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Taxing aviation fuel

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1. Summary

At present, although road fuel is charged excise duty, which represents a substantial proportion of the pump price paid by motorists, aviation kerosene (AVTUR) which is used in jet engines is *exempt* from tax.

Many commentators have argued that this is an indefensible anomaly, given that aviation accounts for a growing share of greenhouse gas emissions. However, there are several obstacles to taxing aviation fuel. First, it is probable that unilateral moves by the UK to impose duty on this category of fuel would be contrary to EU law. Second, it is likely that even an EU-wide agreement on taxing this fuel would have a limited effect. Imposing duty on all flights - not just domestic ones within the EU - would pose the threat of 'tankering' – that is, carriers filling their aircraft as full as possible whenever they landed outside the EU to avoid paying tax, and so *increasing* the level of aviation emissions. Finally, the tax-exemption of aviation fuel is subject to long-standing international agreements, and although there have been some discussion as to the case for amending these, progress has been very slow.¹

In its 2003 white paper on aviation the Labour Government argued that bringing aviation within the EU Emissions Trading Scheme (ETS) represented the most effective response to the growth in emissions.² In December 2007 Member States agreed that aviation would come into the scheme from 2012,³ and this approach to controlling emissions was endorsed by for its part by the Coalition Government.⁴ In answer to a recent PQ on the case for charging excise duty and VAT on aviation fuel, Treasury Minister Robert Jenrick said, "members of the International Civil Aviation Organisation (ICAO), including the United Kingdom, are prevented from taxing international aviation fuel, or any proxies for fuel, under the Chicago Convention. However, Air Passenger Duty – which raised £3.4bn in 2017/18 – ensures that the air travel sector contributes to the cost of public services."⁵

Last year the current Government published [a green paper on its long-term aviation strategy](#). The relative share of the UK's greenhouse gas emissions from aviation is forecast

¹ As noted recently in a written answer, "members of the International Civil Aviation Organisation (ICAO), including the United Kingdom, are prevented from taxing international aviation fuel, or any proxies for fuel, under the Chicago Convention." [PQ255293](#), 21 May 2019

² Department for Transport, [The future of air transport](#), Cm 6046 December 2003 para 3.40

³ For more background see, [EU ETS: Including Aviation, Commons Briefing paper CBP5533](#), 23 May 2012

⁴ For example, see HM Treasury, [Reform of Air Passenger Duty: a consultation](#), March 2011 para 3.9

⁵ [PQ255293](#), 21 May 2019. For more details on this tax on UK passenger flights see, [Air passenger duty: recent debates & reform, Commons Briefing paper CBP5094](#), 14 February 2019.

2 Taxing aviation fuel

to rise significantly, from around 7% at present to possibly 25% by 2050.⁶ The paper discussed the Government's approach to tackling emissions from the aviation sector, noting that "international action is the first priority for tackling international aviation emissions" and that it would "continue to lead efforts in ICAO to negotiate for robust, environmentally effective emissions reduction measures that minimise market distortions and address the sector's emissions in the most cost-effective way."⁷ However the paper makes no mention of the possibility of taxing aviation fuel.

In September this year the Committee on Climate Change published advice to the Government on tackling emissions from international aviation and shipping,⁸ in the context of the UK's 'net zero target' (a target for at least a 100% reduction of greenhouse gas emissions, compared to 1990 levels, in the UK by 2050).⁹ In answer to a PQ on 1 October George Freeman, Minister of State at the DfT, stated, "we are carefully considering this advice and its implications for Government policy and we will shortly publish a consultation on aviation and climate change."¹⁰

2. International agreements on taxing aviation fuel

Over the last decade there have been increasing concerns about the strong growth in air transport, the associated rise in carbon emissions from aviation, and the impact this is having on climate change. In 2007 the Department for Transport published a consultation paper on this issue, which noted that one of the reasons why the impact of the aviation sector was of particular concern was that "air transport is not taxed through VAT on tickets or fuel duty,¹¹ and there are no clear external cost signals being given through taxation. Nor is there currently a price signal through emissions trading."¹²

The 1944 Convention of International Civil Aviation – the 'Chicago Convention' – establishes the legal framework for international civil aviation. Most of the nations of the world, including the EU Member States, are parties to this treaty, and its provisions form binding international law. The Convention led to the creation of the International Civil Aviation Organisation (ICAO), which maintains it – and the text of this agreement is available [on ICAO's site](#).

