



# **GUIDELINES FOR TAXATION OF INTERNATIONAL AIR TRANSPORT PROFITS**



# FOREWORD

The following position paper has been prepared by the International Air Transport Association (IATA) in order to explain the problems faced by international airlines in relation to taxation on income imposed by States in which they operate other than their own fiscal domicile.

The International Civil Aviation Organization (ICAO), which is a specialized agency of the United Nations and the international government organisation concerned with aviation, has adopted a consolidated Resolution regarding taxation of international air transport. The primary principle of ICAO policies on taxation is that there should be reciprocal exemption for taxation on earnings of international air transport by States in respect to international airlines, yet some ICAO Contracting States have not adopted this principle.

Where a State has not adopted the principle of reciprocal exemption on taxation of earnings, as recommended by ICAO, IATA believes that taxation of international airlines by a State should be on a net income basis; that is, on income earned within the State including the appropriate deduction of all expenses incurred in respect of the services provided in relation to that State, irrespective of where the expense was incurred. These principles are consistent with the ICAO Resolution.

The information contained herein is intended to assist various Government departments and international organisations in understanding the airlines' foreign taxation problems and to provide a rational basis for discussion between Government authorities and international airlines.



## 1. INTRODUCTION

1.1. IATA is an association of world air transport enterprises operating scheduled air services under flags of countries eligible for membership in the International Civil Aviation Organization (ICAO). The stated purposes of IATA include the promotion of safe, regular and economical air transport for the benefit of the peoples of the world, the fostering of air commerce, and the study of related problems. IATA's Charter also commits it to cooperate with other international organisations, including ICAO and the United Nations. The membership of IATA, as shown in **Appendix 1**, represents some 130 countries.

1.2. IATA is concerned with the approach of certain States to taxation of income of international airlines serving these States. There also appear to be certain misconceptions regarding tax treaties as they affect airline operations, and experience indicates that many tax administrations are not aware of how income is derived in foreign countries by international airlines. This paper attempts to explain the underlying position of IATA Member airlines and to elucidate some of the problems faced by the industry, together with background material of which tax administrations generally might be unaware. In addition, material is presented under section 8 on the benefits of international air transport to the economies of States which perhaps have not to date been fully appreciated.

1.3. From the outset it should be made clear that IATA and its members do not object to the payment of non-discriminatory, justly and equitably levied income taxes. They do however object most strenuously to taxes imposed, contrary to ICAO recommended practice, on gross receipts or turnover and to income taxes imposed on bases which do not take into account the profitability of the airline operations in that State. The industry respects fully the right of autonomous States to impose taxes, but the nature of international airline operations which form the network of global air commerce gives it a unique place in the economy of the States concerned.

## 2. BACKGROUND

2.1. In contrast to IATA, ICAO is an intergovernmental organisation and the specialised agency of the United Nations concerned with international civil aviation. The Convention on International Civil Aviation of 1944 (Chicago Convention) sets out the charter of ICAO. The aims and objectives of ICAO are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to:

- a) Ensure the safe and orderly growth of international civil aviation throughout the world;
- b) Encourage the arts of aircraft design and operation for peaceful purposes;
- c) Encourage the development of airways, airports, and air navigation facilities for international civil aviation;
- d) Meet the needs of the peoples of the world for safe, regular, efficient and economical air transport;
- e) Prevent economic waste caused by unreasonable competition;
- f) Ensure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines;
- g) Avoid discrimination between contracting States;
- h) Promote safety of flight in international air navigation;
- i) Promote generally the development of all aspects of international civil aeronautics.

2.2. The Chicago Convention therefore recognised from the beginning the need for improving the facilitation of international air transport by removing obstacles to free and unimpeded passage of aircraft, passengers, crews, baggage, cargo and mail across international boundaries.

2.3. The purpose of such facilitation is twofold. First to enable air commerce to take full advantage of the pre-eminent speed of the airplane as a medium of transportation and to prevent its' being hampered by excessive delays for documentation and other border-crossing requirements. Secondly, to avoid the imposition by individual countries of onerous burdens on international airlines in the form of taxation, insurance requirements, user charges, and the like, so that the benefits of air transport could be extended to all States served as economically as possible.

2.4. Neither the Chicago Convention nor bilateral air services agreements negotiated between States release international airlines from compliance with all of the normal legal and commercial obligations of a foreign enterprise in that State, e.g. company qualifications, registrations and taxes.

2.5. The problems of operating in a foreign country are numerous. They include the provision of adequate fuel supplies, the availability of on-board meals for departing passengers, the availability of hotel accommodation in case of aircraft delay, the remittance of proceeds of ticket sales free of exchange restrictions and the employment of qualified experts to service the aircraft and to administer the ground facilities.

2.6. The impression that international airlines do substantial business within States they serve is often misleading and inaccurate as the business they conduct in foreign States is incidental and ancillary to their primary international function. International airlines operate in the long term at lower margins of profit than most other businesses and differ materially from foreign business enterprises which engage in manufacturing, merchandising, natural resources extraction or other activities involving substantial internal presence in the States where they are located and operate.

2.7. Taxation on a basis other than net income leading to potential double taxation is one which causes significant concern to the airline industry.

