://www.legislation.gov.uk/asp/2014/16/part/6/chapter/6>

11.14 If the determination or assessment contains an under-statement of the taxpayer's tax liability, and the taxpayer is aware of this, the taxpayer may be liable to a penalty for failing to take reasonable steps to notify Revenue Scotland (see the '[Penalties](#)' Chapter).

11.15 The Scottish Government also proposes that, up to 12 months after receiving a tax return, Revenue Scotland will have the power under section 84 of the RSTPA 2014<sup>34</sup> to amend the return to correct an obvious error or omission. An 'error' includes an arithmetical mistake or an error of principle. The taxpayer will have the right to reject the correction but only by submitting their own amended return (see the '[Taxpayer Amendment](#)' section) or, if the 12 month amendment period has expired, by notifying Revenue Scotland that they reject the correction within three months of receiving the notice of correction.

## Information notices

11.16 The Scottish Government proposes that Revenue Scotland will have the power, in certain situations and subject to specified rules set out in legislation under Part 7 Chapters 2-3 of the RSTPA 2014<sup>35</sup>, to issue a legal notice (an 'information notice') to a person requiring them to provide information and/or produce documents in relation to a Scottish replacement to APD. The Scottish Government proposes that the same legislative provisions on information notices which currently apply to the existing devolved taxes will also apply to a Scottish replacement to APD.

11.17 Four types of information notice will be able to be given:

- a taxpayer notice, given to a taxpayer for the purpose of checking their tax position;
- a third party notice, given to a third party for the purpose of checking the tax position of another person whose identity is known;
- an identity unknown notice, given to someone in order to check the tax position of a person (or class of persons) whose identity is unknown; and
- an identification notice, given to someone for the purpose of obtaining a limited range of information (name, last known address and date of birth) about a person whose identity is unknown. Note that, unlike the other three types of information notice, no documents can be requested in this type of information notice.

11.18 An information notice may specify or describe the information and/or documents required and also a reasonable time, means and form in which the information and/or documents are to be provided or produced. It will also outline the rights of the person receiving the notice, for example the circumstances under

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<sup>34</sup> <http://www.legislation.gov.uk/asp/2014/16/section/84>

<sup>35</sup> <http://www.legislation.gov.uk/asp/2014/16/part/7>

which the person can request a review or appeal in relation to the information notice.

#### 11.19 An information notice:

- will not be able to require a document to be produced which is not in the possession or power of the person who receives the notice;
- will not be able to require the production of a document where the whole of the document was first produced more than five years before the date of the information notice (unless the notice is given with the approval of the independent Tax Tribunals for Scotland);
- cannot be given for the purposes of checking the tax position of a deceased person more than three years after the person has died.

11.20 Additional safeguards will also be provided which prevent or restrict an information notice requiring the provision or production of certain types of sensitive information and documents, such as personal records, journalistic material, legally privileged information, and statutory audit information held by auditors.

11.21 Most people will comply with the requirements of an information notice. Where this is not the case, however, the person will be liable to a penalty (see the '[Penalties](#)' Chapter). It will also be a criminal offence to conceal, destroy or otherwise dispose of (or arrange for the concealment, destruction or disposal of) any document after it has been required to be produced following an information notice which has been approved by the Tax Tribunals for Scotland.

## Inspections

11.22 The Scottish Government proposes that Revenue Scotland will have the power, in certain situations and subject to specified rules set out in legislation under Part 7 Chapters 4-5 of the RSTPA 2014<sup>36</sup>, to enter and carry out an inspection of the business premises of either a taxpayer or an 'involved third party' in order to check a person's tax position. This does not include the power to enter or inspect any part of premises used solely as a dwelling.

11.23 The Scottish Government proposes that the same legislative provisions on inspections which currently apply to the two existing devolved taxes will also apply to a Scottish replacement to APD. Should fiscal and administrative representatives be provided for under a Scottish replacement tax, an order will be made under section 142(3) of the RSTPA 2014<sup>37</sup> that an 'involved third party' in relation to a Scottish replacement to APD will include such representatives.

11.24 Inspections will generally only be used when all other avenues of obtaining information or documents have been reasonably exhausted. It is expected that

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<sup>36</sup> <http://www.legislation.gov.uk/asp/2014/16/part/7>

<sup>37</sup> <http://www.legislation.gov.uk/asp/2014/16/section/142>

most inspections will be announced, that is where the occupier of the premises to be inspected is informed of the intention to enter and inspect the premises before the inspecting officer's arrival. If, however, there are reasonable grounds for believe that giving advance notice of an inspection would seriously prejudice the assessment or collection of tax, an inspection of business premises will be able to be carried out at any reasonable time without advance notice.

11.25 An inspecting officer will also have powers to do the following during an inspection:

- give an information notice (see the '[Information Notices](#)' section);
- mark business assets;
- copy, remove or take extracts from a document; and
- obtain access to, inspect and check the operation of any computer or associated apparatus or material which is or has been used in connection with a required document.

