

Aviation Tax Act¹

Signed into law on: 9 December 2010

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¹ This working translation of the *Luftverkehrsteuergesetz – LuftVStG* is provided by the Language Service of the Federal Ministry of Finance. Only the German text of this Act is authentic.

Section 1 – Taxable event

- (1) Aviation tax is due on a legal transaction that entitles a passenger to depart from a German place of departure and travel to a destination on an aeroplane or helicopter operated by an aviation enterprise.
- (2) A legal transaction within the meaning of subsection (1) includes assigning a seat to a passenger in an aeroplane or helicopter where no other legal transaction within the meaning of this Act has yet taken place.

Section 2 – Definitions

For the purposes of this Act, the following definitions apply:

1. place of departure:
an airport, landing field or glider field under section 6 (1) of the Aviation Act² or a site for which a permit is necessary under section 25 (1) sentence 1 of the Aviation Act;
2. aviation enterprise:
an enterprise that holds a valid operating licence or equivalent permit authorising it to undertake the commercial carriage of passengers in an aeroplane or helicopter;
3. departure:
the takeoff of an aeroplane or a helicopter from a domestic or foreign place of departure with which the journey begins on the basis of the legal transaction;
4. place of destination:
the domestic or foreign location where the passenger's journey is planned to end in accordance with the legal transaction. If the journey is interrupted according to plan by a stopover as defined under no 5 at a domestic airfield under section 6 (1) of the Aviation Act or at a site for which a permit is necessary under section 25 (1) sentence 1 of the Aviation Act, then the domestic airfield under section 6 (1) of the Aviation Act or the site for which a permit is necessary under section 25 (1) sentence 1 of the Aviation Act at which the stopover is made is deemed to be the place of destination where the passenger's journey ends, and the continuation of the flight is deemed to be a new departure to a place of destination within the meaning of section 4;
5. stopover:
a flight interruption
 - a) of more than 12 hours in the case of flights to a place of destination located in a country listed in Annex 1,
 - b) of more than 24 hours to a place of destination located in a country not listed in Annex 1;

² *Luftverkehrsgesetz*

6. sight-seeing flight:

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

7. flight crew:

all persons on board an aeroplane or helicopter who

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

Section 3 – Competent authority

(1) Main Customs Offices are responsible for implementing this Act.

(2) The authority with local jurisdiction is the Main Customs Office in the district where an aviation enterprise operates its business. In the case of aviation enterprises that are domiciled in another member state of the European Union and that have not appointed a tax representative, local jurisdiction is held by the Main Customs Office in the district where the first departure takes place. If a tax representative has been appointed, the Main Customs Office in the district where the tax representative is domiciled has local jurisdiction. The issuance of an authorisation in accordance with section 8 (2) is the responsibility of the Main Customs Office in the district where the applicant is domiciled. Notwithstanding sentence 2, in the case of aviation enterprises that are domiciled in another member state of the European Union and that revoke the appointment of a tax representative, local jurisdiction remains with the Main Customs Office that has hitherto held local jurisdiction. In the case of aviation enterprises that are not domiciled in Germany or another member state of the European Union and that have not appointed a tax representative, until such a representative is appointed local jurisdiction is held by the Main Customs Office in the district where the first departure takes place.

Section 4 – Chargeability of tax

The tax pursuant to section 1 becomes chargeable upon the passenger's departure from a domestic place of departure.

Section 5 – Tax exemptions

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

1. departures of passengers under two years of age who do not occupy a seat of their own;
2. departures of passengers in aeroplanes or helicopters when the flight serves exclusively

military or other sovereign purposes;

3. renewed departures of passengers who due to an aborted flight have returned to the domestic place of departure from which the first departure took place or have been taken to another domestic airfield under section 6 (1) of the Aviation Act or to a site for which a permit is necessary under section 25 (1) sentence 1 of the Aviation Act;

4. departures of passengers

- a) whose main place of residence is located on a German island,
- b) who provide medical care to persons who reside on a German island or
- c) who perform sovereign tasks on a German island

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

5. (rescinded)

6. departures of passengers in aeroplanes or helicopters which serve exclusively medical purposes;

7. departures of passengers for sight-seeing flights in aeroplanes with a maximum takeoff weight of 2,000 kilogrammes or in helicopters with a maximum takeoff weight of 2,500 kilogrammes;

8. departures of flight crews.