### 3. INCOME TAX EXEMPTION

3.1. ICAO has a longstanding policy and guidance material for States on the taxation of certain aspects of international air transport, namely: the taxation of aviation fuel, lubricants and other consumable technical supplies; airline income and aircraft and the sale and use of international air transport, such as on tickets, passengers and airline gross receipts. The ICAO Council has undertaken a number of revisions to the policies on taxation and in February 1999 adopted a consolidated resolution published in the Third edition of Doc 8632, *ICAO's Policies on Taxation in the Field of International Air Transport*, issued in 2000. This document reaffirms and strengthens the principles underlying ICAO's policies in this field which among other things supported a policy of reciprocal exemption in respect of the income of international air transport enterprises, **Appendix 2**, and opposes taxes related to the sale or use of international air transport, i.e. taxes on gross receipts **Appendix 3**.

Doc 8632 also calls on Contracting States to notify ICAO of their practice and attitude to the Resolution. A supplement to this document, which includes the current responses of Contracting States regarding their position with respect to the Council's resolutions, can be found in **Appendix 4**.

3.2. In addition, the ICAO Assembly adopted in 2001 Resolution A33-19 which among other things refines ICAO's distinction between a tax and a charge and urges Contracting States to follow the resolution of the Council as contained in Doc 8632. This Resolution was since reaffirmed under Assembly Resolution as shown in **Appendix 5**.

3.3. In spite of the recommendations of ICAO, some States still do not provide for the reciprocal exemption of profits derived from the operation of foreign aircraft either pursuant to statutory provisions in the tax laws of the two States or by negotiation of tax treaties. Airlines from such States subsequently may be subject to income tax in other States when they come within the jurisdictional reach of those tax administrations.

3.4. In accordance with the ICAO Resolution, IATA's position is that the most reasonable and equitable means of dealing with income taxation in foreign States is on the basis of reciprocal exemption either by operation of income tax law, or by treaty.

3.5. Negotiation of full taxation treaties involves consideration of many factors and requires the ratification by the governments of both countries. However, in many States the income tax legislation makes provision for the exemption of profits from the operation of aircraft of a foreign country where that foreign State allows a reciprocal exemption. In these circumstances, the responsible Minister or the Commissioner of taxation is empowered to enter into an agreement by an exchange of letters, or something equally simple. An example of legislation with this provision is attached at **Appendix 6**.



## 4. THE DETERMINATION OF TAXABLE NET INCOME WHERE NO ICAO RECOMMENDED EXEMPTION APPLIES

- 4.1. IATA's position is to ensure that where there is no tax exemption the State allows for the taxation of international airlines on a net income basis.
- 4.2. IATA recognises that the amount of net income derived from any particular State by an international airline, and consequently the income tax payable in respect of that income, may be challenging to determine.
- 4.3. On the one hand, the majority of the distance flown by international airlines is outside the territorial jurisdiction of the State seeking to impose an income tax and therefore it is questionable whether that State has the right to impose income tax on revenues earned outside its jurisdiction.
- 4.4. On the other hand, by normal international fiscal standards, airlines operating to and from one State are often considered to have a branch under domestic tax laws or permanent establishment as defined in most double taxation treaties, and that establishment could expect to come within the jurisdiction of that State.
- 4.5. Operation of an airline to and from one State in its global network has an economic effect on its operations in every other State of its network and vice versa. It has therefore been considered by most tax administrations and by the airlines themselves that apportionment formulas provide a reasonable base on which to levy net income tax in States other than the State of fiscal domicile. **Appendix 7** provides a brief outline of several generally accepted net income apportionment formulas.
- 4.6. Any State which levies tax generally on a net income basis, should allow international airlines doing business within its jurisdiction to apportion expenses and other charges incurred during the year against the revenue derived in that same period. This should be irrespective of whether these expenses or other charges were actually incurred in the State seeking to levy tax. This permits a reasonable determination of the taxable net income of the international airline within the taxing State.
- 4.7. In contrast, taxation based on deemed profit or as a percentage of gross revenue has no relationship to operating profit, could result in double taxation and is discriminatory and regressive. IATA cannot proffer or endorse these methods of taxation and ICAO also does not endorse these forms of imposition.
- 4.8. Further, where the use of net income apportionment formulas by international airlines operating in a State other than the State of fiscal domicile generates a loss for any fiscal period, a carryforward of the resulting loss should be allowed in accordance with that State's domestic tax law provisions on utilisation of trading losses. The nature of international airline profits is highly cyclical due to a number of market forces including competition and the overall economies of the States served. By allowing loss carryforwards the State recognises that airline investments in personnel and infrastructure made in one fiscal period will benefit the State over many periods.