11.26 The same restrictions that apply to information notices also apply to information and documents which may be required to be provided or produced during an inspection.

11.27 The occupier of the premises will have the right:

- to refuse entry to the premises to be inspected;
- to ask the inspecting officer to leave the premises during the course of an inspection;
- not to comply with any requirement placed on them by the inspecting officer, for example to produce certain documents.

11.28 Most people will co-operate fully when an inspection is carried out. Where this is not the case, a person deliberately obstructing an officer in the course of carrying out an inspection, including in exercising any of the officer's powers, will be liable to a penalty if the inspection has been approved beforehand by the Tax Tribunals for Scotland (see the '[Penalties](#)' Chapter).

## **Debt enforcement**

11.29 The majority of people will pay the correct amount of money they owe in relation to a Scottish replacement to APD. Some taxpayers may, however, be unable to pay the sum of money on time or will choose not to pay it upon demand.

11.30 In cases where a taxpayer has real difficulty paying any money that is due but is willing to find a way of paying, the Scottish Government proposes that

Revenue Scotland will have the flexibility (as it does already) to work with the person to find a payment arrangement acceptable to both parties.

11.31 There will however be cases where, given the circumstances, it is not possible or appropriate to enter into such arrangements. In such cases, the Scottish Government proposes that Revenue Scotland will be able (as it does already) to undertake civil court proceedings to recover the debt by either:

- applying to the Sheriff Court for a summary warrant to be issued; or
- for particular types of cases, seeking recovery through proceedings before either the Sheriff Court or the Court of Session.

11.32 The Scottish Government proposes to retain the existing enforcement provisions provided for in Part 10 of the RSTPA 2014<sup>38</sup>, subject to an amendment to section 223(1) of the Act adding the following two additional items to the list of 'Revenue Scotland certificates', which are evidence to be accepted in court proceedings as true statements unless proven otherwise:

- that any aircraft or passenger was or was not, on any date so specified, a chargeable aircraft or a chargeable passenger;
- (only if fiscal and administrative representatives are provided for in relation to a Scottish replacement to APD) that the name of any person was or was not, on any date so specified, shown as the fiscal or administrative representative of any person in the register.

### **QUESTION 31 – INVESTIGATORY AND ENFORCEMENT POWERS**

#### **Q31:**

- **(a)** Do you agree with our proposals for the investigatory and enforcement powers set out in Chapter 11 that will be available in relation to a Scottish replacement tax?
- **(b)** If you answered no to Q31(a), please explain your answer. Are there any other safeguards that might need to apply to them or any other powers you think may be needed?

<sup>38</sup> <http://www.legislation.gov.uk/asp/2014/16/part/10>

## CHAPTER 12: PENALTIES

- 12.1 It is important that the system for Scotland’s devolved taxes operates fairly and efficiently. The Scottish Government recognises that the vast majority of taxpayers want to comply with their obligations.
- 12.2 To encourage compliance and deter non-compliance, a range of fixed, daily and tax-g geared (or percentage-calculated) civil penalties apply to the devolved taxes. Revenue Scotland has the power in certain circumstances, and for certain penalties, to suspend, reduce or even waive a penalty. Guidance on the penalty system for the devolved taxes is available on the Revenue Scotland website<sup>39</sup>.
- 12.3 On the assumption that Revenue Scotland will be responsible for the collection and management of a Scottish replacement to APD, the Scottish Government proposes to adopt the current penalty framework provided for in the RSTPA 2014 (see further below), with minor modifications to some penalty provisions to ensure they also cover a Scottish replacement tax. This will ensure that the civil penalty system for a Scottish replacement to APD is consistent with the other devolved taxes.

### Current devolved tax penalties

- 12.4 The following table outlines the current devolved tax penalties which it is proposed will also apply to a Scottish replacement to APD, including the legislative amendments (if any) required to give this effect.

<b>Legislative provision</b>	<b>Penalty description &amp; proposed amendments to RSTPA 2014 (if required) in order for a Scottish replacement to APD to apply</b>
Section 76 and paragraph 5 of Schedule 3	<p>Section 76 - Failure to keep and preserve records in relation to tax returns and tax registration requirements.</p> <p>Paragraph 5 of Schedule 3 – Failure to keep and preserve records in relation to claims for relief from excessive assessment of tax, or claims for repayment of tax.</p> <p><b>Proposed amendments to RSTPA 2014:</b> None, but regulations will be brought forward under section 74(9) of the RSTPA 2014 specifying the records required to be kept and preserved in relation to a Scottish replacement to APD, and which this penalty would therefore apply to.</p>
Section 112	<p>Breaching an obligation contained in regulations made under section 111 - currently The Revenue Scotland and Tax Powers Act (Reimbursement Arrangements) Regulations 2015<sup>40</sup>. These regulations are intended to prevent a taxpayer being reimbursed or repaid tax where it would unjustly enrich them.</p> <p><b>Proposed amendments to RSTPA 2014:</b> None.</p>

<sup>39</sup> <https://www.revenue.scot/legislation/rstpa-legislation-guidance/penalties>

