



WORKING PAPER

WORLDWIDE AIR TRANSPORT CONFERENCE (ATCONF)

SIXTH MEETING

Montréal, 18 to 22 March 2013

Agenda Item 2: Examination of key issues and related regulatory framework

Agenda Item 2.6: Taxation of and other levies on international air transport

TAXATION OF INTERNATIONAL AIR TRANSPORT

(Presented by the Secretariat)

EXECUTIVE SUMMARY

This working paper examines the issue of taxation of international air transport and the impact on the development of air transport. In addition, it discusses the need for more effective measures to improve the implementation of ICAO policies on taxation.

Action: The Conference is invited to:

- a) review the information;
- b) approve, for the optional use by States, the regulatory arrangement presented in paragraph 5;
- c) endorse the conclusions in paragraph 6; and
- d) adopt the recommendations presented in paragraph 7.

References: ATConf/6 reference material is available at www.icao.int/meetings/atconf6.

1. INTRODUCTION

1.1 Although taxation issues are not addressed specifically in the Convention on International Civil Aviation (Chicago Convention), Article 24 is relevant as it deals with exemptions for levies on fuel and aircraft equipment.

1.2 ICAO policies and guidance material on taxes are clearly defined in Assembly Resolution A37-20, Appendix E, as well as in the *ICAO's Policies on Taxation in the Field of International Air Transport* (Doc 8632).

1.3 Nevertheless, the issue of taxation of international air transport remains a concern as it could create impediments to the sound development of air travel. Having noted the proliferation of taxes, ICAO Assembly Resolutions have repeatedly urged Member States to follow the ICAO policies on taxation and not to impose taxes on the sale or use of international air transport.

2. ASSESMENT OF THE CURRENT SITUATION

2.1 In international air transport, air carriers have encountered situations where taxes on the sale or use of international air transport are in contradiction to the ICAO policies on taxation as contained in Doc 8632. According to the industry, such taxes are counterproductive, since in many cases, the revenue raised is far outweighed by the economic benefits that are relinquished as a result of reduced demand for air travel and air cargo shipments.

2.2 Regarding the proliferation of taxes during the last ten years, some examples are provided here below. In some European States, taxes levied on air passengers, but not levied on other modes of international transport, have been introduced under various names, such as “air passenger duty”, “air transportation tax”, “air travel tax”, etc. They range in value from USD 4 to USD 260 depending on the destination and class of travel. Other taxes, for purposes outside aviation, such as “Solidarity” taxes established to combat different types of diseases, have also been introduced in approximately twelve States. The current solidarity taxes clearly discriminate against air transport, as they should not be levied on a particular sector.

2.3 The past decade has also seen the development of tourism taxes in some regions, in particular Latin America, the Caribbean and to a lesser extent in Africa, ranging from USD 1.50 to USD 55. In many cases, revenues from the tourism taxes such as Tourism Enhancement Fee and Travel Promotional levies are not being reinvested in tourism development.

2.4 Other States impose value added tax (VAT) and various sales taxes on: a) fuel and other items purchased within their borders although used in international air transportation; b) air navigation and overflight charges, passenger user charges and/or services fees; c) capital purchases such as importation of air; and d) international air transactions on cargo or excess baggage. In addition, a large number of States levy different sales taxes on the value of tickets for international air transportation (as of 2011, 15 States in Africa, 9 in the Caribbean, 17 in Latin America, one in each of the Middle-East and Asia Pacific regions). Although some of the above taxes only apply when tickets are sold inside the State and/or when travel originates from that State, the place of sale remains irrelevant for tax purposes, as an international air transport service should not be subject to taxation.

3. ICAO WORK AND RELATED POLICY GUIDANCE

3.1 ICAO makes a clear distinction between user charges and taxes. As defined by the ICAO Council, a charge is a levy that is designed and applied specifically to recover the costs of providing facilities and services for civil aviation, and a tax is a levy that is designed to raise national or local government revenues, which are generally not applied to civil aviation in their entirety or on a cost-specific basis.

3.2 A detailed status of State implementation of the policies can be found in the Supplement to Doc 8632 and is also available online at <http://www.icao.int/publications/pages/publication.aspx?docnum=8632> where the position and comments of States pertaining to Resolutions and Recommendations in the field of taxation are reflected. The majority of the eighty-five States that notified ICAO regarding status of implementation adhere to the recommendation of the Council not to impose taxes inconsistent with the policies. Such notifications generally refer to the condition of reciprocal exemptions. It is worth noting that the level of reporting by States remains low in spite of the Secretariat effort to solicit input so as to make available the most updated information.

3.3 The relevance of ICAO policies on taxation and their implementation by States can be assessed by provisions found in air services agreements (ASAs). Over ninety-five per cent of the 2000 ASAs contained in the ICAO Air Services Agreement Database extend the exemptions to fuel and aircraft equipment and about twenty per cent grant reciprocal exemptions from taxes on income of international air transport. In addition, States in a number of instances conclude separate or specific bilateral tax conventions that allow the companies of the two States to avoid double taxation on income and on capital. However, with respect to taxes on the sale and use of international air transport, States have not engaged in ASAs that grant reciprocal exemptions to reduce or eliminate taxes recognized as harmful to the growth of travel and trade.

