

Taxing aviation fuel in the EU

A brief guide

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Taxing transport fuels is almost universal these days in road transport as a means to raise government revenues, pay for road infrastructure, discourage excess driving and more recently to limit climate impacts. Fuel (kerosene) used for international aviation (flights between separate countries) is, on the other hand, universally untaxed as a result of a myriad of intergovernmental air services agreements (ASAs) concluded over the past 50 years or so. These agreements were motivated originally by the view that aviation could help bring the world together after WWII and later promoted by industry association IATA and the UN aviation agency ICAO. Many countries nevertheless tax fuel uplifted for their domestic flights – the US, Australia, Brazil, Japan, India, Saudi Arabia and several countries in South East Asia.

Taxing aviation fuels in Europe was not permitted until the 2003 revision to the Energy Tax Directive enabled domestic aviation fuel to be taxed. Fuel uplifted for all other flights remained exempt but this provision could be waived for flights between two EU states subject to bilateral agreement.

No legal obstacle

So under the Energy Tax Directive (ETD) 2003, EU 28 member states are competent without legal obstacle to tax fuel uplifted for domestic flights. Only the Netherlands did so for a period. And member states were also permitted for the first time under the 2003 ETD to tax fuel uplifted at their airports for flights to other EU destinations subject to agreement on a bilateral basis. No member states have done so.

Fuel uplifted for destinations beyond the EU remain exempt from taxation under member state/EU Bilateral Air Services Agreements. These mutual fuel tax exemptions should be negotiated away.

ICAO's Chicago Convention is not an impediment to taxing fuel that is uplifted by an aircraft. Anywhere. The Chicago Convention merely prevents fuel once on board an aircraft from being taxed on arrival. This, to prevent double taxation – should the fuel have been taxed on uplift at the flight's origin.

Heavily undertaxed

Taxing aviation fuel was much discussed in Europe 20 years ago with the requirement for member state unanimity on all taxation issues being a key element. ICAO passed a non-binding resolution against fuel taxes. Four EU states made reservations. And after the 1997 Kyoto Protocol, ICAO debate focused on standards and MBMs. In 2004, ICAO's triennial Assembly rejected proposals for a global ETS as impractical. Europe then moved to include aviation in the EU ETS (2008); a decision which required a qualified majority of member states, not unanimity. International/industry pushback resulted in "stop the clock" in 2012 restricting the aviation ETS to flights within Europe (intra-EU scope). Efforts then shifted back to ICAO to agree a global MBM. Known as Corsia, this MBM is based on international offsetting credits and is due to begin on a voluntary basis in 2021. Whether the EU will participate will be decided in co-decision during 2020. Offsetting does not count as emission reductions in the ETS from 2021 nor towards the 2030 European emissions reduction target, which includes all outbound aviation emissions from EU airports.

Since aviation's inclusion in the EU ETS in 2012, aviation CO₂ has grown 26% while emissions from other EU sectors reduced 11%, showing that without substantial reforms, the scheme is insufficient to address the sector's climate impact. Emissions from flights beyond the EU, which account for two-thirds of all

European emissions remain unregulated, as does aviation's non-CO2 climate impacts – which exceed those of CO2.

European aviation is heavily undertaxed according to a [recently published study](#) for the European Commission (2019). Many countries tax domestic aviation kerosene – including the USA, Australia, Brazil, Japan, India, Saudi Arabia and the non EU states Norway (since 1999) and Switzerland. Ireland, Luxembourg, Belgium, the Netherlands and Denmark do not tax aviation at all. The weighted average of domestic VAT and ticket taxes in the EU-28 is €11 per passenger. Member states exempt tickets for intra EU flights from VAT completely.

How to proceed on taxing fuel uplifted for intra EU fuel taxation – there being no legal obstacles to member states acting unilaterally to tax domestic fuel?

In principle the fuel tax exemptions in the 2003 ETD should be abolished. Attempts in 2011 to revise various aspects of the ETD failed and the Commission withdrew its proposal in 2015. A further attempt at revising is likely under the new Commission, but the unanimity requirement on taxation remains a major obstacle. Qualified majority voting has been proposed but yet to be agreed.

There is no reason to wait for such a revision, the success of which in any case is uncertain.

