



STATUTORY INSTRUMENTS.

S.I. No. 134 of 2009



AIR TRAVEL TAX REGULATIONS 2009

(Prn. A9/0496)

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The Revenue Commissioners, in exercise of the powers conferred on them by section 55 of the Finance (No. 2) Act 2008 (No. 25 of 2008) and by section 917EA (inserted by section 164 of the Finance Act 2003 (No. 3 of 2003)) of the Taxes Consolidation Act 1997 (No. 39 of 1997), hereby make the following regulations:

Citation

1. These Regulations may be cited as the Air Travel Tax Regulations 2009.

Interpretation

2. In these Regulations—

“accounting period” means in the case of the first accounting period, the period starting on 30 March 2009 and ending on 30 April 2009, and for each subsequent period, a period starting on the first day and ending on the last day of each month;

“Act of 2008” means the Finance (No. 2) Act 2008;

“capacity” means access to the technology, including both hardware and software, by which either or both a return or a payment of tax may be made by electronic means;

“Collector-General” means the Collector-General appointed under section 851 of the Taxes Consolidation Act 1997;

“Commissioners” means the Revenue Commissioners;

“officer” means an officer of the Commissioners;

“Principal Act” means the Taxes Consolidation Act 1997;

“records” means any books, accounts, documents or other recorded information, including information stored by electronic means or in other non-legible form;

“tax” means air travel tax imposed by section 55(2) of the Act of 2008.

Application for registration

3. Every application for registration by an airline operator, under section 55(3) of the Act of 2008, shall be in such form as the Commissioners may require, and shall contain the particulars specified in Schedule 1, and such other particulars as the Commissioners may from time to time require.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 14th April, 2009.*

Signing of applications and returns

4. An application or a return, other than a return under Regulation 8, required of an airline operator or a groundhandling supplier under these Regulations shall be signed—

- (a) in the case of an individual, by such individual or by a person authorised in writing to sign such application or return on behalf of such individual,
- (b) in the case of a body corporate, by a director, company secretary or any person authorised in writing by one of them under the company seal to sign such application or return on behalf of the body, and
- (c) in the case of an unincorporated body of persons, by one of the partners or any person authorised by one of them to sign such application or return on behalf of the body.

Provision of security

5. Security for payment of the tax that an airline operator is required to provide, under section 55(2)(d) of the Act of 2008, shall be in such an amount and in such form as the Commissioners may determine.

Monthly return

6. An airline operator or, where the Commissioners have served a notice in accordance with section 55(2)(e) of the Act of 2008, a groundhandling supplier shall, not later than the 23rd day of the month following the end of an accounting period, furnish to the Collector-General a return in such form as the Commissioners may require showing the number of departures by passengers during the accounting period to which the return relates and such other information as the Commissioners may from time to time require.

Payment of tax

7. (1) An airline operator or, where the Commissioners have served a notice in accordance with section 55(2)(e) of the Act of 2008, a groundhandling supplier shall, not later than the 23rd day of the month following the end of an accounting period, remit to the Collector-General the amount of tax payable in respect of such accounting period.

(2) Where, on or after 1 May 2009, a payment of tax, or of interest on unpaid tax, falls due to be made by or on behalf of a person liable to pay tax under paragraph (1), then the payment shall be made from a current account in a financial institution in the State by such electronic means as are required by the Commissioners.

- (3) (a) Any liabilities to tax, including interest on unpaid tax, are specified as specified tax liabilities for the purposes of section 917EA of the Principal Act.
- (b) An airline operator or, where appropriate, a groundhandling supplier is specified as a specified person for the purposes of paragraph (b) of subsection (3) of section 917EA of the Principal Act.

Annual return

8. (1) An airline operator shall, not later than 23 February each year, furnish to the Collector-General a return giving—

(a) details for the year ended the previous 31 December of the number of persons who travelled on aircraft operated by the airline operator, and, in respect of those persons—

(i) the number of persons in respect of whom tax was payable, and the respective rates at which the tax was paid in respect of those persons,

(ii) the number of persons in respect of whom tax was not payable and the grounds on which the tax was not payable in respect of those persons,

and,

(b) such other information as the Commissioners may from time to time require.