3.4 ICAO also developed a Template Air Services Agreement (TASA) on the basis of model clauses or language found in various ASAs, for optional use by States in air services agreements. Although, the TASA includes an Article on Taxation covering the exemption of income and capital in light of Doc 8632, it addresses in a limited way the concerns of the industry regarding taxation on the sale and use of international air transport.

4. DISCUSSION

4.1 In addition to the policies adopted by ICAO, some policies on taxation have also been formulated at the national or regional level. For instance, African air carriers are opposed to the use of charges and taxes for revenue-generating purposes. At the Second Ordinary Session of the African Union (AU) Conference of Minister of Transport (CAMT) held in Luanda, Angola from 21 to 25 November 2011, the African Transport Ministers have voiced opposition to any imposition of taxes that would add to the cost of air transport and drain income from the sector towards other activities.

4.2 Some regional organizations and industry associations, such as the Airports Council International (ACI) and the International Air Transport Association (IATA), have also developed policies that are opposed to discriminatory and unfair government taxation on air transport. The main principles on taxation contained in ICAO policies are frequently adopted by international organizations in policy documents.

4.3 The World Tourism Organization (UNWTO), while not opposed to taxes per se, as part of the overall fiscal responsibility of States, considers that travel taxes should be scrutinized objectively to avoid excessive burdens on travellers/companies with a view to reducing taxes that have a negative impact on travel and, hence, on tourism development.

4.4 In spite of these policies, the past decade has seen an unprecedented proliferation of taxes levied on air passenger tickets. It remains also an issue that aviation is perceived as not being under-taxed in contrast to other modes of transport; some sectors benefit from national State subsidies. This trend, coupled with the lack of transparency and discriminatory practices against air transport vis-à-vis other modes of transport, is causing serious concern within the industry, and has a negative impact on the sustainable development of air transport, which, ultimately, negatively impacts national economic development.

4.5 Industry associations and regional organizations have always been very active in promoting ICAO policies on taxation. Overall, ICAO policies on taxation remain valid and there is no need for amendment at this stage. However, as stressed by the Council, the policies on taxation would be reviewed and adjusted if, at any time, the present position of the Organization on environmental charges and taxes should change in a way that could have implications for these policies.

4.6 It appears, therefore, that the principal issue remains with States' implementation of existing policies. Although the implementation of ICAO policies, in general, will be addressed under Agenda item 2.8, some actions, such as enhancing States' awareness and knowledge of ICAO policies on taxation through better dissemination using national websites, regularly updating States' positions in the Supplement, and strengthening cooperation with industry stakeholders, could be envisaged.

5. PROPOSED REGULATORY ARRANGEMENT

5.1 Unlike the case of the reciprocal exemptions for fuel and technical supplies of air carriers engaged in international air transport, and income of aircraft and movable property, States have not included in their ASAs a commitment to reduce or eliminate taxes on the sale and use of international air transport.

5.2 An optional regulatory provision could be included in ASAs with respect to the sale and use of international air transport which could help improve the implementation of ICAO policies and, if adopted by States, could reduce the burden and eliminate taxes. It would also reflect the fact that the imposition of taxes on the sale or use of international air transport not only increases the cost of air travel but also creates costs and inconveniences for users, as well as airport facilitation problems.

5.3 It is proposed that the TASA Article on Taxation be amended to bring into the international regulatory regime a provision from the ICAO policies on taxation concerning the exemption, reduction and elimination of taxes on air traffic. The proposed provision is shown as new text highlighted with grey shading in the **Appendix** and would read as follows:

“.... Each party shall undertake to reduce to the fullest practicable extent and make plans to eliminate as soon as its economic conditions permit all forms of taxation on the sale or use of international air transport, including such taxes for services which are not required for international civil aviation or which may discriminate against it.”

5.4 The regulatory provision is proposed for consideration by the Conference for States to use at their discretion in air services agreements. It could also be used in a Memorandum of Understanding (MoU) or Memorandum of Consultation (MoC). Such a provision, if included, will not encompass areas to be covered under double-taxation agreements (DTAs). This explanation would be reflected in the Commentary to the TASA Article on Taxation.

6. CONCLUSIONS

6.1 In light of the discussion above, the following may be concluded:

- a) the air transport industry has, in recent years, witnessed the proliferation of various types of taxes and levies, and the situation is likely to deteriorate in the coming years. This trend, coupled with the lack of transparency and discriminatory practices against air transport vis-à-vis other modes of transport, is causing serious concern within the industry, and will have a negative impact on the sustainable development of air transport, ultimately affecting negatively national economic development; and
- b) ICAO has clear policies on taxation and user charges, which remain valid. States should be urged to apply these policies in their regulatory practices, in accordance with Assembly Resolution A37-20, Appendices E and F. ICAO should continue to take the necessary measures to enhance States' awareness of its policies on taxation and user charges and promote application more vigorously.

