

## CHAPTER 32

### AIR PASSENGER DUTY (APD)

#### 32.1 Introduction to Air Passenger Duty (APD)

The government was intending to replace Air Passenger Duty in November 2009 with a new duty called 'Aviation Duty', which was to be a tax payable per plane. However, it has gone back on that commitment and has instead introduced two new bands of APD and an increase in charges.

However, in the second budget of 2010 they have once again started talking about **reforming the duty and making it a tax per plane** rather than per passage.

APD was introduced in Finance Act 1994, and is a **duty charged on passengers that leave from airports in the UK**. Statutory Instrument 1994/1738 contains details about registration and record keeping requirements which we will move on to a little later in the chapter.

[FA 1994](#)

[SI 1994/1738](#)

#### 32.2 Chargeable aircraft and chargeable passengers

Let's look at exactly what Air Passenger Duty is charged on. Section 28 of the Finance Act says that it is a duty charged on **chargeable passengers** being carried on **chargeable aircraft**. The duty is due **when the aircraft first takes off and it is paid by the operator of the aircraft**. What exactly is a chargeable aircraft?

[s.28 FA 1994](#)

**Every aircraft is chargeable unless it is exempt** under 1 of the headings below:

[s.29 FA 1994](#)

- If it is **authorised take off weight is less than 10 tonnes** and
- If it is **not authorised to seat 20 or more people**, ignoring the crew.

[s.28\(4\) FA 1994](#)

A chargeable passenger is any **passenger if his flight begins in a UK airport**.

However, there are some **exceptions** and these are listed in Section 31. They include the following:

[s.31 FA 1994](#)

- **Children under 2 who are not allocated a separate seat;**
- if the passenger has to change aircrafts as part of his journey, ie he has a **connecting flight**, then subject to satisfying certain conditions, it is **only the first leg** that is potentially liable to APD, and the rate of APD will depend upon the final destination. The definition of connected flights are contained in the Air Passenger Duty Connected Flights Order of 1994;
- if the **flight departs and returns to the same place and is a maximum of 60 minutes**, and
- if a passenger is **carried free of charge**, for instance to **carry out a statutory inspection** of the aircraft or crew then he is an exempt passenger.

[SI 1994/1821](#)

### 32.3 Rates of APD

Now we know what it is liable to APD, let's have a look at the rates. You will find the rates in Section 30. The **rate depends** on where the **ultimate destination** of the flight is.

[s.30 FA 1994](#)

**From 1<sup>st</sup> November 2009 charges are based on four bands.** The countries that are within each of the bands are detailed in schedule 5A.

Sch 5A  
FA 1994

Turn to the schedule in your legislation to see the countries that are listed in each territory.

For example, Band A includes countries in Europe, Band B extends 4,000 miles to destinations such as Egypt, Bahrain, Gambia and the USA. Band C includes the Caribbean and South Africa and Band D includes Australia and New Zealand. The table below shows the rates and bandings that will apply:

Band	Schedule 5A reference	Standard class	Other class
A	Part 1 territories (incl the UK)	£11	£22
B	Part 2 territories	£45	£90
C	Part 3 territories	£50	£100
D	Any other territory	£55	£110

**APD is set to rise again from 1<sup>st</sup> November 2010 to £12 in Band A, £60 in Band B, £75 in Band C and £85 in Band D, for a standard class flight.**

For other classes the rates will be:

Band A	£24
Band B	£120
Band C	£150
Band D	£170

### Example 1

Let's take a couple of examples. In all cases, the flights are standard class and take place in July 2010. You need to complete the box with the amount of APD due.

A flight takes off from Birmingham airport to Paris

A family of four travelling from London Heathrow to Sydney Australia. The two children are aged 18 months and 4.

A couple travelling from Manchester to Pakistan.

## 32.4 Registration of operators

We know what flights are liable to APD and we know what types of passengers are chargeable, now we need to look at how an operator registers in order that he can account for APD due.

If an operator uses an aircraft to carry chargeable passengers, then they become liable to register for APD.

[s.9 FA 1994](#)

**From the 1<sup>st</sup> of April 2010, if someone fails to register then the penalty is determined by schedule 41 of the Finance Act 2008.** You might have a sense of de ja vu here as we have already covered this penalty regime in an earlier chapter on IPT. Go back to chapter 26 and remind yourself of how the penalty is calculated.

Sch 41  
FA 2008

The registration rules are contained in Statutory Instrument 1994/1738. The operator is required to tell Customs that he is liable to register **within 7 days** of using his aircraft to carry chargeable passengers. He does this by completing form **APD1**. Once Customs have received the APD1, they will issue the operator with a certificate of registration, generally within 28 days.