<sup>40</sup> <http://www.legislation.gov.uk/ssi/2015/131/made>

Section 151	<p>Obstructing or failing to comply with a requirement to allow a designated officer access to, or inspection of, a computer or associated apparatus.</p> <p><b>Proposed amendments to RSTPA 2014:</b> None.</p>
Section 159	<p>Failure to submit a tax return on time.</p> <p><b>Proposed amendments to RSTPA 2014:</b> On the assumption that tax returns will be due on a quarterly basis, amend section 159 with the effect that the late tax return penalties in sections 164 to 167 (which currently apply to SLfT) also apply to a Scottish replacement to APD. Further amendments may be required if non-quarterly returns are also permitted, for example annual or non-standard accounting periods (see <a href="#">Chapter 8</a>).</p>
Section 168	<p>Failure to pay tax on or before the filing date.</p> <p><b>Proposed amendments to RSTPA 2014:</b> On the assumption that tax returns will be due on a quarterly basis, amend section 168 with the effect that the late payment of tax penalties in sections 170 to 173 (which currently only apply to SLfT) also apply to a Scottish replacement to APD. Further amendments may be required if non-quarterly returns are also permitted, for example annual or non-standard accounting periods (see <a href="#">Chapter 8</a>).</p>
Section 182	<p>Submitting a tax return or claim which contains an error that is 'careless' or 'deliberate' and which either: a) understates the tax liability, b) provides a false/inflated statement of loss/exemption/relief or c) provides a false/inflated claim for relief to or repayment of tax.</p> <p><b>Proposed amendments to RSTPA 2014:</b> Amend section 182 with the effect that a Scottish replacement to APD is added to the table listing the devolved taxes to which this penalty applies.</p>
Section 185	<p>Submitting a tax return or claim which contains an error that is attributable to another person either deliberately supplying false information to, or withholding information from, the person who provides the document, and which either: a) understates the tax liability, b) provides a false/inflated statement of loss/exemption/relief or c) provides a false/inflated claim for relief to or repayment of tax.</p> <p><b>Proposed amendments to RSTPA 2014:</b> None.</p>
Section 186	<p>Failure to take reasonable steps to notify the tax authority about a Revenue Scotland under-assessment of tax within 30 days of the assessment date.</p> <p><b>Proposed amendments to RSTPA 2014:</b> None.</p>



Section 195	<p>Failure to comply with an information notice or deliberately obstructing the carrying out of an inspection or the exercising of certain powers approved by the tribunal.</p> <p><b>Proposed amendments to RSTPA 2014:</b> None.</p>
Section 196	<p>Continued failure to comply with an information notice or continued obstruction of an inspection or exercising of certain tribunal-approved powers after a penalty under section 195 has been imposed.</p> <p><b>Proposed amendments to RSTPA 2014:</b> None.</p>
Section 197	<p>Providing inaccurate information or documents when complying with an information notice.</p> <p><b>Proposed amendments to RSTPA 2014:</b> None.</p>
Section 204	<p>Increased daily penalty for continued failure to comply with an information notice issued to a person to obtain information or documents about another person (or class of persons) whose identity is unknown to the investigating officer.</p> <p><b>Proposed amendments to RSTPA 2014:</b> None.</p>
Section 206	<p>Tax-related penalty (of an amount determined by the Upper Tax Tribunal for Scotland) for continued failure to comply with an information notice or obstruction of an inspection and where it is felt that, as a consequence of such behaviour, the tax paid by the person (or which is likely to be paid) is significantly less than it would have been.</p> <p><b>Proposed amendments to RSTPA 2014:</b> None.</p>
Section 209	<p>Failure of the taxpayer to register or de-register for tax.</p> <p><b>Proposed amendments to RSTPA 2014:</b> Amend sections 209 and 210 such that the penalty provisions for failing to comply with taxpayer registration requirements (which currently only apply to SLfT) also apply to a Scottish replacement to APD.</p>
Section 231	<p>Failure to comply with a notice to supply the contact details of a debtor.</p> <p><b>Proposed amendments to RSTPA 2014:</b> None.</p>

12.5 Should fiscal and administrative representatives be provided for under a Scottish replacement to APD, the Scottish Government also proposes to consider legislating for three additional penalties as follows:

- a taxpayer failing to appoint a fiscal representative where required;
- a fiscal or administrative representative failing to notify Revenue Scotland of their appointment; and
- a taxpayer or fiscal or administrative representative failing to provide security if required to do so.

#### **QUESTION 32 – PENALTIES**

##### **Q32**

- **(a)** Do you agree with our proposals for civil penalties in relation to a Scottish replacement to APD? Please answer yes or no.
- **(b)** If you answered no to Q32(a), please explain your answer. Are there any other civil penalties that should be considered?

