LEGAL COMMITTEE – 40TH SESSION

(Montréal, 26 – 30 October 2026)

Agenda Item 6 Any other business

INTERNATIONAL TAX COOPERATION AND THE ICAO FRAMEWORK FOR INTERNATIONAL AIR TRANSPORT

(Presented by the International Air Transport Association)

1. INTRODUCTION

1.1 IATA wishes to draw the Legal Committee's attention to ongoing negotiations within the United Nations on a Framework Convention on International Tax Cooperation and an early protocol on the taxation of income from cross-border services. These negotiations may have implications for the established ICAO policy framework on the taxation of international air transport.

1.2 ICAO has long recognized that the inherently international character of air transport gives rise to particular taxation issues requiring specific attention. ICAO's Policies on Taxation in the Field of International Air Transport (Doc 8632) provide guidance to Contracting States, including that they should, to the fullest possible extent, grant reciprocal exemption from taxation on the income of air transport enterprises of other Contracting States derived from the operation of aircraft in international air transport. States may give effect to this principle through double taxation agreements, air services agreements or domestic reciprocal exemption provisions.

1.3 The present UN negotiations provide an important opportunity to ensure coherence between emerging international tax instruments and ICAO's established policy framework on the taxation of international air transport, together with the existing agreements through which that framework is implemented. IATA considers that ICAO, as the United Nations specialized agency responsible for international civil aviation, has an important role in contributing its aviation-specific expertise to this process and supports ICAO's continued engagement, as appropriate, to ensure that ICAO policies and existing aviation-specific arrangements are appropriately taken into account.

2. THE ESTABLISHED ICAO FRAMEWORK

2.1 ICAO's policy on the taxation of international air transport is longstanding. Doc 8632 consolidates the organization's policy in this field and reflects the particular characteristics of international air transport, including the operation of a single international network across multiple jurisdictions. In relation to airline income, the policy supports reciprocal exemption as the approach for avoiding the

[1] English, Arabic, Chinese, French, Russian and Spanish versions provided by the International Air Transport Association.

attribution of the profits of an integrated international operation among numerous States in which an airline may operate.

2.2 This approach is not merely a matter of administrative convenience. It promotes certainty in the allocation of taxing rights and reduces the risk of overlapping claims and multiple taxation. It is also reflected in the legal architecture supporting international air services. States give effect to reciprocal exemption through a range of bilateral and domestic mechanisms, including double taxation agreements, air services agreements and domestic reciprocal exemption provisions. The interaction between new multilateral tax rules and these existing instruments therefore raises important legal and policy questions.

2.3 ICAO's policy framework represents a well-established approach to the coordinated exercise of State taxation powers and has been implemented by States through bilateral agreements and domestic measures. The continued effectiveness of this framework depends upon emerging international instruments taking proper account of existing ICAO policy and the agreements through which States have implemented it.

3. DEVELOPMENTS UNDER THE UN FRAMEWORK CONVENTION

3.1 The Intergovernmental Negotiating Committee established by the United Nations General Assembly is developing the Framework Convention on International Tax Cooperation and two early protocols. The current draft of the first protocol, concerning taxation of income from cross-border services, contains a specific provision stating that income from international traffic is not within the scope of the Protocol. IATA supports the retention of a clear and effective provision to this effect. The exclusion should preserve the established international approach to income from the operation of aircraft in international traffic, including income from directly connected and ancillary activities.

3.2 The Framework Convention itself also requires careful consideration. Provisions concerning the fair allocation of taxing rights and the relationship between the Convention, its protocols and existing international agreements should not have the effect of indirectly modifying established international air transport-specific allocations of taxing rights. In particular, State adherence to a protocol should remain genuinely optional, and existing bilateral or other international agreements should continue to apply unless the States concerned mutually agree to amend them and expressly do so.

3.3 These issues are legal as well as fiscal. A new multilateral framework may coexist with a substantial body of bilateral tax and air services agreements addressing the taxation of international air transport. Uncertainty as to the relationship between those instruments could create competing claims to tax the same international operation, increase the risk of double or multiple taxation and generate disputes concerning the interpretation and application of successive international agreements.

3.4 The objective should therefore be coherence rather than the creation of parallel or competing rules for international aviation. The developing UN instruments can accommodate broader international tax objectives while preserving established sector-specific arrangements. Express scope provisions and clear relationship clauses are practical means of achieving that result.

4. ENGAGEMENT

4.1 The current negotiations concern instruments being developed elsewhere within the United Nations system, but they engage matters on which ICAO has longstanding and established policies and substantial institutional expertise.

4.2 IATA accordingly encourages civil aviation officials and civil aviation legal specialists to engage on the part of their State, as appropriate, with the United Nations Intergovernmental Negotiating Committee and relevant United Nations bodies during the development of the Framework Convention and its protocols. In parallel, IATA supports ICAO's continued engagement, as appropriate, in order to contribute its aviation-specific policy and legal expertise to the process. IATA stands ready to provide industry legal and operational expertise in support of such engagement.

5. ACTION BY THE COMMITTEE

5.1 The Legal Committee is invited to:

a) note the views expressed in this Working Paper;

b) reaffirm the importance of ICAO's established policies on the taxation of international air transport, including Doc 8632, and the legal predictability provided by the agreements and arrangements through which those policies are implemented;

c) recognize the importance of ensuring that the UN Framework Convention on International Tax Cooperation and its protocols do not inadvertently displace or undermine existing international air transport-specific arrangements for the allocation of taxing rights;

d) encourage Contracting States, as appropriate, to ensure coordination between their civil aviation authorities and the officials representing them in the Intergovernmental Negotiating Committee on matters affecting the taxation of international air transport; and

e) support ICAO's continued engagement, as appropriate, in the work of the Intergovernmental Negotiating Committee, with a view to ensuring that the established ICAO framework governing the taxation of international air transport is appropriately reflected in the development of the Convention and its protocols.

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