[SI 1994/1738](#)

This **Certificate of Registration** is a copy of what Customs will keep in their Register of Operators. For each operator a form is kept in accordance with Schedule 1, and contains the following information:

[Sch 1 SI 1994/1738](#)

- a unique reference number which will be allocated by Customs. This comprises the letters APD followed by 5 digits,
- the name of the operator,
- the address of their principal place of business, telephone number and fax number,
- the date notice was given of liability to register and
- details of a fiscal representative if one is needed

We will come on to when a fiscal rep. is needed in a little while. **Entry in the register is dated as to the first day of the month in which the liability arose.** If, for example, liability arose at some point during March the date on the register will be put as the 1<sup>st</sup> of March.

### Example 2

An operator uses a chargeable aircraft for the first time on 16<sup>th</sup> March when does the person need to notify Customs of their liability to register and when will entry in the register be made by Customs?

### Example 3

An operator uses a chargeable aircraft on 21<sup>st</sup> August. When does the person need to notify Customs of their liability to register and when will entry in the register be made by Customs?

Continuing with our registration requirements, we have already mentioned that upon registration Customs will issue a Certificate to the operator. If there are any **changes in the particulars these need to be notified to Customs within 30 days** of the change.

### Illustration 1

Imagine then that BA decides to change its name simply to "B" it will need to note the amendment on the Certificate that Customs had sent and send the Certificate back to Customs.

This is covered in Regulation 4(6) of Statutory Instrument 1994/1738. Customs will then correct the Register and send a new Certificate back to the operator.

[Reg.4\(6\) SI 1994/1738](#)

If an operator ceases to be liable to APD, for instance they **no longer operate chargeable aircraft**, or if they operate chargeable aircraft, they don't have any chargeable passengers, then upon notifying Customs they will be **removed from the Register**.

In addition, if a registered operator has not, within the last 6 months, operated chargeable aircraft and Customs believe he will not do so within the next 12 months, he will be removed from the Register. **Removal though will not occur if the operator owes duty to Customs!**

### 32.5 Fiscal Representatives

Fiscal representatives are covered in Section 34 of the Finance Act 1994. [s.34 FA 1994](#)  
Let's take the following situation.

#### Illustration 2

You are a US airline operator, but you fly to and from the UK. You don't have a business establishment in the UK, but are nevertheless liable to APD because your aircraft takes off from UK airports. You will be required to register for APD and appoint a fiscal representative i.e. someone based in the UK, who can carry out your obligations for APD purposes.

The fiscal representative will be **entitled to act on the principal's behalf**. They must secure compliance with the principal's obligations, i.e. comply with the law. They will be held **jointly and severally liable** for compliance with the legislation and the name of them will appear in the Register for the overseas air operator. If a fiscal representative is required, he must be appointed by the same deadline as registration, i.e. **within 7 days** of the operator using chargeable aircraft. Once the fiscal representative has been appointed, he then needs to tell Customs that he has been appointed and this must happen within 7 days of his appointment.

The fiscal representative needs to provide Customs with certain information when he has been appointed.

He needs to provide Customs with the information contained in Schedule 2 of the Statutory Instrument. This information comprises:

[sch.2 SI 1994/1738](#)

- the name of the fiscal representative,
- the address of his principal place of business within the UK, his telephone and fax number,
- the name of the principal, i.e. the overseas air operator, and
- the date that he was appointed to act for that overseas operator

If a person **ceases to act as a fiscal representative, they need to inform Customs in writing within 7 days**. Alternatively, the Principal can give notice that the fiscal representative is no longer going to act. In addition, if the fiscal representative is imprisoned, or he becomes bankrupt or insolvent, or he no longer has a place of business in the UK, then they will be treated as having ceased to act as a fiscal representative.

Failure to appoint a fiscal representative, or failure by a fiscal representative to give notice, results again in a **penalty** under Section 9 of the Finance Act 1994.

[s.9 FA 1994](#)

### 32.6 Returns

We have looked so far at who is liable to pay APD, the rates of APD, and what happens if you are an overseas air operator. Now we need to look at how you make your Returns and payments to Customs.

Every operator who is registered, or required to be registered, must send a **Return to Customs by the 22<sup>nd</sup> day following the end of each month**. So if we are looking at the month of January, the Return must be sent by the 22<sup>nd</sup> of February.

The Return is shown in Schedule 3 to the Regulations. If the 22<sup>nd</sup> is a non-business day the Return is due on the last business day before that day. If we imagine that the 22<sup>nd</sup> was a Saturday, the Return would be due on Friday the 21<sup>st</sup>.