## 5. ACCOUNTING STANDARDS IN THE INDUSTRY

- 5.1 In 1947, ICAO introduced a data collection on air carrier financial data which would offer the possibility to identify revenues and expenses and also allow them to be directly compared with the related traffic carried and capacity offered. Commercial air carrier financial data are collected by ICAO through Reporting Form EF. The Form covers several financial statements as well as the traffic and capacity figures related to the financial data. These are: Part 1 - Profit and Loss statement; Part 2 - Balance Sheet; Part 3 - Statement of retained earnings; and, Part 4 - Revenue traffic and capacity statistics.
- 5.2 Each year statistics and financial statements are published by ICAO online in ICAO Data+ (<http://www.icao.int/dataplus>), the subscription for which is on payment by the users. As a consequence, all international airlines maintain their accounts on substantially similar lines. The amortisation and depreciation policies adopted by each airline do not vary greatly from airline to airline due to similarity of operations and the aircraft and equipment utilised. The magnitude of operations carried on and the high standards of cooperation among airlines due to the influence of IATA can justify the statement that the accounting results published by member airlines are not only factual, but represent a high degree of standardisation of accounting techniques.
- 5.3 In addition, airline accounts are audited by independent outside auditors on a regular and continuous basis so that published statements can universally be accepted as accurate, fair and systematic reflections of the operating results of the airlines concerned.
- 5.4 The local office/branch of an international airline is not able to prepare accurate profit and loss accounts as all the revenue applicable to that office/branch does not accrue locally nor is all the expenditure attributable to that office/branch paid locally. Consequently there is a significant difference between the accounting operation of the local office/branch of an international airline and the local branch of a foreign manufacturer.
- 5.5 The international airline actually earns or produces its revenue mainly while flying over international territory or waters, consequently the full cost of operating aircraft used to derive the revenue is not incurred in any one country, nor are those expenses which are incurred in that country necessarily appropriately chargeable solely against the revenue attributable to that country. For example, the cost of fuel and meals uplifted in country A is a cost of only the first segment flown out of A.
- 5.6 There is no adequate matching of costs unless the expenditure is apportioned partly to traffic joining the flight at A and partly to the traffic already on board. Therefore, the conventional method of preparing branch profit and loss accounts comprising identifiable local income and expenditure will not produce an accurate result when applied to the branch office of an international airline.

## 6. CONSIDERATION OF SOME ELEMENTS OF A NET INCOME FORMULA

6.1 In an effort to determine the net operating profit or loss of an international airline in any State IATA recommends the use of net income formulas for the apportionment of the global operating results. See **Appendix 7** for examples of generally accepted net income apportionment formulas that can be applied.

The following must be considered when applying net income formulas:

### A. Global Net Air Transportation Profit

6.2 IATA believes the global net air transportation profit in published financial statements of international airlines should be used for determining apportioned local net profit. The use of the published accounts is recommended because these are available in the public domain and are subject to audit by independent professional auditors.

6.3 The advantages to the revenue authorities of adopting the published accounts are considerable:

- a) Figures are easily authenticated.
- b) The impracticability of adjusting for every minor difference in tax and book treatment is avoided.
- c) Any differences between the taxable net income assessed by any State and the accounting profit of the airline are substantially eliminated over the course of time.
- d) Using the published accounts of the international airline instead of other more complicated methods saves considerable time and administrative effort for both the airline and the taxing State while preserving the tax collected.

6.4 IATA accepts that some States may choose to apply tax adjustments to published results, for example, to recognise the difference between book and tax depreciation.

### B. Local Revenue

6.5 The calculation of the gross revenue derived in a country will have a bearing on the amount of income tax payable after application of one of the apportionment formulas.

6.6 Some tax administrations assume that airlines derive their traffic revenue in the same manner as shipping companies, i.e. all local sales represent revenue of the selling airline.

6.7 There is a significant difference between the derivation of revenue by shipping companies and airlines due to 'interline' agreements and the free negotiability of IATA documentation amongst members which allows passengers to purchase, almost anywhere in the world, travel on any number of airlines as required to get them to their destination. For instance:

- a) Under the auspices of IATA, interline traffic agreements between airlines provide one airline with the facility to issue its own tickets for travel on another of any number of IATA airlines. For this reason a standard format of flight coupon is used by all IATA airlines including electronic tickets. Additionally, IATA tickets are freely interchangeable unless the class of travel paid for happens to be one restricted to the issuing airline only, e.g. some charter or inclusive tour fares.
- b) Normally, the carrying airline has a legal right to the revenue applicable to its carriage less a standard rate of commission. In this event, the selling airline only retains so much of the total sale value of the original transaction as it actually carries, plus the commission received on the balance.
- c) Where the ticket is sold by a travel agent, the selling airline only retains the portion of the total sale actually carried less the agent's commission on that portion.

6.8 All this necessarily imposes on each airline a high degree of standardisation of accounting processes, enabling the pro-ration of the total fare paid by passengers among participating airlines. This can only be accomplished at a central accounting office, requiring highly sophisticated data processing capabilities. Much the same considerations apply to cargo shipments although usually the itinerary agreed at point of origin remains fixed.

6.9 Because of the foregoing, it is clear that total local receipts for sales of tickets rarely equals the actual local revenue of the airline issuing the ticket in any State.

6.10 In addition, gross revenue, as reflected in the airlines' financial accounts, is flown revenue, the revenue earned when the carriage purchased by the passenger is actually performed and not sales revenue. As such, it is flown revenue which should be allocated to the country of source (see C overleaf).

## C. Source of Revenue

6.11 The determination of the source of revenue requires consideration of the following:

- a) The uplifting of a passenger in a particular State does not necessarily determine the source of that revenue.
- b) A ticket sold in country A for passage on a foreign airline involves the loss of currency to that country when the passenger boards that airline's aircraft in country A, it is reasonable for country A's tax administration to seek tax on the value of the carriage performed by that airline.
- c) On the other hand, a ticket sold in country B for a passenger who is merely visiting country A should not be taxed in country A as tax is payable in country B based on sale of transportation there. It is unreasonable to determine the local revenue derived by the foreign airline in country A by taking the gross uplifts of passengers. Nevertheless, the passenger from country B contributes considerably to country A's economy, by way of hotel accommodation, meals, local sightseeing tours, purchases of souvenirs, etc.
- d) Airline tickets are frequently written to include several airlines, depending on the itinerary of the passenger, in addition to the airline who sold the ticket. By agreement, the airline uplifting the passenger claims its share of revenue for carriage from the issuing airline. Additionally, a ticket once issued can be surrendered, partly used, or may be used on airlines different from those named on the original ticket.
- e) If revenue derived from the issue value of tickets is the basis of taxation it is impossible to apportion the tax to all airlines involved as these are not known for certain until after the passenger travels, and it is completely inequitable for the issuing airline to bear the whole burden of any income tax.
- f) As such, revenue sourced to a State should include only revenue accruing to the operating airline, excluding revenue claimed and remitted to other airlines. Airlines are able to produce this information on a consistent and accurate basis although not all use precisely the same accounting methods. What has been said of passenger revenue applies equally in respect of cargo.
- g) Commission can also be assigned to the point of sale if under the tax law it is deemed to have a source at the point of sale, while commission retained by other airlines would be excluded.