7. RECOMMENDATIONS

7.1 The following recommendations are proposed for consideration by the Conference:

- a) ICAO has clear policies on taxation, which remain valid. States are urged to apply ICAO policies on taxation in regulatory practices, in accordance with Assembly Resolution A37-20, Appendix E, and to ensure that the policies are followed by relevant authorities within States;
- b) States are requested to avoid double taxation in the field of air transport;
- c) ICAO should continue to take the necessary measures to enhance States' awareness of its policies on taxation and promote application more vigorously; and
- d) ICAO should include the text below in the TASA Article on Taxation an optional regulatory arrangement on the imposition of taxes on the sale or use of international air transport:

“.... Each party shall undertake to reduce to the fullest practicable extent and make plans to eliminate as soon as its economic conditions permit all forms of taxation on the sale or use of international air transport, including such taxes for services which are not required for international civil aviation or which may discriminate against it.”

This clause is an option for use by States at their discretion. States may instead choose to use the arrangement in a MoU or a MoC. These will be reflected in the Explanatory Notes along with the clause in the TASA Article on Taxation.

APPENDIX

EXTRACT FROM THE ICAO TEMPLATE AIR SERVICES AGREEMENTS (TASA)

<p>Article 14 Taxation</p>	
<p>[Paragraphs 1 through 3, option 1 of 2]</p> <ol style="list-style-type: none">1. Profits from the operation of the aircraft of a designated airline in international traffic shall be taxable only in the territory of the Party in which the place of effective management of that airline is situated.2. Capital represented by aircraft operated in international traffic by a designated airline and by movable property pertaining to the operation of such aircraft shall be taxable only in the territory of the Party in which the place of effective management of the airline is situated.3. Where a special agreement for the avoidance of double taxation with respect to taxes on income and on capital exists between any two of the Parties, the provisions of the latter shall prevail.	<p><i>A provision on the taxation of income and capital in agreements is not widespread, in part because such matters may be the subject of a separate treaty on double taxation between the parties. One is presented above in light of the policy of ICAO (Doc 8632) that such an exemption be granted. Since the issue of taxation and taxation agreements between States would be an issue for taxation financial authorities, a provision such as is presented here on air transport taxation may not be within the competencies of aeronautical authorities but would require the involvement of those authorities in its formulation and negotiation.</i></p> <p><i>In this alternative, paragraphs 1 and 2 address the taxation of income and capital respectively.</i></p> <p><i>Paragraph 3 provides for a treaty between the Parties on double taxation to override the provisions of this agreement.</i></p>

<p>[Paragraphs 1 through 4 3, option 2 of 2]</p> <p>1. Profits or income from the operation of aircraft in international traffic derived by an airline of any Party, including participation in inter-airline commercial agreements or joint business ventures, shall be exempt from any tax on profits or income imposed by the Government of each Party.</p> <p>2. Capital and assets of an airline of any Party relating to the operation of aircraft in international traffic shall be exempt from all taxes on capital and assets imposed by the Government of each Party.</p> <p>3. Gains from the alienation of aircraft operated in international traffic and movable property pertaining to the operation of such aircraft which are received by an airline of any Party shall be exempt from any tax on gains imposed by the Government of another Party.</p> <p>[4 5.* Each Party shall on a reciprocal basis grant relief from value added tax or similar indirect taxes on goods and services supplied to the airline designated by another Party and used for the purposes of its operation of international air services. The tax relief may take the form of an exemption or a refund.]</p> <p>Proposed regulatory provision</p> <p>5. Each party shall undertake to reduce to the fullest practicable extent, and make plans to eliminate as soon as economic conditions permit, all forms of taxation on the sale or use of international air transport, including such taxes for services which are not required for, or discriminate against, international civil aviation.</p>	<p><i>This alternative exempts airlines from certain taxes imposed by the Government of each Party rather than specifying where airlines are taxable, i.e., in the territory of effective management of the airline, thereby clarifying the scope of tax exemptions.</i></p> <p><i>Paragraph 1 specifically exempts profits and income from inter-airline commercial agreements.</i></p> <p><i>The exemption is reciprocal though its coverage may vary as indicated by the bracketed text. For example, the Parties may also choose to include import restrictions, or airline supplies such as ticket stock, or computer equipment.</i></p> <p><i>The provision is optional and is provided for use at the discretion of States, either in the air service agreement itself or in a Memorandum of Understanding (MoU) or Memorandum of Consultation (MoC). Such a provision, if included, will not include areas to be covered under avoidance of double-taxation agreements (DTAs).</i></p> <p><i>The provision is intended to eliminate to the extent possible: a) taxes on gross receipts of operators and taxes levied directly on passengers or shippers; b) taxes represented by charges for functions or services which are not required for</i></p>
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international civil aviation; and c) taxes that discriminate against international air transport or against any air carriers operating on the same routes.

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