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Dhaka, Bangladesh.

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## VALUE ADDED TAX ON AERONAUTICAL AND RELATED CHARGES

Dear Mr. Bhuiyan,

On behalf of the International Air Transport Association (IATA) and its member airlines, I would like to thank you for taking the time to meet with industry representatives on Thursday, September 12 at your offices to discuss the imposition of Value Added Tax (VAT) on various aeronautical and related charges in Bangladesh.

As a follow up correspondence from this meeting and as requested, we are enclosing information which supports the assertion that VAT should not apply on various aeronautical and non-aeronautical charges levied by the Civil Aviation Authority of Bangladesh (CAAB) on international air transport, including the: 1) route navigation charge; 2) landing charge; 3) security charge; 4) boarding bridge charge; and 5) embarkation fee; 6) cargo security screening charge, and 7) license fee.

Attached are several important matters in relation to the imposition of VAT on the aforementioned charges for your kind consideration.

- International obligations and efficient taxation which do not support the imposition of VAT.
- Tax treatment in other jurisdictions (Saudi Arabia, UAE, Bahrain, Singapore, Member States of the EU and Canada). You will note amongst others, where VAT is not applied in most other countries, imposition of VAT may violate the terms of the Air Services Agreements concluded by Bangladesh with other countries.
- Provisions in the Bangladesh Value Added Tax and Supplementary Duty Act, 2012, where imposition of VAT appears at odds with the pertinent legislation.

Based on the above, we respectfully request the Government of Bangladesh to provide written confirmation that various aeronautical and non-aeronautical services rendered in relation to an aircraft operating international transport services are not be subject to VAT in Bangladesh.

IATA looks forward to hearing from you and would be happy to further discuss this important matter in greater detail if required.

Yours sincerely,

Conrad Clifford  
Regional Vice President  
Asia Pacific

cc. Mr. A H M Mustafa Kamal, Minister of Finance, People's Republic of Bangladesh  
Mr. Mohammad Mahbub Ali, Minister of Civil Aviation and Tourism, People's Republic of Bangladesh  
Air Vice Marshal M Mafidur Rahman, Chairman Civil Aviation Authority of Bangladesh  
Board of Airline Representatives, Bangladesh  
Mr. Vinoop Goel, Regional Director, Airports and External Relations, IATA  
Mr. Gregory Leshchuk, Manager, Industry Taxation, IATA  
Mr. Azhar Azahari, Asia Pacific Business Development and Area Manager, IATA

## IMPORTANT MATTERS IN RELATION TO THE IMPOSITION OF VAT ON VARIOUS AERONAUTICAL AND NON-AERONAUTICAL CHARGES

### International Obligations & Efficient Taxation

The imposition of VAT on aeronautical and non-aeronautical charges by CAAB on international air transport services of passengers or cargo would directly contradict accepted policies on taxation published by the International Civil Aviation Organization (ICAO), a specialized agency of the United Nations. Bangladesh, as a signatory nation to the Convention on International Civil Aviation (Chicago Convention) and having provided its Notification of Adherence to the Chicago Convention in December 1972, is a Contracting State of ICAO and has committed to adhering to the following:

- Article 15 of the Chicago Convention which states that: "*No fees, dues or other charges shall be imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons or property thereon*";
- Policies on Taxation in the Field of International Air Transport contained in ICAO Document 8632<sup>1</sup>, which specifies that "*each Contracting State shall reduce to the fullest practicable extent and make plans to eliminate ... 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*";
- Article 14 of the ICAO Template Air Services Agreement (ASA) which indicates that "*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 the other 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.*"

Specifically in relation to Article 14 of the ICAO Template ASA, and to the extent that Bangladesh has concluded one or more ASAs with a counterparty State that includes this provision, levying VAT on the provision of aeronautical and non-aeronautical services pertaining to international air transport, where Bangladesh airlines are not subject to VAT (or similar taxes) in the counterparty State, would violate the terms of the ASA.