## 7. OFF-LINE CARRIERS

7.1 While IATA acknowledges the right of a government to impose taxes, it believes that income and similar taxes should not be imposed on an airline which does not have direct sales by its own office in a foreign country.

7.2 IATA's position is consistent with double taxation treaties that usually prescribe the minimum contact a resident of one country can have in the other country before the status of a permanent establishment and thus tax liability is reached. The standard form of agreement excludes from the definition of a permanent establishment, any business carried on through an independent broker acting in the usual course of his business.

7.3 It is the IATA position that where the airline's activities in a foreign country is limited to the sale of tickets by its own office for international transportation by air, its function in the jurisdiction is similar to that of a ticket broker and therefore one method to determine its taxable results could be by deducting from the commission earned on the sale of tickets, including deemed commission on its own sales, the amount of local costs incurred in earning that commission.

## 8. BENEFITS OF INTERNATIONAL AIR TRANSPORT TO COUNTRIES IT SERVES

8.1 The impact of international air transport on national economies is considerable in terms of benefits directly and indirectly traceable to airline operations. The more significant benefits include income flow from expenditures and the income multiplier effect, employment, commercial and trade advantages brought by speed of business air travel and air freight, tourism, improved communications, civil aircraft maintenance and overhaul, foreign exchange earnings and contributions to balance of payments.

### A. Income Multiplier Effect

8.2 Expenditures by airlines, airports, and their staff and airlines' passengers generate further far-reaching income flow through the multiplier process. Airlines and airports pay salaries and wages to their employees, purchase equipment, supplies and services, and pay taxes and make other payments to governments. Similarly, air passengers purchase goods and services in the countries or cities they visit and these all have multiplier effects.

8.3 These income flows give rise to secondary expenditures by airline and airport employees, hotels, restaurants, travel agents, freight forwarders, insurance companies, governments and other industries from which goods and services are purchased, and these too have multiplier effects on the economy. In this way, successive rounds of income and expenditure are generated by the expenditures of airlines and airports and their passengers that have an impact throughout the economy.

## B. Employment

8.4 One of the most significant advantages of international air transport is the way it acts as a generator of employment, directly and indirectly. Air transport, and to a greater extent the service industries it supports, are labour intensive and their importance as generators of employment is increasing.

8.5 Worldwide, the scheduled airlines directly employ 2.27 million people<sup>1</sup> and, in addition, airline expenditures and activities, directly and indirectly, generate employment for many millions more.

## C. Tourism and Trade

8.6 Tourism plays a significant part in international trade, and international air transport has made an enormous contribution to this development. Improved airline services and the availability of attractive air fares to the travelling public have been important factors in this development. Larger and fuel efficient aircraft have made an important contribution by enabling people to travel long distances quickly and by making shorter and more frequent visits possible.

8.7 Tourism spending has a strong regional and local impact, since the service industries required by tourists employ many persons. This impact comes from spending for hotel and accommodation, restaurant meals, travel agents and tour operators, local transport including taxi and car rentals, and other products and services purchased. In turn, these service industries purchase a wide range of products and services in these countries. Thus the benefits of tourist spending flow rapidly into the general economy. Certain expenditure by the tourist service industries is also made on imported goods and services, thereby stimulating international trade.

8.8 By assisting in the development of tourism and foreign trade, the airlines can make an important contribution to balance of payments positions and foreign currency earnings. Airlines are often important earners of foreign exchange in their own right. The existence of good air services also enhances the attractiveness of a country for commercial and industrial interests because of communications and trade advantages. This benefit is of considerable significance in attracting foreign investment and in creating new foreign trade opportunities.

## D. Other Benefits of International Air Transport

8.9 Further expenditure and income flows are produced by capital investment, expenditure on fuel, rents, interest, insurance, taxes and many other items. Since civil air transport requires a high rate of investment in aircraft and aviation infrastructure this has also produced beneficial effects on economic growth.



<sup>1</sup>Aviation Benefits Beyond Borders 2014 Report available here: [http://aviationbenefits.org/media/26786/ATAG\\_AviationBenefits2014\\_FULL\\_LowRes.pdf](http://aviationbenefits.org/media/26786/ATAG_AviationBenefits2014_FULL_LowRes.pdf)

## 9. CONCLUSION

IATA recommends that:

