



Committee on Economic Development of Air Transport – Topic 2

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¹ This paper reflects the author's personal views and cannot be considered as the views of ICAO.

THE TAXATION OF INTERNATIONAL AIR TRANSPORT

1. Introduction

The taxation of international air transport is one of the most complex questions in the economic regulation of the sector. It has been considered in the context of the desire of nations to ensure the continuous development of international air transport as put in the Preamble of the Chicago Convention: “*that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically*”. At the same time, taxation has a direct impact on State budgets, a subject matter that goes into the core of sovereignty, a basic principle of the Chicago Convention. More recently, taxation has also been discussed in the context of the environmental and climate change policies of States with the objective of reducing the level of emissions coming from the operation of air transport.

2. Regulatory framework

ICAO policies on the taxation of international air transport go back to the beginning of the development of our modern framework for the regulation of international civil aviation, the Chicago Convention from 1944, which in its Article 24 sets out legally binding restrictions on States to introduce “customs duties” on the core physical elements necessary for international air navigation. This was followed up by regular discussions in the ICAO Council and Assembly as reflected in a series of Resolutions by the governing bodies of ICAO. ICAO Doc 8632 – ICAO’s Policies on Taxation in the field of International Air Transport, lastly updated in 2000 as the third edition, gives a comprehensive overview of how ICAO, and States when acting within ICAO, consider the development of international air transport from the perspective of taxation.

First of all, it is important to note that ICAO policies on taxation make a clear “distinction between a charge and a tax: charges² are levies to defray the costs providing facilities and services for civil aviation, while taxes are levies to raise national or local government revenues that are applied for non-aviation purposes.”³ However, as discussed below, such a distinction may be less straightforward to apply in practice. Further complication was added through the ICAO discussions on emission-related charges and taxes.⁴

² ICAO policies and guidance on charges are set out in the Statements by the Council to Contracting States on Charges for Airports and Air Navigation Services (Doc 9082)

³ ICAO Doc 8632, p3

⁴ ICAO Council Resolution on Environmental Charges and Taxes at <https://www.icao.int/sustainability/Pages/eap-im-levies.aspx#:~:text=In%20a%20Resolution%20adopted%20on%209%20December%201996,and%20by%20funding%20research%20on%20development%20of%20technology%29>.

In fact, ICAO policies on taxation are rather straightforward: “*the imposition of taxes on international air transport, such as on aircraft, fuel, and consumable technical supplies, on the income of international air transport enterprises, and on the sale or use of such services, may have an adverse economic and competitive impact on international air transport operations*”⁵ To put it simple: do not tax aviation so that it can flourish.

For the purposes of laying down detailed taxation policies, ICAO has grouped physical aviation assets, operational activities as well as income therefrom into four categories:

Fuel, lubricants and other consumable technical supplies

Importantly, Article 24 (a) of the Chicago Convention provides that fuel and lubricating oils *on board* an aircraft of a Contracting State, on arrival in the territory of another Contracting State and retained *on board* on leaving the territory of that State, shall be exempt from various duties and charges.

It is then added that “many States” exempt from taxation all fuel and lubricants on board of an aircraft engaged in international transport on arrival to its territory and, on the basis of reciprocity, to exempt from or refund taxes on fuel and lubricants *taken on board* at the final airport in its territory.

Finally, ICAO recommends States to extend such exemptions or refunds to other consumable technical supplies, such as de-icing fluid, hydraulic fluid, cooling fluid etc.

ICAO also clarifies that the expression “customs and other duties” shall include import, export, excise, sales, consumption and internal duties and taxes of all kinds levied upon the fuel, lubricants and other consumable technical supplies, regardless of the names attached to such levies in different countries.

Income of international air transport enterprises; aircraft and other movable property

In this area, ICAO’s objective is to avoid the double or multiple taxation of the earnings of international air transport enterprises and of aircraft and other movable property associated with the operation of aircraft engaged in international air transport and to limit taxation to the State in which any such enterprise has its fiscal domicile. Article 24 (a) of the Chicago Convention explicitly refers to aircraft to remain “free of duty” when used to carry out international flights. Regarding the taxation of the income of airlines, there has been general consensus, going beyond ICAO, that only the State should tax such income where the airline is domiciled for tax purposes. This is reflected in the Model Tax Conventions prepared by the UN and OECD.

