

**Federal Act Introducing an Air Transport Levy (Air Transport Levy Act – *FlugAbgG*) Federal as amended by Tax Code Amendment Act 2012 [Abgabenänderungsgesetz 2012] Law Gazette BGBl. I No. 112/2012**

**Subject Matter of Tax**

§ 1. The departure of any passenger from a domestic airport using a motorised aircraft is subject to air transport levy.

**Definitions**

§ 2. (1) Within the meaning of this Federal Act, ‘motorised aircraft’ are airplanes and rotary wing aircraft for which the fuel used is mineral oil.

(2) An ‘airport’ is a public airfield intended for international air traffic having the necessary facilities for this purpose (§ 64 of Austrian Aviation Act (*LFG*), Federal Law Gazette BGBl. No. 253/1957).

(3) An ‘aircraft owner’ is a person operating the aircraft for his own account and having authority to make such dispositions with respect thereto as constitute the prerequisite to such operations (§ 13 LFG).

(4) ‘Departure’ is the take-off of a motorised aircraft from a domestic airport.

(5) ‘Destination airfield’ is the place located within Austria or abroad at which the passenger’s flight is to end pursuant to schedule. The airfield at which any stopover occurs is not deemed the ‘destination airfield’. A stopover landing is an interruption of the passenger’s flight for less than 24 hours, where a departure to an airfield other than the airfields of the preceding departures follows the interruption. The destination airfield is not required to be a different airport from that of departure (sightseeing flight).

(6) The ‘flight crew’ includes all persons who depart with an aircraft and

1. are charged with piloting the aircraft, or
2. are charged with performing technical oversight, maintenance or repair of the aircraft, or
3. are charged with the passengers’ security, or
4. are charged with catering to the passengers’ needs.

**Exemption from Liability for Tax**

§ 3. The following are exempt from liability for tax:

1. Departures of passengers who have not yet reached two years of age and who do not have a seat of their own.
2. Departures of passengers who belong to the flight crew or who are flying to their point of deployment or from their point of deployment as crew members of another flight.
3. Departures for training purposes or purposes of parachute jumps.
4. Departures exclusively for military, medical or humanitarian purposes.
5. Departures by transit and transfer passengers following a stopover landing at a domestic airport which has given rise to a scheduled interruption of the passenger’s flight of less than 24 hours.
6. Departures following an unscheduled landing.
7. Departures of aircraft with a maximum allowed take-off weight up to and including 2,000 kilograms.
8. Departures of state aircrafts in the sense of article 3 of the Convention on International Civil Aviation.

**Calculation of Air Transport Levy**

§ 4. The air transport levy is governed by the location of the destination airfield and the number of passengers transported.

**Tariff**

§ 5. (1) The air transport levy per passenger with a destination airfield within the following zones is as follows:

Short haul pursuant to Annex 1	EUR 7
Medium haul pursuant to Annex 2	EUR 15
Long haul	EUR 35

(2) A destination airfield is deemed to be in long haul range if it is located in a state or territory that is listed neither in Annex 1 nor in Annex 2.

(3) The levy for short haul flights in the amount of EUR 7 is quoted inclusive of any value-added tax which may arise thereon.

### **Tax Debtor**

§ 6. The tax debtor is the aircraft owner performing the departure. The airport owner of the domestic airport from which the departure is undertaken bears liability for the tax.

### **Tax Liability and Tax Collection**

§ 7. (1) The tax liability arises upon expiry of the calendar month in which the departure occurred.

(2) The tax debtor shall itself calculate the levy and shall submit a tax statement to the tax office (*Finanzamt*) no later than on the 15<sup>th</sup> day (due date) of the second calendar month following the calendar month in which the tax liability arose (statement period). The tax statement must be submitted electronically.

(3) The tax debtor shall pay the air transport levy no later than on the due date (para 2).

(4) The tax debtor shall electronically forward a tax return to the tax office for the preceding calendar year by 31 March of each year.

(5) Any duty prescribed pursuant to § 201 of the Austrian Federal Tax Code (BAO), Federal Law Gazette BGBl. 194/1961, shall have the same due date as that referenced in para 2.

