



31/12/06

SUPPLEMENT TO DOC 8632

**ICAO'S POLICIES ON TAXATION IN THE FIELD OF
INTERNATIONAL AIR TRANSPORT**

(Third Edition — 2000)

AMENDMENT NO. 1

1. The attached amendment to the Supplement includes information received from Contracting States as to their position vis-à-vis the consolidated Resolution on taxation in the field of international air transport up to 31 December 2006.
 2. To incorporate this amendment, replace existing pages *(iii)* and *(iv)* with the new pages dated 31 December 2006; remove the existing page for Austria from Part B and insert the new page for Austria dated 31 December 2006 into Part A.
 3. Additional information received from Contracting States will be issued at intervals as amendments to this Supplement.
 4. Record this amendment on page (ii) of the Supplement.
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11/1/02

Transmittal Note

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 from Contracting States as to their position vis-à-vis the consolidated Resolution on taxation in the field of international air transport up to 11 January 2002.
 2. The Supplement is divided into two parts to better reflect the revised editions. Part A includes the position of States on the consolidated Resolution adopted by the Council on 24 February 1999 as it appears in the Third Edition of Doc 8632 dated 2000. Part B includes the positions of States as contained in Doc 8632, Second Edition, dated January 1994. The Second Edition, now an obsolete document, is reproduced in the Attachment to Part B.
 3. Additional information received from Contracting States will be issued at intervals as amendments to this Supplement.
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SUPPLEMENT TO DOC 8632 — THIRD EDITION

**ICAO'S POLICIES ON TAXATION IN THE FIELD
OF INTERNATIONAL AIR TRANSPORT**

Information reflecting the status of implementation in Contracting States of
Council's 1999 Taxation Resolutions and Recommendations as notified to ICAO.

Published by the authority of the Council

JANUARY 2002

INTERNATIONAL CIVIL AVIATION ORGANIZATION

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PART A

Position of States to the Third Edition — 2000

Clause 1

- Clause 1 a)** This clause is implemented in Austria for commercial air transport;
- Clause 1 b)** Exemptions are being granted even without the requirement of reciprocity;
- Clause 1 c)** Exemptions are also being granted on departure;
- Clause 1 d)** This definition is acceptable in Austria; and
- Clause 1 e)** There are no such local taxes and duties in Austria.

Clause 2 Fully acceptable to Austria.

Clause 2 c) Austria has concluded a number of bilateral agreements on double taxation, so that multiple taxation inter alia in the field of civil aviation is to be avoided.

Clause 3 There is no turnover or value added tax for international air transport in Austria, but there is a "Security Levy" to be paid by departing passengers which has the characteristics of a Federal Tax.

Clause 4 As stated above, Austria respects the existing exemption of international civil aviation from taxation with said one exception.

However, Austria would support the introduction of market-based measures, e.g. emission trading, excise duty on kerosene, value added tax, emission-related charges, to reduce or to limit the environmental impact of civil aviation, but this only if it is done under the framework of ICAO and UNFCCC and if a global solution can be achieved.

Clause 1 The Government of Burundi exempts from customs and other duties fuel, lubricants and other consumable technical supplies when used in international air transport.

Moreover, it favours the inclusion of a clause to that effect in bilateral air transport agreements in order to ensure reciprocity.

Clause 2 In Burundi, the taxation of the earnings of air transport enterprises and of aircraft and other movable property associated with the operation of aircraft engaged in international air transport is effected in the State in which the head office of the enterprise in question is actually located.

Bilateral air transport agreements negotiated by Burundi must include a tax clause to ensure reciprocal treatment for its international air transport enterprises.

Clause 3 The Government of Burundi levies no taxes on the sale or use of international air transport.

General Comments

Canada has a federal system of government. Canada's constitution gives certain taxing powers to the provincial governments, and does not require the provinces to conform to the policies of the federal Government in exercising those powers. Municipal governments have also been given their own taxing powers by their respective provincial governments.

Clause 1**Clause 1 a) Fuel**

Aviation fuel used in the provision of international air transportation services is exempt from federal customs duties and excise taxes;

For purposes of the GST, i.e. the federal goods and services tax, and the HST, i.e. the tax levied in the provinces of Nova Scotia, New Brunswick and Newfoundland which harmonizes the GST and provincial sales tax, aviation gasoline and turbo fuel may be purchased on a zero-rated basis (taxed at zero per cent) where the fuel is used for transportation to or from Canada or between points outside of Canada;

With the exception of New Brunswick (by means of refunds) and Quebec, all provinces and territories impose aviation fuel taxes on fuel purchased for international flights. Exemptions, refunds or lower fuel tax rates are, however, available in some provinces depending on the type of air service involved or the type of fuel used.

Lubricants or other consumable technical supplies

Aircraft stores, lubricants and other consumable technical supplies used in the provision of international air transportation services are for most items exempt from federal customs duties and excise taxes.

If an air carrier is not registered for the GST/HST, consumable technical supplies used in international traffic may be purchased on a zero-rated basis.

If the carrier is registered for the GST/HST a full refund is available for GST or HST paid on property or services, including consumable technical supplies, purchased for business use.

With respect to those provinces which do not participate in the HST, British Columbia, Ontario and Manitoba tax the sale of some types of technical supplies but not others. For example, Manitoba allows a sales tax exemption on the purchase of parts for and the payment for repairs to registered state aircraft or commercial aircraft under the Aeronautics Act (Canada), or regulations thereof, if the aircraft is used only for transportation of passengers or cargo for a fee. The provinces of Alberta, Saskatchewan, Quebec and Prince Edward Island and Canada's three northern territories either do not tax consumable supplies or do not have a provincial sales tax. Other types of taxes, such as Prince Edward Island's health tax may be applicable to tobacco and liquor.

Clause 1 a) Last paragraph

The assessment of taxes referred to in the above comments may depend on several factors including whether or not the flights are operated for remuneration. For example, the relief from GST/HST outlined above only applies where the air carrier is providing international transportation of passengers or cargo for remuneration.

Clause 1 e): See **General Comment** and comments concerning **Clause 1 a)** above.

Clause 2

- Clause 2 a) i)** No taxes are levied on income derived by non-residents from the operation of aircraft in international traffic, provided the country where they reside grants substantially similar relief to Canadian residents;
- Clause 2 a) ii)** No federal property taxes are imposed on aircraft of other Contracting States engaged in international air transport. A non-resident corporation that carries on business through a permanent establishment in Canada is exempt from a “large corporation tax” on aircraft provided the country in which the corporation is resident imposes neither a capital tax on similar assets nor a tax on the income from the operation of aircraft in international traffic;
- Clause 2 b)** When non-residents are exempt from federal tax on income and capital directly related to the operation of aircraft in international traffic, the provinces provide similar tax relief;
- Clause 2 c)** Canada has agreements relating to the avoidance of double taxation with the following countries: Argentina, Australia, Austria, Bangladesh, Barbados, Belgium, Brazil, Cameroon, Chile, China, Côte d’Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Egypt, Estonia, Finland, France, Germany, Guyana, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kazakhstan, Kenya, Republic of Korea, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Morocco, Netherlands, New Zealand, Norway, Pakistan, Papua New Guinea, Philippines, Poland, Romania, Russian Federation, Singapore, Spain, Sri Lanka, Sweden, Switzerland, Tanzania, Thailand, Trinidad and Tobago, Tunisia, Ukraine, United Kingdom, United States, Vietnam, Zambia, Zimbabwe.

Clause 3 International air passenger and freight travel is generally zero-rated under the GST/HST. The GST/HST is applied to passenger air transport between Canada and the continental United States and the islands of St. Pierre and Miquelon if the ticket is purchased in Canada or if the transportation originates in Canada. Under proposed amendments, which if enacted will be effective as of January 1, 2000, the GST/HST would be applied to such transportation only if the transportation originates in Canada.

There are charges and fees which, because they are used solely to help pay the cost of air transport facilities and services, are not taxes and fall outside the scope of Clause 3. For example, Nav Canada, a private non-profit Canadian corporation, owns and operates the air navigation system. Nav Canada charges user fees to air carriers to fund the costs of its services. The fees charged by Nav Canada to air carriers are zero-rated for GST/HST purposes where they relate to transportation to or from Canada or between points outside of Canada. In addition, many of Canada’s airports charge passenger departure fees to help pay for airport improvements. The fees may vary depending on whether the passenger is travelling intra-provincially, domestically or internationally.

General Comments

Airport and aeronautical services fees collected by Egypt are appropriate in view of the cost associated with the extension of these services and are consistent with ICAO recommendations; they are also reasonable compared to fees levied by other countries.

Clause 1 Egypt does not levy taxes on fuel, lubricants and other consumer technical supplies in accordance with Article 24 of the Chicago Convention and with the provisions of bilateral agreements between Egypt and those countries.

Clause 2 As for taxes on the revenues of airlines, Egypt concludes bilateral agreements with various countries in order to provide against double taxation on the revenues and sales of airlines, on a reciprocal basis.

General Comments

In its general taxation policies Estonia agrees to the ICAO policies and has considered its position in national law making. The most recent amendments to Estonia's tax laws have been intending to make laws compatible with those applied by the European Union (EU).

Clause 1 Concerning taxes on fuel, lubricants and other consumable technical supplies, Estonia does not pose duties on fuel imported in the tanks of the aircraft. Also, if the supplies are brought into the custom zone but not beyond it to the country, the duties are not charged either.

The following table presents an overview of import duties applied by Estonia:

<i>Product</i>	<i>Rate of import duty</i>
Electrical traffic regulating equipment	15 per cent
Mechanical airport and air traffic equipment	10 per cent
Transport equipment used in airports for cargo relocation	15 per cent
Aircrafts, helicopters	5 per cent

Source for the table is Estonia's Law on tariffs (Journal of Official Documents RT1/1997, 78, 1321).

Please note that the Law allows the government to sign favourable bilateral treaties with other countries to support international trade. The preferential treatment will no longer be in force after Estonia joins the World Trade Organization. The government hopes to do so before the end of 1999.

Clause 2 Estonia has signed bilateral contracts with its major air traffic partners to avoid double taxation on the income of international companies. These countries include Finland, Sweden, Denmark, Norway, Germany, the United States of America, Latvia, Lithuania, United Kingdom, Canada and several other countries. Those agreements are bilateral and vary to some extent. No property taxes are applied by Estonia. Airlines registered in the country are subject to a 26 per cent corporate tax. However, there is a strong political will to lower the corporate tax rate.

Clause 3 Airline tickets are not subject to the 18 per cent sales tax (VAT) that is applied on most products including domestic airline tickets. The law on Value Added Tax was published in the Journal of Official Documents RT I/1993, 60, 847 for the first time in 1993. According to a 1997 amendment to the law, VAT is not to be paid on the import of aircraft that are only utilized in international transport. Recently, the process of harmonization with the EU regulations has been initiated.

The Administration is broadly in agreement with the terms of the revised resolution. Article 3 as it relates to taxes levied directly on passengers poses some difficulties for us. A travel tax of Ir£5 is levied on all passengers departing Ireland (by both air and sea). There are no plans to abolish this tax. It has not increased since 1983.

Lesotho does conform with the ICAO consolidated resolution and commentary.

Clause 1

Clause 1 a) This clause is implemented in the Netherlands for air transport other than private pleasure flying;

Clause 1 d) The expression “customs or other duties” as defined in clause d) is acceptable (“other consumable technical supplies” only as far as practicable); and

Clause 1 e) No local duties and taxes are levied on fuel, lubricants and other consumable technical supplies.

