

Aviation ticket & Per Flight taxes

New study highlights means to improve the environment benefits of aviation taxation

December 2018

Summary

Aviation suffers from chronic under taxation - largely exempt from both kerosene taxation and consumption tax (VAT). This lack of taxation has acted as a subsidy, further driving the rapid growth of the sector and therefore its emissions.

One way to resolve such under taxation has focused on introducing per passenger ticket taxes, with major European markets, including UK and Germany, introducing them. As well as raising revenue for the state, such taxes, when the cost is passed on to passengers, act to reduce demand. This has some, but only minimal, environmental impact.

A new study from T&E has found that these taxes can be modified to have a greater environmental impact by taking into account emissions and flight distances. It examines various issues that need to be considered based on a number of past legal challenges. Taxing the flight (per flight tax) rather than departing passengers is also examined as a preferable option to ticket taxes. This is because all passengers are included as is belly freight and all-cargo flights, thus giving a strong incentive to high load factors and deployment of cleaner aircraft.

1. Airline ticket taxes - long history, legally secure.

Airline ticket taxes have been levied in a wide range of countries since the 1990s with passengers initially paying the tax directly at an airport booth. The UK was the first European state to apply a per passenger ticket tax when it introduced its Air Passenger Duty (APD) in 1994. APD is levied on the passenger according to the distance and class of travel - i.e. a business class passenger flying to the US pays more than an economy class passenger flying to Rome. But instead of collecting directly from passengers, airlines were required to report on the number of departing passengers and remit the appropriate sum to national tax authorities. Airlines were left to recover tax costs. The UK has noted that this tax is one of the most administratively simple ways the UK Government raises revenue.

2. Why not VAT?

When introducing its APD, the UK Government specifically stated at the time that this was an alternative to levying VAT on the sector. Historically intra-EU flight tickets have been VAT exempt, however member states are free to levy VAT on domestic air tickets and indeed some countries do (Germany and Spain). Cross border trains and buses do pay VAT but the calculation methodology is cumbersome - the VAT applies according to the distance travelled and VAT rate in each member state.

Although the UK Government at the time made clear that introduction of the APD was solely intended as a revenue raising measure in lieu of VAT, later governments in the UK and elsewhere in Europe began to cite environmental arguments for justifying ticket taxes. Ticket taxes do have an environmental effect. By requiring airlines to levy and collect the ticket tax themselves from all passengers, operators have little choice but to build these taxes into ticket prices or incur losses. Higher ticket prices will reduce demand and thus air traffic growth thereby reducing emissions. But such taxes do not, for example, incentivise the use of more efficient aircraft or cleaner fuels. Since the UK in 1993, other EU states have followed suit. Only one of these taxes - a tax introduced by the Belgian municipality of Zaventem in - was deemed illegal in 1995. The rest all survived a good number of legal challenges by airlines, though in some cases requiring amendments (discussed below).

Other taxes, notably in Ireland and the Netherlands, faced considerable political opposition. KLM claimed the tax led to traffic leaking to neighbouring German airports, while in Ireland, the tax was accused of harming the tourism industry. In reality it was the 2008 economic crash which hit passenger numbers, with no evidence that these ticket taxes had a disproportionate impact on these countries' economies or connectivity.

Germany and Austria introduced ticket taxes in 2011 and Norway and Sweden followed more recently. It is important to note that introducing these taxes is solely within the remit of member states.

3. Legal Issues

A recent study commissioned by T&E looked at the legal challenges to a number of EU ticket taxes introduced and drew conclusions about what features are important or essential to avoid legal challenge.

3.1 No violation of Chicago Convention

The study firstly concludes that ticket taxes do not contravene the Chicago Convention, the Convention which established the UN's International Civil Aviation Organisation (ICAO) in 1944 and which is the basis for the regulation of international aviation. The study notes that ICAO is well aware of the fact that the Convention did not prohibit taxes. ICAO had unambiguously stated in a 1999 policy document that fiscal issues were not comprehensively dealt with by the Convention. Article 15 of the Convention rules out "imposing fees, dues or other charges" on aircraft however a tax is not a fee, a due or another charge. While the Belgian Supreme Court had ruled the Zaventem tax illegal on the grounds of Article 15, subsequent decisions in other European cases (Netherlands, UK, Germany) did not take this line.