## CHAPTER 13: INTEREST

13.1 Interest is charged to compensate the tax authority (and therefore the public purse) or the taxpayer for the loss of the use of money, and is not to be viewed as a penalty or other sanction. The Scottish Government proposes that interest will be charged on any amount of unpaid tax or penalties in relation to a Scottish replacement to APD. The interest will be charged from the date on which the tax or penalty is due to be paid until it is paid. Interest will also be chargeable on money owed and repaid back to the taxpayer, from the date the payment was made until the date of repayment.

13.2 The interest will be calculated and applied on a simple interest (not compound interest) basis. This means, in the case of unpaid tax for example, late payment interest is only calculated on the amount of unpaid tax and not also on late payment interest that has already been charged or accrued.

13.3 On the assumption that Revenue Scotland will be responsible for the collection and management of a Scottish replacement to APD, the Scottish Government proposes to use the provisions of Part 9 of the RSTPA 2014<sup>41</sup> and to modify The Revenue Scotland and Tax Powers Act (Interest on Unpaid Tax and Interest Rates in General) Regulations 2015<sup>42</sup> to provide for the charging of interest in relation to a Scottish replacement to APD.

13.4 This will ensure that provision for interest under a Scottish replacement to APD is consistent with the other devolved taxes. Guidance on interest for the existing devolved taxes is available on the Revenue Scotland website<sup>43</sup>.

### QUESTION 33 – INTEREST

#### Q33:

- **(a)** Do you agree with our proposals for charging interest in relation to a Scottish replacement to APD? Please answer yes or no.
- **(b)** If you answered no to Q33(a), please explain your answer.

<sup>41</sup> <http://www.legislation.gov.uk/asp/2014/16/part/9>

<sup>42</sup> <http://www.legislation.gov.uk/ssi/2015/128/made>

<sup>43</sup> <https://www.revenue.scot/legislation/rstpa-legislation-guidance/interest>

## CHAPTER 14: DISPUTE RESOLUTION

- 14.1 The Scottish Government proposes that taxpayers (and fiscal or administrative representatives, should these be provided for) who disagree with certain decisions by the tax authority in relation to a Scottish replacement to APD will have the statutory right to request that the tax authority carries out an internal review of that decision and to also appeal to an independent tribunal. A system of mediation will also be offered, but this would need to be jointly agreed by both parties (typically the taxpayer and the tax authority).
- 14.2 On the assumption that Revenue Scotland will be responsible for the collection and management of a Scottish replacement tax, the Scottish Government proposes to use the provisions of Part 11 of the Revenue Scotland and Tax Powers Act 2014<sup>44</sup> to establish the legislative framework for disputing decisions made by Revenue Scotland in relation to that tax. This will ensure that the dispute resolution system and process for a Scottish replacement to APD is consistent with the other devolved taxes, with reviews carried out by Revenue Scotland and appeals decided by the independent Tax Tribunals for Scotland<sup>45</sup> (anticipated to become part of the new Scottish Tribunals structure in due course<sup>46</sup>). Guidance on the dispute resolution process is available on the Revenue Scotland website<sup>47</sup>.
- 14.3 It is further proposed that the list of decisions made by Revenue Scotland in relation to a Scottish replacement to APD, against which a notice of review or appeal can be given, will be those set out in section 233(1) of the RSTPA 2014 ('appealable decisions' - see further below). The list of Revenue Scotland decisions against which a notice of review or appeal cannot be given will be those set out in section 233(4) of the Act.
- 14.4 In the event of fiscal or administrative representatives being provided for under a Scottish replacement to APD, it is proposed that an addition to the list of appealable decisions in section 233(1) covering security-related decisions (as they relate to fiscal and administrative representatives) is made using the order-making power in section 233(6) of the Act.
- 14.5 This would be subject to a separate addition to the list of decisions which are not appealable decisions in section 233(4) of the Act (again using the order-making power in section 233(6)), the purpose of which is to ensure that the requirement to provide security on the appointment of an administrative representative is not an appealable decision (on the grounds that this is a pre-condition of appointment). Further information on current security-related requirements in relation to UK APD is outlined in [Chapter 7](#) and [Annex B](#).

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<sup>44</sup> <http://www.legislation.gov.uk/asp/2014/16/part/11>

<sup>45</sup> <http://www.taxtribunals.scot/>

<sup>46</sup> <http://www.gov.scot/Topics/Justice/policies/civil-courts/tribunal-system>

<sup>47</sup> <https://www.revenue.scot/legislation/rstpa-legislation-guidance/dispute-resolution>

## Appealable decisions

14.6 The RSTPA 2014 defines as 'appealable decisions' the list of Revenue Scotland decisions against which a person aggrieved by that decision has the right to give a notice of review or appeal. The current list of appealable decisions is:

- a decision to make adjustments to counteract a tax advantage;
- a decision in relation to the registration of any person in relation to any taxable activity;
- a decision which affects whether a person is chargeable to tax;
- a decision which affects the amount of tax to which a person is chargeable;
- a decision which affects the amount of tax a person is required to pay;
- a decision which affects the date by which any amount by way of tax, penalty or interest must be paid;
- a decision in relation to a penalty;
- subject to certain conditions and exceptions, a decision in relation to the giving of an information notice or in relation to the use of any other investigatory powers; and
- subject to certain conditions, a decision in relation to the giving of a notice to a third party requiring them to supply the contact details of a debtor.