### **Fiscal Representative**

§ 8. (1) An aircraft owner who has neither an ordinary residence nor a registered office or permanent establishment within Austria shall engage a fiscal representative prior to performing its first departure from a domestic airport, triggering tax liability.

(2) The fiscal representative shall perform the tax law obligations of the party represented by it. The fiscal representative is authorised to exercise the rights to which the principal is entitled. He shall bear liability for the levy. The fiscal representative must also be an authorised recipient of service of process.

(3) Only the following may be appointed as fiscal representatives:

1. Austrian chartered accountants (*Wirtschaftstreuhänder*), solicitor-advocates, notaries or entrepreneurs within the meaning of § 2 para 1 of the Austrian Value-Added-Tax Act 1994 (*UStG 1994*), Federal Law Gazette BGBl. 663/1994, each of whom must have a registered office or ordinary residence within Austria, or
2. international associations of airlines which are registered on the Austrian Commercial Register with a domestic branch establishment,

if they are in a position to satisfy the obligations under tax law.

(4) The aircraft owner shall inform the tax office with jurisdiction for collecting the levy prior to performing its first departure from a domestic airport, triggering tax liability, with respect to:

1. the fiscal representative engaged by it,
2. the registered office or ordinary residence of the fiscal representative,
3. the fiscal representative's tax ID number and VAT ID number pursuant to § 28 UStG 1994.

### **Registration of Aircraft Owner**

§ 9. (1) No later than at the time of performing the first departure from a domestic airport, triggering tax liability, the aircraft owner shall file an application for registration with the tax office. The following must be stated in the application for registration:

1. the name of the aircraft owner,
2. the registered office or ordinary residence of the aircraft owner,
3. a list of domestic airports from which a departure is contemplated.

(2) Where an aircraft owner has neither an ordinary residence nor a registered office or permanent establishment within Austria, that aircraft owner must additionally provide the name and registered office or ordinary residence of its fiscal representative (§ 8) in its application for registration.

(3) The aircraft owner shall inform the tax office without delay with respect to:

1. amendments to details within the meaning of paras 1 or 2,
2. cessation of performance of departures from a particular domestic airport,
3. intended performance of departures from domestic airports not yet included in the listing,
4. cessation of payments, threatened or actual insolvency or over-indebtedness or the filing of an application for the opening of insolvency proceedings.

(4) The tax office shall issue a tax ID number to the registered aircraft owner and notify it thereof.

(5) The registration procedure shall be performed by the tax office with jurisdiction for collecting the tax.

### **Obligations of Aircraft Owner**

§ 10. (1) The aircraft owner shall maintain electronic records in German or English which show, precise to the day:

1. the number of passengers departing from any domestic airport,
2. the flight number of the departures undertaken, if a flight number has been assigned to the departures undertaken,
3. the destination airfield within the meaning of § 2 para 5 of passengers departing from a domestic airport,
4. the date and time of the departure,
5. the name of the domestic airport from which the departure occurred.

(2) The duty of record-keeping also covers data on persons whose departures are exempt from air transport levy pursuant to § 3 sub-para 1 to 5. These must be shown separately. In derogation from para 1 hereof, the record-keeping duty shall not apply if no tax liability is triggered by a departure (§ 2 para 4).

(3) The aircraft owner shall forward to the tax office, indicating its tax ID number (§ 9 para 4) no later than on the 15<sup>th</sup> day of the second calendar month following the calendar month in which the tax liability arose the following data, aggregated by domestic airports, for a calendar month:

1. ICAO code and tax ID of the aircraft owner,
2. in the absence of an ICAO code, the identification of the aircraft owner,
3. name of the domestic airport from which the departure occurred,
4. month and year for which the report is being transmitted,
5. number of departing passengers, not including members of the flight crew (§ 2 para 6) and without passengers who have not yet reached two years of age and who did not have a seat of their own (§ 3 para 1), in each case indicating the figures and showing the individual tariff group to which they belong within the meaning of § 5 para 1, taking account of § 5 para 3,
6. amount of tax,
7. number of
  - a) passengers who have not yet reached two years of age and who did not have a seat of their own,
  - b) persons who were being flown to their point of deployment or from their point of deployment as flight crew members for another flight,
  - c) tax-exempt departures of persons pursuant to § 3 sub-para 3 and 4,
  - d) transfer passengers.

