

## **EXPLANATORY MEMORANDUM TO**

### **THE AIRCRAFT OPERATORS (ACCOUNTS AND RECORDS) (AMENDMENT) REGULATIONS 2009**

**2009 No. 2051**

1. This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty

#### **2. Purpose of the instrument**

2.1 This instrument amends the Aircraft Operators (Accounts and Records) Regulations 1994 (S.I. 1994/1737) (“the principal Regulations”).

2.2 Following the introduction in the Finance Act 2009 of additional destination bands for the purposes of determining the rate of air passenger duty (“APD”) charged, this instrument amends the particulars specified in the principal Regulations that an aircraft operator has to keep in relation to the number of passengers carried at each duty rate.

#### **3. Matters of special interest to the Joint Committee on Statutory Instruments**

None

#### **4. Legislative Context**

4.1 APD was introduced by the Finance Act 1994 and, for the purposes of determining the rate of duty charged, there are currently two destination bands.

4.2 Under the Finance Act 2009 APD is being reformed with effect from 1 November 2009. The existing two destination bands will be replaced by four.

4.3 Regulation 4 of, and Schedule 1 to, the principal Regulations require aircraft operators to keep an APD account containing particulars of the number of passengers carried and the chargeable rates they attracted. This instrument amends the details required to be kept in the APD account to take into account the new destination bands.

#### **5. Territorial Extent and Application**

This instrument applies to all of the United Kingdom.

#### **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- *What is being done and why*

7.1 At the Pre-Budget Report 2008, the Government announced that, instead of introducing a per plane tax to replace APD, it would reform APD and replace its current two destination band system with a four band one. As is currently the case, each band will have two rates to distinguish between the class of travel, and consequently the number of rates will increase from four to eight.

7.2 The liability to pay APD lies with aircraft operators. APD is a self assessing tax, and registered operators are required to calculate, declare and account for the tax due on a monthly basis, on the APD return.

7.3 As part of record keeping obligations and in order to provide assurance that the tax has been calculated and declared correctly, aircraft operators are required to maintain an APD account. This APD account contains the particulars of the number of passengers carried at each chargeable rate, and forms part of the audit trail supporting the declarations on the APD return.

7.4 APD currently has two destination bands for class of travel. Legislation implementing the four new destination bands is contained in the Finance Act 2009. This instrument amends the record keeping requirements of APD registered operators, to bring them in line with the four band structure.

- *Consolidation*

7.2 There are currently no plans to consolidate the principal Regulations

## **8. Consultation outcome**

This is a consequential amendment as a result of changes in primary legislation. No consultation on this consequential change was conducted.

## **9. Guidance**

Guidance on the changes being made to the APD account will be included in the HMRC Public Notice 550, Air passenger duty.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment was produced for the destination band changes to APD, which took into account the impact of all changes on businesses. Continuing costs, which include all new record keeping and collecting requirements, are estimated to be around £45,000-£85,000. This instrument relates to just one part of

this process and the impact of this is estimated to be negligible. The relevant extract from the Impact Assessment is attached at Annex A.

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is make only the minimum changes required to be in line with primary legislation.

11.3 The basis for the final decision on what action to take to assist small business was that no additional regulatory requirement other than that which is necessary is to be introduced.

11.4 APD makes allowances for small businesses, with a de minimis exemption for flights made in aircraft of less than 10 tonnes and/ or equipped to carry fewer than 20 passengers. This allowance excludes the majority of the small businesses in the aviation sector. HMRC do not expect small businesses that do pay APD to be disadvantaged by the changes relative to larger airlines, as in general they are less likely to operate flights to the long haul destinations affected by the changes.

## **12. Monitoring & review**

A Post Implementation Review of the reform of APD will take place three years after the introduction of the changes on 1 November 2009, and it would be appropriate to review this instrument as part of this process.

## **13. Contact**

Wing Edmundson at the Transport Taxes Team, HMRC Tel: 0207 147 0410 or email: [wing.edmundson1@hmrc.gsi.gov.uk](mailto:wing.edmundson1@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.

## Annex A

### *‘Continuing costs*

The SCM<sup>1</sup> is used to estimate these costs. The model splits the process of returning and recording information into a number of different information requirements, each with its own cost.

Under APD reform, the basic method of completing tax returns will be unchanged. General administrative processes such as reporting an airline’s APD registration number, details of the period of which the return covers and signatory of the account will be exactly the same, as will recording the total number of passenger carried in the reporting period, including those exempt from paying APD (e.g. cabin crew).

Under the new four band distance structure, airlines (or their agents) will be required to collect and return information for passengers flying to a final destination in each of the four bands. Band A (up to 2,000 miles) is very similar to the existing EEA band with the addition of a few North African countries and Russia (west of the Ural Mountains). We assume that the cost to airlines of collecting the relevant information and calculating the duty for Band A passengers will be broadly unchanged from the current EEA band.

Passenger currently accounted for within the non-EEA band will have to be split into three new bands depending on how far they are flying: Band B (2,001-4,000 miles); C (4,001-6,000 miles); or D (over 6,000 miles). This process is expected to take slightly more time. Many airlines will have automated systems and any manual checks should be reasonably quick and straightforward. We assume that it will take no more than 50% longer to complete this task and probably less (we have used a range of 25-50% in this assessment). Using hourly wage rates in the SCM, this gives an additional annual cost of around £45,000-£85,000.’

*Extract from HMRC’s Impact Assessment on Changes to air passenger duty. The full version is available at: <http://www.hmrc.gov.uk/ria/apd-reform-ia.pdf>*

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<sup>1</sup> HMRC’s Standard Cost Model (SCM) is used to establish the costs to business of complying with HMRC tax obligations. The model looks at the activities a business had to undertake to comply with HMRC obligations, how many businesses are involved and how often they must do so.