14.7 The current list of Revenue Scotland decisions which are not appealable decisions are:

- giving a notice of proposed counteraction of a tax advantage under the Scottish GAAR;
- making a Revenue Scotland determination in the event of no tax return being submitted; and
- a decision to give a notice of enquiry.

### QUESTION 34 – DISPUTE RESOLUTION

**Q34:**

- **(a)** Do you agree with our proposals for dispute resolution in relation to a Scottish replacement to APD? Please answer yes or no.
- **(b)** If you answered no to Q34(a), please explain your answer. What, if any, other decisions not on the proposed list of appealable decisions do you think should be included?

## CHAPTER 15: HOW TO RESPOND

### Responding to this Consultation

This consultation is your opportunity to shape the provisions of a future Bill to be introduced before the next Scottish Parliament establishing a Scottish replacement to APD.

We are inviting responses to this consultation by **Friday 3 June 2016**.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You can view and respond to this consultation online at <https://consult.scotland.gov.uk/fiscal-responsibility/air-passenger-duty>

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of **Friday 3 June 2016**.

You can also, if you wish, email your response (along with a completed [Respondent Information Form](#)) to: [apd@gov.scot](mailto:apd@gov.scot).

If you are unable to respond online, please send your hard copy response (along with a completed [Respondent Information Form](#) - see "Handling your Response" below) to:

Fiscal Responsibility Division  
Scottish Government  
Area 3D-North  
Victoria Quay  
Edinburgh  
EH6 6QQ

In addition to submitting your consultation response, we encourage you to engage in active dialogue on the matters raised both in this consultation paper and the SEA Screening and Scoping Report. You can submit your thoughts and ideas, as well as comment on others, at: <https://ideas.scotland.gov.uk/air-passenger-duty>.

This dialogue is open for submissions until Friday 8 April 2016.

### Handling your response

If you respond using Citizen Space, you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the [Respondent Information Form](#) included in this document. If you ask for your response not to be published we will regard it as confidential and will treat it accordingly.

We would be grateful if you would use the consultation questionnaire provided or would clearly indicate in your response which questions or parts of the consultation paper you are responding to, as this will aid our analysis of the responses received.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Next steps in the process**

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

### **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to:

Fiscal Responsibility Division  
Scottish Government  
Area 3D-North  
Victoria Quay  
Edinburgh  
EH6 6QQ

### **Scottish Government consultation process**

Consultation is an essential part the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups or other online methods such as Dialogue (<http://ideas.scotland.gov.uk>).

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of



this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review;
- inform the development of a particular policy;
- help decisions to be made between alternative policy proposals;
- be used to finalise legislation before it is implemented.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

### **Scottish Government consultations**

The Scottish Government has an e-mail alert system for consultations. This system, called SEconsult, allows individuals and organisations to register and receive a weekly email with details of all new consultations (including web links). SEconsult complements, but in no way replaces, Scottish Government distribution lists. It is designed to allow people with an interest to keep up to date with all Scottish Government consultation activity. You can register at SEconsult at:

<http://www.gov.scot/consultations/seconsult.aspx>

# A Consultation on a Scottish replacement to APD



## RESPONDENT INFORMATION FORM

**Please Note** this form **must** be returned with your response.

Are you responding as an individual or an organisation?

- Individual
- Organisation

If you are an organisation please indicate which category best describes your organisation:

- Academic or Research Institute
- Community organisation
- Local government
- Private sector organisation
- Public body, including Executive Agencies, NDPBs etc.
- Representative body for professionals
- Third sector / equality organisation
- Others – please state:

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response.

Please indicate your publishing preference:

- Publish response with name
- Publish response only (anonymous)
- Do not publish response

We will share your response internally with other Scottish Government policy teams and Revenue Scotland who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

# LIST OF CONSULTATION QUESTIONS

## Chapter 2: Improving Scotland's Air Connectivity – Strategic and Policy Objectives

**Q1:**

- **(a)** Do you agree with our strategic and policy objectives for improving Scotland's air connectivity? Please answer yes or no.
- **(b)** Please explain your answer to Q1(a).

**Q2:** How could a Scottish replacement to APD help achieve these objectives?

## Chapter 3: Scope and Structure of Duty

**Q3:**

- **(a)** Taking into account the scope of the powers proposed to be devolved to the Scottish Parliament, should the UK APD definitions of 'chargeable passenger' and 'chargeable aircraft' be retained under a Scottish replacement tax? Please answer yes or no.
- **(b)** If you answered no to Q3(a), please explain your answer.

**Q4:**

- **(a)** Do you think that the current UK APD per-passenger charging model should be retained under a Scottish replacement tax? Please answer yes or no.
- **(b)** If you answered no to Q4(a), please explain your answer. Subject to compliance with State Aid rules and current aviation agreements, what alternative charging model(s) should be considered?