Under the existing 2003 provisions, member states can tax fuel on flights to airports in other EU states by agreeing bilaterally to do so. Apart from the long focus on the ETS and ICAO detailed above, this has not happened because foreign carriers operating on intra-EU routes are exempt from fuel taxation, and taxing kerosene bilaterally between EU member states would introduce a distortion with EU registered carriers being subject to the tax. These exemptions were largely granted on a mutual basis when member states struck aviation agreements with foreign countries decades before the Union was formed. However member states and the EU have been progressively renegotiating these air services agreements to remove the foreign carrier fuel tax exemption on intra (not extra) EU flights. Many of the exemptions have been removed, although the 2007 EU-US Open Skies Agreement struck is a notable exception.

Industry has also changed. Operating intra EU sectors often involves foreign airlines stationing flight crew in Europe to operate the EU sectors. This is now cost prohibitive. In addition, ticket yields have plummeted due to low fare airlines. Foreign operations in Europe are more profitable point to point. The ETS emissions reports show that foreign carriers account for about 1% of intra EU emissions. T&E estimates that about 100 airlines/operators still fly within the EU but frequencies have dropped to maybe only one or two flights a week; only Singapore, Emirates, Ethiopian have about 5 flights each week. All others* less.

The *de minimis*

So a *de minimis* fuel tax set just above this level of flights for ALL carriers would mean no effective tax incidence on foreign carriers. This is explained by T&E [in this report](#) from January 2019. This possibility of applying a fuel tax *de minimis* to overcome the foreign carrier fuel tax exemption issue is completely new information for member states. It was never thought of or seemed possible before – because it wasn't a possibility – too many foreign carriers were operating intra EU to make a *de minimis* feasible. Such a provision has never been written about or discussed before. So while the ETD should be revised to remove the exemptions, there is in reality nothing stopping member states pursuing bilateralism/multilateralism now provided a *de minimis* is applied.

*There is however an issue with two carriers – the US freight operators UPS and Fedex which under the EU/US Open Skies Agreement are both fuel tax exempt on intra EU sectors and also have the unique right

to establish hubs in Europe. These carriers operate intra-EU all freight operations from fleets stationed in Paris and Cologne – and the number of flights they operate each week would be too high to serve as the de minimis tax level to exempt all carriers. This issue can nevertheless be overcome:

- All cargo (freighter) operations of all carriers within the EU could be exempted from the fuel tax. All freight operations are a very small % of intra EU commercial aviation.
- Alternatively, all cargo operations within Europe could be subject to a per flight tax instead of a fuel tax. Such a flight tax was recently proposed by the Dutch government for all freighter operations from Dutch airports.

Role for DG Taxud

Member states may well have some practical questions about how to implement bilateral agreements and to apply the de minimis. It would be appropriate for the European Commission (DG Taxud) to respond to any questions possibly in the form of formal guidelines. Questions could include;

- Could a bilateral agreement be as simple as Country A wishing to tax fuel to country B, merely requesting and receiving the answer from Country B that that is OK?
- Could a standard draft template for bilateral agreements be prepared for member states?
- Could it be drafted so that third states could easily join the agreement – multilateralism
- Would an informal coordinating committee of member states – along the lines of the Eurovignette CoCom, where the Commission also participates, be a useful precedent?
- The 2003 ETD permits member states to set a fuel tax at any level below the EU minimum of 33 cents/litre. In bilateral agreements, should the tax levels be the same at both ends?
- How should the de minimis be set? X flights per week exempt? Set on the amount of fuel burn? Other? Tax all flights and issue a quarterly refund?
- Can Eurocontrol advise of the number of foreign flights within the EU – and which routes?
- The Excise Duty Directive requires that excise duty be levied at the point of sale – i.e. by airport refuellers. They would need to be registered to levy excise duty as with road fuel suppliers. Norway and Swiss authorities could explain what procedures are in place today to ensure that only fuel uplifted for their domestic flights is taxed while exempting all others flights. Such procedures could be adapted for intra-EU fuel taxation.

Further information

Bill Hemmings

Director, Aviation and Shipping

Transport & Environment

bill.hemmings@transportenvironment.org

Tel: +32(0)2 8510211