Clause 2

Clause 2 a) The Netherlands grants to air transport enterprises of other States engaged in international air transport and not established in the Netherlands:

- i) exemption, on the basis of reciprocity, from income tax in any form on income derived in the Netherlands from the operation of aircraft in international air transport;
- ii) in the case of corporations, exemption from property taxes, capital levies or other similar taxes, on aircraft and other movable property pertaining to the operation of aircraft in international air transport;

Clause 3 The turnover tax on aircraft to be operated as a public conveyance mainly in international traffic and on goods designed as supplies of these outgoing aircraft, as well as the turnover tax on the service rendered in connection with these aircraft and goods is nil.

The turnover tax on the transportation of passengers by aircraft is nil if the destination or port of embarkment is situated outside the Netherlands.

With the exception of transport within the European Union, the turnover tax on the international transport of cargo by an air charter or carrier is nil.

Clause 4 As stated above, the Netherlands respects the existing exemption of international aviation from taxes. However, the Netherlands is in favor of the introduction of market-based options, e.g. excise duty on kerosine, value added tax, environmental charges — to reduce or to limit the environmental impact of aviation.

The Netherlands will continue its efforts to promote the introduction of possible market based options at the international level, preferably in the framework of ICAO.

With respect to the taxation of fuel, Norway introduced with effect from 1 January 1999, a tax payable on fuel taken on board for all domestic flights. The revenue from the tax accrues direct to the Norwegian Exchequer. All international flights are at present exempted from taxation of fuel taken on board, in compliance with the resolution.

With respect to the taxes on the sale and use of international air transport, a tax is levied per passenger on the main routes in Southern Norway as well as on international scheduled and non-scheduled flights. The revenue from the tax accrues direct to the Norwegian Exchequer.

Although the resolution does not fully comply with the policy of the Government of Norway, Norway follows — with the exception of the above-mentioned taxes — these resolutions at present. Norway will furthermore make a reservation as far as tax on fuel taken on board on international flights is concerned.

The consolidated resolution is in accordance with Tunisia's relevant fiscal policy.

PART B

Position of States to the Second Edition — 1994

Sections I and II

Argentina complies with the Council Resolutions contained in Sections I and II, with the following clarifications:

- 1) With reference to the exemptions which the Resolutions in Sections I and II of Doc 8632 establish with respect to import and export duties, the situations outlined there are free from the payment of such taxes, with the exception of the hypotheses foreseen which are mentioned in Attachment I hereto.
- 2) With regard to international air transport operations performed in our country by aircraft registered in another State or leased or chartered by enterprises of that State, which are provided for in the Resolutions in Sections I and II of Doc 8632 which establish the exemption from consumption taxes levied on the acquisition of fuel, lubricants and other consumable technical supplies contained in the tanks or other receptacles on aircraft or taken on board, Argentina legislation provides for tax exemption for these products under certain conditions, namely:
 - a) With respect to internal taxes, provided that the fact of being taxable has not been established, provision is made for exemption when these products have been included on the list of stores (products which will be consumed on board) or if the fact of being taxable has been established, the tax will be refunded or credited.
 - b) Although the sale of certain products has the Value Added Tax (VAT) levied on it, the regulations for this tax provide for the refund of the tax in those cases intended for the international transport of passengers and cargo.

Section III

Argentina complies with the Council Resolution contained in Section III which merits the following comments:

- 1) Since 1946, Argentina has maintained the position which provides that each State must have exclusivity in the taxation of the income and the capital of the enterprises performing international transport operations which are constituted or domiciled in that State.
- 2) Starting from the year mentioned in 1) above, specific agreements have been concluded for the avoidance of double taxation in the field of international transport by sea and by air. In addition, the position mentioned in the relevant articles of the broad tax agreements for the avoidance of double taxation (Articles 8, 13 and 22 of the OECD Model Convention) has been established.

Section IV

Argentina does not apply types of taxation which may affect the *modus operandi* of international transport by creating obstacles or difficulties for its development, as far as passengers and shippers are concerned. In this regard, the following comments should be made:

- 1) Argentina levies 5 per cent on the price of air tickets for travel abroad which are sold or issued in our country, as well as those sold or issued outside our national territory, to nationals or permanent residents of our country, where the departure point of the journey is at any airport located in our country.
- 2) There is a conceptual difference with respect to the Resolving Clause (2) part where what in Argentina is called a charge for the payment of a service provided by the Nation, Province or Municipality is considered a tax and with respect to which international practices, a position maintained by Argentina,

allow for countries to be able to collect such charges which are in general applied on the value of the immovable property and which are intended to cover the costs of city lighting and cleaning.

Attachment 1

Customs Code of the Argentine Nation (Law 22.415)

“Article 514

Except for any special provision to the contrary, the loading in a means of transport, national or foreign, of goods which are not freely circulated in the customs territory and which are intended as supplies, of stores or of supplies coming from a warehouse subjected to customs control, shall be considered as if it were importation for consumption and shall be subject to the corresponding payment of taxes.”

General Comment

While we understand that ICAO has the right to make recommendations and resolutions regarding international aviation taxation issues, we strongly oppose the creation of separate taxation regimes for particular groups, including international airlines, and would oppose any moves by ICAO to make its taxation policy binding on Contracting States.

Australia's policy remains that questions relating to the taxation of international airlines should be dealt with in the context of Australia's overall taxation policy. Australia will therefore continue to address these issues only in double taxation agreements and, less commonly, international airlines profits agreements.

Extension of ICAO taxation policies to taxes levied at sub-national levels

Australia cannot agree to the provisions extending ICAO taxation policies to local tax authorities. Australian States and Territories have their own taxing powers and the Commonwealth does not have the authority directly to impose its will over taxing powers that they legitimately possess. This is reflected in the fact that Australia's double taxation agreements and airline profit agreements do not cover State taxes.

The following information is provided in relation to national taxation.

Notification of practice with regard to Doc 8632 — taxation at national level only**Section I**

Clause (1) Australian practice, as reflected in Article 13 of Australia's standard Air Service Agreement complies with Clause (1). Supplies do not become dutiable if consumed on flights within Australia between international airports.

For sales tax purposes, stores for aircraft engaged in overseas services are exempt if they are not subject to customs duty, or are exempt from customs duty under s130 of the Customs Act. Such exemptions cover lubricants and technical supplies that are on board the aircraft at its first point of call in Australia, and the stores purchased or imported into Australia for use in the international service.

Clause (2) Australian practice is that aircraft are eligible for exemption from duty if the fuel is to be used on an international flight. Such fuel is normally delivered underbond to the aircraft and uplifted with duty free status. If the uplifted fuel is from duty paid stocks then a drawback of the duty may be provided.

There is no sales tax on aircraft fuel and products such as hydraulic fluid and engine oils that become integral parts of the aircraft in their general repair and maintenance, and will qualify for exemption from sales tax regardless of whether or not the aircraft is involved in domestic or international services.

With respect to Section I of Doc 8632, there is already an exemption, for aircraft in international service, for fuels, lubricants and consumable technical supplies under either items 189, 55, 59 or 61 in the Sales Tax (Exemptions and Classifications) Act 1992.

Section II

Provided the aircraft is engaged in international services, Australia sales tax practice meets the recommendation contained in Section II.

Section III

Clause (1) Australia does not levy a tax on capital. However it does tax, as part of its income tax regime, capital gains arising from the disposal of assets. For non-residents, the capital gains tax provisions apply only to assets that are “taxable Australian assets” as defined in Australian income tax legislation. In the absence of a double taxation agreement, Australia would seek to exercise taxing rights in relation to non-residents over capital gains that arise from the disposal of relevant “taxable Australian assets”.

Where a double taxation agreement exists, income profits or gains from the alienation of aircraft operated in international traffic, or of property (other than real property) pertaining to the operation of those aircraft are taxable only in the Contracting State of which the enterprise which operated those aircraft is a resident. Those from real property may be taxed in the Contracting State in which the property is situated.

Clause (3) Australia has entered into 34 comprehensive double taxation agreements, 31 of which contain provisions dealing with the taxation of profits from the operation of aircraft and generally provide that the country of residence has the sole right to tax airline profits from international traffic. In addition, Australia has concluded 4 limited agreements in relation to profits from international traffic (3 of which are with countries with which Australia has comprehensive double taxation agreements).

Section IV

Clause (1) On 1 January 1995 the existing Departure Tax was replaced by the Passenger Movement Charge. The Departure Tax was a non-specific tax levied on passengers but its replacement, the Passenger Movement Charge is a cost recovery measure for Customs, Immigration and Quarantine processing Charges.

Clause (2) The Passenger Movement Charge is not a levy or tax on international aviation but a charge on international travellers. The charge is expected to be collected by airlines in the same way as similar charges imposed by more than 70 countries.

The State of Bahrain is committed to promote market-based economics and has thus adopted a proactive position within its resources and facilities. Accordingly it does not levy a corporate tax on companies in all fields of activity including airlines. This is designed to facilitate commercial investment.

The State has also concluded several double taxation avoidance agreements in respect of airline activities. Its bilateral air services agreements also contain a special provision exempting airlines from taxes and other charges.

Section IV

Clause (3) With effect from 1 January 1997 the travel tax of twenty per cent (20 per cent) on airline tickets for journeys commencing in Barbados has been removed. In place of that tax, a value added tax of fifteen percent (15 per cent) has been imposed on airline tickets for journeys commencing, issued or paid for in Barbados.

Section I A. Fuel and lubricants on board aircraft

An exemption from customs duties is granted on arrival for fuels and lubricants on board aircraft serving scheduled international routes.

An exemption from excise duties is granted for stores, supplies, fuels and lubricants on board aircraft on arrival.

B. Fuels and lubricants delivered on board an aircraft in Belgium

Goods from countries outside the EU which are retrieved from a holding facility (e.g. customs bonded warehouse) are exempt from customs duties.

If such goods are re-exported outside the territory of the EU, they are exempted from import duties. This is the case with supplies for aircraft whose final destination is outside the EU.

It should be noted that the exemption from excise duties is restricted to the provision of aviation fuel irrespective of the flight performed.

Section II A. Fuels and lubricants on board aeroplanes on arrival

Same comments as for Section IA.

B. Fuels and lubricants delivered on board aircraft in Belgium

Same comments as for Section IB.

As to registration and the value-added tax:

The ICAO Resolutions are applied within the limits of the 6th directive of 17 May 1977 of the Council of the European Union (77/388/CEE) transposed into the Belgian legislation.

The latter contains a paragraph providing that the following are tax-exempt:

1. deliveries and imports of aeroplanes, hydroplanes, helicopters and similar aircraft for use by the State and by airlines chiefly engaged in the international transport of persons and goods for remuneration;
2. deliveries to the producers, owners or operators of the aircraft referred to in Item 1 of this paragraph, and imports by them of articles to be incorporated in these aircraft or used in operating them;
3. the provision of services for the production, conversion, repair, maintenance and rental of the aircraft and articles referred to in Items 1 and 2 of this paragraph;
4. deliveries to airlines referred to in Item 1 of this paragraph and imports by them of goods for refuelling the aeroplanes, hydroplanes, helicopters and similar aircraft which these airlines use;
5. the provision of services other than those referred to in Item 3 of this paragraph for the direct needs of the aircraft referred to in Item 1 of this paragraph, except for aircraft used by the State, and of their cargo, such as towing, piloting, rescue and expertise, use of aerodromes, services required for landing, take-off and stay of aircraft on aerodromes, services provided to airlines by airline agents in their capacity as agents, assistance provided to passengers and crews on behalf of airlines.

The VAT code also provides for a tax exemption for intra-Community imports and purchases of goods whose delivery by those liable to tax is, in any case, exempt within the country.

Implementation provisions of the VAT code also provide for the permanent tax-exempt import of the stores on board aircraft serving scheduled international routes.

The provisions of the Belgian legislation are in keeping with the objectives of the first two ICAO Resolutions. It will also be noted that these exemptions only apply to aircraft used for the international transport of persons and goods, contrary to the provisions of Section I 3) of the document and paragraph 8 of the Council's Commentary.