Section 6 – Tax debtor

(1) The tax debtor is the aviation enterprise that makes the departure in accordance with section 1. In addition, tax representatives (section 8) are also tax debtors. The aviation enterprise and the tax representative are joint and several debtors.

(2) If an enterprise that is not domiciled in Germany or another member state of the European Union does not appoint a tax representative, the owner and the registered user of the aeroplane or helicopter are liable for the tax. Notwithstanding section 219 of the Fiscal Code³, tax claims may still be asserted against the persons who are legally liable for the tax if no enforcement has previously been made against the tax debtor's movable property or if it cannot be assumed that such enforcement would not lead to the desired result.

Section 7 – Registration

(1) Aviation enterprises that wish to make departures within the meaning of section 1 must get registered in writing at the competent Main Customs Office in accordance with subsection (2) sentences 1 to 3 at least three weeks before making the first departure from a

³ *Abgabenordnung*

domestic place of departure. Notwithstanding the provisions of sentence 1, aviation enterprises must transmit to the competent Main Customs Office, in writing and without delay, the information required under subsection (2) sentences 1 to 3 along with the date of departure and the intended domestic place of departure if

1. the period between the underlying legal transaction and the first departure is less than three weeks or
2. no more than two departures per calendar year are made.

In cases where sentence 2 no 1 applies, applications for registration must be filed retroactively within three weeks after the notification is received by the competent Main Customs Office.

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

1. the name of the enterprise,
2. the business or residential address,
3. the legal form,
4. any alternative location where accounts are kept and
5. the tax number assigned by the competent tax office, if issued, and the VAT identification number, if issued (section 27a of the VAT Act⁴).

The following documents must be submitted together with the application:

1. proof of a licence to operate as an aviation enterprise,
2. a list of locations in Germany where the enterprise intends to make departures,
3. in the case of enterprises that are entered in the commercial register, a current extract from that register and
4. a statement as to when the first departure will take place.

In their applications for registration to the Main Customs Office, aviation enterprises that are not domiciled in Germany or another member state of the European Union must, in addition, appoint an authorised representative in accordance with section 8 and submit appropriate documentation of such authorisation. Other aviation enterprises may appoint a tax representative in accordance with section 8.

(3) Aviation enterprises must supply additional information as requested by the Main Customs Office if such information appears to be necessary for purposes of securing tax revenue or carrying out fiscal supervision (section 14).

(4) Aviation enterprises must notify the Main Customs Office, in writing and without delay, of any changes in the circumstances listed in subsection (2) and of any overindebtedness, impending or actual insolvency, discontinuation of payments, or applications to open insolvency proceedings.

(5) The Main Customs Office provides aviation enterprises with written proof of registration.

⁴ Umsatzsteuergesetz

Section 8 – Tax representatives

- (1) A tax representative represents an aviation enterprise in carrying out its tax-related rights and obligations under this Act. Tax representatives must fulfil an aviation enterprise's obligations under this Act as if such obligations were their own. They have the same rights and obligations as the enterprise they represent.
- (2) Acting in the capacity of tax representative for an aviation enterprise within the meaning of section 7 (2) sentence 3 requires authorisation by the competent Main Customs Office. This authorisation is issued, upon application and subject to revocation, to persons who have their place of business in Germany, whose reliability in tax matters is unblemished and who – insofar as this is required of them under the Commercial Code⁵ or the Fiscal Code – keep proper business records and produce annual financial statements within the specified period of time.

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

1. the applicant's name,
2. the place of business or residence,
3. the legal form,
4. any alternative location where accounts are kept and
5. the tax number assigned by the tax office and the VAT identification number, if issued (section 27a of the VAT Act).

In the case of non-registered enterprises, the application for authorisation must be accompanied by a copy of the current acknowledgement receipt of the business registration; in the case of enterprises that are entered in the commercial register, cooperative society register or register of associations, the application must be accompanied by a current extract from the relevant register. The applicant must supply additional information as requested by the Main Customs Office if such information appears to be necessary for purposes of securing tax revenue or carrying out fiscal supervision (section 14).

(4) In order to safeguard tax revenue, tax representatives must notify the Main Customs Office, in writing and without delay, of any changes in the circumstances listed in subsection (3) and of any overindebtedness, impending or actual insolvency, discontinuation of payments, or applications to open insolvency proceedings.