- Each State shall grant reciprocal exemption from taxation of the income of air transport enterprises of other States derived in that State from the operation of aircraft in international air transport in accordance with the ICAO Assembly Resolution which urges Contracting States to follow the resolution of the Council as contained in Doc 8632, ICAO's Policies on Taxation in the Field of International Air Transport, as noted in Appendix 5.
- Whereas the autonomous right to levy taxation on the income of international airlines is acknowledged in each State not adhering to the principles of reciprocal exemption, each State shall, for the taxation of foreign air transport enterprises engaged in the operation of aircraft to and from that State, adhere to the following principles:
  - > No heavier burden of taxation shall apply to the international air transport enterprises of other States than is applicable to an enterprise engaged in international air transportation domiciled in that State.
  - > Costs incurred in earning local gross income are recognised as deductible expenses irrespective of the country where these expenses have been incurred, including but not limited to the aircraft depreciation, financing costs and other head office costs, thereby taxing the airline on a net income basis.
  - > The taxable amount of each separate air transportation enterprise of another State shall be determined by means of apportionment formulas using audited worldwide accounts of the air transport enterprise. The audited accounts shall be accepted on the basis of appropriate certifications from appropriate auditors in the State in which the global accounts are kept.
- Whereas the autonomous right to levy taxation on the income of international airlines is acknowledged in each State not adhering to the principles of reciprocal exemption, each State shall, for the taxation of foreign international air transport enterprises whose activities in that State are limited to the mere sale of tickets for international transportation by air, adhere to the following principles:
  - > The taxable result of air transport enterprises selling tickets for international transportation by air by means of their own sales offices in that State shall be determined by deducting from the commission earned on the sale of said tickets, including deemed commission on own sales, the amount of local costs incurred in earning that commission.
  - > Air transport enterprises not having their own offices in that State, but selling their tickets through general sales agents and/or other air transportation enterprises, shall not be subject to the taxation on income in that State.
- The principles outlined in this section should be applied not only to income tax, but also to taxes or levies of a substantially similar character, by whatever name described, imposed by a State or a subdivision of a State.

# APPENDIX 1

## IATA MEMBERSHIP

ABSA Cargo Airline	Belavia – Belarusian Airlines	InselAir	Royal Brunei
Adria Airways	BH AIR	Interair	Royal Jordanian
Aegean Airlines S.A.	Biman	Interjet	RwandAir
Aer Lingus	Binter Canarias	InterSky	SAA
Aero Contractors	Blue Panorama	Iran Air	Safair
Aero República	Blue1	Iran Aseman Airlines	Safi Airways
Aeroflot	bmi Regional	Israir Airlines and Tourism Ltd.	Santa Barbara
Aerolíneas Argentinas	Boliviana de Aviación - BoA	Japan Airlines	SAS
Aerolineas Galapagos S.A.	British Airways	Jazeera Airways	SATA Air Açores
Aerogal	Brussels Airlines	Jet Airways	SATA Internacional
Aeromexico	Bulgaria air	Jet Lite (India) Ltd.	Saudi Arabian Airlines
Afriqiyah Airways	C.A.L. Cargo Airlines	JetBlue	Shandong Airlines Co., Ltd.
Aigle Azur	Cargojet Airways Ltd.	Jordan Aviation Airlines	Shanghai Airlines
Air Algérie	Cargolux S.A.	JSC Aircompany Yakutia	Shenzhen Airlines Co. Ltd
Air Arabia	Caribbean Airlines	JSC Nordavia-RA	SIA
Air Astana	Carpatair	Juneyao Airlines	SIA Cargo
Air Austral	Cathay Pacific	Kenya Airways	Siberia Airlines
Air Baltic	China Airlines Ltd.	Kish Air	Sichuan Airlines Co. Ltd.
Air Berlin	China Cargo Airlines Ltd.	KLM	Silkair
Air Botswana	China Eastern	Korean Air	SKY Airline
Air Caledonie	China Postal Airlines	Kuwait Airways	South African Express Airways
Air Canada	China Southern Airlines	LACSA	SriLankan
Air China Limited	CityJet	LAM - Linhas Aéreas de Moçambique	Sudan Airways
Air Corsica	Comair Ltd.	Lan Airlines	Sun Express
Air Europa	Condor	Lan Argentina	Surinam Airways
Air France	COPA AIRLINES	Lan Cargo	SWISS
Air India	Corendon Airlines	Lan Perú	SYPHAX AIRLINES
Air Koryo	Corsair International	Lan Ecuador	Syrianair
Air Macau	Croatia Airlines	LIAT Airlines	TAAG-Angola Airlines
Air Madagascar	Cubana	LLC "NORD WIND"	TACA
Air Malta p.l.c	Cyprus Airways	LOT Polish Airlines	TACA Peru
Air Mauritius	Czech Airlines j.s.c	Lufthansa	TACV Cabo Verde Airlines
Air Moldova	Delta Air Lines	Lufthansa Cargo	TAM – Transportes Aéreos del Mercosur S.A.
Air Namibia	DHL Air Ltd.	Lufthansa CityLine	TAM Linhas Aéreas S.A.
Air New Zealand	DHL Aviation	Luxair	TAME – Linea Aérea del Ecuador
Air Niugini	Dniproavia	Mahan Air	TAP Portugal
Air Nostrum	Donavia	Malaysia Airlines	TAROM
Air SERBIA a.d. Beograd	Dragonair	Malmö Aviation AB	Tassili Airlines
Air Seychelles	Egyptair	Mandarin Airlines	Thai Airways International
Air Tahiti	EL AL	Martinair Cargo	THY - Turkish Airlines Inc.
Air Tahiti Nui	Emirates	MAS AIR	Tianjin Airlines
Air Transat	Estonian Air	MEA	TNT Airways S.A.
Air Vanuatu	Ethiopian Airlines	Meridiana fly	Transaero
AirBridgeCargo Airlines	Etihad Airways	MIAT	TransAsia Airways
Aircalin	Euroatlantic Airways	Montenegro Airlines	TUIfly
Airlink	European Air Transport	Nesma Airlines	Tunis Air
Alaska Airlines	Euwings	NIKI	Ukraine International Airlines
Alitalia	EVA Air	Nile Air	United Airlines
All Nippon Airways	Federal Express	Nippon Cargo Airlines (NCA)	UPS Airlines
AlMasria Universal Airlines	Fiji Airways	Nouvelair	US Airways, Inc.
ALS	Finnair	Olympic Air	UT air
American Airlines	flybe.	Oman Air	Uzbekistan Airways
Árik Air	Freebird Airlines	Onur Air	Vietnam Airlines
Arkia Israeli Airlines Ltd.	Garuda	Orenair	Virgin Atlantic
Asiana Airlines Inc.	Georgian Airways	PAL	Virgin Australia
Atlas Air	Germania	Pegasus Airlines	VLM Airlines
Atlasjet Airlines	Gulf Air	PGA – Portugalía Airlines	Volaris
Austral	Hahn Air	PIA	Volga-Dnepr Airlines
Austrian	Hainan Airlines	Precision Air	VRG Linhas Aéreas S.A.-Grupo GOL
AVIANCA	Hawaiian Airlines	PrivatAir	White Coloured by You
Avianca Brasil	Hi Fly	Qantas	Wideroe
Azerbaijan Airlines	Hong Kong Airlines	Qatar Airways	Xiamen Airlines
Azul Brazilian Airlines	Hong Kong Express Airways	Rossiya Airlines	Yemenia
B&H Airlines	IBERIA	Royal Air Maroc	
Bangkok Air	Icelandair		