(2) Where, on or after 1 January 2010, a return falls due to be made by any person under paragraph (1), then the return shall be made by electronic means and in accordance with Chapter 6 of Part 38 of the Principal Act.

(3) (a) A return required to be furnished under this Regulation and which is specified for the purposes of Chapter 6 of Part 38 of the Principal Act by order made by the Commissioners under section 917E of that Act is specified as a specified return for the purposes of section 917EA of that Act.

(b) An airline operator is specified as a specified person for the purposes of paragraph (a) of subsection (3) of section 917EA of the Principal Act.

Exclusion of certain specified persons

9. (1) A specified person may, by notifying the Commissioners in writing, request to be excluded from the provisions of Regulations 7(2) and 8(2) on the grounds that the person does not have the capacity to pay the specified tax liabilities or to make a specified return by electronic means and the notification shall include all information relevant to the consideration by the Commissioners of the request.

(2) Where the Commissioners receive a notification from a specified person in accordance with paragraph (1) or where the Commissioners otherwise consider it appropriate, they may exclude the person from the provisions of Regulations 7(2) and 8(2) only if they are satisfied that, in all of the circumstances, the person could not reasonably be expected to have the capacity to make a payment in respect of specified tax liabilities or make a specified return by electronic means.

(3) A decision on whether to exclude a person from the provisions of Regulations 7(2) and 8(2) by the Commissioners in accordance with paragraph (2) shall be made within 30 days of receipt of the notification from the specified person, and the Commissioners shall notify the specified person in writing of the decision.

Right of appeal to the Appeal Commissioners

10. (1) A person aggrieved by a failure of the Commissioners to exclude such person from the provisions of Regulations 7(2) and 8(2) in accordance with Regulation 9(2) may, by notice in writing to the Commissioners before the end of the period of 30 days beginning with the day on which notice of the decision was given to the person, apply to have such person's request to be excluded from the provisions of Regulations 7(2) and 8(2) heard and determined by the Appeal Commissioners.

(2) The Appeal Commissioners shall hear and determine an appeal made to them under paragraph (1) as if it were an appeal against an assessment to income tax, and the provisions of the Income Tax Acts relating to appeals shall apply accordingly.

(3) On the hearing of an appeal made under this Regulation, the Appeal Commissioners shall have regard only to those matters to which the Commissioners may or are required to have regard under these Regulations.

Provisions to amend exclusions

11. (1) If, at any time after a decision by the Commissioners in accordance with Regulation 9(2) or a determination by the Appeal Commissioners in accordance with Regulation 10(2) to exclude a specified person from the provisions of Regulations 7(2) and 8(2), the Commissioners decide that, due to a material change in all of the circumstances, the specified person should not be so excluded, they shall notify the specified person in writing of that decision.

(2) The decision referred to in paragraph (1) shall be deemed to be a failure to exclude the specified person from the provisions of Regulations 7(2) and 8(2) and Regulation 10 shall apply accordingly.

Time at which payments made by electronic means are taken to be made

12. For the purpose of these Regulations, the time at which a payment of a specified tax liability by or on behalf of a specified person required to make payments under Regulation 7 shall be taken as having been made shall be the later of the due date for that payment or the time at which the Commissioners receive authorisation to debit the amount of the payment from the account of the specified person in a financial institution.

Presumption

13. For the purposes of any dispute arising as to the time at which a payment in respect of a specified tax liability is to be taken as having been made, a certificate signed by an officer which certifies that he or she has examined the

relevant records and that it appears from them that the time at which the payment is to be taken as having been made, is the time so specified in the certificate, shall be evidence until the contrary is proven that the payment was made at the time so certified.

Exclusion

14. The Tax Returns and Payments (Mandatory Electronic Filing and Payment of Tax) Regulations 2008 (S.I. No. 341 of 2008) shall not apply in relation to the tax.

Records to be kept

15. (1) (a) Every airline operator shall keep, in such form as the Commissioners may require, all the accounts and other records specified in Schedule 2, Part A and shall produce such accounts or records for examination when required to do so by an officer.

(b) Every groundhandling supplier shall keep, in such form as the Commissioners may require, all the accounts and other records specified in Schedule 2, Part B and shall produce such accounts or records for examination when required to do so by an officer.

