

WORKING TRANSLATION / NON-OFFICIAL VERSION

AIR TRAVEL TAX ACT

(Luftverkehrsteuergesetz - LuftVStG)

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§ 1

OBJECT OF TAXATION

1. The authorized carriage of a passenger from a domestic departure point in an aircraft or helicopter by an aviation enterprise to a destination is a taxable legal transaction under the Air Travel Tax Act.
2. Assignment of a passenger seat in an aircraft or helicopter constitutes a taxable legal transaction following Section 1 to the extent no other legal transaction applies under this Act.

§ 2

DEFINITIONS

The terms below found in this Act are defined as follows:

1. **Place of Departure:**
An airport, landing field or glider field pursuant to § 6 (1) of the German Air Travel Tax Act (iLuftverkehrsteuergesetz) or sites for which a permit is required under § 25 (1), Sentence 1 German Aviation Act;
2. **Aviation Enterprises:**
An enterprise with a valid operating permit or equivalent permit authorizing it to undertake the commercial carriage of passengers in an aircraft or helicopter;
3. **Departure:**
An aircraft or helicopter takes off from a domestic or foreign place of departure, which commences the flight on the basis of the underlying legal transaction;
4. **Destination:**
The domestic or foreign site at which the passenger's flight shall end as scheduled in accordance with the underlying legal transaction. In the event the flight as scheduled to a domestic landing site under § 6 (1) of the German Aviation Act or site for which a permit is required under § 25 (1), Sentence 1 of the German Aviation Act is interrupted by an intermediate stop following number 5, the domestic landing site under § 6 (1) of the German Aviation Act or the site for which a permit is required under § 25 (1), Sentence 1 of the German Aviation Act, at which the layover occurs shall constitute the destination at which the passenger's flight ends. continuation of the flight shall constitute a new departure to a destination within the meaning of § 4;
5. **Stop over:**
Interrupted flights of:
 - a) more than 12 hours for flights to a destination in a country set forth in Annex 1,
 - b) more than 24 hours for flights to a destination in a country not set forth in Annex 1;

6. Sightseeing Flight:
A flight that has an identical departure and destination site without any further landings;
7. Flight Crew:
All persons on board an aircraft or helicopter, who are responsible for
 - a) piloting the aircraft or helicopter,
 - b) performing technical surveillance, maintenance or repairs,
 - c) ensuring passenger security, or
 - d) assisting passengers.

§ 3

FACTUAL AND LOCAL COMPETENT AUTHORITIES

1. The Main Customs Office shall factually be responsible for the execution of Act.
2. The Main Customs Office in which the entrepreneur operates its aviation enterprise shall have be locally . In the event a representative in tax matters has been designated, the Main Customs Office shall have local responsibility in the jurisdiction in which the tax representative is domiciled. The Main Customs Office in the jurisdiction in which the applicant is domiciled shall have local jurisdiction for issuing a permit pursuant to § 8 (2). For aviation enterprises that do not operate domestically and have not designated a representative for tax matters, the Main Customs Office in the jurisdiction in which the first departure occurs shall have local jurisdiction until a tax representative has been designated.

§ 4

ACCRUAL OF TAX

The tax pursuant to § 1 becomes due upon departure of the passenger from a domestic place of departure.

§ 5

EXEMPTIONS FROM TAX

The following legal transactions, which entitle to a departure from a domestic place of departure, are tax-exempt:

1. Departures of passengers who have not reached the age of 2, to the extent they do not have their own seat assignment;

2. Departures of passengers in aircraft or helicopters if the flight is solely for military or other sovereign purposes;
3. Renewed departures of passengers, who have returned to the domestic place of departure from which the departure occurred due to an aborted or interrupted flight, or who are transported to another domestic landing Field pursuant to § 6 (1) of the German Aviation Act or a site for which a permit is required under § 25 (1), Sentence 1 of the German Aviation Act;
4. Departures of passengers,
 - a) who have their domicile on a domestic island,
 - b) who serve as providers of medical support to persons located on a domestic island, or
 - c) who perform sovereign duties on a domestic islandto and from this domestic island, provided, the island is not connected to the mainland via a road or rail connection independent from tides and the linear distance of the place of departure and destination on the mainland is not more than 100 kilometers from the coast or is located on another domestic island;
5. Departures of passengers, which are not already tax-exempted under number 4, to and from a domestic Danish or Dutch North Sea island not connected to the mainland via a road or rail connection independent from tides if the place of departure or destination
 - a) is on the mainland and the linear distance not more than 100 kilometers from the coast, or
 - b) is located on another domestic, Danish or Dutch North Sea island;
6. Departures of passengers in aircraft or helicopters which are solely for medical purposes;
7. Departures of passengers in aircraft with a maximum take-off weight of up to 2000 kilograms or in helicopters with a maximum take-off weight of up to 2,500 kilograms in sightseeing trips;
8. Departures of flight crews.