We are currently aware of the existence of in excess of 40 bilateral ASA agreements between Bangladesh and other States. You will be aware that an ASA is a legally binding document under international law, where international law supersedes domestic law in the event of a contradiction by means of Article 27 of the Vienna Convention on the Law of Treaties that stipulates that "*a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.*"

Based on ICAO policies regarding the taxation of international air transport, and while the aeronautical charges themselves appear legitimate, the imposition of VAT on these charges does not adhere to the guidelines established by ICAO and agreed to by Bangladesh as a Contracting State.

We further understand that Article 25 of the Constitution of Bangladesh provides for the fact that Bangladesh shall respect international law and adhere to the principles espoused by the United Nations. Based on our analysis detailed above, it appears that Bangladesh is not in adherence with United Nations principles concerning international civil aviation.

Additionally, under the standard principles of a VAT regime, exports (including international air transport services) are to be zero-rated. This is explicitly noted in the Organisation for Economic Co-operation and Development's ("OECD") *International VAT/GST Guidelines* (2017)<sup>2</sup>, which states the following:

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<sup>1</sup> Available at: [http://www.icao.int/publications/Documents/8632\\_3ed\\_en.pdf](http://www.icao.int/publications/Documents/8632_3ed_en.pdf)

<sup>2</sup> Available at: <http://www.oecd-ilibrary.org/docserver/download/2317031e.pdf?expires=1518175454&id=id&accname=guest&checksum=28C75F3866AB0ED6E8404B512F54272C>

*"The application of the destination principle in VAT achieves neutrality in international trade. Under the destination principle, exports are not subject to tax with refund of input taxes (that is, "free of VAT" or "zero-rated")... In fact, the destination principle is the international norm and is sanctioned by World Trade Organization ("WTO") rules."*

Consequently, the provision of services (e.g., route navigation services, landing services, boarding bridge services, security services, embarkation services, etc.) to an aircraft operating international air transport services should not be subject to VAT in Bangladesh.

### **Tax Treatment in Other Jurisdictions**

In addition to the international tax standards that Bangladesh has committed to, it is important to note that the supply of most services in relation to international air transport is not subject to tax in many other jurisdictions, these include the Kingdom of Saudi Arabia (Saudi Arabia), in the United Arab Emirates (UAE), Bahrain, Singapore, in the Member States of the European Union (EU), and Canada, amongst others. The respective provisions in each of these jurisdictions' VAT rules/regulations is detailed below.

#### Saudi Arabia

Article 34 (Transportation services for goods or passengers outside the Kingdom and supplies relating to transportation), Subsection 5 of the Value Added Tax Implementing Regulations in Saudi Arabia states the following:

*"Any services relating to Goods or passenger transportation, as defined in article twenty-five of these Regulations are zero-rated provided these are either:*

- a) ancillary to and provided with a Supply of zero-rated international transport,*
- b) provided in respect of a qualifying means of transport at an airport or port.*

Services included under Article 25 of the Value Added Tax Implementing Regulations of Saudi Arabia that are VAT zero-rated when associated with international air transport include: *"a) port fees or charges, including docking, mooring, landing and parking fees; ... c) air navigation services; ... f) loading, unloading or reloading; ... i) cargo security services", etc.*

As a Contracting State of ICAO, Saudi Arabia adheres to the tax policies and standards associated within international air transport.

Please see **Appendix 1** for a copy of the VAT Implementing Regulations in Saudi Arabia.

#### UAE

Under the Cabinet Decision No. (52) of 2017 on the Executive Regulations of the Federal Decree-Law No (8) of 2017 on Value Added Tax (UAE VAT Executive Regulations) and Article 35 (Zero-rating Goods and Services Supplied in Connection with Means of Transport), the following goods and services associated with international air transport are VAT zero-rated:

*"1. The Goods and Services related to the supply of the means of transport mentioned in Article (34) of this Decision shall be subject to the zero rate if they are any of the following:*

*a. Goods... that are supplied in the course of operating, repairing, maintaining or converting means of transport in any of the following cases:*

*1) The Goods shall be incorporated into, affixed to, attached to or form part of those means of transport.*

*2) The Goods are consumable Goods that become unusable or worthless as a direct result of being used in the operation, repair, maintenance, or conversion process.*

*b. Services which are supplied directly in connection with means of transport referred to in Article (34) of this Decision for the purposes of operating, repairing, maintaining or converting those means of transport."*

The UAE is a Contracting State of ICAO and adheres to the tax standards and policies around international air transport.