(c) Every airport authority shall keep, in such form as the Commissioners may require, all the accounts and other records specified in Schedule 2, Part C and shall produce such accounts or records for examination when required to do so by an officer.

(2) In the case of any record required to be kept under these Regulations that is held in a non-legible form, such record shall be produced in a legible form, or reproduced in a permanent legible form, when so required by an officer.

Alterations to records

16. (1) In respect of any record required to be kept under these Regulations, a person shall not—

(a) obliterate any entry,

(b) make any entry that is untrue in any particular, or

(c) alter or cancel any entry, except for the purpose of correcting an error.

(2) Any alteration or cancellation made under paragraph (1)(c) shall be made in a manner that does not render illegible, in whole or in part, the original entry.

Preservation of records

17. (1) Except where the Commissioners may otherwise allow or require, the records required to be kept under these Regulations shall—

(a) be preserved for a period of not less than 6 years from the date of the last entry in such records, and

(b) be kept at the registered place of business of the airline operator, groundhandling supplier or airport authority, or such other place as the Commissioners may in any particular case allow.

(2) Except where otherwise required by the Commissioners, the records referred to in paragraph (1) may be kept by any electronic, photographic or other process that—

(a) ensures the integrity of the record, and

(b) allows the record to be readily displayed in a legible form, or reproduced in a permanent legible form.

SCHEDULE 1

PARTICULARS TO BE INCLUDED IN AN APPLICATION FOR REGISTRATION

1. Name, business address and registered office address of the airline operator.
2. The business status of the airline operator (public limited company, private company, branch of foreign company etc.).
3. Names and addresses of the directors and of the company secretary of the airline operator.
4. Name, business address, registered office address and VAT registration number of the airline operator's groundhandling supplier.
5. An estimate of the airline operator's annual liability for the tax.

SCHEDULE 2

SPECIFIED RECORDS

Part A

1. Invoices, credit notes, debit notes, receipts and other records of payment.
2. Records relating to the numbers of persons who depart from an airport on an airline operator's aircraft, including details of the numbers of passengers liable for each rate of tax and details of the numbers of persons exempt from the tax.
3. Statements of account, profit and loss accounts, balance sheets, trading forecasts, trading and management accounts and reports relating to such accounts.
4. Internal and external auditors' reports.

Part B

1. Invoices, credit notes, debit notes, receipts and other records of payment.
2. Records relating to the numbers of persons who depart from an airport on an aircraft of an airline operator for which the groundhandling supplier provides groundhandling services, including details of the numbers of passengers liable for each rate of tax and details of the numbers of persons exempt from the tax.
3. Statements of account, profit and loss accounts, balance sheets, trading forecasts, trading and management accounts and reports relating to such accounts.
4. Internal and external auditors' reports.

Part C

1. Invoices, credit notes, debit notes, receipts and other records of payment.
2. Records relating to the total number of persons who depart from the airport and to the numbers of persons who depart from the airport on the aircraft of each airline operator operating from the airport, including details of the numbers of passengers liable for each rate of tax and details of the numbers of persons exempt from the tax.
3. Statements of account, profit and loss accounts, balance sheets, trading forecasts, trading and management accounts and reports relating to such accounts.
4. Internal and external auditors' reports.

GIVEN under my hand,
7 April 2009

MICHAEL O'GRADY,
Revenue Commissioner.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations are made by the Revenue Commissioners under the provisions of section 55 of the Finance (No. 2) Act 2008, which imposed an excise duty known as air travel tax (ATT) on departures by passengers from Irish airports, and section 917EA of the Taxes Consolidation Act 1997, which provides for mandatory electronic filing and payment.

The Regulations set out the procedures to be followed in relation to registration, provision of security, payment of ATT and returns. The Regulations also specify the requirements for the keeping and making available for inspection of records relevant to the tax.

The Regulations provide that ATT must be paid by electronic means. The annual return in relation to the tax must also be made by electronic means.

The Revenue Commissioners may, on application, exclude a person from the obligation to pay ATT and make the annual return by electronic means, if they are satisfied that the person does not have the capacity to do so. A person aggrieved by a decision of the Commissioners not to exclude him or her from the obligation to use electronic means may appeal that decision to the Appeal Commissioners.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
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AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,
CONTAE MHAIGH EO,
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)
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€3.05