# APPENDIX 2

## EXTRACT OF COUNCIL RESOLUTION OF 24 FEBRUARY 1999 WITH RESPECT TO THE TAXATION OF INCOME OF INTERNATIONAL AIR TRANSPORT ENTERPRISES AND TAXATION OF AIRCRAFT AND OTHER MOVABLE PROPERTY

... **Whereas with respect to the taxation of income of international air transport enterprises and aircraft and other movable property:**

- a) 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 can be effectively prevented by the reciprocal agreement of States to limit taxation in these two fields to the State in which any such enterprise has its fiscal domicile;
- b) for international air transport enterprises lack of implementation of this rule of reciprocal exemption involves either multiple taxation or considerable difficulties of income allocation in a very large number of taxing jurisdictions; and
- c) such exemptions have already been widely obtained, for example, through the inclusion of appropriate provisions in bilateral agreements aimed at avoidance of multiple taxation generally or in those dealing with the exchange of commercial air transport rights or through individual States adopting legislation which grants the exemption to any other State that provides reciprocity;

... *The Council resolves that:*

... **2. With respect to the taxation of income of international air transport enterprises and taxation of aircraft and other moveable property:**

- a) each Contracting State shall, to the fullest possible extent, grant reciprocally:
  - i) exemption from taxation on the income of air transport enterprises of other Contracting States derived in that Contracting State from the operation of aircraft in international air transport; and
  - ii) exemption of air transport enterprises of other Contracting States from property taxes, and capital levies or other similar taxes, on aircraft and other moveable property associated with the operation of aircraft in international air transport;
- b) the "taxation" and "taxes" referred to in a) i) and ii) shall include taxes levied by any national or local taxing authority within a State;
- c) each Contracting State shall endeavour to give effect to Clause a) above, by the bilateral negotiation of agreements relating to double taxation generally, or by such other methods as the inclusion of appropriate provisions in bilateral agreements for the exchange of commercial air transport rights, or by legislation granting such exemption to any other State that provides reciprocity; and
- d) each Contracting State shall take all feasible measures to avoid delays in any bilateral negotiations found necessary to achieve implementation of Clause a) above;

# APPENDIX 3

## EXTRACT OF COUNCIL RESOLUTION OF 24 FEBRUARY 1999 WITH RESPECT TO TAXES ON THE SALE AND USE OF INTERNATIONAL AIR TRANSPORT

### **...Whereas with respect to taxes on the sale and use of international air transport:**

the imposition of taxes on the sale or use of international air transport tends to retard its further development by increasing its cost to the operator (as in the case of taxes on gross receipts or turnover), to the shipper (as in the case of taxes on cargo air waybills) and to the traveller (as in the case of taxes on tickets), and moreover, subjects the traveller to considerable inconvenience (as in the case of head taxes, and embarkation and disembarkation taxes);

...

*The Council resolves that:*

...

3. With respect to **taxes on the sale and use of international air transport**: each Contracting State shall 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 transport by air, including taxes on gross receipts of operators and taxes levied directly on passengers or shippers;

# APPENDIX 4

NB: This reproduces the first pages of the Supplement to Doc 8632. The full Supplement can be found at [www.icao.int/publications/Pages/doc-series.aspx](http://www.icao.int/publications/Pages/doc-series.aspx)

## SUPPLEMENT TO DOC 8632 ICAO'S POLICIES ON TAXATION IN THE FIELD OF INTERNATIONAL AIR TRANSPORT (Third Edition - 2000)

1. The attached Supplement supersedes all previous Supplements to Doc 8632 and includes information received up to 15 January 2013 from Contracting States as to their position vis-à-vis the Council Resolution on taxation in the field of international air transport.
2. Additional information received from Contracting States will be issued at intervals as amendments to this Supplement.