Section III

A. Income of international air transport enterprises and from aircraft operation

The Belgian income tax code allows for the exemption, under conditions of reciprocity, of the profits which a foreign company derives in Belgium from operating aircraft which it owns or charters and which stop over in Belgium. This is an exemption from the Belgian non-residents' tax, which is in principle the only possible tax on the income in question.

B. Double taxation avoidance agreements

In the great majority of double taxation avoidance agreements, Belgium has included, following the OECD Model Convention, a provision stipulating that the profits from the operation of aircraft in international traffic shall only be taxable in the Contracting State where the enterprise's place of effective management is located or in that enterprise's State of residence.

This also applies to capital gains arising from the alienation of aircraft, to the salary received for paid work on board aircraft and to any taxes on the wealth constituted by these aircraft.

In the case of Belgium, these double taxation avoidance agreements apply to the personal income tax, the corporate tax, the tax on juridical persons, the non-residents' tax, the special contribution related to the personal income tax and the supplementary crisis tax, including the deductions at source, the surtax on the said deductions as well as the surtaxes on the personal income tax, levied on behalf of Belgium, its political subdivisions or its local communities.

Section IV

Subject to what was mentioned in the Commentary on Section II concerning the income of international air transport enterprises, Belgium does not have specific sales taxes on international air transport operations or on international tickets.

There are airport charges whose proceeds are used to pay for the services provided or to finance investments for the benefit of civil aviation. In particular, this is the case for the use of the facilities developed for the passengers and for the surfaces occupied by handling companies.

The aircraft take-off and landing charges are set in accordance with a rate which varies depending on the weight of the aircraft, its acoustic category and the time of operation. This variation is intended to protect the environment and the peace of those living nearby.

Botswana does endorse the four ICAO Council Resolutions of 14 December 1993 as contained in Doc 8632, Second Edition, 1994. The present legislation does not require the imposition of any taxes or duties of any sort on the said items. As a safeguard, the bilateral air services agreements with other countries contain articles which exempt the designated airlines from payment of such taxes and duties for aircraft engaged in international operations on a reciprocal basis.

Botswana shall keep ICAO informed of any subsequent changes in her position vis-à-vis these resolutions.

Sections I and II

The Directorate General of Civil Aeronautics is in full agreement with both Resolutions. This position is consistent with the exemption from taxation given by Chile in the cases indicated in Sections I and II of Doc 8632.

Section III

In order to avoid multilateral double taxation, Chile concludes international treaties and agreements with some foreign countries which relate specifically to air transport.

In general, this type of agreement exempts from taxation the income of the transport enterprises of the other Contracting State derived from their activities, provided that this exemption from taxation is subject to the principle of reciprocity in that other State. Chile has signed treaties with Argentina, Brazil, Colombia, France, Germany, Spain and the United States.

Section IV

In Chile the sale of tickets is exempt from the Value Added Tax (VAT).

Note.— Hong Kong is under the People's Republic of China's sovereignty as of 1 July 1997 pursuant to an Agreement signed in 1984 between China and the United Kingdom.

Section I

Clauses (1–6) Implemented.

Section II

Clauses (1–4) Implemented.

Section III

Clauses (1–5) The Government of the Hong Kong Special Administrative Region has concluded with a number of countries an avoidance of double taxation article for inclusion in our Air Services Agreements. Negotiations are also under way with some other aviation partners.

Section IV

Clauses (1–3) Implemented except for the Air Passenger Departure Tax payable by every passenger departing Hong Kong by air unless exempted.

Sections I, II and III

Colombia has no comments on above sections which refer to taxation of fuel, lubricants and other consumable technical supplies and taxation of the income from aircraft operations and other movable property associated with the operation of aircraft in international air transport.

Section IV

As for taxes paid by travellers, Colombia has two of them: the first is the national stamp tax governed by law 2 of 1976, whose value today is \$15 000, in accordance with Decree 2491 of 14 December 1993; the second is the international airport fee, whose value is \$16 600 or U.S.\$ 20, governed by Resolutions 0876 of 4 February 1991 and 00724 of 31 January 1995.

Presently Cuba is reviewing the taxation policy at the national level, including that relating to international air transport; this review will not be finished before the end of 1996. Only in the beginning of 1997 will Cuba be in a position to give a reply concerning those cases in which income tax will, or will not be charged on profits of airline companies.

Section I Ecuador complies with the first 4 resolving clauses. As to the 5th, tax is levied on the value of each gallon of aviation fuel and lubricants used within Ecuador by any aircraft engaged in international and domestic commercial service (Art. 28 of the Civil Aviation Act), as established in order to finance the costs of facilities and services.

Section II In Ecuador, the same practice as in Section I is applied.

Section III Ecuador has a regulation making all enterprises and individuals subject to annual "Income Tax" which must be paid to the Ministry of Finance.

Section IV In Ecuador, no tax is levied on operators' gross revenues or sales.

Sales of international air passenger tickets issued in Ecuador are taxed at 10 per cent of their value. This amount is collected by the Ministry of Finance.

Any change which takes place will be notified to the Organization.

Fiji's Income Tax and Value Added Tax Legislations are compatible with ICAO's policies on taxation regarding international carriage of passengers and goods.

Section I**Clauses (1, 4, 5, 6)**

Implemented. The exemptions do not require reciprocal treatment by other States.

Clause (2, 3) Implemented, with the exception that the exemptions do not apply to non-commercial general aviation.

Clause (7) Supported.

Section II

Clauses (1–4) Implemented, with exception that the exemptions do not apply to non-commercial general aviation. The exemptions do not require reciprocal treatment by other States.

Clause (5) Supported.

Section III

Clauses (1–5) Implemented. The exemptions require a reciprocal agreement between States.

Clause (6) Supported.

Section IV

Clauses (1–3) Implemented.

Clause (4) Supported.

General Comments

1. Although the resolutions do not comply with the policy of its Government, Germany follows these resolutions **at present**.
2. The Government of Germany has decided to introduce also in international commercial air transport **a taxation on the consumption of fuel and lubricants** as well as **a taxation on the sale and use of international passenger air transport**. Accordingly regulations are to be implemented within the European Union.

Section III No objections to Section III.

Sections I, II and III

In Hungary these kinds of preferences are given within the framework of the bilateral Air Services Agreements:

- aviation turbine fuel is subject to consumption tax, however, depending on the consumption, excise duty is reimbursed to MALEV Hungarian Airlines; **foreign airlines do not pay consumption tax;**
- de-icing, hydraulic and cooling liquids, as well as technical expendable means are free of tax for both MALEV and foreign airlines.

The above listed fuel and lubricants, as well as technical expendable means are also free of customs and duties.

Exemptions refer exclusively to materials and technical expendable means which are destined for use of operation of aircraft.

Section IV

Under this regulation airlines should be exempt from all kinds of taxes. For the time being we are not in a position to take into account and enforce the said regulation (moreover within the foreseeable future we can't introduce the regulation in our country).

The regulation is not acceptable to us on the one hand because of the narrow material-financial circumstances of our national economy, its relatively low economic potential; on the other hand, to an airline as an entrepreneurship, the same conditions of economics and law of economy should apply which determine the circumstances of the economic system and activity of entrepreneurs in general.

The airline is significantly favoured within the framework of the exemptions detailed in Sections I, II and III, the exemptions by which undertakings operating in the field of air transport have an advantage.

Section I Fuel, lubricants and other technical supplies on board an aircraft arriving at an Indian airport, or departing from it, are exempt from customs duty or any other tax. However, any such item taken on board while at an Indian airport is subject to sales tax according to the laws of the State in which the airport is located. In some states, the rate of sales tax is higher for non-scheduled flights compared to scheduled flights. A proposal for taking a legislative measure to treat sale of ATF to international carriers as deemed export and to exempt it from sales tax, is under consideration of the Government.

Section II Same as Section I.

Section III A list of countries with whom Double Taxation Avoidance Agreement has been concluded is enclosed.

Section IV There is no tax on air cargo shipments or on air tickets. But a departure tax called Foreign Travel Tax is levied on every passenger leaving India by flight.

ATTACHMENT

INDIA'S DOUBLE TAXATION AVOIDANCE AGREEMENTS NOTIFIED
(AS OF 16 SEPTEMBER 1996)

No.	NAME OF THE COUNTRY	EFFECTIVE FROM ASSESSMENT YEAR
1.	AUSTRALIA	1993-1994
2.	AUSTRIA	1963-1964
3.	BANGLADESH	1993-1994
4.	BELGIUM	1975-1976 / 1976-1977
5.	BELGIUM (S. PROTOCOL)	1988-1989 / 1989-1990
6.	BRAZIL	1994-1995
7.	BULGARIA	1998-1999
8.	CANADA	1987-1988
9.	CHINA	1996-1997
10.	CYPRUS	1994-1995
11.	CZECHOSLOVAKIA	1986-1987
12.	DENMARK	1990-1991 / 1991-1992
13.	FINLAND	1985-1986
14.	FRANCE (REVISED)	1996-1997
15.	FEDERAL REPUBLIC OF GERMANY	1958-1959
16.	F.R.G. (PROTOCOL)	1984-1985
17.	GERMAN DEMOCRATIC REPUBLIC	1985-1986
18.	GREECE	1984-1985
19.	HUNGARY	1989-1990
20.	INDONESIA	1989-1990
21.	ISRAEL	1995-1996 / 1997-1998
22.	ITALY	1978-1979
23.	ITALY (REVISED)	1997-1998
24.	JAPAN (REVISED)	1991-1992
25.	KENYA	1985-1986
26.	LIBYA	1983-1984 / 1984-1985
27.	MALAYSIA	1973-1974
28.	MALTA	1997-1998
29.	MONGOLIA	1995-1996
30.	MAURITIUS	1983-1984
31.	NEPAL	1990-1991
32.	NETHERLANDS	1990-1991
33.	NEW ZEALAND	1988-1989
34.	NORWAY	1988-1989
35.	PHILIPPINES	1998-1999
36.	POLAND	1991-1992
37.	ROMANIA	1989-1990
38.	SINGAPORE (REVISED)	1995-1996
39.	SPAIN	1997-1998
40.	SOUTH KOREA	1985-1986
41.	SRI LANKA (REVISED)	1981-1982
42.	SWEDEN (REVISED)	1990-1991
43.	SWITZERLAND	1996-1997
44.	SYRIA	1983-1984
45.	TANZANIA	1982-1983 / 1983-1984
46.	THAILAND	1987-1988 / 1988-1989
47.	UNITED ARAB EMIRATES	1995-1996

48.	UNITED ARAB REPUBLIC	1969–1970 / 1970–1971
49.	UNITED KINGDOM (REVISED)	1995–1996
50.	UNITED STATES OF AMERICA	1992–1993
51.	U.S.S.R. (NOW APPLICABLE TO RUSSIA)	1991–1992
52.	VIETNAM	1997–1998
53.	ZAMBIA	1979–1980

The Islamic Republic of Iran is in full agreement with the proposals provided they are done on a basis of reciprocity.

Section I

- Clause (1)** The exemption referred to in this clause is granted as a rule.
- Clause (2)** As regards passenger and cargo planes, the exemption in respect of fuel, lubricants and other consumable technical supplies taken on board for consumption during the flight is granted on the basis of special provisions included in bilateral agreements on air transport.
- Where no special agreement exists, the above mentioned exemption is granted on the basis of actual reciprocity.
- Clause (3)** The exemptions outlined in paragraphs 1 and 2 above do not apply to pleasure aircraft.
- As for pleasure aircraft, the exemption in respect of fuel and lubricants (not in respect of other consumable technical supplies) is granted only to aircraft departing from Italy to non-European Union Member countries.
- Clause (4)** The exemptions are those covered in this clause.
- Clause (5)** Under the law in force in Italy there are no taxes on air transport levied by the local taxing Authority.

