

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

SECOND EDITION



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INTERNATIONAL CIVIL AVIATION ORGANIZATION

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FOREWORD

After a comprehensive study of the various existing and anticipated problems related to taxation in the field of international air transport, the Council in 1951 adopted three Resolutions and one Recommendation on the subject which were published in Doc 7145. In response to Assembly Resolution A15-16 which explored the possibility of a new initiative in this field, the Council undertook a comprehensive review of all aspects related to this subject matter and, at the Fourth Meeting of its 59th Session, on 14 November 1966, decided to recast the Resolutions and the Recommendation, taking into account developments since 1951, while reaffirming at the same time their underlying principles. Council further decided to publish them in the policy document, Doc 8632, for action by Contracting States and to provide certain explanatory material for guidance to States and international operators.

The 1966 Resolutions/Recommendation dealt with:

- i) taxation of fuel, lubricants and other consumable technical supplies when an aircraft registered in one State arrives in or departs from a customs territory of another State;
- ii) taxation of fuel, lubricants and other consumable technical supplies when an aircraft registered in one State makes successive stops at two or more airports in one customs territory of another State;
- iii) taxation of the income and aircraft of international air transport enterprises; and

- iv) taxes related to the sale or use of international air transport.

The Assembly, at its 26th Session in 1986, adopted Resolution A26-15 which instructed the Council to review compliance with these Resolutions and Recommendation and to consider the need for new practical measures to reaffirm and strengthen the principles underlying its policies in this field. After consultation with States the Council reported the results of its review to the 29th Session of the Assembly which agreed with the Council's approach to the revision of the 1966 Resolutions and Recommendation, the results of which are presented in this policy document. The revision maintains the previous format but, in view of the evidence of increased acceptance by States of the policy therein, upgrades the Recommendation in Section II to a Resolution. It also incorporates certain enhancements to the first three sections described above and a more substantive revision of the last section dealing with taxes related to the sale or use of international air transport. These changes take into account the realities of the current situation in civil aviation, while reaffirming the underlying principles of ICAO's policies in this field.

The 29th Session of the Assembly also reinforced the importance of this policy statement by adopting Resolution A29-18 which calls upon States to follow the Resolutions of the Council as contained in this document.

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INTRODUCTION

1. It has long been recognized that international air transport creates a number of special or unique problems in the field of taxation. Unlike other types of enterprises of one State doing business in another State, the earnings of international air transport are based upon the use of aircraft requiring large amounts of fuel in operations between various tax jurisdictions, and a considerable percentage of these operations is conducted outside any tax jurisdiction, i.e. over the high seas. Taxation in the field of international air transport is a complex subject and covers many aspects, considering the variety of items which may be subject to taxes and the types of taxes that may be levied. Amongst the items which are usually taxable and have been considered in the past in connexion with avoidance of multiple taxation are those pertaining to fuels, lubricants and other consumable technical supplies used by aircraft during flight, the income derived from operating aircraft, the aircraft itself and its components, spare parts and ground equipment necessary for its operation. The taxes levied may include income taxes, import, export, excise, sales, consumption or internal duties or taxes.

2. The Chicago Convention on International Civil Aviation of 1944 did not attempt to deal comprehensively with tax matters. The Convention simply provides (cf. Article 24 (a)) 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 customs duty, inspection fees or similar national or local duties and charges. The same Article of the Chicago Convention also refers to the temporary admittance, free of duty, of aircraft on a flight to, from or across the territory of another Contracting State and to the exemption from customs duty, etc., of spare parts, regular equipment and aircraft stores.

3. Tax problems connected with aircraft equipment, spare parts, ground equipment and stores have also been pursued on a multilateral basis through the development, by the Facilitation Division, of International Standards and Recommended Practices for inclusion in Annex 9 (cf. Chapter 4, section G of the Annex). The Council in 1951 adopted a Resolution and Recommendation on the taxation of fuel, a Resolution on the taxation of income and of aircraft, and a Resolution on taxes related to the sale or use of international air transport (cf. Doc 7145) which were further amended and amplified by the policy statements in Doc 8632 published in 1966. The Resolutions and Recommendation concerned were designed to recognize the uniqueness of civil aviation and the need to accord tax exempt status to certain aspects of the operations of international air transport and were adopted because multiple taxation on the aircraft, fuel, technical supplies and the income of international air transport, as well as taxes on its sale and use, were considered as major obstacles to the further development of international air transport. Non-observance of the principle of reciprocal exemption envisaged in these policies was also seen as risking retaliatory action with adverse repercussions on international air transport which plays a major role in the development and expansion of international trade and travel.

4. In 1986, in view of the significant changes which international civil aviation had undergone, the 26th Session of the Assembly expressed concern over certain taxes that were being imposed by some States and considered there was a need for new practical measures to reaffirm and strengthen the principles underlying ICAO's policies in this field. Subsequent deliberations finally led to the adoption by Council of the revised policy statements as shown on the following pages, which are more responsive to the practicalities of present-day

governmental requirements while preserving and enhancing the basic thrust of the previous statements.

5. This document is presented in four sections, each one starting out with the text of the relevant Council Resolution, followed by commentaries

designed to furnish the reader with some explanatory text. As in the previous edition, it is the intention to publish and keep up to date a Supplement to this document, similar to the procedure used for the Supplement to Annex 9, whenever a sufficient amount of information has been received from Contracting States concerning their status of compliance with the Resolutions contained in this document.

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.