

# **Ordinance Implementing the Aviation Tax Act<sup>1</sup>**

## **(Aviation Tax Implementing Ordinance)**

Last amended by Article 8 of the Act of 14 August 2020 (Federal Law Gazette I, p. 1960)

### **Enacting clause**

The Federal Ministry of Finance

- on the basis of section 18 (1) nos 3 and 4 and section 18 (3) sentence 1 nos 1 to 6 and 8 of the Aviation Tax Act<sup>2</sup> of 9 December 2010,
- in consultation with the Federal Ministry of the Interior on the basis of section 18 (3) sentence 1 no 7 of the Aviation Tax Act of 9 December 2010 and
- in agreement with the Federal Ministry of Transport, Building and Urban Development on the basis of section 18 (2) no 1 of the Aviation Tax Act of 9 December 2010

hereby enacts as follows:

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Section 1 – Supplementary definitions to the Act

#### **Part 2**

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<sup>1</sup> This working translation of the *Verordnung zur Durchführung des Luftverkehrsteuergesetzes* (short title: *Luftverkehrsteuer-Durchführungsverordnung*) is provided by the Language Service of the Federal Ministry of Finance. Only the German text of this Ordinance is authentic.

<sup>2</sup> *Luftverkehrsteuergesetz*

## **Part 3**

### **On section 9 of the Act**

Section 3 – Indications that the tax is at risk

## **Part 4**

### **On sections 12 and 18 (3) of the Act**

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Section 6 (rescinded)

## **Part 5**

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## **Part 1 – On section 2 of the Act**

### **Section 1 – Supplementary definitions to the Act**

For the purposes of section 2 no 2 of the Act, anyone who operates the commercial carriage of passengers and, consequently, requires a licence or permit under the provisions of the Act or Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community (OJ L 293 of 31.10.2008, p. 3), as amended, is also deemed to be an aviation enterprise.

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<sup>3</sup> *Abgabenordnung*

## **Part 2 – On section 8 of the Act**

### **Section 2 – Issuance of authorisation to act as tax representative**

- (1) The competent Main Customs Office issues authorisations under section 8 (2) of the Act, in electronic or written form.
- (2) The authorisation may be made subject to all of the ancillary provisions listed in section 120 (2) of the Fiscal Code.

#### Footnotes

Section 2 (1): As amended by Article 8 no 2 of the Ordinance of 14 August 2020 (Federal Law Gazette I, p. 1960), with effect from 1 January 2021.

## **Part 3 – On section 9 of the Act**

### **Section 3 – Indications that the tax is at risk**

Indications that the tax is at risk as per section 9 of the Act are deemed to exist in particular if one or more of the following conditions are met:

1. the tax debtor
  - a) refuses without justification to provide information about their financial situation, including the source of their working capital,
  - b) refuses an audit of their financial situation or
  - c) fails to provide the balance sheets, inventories, accounts and records required for the audit, or fails to do so in due time or with the correct content;
2. an aviation enterprise under section 7 (3) or an applicant under section 8 (3) sentence 3 of the Act fails without justification to supply additional information that is necessary for purposes of securing tax revenue, or fails to do so in good time or with the correct content;
3. the tax debtor does not fulfil the legal requirements for receiving authorisation as a tax representative under section 8 (2) of the Act;
4. to pay the aviation tax due, the tax debtor submits, or arranges for other persons to submit, uncovered cheques or partly covered cheques;
5. on multiple occasions, the tax debtor pays aviation tax within the time limit under section 240 (3) of the Fiscal Code or after such time limit expires;
6. on multiple occasions, the tax debtor arranges for a third party to pay aviation tax without being able to prove that there is an economically justifiable contractual basis for such payments by the third party;

7. the tax debtor or, if the tax debtor is an enterprise, persons who have a substantial holding in the enterprise's capital or who are substantially involved in fulfilling the enterprise's obligations under the Act,
  - a) were convicted, by final court judgement, of intentionally or recklessly understating aviation tax or of participating in such an offence,
  - b) are, on the basis of sufficient factual evidence in a specific case, perpetrators of or participants in a tax crime,
  - c) are or were involved in a case of insolvency, and the full amount of aviation tax could not be collected as a result;
8. the tax debtor does not comply with record-keeping obligations under section 13 of the Act, or does so insufficiently, and thereby substantially impedes the verification or determination of aviation tax;
9. the tax debtor repeatedly fails to declare or report aviation tax, or fails to do so on time;
10. the tax debtor has substantial arrears in the payment of other taxes or in payments to other tax creditors;
11. the tax debtor raises objections against the performance of external audits, especially lawful audits of their financial situation, or
12. the tax debtor applies for deferral under section 222 of the Fiscal Code.

#### **Part 4 – On sections 12 and 18 (3) of the Act**

##### **Sections 4 to 6 (rescinded)**

##### Footnotes

Sections 4 to 6: Rescinded by Article 8 no 3 of the Ordinance of 14 August 2020 (Federal Law Gazette I, p. 1960), with effect from 1 January 2021

#### **Part 5 – On section 156 (1) of the Fiscal Code**

##### Footnotes

Part 5 (section 6a): Inserted by Article 11 no 3 of the Ordinance of 2 January 2018 (Federal Law Gazette I, p. 84), with effect from 1 January 2018

### **Section 6a – Rules on small amounts**

(1) A declared or assessed tax will be given a divergent assessment, amended or corrected by the competent Main Customs Office only if the divergence from the declared or assessed tax is at least 25 euros.

(2) If an assessment is supported by automated procedures, subsection (1) applies only if the respective rule has been implemented in the automated programme.

#### **Footnotes**

Part 5 (section 6a): Inserted by Article 11 no 3 of the Ordinance of 2 January 2018 (Federal Law Gazette I, p. 84), with effect from 1 January 2018

### **Part 6 – Entry into force**

#### **Footnotes**

Part 6: Formerly part 5 under Article 11 no 4 of the Ordinance of 2 January 2018 (Federal Law Gazette I, p. 84), with effect from 1 January 2018

### **Section 7 – Entry into force**

This Ordinance enters into force on 1 September 2012.