Section II

- Clauses (1–3)** In Italy there is no special rule in respect of the number of stops. See the above-mentioned comments in Section I.

Section III**Clauses (1) and (2)**

Italy follows the principles stated in these clauses, which are given practical effect through the agreements mentioned under Clause (3) below.

- Clause (3)** The provisions aimed at avoiding double taxation of the income and capital of airlines are normally included in general bilateral agreements signed by Italy in the specific field of double taxation or are the subject of special agreements.

Section IV

- Clause (1)** International air transport of goods and passengers is exempt from taxation on the sale or use (e.g. VAT, stamp tax etc.).

No taxes are imposed by Jordan in the field of international air transport. It is guided in this connection by ICAO Doc 8632 and all other ICAO documents, Annexes and resolutions.

The Jordanian policy is based on the principle of reciprocal exemption from taxation on international air transport revenues. In so doing, Jordan seeks to reach agreements on reciprocal tax exemptions on airline incomes with other countries. The objective is to reduce the financial burden on airlines operating in this field.

The State of Kuwait is committed to the implementation of the provisions and decisions regarding policies that govern taxation in the field of air transport. These include the following:

- 1) No local taxes are currently imposed on the purchase of fuels, lubricants and technical and consumer supplies used by **foreign** aircraft. Such exemption is stipulated in the bilateral agreements that are concluded with various countries.
 - 2) Reciprocal exemption from taxation on airline revenues and profits is provided for either in bilateral agreements (if so agreed to by the other party) or in special agreements between the competent authorities in both countries.
 - 3) No taxes are currently received by Kuwait on sales of air transport services.
-

Lebanon reaffirmed its position of not resorting to levying high taxes and charges in the field of air transport, and advised its acceptance of the resolutions contained in Doc 8632. Concerning taxation of fuel, lubricants and other supplies, Lebanon complies with the provisions of Article 24 of the Chicago Convention, in all its bilateral agreements, on the basis of reciprocity.

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- Section I** Council Resolution of 14 December 1993 on taxation of fuel, lubricants and other consumable technical supplies at the point of arrival and departure is fully complied with.
- Section II** This Council Resolution of 14 December 1993 on taxation of fuel, lubricants and other consumable technical supplies at points of arrival/departure in the same State is not applicable to Malta where only one international airport is available for use.
- Section III** Council Resolution of 14 December 1993 on taxation of income of international air transport enterprises and on taxation of aircraft and other moveable property associated with the operation of aircraft in international air transportation is also complied with. Malta has concluded a number of air service agreements which contain a clause stating that profits from the operator of aircraft shall be only taxable in the State where the effective management of the enterprise is situated.
- Section IV** Council Resolution of 14 December 1993 on taxes related to the sale or use of international air transportation is fully complied with.
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Sections I and II

In Mexico, the fuel throughput charge, the Value Added Tax (VAT) and the air navigation services charge, collected as a fee per litre of fuel provided, are the only charges that fall under these sections, according to ICAO definitions. Unlike the VAT, the fuel throughput charge and the air navigation services charge are designed to recover costs incurred in the provision of those services, bringing them under the exceptions established by ICAO itself. Fuels, therefore, do not need to be exempted from this charge.

With regard to the VAT, in Mexico, under Article 1, subparagraph 1 of the relevant law, individuals or legal entities that sell goods on Mexican territory must pay a 15 per cent tax whatever their nationality or wherever the goods are to be consumed, even considering that, as far as this latter point is concerned, such goods are partly consumed on our territory.

Since the VAT is a general tax that applies to all goods and services sold in the country, it is not possible to give preferential treatment to a particular sector of the economy (in this case the aviation sector).

For its part, the Customs Law allows entry to or exit from Mexican territory free of foreign trade tax of all merchandise destined for use in maintaining the aircraft of national airlines that provide international services and are established in accordance with the relevant laws. Furthermore, regulations under that law stipulate that fuel shall be provided to aircraft free of foreign trade tax, except for the restrictions established under international conventions.

Section III

At the present time, Mexico is developing an extensive network of conventions to avoid double taxation of income. Some of these conventions are in force and others are under negotiation.

The taxation policy followed in this area is to grant reciprocal exemptions, through bilateral tax conventions, on income derived from international air transport and associated activities. Nevertheless, it is important to mention that under some of the Mexican conventions, contrary to the approach suggested by ICAO, the determining factor in selecting the country in which such taxes are to be collected is the state of residence of the airline that is providing the services.

At the present time, the Secretariat of Finance and Public Credit is approaching many states with a view to concluding bilateral agreements to avoid double taxation in a number of areas, including air transport. As a result, the above-mentioned Secretariat has even asked that the Directorate General of Civil Aeronautics of the Secretariat of Communications and Transport not include clauses to avoid double taxation in its bilateral air transport agreements, so as to prevent duplication of rules in this area.

On the other hand, under Chapter II of the Income Tax Law, concessionaires must, without exception, pay taxes on all income in cash, goods, credit services or any other form received during the fiscal year. With regard to the Property Tax, under Article 7 of the Law on General Communication Routes, airports cannot be taxed since they are Federal public property. As a result, if the operation or management of an airport is granted as a concession, the concessionaire would not be obliged to pay the land tax on the building in question.

Section IV

In Mexico, the Airport Use Fee and the VAT fall into this category, since they apply at the time that an air transport ticket is sold. Nevertheless, the Airport Use Fee is an exception because the income from this source is to be used to cover the costs of maintaining the passenger service areas in airports. This type of charge, therefore, cannot be eliminated according to ICAO's own policies.

With regard to the VAT, the comments presented under Sections I and II apply, except for international air transport, for which only part of the service is deemed to be provided on our territory. Following this criteria, under Article 16 of the Law concerning VAT, only 25 per cent of the service is deemed to be provided on Mexican territory when the travel commences there.

The remaining portion of the price of the service is taxed in accordance with Article 29, subparagraph VI of the above-mentioned law, that is, for the purposes of that law the service is deemed to be exported, and therefore a rate of 0 per cent is applied to the value of the service provided (75 per cent, the remainder).

The airport use charge is established in the decree under which persons in their capacity as passengers on departing flights use international airports administered by Airports and Auxiliary Services. Furthermore, Article 200 of the Federal Law on Charges provides that individuals or legal entities using Mexican ports must pay an export port charge; also, Article 205 of the same law stipulates that this charge will not be levied in the case of concessions.

Finally, the Mexican Government's Model Convention on Air Transport contains clauses on the taxation of international air transport that have been approved by our tax authorities, so all bilateral air transport agreements that Mexico has concluded with other countries contain clauses intended to prevent undue taxation of international air transport.

These clauses are subject to bilateral negotiations. Nevertheless, any policy or decision that involves amending them must be submitted to the appropriate taxation authority.

Sections I and II

New Zealand complies with the resolving clauses in Sections I and II.

Section III

Clause 1(a) An airline of another State will be liable to income tax on its income sourced from New Zealand, unless:

- (i) a Double Tax Agreement operates to prevent New Zealand taxing the New Zealand sourced income of a foreign airline; or
- (ii) the Commissioner of Inland Revenue has exempted the airline from income tax in New Zealand.

A Double Tax Agreement (DTA) overrides New Zealand taxation legislation where the two are inconsistent. New Zealand has 24 DTAs and they all contain an Article dealing with shipping and air transport. The Article typically provides that the profits of an airline can only be taxed in the country of residence of the airline.

A DTA applies only to income tax and therefore does not exempt a foreign based airline from Goods and Services Tax or other taxes or levies where the airline would be liable under the Goods and Services Tax Act or other Act.

Clause 1(b) New Zealand complies with this clause.

Clause 3 There is no provision in New Zealand law for an Air Services Agreement to give an exemption from tax. New Zealand negotiates DTAs as appropriate. Additionally, the Commissioner of Inland Revenue may exempt from income tax the New Zealand derived income of a foreign airline where the Commissioner is satisfied that the other country will give a like exemption to a New Zealand resident airline.

Section IV

Clause 1 As noted in Section III, airlines of other States are subject to income tax on operations in New Zealand unless a DTA or exemption applies. Such airlines are also liable for Goods and Services Tax for goods or services supplied in New Zealand and not used in the conduct of international air transport.

Sections I and II

With regard to Sections I and II concerning taxation of fuel, lubricants, and other consumable technical supplies and aircraft spare parts, all airlines are exempt from taxation in all cases as referred to in Doc 8632 on the basis of the Chicago Convention and Bilateral Agreements concluded by the Sultanate. There are no other taxes imposed on the above-mentioned items.

Section III

With regard to Section III concerning taxation of airline revenues, the competent authorities in the Sultanate conclude double taxation agreements with the countries that so request. The Sultanate has signed an appreciable number of these agreements. There is also a collective agreement among the Arab countries for mutual exemptions from taxes on the activities and equipment of air transport. Accordingly, the competent authorities exempt the airlines of member States in this Agreement from taxes on their profits from sales. The Ministry of Communications and the other competent authorities seek to grant such exemptions on the basis of reciprocity to encourage air transport activities to and from the Sultanate.

Section IV

With regard to Section IV concerning taxation of the sale and use of international air transport, we have no taxation on the operators or passengers or shippers apart from the fees that are imposed in return for a specific service and these are set at reasonable rates corresponding with the level of the services rendered.

Sections I and II

Clauses 1 and 2 of Section I and Clause 1 of Section II are concurred to the extent of exemption from custom duties subject to the condition that concessions envisaged therein are based on the principles of reciprocity and would be implemented through a bilateral agreement.

Section III

As regards to Section III concerning taxation of income from international operation of aircraft, airlines are governed through bilateral tax treaties which generally are directed towards reciprocal tax exemption.

Section IV

This resolution is in conflict with the settled principle in that sovereign States can levy taxes and use them for such purposes as such States may decide. These rights cannot be abridged by resolution like the one under reference and no State can be expected to collect and spend tax in accordance with the wishes of or schemes laid out by any foreign agency like ICAO. It may also be mentioned that the resolution is incapable of implementation inasmuch as that no line can possibly be drawn as to where the use of international air transport starts or ends and how must the application objectives of taxes collected could be realized. We may also like to add that taxes are levied on the income from air transport business having its source in the taxing country. For the convenience of the taxpayer as well as that of business, the measure of determining the quantum of income is the gross receipts which may then be taxed at an appropriately reduced rate. This is a practice followed worldwide. However, where States agree through bilateral treaties to avoid double taxation, this income may either be taxed at reduced rates or totally exempted from tax on a reciprocal basis.

Airport tax collected from departing passengers is directly credited to the civil aviation authority.

Sections I–IV

Panama's position is the same as that in Sections I–IV of Doc 8632. Panama's legislation provides for exemption of all taxation on fuel, oils, lubricants, equipment and spare parts which airlines keep for their own consumption, even if these items are nationalized.

Since Peru is presently in the process of reactivating its economy, it will continue to apply its tariff policy in all fields of economic activity until stabilization is achieved.

As a result, Peru shall inform ICAO at the proper time when the conditions of its economy make it possible to apply ICAO's Policies on Taxation in the Field of International Air Transport contained in Doc 8632.

Sections I and II

Bilateral agreements concluded between Portugal and other States contemplate equal treatment as regards customs duties, inspection fees or other national duties and charges on fuel, lubricant oils and consumable technical supplies taken on board the aircraft engaged in international air services.

In this respect, the same policy is applicable to both scheduled and non-scheduled air transport.

Charges are related to the costs of the services provided for civil aviation and are collected by airport authorities. There is also a charge on aircraft refuelling.

The revenue from such charges is directly allocated to civil aviation, namely in financing airport activities.

