

立法會
Legislative Council

Paper for the Panel on Economic Development

Issue relating to the air passenger departure tax

At the meeting of the Panel on Economic Development on 19 April 2016, legal advice has been sought on whether an aircraft operator who fails to refund the air passenger departure tax ("APDT") collected as required under the Air Passenger Departure Tax Ordinance (Cap. 140) commits an offence.

Air Passenger Departure Tax

2. Section 3 of Cap. 140 provides that, unless otherwise exempted, a passenger aged 12 or above intending to depart from Hong Kong by aircraft at the airport shall pay the APDT at an amount specified in the First Schedule to Cap. 140, currently at an amount of \$120. Section 4 of Cap. 140 requires that APDT shall be paid to the operator of the aircraft (i.e. the airline) which shall collect and pay the APDT collected to the Director of Accounting Services.

3. In addition, the operator shall -
- (a) maintain proper records of passengers embarking on aircraft under its control and the APDT paid (section 5 of Cap. 140); and
 - (b) furnish returns to the Director-General of Civil Aviation giving details of passengers and aircraft departures and such other information relating to the APDT or the collection of the APDT as the Director of General of Civil Aviation may require (section 6 of Cap. 140).

Refund by the Operator

4. Under section 14 of Cap. 140¹, the APDT paid to an operator by a passenger who does not depart by air from Hong Kong on the

¹ During the Second Reading debate of the Air Passenger Departure Tax Bill 1983, there was no discussion on the refund of the APDT nor any intended legal remedy arising from a breach of such statutory duty (Council meeting of 11 May 1983, Hansard, pp. 909-910 and Council meeting of 8 June 1983, Hansard, pp. 979-981).

occasion in respect of which he has paid the tax, shall be refunded by the operator.

5. Section 15 of Cap. 140 provides respective offences in respect of a passenger who fails to pay the APDT (section 15(1)) and an operator who fails to maintain proper records or furnish returns (section 15(5)). Cap. 140 does not provide for any offence in respect of an operator who fails to refund to the passenger the APDT as required under section 14. Nor is there any provision in Cap. 140 providing for the legal remedy for the breach of such statutory duty.

Other observation

6. In the absence of a criminal sanction for the breach of section 14 in Cap. 140, the inference is stronger that a civil sanction is intended². When there is a statutory obligation to pay money and no other remedy is expressly given in the enactment, general remedy is available in a civil action for recovery of a debt owed under the enactment³. In view of the express obligation on the operator to refund the APDT paid by a passenger for a departure subsequently cancelled and the fact that Cap. 140 does not provide any other remedy, it follows that the remedy for failure to refund such amount lies in a civil action for recovery of a debt under the general law.

Conclusion

7. In the circumstances, an operator who fails to refund the APDT in accordance with section 14 is not subject to a criminal sanction under Cap. 140. However, the operator may be liable to the passenger concerned for recovery of a debt owed under Cap. 140 in a civil action.

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² Oliver Jones (2013), *Bennion on Statutory Interpretation*, 6th ed., Lexis Nexis, p. 39.

³ *Ibid*, p. 43. *Booth v Trail* [1883]12 Q13D8.