[Sch.3 SI 1994/1738](#)

Payment can be made by a variety of means, and if it is made by **direct debit** or **credit transfer**, then there is a longer period for which payment must be made, allowing a further 7 days for payment. If payment is not made by one of these means then payment is due on the same day as the Return.

An operator is required to comply with record keeping requirements. These are contained in the Aircraft Operator's (Accounts and Records) Regulations of 1994. One of these records that an operator must keep is an **Air Passenger Duty Account**. The details of this are contained in Schedule 1. These details include for every month:

[SI 1994/1737](#)

- the amount of duty payable before any adjustment is required,
- any adjustments to the duty payable,
- the duty due after adjustments have been made,
- the amount of duty that is due finally,
- the date and method of payment of duty,
- the number of passengers carried, at each rate of APD,
- the number of exempt passengers and the number of persons carried in total.

[sch.1 SI 1994/1737](#)

**These records must generally be kept for 6 years.**

The type of adjustments that may need to be made are for things like errors found in records. If the **error is a maximum of £10,000 (or if greater than 1% of turnover - subject to maximum of £50,000)** then it can be adjusted for on the next month's air passenger duty return.

For errors above that amount then a separate disclosure needs to be made to Customs telling them how the error arose and what it relates to. In addition to the 'Air Passenger Duty Account', an **operator must keep other records**. These records would include things like:

- details on passengers that are exempt,
- copies of Returns made to the Civil Aviation Authority relating to the number of flights operated and number of passengers carried, and
- other things like voyage reports, loading lists, flight interruption, manifests, flight coupons, invoices, etc.

### 32.7 Special Accounting Scheme

Certain operators may have difficulty in calculating their APD exemptions using flight coupons from their systems.

Therefore, the legislation allows such a registered operator to enter into an agreement with Customs to operate a 'special accounting scheme.'

[s.39  
FA 1994](#)

The scheme will provide for an alternative method for calculating how many persons are chargeable and at what rate the charge should be. For example, exemptions might be based on other methods such as statistics or surveys rather than actual figures.

[part 1. sch.2 SI  
1994/1737](#)

In addition, Customs may specify in their public notice specific terms and conditions relating to the operation of such a scheme.

[part 2. sch.2 SI  
1994/1737](#)

Customs have the power to terminate the operation of a scheme where they have 'reasonable grounds' for doing so. Customs and the operator can agree to vary the terms of the scheme to take effect in the future.

### 32.8 Case Law

**R (on the application of Federation of Tour Operators and others) v HM Treasury [2008] All ER(D)46(Jul) 2<sup>nd</sup> July 2008**

Our final look in this lecture is at a case concerning APD. The rate of APD was doubled from February 2007 i.e. prior to this date a standard flight to Paris incurred £5 APD, whereas from February 2007 it incurred £10. Where a person had already booked and paid for their flight prior to February 2007, the tour operator they booked with would have passed on the cost of the APD to them - which would have been the then lower rate. However, if their flight took off after the rate increased, the airline would have to pay the new higher rate.

Tour operators were largely precluded from passing on the increase in the rate of APD to their customers as a result of regulations in their sector. When the government announced the increase in rates, the tour operators drew this problem to the government's attention. The government did nothing about their concerns and continued with the increase in duty from February 2007.

This case was brought by the Federation of Tour Operators who sought judicial review, contending that the increase in duty was unlawful and that the duty itself was unlawful. They contended that the increase in duty infringed tour operator's human rights.

The appeal was dismissed. Failure to exempt passengers who had pre-booked with tour operators did not impose an excessive or individual burden on the tour operators and was not devoid of reasonable foundation. Tour operators could mitigate the effect of the charge by increasing charges for passengers who booked with them subsequently.

**Answer 1**

A flight takes off from Birmingham airport to Paris

£11

Paris is in France and France is listed in the "part 1 territories" in Schedule 5A.

A family of four travelling from London Heathrow to Sydney Australia. The two children are aged 18 months and 4.

£165

Australia is not listed in any of the territories in parts 1 to 3. However the child that is under 2 years old, provided it does not have its own seat, would be exempt from APD. Therefore, three of the passengers are chargeable passengers at £55 each.

A couple travelling from Manchester to Pakistan.

£90

Pakistan is a 'part 2' territory.

**Answer 2**

Notification is required by 23<sup>rd</sup> March.

The entry in the register will be made on 1<sup>st</sup> March.

**Answer 3**

Notification is required by 28<sup>th</sup> August.

The entry in the register will be made on 1<sup>st</sup> August.