§ 6

TAX DEBTORS

1. The tax debtor is the aviation enterprise carrying out the departure pursuant to § 1. In addition, the representative in tax matters (§ 8) is a tax debtor. The aviation enterprise and the tax representative are joint and several debtors.
2. In the event a foreign aviation enterprise does not designate a tax representative, the owner and operator of the aircraft or helicopter shall be liable for taxes owed. Differing from § 219 of the Tax Code (Abgabenordnung), the liable debtors may also be pursued for payment if there has been no

execution of a judgment with respect to the movable assets of the tax debtor or if an unsuccessful execution can not be expected.

§ 7

REGISTRATION

1. Aviation enterprises that want to make departures following § 1, must register in writing with the responsible Main Customs Office no later than three weeks prior to making the first departure from a domestic place of departure pursuant to paragraph 2, sentences 1 through 3. Differing from sentence 1, the aviation enterprise must notify the responsible Main Customs Office immediately and in writing of the information required under § 2, sentence 1, numbers 1 through 3, as well as of the departure date and domestic place of departure from which the departure shall take place, if
 - a) there are less than three weeks between the underlying legal transaction and the first departure, or
 - b) a maximum of two departures, are undertaken during the calendar year.

In the cases of sentence 2, number 1, the registration application pursuant to sentence 1 must be subsequently submitted to the Main Customs Office within three weeks after receipt of the notification.

2. The aviation enterprise must provide the following information in the registration application:
 - a) Name of the enterprise,
 - b) corporate seat or domicile,
 - c) Legal form,
 - d) Alternative place of bookkeeping ,as well as
 - e) Tax identification number (if available), VAT identification number (§ 27a of Value Added Tax Act).

The following must be attached to the application:

- a) proof of the permit to operate as an aviation enterprise,
- b) A list of domestic places of departure from which departures are planned,
- c) A current copy of the commercial register excerpt for companies registered in the Commercial Register, and
- d) A statement indicating when the first departure will occur.

Aviation enterprises with no national corporate seat must additionally designate a licensed tax representative pursuant to § 8 in its registration application and provide the Main Customs Office with the appropriate documentation with respect to the representative. Other aviation enterprises may designate a representative in tax matters in accordance with § 8.

3. Upon request by the Main Customs Office, the aviation enterprise must provide further information if it appears necessary in securing tax revenue or for tax oversight (§14).
4. The aviation enterprise must immediately notify the Main Customs Office in writing regarding changes in the circumstances indicated in paragraph 2, as well as over-indebtedness, pending or current insolvency, payment stoppage and the submission of a petition to open an insolvency proceeding.
5. The Main Customs Office shall issue a written confirmation of the registration.

§ 8

TAX REPRESENTATIVE

1. Representatives in tax matters represent the aviation enterprise in the fulfilment of its rights and duties under this Act. The representative in tax matters must fulfil the duties of the aviation enterprise under this Act as if they were his/her own. He/she has the same rights and duties as the enterprise represented.
2. Practicing as a representative in tax matters for an aviation enterprise within the meaning of § 7, paragraph 2, sentence 3, requires the authorization of the responsible Main Customs Office. Such authorization is granted upon application and under right of revocation to persons who are domiciled domestically, who is deemed reliable for tax purposes and who, to the extent they are required to do so by the German Commercial Code or German Tax Code, keep proper commercial books of account and timely issue annual reports.
3. The application to be granted authorization to practice as a representative in tax matters shall contain the following information:
 - a) Name of the applicant,
 - b) Headquarters or domicile,
 - c) The legal form,
 - d) Alternative bookkeeping location, and
 - e) Tax office identification number (if issued), sales tax identification number (§ 27a of the Sales Tax Act).