Section III

Where double taxation agreements exist, foreign airlines operating in Portugal with an established office are exempt from taxation on the income derived from their activity, on the basis of reciprocity, since payment of such taxes is limited to their fiscal domicile. It is generally understood that, even in case of non-existence of double taxation agreements, airlines are exempt from taxes on income, as it is usually considered that delegations are a mere extension of their enterprises. The special aircraft tax imposed on the entity responsible for the operation of aircraft in Portugal does not apply to aircraft engaged in the service of foreign enterprises registered abroad.

Section IV

As regards this resolution, the Portuguese authorities consider that fiscal exemption can be a useful instrument to further the development of air transport. However, it should be reasonably compatible with the fiscal national policy that serves the interests of the community in general. In the field of taxation, Portugal is also a party to the options taken at EU's level.

Section I Acceptable.

Section II Acceptable.

Section III

Clause (1) (a) In accordance with the agreements on the avoidance of double taxation, the “residence principle” is generally applied to the taxation on the income of air transport enterprises from the operation of aircraft in international air transport.

(b) Property taxes on aircraft and other movable property can be exempted on a reciprocal basis.

Section IV Value Added Tax on the sales or use of international transport can be exempted on a reciprocal basis.

Russian Federation taxation matters, including those in the field of international air transport, are regulated by the corresponding legislation, as well as by agreements between Russia and other States and by bilateral intergovernmental agreements on international air services.

All the agreements provide for the application, on a reciprocal basis and under corresponding conditions, of full or partial exemption of individual types of income and property from taxation in one of the States, as well as procedures for the elimination of double taxation of income and property.

In developing the tax legislation of the Russian Federation and corresponding agreements with other States, account is taken of the generally accepted principles and norms of international law and Russia's international treaties, including ICAO's Policies on Taxation in the Field of Air Transport.

Section I Regulation 177 allows an officer to “seal” aircraft stores on arrival. These stores are exempt from customs duty or any other taxes unless diverted to home consumption.

There being only one international airport in Seychelles voids the other resolutions of Part I.

Section II Not applicable, only one international airport. A small aircraft departing for foreign territory would not be charged for local fuel consumption.

Section III Section 69 of the Business Tax Act refers to direct taxation on the turnover of goods, passengers, etc., that is paid within Seychelles at a rate of 5 per cent. The Section refers to shipowners of charters; however, it is extended to airline companies as well.

Agreements would be reached regarding taxation with any airline company who would wish to establish themselves here in Seychelles as regards capital equipment, consumables and operating materials.

Section IV Fees collected from departing passengers (passenger service fees) are directly credited to the Civil Aviation Division.

Under the Investment Promotions Act, companies (including airline companies and freight forwarders) would be entitled to import exemptions on capital equipment, consumables and raw materials. Corporate tax relief is also available when accepted by the Minister responsible for Finance.

Sections I and II

Customs duties on lubricant and jet fuel have been suspended since 1 April 1994. Even before 1 April 1994, duty exemption was available under the Customs Duties (Exemption) Order 1990 for any jet fuel, lubricants and other consumable technical supplies taken on board any aircraft as air stores. Similar relief is also available under the goods and services tax (GST) legislation. Hence we are able to comply with the resolutions/recommendations under Sections I and II.

Section III

Issues pertaining to reciprocal exemption from taxation would be more appropriately dealt with under a bilateral agreement for the avoidance of double taxation (DTA) or an agreement for reciprocal tax exemption rather than under the ICAO policy document.

Singapore has in force 30 DTAs and 3 reciprocal agreements which provide for full or partial income tax exemption on profits derived from the operation of aircraft in international traffic.

In general, our DTAs and reciprocal agreements provide for gains from the alienation of aircraft operated in international traffic or movable property pertaining to the operation of such aircraft to be taxable only in the country of residence or place of effective management of the operator. However, they do not cover property taxes and capital levies or similar taxes on property.

Section IV

Any reduction or elimination of taxes related to the sale or use of international air transport would be given only to the extent provided under our relevant domestic laws.

Under our domestic laws, the supply of services comprising the transport of passengers or goods and the letting on hire of aircraft are zero-rated supplies for goods and services tax (GST) purposes.

Section I Slovakia fully complies with this Resolution.

Section II Slovakia complies with this Resolution in international air services (consumption tax), international air scheduled passenger services and international air freight services (VAT, value-added tax). Also the rule of reciprocity is invoked. Slovakia endeavours for wider application — the definitive decision could be made by the Ministry of Finance.

Section III Principles of this Resolution are included in bilateral air transport agreements. During the first 3 years of Slovakia's existence (from 1/1/1993) experts' negotiations were completed with these States:

Bulgaria, Cyprus, the Czech Republic, Denmark, Greece, Netherlands, Croatia, India, Indonesia, Israel, Kuwait, Hungary, Norway, Poland, Austria, Romania, Russian Federation, Slovenia, United Kingdom, Germany, Syria, Switzerland, Sweden, Turkey, Ukraine, Vietnam and Yugoslavia.

Bilateral air transport agreements were signed at the top level with representatives of the following States:

Bulgaria, Netherlands, Croatia, Israel, Poland, Russian Federation, Slovenia, Ukraine. The agreements are effective, except with Israel and Slovenia.

Besides the above-mentioned, taxation of the income of international air transport enterprises, aircraft and other movable property associated with the operation of aircraft in international air transport is covered by bilateral agreements to avoid double taxation. The Ministry of Finance is in charge for these specific kinds of agreements.

Section IV Slovakia fully complies with this Resolution.

Section I The international conventions ratified by Slovenia are implemented directly in accordance with the Customs Law (Official Gazette of the Republic of Slovenia Nos. 1/95 and 28/95). In particular, implementation regulations adopted on the basis of the Customs Law provide for exemption of payment of customs duty for fuel and lubricants in the tanks or, pursuant to the Decree on the determination of use of reduced rates of duty and zero customs duties (Official Gazette of the RS Nos. 73/95 and 17/97), no customs duty has been provided for aircraft fuels. Neither is sales tax imposed in the above-mentioned cases.

Section III In compliance with the Law on Corporate Profit Tax (Official Gazette of the RS Nos. 72/93, 20/95 and 34/96) the provisions of the agreements on the avoidance of double taxation are directly applied for taxpayers who are resident in the States with which the agreement has been concluded, if such agreement defines the issue of taxation or regulates it in a different manner than it is regulated in the above law.

Section IV In compliance with the Law on Sales Tax (Official Gazette of the RS Nos. 4/92, 71/93 and 16/96) and the Rules on the Application of the Law on Sales Tax (Official Gazette of the RS Nos. 6/92 - 37/95) sales tax is not levied on export services which also include international transport of goods and passengers, if the starting point is in the territory of the Republic of Slovenia and the destination point abroad, or if the starting point is abroad and the point of destination in the territory of the Republic of Slovenia.

The taxes administered by the Department of Finance, namely income tax, value added tax and customs and excise duties all conform with the Resolution. It must, however, be mentioned that the Constitution of South Africa, 1993 (Act No. 200 of 1993) makes provision for the imposition of certain taxes by the provinces. It can therefore not, at this stage, be confirmed that such taxes will comply with the Resolution.

Sections I and II**Value Added Tax**

As regards air transport taxes and the Value Added Tax, the regulations governing the VAT in Spain contain the measures necessary to implement the principles contained in Sections I and II of the ICAO document in question (Doc 8632), insofar as this tax is concerned (See Law 37/1992, Articles 18, 22, 24, 26, and 27).

Special taxes The following facts are with regards to special taxes in the field of air transport:

1. The lubricating oils used for aircraft in international air transport are not subject to the tax that Spain levies on hydrocarbons, since such oils are not included in the scope of the tax (Article 46, para. 1 of Law 38/1992 on special taxes, dated 28 December).
2. Fuels (avgas and kerosene) to be used in air navigation (international or domestic), except for private recreational aviation, are exempt from the Tax on Hydrocarbons (Article 51, para. 2a) of Law 38/1992 on special taxes, dated 28 December).

For this purpose, Spanish legislation defines private recreational aviation as the use of an aircraft which is not public property by its owner (or by a person permitted to use it under a rental agreement or some other arrangement) for non-commercial purposes, and especially for purposes other than the carriage of passengers or cargo or the provision of services for remuneration.

Customs duties With regard to customs duties on fuels, lubricants and other similar technical supplies:

1. EEC Regulation 918/83 on customs exemptions states in Article 133 that *“the provisions of this Regulation shall not prevent member States from granting: ... 1 g) exemptions granted within the framework of agreements concluded on a reciprocal basis with third countries parties to the Convention on International Civil Aviation (Chicago 1944) for the application of Recommended Practices 4.42 and 4.44 of Annex 9 to that Convention.”*
2. Section I, Clause 1 in Doc 8632, which contains the Resolution of the ICAO Council, refers to exemption from customs duties on fuel, lubricants and other consumable technical supplies that are in the aircraft upon arrival in the customs territory of another State, provided that no quantity is unloaded. This issue, which was included in basic form in Article 24a) of the Chicago Convention, has been extended to cover other technical supplies such as those mentioned above, although the provisions of Article 24 of the Convention are broadened in that there is no obligation that such supplies still be aboard the aircraft upon departure from the customs territory.

Spain has not expressed any reservation with regard to para. 4.42 of Annex 9 to the Convention on International Civil Aviation as regards supplies and, as a result, there will be no difficulty in applying Section I, Clause 1 of the above-mentioned document.

With regard to Clause 2 in the above-mentioned Section I, if the aircraft leaves the State for another customs territory in the same State or any other State, there are no customs duties since the supplies are domestic.

With reference to fuels, the following should be noted:

Article 8.7 of EEC Directive 92/81 establishes that:

“No later than 31 December 1977 the Council shall review the exemptions provided for in paragraphs 1 (b) [(Art. 8.1.b) exemption for commercial aviation fuel] and 2 (b), on the basis of a report by the Commission and taking account of the external costs entailed in such means of transport and the

implications for the environment and shall decide unanimously, on a proposal from the Commission, whether to abolish or modify those exemptions.”

In this context, some Member States of the European Union have already stated their position in favour of the abolition of this exemption for environmental reasons. The Spanish position in this regard still has to be established by the various Ministries involved.

In addition, with regard to Section II, when an aircraft makes successive stops at two or more airports within the same customs territory, the supplies carried on board are domestic and are not subject to customs duties.

The Value Added Tax and special taxes are governed by the Spanish legislation in force (Laws 37/1992 and 38/1992, Articles 22.6 and 9, paragraph f). The laws on VAT and special taxes could be applied to other laws such as the law regulating the IGIC and APIC in the Canaries and the law regulating the production and import tax in Ceuta and Melilla.

Section III

With regard to Section III concerning taxation of the revenues of international air transport enterprises, Spain has signed 35 agreements to avoid double international taxation in the area of taxes on revenue and property. These agreements contain an article concerning the profits from the international operation of aircraft, providing that such profits can only be taxed in the State of the Operator. Most refer to the State in which the firm has its effective headquarters; the others refer to the State of residence of the firm.

In the case of States with which there is no agreement to avoid double international taxation of revenue and property, there are air navigation agreements that are also intended to limit the taxation of profits to the State of the Operator, as well as unilateral agreements that base the exemption of non-resident operators on reciprocity and are applied by means of Orders.

The Attachment contains a list of the double taxation agreements ratified by Spain to date, as well as the agreements and ministerial orders currently in force.

Section IV

As regards the principles contained in this Section, Spanish regulations provide for full exemption of international passenger transport by air from the Value Added Tax (Law 37/1992, Art. 22, para. thirteen).

ATTACHMENT

COUNTRIES WITH WHICH SPAIN HAS AGREEMENTS ON
DOUBLE TAXATION OF INCOME AND PROPERTY

Note.— In the following list, BOE stands for Boletín Oficial del Estado and O.M. stands for Orden Ministerial (Ministerial Order).