SUPPLEMENT TO ICAO DOC 8632 – January 2013

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# APPENDIX 5

## EXTRACT OF ICAO ASSEMBLY RESOLUTION A38-14 ON THE CONSOLIDATED STATEMENT OF CONTINUING ICAO POLICIES IN THE TRANSPORT FIELD, APPENDIX D – TAXATION

Whereas international air transport plays a major role in the development and expansion of international trade and travel and the imposition of taxes on aircraft, fuel, and consumable technical supplies used for international air transport, taxes on the income of international air transport enterprises and on aircraft and other movable property associated with the operation of aircraft in international air transport, and taxes on its sale or use, may have an adverse economic and competitive impact on international air transport operations;

Whereas ICAO policies in Doc 8632, ICAO's Policies on Taxation in the Field of International Air Transport, make a conceptual distinction between a charge and a tax in that "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";

Whereas it is a matter of great concern that taxes are increasingly being imposed by some Member States in respect of certain aspects of international air transport and that charges on air traffic, several of which can be categorized as taxes on the sale or use of international air transport, are proliferating;

Whereas the matter of aircraft engine emission-related levies is addressed in Assembly Resolution A38-17, Consolidated statement of continuing ICAO policies and practices related to environmental protection — General provisions, noise and local air quality (Appendix H, Aviation impact on local air quality); and

Whereas the resolution in Doc 8632 supplements Article 24 of the Convention and is designed to recognize the uniqueness of international civil aviation and the need to accord tax-exempt status to certain aspects of the operations of international air transport;

*The Assembly:*

1. Urges Member States to follow the resolution of the Council as contained in Doc 8632, ICAO's Policies on Taxation in the Field of International Air Transport so as to avoid imposing discriminatory taxes on international aviation;
2. Urges Member States to avoid double taxation in the field of air transport; and
3. Requests the Council to ensure that the guidance and advice contained in Doc 8632 are current and responsive to the requirements of Member States and to continue to promote their application more vigorously.

# APPENDIX 6

Some States' legislation makes provision for the profits derived in those States by international airlines from the operation of aircraft to be exempted from income tax on a reciprocal basis.

As an example of this type of legislation, Section 883 of the United States Internal Revenue Code reads (in part):

## **SEC. 883. EXCLUSIONS FROM GROSS INCOME.**

### **883(a) INCOME OF FOREIGN CORPORATIONS FROM SHIPS AND AIRCRAFT.**

The following items shall not be included in gross income of a foreign corporation, and shall be exempt from taxation under this subtitle:

#### **883(a)(1) SHIPS OPERATED BY CERTAIN FOREIGN CORPORATIONS.**

Gross income derived by a corporation organized in a foreign country from the international operation of a ship or ships if such foreign country grants an equivalent exemption to corporations organized in the United States.

#### **883(a)(2) AIRCRAFT OPERATED BY CERTAIN FOREIGN CORPORATIONS.**

Gross income derived by a corporation organized in a foreign country from the international operation of aircraft if such foreign country grants an equivalent exemption to corporations organized in the United States.

# APPENDIX 7

## GENERALLY ACCEPTED NET INCOME APPORTIONMENT FORMULAS

### 1. MARITIME FORMULA

This is a single factor formula used historically by the shipping industry to measure local income. It employs sales revenues as the basis for apportioning the global net air transportation profit or loss of international enterprises.

Country 'X' net air transportation profit or loss	=	$\frac{\text{Revenue derived from country 'X'}}{\text{Global Revenue}}$	x	Global net air transportation profit or loss
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#### Notes:

- Revenue derived from country 'X' means the net revenue having a source in country 'X'.
- Global revenue means the total air transportation revenue appearing in the airline's annual Profit and Loss Accounts.
- Global net air transportation profit or loss means the profit or loss from operating air transport, before income tax, appearing in the airline's annual Profit and Loss Accounts.

There are variations of this formula which produce the same result.

### 2. CALCUTTA FORMULA

Under this basis a Profit and Loss Statement is prepared which deducts from the revenue derived from country 'X' all the expenditure incurred in deriving that revenue e.g.

Revenue derived from country 'X'	\$XXX
Less:	
Direct operating expenditure in or related to country 'X'	\$XXX
Apportioned system expenditures	\$XXX
Country 'X' net air transportation profit or loss	\$XXX

#### Notes:

- Revenue derived in country 'X' is the same as for the Maritime formula and means net revenue having a source in country 'X'.
- Direct operating expenditure in or related to country 'X' includes all station and ground costs, passenger service expenditure costs, local administrative costs, and local distribution costs including selling costs, advertising and publicity. May include additional route related costs if all direct operating expenditures are not incurred in the local country.
- Apportioned system expenditure includes all expenditures, other than similar expenditure under b) incurred in other countries. This item is apportioned according to the ratio of country 'X' revenue to Global Revenue.

### 3. MASSACHUSETTS FORMULA

This method has its origin in the United States of America and employs a concept of the involvement in country 'X' by giving weight to three dominant economic factors contributing to the net result, i.e. the airline's payroll, property employed there, and the revenue derived from 'X', e.g.

$\frac{\text{Payroll in country 'X'}}{\text{Total World Payroll}}$	=	a %
$\frac{\text{Property employed in country 'X'}}{\text{Total World Property}}$	=	b %
$\frac{\text{Revenue derived from country 'X'}}{\text{Total Global Revenue}}$	=	c %

Taxable income/ (loss) in country 'X'	=	Global net air transportation Profit	x	$\frac{a + b + c\%}{3}$
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#### Notes:

Revenue derived from country 'X' Global Revenue and Global net air transportation Profit is the same as for the Maritime formula.