[Article 24](#) of the Convention requires all contracting states not to charge duty on aviation fuel already on board any aircraft that has arrived in their territory from another contracting state. ICAO publishes [detailed policy guidance](#) on airport and air navigation services charges, and as part of this notes, "it is the common practice of many States with respect to aircraft engaged in international transport 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 airport in that customs territory."¹³

⁶ HMG, [Aviation 2050: The future of UK aviation - a consultation](#), Cm 9714, December 2018 para 1.24

⁷ *op.cit.* para 3.82, para 3.88

⁸ Committee on Climate Change, [Letter: International aviation and shipping and net zero](#), 24 September 2019

⁹ For details see, [Legislating for net zero. Commons Briefing paper CBP8590](#), 27 June 2019

¹⁰ [PQ291460](#), 1 October 2019

¹¹ In the case of aviation turbine fuel used by larger aircraft ... duty is charged on aviation gasoline.

¹² DfT, [Consultation on the emissions cost assessment](#), August 2007, p10

¹³ ICAO, [Policies on Charges for Airports and Air Navigation Services \(Doc 9082\)](#), 3rd ed. 2000

The exemption of airlines from national taxes and customs duties on a range of aviation-related goods, including parts, stores and fuel is a standard element of the network of bilateral 'Air Service Agreements' (ASAs) between individual countries – as noted in a recent survey of the use of taxes in the aviation sector published by the European Commission:

The exemptions from taxation on jet fuel is often explicitly mentioned in bilateral air service agreements. For example the [EU/US Air Transport Agreement](#) (2007/339/EC) states: "There shall also be exempt, on the basis of reciprocity, from the taxes, levies, duties, fees and charges [...] with the exception of charges based on the cost of the service provided:[...] fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Party for use in an aircraft of an airline of the other Party engaged in international air transportation." ...

Most countries considered in this study comply with ICAO resolutions that – based on reciprocity – intake of jet fuel is not taxed. Some countries included some reservations in this respect in their statement. In Europe, these were Germany, Norway, Sweden and Switzerland.

In the case of Germany the following passage was included: "The Government of Germany may decide[d] to introduce also in international commercial air transport a tax on the consumption of fuel and lubricants as well as a taxation on the sale and use of international passenger air transport."

Norway includes the following passage: "[...] Norway questions the reasons for the tax exemption concerning fuel in the Resolution. Tax policy in respect of environmental protection may be a reason for introducing taxes on fuel for the use by aircrafts in general. For domestic flights, a tax on fuel is applicable in Norway (effect from 1 January 1999). The revenue from this tax accrues direct to the Norwegian Exchequer".

According to the position of Sweden: "In light of the discussions in various fora about market based measures as tools in the limiting of the impact of international civil aviation on climate change, our opinion is that taxes levied on the uplift of lift or levied on air transport should not be ruled out as possible future measures." A similar position is put forward by Switzerland: "The Swiss Confederation generally supports and applies ICAO's policies on taxation in the field of air transport as set out in Doc 8632. Notwithstanding the Council's resolution, the Swiss Confederation is in favour of market-based measures aimed at reducing or limiting the environmental impact of aviation."¹⁴

Without any international agreement on taxing fuel, it is highly likely that moves to impose duty on international flights, either at a domestic or European level, would encourage 'tankering': carriers filling their aircraft as full as possible whenever they landed outside the EU to avoid paying tax. Clearly this would be entirely counterproductive. Aircraft would be travelling further than necessary to fill up in low-tax jurisdictions, burning up more fuel when carrying the extra weight of a full fuel tank.¹⁵

