

立法會
Legislative Council

LC Paper No. LS21/2025

**Paper for the House Committee Meeting
on 21 March 2025**

**Legal Service Division Report on
Air Passenger Departure Tax (Amendment) Bill 2025**

I. SUMMARY

1. The Bill

The Bill seeks to amend the Air Passenger Departure Tax Ordinance (Cap. 140) to:

- (a) provide that the part of air passenger departure tax (“departure tax”) approved to be retained by aircraft operators to offset the collection fee payable to them does not form part of the general revenue;
- (b) increase the departure tax from HK\$120 to HK\$200 per passenger; and
- (c) provide for related matters.

2. Public Consultation

The Administration did not carry out prior consultation on the legislative proposal. However, according to the Administration, they have formulated the proposal of increasing the departure tax after considering the views received from legislators, political parties and other stakeholders during the consultation of the Budget for the 2025-2026 financial year.

**3. Consultation with
LegCo Panel**

The Panel on Financial Affairs has not been consulted on the Bill.

4. Conclusion

Subject to Members’ views on the issue mentioned in paragraph 7 of Part II of this report, no difficulties relating to the legal and drafting aspects of the Bill have been identified. Members may consider whether it is necessary to form a Bills Committee to study the policy aspect of the Bill.

II. REPORT

The date of First Reading of the Bill is 19 March 2025. Members may refer to the Legislative Council (“LegCo”) Brief (File Ref.: TsyB R 183/535-1/7/0 (25-26) (C)) issued by the Financial Services and the Treasury Bureau (“FSTB”) in March 2025 for further details.

Object of the Bill

2. The Bill seeks to amend the Air Passenger Departure Tax Ordinance (Cap. 140) to:

- (a) provide that the part of air passenger departure tax (“departure tax”) approved to be retained by aircraft operators to offset the collection fee payable to them does not form part of the general revenue;
- (b) increase the departure tax from HK\$120 to HK\$200 per passenger; and
- (c) provide for related matters.

Background

3. In the 2025-2026 Budget (“Budget”), the Financial Secretary (“FS”) announced the Government’s proposal to increase the rate of departure tax from HK\$120 to HK\$200 per passenger.¹ According to paragraph 3 of the LegCo Brief, the purpose of this proposal is to raise revenue. The Bill is introduced into LegCo to implement the proposal.

4. According to paragraphs 5 to 7 of the LegCo Brief, under the existing system of departure tax collection, the aircraft operators have been collecting departure tax from air passengers on behalf of the Government, and in return are paid an administration fee pursuant to section 10(1) of Cap. 140. The aircraft operators will first deduct the administration fees from the departure tax received before remitting the remaining sum to the Government. In order to satisfy the requirement of section 3(1) of the Public Finance Ordinance (Cap. 2),² FSTB will budget for the relevant provision in its Estimates every year (given that the administration fee is borne by it), and transfer the relevant provision to the Civil Aviation Department (“CAD”), which is responsible for monitoring the collection of departure tax, so that CAD can credit a sum equivalent to the administration fee to the relevant revenue account. The Administration seeks to streamline this arrangement through this Bill, such that FSTB would not need to budget for the relevant provision, and CAD would not have to credit a sum equivalent to the administration fees to the relevant revenue account.

¹ Please refer to paragraph 249(a) of the Budget speech.

² Section 3(1) of Cap. 2 provides that any moneys raised or received for the purposes of the Government shall form part of the general revenue, except where otherwise provided by or under Cap. 2 or any other enactment.

Provisions of the Bill

Proposed increase of air passenger departure tax

5. Clause 5 of the Bill seeks to amend the First Schedule to Cap. 140 to increase the departure tax from HK\$120 to HK\$200 per passenger. The effect would be to increase the departure tax paid by every passenger (other than passengers exempted or waived under the existing sections 12 and 13 of Cap. 140, e.g. direct transit passengers) who intends to depart from Hong Kong by aircraft at the airport.³

Proposed retention of a part of the air passenger departure tax by aircraft operators

6. In order to streamline the existing arrangement concerning the administration fees payable to aircraft operators, clause 4 of the Bill seeks to repeal the existing section 10(2) of Cap. 140 and to provide that under the proposed new section 10(2) of Cap. 140, FS could approve an aircraft operator to retain any part of the departure tax collected by the aircraft operator to offset the administration fee payable to it under the existing section 10(1) of Cap. 140. Under the proposed new section 10(3) of Cap. 140, it is proposed that the part of the departure tax that FS could approve the aircraft operator to retain would not form part of the general revenue for the purposes of section 3(1) of Cap. 2.