(5) The authorisation of the representative must be revoked if any one of the preconditions listed in subsection (2) sentence 2 ceases to be met.

Section 9 – Security

The Main Customs Office may require tax debtors to pay security in the amount of up to two calendar months' expected tax if there are indications that the tax may be at risk.

Section 10 – Tax base

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

⁵ *Handelsgesetzbuch*

passengers carried.

Section 11 – Tax rate

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

- | | |
|---|--------------|
| 1. in a country listed in Annex 1 to this Act | 15.53 euros |
| 2. in a country listed in Annex 2 to this Act | 39.34 euros |
| 3. in other countries | 70.83 euros. |

(2) From 2025 onwards, the Federal Ministry of Finance is authorised and obliged, by means of statutory instruments not requiring the consent of the Bundesrat, to reduce the tax rates under subsection (1) by a certain percentage with effect for the following calendar year, provided that aviation tax revenue in the preceding year exceeds 2.33 billion euros. The percentage by which rates are reduced is calculated as the ratio between the amount of revenue in excess of 2.33 billion euros as at 31 December of the respective preceding year and 2.33 billion euros. The reduced tax rate is rounded up to the nearest cent.

(3) A reduced tax rate amounting to 20 percent of the tax rate specified in section 11 (1) no 1 is applied to legal transactions entitling passengers to make departures that are not already tax-exempt under section 5 no 4 to and from German, Danish or Dutch North Sea islands with no tide-independent rail or road connections to the mainland, if the place of departure or destination

1. is located on the mainland not more than 100 kilometres straight-line distance from the coast or
2. is located on another German, Danish or Dutch North Sea island.

Section 12 – Self-assessed tax return, due date

(1) By the 10th day after the end of the calendar month in which the tax became chargeable or in which a tax exemption under section 5 was claimed, tax debtors must file a tax return using the official form, declaring the self-calculated amount of tax due for the relevant calendar month (self-assessed tax return). The tax is due on the 20th day after the end of the calendar month in which it became chargeable.

(2) (rescinded)

(3) If no registration application in accordance with section 7 (1) is filed, tax debtors must file a self-assessed tax return for each departure without delay. The tax is due immediately.

Section 13 – Obligation to keep records

(1) Aviation enterprises are required to keep records pursuant to sentence 2 and subsection (2) sentence 1 for the purposes of determining the tax, the bases of its calculation and for examining the preconditions for tax exemptions pursuant to section 5. The records must be of such a nature as to enable an outside expert to determine the bases of taxation within a reasonable period of time. If a tax representative has been appointed pursuant to section 7 (2) sentences 3 and 4, aviation enterprises must, on a monthly basis, provide such representatives with the records referred to in sentence 1 for the previous calendar month. Tax

representatives must hold the records ready and available for inspection.

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

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

The Main Customs Office may require additional records to be kept or issue special instructions regarding records if this appears to be necessary for purposes of securing tax revenue or carrying out fiscal supervision.

Section 14 – Fiscal supervision

The facts relevant for aviation tax are subject to fiscal supervision in accordance with section 209 (3) of the Fiscal Code. The rights of revenue authorities to enter property and premises include the right to board an aeroplane or helicopter belonging to an aviation enterprise that is subject to fiscal supervision, as well as the right to enter the property and premises on or in which the aeroplane or helicopter is located.

Section 15 – Business statistics

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

(2) In addition, revenue authorities may transmit already-processed data to the Federal Statistical Office for presentation and publication for general purposes.

Section 16 – Administrative fines

(1) An administrative offence is deemed to have been committed by anyone who intentionally or recklessly

1. in violation of section 7 (1) sentence 1, fails to get registered, or fails to get registered within the prescribed period,
 2. in violation of section 7 (1) sentence 2, fails to transmit the information listed there, or fails to do so correctly, completely, in the prescribed manner or within the prescribed period,
 3. contravenes an enforceable order under section 7 (3), section 8 (3) sentence 3, section 9 or section 13 (2) sentence 2,
 4. in violation of section 7 (4) or section 8 (4), fails to report a change in circumstances, or fails to do so correctly, completely, in the prescribed manner or within the prescribed period or
 5. in violation of section 13 (1) sentence 1, fails to keep a record or fails to do so correctly and completely.
- (2) Administrative offences may be punished with a monetary fine of up to 10,000 euros.