3. EU rules on taxing aviation fuel

In October 1992 Member States agreed a series of provisions to harmonise excise duties across the EU, to underpin the efficient operation of the Single European Market,

¹⁴ European Commission (Directorate-General for Mobility and Transport), [Taxes in the field of aviation and their impact: final report](#), 6 June 2019 pp28-9. see also, Michael Keen & John Strand, "[Indirect Taxes on International Aviation](#)", *Fiscal Studies*, vol 28 no.1, 2007 (pp6-7); HMT/DfT, [Aviation and the environment: using economic instruments](#), March 2003 p10.

¹⁵ For a discussion of this issue see, Laurie Michaelis, [Special issues in carbon/energy taxation: carbon charges on aviation fuels](#), OECD, March 1997

4 Taxing aviation fuel

launched on 1 January 1993. In the case of excise duties on mineral oils, the relevant directives were directive 92/82/EEC, which established the minimum rates of duty that Member States could charge, and its companion directive 92/81/EEC which defined those oils to be charged duty. In October 2003 both directives were replaced by directive 2003/96/EC of 27 October 2003, known as the [‘Energy Products Directive’ \(EPD\)](#).

Article 8(1) of the directive 92/81/EEC provided for aviation kerosene used by commercial aircraft to be duty-free, though Member States were given the option to limit the scope of this exemption to supplies of jet fuel.¹⁶ The provision is retained in [article 14\(1\)\(b\) of the EPD](#): Member States are to exempt “energy products supplied for use as fuel for the purpose of air navigation other than in private pleasure-flying.” In this context, private pleasure-flying is defined to be “the use of an aircraft by its owner or the natural or legal person who enjoys its use either through hire or through any other means, for other than commercial purposes and in particular other than for the carriage of passengers or goods or for the supply of services for consideration or for the purposes of public authorities.”

The 1992 directive allowed for a variety of reduced rates in individual countries, and these derogations were carried over into the EPD on a *temporary* basis. As a consequence aviation fuel used for private pleasure flying in this country has either been free of duty (aviation kerosene) or a lower rate of duty (aviation gasoline, or AVGAS).¹⁷ These derogations expired on 31 December 2006, and fuel used in private pleasure flying has been liable to excise duty at the full rate since 1 November 2008.¹⁸

In November 1996 the European Commission reviewed this agreement and recommended that the exemption of aviation kerosene be abolished, as soon as the international situation allowed duty to be charged on all carriers including those from *third* countries.¹⁹ In a report on taxing aviation fuel published in 2000, the Commission concluded “it would not be practicable or desirable for the Community as a whole to introduce taxation of aircraft fuel targeting exclusively intra-Community flights operated by Community air carriers at the present time.”²⁰

The 1996 review of the mineral oils directive had proposed that Member States be permitted to levy tax on fuel for national flights pending the abolition of this exemption. Provision is now made in the EPD for Member States to do this if they so wish: article 14(2) of 2003/96/EC allows countries to limit the exemption “to international and intra-Community transport” or where they have “entered into a bilateral agreement with another Member State.” Prior to its adoption the Labour Government declared it had no interest in using this option,²¹ and it reiterated its position in answer to a PQ in 2003.²²

In July 2006 the Environmental Audit Committee published a report on options to reduce emissions from the transport sector, and argued that the UK should use this provision to apply duty to domestic flights:

The Government has the power to increase taxes on domestic flights: it should do so, and as soon as possible. It should further work to conclude bilateral agreements with

¹⁶ This point was confirmed in answer to a PQ some years ago: [HC Deb 21 November 1995 cc47-48W](#)

¹⁷ AVGAS, as it is known, is used mainly in small piston-engined aircraft. AVTUR is used in jets and turbo-prop aircraft. Helicopters use both types of fuel. This derogation was provided under article 8(4) of Directive 92/81/EEC & article 1(12) of Directive 92/510/EEC, and transposed into article 18(1) & para 15 to Annex II of Directive 2003/96/EC.