For non-registered enterprises, the application to be granted authorization to practice must be accompanied by a copy of the business registration confirmation of receipt; and for companies that have been registered in the registry of companies, partnerships, cooperatives or societies, a current extract of their

registration. The applicant, upon request, must provide further information if it appears necessary in securing tax revenue or for tax oversight (§14).

4. In order to secure tax revenue, the representative in tax matters must immediately notify the Main Customs Office in writing regarding changes in the circumstances indicated in paragraph 3, as well as over-indebtedness, pending or current insolvency, payment stoppage and the submission of a petition to open an insolvency proceeding.
5. The representative's authorization may be revoked in the event any of the criteria set forth in sentence 2 are no longer fulfilled.

§ 9

SECURITY

The Main Customs Office may require security from the tax debtors up to the amount of the tax likely to accrue for two calendar months in the event there is reason to believe the tax will not be collected.

§ 10

BASIS OF ASSESSMENT

The tax is assessed according to the respective destination selected as well as the number of carried passengers.

§ 11

TAX RATE

1. For each passenger, the tax for flights with a destination
 - a) in a country set forth in Annex 1 of this Act, 7,50 Euros,
 - b) in a country set forth in Annex 2 of this Act, 23,43 Euros,
 - c) in any other countries, 42,18 Euros.
2. The Federal Ministry of Finance is authorized, in consultation with the Federal Ministry for the Environment, Conservation and Reactor Safety, the Federal Ministry of Transportation, Construction, and Urban Development and the Federal Ministry for Commerce and Technology, to issue regulations without the consent of the Bundesrat, providing for percentage reductions of the tax rates pursuant to paragraph 1 effective at the beginning of the calendar year. Reductions in the percentages shall be calculated on the basis of the relation of the respective revenues from the prior year arising out of the inclusion of air travel in commerce with greenhouse gas emissions certificates up to one billion Euros. Revenues from the inclusion of air travel in commerce with greenhouse gas emissions certificates shall be estimated on the basis of the revenues from the respective first half of the year of the prior year. In derogation of sentence

3, for 2012 revenues from the inclusion of air travel in commerce with greenhouse gas emissions certificates will be estimated on the basis of likely 2012 revenues. The reduced tax rate will be rounded to the whole cent.

§ 12

TAX RETURN, MATURITY

1. The tax debtor has 10 days from the end of the calendar month in which the tax accrues or a tax exemption was claimed pursuant to § 5, to declare the tax by filing the official form on which the tax for the calendar month is computed by the filer of the declaration (tax return). The tax is due on the 20th day after the end of the calendar month in which it accrued.
2. For the tax accrued during the period from 1 to 18 December, the tax debtor must file a tax return by 22 December. The tax is due on 27 December. For the tax accrued during the period from 19 to 31 December or if a tax exemption is claimed pursuant to § 5 for the period between 1 to 31 December, paragraph 1 applies.
3. In the event a registration application is not filed pursuant to § 7, paragraph 1, the tax debtor must immediately submit a tax return for each departure. The tax is due immediately.

§ 13

DUTY TO MAINTAIN RECORDS

1. The aviation enterprise has a duty to maintain records in accordance with sentence 2 and paragraph 2, sentence 1, to enable the determination of tax, the bases of its computations and to enable review of the criteria for tax exemptions under § 5. Records must be maintained in such manner that a third party expert is able to determine the bases for taxation within a reasonable period of time. To the extent a representative in tax matters has been designated pursuant to § 7, paragraph 2, sentences 3 and 4, the aviation enterprise must provide him/her with the records described in sentence 1 on a monthly basis for the pervious calendar month. The representative in tax matters shall keep the records available for audit purposes.
2. Records must at least identify the following information:
 - a) The number of passengers departing from a domestic place of departure for each aircraft or helicopter,
 - b) The place of departure where the departure was made and the destination of the aircraft or helicopter,
 - c) The time of departure from a domestic place of departure.

The Main Customs Office may request additional records or issue special orders regarding the records if it appears necessary in securing tax revenue or for tax oversight.