# APPENDIX 8

## MARITIME FORMULA WORKING EXAMPLE

Air transportation company "Carrier A" earns income from the transportation of passengers and freight to/from Carrier A's country of residence ("Country A") to Country X. Country A and Country X do not have a Double Taxation Treaty in existence, nor do they have a separately executed Airline Profits Agreement.

The revenues derived by Carrier A in Country X totals \$3,000,000 which represents 0.34% of total Global Revenue for Carrier A per its Global Revenue Reports as follows:

### Global Revenue Report for Year 20XX

"A"	COUNTRY	NET TOTAL REVENUE (\$)
A	Argentina	10,520,300
A	Australia	65,320,200
A	Austria	5,000,000
A	Belgium	12,000,000
A	Brazil	20,000,000
A	Canada	38,000,000
A	Country x	3,000,000
A	Czech Republic	500,000
A	Denmark	6,000,000
A	Germany	80,000,000
A	Finland	5,000,000
A	France	40,000,000
A	Greece	2,000,000
A	Hong Kong	55,000,000
A	Hungary	1,500,000
A	Iceland	1,000,000
A	India	20,000,000
A	Indonesia	10,000,000
A	Italy	13,000,000
A	Jamaica	200,000
A	Japan	65,000,000
A	Mexico	2,000,000
A	Mongolia	500,000
A	Netherlands	3,000,000
A	New zealand	6,000,000
A	Nigeria	500,000
A	Norway	5,000,000
A	People's Republic of China	100,000,000
A	Philippines	9,000,000
A	Portugal	1,500,000
A	Qatar	2,000,000
A	Republic of Ireland	15,000,000
A	Russian Federation	5,000,000
A	Singapore	35,000,000
A	Slovak Republic	2,000,000
A	Spain	15,000,000
A	Sweden	11,000,000
A	Switzerland	20,000,000
A	Thailand	8,000,000
A	Turkey	6,000,000
A	United States of America	100,000,000
A	United Arab Emirates	6,000,000
A	United Kingdom	85,000,000
A	Venezuela	2,000,000
<b>TOTAL</b>		<b>892,540,500</b>
<b>COUNTRY X % of Global Revenue</b>		<b>0.34%</b>

The annual Profit and Loss Account of Carrier A for the year is as follows:

### Profit & Loss Account

CARRIER A - ANNUAL REPORT	Year 20XX Carrier A \$M
Net passenger/freight revenue	893
Tours and travel revenue	2
Contract work revenue	45
Other	200
Finance income	60
<b>Total Revenue - \$</b>	<b>1,200</b>
<b>\$M</b>	
Manpower & staff related	250
Aircraft operating variable	300
Fuel	400
Selling & marketing	20
Property	30
Computer and communication	20
Depreciation and amortisation	75
Finance costs	80
<b>Total Expenditure - \$</b>	<b>1,175</b>
<b>Profit/(Loss) Before Income Tax</b>	<b>25</b>

Carrier A has achieved a profit (before income taxes) for the year of \$25,000,000. In calculating its income tax payable in Country X, Carrier A applies the Maritime Formula as follows:

Country 'X' net air transportation profit or loss	=	Revenue derived from country 'X' / Global Revenue	x	Global net air transportation profit or loss
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The resulting taxable position for Carrier A in Country X is \$85,000 (0.34% x \$25,000,000).

## CALCUTTA FORMULA WORKING EXAMPLE

This example below assumes the same facts above as well as the following additional information in relation to Carrier A's expenditure.

Direct operating expenditure in Country X:

	\$
Station and ground costs	575,000
Passenger service costs	405,000
Administrative and distribution costs	260,000
Other operating costs	190,000
<b>Total direct operating expenditure in Country 'X'</b>	<b>1,430,000</b>

Apportioned system expenditure is calculated as follows:

- All expenditure excluding direct operating expenditure in Country X and all other countries = \$442,705,400
- Using 0.34% as a reasonable basis for apportioning the expenditure determined in a) above, the resulting apportioned system expenditure is \$1,505,198.

Applying the Calcutta Formula in calculating its income tax payable in Country X, the resulting taxable position for Carrier A in Country X is as follows:

	\$
Revenue derived from country 'X'	3,000,000
Less	
Direct operating expenditure in or related to country 'X'	-1,430,000
Apportioned system expenditure	-1,505,198
Country 'X' net air transportation profit or loss	64,802

## MASSACHUSETTS FORMULA WORKING EXAMPLE

Again, this example below assumes the same facts above as well as the following additional information for Carrier A.

- Payroll in country X = \$420,000
- Total world payroll (per Carrier A Annual Report) = \$250,000,000
- Value of property employed in country X = \$200,000
- Value of total world property = \$100,000,000

Applying the Massachusetts Formula in calculating its income tax payable in Country X, the resulting taxable position for Carrier A in Country X is as follows:

Payroll in country 'X'	420,000
Total World Payroll	250,000,000
	= 0.168 %
Property employed in country 'X'	200,000
Total World Property	100,000,000
	= 0.2 %
Revenue derived from country 'X'	3,000,000
Total Global Revenue	892,540,500
	= 0.34 %

Taxable income in country 'X'	=	Global net air transportation Profit	x	$\frac{a + b + c\%}{3}$
	=	25,000,000	x	$\frac{(0.168\% + 0.2\% + 0.34\%)}{3}$
	=	25,000,000	x	0.236%
	=	59,000		

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