7. The Legal Service Division (“LSD”) has sought clarification from the Administration regarding the underlying arrangement between aircraft operators and the Administration in relation to the system of collection of departure tax and whether it is necessary to refer to any agreement(s) (if any) approved by FS in the Bill, similar to the legislation referred to by the Administration in paragraph 7 of the LegCo Brief (e.g. section 22A of the Road Tunnels (Government) Ordinance (Cap. 368)). The Administration has explained that the obligation of aircraft operators and the payment of administration fees are provided under Cap. 140 and no separate agreement has been signed between the Government and the aircraft operators. CAD will continue the existing practice of informing aircraft operators in writing of the detailed arrangements for the collection of the departure tax, including the computation of the amount to be retained by aircraft operators as administration fees. Copies of LSD’s letter dated 11 March 2025 and the Administration’s reply dated 14 March 2025 are at **Annex**.

Related matters

8. Clause 3 of the Bill seeks to add a new section 7(2A) to Cap. 140 to consequentially provide that in assessing the amount of departure tax due by the aircraft operator under section 7(1) of Cap. 140, the Director-General of Civil Aviation would have to take into account any amount of departure tax that the aircraft operator is approved to retain under the proposed new section 10(2) of Cap. 140.

³ Under the existing section 2 of Cap. 140, “airport” means the Hong Kong International Airport or the heliport at the Hong Kong—Macau Ferry Terminal.

Commencement

9. The Bill (except clause 5), if passed, would come into operation on the day on which it is published in the Gazette as an Ordinance. Clause 5 (which seeks to increase the departure tax as stated in paragraph 5 above) would come into operation on 1 October 2025. According to paragraph 4 of the LegCo Brief, this would allow aircraft operators to adjust their information technology systems and to allow sufficient time for publicity.

Public Consultation

10. According to paragraph 14 of the LegCo Brief, owing to the confidentiality of the Budget, the Administration did not carry out prior consultation on the legislative proposal. However, according to the Administration, they have formulated the proposal of increasing the departure tax after considering the views received from legislators, political parties and other stakeholders⁴ during the Budget consultations.

Consultation with LegCo Panel

11. As advised by the Clerk to the Panel on Financial Affairs, the Panel has not been consulted on the Bill.

Conclusion

12. Subject to Members' views on the issue mentioned in paragraph 7 above, no difficulties relating to the legal and drafting aspects of the Bill have been identified. Members may consider whether it is necessary to form a Bills Committee to study the policy aspect of the Bill.

Encl.

Prepared by

Jonathan CHENG
Assistant Legal Adviser
Legislative Council Secretariat
19 March 2025

⁴ Upon LSD's enquiry, the Administration clarified that the stakeholders were professional bodies and organizations.



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF : TsyB R 183/535-1/7/0 (25-26) (C)
本函檔號 OUR REF : LS/B/9/2025
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Urgent by Email (josephinehttsang@fstb.gov.hk)

11 March 2025

Miss TSANG Hiu-tung, Josephine
Principal Assistant Secretary for
Financial Services and the Treasury (Treasury)(R1)
Financial Services and the Treasury Bureau
The Treasury Branch
R1 Division
24/F, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Miss TSANG,

Air Passenger Departure Tax (Amendment) Bill 2025

We are scrutinizing the captioned Bill with a view to advising Members on its legal and drafting aspects. To facilitate Members' consideration of the Bill, we should be grateful if you could clarify the following matter.

