



IATA POSITION ON THE MALAYSIAN AIR PASSENGER DEPARTURE LEVY

The International Air Transport Association (IATA) is a global trade association for airlines representing over 290 airline members and accounting for 82% of total global air traffic. Our members include Malaysia Airlines, Malindo Air, Singapore Airlines, Silk Air, All Nippon Airways, Garuda Indonesia, Qatar Airways, Etihad Airways, Emirates, Thai Airways, KLM Royal Dutch Airlines, Air China, China Eastern, amongst many others, which operate services to/from Malaysia.

Per the Malaysia Budget 2019 and the Budget Speech on 2 November 2018, we note that the Government of Malaysia has indicated its intention to introduce an Air Passenger Departure Levy on departing international passengers effective 1 June 2019 on the basis of a two-tier rate structure, including: 1) MYR 20 per departing passenger to ASEAN Member States; and 2) MYR 40 per departing passenger to all other international destinations.

IATA's previous submission to the Malaysian Minister of Finance on the proposed Air Passenger Departure Levy dated 23 November 2018 called on the Government of Malaysia to reconsider its decision and not proceed with imposing the Air Passenger Departure Levy due to the Levy's contradiction with established international taxation principles and the associated negative economic consequences.

This position paper outlines the basis upon which IATA continues to actively challenge the basis of the Air Passenger Departure Levy, but proposes alternatives to the current proposal in the event the Government of Malaysia decides to proceed with the Levy.

Contradictions with Accepted International Principles

The imposition of the Air Passenger Departure Levy would directly contradict accepted policies on taxation published by the International Civil Aviation Organization (ICAO), a specialized agency of the United Nations. In this respect, Malaysia, as a signatory nation to the Convention on International Civil Aviation (Chicago Convention) and a Contracting State of ICAO, is obliged to adhere to the following, including:

1. 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".
2. *Policies on Taxation in the Field of International Air Transport* contained in ICAO Document 8632¹, which states 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".

¹ Available at: http://www.icao.int/publications/Documents/8632_3ed_en.pdf



It is noteworthy that, in addition to the proposed Levy, Malaysia currently imposes several taxes and charges on passengers traveling by air, including: 1) the Passenger Service and Security Charge on domestic and international air transport; 2) the Regulatory Service Charge on domestic and international air transport; and 3) the Service Tax on domestic air transport.

Specific to international air transport from Malaysia, each departing passenger already pays a total of MYR 74 in aviation charges. However, with the imposition of the Air Passenger Departure Levy, the amount of charges and taxes paid by each departing international passenger from Malaysia would increase to a total of MYR 94 to ASEAN destinations and to a total of MYR 114 to all other international destinations.

Air passengers are already paying for the aviation services they utilize and should not be forced to remit more than their fair share in tax receipts with the introduction of the Levy. It should be highlighted that airlines and airports/airport authorities are required to adhere to the provisions of the respective agreements they have entered into, including the payment of passenger-related charges by airlines. In the event of non-payment or underpayment of these passenger charges, the airport/airport authority should take the necessary means to ensure payment in line with the commercial agreements they have concluded and not seek to recover under-remitted amounts by alternative fiscal means, such as through revenues generated by the Air Passenger Departure Levy.

Moreover, Malaysia already introduced the Tourism Tax in September 2017 on accommodations provided to foreign tourists at a rate of MYR 10 per room night. As a significant number of foreign tourists travel to/from Malaysia by air, the imposition of the proposed Air Passenger Departure Levy would be duplicative and subject only tourists traveling by air (and not other modes of transport) to unfair and inefficient double taxation. The IATA position on Tourism Tax can be found in **Appendix 1**.

Without adherence to the various ICAO principles outlined above, international aviation would become financially overburdened by excessive and unjust taxation, which in turn would significantly limit the economic and social benefits generated by air transport and explored in detail below.