**Q5:**

- **(a)** Do you think that the current UK APD destination based banding system should be retained under a Scottish replacement tax? Please answer yes or no.
- **(b):**
  - If you answered yes to Q5(a), should destination bands be defined by distance to capital cities or what alternative measures could be considered? What would be the optimum number and definition of bands to support the achievement of the Scottish Government's strategic objectives for a Scottish replacement tax, as outlined in Chapter 2?
  - If you answered no to Q5(a), please explain your answer. What system do you think should be used instead?

**Q6:**

- **(a)** Do you think that the reduced, standard and higher rates system used for UK APD should be retained under a Scottish replacement tax? Please answer yes or no.
- **(b):**
  - If you answered yes to Q6(a), do the UK definitions remain appropriate for practices in the aviation industry in Scotland?
  - If you answered no to Q6(a), please explain your answer. What system do you think should be used instead?

**Q7:** Can you provide any evidence on the impact of the introduction of the higher rate which came into effect from 1 April 2013?

**Q8:** Do you have any views on how and when the planned 50% reduction in the burden of APD should be implemented?

## **Chapter 4: Exemptions**

**Q9:**

- **(a)** Do you think that the current UK APD passenger exemptions should be retained under a Scottish replacement tax? Please answer yes or no.
- **(b):**
  - If you answered yes to Q9(a), to what extent are the existing definitions appropriate for the Scottish industry?
  - If you answered no to Q9(a), please explain your answer. Is there any evidence to support the introduction of any additional or alternative exemptions?

**Q10:**

- **(a)** Do you think that the current UK APD flight exemptions should be retained under a Scottish replacement tax? Please answer yes or no.
- **(b):**
  - If you answered yes to Q10(a), to what extent are the existing definitions appropriate for the Scottish industry?
  - If you answered no to Q10(a), please explain your answer. Is there any evidence to support the introduction of any additional or alternative exemptions?

**Q11:** What are the benefits to the local economy and residents of the Scottish Highlands and Islands region from the current UK APD exemption for passengers departing from airports in the region?

**Q12:**

- **(a)** Do you think the current exemption for outbound flights from the Highlands and Islands region should be retained or modified under a Scottish replacement tax? Please answer 'retained' or 'modified'.
- **(b)** If you answered 'modified' to Q12(a), please explain your answer. In what way should it be modified?

## **Chapter 5: Connected Flights**

**Q13:**

- **(a)** Do you think that the current UK APD rules relating to connected flights should form a baseline position for a Scottish replacement tax? Please answer yes or no.
- **(b)** If you answered no to Q13(a), please explain your answer. What rules do you think should be considered instead?

**Q14:** What situations do you think could result in double taxation after a Scottish replacement to APD is introduced, and how might double taxation in such situations be avoided?

## **Chapter 6: Registration**

**Q15:**

- **(a)** Do you agree with our proposals regarding registration for a Scottish replacement to APD? Please answer yes or no.
- **(b)** If you answered no to Q15(a), please explain your answer.

**Q16:**

- **(a)** Do you currently use the Occasional Operator Scheme for UK APD? Please answer yes or no.
- **(b)** If you answered yes to Q16(a), what impact does this have on your organisation? What grounds are there to introduce a similar Occasional Operator Scheme for a Scottish replacement tax?

## Chapter 7: Fiscal and Administrative Representatives

### Q17:

- **(a)** Do you currently use a fiscal representative for UK APD? Please answer yes or no.
- **(b)** If you answered yes to Q17(a), what impact does this have on your organisation? What would be the advantages and disadvantages of retaining a similar fiscal representative system under a Scottish replacement tax? How could the existing UK system be improved upon?

### Q18:

- **(a)** Do you currently use an administrative representative for UK APD? Please answer yes or no.
- **(b)** If you answered yes to Q18(a), what impact does this have on your organisation? What would be the advantages and disadvantages of retaining a system of administrative representatives under a Scottish replacement tax? How could the existing UK system be improved upon?

## Chapter 8: Tax Return and Payment

**Q19:** What are your views on the current level of information required in the UK APD tax return? What additional information, if any, do you think it would be beneficial to collect on a Scottish tax return in order to ensure efficient and effective compliance of that tax?

### Q20:

- **(a)** Do you currently use a special accounting scheme system for UK APD? Please answer yes or no.
- **(b)** If you answered yes to Q20(a), why and what impact does this have on your organisation? What would be the advantages and disadvantages of allowing similar special accounting schemes under a Scottish replacement tax?

### Q21:

- **(a)** Do you agree with our proposal for a standard quarterly tax return cycle under a Scottish replacement to APD? Please answer yes or no.
- **(b)** If you answered no to Q21(a), please explain your answer.

### Q22:

- **(a)** Do you think taxpayers should be able to apply to use an alternative annual tax return cycle or non-standard accounting period? Please answer yes or no.
- **(b)** Please explain your answer to Q22(a).