This data shall be transmitted electronically.

(4) No later than on the 15<sup>th</sup> of the calendar month following the month in which the tax liability arose, the aircraft owner shall transmit the data set out in para 3 (sub-para 1 to 7), aggregated for a single calendar month, to the owner of the domestic airport from which it has performed the taxable departures during the period in question.

### **Obligations of Airport Owner**

§ 11. (1) The owner of the domestic airport from which the departure occurs shall maintain electronic records which show, precise to the day:

1. the names of the aircraft owners that have undertaken departures,
2. the flight numbers of the departures undertaken, if a flight number has been assigned to the departures undertaken
3. the airfields which were the scheduled destination airfields for these departures,
4. the number of departing passengers,
5. the date and time of the departures.

(2) The duty of record-keeping also covers data of persons whose departures are exempt from flight tax pursuant to § 3 sub-para 1 to 5. These shall be separately shown. In derogation from para 1 hereof, the duty of record-keeping shall not apply if no tax liability is triggered by a departure (§ 2 para 4).

(3) The airport owner shall review the data forwarded to it by the aircraft owners (§ 10 para 4) and shall compare it to its own data.

(4) The airport owner shall forward a summary of the comparison data to the tax office with jurisdiction for collecting the air transport levy no later than on the 15<sup>th</sup> day of the second calendar month following the month in which the departure occurred. These records shall be transmitted electronically.

(5) Transmission of these records pursuant to para 4 shall include the following data, aggregated by aircraft owners:

1. ICAO code of the aircraft owner,
2. in the absence of an ICAO code, the name, address and postcode and country of the aircraft owner,
3. month and year for which the report is being transmitted,

4. number of departing passengers, not including members of the flight crew (§ 2 para 6) and without passengers who have not yet reached two years of age and who did not have a seat of their own (§ 3 sub-para 1),

5. number of

- a) passengers who have not yet reached two years of age and who did not have a seat of their own,
- b) persons who were being flown to their point of deployment or from their point of deployment as flight crew members for another flight,
- c) transfer passengers.

(6) In derogation from para 5 hereof, the airport owner shall transmit the following records with respect to aircraft owners who have carried out departures triggering or having triggered air transport levy but have failed to transmit data to the airport owner within the meaning of § 10 para 4 hereof:

1. ICAO code of the aircraft owner,
2. in the absence of an ICAO code, the identification, address and postcode and country of the aircraft owner,
3. month and year for which the report is being transmitted,
4. flight number or registration number of the aircraft,
5. date and time of the departure as scheduled,
6. flight destination by means of IATA code or ICAO code of the airfield,
7. number of departing passengers, not including members of the flight crew (§ 2 para 6) and without passengers who have not yet reached two years of age and who did not have a seat of their own (§ 3 sub-para 1).
8. number of
  - a) passengers who have not yet reached two years of age and who did not have a seat of their own,
  - b) persons who were being flown to their point of deployment or from their point of deployment as flight crew members for another flight,
  - c) transfer passengers
9. number of passengers per destination (next destination by flight destination) by means of IATA code or by means of ICAO code of the airfield.

(7) Where the airport owner transmits its comparison data in a correct, complete and timely fashion, then the liability of the airport owner pursuant to § 6 for the tax shall be deemed extinguished with respect to taxes accruing for the period for which the data were transmitted.

#### **Power to Issue Ordinances**

§ 12. The Austrian Federal Minister of Finance is authorised to prescribe the substance and procedure for the electronic transmission of

1. the tax statement pursuant to § 7 para 2,
2. the tax return pursuant to § 7 para 5,
3. the records of the aircraft owner pursuant to § 10 para 3, and
4. the records of the airport owner pursuant to § 11 para 4

by ordinance. The ordinance may provide that the tax debtor and the airport owner must use a particular public-law or private-law transmission agency.

#### **References to Other Provisions of Law**

§ 13. To the extent that this Federal Act refers to provisions of other Federal Acts, they shall be applicable as from time to time amended.

#### **References to Persons**

§ 14. With respect to all references to persons used in this Federal Act, the form of the reference selected shall apply to both genders.

