

14 October 2014

VIA E-MAIL

Mr. Michael Lennard  
Chief, International Tax Cooperation Section  
Financing for Development Office  
UN Department of Economic and Social Affairs  
2 UN Plaza, Room DC2-2172  
United Nations  
New York, NY 10017  
USA  
[lennard@un.org](mailto:lennard@un.org)

Re: United Nations Model Double Taxation Convention, Article 8

Dear Mr. Lennard :

I am writing on behalf of the International Air Transport Association (IATA) to provide some further comments, in addition to those set forth in our letter of 14 October 2013, on the issues being considered by the United Nations Committee of Experts on International Cooperation in Tax Matters (the Committee) in connection with Article 8 (Shipping, inland waterways transport and air transport) of the UN Model Double Taxation Convention.

As you know, IATA is the trade association for the world's airlines, representing some 240 airlines or 84% of total air traffic. We expect to be represented at the Committee's Tenth Session in Geneva on 27-31 October 2014 by Auguste Hocking and Morgan Lightfoot, both from IATA, and our tax counsel, Mary Bennett of Baker & McKenzie, LLP.

IATA's Industry Taxation Working Group has read with interest note E/C.18/2014/CRP.1 on Auxiliary Activities under Article 8, prepared for the upcoming Tenth Session. While our October 2013 letter addressed many of the issues covered by that note, we have prepared the attached comments on the newer portions of that note, in particular the section relating to so-called "non-traditional" sources of revenue. I hope that you will be able to circulate a copy of these comments to the Committee members in advance of the meeting.

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I wish to confirm that IATA remains fully available to contribute further to any ongoing discussions or analysis the Committee may undertake with respect to Article 8 after this month's meeting. Please do not hesitate to contact me and/or our tax counsel, Mary Bennett ([mary.bennett@bakermckenzie.com](mailto:mary.bennett@bakermckenzie.com)), if you would like to pursue this offer of further dialogue.

Thank you very much for your kind consideration of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Charlotte Fantoli', with a stylized flourish at the end.

Charlotte Fantoli  
Assistant Director, Industry Taxation  
[fantolic@iata.org](mailto:fantolic@iata.org)

Attachment: Appendix, IATA First Supplemental Comments on Article 8

**INTERNATIONAL AIR TRANSPORT ASSOCIATION (IATA) :**  
**FIRST SUPPLEMENTAL COMMENTS ON ARTICLE 8 OF THE UN MODEL TAX CONVENTION**

***MEETING OF THE COMMITTEE OF EXPERTS ON INTERNATIONAL COOPERATION IN TAX MATTERS***  
***GENEVA, 27-31 OCTOBER 2014***

***Introduction***

1. IATA is the trade association for the world's airlines, representing some 240 airlines or 84% of total air traffic. Our member companies are based in over 125 countries and engage in air transport operations in virtually every country around the globe.
2. As noted in our preliminary comments submitted on 14 October 2013, our member companies' ability to conduct their air transport operations without facing crippling compliance burdens and multiple taxation risks depends almost entirely upon the consensus in favor of exclusively residence-based taxation of airlines' income from international traffic, as reflected in Article 8 (Shipping, inland waterways transport and air transport) of the UN Model Tax Convention and in the identical language of Article 8 of the OECD Model Tax Convention.
3. Accordingly, IATA has a strong interest in the manner in which Article 8 is interpreted and applied. We continue to strongly support the idea of aligning the Commentary on Article 8 of the UN Model with the Commentary on the identical language of Article 8 of the OECD Model, and we remain interested in contributing constructively to the Committee's ongoing examination of the policy considerations relevant to any potential revisions to the Article 8 Commentary. We would be pleased to provide a more thorough analysis of any of the points made in our comments after the Committee's October 2014 meeting.