3.2 Transit passenger may be exempted

The question of whether exempting transfer and transit passengers in ticket taxes has previously been challenged. The report notes that the courts ruled that such a provision, introduced to avoid double taxation, was justifiable.

3.3. Differentiation by distance is permitted

The court cases concluded that ticket taxes can be differentiated according to journey distance provided EU internal market rules are observed - i.e. the tax cannot differentiate between airports within the EU single market - as the Irish tax had done. So a single tax rate would need to apply to all flights within the EU. Distance bands could also apply to flights beyond the EU but not directly proportional - so as to avoid the ticket tax being characterised as a fuel tax.

Ticket taxes are often linked to journey distance and their validity was challenged on the grounds that such a tax was in fact a fuel tax and thus contravened bilateral air services agreements. The courts ruled that so

long as the distance factor was not directly proportional to flight length and because transit/transfer traffic was exempt, then any direct link with a flight's fuel consumption would not arise.

4. Environmental ticket taxes

At present, ticket taxes vary only by distance and, in the UK, on the basis of class of travel. However the environmental impact can be strengthened if additional criteria are taken into account when determining the tax.

The CE Delft study considers how such further environmental differentiation can be introduced. It identifies several ways how the environmental impacts of aviation taxes as well as the efficiency of the transport system can be improved by internalising the external costs of aviation through differentiation of the tax. Four options are identified;

- internalise CO2 emissions by differentiating the tax on the basis of the average lifecycle emissions of advanced alternative fuels that the airline has used in a previous period, provided that appropriate safeguards are put in place to ensure that fuels used are truly sustainable;
- introduce more distance bands on extra-EU flights to better reflect emissions without falling foul of the fuel tax restrictions;
- differentiate the tax on the basis of the aircraft's certified NO_x emissions during landing and take-off (called LTO NO_x emissions). This would also incentivise addressing the climate-warming impact of NO_x emissions at altitude; and
- fourthly, a share of the aviation tax could be replaced by a NO_x climate impact charge related to the distance flown and the LTO NO_x emissions of the aircraft.

5. Per Flight taxes

An additional measure examined by the study is to levy the tax on the (departing) flight itself rather than on the number of passengers excluding those in transit. A per flight tax based on the certified maximum take-off weight of the aircraft and distance flown would incentivise airlines to maximise the number of passengers and freight transported, as well as to use more fuel efficient aircraft, thereby better targeting emissions. Such a tax would broaden the tax base and the scope of targeted emissions since transit and transfer passengers as well as belly hold and purely freight flights could also be taxed. Basing the tax on aircraft weight and distance bands is a reasonable reflection of emissions while avoiding the danger of it being seen as a fuel tax.

The Dutch Government is currently considering the option of introducing a per flight tax differentiated by aircraft maximum take-off weight and certified noise levels. However as no such per flight taxes have so far been introduced, there have been no legal challenges so no conclusions about legal certainty are available.

6. Revenues

Ticket taxes set at the average level of the current German ticket tax ([details](#)) have the potential to raise around €8.5 billion per annum for EU member states¹.

	Domestic	Intra-EU	Extra-EU	Total
Ticket Taxes € million/annum	1240.1	3240.7	4047.3	8528.1

Table 1: Ticket tax revenue in Europe set at average German ticket tax rates.

¹ Conservative estimate as not calculated with the distance bands for Annex 1 or 2 for extra-EU flights <https://www.fccaviation.com/regulation/germany/aviation-tax> (access 06/12/2018)

7. Conclusions

Ticket taxes are straightforward to implement at national level covering domestic, intra EU and extra EU flights and, if constructed correctly, are safe from legal challenge. They can raise significant tax revenues especially so long as airline tickets are VAT exempt.

However, to maximise environmental benefits, they need to be modified to better take into account emissions. Per flight taxes, as yet untried, are a preferable option, especially as they cover all passengers travelling as well as belly hold and cargo flights. More than half the EU aviation market is now subject to ticket taxes which could benefit from being modified to incorporate environmental incentives.

The European Union should not be blind to these developments - there is a strong case for the Commission to come forward with guidance on how such taxes can be environmentally strengthened and, rather than vary nationally, be harmonised ideally through legislation.

Further information

Lucy Gilliam
Aviation & Shipping
Transport & Environment
Lucy.gilliam@transportenvironment.org
Tel: +32(0) 483145530