**Q23:**

- **(a)** Do you agree with our proposal for tax returns for a Scottish replacement to APD being able to be submitted both online and by post, and having to be received no later than 30 days after the end of the relevant return period? Please answer yes or no.
- **(b)** If you answered no to Q23(a), please explain your answer.

**Q24:**

- **(a)** Do you agree with our proposal for taxpayers, subject to certain conditions, being able to amend previously submitted tax returns either online or by post under a Scottish replacement to APD? Please answer yes or no.
- **(b)** If you answered no to Q24(a), please explain your answer.

**Q25:** What impact, if any, will there be on your organisation in not being able to adjust for under-declarations and over-declarations in later tax returns?

**Q26:**

- **(a)** Do you agree with our proposals regarding payment methods and time limits for a Scottish replacement to APD? Please answer yes or no.
- **(b)** If you answered no to Q26(a), please explain your answer.

**Q27:**

- **(a)** Do you agree with our proposals regarding claims for repayment or relief from tax? Please answer yes or no.
- **(b)** If you answered no to Q27(a), please explain your answer.

## **Chapter 9: Record Keeping**

**Q28:**

- **(a)** Do you agree with our proposals regarding keeping and preserving records in relation to a Scottish replacement tax? Please answer yes or no.
- **(b)** If you answered no to Q28(a), please explain your answer.

## **Chapter 10: Tax Avoidance and Tax Evasion**

**Q29:** To what extent, and in what areas, do you think that artificial tax avoidance is or is not currently an issue with UK APD? If you think it is an issue, what measures could be taken to reduce the potential for such avoidance?



**Q30:**

- **(a)** Do you agree with our intended approach to tackling tax avoidance and tax evasion in relation to a Scottish replacement tax? Please answer yes or no.
- **(b)** If you answered no to Q30(a), please explain your answer.

## **Chapter 11: Investigatory and Enforcement Powers**

**Q31:**

- **(a)** Do you agree with our proposals for the investigatory and enforcement powers set out in Chapter 11 that will be available in relation to a Scottish replacement tax?
- **(b)** If you answered no to Q31(a), please explain your answer. Are there any other safeguards that might need to apply to them or any other powers you think may be needed?

## **Chapter 12: Penalties**

**Q32**

- **(a)** Do you agree with our proposals for civil penalties in relation to a Scottish replacement to APD? Please answer yes or no.
- **(b)** If you answered no to Q32(a), please explain your answer. Are there any other civil penalties that should be considered?

## **Chapter 13: Interest**

**Q33:**

- **(a)** Do you agree with our proposals for charging interest in relation to a Scottish replacement to APD? Please answer yes or no.
- **(b)** If you answered no to Q33(a), please explain your answer.

## **Chapter 14: Dispute Resolution**

**Q34:**

- **(a)** Do you agree with our proposals for dispute resolution in relation to a Scottish replacement to APD? Please answer yes or no.
- **(b)** If you answered no to Q34(a), please explain your answer. What, if any, other decisions not on the proposed list of appealable decisions do you think should be included?

## ANNEX A

### UK APD – Band A destinations

Under UK APD, destinations are split into different bands based on the distance of the destination country's capital city from London. The exception is the Russian Federation, which is split east and west of the Urals.

Since 1 April 2015 a two band structure has operated, with the countries in the table below designated as Band A destinations, which are countries whose capital city is 2,000 miles or less from London.

Albania	Finland	Libya	Russian Federation, west of the Urals
Algeria	France (including Corsica)	Liechtenstein	San Marino
Andorra	Germany	Lithuania	Serbia
Austria	Gibraltar	Luxembourg	Slovak Republic
Azores	Greece	Former Yugoslav Republic of Macedonia	Slovenia
Belarus	Greenland	Malta	Spain (including the Balearic Islands and the Canary Islands)
Belgium	Guernsey	Moldova	Sweden
Bosnia and Herzegovina	Hungary	Monaco	Switzerland
Bulgaria	Iceland	Montenegro	Tunisia
Channel Islands	Republic of Ireland	Morocco	Turkey
Croatia	Isle of Man	Netherlands	United Kingdom
Cyprus	Italy (including Sicily and Sardinia)	Norway (including Svalbard)	Ukraine
Czech Republic	Jersey	Poland	Vatican City
Denmark (including the Faroe Islands)	Republic of Kosovo	Portugal (including Madeira)	Western Sahara
Estonia	Latvia	Romania	

## ANNEX B

### Fiscal and administrative representatives – further information

#### Fiscal representatives

1. When security is required in relation to the appointment of a fiscal representative for UK APD (see [Chapter 7](#)), the security must be provided immediately when the taxpayer receives the notice to provide security, and must be in the form of a written guarantee from an acceptable financial institution such as a bank. The security is held for as long as is considered necessary to safeguard the amount of money that may be at risk. In the event that a sum of money does become unpaid, the security is used to offset the amount owed and further security may also then be required.
2. The amount of security that must be provided is periodically reviewed and is calculated using a formula that reflects the minimum time it would take to recover the debt if, in future, tax was not paid. The information used to calculate the amount of security can include, amongst other things, the tax declared on tax returns already submitted, tax declared on tax returns from businesses of a similar size, and passenger and destination information provided in the taxpayer's registration application.