FRANCE	27-6-73 (BOE 7-5-75) O.M. 28-4-78 (BOE 6-9-78) Agreement Comp. 6-12-77 (BOE 30-4-79).
SWEDEN	16-6-76 (BOE 22-1-77) O.M. 27-7-77 (BOE 9-8-77) O.M. 18-2-80 (BOE 1-3-80).
NORWAY	25-4-63 (BOE 17-7-64).
SWITZERLAND	26-4-66 (BOE 3-3-67). O.M. 20-11-68 (BOE 26-11-68).
AUSTRIA	20-12-66 (BOE 6-1-68). O.M. 26-3-71 (BOE 29-4-71).
GERMANY	5-12-66 (BOE 8-4-68) O.M. 10-11-75 (BOE 4-12-75). O.M. 30-12-77 (BOE 17-1-78).
FINLAND	15-11-67 (BOE 11-12-68).
BELGIUM	24-9-70 (BOE 27-10-72) O.M. 27-2-73 (BOE 26-3-73).
NETHERLANDS	16-6-71 (BOE 16-10-72) O.M. 31-1-75 (BOE 13-2-75).
DENMARK	3-7-72 (BOE 28-1-74) O.M. 4-12-78 (BOE 5-1-79).
JAPAN	13-2-74 (BOE 2-12-74).
BRAZIL	14-11-74 (BOE 31-12-75).
UNITED KINGDOM	21-10-75 (BOE 18-11-76) O.M. 22-9-77 (BOE 11-10-77).
ROMANIA	24-5-79 (BOE 2-10-80).
ITALY	8-9-77 (BOE 22-12-80).
CANADA	23-11-76 (BOE 6-2-81).
CZECHOSLOVAKIA	8-5-80 (BOE 14-7-81).
POLAND	15-11-79 (BOE 15-6-82).
MOROCCO	10-7-78 (BOE 22-5-85).
USSR	1-3-85 (BOE 22-9-86).
TUNISIA	2-7-82 (BOE 3-3-87).
LUXEMBOURG	3-6-86 (BOE 4-8-87).

HUNGARY	9-7-84 (BOE 24-11-87).
UNITED STATES	22-2-90 (BOE 22-12-90).
BULGARIA	6-3-90 (BOE 12-7-91).
CHINA	22-11-90 (BOE 25-6-92).
AUSTRALIA	24-3-92 (BOE 29-12-92).
ECUADOR	20-5-91 (BOE 5-5-93).
ARGENTINA	21-7-92 (BOE 9-9-94).
MEXICO	24-7-92 (BOE 27-10-94).
INDIA	(BOE 7-2-95).
IRELAND	(BOE 27-12-94).
PHILIPPINES	(BOE 15-12-94).
REPUBLIC OF KOREA	(BOE 15-12-94).
PORTUGAL	(BOE 7-11-95).

**MINISTERIAL ORDERS GOVERNING THE EXEMPTION OF
AIRLINES OF THE FOLLOWING COUNTRIES**

	DATE OF ORDER	DATE OF BOE	AIRLINE AND CERTIFICATE
CUBA	20.2.68	2.3.68	EMPRESA CONSOLIDADA CUBANA DE AVIACION (16.4.68)
UAR	20.12.68	31.12.68	UNITED ARAB AIRLINES (21.1.69)
PERU	2.7.69	9.7.69	AEROLINEAS PERUANAS, S.A. (10.7.69)
CONGO	22.12.71	2.2.72	AIR CONGO (3.2.72)
SOUTH AFRICA	18.2.72	25.2.72	
LEBANON	31.1.76	25.2.75	MIDDLE EAST AIRLINES. AIR LIBAN. S.A.L. (MEA) (11.3.75)
NIGERIA	26.1.76	9.2.76	
KUWAIT	27.6.78	2.8.78	
URUGUAY	7.2.66 7.2.83	17.2.66 14.2.83	PRIMERAS LINEAS URUGUAYAS DE NAVEGACION AEREA (P.L.U.N.A.) (6.4.83)
ISRAEL	5.2.85	30.3.85	EL AL ISRAEL AIRLINES (9.4.86)
GREECE	6.5.85	25.5.85	OLYMPIC AIRWAYS, S.A. (10.6.85)
PARAGUAY	24.4.87	9.5.87	LINEAS AEREAS PARAGUAYAS (LAP) (11.5.87)
SEYCHELLES	6.5.91	10.6.91	AIR MARKETING REPRESENTATIVES, S.A. (AMR) (4.7.91)
PANAMA	19.10.94	10.11.94	
COLOMBIA	There is no reciprocity order, but there is an additional protocol (exchange of notes of 5.9.66) to the Air Agreement of 11.12.51 which has the same effect.		AEROLINEAS NACIONALES DE COLUMBIA (AVIANCA) (18.4.68)

AGREEMENTS ON DOUBLE TAXATION OF MARINE AND AIR NAVIGATION

SOUTH AFRICA	16.10.73	(BOE 19.12.73)
IRELAND	25.2.75	(BOE 16.4.77)
CHILE	28.12.76	(BOE 11.7.78)
VENEZUELA	6.3.86	(BOE 1.2.89)

The Swedish Civil Aviation Administration approves of the policies in the revised edition of Doc 8632. The Swedish Government is also in compliance with the Resolutions.

General Comment

Air transport is a matter of the Swiss Federal Government and is therefore regulated by Federal laws. Consequently cantonal (regional) or communal laws do not apply.

Sections I–IV Swiss laws are in compliance with the respective Council Resolutions of 14 December 1993. Nevertheless, concerning the application of VAT on charter flights, in the view of the Swiss Tax Administration such transports are not to be considered as international air transports, but as a rental of aircraft. The industry concerned has not accepted such interpretation and has brought the case to court. Therefore, an answer on the application of Section IV of Doc 8632 in Switzerland is not possible for the time being.

Sections I and II

Thailand complies with the revised sections of the document dealing with taxation of fuel, lubricants and other consumable technical supplies.

Section III Concerning taxation of income and aircraft, the Value Added Tax system, based on the principle of reciprocity, is applied in Thailand.

Section IV Regarding taxes on the sale or use of air transport, Thailand aims to carry out its practice in accordance with ICAO policies.

The United Arab Emirates is fully in compliance with ICAO's policies on taxation in Doc 8632.

Sections I and II

There are no national or local taxes being imposed within the United Kingdom on the acquisition of fuel, lubricants or consumable technical supplies for use by aircraft in international air transport.

Section III

The United Kingdom has implemented more than 90 agreements with other States which effectively implement this Resolution in respect of the United Kingdom and those States. The United Kingdom is always willing to consider holding bilateral discussions with a view to concluding further such agreements covering the profits of international air transport.

Section IV

The United Kingdom introduced with effect from 1 November 1994, a charge payable in respect of each passenger departing on a flight from a United Kingdom airport for both domestic and international destinations. The revenue from the charges accrues direct to the United Kingdom Exchequer.

Section I

Clause (1) This clause is implemented in the United States.

Clause (2) Subject to the comments in clauses (3) and (5) below, this section is implemented in the United States for federal taxes on aviation fuels, lubricants and other consumable technical supplies taken on board aircraft for consumption during flight.

Clause (3) Exemptions, credits or refunds of Federal fuel taxes and customs duties are granted with regard to supplies for (i) military aircraft of any country; and (ii) civil aircraft engaged in foreign trade with the United States, or in trade between the United States and any of its possessions. However, in the case of civil aircraft registered in a foreign country, these exemptions, credits or refunds are granted only if the foreign country allows, or will allow, substantially reciprocal privileges in respect of U.S. registered aircraft.

The United States does not anticipate the expansion of these exemptions to foreign civil aircraft other than those engaged in foreign trade with the United States.

Clause (4) See answer to clause (3) above.

Clause (5) This clause is implemented in the United States with respect to the purchase of bonded or foreign trade zone (FTZ) fuel at many international airports. Several States of the United States already exempt fuel used on international flights from State excise taxation.

Except for situations involving the purchase of bonded or FTZ fuel, various States of the United States collect taxes on fuel taken on board. In some of these States, the tax revenues are allocated to civil aviation use. While the United States is sympathetic with the objective of eliminating local taxes for such fuel, under the Federal structure of the U.S. Government, and in light of the decisions of the United States Supreme Court in *Wardair Canada v. Florida Dept of Revenue*, 477 U.S. 1, 106 S.Ct. 2369, 91 L. Ed. 2d 1 (1986); *see also, Intel. Containers Intern. Corp. v. Huddleston*, 113 S.Ct. 1095 (1993), the United States does not anticipate that international air transport will be exempted from these State taxes in the immediate future (with the exception of purchases of bonded or FTZ fuel).

Local sales and excise taxes on fuel at public (federally supported) airports are permitted only to the extent such taxes are “expended for capital or operating costs of --(A) the airport; (B) the local airport system; or (C) other local facilities owned or operated by the airport owner or operator and directly and substantially related to the actual air transportation of passengers or property” (*i.e.* a “user charge”). (49 U.S.C. 47107 (b))

Section II

Clause (1) Subject to reciprocity, exemptions apply with respect to flights between points within the United States when part of an international flight.

Clause (2) and (3)

See comments under clauses (3) and (5), Section I, above.

Section III

Clause (1)(a) The United States is in accord with the principles set forth in this Clause and, in accordance with its existing laws, has for a long period of time followed the practice of granting the exemptions provided for in this

Clause through bilateral agreements with other countries or, in appropriate cases, by means of administrative rulings. Some of the exemptions apply reciprocally only to aircraft registered in the other country.

Clause (1)(b) No Federal property tax applies to property of an air transport enterprise. Some State or local Governments within the United States may, however, impose a tax on certain movable personal property of such enterprise (not including commercial aircraft).

Clause (2) The bilateral agreements referred to under Clauses (1)(a) and (3) are applicable only to Federal taxes. However, the U.S. Government has generally been successful in persuading U.S. State Governments to follow the Federal practice in this area. Federal law specially precludes State taxation of U.S. and foreign air carriers on the basis of "Gross Receipts" (see 49 U.S.C. 4011(b)).

Clause (3) Income tax exemptions are in effect with more than 65 countries, however, the income exempted may vary based on the degree of reciprocity available through a country's law.

In some cases, where reciprocal exemption is provided in a pre-1987 tax treaty, it is limited to planes documented under the laws of the country of the residence of the operator or lessor. Reciprocal exemptions provided under U.S. law (beginning in 1987) and recent tax treaties go to residents of the other country without regard to where the aircraft is documented.

Section IV

Clauses (1) and (2)

All taxes or charges imposed on the sale of international air transport, or use of international air transport facilities and services, are dedicated for, or do not exceed, the costs of airport, air navigation and aviation security facilities and services. These charges include:

* A \$6.00 passenger departure tax for international air transportation that begins in the United States. For air transportation between the continental United States and a 225 mile zone in Canada or Mexico, a 10 per cent ticket tax applies if the payment was made within the United States, while the \$6.00 tax applies if the payment was made outside the United States. These taxes go into the Airport and Airway Trust Fund.

A \$6.50 passenger charge for customs inspections; a \$6 passenger charge for immigration inspections; and a \$1.45 passenger, and \$76.75 aircraft, charge for animal, plant and health inspections (APHIS). These charges are dedicated toward the costs of these services.

* A tax on fuels for non-commercial aviation of 19.3 cents per gallon for aviation gasoline, and 21.8 cents per gallon for aviation fuel other than gasoline (e.g. jet fuel). 4.3 cents of these fuel taxes go into the general fund. The balance goes into the Airport and Airway Trust Fund, which is dedicated to aviation purposes. Commercial aviation fuel used in foreign trade services refunds of any of these taxes which have been paid.

* These taxes are reenacted for transportation sold on or after August 27, 1996, and are effective on transportation sold and begun through December 31, 1996.