Section 17 – Exchange of data and obligation to provide information

- (1) Upon request, airfield operators report to the competent Main Customs Office all departures, giving the date and time of departure, the place of destination, the flight number and the identification number of the aeroplane or helicopter and the name of the aviation enterprise that carries out the passenger's departure from a domestic place of departure. Furthermore, the Main Customs Office may require additional information about facts that are relevant for tax purposes.
- (2) The Federal Office of Civil Aviation, the Federal Police and the agencies responsible for air traffic control must, upon request, provide the competent Main Customs Office with the information that is relevant for tax determination.
- (3) The competent main customs office may provide, upon request or on an ad hoc basis, the Federal Office of Civil Aviation with information derived from the taxation process that is necessary for assessing whether an aviation enterprise meets the reliability requirements under aviation law or whether the provisions of this Act are complied with by aviation enterprises whose head offices are located outside the territory of application of European Union aviation law.

Section 18 – Authorisations

- (1) In order to implement this Act and to simplify procedures, ensure equality of tax treatment and safeguard tax revenue, the Federal Ministry of Finance is authorised to adopt statutory instruments, without the consent of the Bundesrat, that enact rules pertaining to sections 1, 3, 4, 6 to 15 and 17 (1), and in particular
 1. to enact rules for implementing tax exemptions
 - a) under Article XI of the Agreement of 19 June 1951 between the Parties to the North Atlantic Treaty regarding the Status of their Forces (Federal Law Gazette 1961 II, p. 1183, 1190), as amended, and Articles 65 to 67 of the Agreement of 3 August 1959 to Supplement the Agreement of 19 June 1951 between the Parties to the North Atlantic Treaty regarding the Status of their Forces with respect to Foreign Forces Stationed in the Federal Republic of Germany (Federal Law Gazette 1961 II, p. 1183, 1218), as amended,
 - b) under Article 15 of the Agreement of 13 March 1967 between the Federal Republic of Germany and the Supreme Headquarters Allied Powers Europe on the special conditions applicable to the establishment and operation of International Military Headquarters in the Federal Republic of Germany (Federal Law Gazette 1969 II, p. 1997, 2009), as amended,
 - c) under Articles III to V of the Agreement between the Federal Republic of Germany and the United States of America of 15 October 1954 concerning tax relief to be accorded by the Federal Republic to United States expenditures in the interest of the common defense (Federal Law Gazette 1955 II, p. 821, 823), as amended,
 - d) in the form of reciprocity for diplomatic missions and consular posts and
 - e) under international conventions for international institutions,
 2. to regulate the details of the registration procedure under section 7,
 3. to regulate the details of the authorisation procedure under section 8,

4. to define the indications that the tax may be at risk as per section 9,
5. to enact procedural rules for determining and collecting the tax, in particular for self-assessed tax returns and for the calculation and payment of the tax,
6. (rescinded)
7. to specify rules on how record-keeping obligations under section 13 are to be fulfilled and on cases where such obligations can be simplified.

(2) In order to implement this Act and to simplify procedures, ensure equality of tax treatment and safeguard tax revenue, the Federal Ministry of Finance is authorised to adopt statutory instruments, without the consent of the Bundesrat and in agreement with the Federal Ministry of Transport and Digital Infrastructure, that enact rules pertaining to sections 2, 5 and 17 (2) and (3), and in particular

1. to further specify the definitions set out in section 2 nos 2 to 7 and section 5 and
2. to further specify the type, contents and form of data and information to be exchanged among Main Customs Offices, the Federal Office of Civil Aviation, the Federal Police and the agencies responsible for air traffic control, as well as to require further information about facts that are relevant for tax purposes under section 17 (2) and (3).

(3) To implement this Act, the Federal Ministry of Finance is authorised, by means of statutory instruments not requiring the consent of the Bundesrat,