#### Administrative representatives

3. When security is required in relation to the appointment of an administrative representative for UK APD (see [Chapter 7](#)), the security must be provided in the form of a written guarantee from an acceptable financial institution such as a bank. The security is held until such time as the taxpayer establishes a presence in the UK, appoints a fiscal representative who is jointly and severally liable for the duty, or ceases to operate flights from the UK.
4. The amount of security that must be provided, assuming that the taxpayer's estimated APD liability is £25,000 or more over a prescribed 12 month period, is an average of 5 months of that liability within the prescribed period (16 months if the taxpayer is on an annual accounting arrangement for APD - see the 'Frequency of Tax Return' section in [Chapter 8](#)).
5. If the taxpayer is already registered for APD, the prescribed 12 month period starts on the day the taxpayer gives notification of the appointment of the administrative representative. If not already registered, the 12 month period starts on the day the taxpayer gives notification of their liability to be registered or, if earlier, the day immediately following the date on which the taxpayer first operated a chargeable aircraft carrying chargeable passengers.
6. If, due to the seasonal nature of the taxpayer's business, the estimated liability for the 5 month period does not reflect their APD liability in the busiest period of

operation, the tax authority may require a period of 12 months which is not a calendar year to be used to make the calculation. Alternatively, the tax authority may request that the taxpayer lodges a guarantee for an amount based on a 5 month period during which the APD liability is at its highest.

7. The taxpayer must then review their estimated APD liability on each anniversary of the start of the prescribed 12 month period (“the review day”). If, on such a review, the estimated APD liability for the 12 month period starting on the review day is £25,000 or more, the taxpayer must provide any additional security that may be due (over and above any amount already provided) within 7 days of that day.
8. The tax authority also periodically reviews the required security amount. In the event that the taxpayer owes any tax, penalty or interest in relation to APD, the security is used to offset the amount owed and further security may also then be required.

## ANNEX C

### Glossary

APD	Air Passenger Duty, a duty which is charged on the carriage on a chargeable aircraft of any chargeable passenger from an airport in the United Kingdom. It is proposed that powers over APD be devolved to the Scottish Parliament via the Scotland Bill currently being considered at Westminster. Subject to the passage of the Scotland Bill, Scottish and UK Ministers have agreed that relevant powers will be devolved with effect from 1 April 2018.
Devolved taxes	Those taxes for which the Scottish Parliament is empowered to legislate as a consequence of the Scotland Act 2012, and is expected to be empowered to legislate following enactment of the Scotland Bill currently being considered at Westminster.
LBTT	Land and Buildings Transaction Tax, a devolved tax which came into effect in Scotland on 1 April 2015 and which is a tax charged on residential and commercial land and buildings transactions (including commercial purchases and commercial leases) where a chargeable interest is acquired.
RSTPA 2014	Revenue Scotland and Tax Powers Act 2014 which, amongst other things, establishes Revenue Scotland as Scotland's devolved tax authority and the collection and management framework for devolved taxes.
Revenue Scotland	Scotland's devolved tax authority and a Non-Ministerial Department, as established by the Revenue Scotland and Tax Powers Act 2014. Revenue Scotland is responsible for the collection and management of devolved taxes.
SLfT	Scottish landfill tax, a devolved tax which came into effect in Scotland on 1 April 2015 and which is a tax charged on the disposal of waste to landfill.

## Taxpayer

The person who is legally required to submit a tax return in relation to APD and pay any tax due (although as outlined in [Chapter 7](#) some taxpayers without a business or other fixed establishment in the UK can appoint a fiscal representative to fulfil this function on their behalf). In most cases this will be an aircraft operator.

## ANNEX D

### Stakeholder forum

1. The Scottish Government has established a stakeholder forum - involving a broad range of sectors including airlines, airports, business representatives, tax accountancy and legal professional bodies and environmental organisations - in order to support policy development on a Scottish replacement to APD.
2. The initial remit of the forum was to support the development of the policy proposals and discussion topics contained within this consultation paper. Once this part of the consultation process has concluded, the remit of the forum will be to:
  - provide advice and support to the Scottish Government prior to and during the legislative process of a future Bill to be introduced before the Scottish Parliament establishing a Scottish replacement tax; and
  - where appropriate, and at the appropriate juncture, provide advice and support in the design and testing of an administrative system for the collection and management of the replacement tax.
3. The forum has now met three times, with the first meeting on 6 August 2015 jointly chaired by the Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy and the Cabinet Secretary for Infrastructure, Investment and Cities. Papers and notes of all forum meetings, as well as the current terms of reference, are available on the Scottish Government website<sup>48</sup>.

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<sup>48</sup><http://www.gov.scot/Topics/Government/Finance/scottishapproach/airpassengerduty/APDstakeholderforum>



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