In paragraph 7 of the Legislative Council Brief, it was mentioned that the proposed new arrangement under clause 4 of the Bill is similar to existing arrangements under the Road Tunnels (Government) Ordinance (Cap. 368), the Tsing Sha Control Area Ordinance (Cap. 594), and the Waste Disposal Ordinance (Cap. 354). We note that under section 22A of Cap. 368, section 23A of Cap. 594 and section 43 of Cap. 354, references are made to the fact that agreements were entered into by operators (or contractors) and approved by the Financial Secretary ("FS") relating to sums payable to the operators or contractors, and it is

expressly provided that such sums do not form part of the general revenue for the purpose of section 3(1) of the Public Finance Ordinance (Cap. 2). We note that the existing section 10(1) of the Air Passenger Departure Tax Ordinance (Cap. 140) only provides that the FS “may authorize the payment to an operator of a fee for collection of the tax”, the provision does not contain any reference to any agreement(s) (if any) entered by aircraft operators and approved by FS. Clause 4 of the Bill also does not propose to make any such references. In this regard, for the purpose of facilitating Members’ understanding of the underlying arrangement, please clarify the details of the arrangement(s) between the aircraft operators and the Administration relating to the system of collection of Air Passenger Departure Tax (“departure tax”) and the aircraft operators’ right to retain part of the departure tax for offsetting the administration fees payable to them by the Administration, and whether it is necessary to refer to any agreement(s) and approval by FS and if so, whether that would be provided for in the Bill.

We look forward to your written response as soon as practicable, preferably before 14 March 2025.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Cheng". The signature is fluid and cursive, with the first name "Jonathan" and the last name "Cheng" clearly distinguishable.

(Jonathan CHENG)
Assistant Legal Adviser

c.c. Financial Services and the Treasury Bureau
(Attn: Mr Adrian LOW, Assistant Secretary for Financial Services
and the Treasury (Treasury)(R)3)
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本函檔號 Our Ref. : TsyB R 183/535-1/7/0 (25-26) (C)
來函檔號 Your Ref. : LS/B/9/2025

By email

14 March 2025

Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Email : jlhcheng@legco.gov.hk)

Dear Mr Cheng,

Air Passenger Departure Tax (Amendment) Bill 2025

Thank you for your letter dated 11 March 2025. Our response to the questions raised is set out below.

To support our streamlining proposal on the existing financial arrangement for handling the payment of administration fee by the Government in the context of the air passenger departure tax ("APDT"), we have quoted relevant provisions under the Road Tunnels (Government) Ordinance (Cap. 368), the Tsing Sha Control Area Ordinance (Cap. 594) and the Waste Disposal Ordinance (Cap. 354) as examples, where the Financial Secretary ("FS") approves the payment to an operator of a Government tunnel and a waste disposal facility, or remuneration/reimbursement retained by the operator under an agreement with the Government, subject to conditions, the payment or remuneration/reimbursement retained shall not form part of the general revenue. The agreements under these Ordinances are management agreements which stipulate, among other things, the obligations of the operators and the administration fees / remuneration that can be paid to them by the Government.

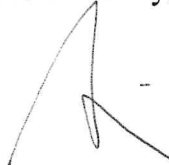
In the case of APDT, the obligations of the airlines and the helicopter company (hereinafter referred to as "aircraft operators") as well as the payment of administration

fee to them are provided under the Air Passenger Departure Tax Ordinance (Cap. 140). There is no separate agreement between them and the Government. In reality, it is also not practical for the Government to negotiate and sign an agreement with each of the airline operating at the Hong Kong International Airport ("HKIA"). Unlike the cases under the abovementioned Ordinances where there is only one operator for each Government tunnel and waste disposal facility, there are more than 120 airlines regularly operating at the HKIA. In addition, the number of airlines changes from time to time and some of the airlines do not have representative offices in Hong Kong.

While no agreement has been signed between the Government and the aircraft operators, according to the established practice, the Civil Aviation Department ("CAD") has informed all of them, and will inform any new ones, of the detailed arrangements for the collection of the APDT in writing, including the information to be filed, the computation of the amount of APDT collected to be retained as administration fee, and the date of transferring the remaining sum to the Government. The CAD will continue this practice to ensure that all aircraft operators will be well-informed of the operational arrangements as well as any updates.

With the APDT Ordinance governing the relationship between the Government and the aircraft operators, as well as the established practice of the CAD to communicate with them on the operational arrangements, we consider it sufficient to empower the FS to approve them to retain part of the APDT collected for offsetting the administration fees payable to them without the need for agreements between them and the Government. The CAD will regularly review the list of aircraft operators required to collect APDT on behalf of the Government and seek approval from the FS as necessary.

Yours sincerely,



(Miss Josephine TSANG)

for Secretary for Financial Services and the Treasury

c.c.

Civil Aviation Department
Department of Justice

(Attn: Ms Eileen Yuen)
(Attn: Mr Wallance Ng)