1. to permit, in consultation with the Federal Ministry of the Interior, Building and Community, as an alternative to the qualified electronic signature, another secure procedure that authenticates the data submitter and ensures the confidentiality and integrity of data sets transmitted electronically. Section 87a (6) sentence 2 of the Fiscal Code applies accordingly. Such statutory instruments may provide for exceptions to the obligation to use the procedure permitted under sentence 1. Such statutory instruments may also set rules on data transmission by way of reference to publications by expert bodies.
2. to stipulate, for the purpose of simplifying procedures, that remote data transmission must or may be used for the partial or full transmission of tax returns or other declarations, self-assessed tax returns, applications, notifications, statements or verifications provided for by this Act or by statutory instruments adopted on the basis of this Act, or of any other data required for such procedures, and in particular to set rules on the following:
 - a) the conditions for using remote data transmission,
 - b) details regarding the form, processing and storage of the data to be transmitted,
 - c) the method of data transmission,
 - d) responsibility for receiving the data to be transmitted,
 - e) third parties' obligations to cooperate and their liability if tax is understated or tax advantages are obtained as a result of the incorrect collection, processing or transmission of data,
 - f) data submitters' liability for understated taxes or wrongfully obtained tax advantages in cases where data submitters fail to verify the contracting party's identity,
 - g) the scope and form of taxpayers' or applicants' special filing obligations that are necessary for this procedure.

A secure method that authenticates the data submitter and ensures the confidentiality and integrity of the data set transmitted electronically must be used to transmit data. Statutory

instruments may also set rules on data transmission by way of reference to publications by expert bodies.

Section 19 – Application provisions and transitional provisions

- (1) This Act applies to legal transactions conducted from 1 September 2010 onwards in which the passenger's name becomes known to the aviation enterprise on 1 September 2010 or thereafter and which authorise departures that take place from 1 January 2011 onwards.
- (2) Notwithstanding the provisions of section 7 (1), aviation enterprises that conduct their first departure during the period from 1 January to 28 February 2011 may register by 14 February 2011. In such cases, compliance with the three-week time limit is not required.
- (3) Subject to sentence 2, the tax exemption for departures under section 5 no 4 amounts to €7.50 for each passenger departure. Sentence 1 no longer applies if the European Commission decides that a full exemption up to the tax rate specified in section 11 (1) sentence 1 does not constitute state aid within the meaning of Article 107 (1) of the Treaty on the Functioning of the European Union or is compatible with the internal market. The Commission's decision must be announced by the Federal Ministry of Finance in the Federal Law Gazette.
- (4) The Federal Ministry of Finance, with input from the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, the Federal Ministry of Transport and Digital Infrastructure and the Federal Ministry for Economic Affairs and Energy, will submit a report to the Bundestag by 30 June 2012 on how this Act's introduction has affected the aviation sector and on trends in revenue from aviation tax.
- (5) Subject to sentence 2, section 11 (3) applies up to the amount of €7.50 for each passenger departure. Sentence 1 no longer applies if the European Commission decides that a reduced tax rate amounting to 20 percent of the tax rate specified in section 11 (1) sentence 1 does not constitute state aid within the meaning of Article 107 (1) of the Treaty on the Functioning of the European Union or is compatible with the internal market. The Commission's decision must be announced by the Federal Ministry of Finance in the Federal Law Gazette.

Annex 1 (to section 11)

Albania	Luxembourg
Algeria	Malta
Andorra	Republic of Moldova
Austria	Monaco
Belarus	Montenegro
Belgium	Morocco
Bosnia and Herzegovina	Netherlands
Bulgaria	Republic of North Macedonia
Croatia	Norway
Czech Republic	Poland
Cyprus	Portugal
Denmark	Romania
Estonia	Russian Federation
Finland	San Marino
France	Serbia
Germany	Slovakia
Greece	Slovenia
Hungary	Spain
Iceland	Sweden
Ireland	Switzerland
Italy	Tunisia
Kosovo	Turkey
Latvia	Ukraine
Libya	United Kingdom
Liechtenstein	Vatican City
Lithuania	

Annex 2 (to section 11)

Afghanistan	Kuwait
Armenia	Kyrgyzstan
Azerbaijan	Lebanon
Bahrain	Liberia
Benin	Mali
Burkina Faso	Mauritania
Cameroon	Niger
Cape Verde	Nigeria
Central African Republic	Oman
Chad	Pakistan
Côte d'Ivoire	Palestinian territories
Djibouti	Qatar
Egypt	Sao Tome and Principe
Equitorial Guinea	Saudi Arabia
Eritrea	Senegal
Ethiopia	Sierra Leone
Gabon	South Sudan
Gambia	Sudan
Georgia	Syrian Arab Republic
Ghana	Tajikistan
Guinea	Togo
Guinea-Bissau	Turkmenistan
Iraq	Uganda
Islamic Republic of Iran	United Arab Emirates
Israel	Uzbekistan
Jordan	Yemen
Kazakhstan	