⁵ ICAO Doc 10184, Assembly Resolutions in Force (as of 7 October 2022), p III-9

Sale and use of international air transport

As regards the sale and use of international air transport, ICAO recommends States 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 transport by air, including taxes on gross receipts of operators and taxes levied directly on passengers or shippers.

Spare parts and equipment

Article 24 (b) of the Chicago Convention exempts from customs duties spare parts and equipment imported into one State for incorporation on or use on an aircraft of another State engaged in international air navigation. This exemption is important to ensure the smooth procedures for repair and maintenance of aircraft whichever country they are in when repair or maintenance needs to be done.

3. Legislative and policy instruments

It is also important to examine which legislative/policy instruments ICAO has used to (help) implement its taxation policies in practice?

- As we have seen, Article 24 of the Chicago Convention contains provisions, which have mandatory status under international law, that is they are legally binding on States.
- As part of its guidance material, ICAO has developed template clauses on *Customs duties* (Article 13) and on *Taxation* (Article 14), which can be found in the ICAO Template Air Services Agreement⁶. These clauses are recommended to be included in bilateral air services agreements negotiated, signed and concluded between States. Once included in the agreements, the clauses become legally binding on the Parties under international law.
- As mentioned, ICAO has developed comprehensive policies on taxation, which are summarised in ICAO DOC 8632 - ICAO's Policies on Taxation in the field of International Air Transport. Doc 9587 - Policy Guidance and Material on the Economic Regulation of International Air Transport also contains guidance on taxation. Finally, ICAO Assembly Resolutions continue to cover taxation⁷ and are regularly updated. The key and quite clear message therein is that the ICAO Assembly "*Urges Member States to follow ICAO's Policies on Taxation in the Field of International Air Transport as contained in Doc 8632, and to avoid imposing discriminatory taxes on international aviation*", that is to exempt international air transport from taxation to the extent possible. While ICAO policies are not legally binding on States *per se*, they have a high level of authority given that practically all States are represented in ICAO, a specialised agency of the United Nations, which is responsible for the development of international civil aviation at the global level.

⁶ Appendix 1 to ICAO Doc 9587.

⁷ ICAO Doc 10184, Assembly Resolutions in Force, A41-27, Appendix b. Taxation, p III-9

4. Challenges to the status quo

While ICAO's taxation policies seem to follow a fair logic based on the desire of States to develop international air transport, they have been subject to challenges mainly by the same States that had decided upon these policies when acting within ICAO. This is understandable from the fact that, unlike in the area of aviation safety, ICAO is not the sole authority when it comes to the taxation of international aviation. Fiscal authorities in States have the final say in taxation matters and they do not necessarily are aware of or follow ICAO policies on taxation. Other State policies, mainly environment protection and climate change, may also play a role in the taxation of air transport.

Below, we will refer to a few challenges to ICAO's taxation policies to highlight the complexity of the matter.

Ticket (and other) taxes

While ICAO has made a clear distinction between taxes and charges (see above), in practice such distinction can be blurred.⁸ Indeed, governments have been creative in introducing taxes (charges, levies, fees etc.) typically called "ticket tax" or "departure tax", which in many cases are intended solely to raise government income.⁹ In other cases, they may be used to finance specific objectives, which may or may not concern the development of civil aviation as such, including "greening aviation" (see below).

Not surprisingly, ICAO and the global airline association, IATA have criticized ticket (and other) taxes on air transport, claiming that "Ticket taxes imposed on passengers by governments or other charging authorities may reduce the demand for air travel, which is highly sensitive to price changes. This, in turn, will hamper economic growth."¹⁰

Favourable treatment of air transport

As we have seen, since the time of drafting the Chicago Convention in 1944, ICAO and its Member States have been keen on putting in place a favourable regulatory framework for civil aviation to ensure its continuous development. This is reflected in the Chicago Convention, ICAO policies including on taxation as well as the in the actual work of ICAO. However, some have argued that the preferential treatment of civil aviation vis-à-vis other modes of transport and economic sectors may not be adequate and questioned whether the tax exemptions granted to air transport enterprises and their activities are best practices in current times when air transport has seen tremendous growth, which is predicted to continue.