#### **Implementation**

§ 15. The Federal Minister of Finance is charged with implementing this Federal Act. The Federal Minister of Finance shall, jointly with the Federal Minister of Transport, Innovation and Technology, evaluate the impacts of introducing the Air Transport Levy Act on the aviation sector and the development of tax receipts from flight tax by 30 September 2012. The next evaluation has to be done before 30. September 2014

#### **Entry into Force**

§ 16. (1) This Federal Act shall enter into force as of 1 January 2011.

- (2) Where a departure is not based on any legal transaction, then the tax liability shall arise for the first time on departures after 31 March 2011. Where a departure is based on a legal transaction, then the tax liability shall arise for the first time where the legal transaction was concluded after 31 December 2010 and the departure occurs after 31 March 2011.
- (3) § 3 sub-para 7, § 8 para 1 and 4, § 9 para 1, § 10, § 11 and § 12, each of which as amended by Federal Act, Federal Law Gazette BGBl. I No. 76/2011, shall enter into force as of 1 January 2011.
- (4) § 5 para 1 and 3 each of which as amended by Federal Act, Federal Law Gazette BGBl. I No. 112/2012, shall enter into force as of 1 January 2013.

## Annex 1

### Short Haul Destination Airports

Short haul destination airports are all airports located in the following states and territories:

Arab Republic of Egypt	Republic of Macedonia
Republic of Armenia	Republic of Moldova
Republic of Albania	Montenegro
People's Democratic Republic of Algeria	Principality of Monaco
Principality of Andorra	Kingdom of the Netherlands
Kingdom of Belgium	Kingdom of Norway
Bosnia and Herzegovina	Republic of Austria
Republic of Bulgaria	Palestinian Territories
Kingdom of Denmark	Republic of Poland
Federal Republic of Germany	Portuguese Republic
Republic of Estonia	Romania
Republic of Finland	Russian Federation
French Republic	Republic of San Marino
Georgia	Kingdom of Sweden
Hellenic Republic (Greece)	Swiss Confederation (Switzerland)
Ireland	Republic of Serbia
Isle of Man	Slovak Republic
State of Israel	Republic of Slovenia
Italian Republic	Spain
Hashemite Kingdom of Jordan	Syrian Arab Republic
Channel Islands (Alderney, Guernsey, Herm, Jersey, Sark)	Czech Republic
Republic of Kosovo	Tunisian Republic
Republic of Croatia	Republic of Turkey
Republic of Latvia	Ukraine
Principality of Liechtenstein	Republic of Hungary
Republic of Lithuania	State of the Vatican City
Grand Duchy of Luxembourg	United Kingdom of Great Britain and Northern Ireland
Lebanese Republic (Lebanon)	Republic of Belarus (Belarus)
Libya	Republic of Cyprus
Republic of Malta	

## Annex 2

### Medium Haul Destination Airports

Medium haul destination airports are all airports located in the following states and territories:

Islamic Republic of Afghanistan	Democratic Republic of the Congo
Republic of Equatorial Guinea	Republic of the Congo
Republic of Azerbaijan	State of Kuwait
Democratic Federal Republic of Ethiopia	Republic of Liberia
Kingdom of Bahrain	Republic of Mali
Republic of Benin	Kingdom of Morocco
Burkina Faso	Islamic Republic of Mauritania
Republic of Burundi	Republic of Niger
Republic of Cote d'Ivoire	Federal Republic of Nigeria
Republic of Djibouti	Sultanate of Oman
State of Eritrea	Islamic Republic of Pakistan
Gabonese Republic	Republic of Rwanda
Republic of the Gambia	Democratic Republic of Sao Tomé and Príncipe
Republic of Ghana	Kingdom of Saudi Arabia
Republic of Guinea	Republic of Senegal
Republic of Guinea-Bissau	Republic of Sierra Leone
Republic of India	Republic of Somalia
Republic of Iraq	Republic of the Sudan
Islamic Republic of Iran	Republic of South Sudan
Iceland	Republic of Tajikistan
Republic of Yemen	Togolese Republic
Republic of Cameroon	Republic of Chad
Republic of Cape Verde	Turkmenistan
Republic of Kazakhstan	Republic of Uganda
State of Qatar	Republic of Uzbekistan
Republic of Kenya	United Arab Emirates
Kyrgyz Republic (Kyrgyzstan)	Central African Republic