Please see **Appendix 2** for a copy of the UAE VAT Executive Regulations.

#### Bahrain

Under Article 68 (International transportation of passengers and goods and related services) of the Executive Regulations on Value Added Tax (Bahrain), the following goods and services associated with international transport are VAT zero-rated:

*"C. Tax shall be imposed at the zero rate on a Supply of Services and Goods directly or indirectly associated with a Supply of international transportation of passengers and Goods, including the following Supplies:*

- 1) A Supply of Goods and Services for use or consumption on board a Means of Transport,*
- 2) Loading and unloading of machinery and equipment used for the transport of Goods, loading of products, unloading, transporting, stowing, packaging, weighing, measuring, monitoring, expertise (including expert Services, commissions closely related to export transactions and equipment intended for export),*
- 3) Rental of containers and equipment for the protection of Goods intended for export,*
- 4) Rental of machinery and equipment that is used to transport Goods intended for export,*
- 5) Security and storage of Goods intended for export,*
- 6) Packaging of Goods that are intended for export,*
- 7) Transactions necessary for export transactions which are carried out by an approved clearance agent of the Customs Department,...."*

The above listing of VAT zero-rated services associated with international transport from/to Bahrain is not exhaustive, but is indicative of the type of services that are not typically subject to VAT. Bahrain is also a Contracting State of ICAO.

Please see **Appendix 3** for a copy of the Bahrain VAT Executive Regulations.

#### Singapore

Section 21(3) (Zero-rating for exports and international services) of the Goods and Services Tax (GST) Act (Singapore) specifies that the following international services are to be GST zero-rated, including:

- l) "prescribed services in connection with — (i) the handling of ships or aircraft; or (ii) the handling or storage of goods carried in any ship or aircraft;*
- m) pilotage, salvage or towage services performed in relation to ships or aircraft;*
- n) services comprising the surveying of any ship or aircraft or the classification of any ship or aircraft for the purposes of any register;*
- o) the supply (including the letting on hire) of any ship or aircraft;*
- p) prescribed services comprising the repair, maintenance, broking or management of any ship or aircraft;"*

Moreover, the Third Schedule of the Singapore GST (International Services) Order provides additional details as to the nature of the 'prescribed services' associated with international (transport) services that are subject to GST zero-rating and which includes, amongst others, the following services:

- 1) Services supplied within any free trade zone or designated area of a port, terminal or airport for —  
(a) the handling of ships or aircraft; or (b) the handling or storage of goods carried in any ship or aircraft.*

Singapore is a Contracting State of ICAO.

Please see **Appendix 4** for a copy of the Singapore GST (International Services) Order. As the Singapore GST Act is over 250 pages in length, a copy of the Act has not been included herein but can be accessed online at: <https://sso.agc.gov.sg/Act/GSTA1993>.

#### Member States of the EU

Article 148 of the EU VAT Directive (Council Directive 2006/112/EC of 28 November 2006) specifically indicates that Member States of the EU (including the United Kingdom, Germany, France, Italy, Spain, etc.) shall VAT exempt the following transactions, including:

*" (f) the supply, modification, repair, maintenance, chartering and hiring of the aircraft referred to in point (e), and the supply, hiring, repair and maintenance of equipment incorporated or used therein;*

*(g) the supply of services, other than those referred to in point (f), to meet the direct needs of the aircraft referred to in point (e) or of their cargoes."*

As services such a route navigation, landing, boarding bridge, etc. are required in order to meet the direct needs of operating an aircraft, such services are not subject to VAT in Member States of the EU. All Member States of the EU are Contracting States of ICAO.

Please see **Appendix 5** for a copy of the EU VAT Directive.