Environmental policies

Since the aviation sector is not covered by the 2015 Paris Agreement under the UNFCCC, ICAO has developed the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)

⁸ Mendes de Leon, P: Introduction to air law (Eleventh Edition), Kluwer, 2022 (pp 85-87)

⁹ See, for example, <https://www.aviation24.be/airlines/german-government-wants-to-increase-the-air-passenger-tax-but-rejects-a-kerosene-tax-in-domestic-aviation/>

¹⁰ <https://www.iata.org/en/programs/airline-distribution/taxation/ticket-taxes/>

as the central instrument to tackle greenhouse gas emissions from aviation. CORSIA is a global market-based framework offering a harmonized way to reduce emissions from international aviation¹¹, which is intended to be combined with other measures, namely technological improvements, operational improvements and sustainable aviation fuels. However, in this basket of ICAO measures “green” taxes or charges are not contemplated.

CORSIA has been subject to criticism partly due to a degree of uncertainty whether it will be able to achieve its objectives. For instance, certain States having large air transport industries have not yet agreed to participate in CORSIA. In any case, taxing air transport from the environmental perspective i.e. with a view of the “internalisation of climate-related externalities in this sector” has not been completely excluded.^{12 13}

UN Tax Committee

Somewhat surprisingly, even the rather straightforward ICAO policy on taxing an airline only in the State of its fiscal domicile has been put in question by the UN Tax Committee in the context of its regular review of the UN Model Double Taxation Convention. A proposal has been put forward to make airlines subject to the different tax jurisdictions where they operate or generate revenue, thus giving a much stronger say to the tax authorities of all those States.^{14 15}

It remains to be seen if the UN Tax Committee will move forward with this proposal. If so, further complexities will certainly arise. This example also shows that global consensus on even basic principles on the taxation of international air transport cannot be taken for granted.

¹¹ <https://www.icao.int/environmental-protection/CORSIA/pages/default.aspx>

¹² Study on the taxation of the air transport sector - Final Report, 2 July 2021

¹³ For a recent example, see <https://www.schengenvisainfo.com/news/denmark-approves-14-passenger-tax-to-finance-eco-friendly-aviation-transition/>

¹⁴ https://www.iata.org/contentassets/53a91210fd3b4f7f8818ec0a0accd65/tax_focus_unmodel_convention.pdf

¹⁵ <https://kluwertaxblog.com/2023/10/12/proposed-changes-to-the-un-tax-model-convention-10-reasons-why-article-8-must-be-kept-unchanged-for-airlines/>

Non-exhaustive list of potential questions to be addressed by the delegates

1. What is your State's policy with regard to the taxation of international air transport?
2. Has your State encountered internal policy challenges to harmonise different interests in this area, namely air transport development, budgetary considerations and, perhaps, environmental goals?
3. Do you believe that the current regulatory framework for the taxation of international air transport is still adequate to serve complex and sometimes conflicting public policy objectives in the 21st century, with due regard to sustainability?
4. If you do not believe so, under what considerations do you think the current framework should be reviewed? And would ICAO be the right forum for developing a new/revised global framework? How would it be possible to reach agreement on this sensitive issue?
5. If you believe ICAO should take on this task, what instruments would you propose to achieve success? Should, for example, the Chicago Convention be amended or a new multilateral treaty on the taxation of international air transport be drawn up? Would you start with discussions at expert level (bottom-up) or launch a high-level diplomatic set of actions (top-down) to try to garner political buy-in of States?
6. If you do not believe ICAO is the right forum, how can an effective, harmonised and fair global regulatory framework for the taxation of international air transport be designed?

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UN and OECD

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EU

Study on the taxation of the air transport sector - Final Report, 2 July 2021 at https://taxation-customs.ec.europa.eu/index_en?wt-search=yes