In addition to these Federal taxes, State or local commercial airport operators may, with the approval of the Federal Aviation Administration, collect a maximum \$3.00 passenger facility charge for funding of specific airport capital improvements, with a maximum \$6.00 charge (2 airports) for any one-way itinerary, regardless of the number of airports utilized.

Section I

- Clause (1)** Supplies carried on board an aircraft arriving in Uzbekistan are not considered imported and they are exempt from customs duties if they are not unloaded from the aircraft. Supplies unloaded temporarily are not subject to customs duties.
- Clause (2)** The exemptions mentioned above with respect to Clause (1) are also granted upon departure.
- Clause (3)** The provisions of Clause (1) and Clause (2) apply regardless of the type of operation performed.
- Clause (4)** The expression “customs duties” includes import and export duties.

Section II

- Clause (1)** See explanation with respect to Clauses (1) – (3) of Section I above.
- Clause (2)** See explanation with respect to Clause (4) of Section I above.

Section III

- Clause (1) (a)** On the basis of reciprocity, Uzbekistan grants air transport enterprises of other Contracting States exemption from taxation on income derived in its territory from the operation of aircraft in international air transport.
- Clause (1) (b)** Uzbekistan grants exemption from property taxes, capital levies and other similar taxes on aircraft in international air transport.
- Clause (2)** In accordance with Clauses (1) (a) and (1) (b), tax exemption is granted in accordance with the appropriate provisions included in bilateral air services agreements or on the basis of bilateral agreements relating to double taxation.

Uzbekistan has concluded the above-mentioned agreements with the following States:

Bilateral air service agreements

Each of these agreements contains a provision on airline tax exemption. They have been concluded between Uzbekistan and China, Republic of Korea, Austria, Viet Nam, Norway, Denmark, Sweden, Kuwait.

Bilateral agreements

Agreements on the avoidance of double taxation have been concluded between Uzbekistan and Belarus, Ukraine, India, United Kingdom, Thailand, Russian Federation, Republic of Moldova, Pakistan, Poland.

- Clause (3)** In its policy, the Government of Uzbekistan strives to conclude agreements with other States which are prepared to act on the basis of reciprocity.

Section IV

Clause (1) Passengers departing from Uzbekistan on international flights pay a passenger service charge of U.S.\$ 10.

ATTACHMENT TO PART B

Extract from Doc 8632, Second Edition, January 1994

SECTION I

COUNCIL RESOLUTION OF 14 DECEMBER 1993 ON TAXATION OF FUEL, LUBRICANTS AND OTHER CONSUMABLE TECHNICAL SUPPLIES WHEN AN AIRCRAFT REGISTERED IN ONE STATE OR LEASED OR CHARTERED BY AN OPERATOR OF THAT STATE ARRIVES IN OR DEPARTS FROM A CUSTOMS TERRITORY OF ANOTHER STATE

- WHEREAS international air transport plays a major role in the development and expansion of international trade and travel pursuant to the objectives of ICAO;
- WHEREAS the imposition of national or local taxes on the acquisition of fuel, lubricants and consumable technical supplies for use by aircraft in connexion with international air transport is an impediment to the sound, economical and orderly development of international air transport operations;
- WHEREAS Article 24 (a) of the Convention on International Civil Aviation provides, *inter alia*, 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;
- WHEREAS it is the common practice of many States with respect to ships and aircraft engaged in international navigation generally to exempt from taxation all fuel and lubricants on board on arrival in each customs territory and, on a basis of reciprocity, to exempt from or refund taxes on fuel and lubricants taken on board at the final port of call in that customs territory; and
- WHEREAS it is practicable and desirable to extend such exemptions or refunds to other consumable technical supplies*, which, like fuel and lubricants, are filled into receptacles forming part of the aircraft, are consumed during flight and are essential for that purpose, so that all the exemptions applicable to fuels and lubricants will apply also to such supplies;

THE COUNCIL RESOLVES THAT:

- (1) When an aircraft registered in one State or an aircraft leased or chartered by an operator of that State arrives in the territory of another State, the fuel, lubricants and other consumable technical supplies contained in the tanks or other receptacles on the aircraft shall be exempt from customs and other duties provided that no quantity may be unloaded except temporarily and under customs control;

*e.g. de-icing fluid, hydraulic fluid, cooling fluid, etc.

- (2) When an aircraft registered in one State or an aircraft leased or chartered by an operator of that State departs from an international airport of another State either for another customs territory of that latter State or for the territory of any other State, the fuel, lubricants and other consumable technical supplies taken on board for consumption during the flight shall be furnished exempt from all customs and other duties or, alternatively, any such duties levied shall be refunded, provided that the aircraft has complied, before its departure from the customs territory concerned, with all customs and other clearance regulations in force in that territory;
- (3) The provisions of paragraphs (1) and (2) above shall apply whether the aircraft is engaged in an individual flight or in the operation of an air service and whether or not it is operating for remuneration;
- (4) 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;
- (5) The duties and taxes described in (4) above shall include those levied by any taxing authority within a State, whether national or local. These duties and taxes shall not be or continue to be imposed on the acquisition of fuel, lubricants or consumable technical supplies used by aircraft in connexion with international air services except to the extent that they are based on the actual costs of providing airports or air navigation facilities and services and used to finance the costs of providing them;
- (6) Each Contracting State shall notify the Organization of the extent to which it is prepared to take action in accordance with the principles of this Resolution and thereafter keep the Organization informed of any subsequent changes in its position vis-à-vis the Resolution;
- (7) The information thus received shall be published and transmitted to all Contracting States.

COMPLIANCE WITH THIS RESOLUTION BEING SUBJECT TO THE TERMS AND CONDITIONS
HEREINAFTER SPECIFIED:

- (i) the Resolution being based upon reciprocity, no State complying with the Resolution is obliged to grant to aircraft registered in another State or aircraft leased or chartered by an operator of that State any treatment more favourable than its own aircraft are entitled to receive in the territory of that other State;
 - (ii) notwithstanding the principle of reciprocity underlying this Resolution, Contracting States are encouraged to apply the Resolution, to the maximum extent possible, to all aircraft on their arrival from and departure for other States.
-

COMMENTARY ON COUNCIL RESOLUTION IN SECTION I

6. In adopting this Resolution the Council endorsed the policy of reciprocal exemption from, or refund of, customs and other duties on certain fuel, lubricants and other consumable technical supplies used in international air transport. It did so upon the bases of, *inter alia*, long-standing maritime practice and the established policy of many States. The Council recognized the obvious practical difficulties inherent in adopting any other course of action and pointed out that its policy as set forth in the Resolution appeared to be the only one available in the foreseeable future which would, in a simple and effective manner, assure equitable treatment for international aviation throughout the many jurisdictions into which it operated.

7. The Resolution includes (Resolving Clauses (1) and (2)), in addition to fuel and lubricants, consumable technical supplies such as de-icing fluid, hydraulic fluid and cooling fluid which, in their usage, furnish a precise parallel with fuel and lubricants. It is noted that Resolving Clause (1) of the Resolution goes somewhat further than Article 24 of the Convention in that the fuel, lubricants and other consumable technical supplies on board upon arrival of the aircraft, so long as they are not offloaded, remain exempt from customs and other duties and can be consumed without any obligation that they or their equivalent be "retained on board on leaving the territory" of the State granting the exemption. More importantly, it is also noted that Resolving Clause (2) of the Resolution provides for exemption or refund for the fuel, lubricants and other consumable technical supplies taken on board at the final international airport of call in a customs territory of a State, whether or not such airport is located at the border of the customs territory.

8. Special attention is drawn to Resolving Clauses (1), (2) and (3) which make the Resolution applicable to all aircraft engaged in international operations, i.e. those performing scheduled, non-scheduled and private flights, and including those aircraft leased or chartered by an operator of

another State even though the aircraft concerned may be registered in the State from which the exemption is sought. The Council concluded that all types of operations were entitled to equal treatment in this respect and this had been the basis upon which Article 24 of the Chicago Convention was drafted. Those Contracting States which, thus far, have granted exemption from duties on fuel, etc., to one type of operation only, e.g. scheduled international flights, are therefore invited to make special efforts in bringing their national practices in line with this clause of the Resolution.

9. Resolving Clause (4) makes it clear that fuel, lubricants, etc., should be exempt from any kind of duties and taxes regardless of the names attached to such levies in different countries.

10. With respect to Resolving Clause (5), the term "local" relates to political subdivisions of a State such as states, provinces and municipalities, and the Council is aware of the difficulties which might arise in some States where such entities have the constitutional right to levy duties and taxes on their own behalf. The inclusion of this clause is intended to encourage such States to seek the necessary internal arrangements for the benefit of international air transport. If such arrangements cannot reach complete fruition, the other State concerned can still determine whether sufficient reciprocity is available to warrant its entry into an agreement.

11. Also in relation to Clause (5), Council recognized that throughput charges imposed by government or airport authorities on fuel companies in return for facilities or services provided can in certain circumstances become, in practical effect to those engaged in international air navigation, the equivalent of another tax payable by them. However, taxes and customs or excise duties on fuel differ in essence from charges (however they may be levied) for the use of certain facilities and the Council has recommended in its Statement on Airport Charges in Doc 9082 (*Statements by the Council to Contracting States*

on Charges for Airports and Air Navigation Services) that "where fuel 'throughput' charges are imposed they should be recognized by airport authorities as being concession charges of an aeronautical nature. ('Concession charges' are fees for the right to operate a commercial activity at an airport.)" In general, to clarify what is a charge and what is a tax, it should be generally recognized that, when any levy on consumption of fuel: (a) falls on aircraft operators of other States engaged in international air navigation, (b) is in the form of a compulsory contribution to the support of the government, and (c) is not then used for airports or air navigation facilities and services, it is in reality an excise tax and comes within the terms of the Resolutions of Council set forth in Sections I and II of this document.

12. As is implied in Resolving Clauses (6) and (7), it is the intention to present to the reader of this document as complete a picture as possible of the actual status of implementation by Contracting States of the Resolution. In order to accomplish this, it is essential that each State, and particularly those which have not as yet communicated with ICAO on this subject matter, submits to this Organization the desired information in the briefest possible manner, preferably in the form of short comments on each of the resolving clauses, suitable for publication in a Supplement hereto. It is equally important, of course, that the Organization be kept informed of any changes in the position of a State so that such changes may be reflected in amendments to the Supplement, to be published from time to time.

SECTION II

COUNCIL RESOLUTION OF 14 DECEMBER 1993 ON TAXATION OF FUEL, LUBRICANTS AND OTHER CONSUMABLE TECHNICAL SUPPLIES WHEN AN AIRCRAFT REGISTERED IN ONE STATE OR LEASED OR CHARTERED BY AN OPERATOR OF THAT STATE MAKES SUCCESSIVE STOPS AT TWO OR MORE AIRPORTS IN ONE CUSTOMS TERRITORY OF ANOTHER STATE

- WHEREAS international air transport plays a major role in the development and expansion of international trade and travel pursuant to the objectives of ICAO;
- WHEREAS the imposition of national or local taxes on the acquisition of fuel, lubricants and consumable technical supplies for use by aircraft in connexion with international air transport is an impediment to sound, economical and orderly development of international air transport operations;
- WHEREAS the Council Resolution on Taxation of Fuel, Lubricants and Other Consumable Technical Supplies adopted by the ICAO Council on 14 December 1993 provides that exemption from all customs and other duties be granted for all fuel in the tanks of an aircraft engaged in international air navigation when it arrives in the territory of a State and for all fuel taken on board in that State on departure from the final international airport of call for another customs territory of that State or for the territory of any other State; and
- WHEREAS it appears practicable and desirable to extend such exemption to fuel, lubricants and other consumable technical supplies* taken on board an aircraft engaged in international air navigation when it makes successive stops at two or more international airports in a single customs territory;

THE COUNCIL RESOLVES THAT:

- (1) When an aircraft registered in one State or leased or chartered by an operator of that State engaged in international air navigation makes successive stops at two or more international airports in one customs territory of another State on its way to another customs territory of that State or to the territory of any other State, the fuel, lubricants and other consumable technical supplies taken on board at any of the airports referred to above shall be exempt from customs and other duties on a reciprocal basis;

*e.g. de-icing fluid, hydraulic fluid, cooling fluid, etc.