Passenger Demand & Economic Considerations

Air transport is an enabling sector, where international air travel in particular is highly sensitive to changes in price. Imposing a new discriminatory tax on air passengers will undoubtedly have a negative impact on passenger demand, which in turn will have negative consequences for the economy of Malaysia. In recent years, Malaysia has been struggling to attract foreign visitors and to remain competitive as a regional tourist destination.² The imposition of the Levy would only exacerbate this issue and further erode Malaysia's competitiveness as a tourist destination in the region to the detriment of its economy.

² Source: UN World Tourism Organization (<https://www.e-unwto.org/toc/unwtotfb/current>)



In terms of the importance of the aviation sector to the Malaysian economy, according to a recent study prepared by the Air Transport Action Group (ATAG) – a non-profit organization which promotes the sustainable development of global aviation – in 2017, a total of 51.9 million passengers departed from airports in Malaysia, which supported a total of 450,000 jobs and contributed a total of USD 10.1 billion to Malaysia's Gross Domestic Product (GDP).³ Overall, the tourism sector, which is significantly supported by air transport, contributed 13.4% to Malaysia's total GDP in 2017.⁴

With respect to the direct economic impact of the Air Passenger Departure Levy and based on our analysis, the imposition of the two-tier Levy (i.e., MYR 20 per passenger for ASEAN destinations, MYR 40 per passenger for all other international destinations) has the potential to reduce the number of passengers departing Malaysia by air by up to 835,000 per year, leading to a decrease in GDP of up to USD 419 million and a reduction of up to 5,300 jobs. These negative impacts, while significant and costly to the Malaysian economy, can be avoided if the Levy is repealed.

Recommendation

In light of the above, we continue to respectfully request that the Government of Malaysia actively reconsiders its decision and not proceed with imposing the Air Passenger Departure Levy. Based on recent discussions with representatives of the Government of Malaysia, it is IATA's understanding that a complete withdrawal of the Levy may not be possible at present. If such a withdrawal is not possible, we would propose the following policy alternatives associated with the Levy:

1. Impose a single tax rate of MYR 20 per departing passenger to all international destinations

While the imposition of the Air Passenger Departure Levy in its entirety is ill advised and discriminatory, implementing the Levy at the reduced rate of MYR 20 per departing international passenger to all destinations would partially mitigate the negative economic impacts detailed above. In addition, the imposition of the Levy at the lower, single rate will be easier and less costly for airline systems to implement and incorporate at pricing. It will further reduce the costs to airlines when filing and remitting the tax, as well as minimize the administrative burden on the Malaysian tax authority associated with auditing and verifying remitted amounts.

2. Implement the Levy on a sales basis as of the effective date (currently 1 June 2019) as opposed to implementing on a passenger flown basis

As airlines can sell/issue tickets up to one year in advance of travel, airlines will not have included the Air Passenger Departure Levy in pricing nor collected the associated amounts from passengers at time of ticketing. Imposing the Levy on a flown passenger basis as of the

³ Source: https://aviationbenefits.org/media/166344/abbb18_full-report_web.pdf

⁴ Source: https://aviationbenefits.org/media/166344/abbb18_full-report_web.pdf



effective date means that airlines will be unfairly out of pocket the Levy amount as there is no effective means by which airlines can collect the Levy from passengers after ticket issuance. Given the significant number of tickets that will have been issued prior to the effective date of the Levy, this expense could be substantial for airlines.

Implementing the Levy on a sales basis as of the effective date would ensure that airlines are not forced to bear the full incidence of the tax simply due to standard industry sales and commercial practices.

3. Align any passenger exemptions with industry standards

With respect to the application of any passenger exemptions from the Air Passenger Departure Levy, IATA requests that such exemptions be designed to ensure adherence and compatibility with existing industry standards, including (but not limited to):

- exemptions for infants should be with an age reference of under 2 years and specify whether the exemption applies to infants occupying a seat,
- exemptions for children should be with an age reference of under 12 years,
- exemptions for transfer/transit passengers should specify the associated transfer/transit time limit,
- exemptions for second departures due to involuntary rerouting.

This would facilitate the application and automation of the Levy exemptions within the framework of existing IT systems and reduce compliance costs to airlines. IATA would be happy to offer its assistance to the Malaysian authorities on this aspect.