***Article 8 – So-called “Non-Traditional” Sources of Airline Revenue***

4. These comments are focused on the topic of so-called “non-traditional” sources of airline revenue discussed at paragraphs 53 *et seq.* of note E/C.18/2014/CRP.1 on Auxiliary Activities under Article 8, prepared by the Secretariat for the Committee's meeting in Geneva on 27-31 October 2014.
5. The note mentions a number of components of airline revenue which it describes as “additional profit earning items”. These include: unbundled air fares, travel add-ons, on-board sales, advertising sales, customer loyalty programs, co-branded credit cards, and other revenue sources (e.g. services provided to other airlines).
6. From IATA's perspective, a preliminary point to note about most of the items mentioned is that they do not represent new or “additional profit earning items” for the airlines. Almost all of the items mentioned are services that airlines traditionally provided to passengers as part of the ticket price for transportation, but which have more recently begun to be separately charged in order to give customers the option of whether to pay for them and to lower the basic ticket fare to attract additional business. In other words, the airlines have adopted a new pricing model for these items, but they are not new revenue sources for the airlines. Any increases in airline revenue since the introduction of this kind of à la carte pricing are attributable in part to an increase in demand for business travel.

7. Thus, for example, bookings changes, checked baggage, seat assignment, in-flight meals, snacks or beverages, printing of boarding passes, frequent-flyer miles, lounge access, travel by unaccompanied minors, priority boarding, headsets, and access to fast track through security have all traditionally been services provided by airlines and have traditionally been included as part of the ticket fare for various classes of service. The fact that airlines have recently begun in certain cases to unbundle these components from the ticket fare and to charge separately for them does not make them new or additional sources of revenue or make them less directly connected with the airlines' operation of aircraft in international traffic. The revenues from these services have always been considered covered by Article 8, and the fact that they may now be derived through a modified pricing model should not change that.
8. Other items mentioned in the note may always have been charged separately from the ticket fare itself, but have been considered so clearly connected with the provision of transportation services to international traffic passengers that they, too, have been considered to fall within the coverage of Article 8. These include items such as excess baggage, on-board sales of duty free and other items, transport to and from the airport, etc.
9. Similarly, revenues from the sale of advertising space in in-flight magazines and other airplane locations are a type of income which, while not derived from providing transportation itself, is so dependent upon and subsidiary to the provision of transportation services that they are properly considered ancillary income covered by Article 8.
10. Commissions earned by airlines from the sale of so-called "travel add-ons" (e.g. hotels, car rentals, excursions, and insurance sold in conjunction with ticket sales for flights) are also a type of income which is ancillary to the airlines' income from the related ticket sales. These items generate for the airlines relatively minor additions to the income from the ticket transactions, and they are derived exclusively from transactions with the airlines' own flight customers. As such, they are sufficiently closely related to income from the international operation of aircraft to be covered by Article 8.
11. Customer loyalty programs have long been a feature of airlines' marketing efforts to their customers. Income earned from providing frequent flyer miles to customers, whether as part of current ticket sales to those customers or through separate sales to the customers or to partner service-providers (e.g., hotels, car rental agencies, credit card companies) who pass them on to the airline customers, are simply a way of earning advance income for the future provision of transportation. As long as an airline's transportation services exclusively fall within the category of international traffic (i.e., where the airline does not have aircraft operated solely between places within a State other than the State where it has its place of effective management), its income from customer loyalty programs should be considered ancillary to its income from the operation of aircraft in international traffic.
12. In summary, IATA believes that the various categories of so-called "non-traditional" sources of airline revenue identified in the note are not new revenue sources but for the most part are instead new ways of charging for traditional services. We believe the revenues are covered by Article 8 by virtue of the fact that they are either directly related to the operation of aircraft in international traffic or are ancillary thereto.

13. IATA appreciates the opportunity to provide these comments. In the event that the Committee decides to study this or any other aspect of the Commentary on Article 8 with a view to its potential revision, we would welcome the opportunity to engage in further dialogue with the Committee on those issues.