- (2) 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;
- (3) The duties and taxes described in (2) above shall include those levied by any taxing authority within a State, whether national or local. These duties and taxes shall not be or continue to be imposed on the acquisition of fuel, lubricants or consumable technical supplies used by aircraft in connexion with international air services except to the extent that they are based on the actual costs of providing airports or air navigation facilities and services and used to finance the costs of providing them;
- (4) Each Contracting State shall notify the Organization of the extent to which it is prepared to take action in accordance with the principles of this Resolution and thereafter keep the Organization informed of any subsequent changes in its position vis-à-vis this Resolution;
- (5) The information thus received shall be published and transmitted to all Contracting States.

COMMENTARY ON COUNCIL RESOLUTION IN SECTION II

13. The Resolution in the preceding Section deals with the exemption from duties and taxes on the fuel, etc., in the tanks of an aircraft when it arrived in another State and on the fuel taken on board in that State prior to departure for another customs territory of the same or the territory of another State. Council's Resolution in this Section goes one step further, calling on States to grant such exemptions also for the fuel and other consumable technical supplies taken on board an aircraft engaged in international air navigation when it makes successive stops at two or more international airports in a single customs territory. Council has endeavoured to make it clear in the above Resolution that the fuel in question is that taken on board at international airports in the State concerned prior to the last international airport of call.

14. Based on information supplied by States concerning their practices, the Council noted that there was evidence of a more general acceptance in recent years for granting exemption from duties to international air transport for this fuel. Taking this

into account, the Council decided to upgrade the original Recommendation to a Resolution as it is convinced that compliance with its terms will result in a considerable amount of facilitation to international aircraft operations with, in most cases, little loss of revenue to States. This Resolution, like the Resolution reproduced in Section I, is based on reciprocity.

15. Clauses (2) and (3) are parallels to Resolving Clauses (4) and (5) of the preceding Resolution and paragraphs 9 to 11 of this document apply equally to this Resolution. Clauses (4) and (5) are parallels to Resolving Clauses (6) and (7) of the preceding Resolution and paragraph 12 of this document applies equally to this Resolution. In particular, States should comment, in brief, on their existing practices with regard to Clause (1) and keep the Organization informed of any changes which may occur in the future so as to enable ICAO to keep the Supplement to this document up to date through publication of amendments from time to time.

SECTION III

COUNCIL RESOLUTION OF 14 DECEMBER 1993 ON TAXATION OF THE INCOME OF INTERNATIONAL AIR TRANSPORT ENTERPRISES AND ON TAXATION OF AIRCRAFT AND OTHER MOVABLE PROPERTY ASSOCIATED WITH THE OPERATION OF AIRCRAFT IN INTERNATIONAL AIR TRANSPORT

WHEREAS 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;

WHEREAS 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

WHEREAS 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:

- (1) Each Contracting State shall, to the fullest possible extent, grant reciprocally
 - (a) exemption from taxation on the income of air transport enterprises of other Contracting States derived in that State from the operation of aircraft in international air transport; and
 - (b) exemption of air transport enterprises of other Contracting States from property taxes, and capital levies or other similar taxes, on aircraft and other movable property associated with the operation of aircraft in international air transport.
- (2) The "taxation" and "taxes" referred to in (1) (a) and (b) shall include taxes levied by any national or local taxing authority within a State;
- (3) Each Contracting State shall endeavour to give effect to Clause (1) 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;

- (4) Each Contracting State shall take all feasible measures to avoid delays in any bilateral negotiations found necessary to achieve implementation of Clause (1) above;
- (5) Each Contracting State shall notify the Organization of the extent to which it is prepared to take action in accordance with the principles of this Resolution and thereafter keep the Organization informed of any subsequent changes in its position vis-à-vis the Resolution;
- (6) The information thus received shall be published and transmitted to all Contracting States.

COMMENTARY ON COUNCIL RESOLUTION IN SECTION III

16. This Resolution aims at the avoidance of multiple taxation on the income of air transport enterprises, as well as multiple taxation of aircraft and other movable property associated with the operation of aircraft in international air transport. The Council, for reasons similar to those given in the foregoing Resolutions on taxation of fuel, lubricants and other consumable technical supplies, based the Resolution upon the principle of reciprocity. This approach appeared to offer the best prospect of general acceptance, has been widely applied to international shipping for many years, and has already been put into effect in many instances either through appropriate legislation in individual States or through bilateral agreements of one sort or another between States.

17. It will be noted in this connexion that the conclusion of such agreements is consistent with the recommendation of the Economic and Social Council of the United Nations and the Organization for Economic Co-operation and Development (OECD) to the effect that governments should actively pursue a policy of negotiating agreements with each other for the avoidance of multiple taxation. Furthermore, both this reciprocal approach and the method used for avoidance of multiple taxation for the items referred to in this Section are reinforced by the OECD Model Convention (1992) for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital. The United Nations Model Double Taxation Convention

between Developed and Developing Countries (1980) also stresses the reciprocal approach and has many articles in common with the OECD Convention.

18. Resolving Clause (2) parallels the principle in Resolving Clause (5) of the Resolution in Section I and Clause (3) of the Resolution in Section II and the comments in paragraphs 9 and 10 apply equally to this Resolution. The Resolution, when fully implemented by all Contracting States, would mean that taxes on the earnings, aircraft and other movable property associated with the operation of aircraft of an international air transport enterprise would be levied solely by the State where the place of effective management of the enterprise is located. In the absence of reciprocal exemptions, an international air transport enterprise is subject either to multiple taxation — a situation which this Resolution endeavours to prevent — or to assessments on the basis of one or the other allocation formula to be negotiated between the operator and the State concerned. The only possible alternative, i.e. allocation on a multilateral basis, in Council's view, remains a theory which conceivably might be more equitable provided every State in the world would agree to commit itself to the formula devised. This appears precluded in the foreseeable future by: (a) fundamental differences between jurisdictions, in tax structure, revenue needs and economic conditions, as well as by differences in language,

business and accounting practices and fiscal and commercial legislation, and (b) the freely admitted desire of the operators of international flights, in cases where the rule of reciprocal exemption is not followed, to maintain flexibility by utilizing different formulae in different circumstances.

19. In giving effect to the terms of this Resolution, various courses of action, as mentioned in the third WHEREAS clause, are open to Contracting States. Of these, the adoption of legislation granting exemption on a reciprocal basis is undoubtedly the most simple and least time-consuming method of achieving the aims of this Resolution, provided that such legislation can be enacted without undue delays. Some States, on the other hand, find it more practicable to deal with the problem of relief from multiple taxation of air transport enterprises through formal bilateral negotiations of agreements relating to taxation generally or in the context of agreements for the exchange of commercial air transport rights. In some instances, however, negotiations conducted between certain States to this end are known to

have encountered numerous formal difficulties and delays, as a result of which Council has invited (cf. third resolving clause) negotiating governments to take all feasible measures to achieve rapid implementation. In this connexion, the attention of governments is drawn to a method of implementation that has been utilized between certain States. Having decided, in principle, to apply the rule of reciprocal exemption to each other's air transport enterprises, the States concerned have completed action on the matter by means of a simple exchange of diplomatic notes. A wider application of this type of action, where possible and appropriate, might assist in the early achievement of more universal application of the rule of reciprocal exemption.

20. As in the previous Resolutions on fuel and lubricants, the Council again has urged States (cf. Resolving Clauses (5) and (6)) to notify the Organization of their position vis-à-vis items (a) and (b) of the first resolving clause so that an up-to-date record may be maintained in a Supplement to this document.

SECTION IV

COUNCIL RESOLUTION OF 14 DECEMBER 1993 ON TAXES RELATED TO THE SALE OR USE OF INTERNATIONAL AIR TRANSPORT

WHEREAS the further development and expansion of international travel and trade in pursuance of the principles of the Convention is accepted as an objective by the Contracting States of ICAO; and

WHEREAS 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:

- (1) 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;
- (2) In the context of this Resolution, a tax is defined as a levy to raise revenue for the national or local treasury which will be used for general or specific public (i.e. non-aviation) purposes, and charges levied to cover the cost of services and functions not required for civil aviation also represent taxes for the purposes of this Resolution;
- (3) Each Contracting State shall notify the Organization of the extent to which it currently levies taxes on the sale or use of international transport by air and of the extent to which it is prepared to take action in accordance with the principles of this Resolution, and thereafter keep the Organization informed of any subsequent changes in its position vis-à-vis the Resolution;
- (4) The information thus received shall be published and transmitted to all Contracting States.

COMMENTARY ON COUNCIL RESOLUTION IN SECTION IV

21. The development and expansion of international travel and trade has become an important objective of all ICAO Contracting States, and international civil aviation has played an ever-increasing role in this expansion each year since the signing of the Chicago Convention. At the same time it has been generally recognized that taxes on the sale or use of international air transport are a relatively inequitable form of taxation and can create a considerable obstacle to the further development of this form of transport, mainly because they cause increased prices as well as delays and inconvenience to the travellers and the trading community using the product.

22. Taxes levied on gross receipts of international air transport enterprises, i.e. on the revenue derived from the sale of transport by air of passengers and cargo, add to the over-all cost to operators of maintaining their international air services and must, like other costs, be passed on to their consumers. It is widely appreciated that one of the main ways to obtain increased public use of air transport, and thus further its development, is to reduce fares so that more and more people can take advantage of its speed and convenience. Taxes of the kind mentioned above, however, can be a deterrent in this respect.

23. Taxes levied on each shipment of air cargo laden or unladen from international flights discourage trade in high value merchandise and perishable products where speed of transportation is of prime importance. Taxes of this nature, however, should not be confused with customs duties on the importation of goods from abroad, which constitute a commonly used source of revenue for States and, when applicable, are collected regardless of the mode of transport employed.

24. Sales taxes on tickets purchased for international air transport, where levied, increase the cost of air travel. The same effect can be ascribed to other taxes, sometimes levied upon international air travellers at times of embarkation

and disembarkation. In addition to raising the cost of travelling by air, these latter taxes, when collected at the last moment, have the added disadvantage of causing inconvenience to the traveller by requiring him, for example, to check in earlier for his embarkation, to obtain additional local currency, etc.

25. The definition of a tax as contained in Resolving Clause (2) differs from that generally accepted by the OECD and the United Nations, where revenue paid into consolidated revenue, but subsequently dedicated to the civil aviation budget, would generally be characterized as a tax. However, all taxes or charges levied by States that are directly or indirectly intended to finance the cost of aviation facilities would be considered acceptable and not falling within the scope of this Resolution.

26. In its Statements to Contracting States on Charges for Airports and Air Navigation Services (Doc 9082), the Council has made two important recommendations in relation to charges. The first is that States should impose charges only for services and functions which are required for international civil aviation; and the second is that States refrain from imposing charges which discriminate against international civil aviation in relation to other modes of international transportation. Where charges are imposed for services and functions which are not required for international civil aviation, these charges are in effect taxes and come within the purview of this Resolution.

27. The comments concerning "local" taxes in paragraph 10 apply equally to taxes levied by a "local" treasury as mentioned in Resolving Clause (2).

28. Analogous to the Resolutions in Sections I, II and III, States are again in Clauses (3) and (4) urged to inform the Organization of their position in this respect for the purpose of publishing the information in a Supplement thereto.