#### Canada

Under Part V (Exports) of Schedule VI (Zero-Rated Supplies) of the Goods and Services Tax section of the Excise Tax Act (Canada), the supply of air navigation services to aircraft operating international transport services to/from Canada is zero-rated. The relevant section of the Excise Tax Act is included below as reference.

**2.2** A supply of an air navigation service (as defined in subsection 2(1) of the *Civil Air Navigation Services Commercialization Act*) made to a person who is registered under Subdivision D of Division V of Part IX of the Act at the time the supply is made, if

- (a)** the person carries on a business of transporting passengers or property to or from Canada, or between places outside Canada, by aircraft; and
- (b)** the service is acquired by the person for use in the course of so transporting passengers or property.

Canada is a Contracting State of ICAO.

As the Excise Tax Act (Canada) is almost 1,200 pages in length, a copy of the Act has not been included as reference herein but can be accessed online at: <https://laws-lois.justice.gc.ca/PDF/E-15.pdf>.

Based on the above provisions in Saudi Arabia, UAE, Bahrain, Singapore, the Member States of the EU, and Canada, respectively, these jurisdictions do not levy VAT on the provision of most services in relation to the operation of aircraft in international traffic to/from their territory, including aircraft of Bangladesh headquartered airlines. To allow equal and reciprocal treatment, a similar VAT-free status should be afforded to foreign airlines that operate air services to/from Bangladesh.

#### **Provisions in the Bangladesh Value Added Tax and Supplementary Duty Act, 2012**

Under the Value Added Tax and Supplementary Duty Act, 2012 (VAT Act, 2012) that entered into force on 1 July 2019 and fully repealed the previous Value Added Tax Act, 1991, it is our strong contention that the aeronautical and related charges in question are VAT zero-rated and not subject to tax at 15%.

In this respect, Section 24 (Supplies of Zero-Rated Services) of the VAT Act, 2012 indicates the following:

*"(11) The supply of the following services shall be zero-rated, namely:—*

- (a) a supply of services to any international transport;*
- (b) a supply of insurance services to the international transport of goods;*

- (c) a supply of the services of repair, maintenance, cleaning, renovation, modification, or otherwise physically affecting an aircraft or an ocean-going ship engaged in international transport;*
- (d) a supply to a non-resident, who is not registered, of services directly connected to the operation or management of an ocean-going ship or an aircraft engaged in international transport;*  
*or*
- (e) a supply of stevedoring services."*

Where Section 2 (Definitions) defines the term "international transport" and "ancillary transport services" as follows:

*"(12) "international transport" means, except the ancillary transport services, any of the following services of transportation of any passenger or good by road, water or air from one place to another, namely-*

- (a) from a place outside Bangladesh to another place outside Bangladesh;*
- (b) from a place outside Bangladesh to a place within Bangladesh; or*
- (c) from a place within Bangladesh to a place outside Bangladesh;"*

*"(11) "ancillary transport services" means any stevedoring services, lashing and securing services, cargo inspection services, services relating to preparation and processing of customs documentation, container handling services, and services relating to the storage and safe-keeping of transported goods or goods to be transported and any other similar service;"*

As such, the aeronautical and related services rendered by CAAB to aircraft operating international transport services to/from Bangladesh qualify as a supply of services to international transport under Section 24(11) of the VAT Act, 2012. Such services do not fall within the definition of ancillary transport services as they are directly related to, and necessary for, the operation of aircraft in international traffic. For example, aircraft would not be able to operate in the airspace above Bangladesh in the absence of route navigation services, land in the absence of landing services, disembark or embark passengers in the absence of boarding bridge services, etc. and as such, cannot be deemed ancillary transport services.

In addition, it is important to note that the definition of 'ancillary transport services' under Section 2 of the VAT Act, 2012 pertains specifically to cargo-related services (e.g., stevedoring services, lashing and securing services, cargo inspection services, container handling services, etc.), all of which are services not directly related, nor necessary, to the operation of aircraft and where aeronautical and related services do not fall within this definition.