§ 14

TAX SUPERVISION

Important matters related to the air travel tax are subject to tax oversight under § 209, paragraph 3 of the German Tax Code. The right of entry also covers the aircraft or helicopter of the aviation enterprise subject to tax oversight, as well as the property and spaces on or in which the aircraft or helicopter is located.

§ 15

BUSINESS STATISTICS

1. Upon further determination by the Federal Ministry of Finance, the Main Customs Offices may conduct surveys for statistical purposes with respect to transaction data that is tax relevant according to this Act and may provide the results to the Federal Office of Statistics for evaluation.
2. The Federal Finance Agencies may provide already obtained data to the Federal Office of Statistics for informational purposes and publication for general purposes.

§ 16

PENALTY PROVISIONS

1. A violation of the rules occurs when a person either intentionally or carelessly,
 - a) Fails to register, or fails to timely register in violation of § 7, paragraph 1, sentence 1,
 - b) Fails to provide information required by §7, paragraph 1, sentence 2, fails to correctly provide such information, fails to fully provide such information, fails to provide such information in the manner required, or fails to timely provide such information in violation of § 7, paragraph 1, sentence 2,
 - c) Acts in violation of an executable order pursuant to § 7, paragraph 3, § 8, paragraph 3, sentence 3, § 9 or §13, paragraph 2, sentence 2,
 - d) Fails to notify regarding a change of circumstances, fails to correctly notify of a change in circumstances, fails to fully notify of a change in circumstances, fails to notify of a change in circumstances in the form required or fails to timely notify of a change in circumstances in violation of § 7, paragraph 4 or § 8, paragraph 4, or
 - e) Fails to maintain a record, fails to correctly maintain a record, or fails to fully maintain a record in violation of § 13, paragraph 1, sentence 1.
2. Violations of the rules may be punished with a penalty of up to ten thousand Euros.

§ 17

DATA EXCHANGE AND DUTY TO PROVIDE INFORMATION

1. At the request of the responsible Main Customs Office, airport operators report all departures, indicating the date and time of departure, destination, flight number and aircraft or helicopter identification and aviation enterprise that carries out the departure of the passenger from a domestic place of departure. The Main Customs Office may request further information about tax-relevant facts.
2. The German Civil Aviation Authority, the Federal Police, as well as authorities responsible for flight security must provide, upon request, information to the Main Customs Office which is significant in determining taxation.
3. The responsible Main Customs Office may, when circumstances require or upon request, may provide information arising from taxable events, which are required to evaluate the reliability of an aviation enterprise as required under aviation law.

§ 18

AUTHORIZATIONS

1. For the purposes of carrying out this Act, the Federal Ministry of Finance is authorized, without the consent of the Bundesrat, to promulgate regulations to simplify procedures as well as to ensure the uniformity of taxation and collection of revenue with provisions related to §§ 1, 3, 4, 6 through 15 and 17, paragraph 1, and thereby
 - a) Promulgate provisions related to the implementation of tax exemptions
 - (1) pursuant to Article XI of the agreement of 19 June 1951 between the parties to the North Atlantic Treaty On the Status of Their Forces (BGBl. 1961 II p. 1183, 1190) as amended and Articles 65 through 67 of the Agreement to Supplement the Agreement 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 (BGBl. 1961 II p. 1183, 1218) as amended,
 - (2) pursuant to 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 for the Establishment and Operation of International Military Headquarters in the Federal Republic of Germany (BGBl. 1969 II p. 1997, 2009) as amended,
 - (3) pursuant to Articles III through V of the Agreement between the Federal Republic of Germany and the United States of America of 15 October 1954 Concerning Tax Relief accorded by the Federal Republic of Germany to United States Expenditures in the Interest of the Common Defense (BGBl. 1955 II p. 821, 823) as amended,
 - (4) in the form of reciprocity for diplomatic missions and consular representations and

- (5) pursuant to international agreement for international facilities,
 - b) Further regulate registration procedures under § 7,
 - c) Further regulate the procedures for granting authorization under § 8,
 - d) Further define the reasons to believe tax will not be collected under § 9,
 - e) Promulgate rules of procedure with respect to setting and collecting taxes, in particular with respect to tax returns and remittance of the tax,
 - f) Allow an average amount based on the tax return for the month of November of the same year to be declared instead of the amount of tax to be declared pursuant to § 12, paragraph 2, sentence 1 and determine how it is calculated, and
 - g) Further specify how the duty to maintain records pursuant to § 13 must be fulfilled and in which cases accommodations may be granted in fulfilling these duties.
2. For the purposes of carrying out this Act, the Federal Ministry of Finances is authorized, without the consent of the Bundesrat, to promulgate regulations in consultation with the Federal Ministry of Transportation, Construction, and Urban Development to simplify procedures, as well as to ensure the uniformity of taxation and collection of revenues with provisions related to §§ 2, 5 and 17, paragraph 2 and 3, and thereby
- a) Further define terms in § 2, number 2 through 7 and § 5, and
 - b) Promulgate further provisions related to the type, content and form of data and information, which must be exchanged between the Main Customs Office, the German Civil Aviation Authority, the Federal Police, authorities responsible for flight safety, as well as request other information related to tax-relevant facts under § 17, paragraph 2 and 3.
3. For the purposes of carrying out this Act, the Federal Ministry of Finances is authorized, without the consent of the Bundesrat, for the purposes of simplifying the automated tax procedure, may determine that tax declarations, tax returns or other data required for the tax procedure, may be transmitted electronically, and thereby may establish rules related to
- a) The criteria for applying the procedure,
 - b) Details related to form, content, processing and security of transmitted data,
 - c) The method and manner of data transmission,
 - d) The responsibility for accepting data to be transmitted,
 - e) The duties of cooperation of third parties and their liability for taxes or tax benefits, which are curtailed or received on the basis of an improper collection, processing or transmission of data,

- f) The extent and form of special declaration obligations of the person required to register or pay tax
- g) As an alternative to the qualified electronic signature, another secure procedure, in consultation with the Federal Interior Ministry, that secures the authenticity and integrity of transmitted electronic documents, and
- h) Authorizing exceptions to the obligation to use a qualified electronic signature or another secure procedure under number 7. With respect to rules for data transmission, reference may be made in regulations to publications of the relevant administrative bodies, whereby the date of publication, the source and the administrative body where the publication is securely stored in archives shall be indicated.

§ 19

REGULATIONS AND TRANSITIONAL REGULATIONS

1. This Act applies to legal transactions that occur as of 1 September 2010 for which the passenger is named to the aviation enterprise as of 1 September 2010 and which authorize departures as of 1 January 2011.
2. In derogation of § 7, paragraph 1, aviation enterprises that carry out the first departure in the time period between 1 January and 28 February 2011, may register by 14 February 2011. The three-week deadline must not be complied with in this case.
3. The Tax Data Transmission Regulation of 28 January 2003 (BGBl. I p. 139), as amended by Article 2 of the Regulation of 8 January 2009 (BGBl. I p. 31) shall not apply to the declaration and transmission obligations under this Act.
4. The Federal Ministry of Finance shall submit a report, which shall include the participation of the Federal Ministry of the Environment, Conservation and Reactor Safety, the Federal Ministry of Transportation, Construction and Urban Planning, and with the Federal Ministry of Commerce and Technology to the Bundestag regarding the effects of the introduction of the Air Travel Tax Act on the aviation sector and developments with respect to tax revenues gained from the air travel tax.

ANNEX 1
(TO § 11 LUFTVSTG)

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

ANNEX 2
(TO § 11 LUFTVSTG)

Afghanistan	Jordan
Armenia	Kazakhstan
Azerbaijan	Kuwait
Bahrain	Kyrgyzstan
Benin	Lebanon
Burkina Faso	Liberia
Cameroon	Mali
Cape Verde	Mauretania
Central African Republic	Niger
Chad	Nigeria
Côte d'Ivoire	Oman
Djibouti	Pakistan
Egypt	Palestinian Areas
Equatorial Guyana	Qatar
Eritrea	São Tomé and Príncipe
Ethiopia	Saudi Arabia
Gabon	Senegal
Gambia	Sierra Leone
Georgia	Sudan
Ghana	Syria, Arab Republic
Guinea	Tajikistan
Guinea-Bissau	Turkmenistan
Iran	Uganda
Iraq	United Arab Emirates
Islamic Republic of Togo	Uzbekistan
Israel	Yemen