¹⁸ [HM Revenue & Customs Brief 50/08](#), 6 October 2008. A similar derogation allowing the use of rebated fuel in private pleasure boating was also withdrawn at this time.

¹⁹ EC Cons Doc 11452/96, 19 November 1996

²⁰ European Commission, *Taxation of aviation fuel*, COM(2000) 110 final, 2 March 2000 p5

²¹ [HC Deb 4 April 2000 cc459-460W](#)

²² [HC Deb 6 November 2003 c798W](#)

European partners to levy additional taxes on flights between them. Revenue generated as a result could be put towards investment in improving rail services, including high speed rail links, and to accelerating the development and introduction of more energy efficient aircraft designs.²³

In its response to the report, the Labour Government opposed such a move, on the grounds that it would have little effect on the underlying problem:

Whilst it is legally possible to impose fuel tax on domestic services, this would only cover a small part of the market and would adversely affect outlying regions. The risk is that ... it would lead to market and environmental distortions. such as the carrying of extra fuel to avoid tax, which would lead to increased emissions. A unilateral approach to aviation fuel tax would therefore not be effective.

It went on to argue, that although the UK had been renegotiating air service agreements with individual countries, this would not provide an effective method of controlling emissions for the foreseeable future:

For the last 18 months, whenever we meet another country to negotiate a new bilateral air services agreement, or changes to an existing one, the UK (as with other EU member states) has sought to introduce an exception to this provision that would allow the UK to apply fuel taxes (on a non-discriminatory basis) for intra-EU flights should we wish to do so. So far we have succeeded in around 30 cases. However, as the European Commission noted in their communication on aviation and climate change, it is difficult to avoid discrimination as long as some carriers continue to enjoy tax exemptions under air services agreements. As the process of renegotiating these bilateral agreements will inevitably take time, application of energy taxes to aviation cannot be relied upon as the key pillar of a strategy to combat the climate change impact of aviation in the short and medium term.²⁴

Since then the issue does not appear to have come up in the House.

The Commission's recent survey of aviation taxes states that no Member States charge excise duty on aviation kerosene – although quite a number of countries charge VAT on domestic flights, and have ticket taxes similar to the UK's Air Passenger Duty. Excise duties on jet fuel exist in a small number of other countries: Australia, Canada, Japan and the USA. In the latter case duties are also charged by some states and local authorities.²⁵

In September this year the Commission published a report assessing the impact of the EPD, raising concerns that "overlaps, gaps and inconsistencies [in the Directive] significantly hamper EU objectives in the field of energy, environment, climate change and transport."²⁶ The report does not make any proposals, although it comments on the existing provision to exempt jet fuel from duty, in the context of the current scope of the EU's Emissions Trading System:

According to Article 14 of the ETD Member States must exempt from taxation energy products supplied for use as fuel for the purpose of air navigation other than in private pleasure-flying and energy products supplied for use as fuel for the purposes of navigation within Community waters (including fishing), other than private pleasure

²³ *Ninth report: Reducing carbon emissions from transport*, HC 981, 7 August 2006 para132

²⁴ *Twelfth report*, HC 1718, 4 December 2006 pp37-8. The Government provided a rough estimate of the receipts that imposing duty on Avtur might raise at this time (HC Deb 10 June 2008 cc177-8W)

²⁵ European Commission, [Taxes in the field of aviation and their impact: final report](#), 6 June 2019 p130 (VAT rates across EU Member States), pp20-22 (ticket taxes), pp29-31 (excise duty on aviation kerosene in other countries).

²⁶ European Commission, [Commission report: evaluation of the Energy Taxation Directive](#), 12 September 2019

6 Taxing aviation fuel

craft, and electricity produced on board a craft,²⁷ which potentially contradicts the decarbonisation objectives of the EU transport policy as well as EU climate objectives.

The strong growth of air traffic has caused air transport emissions to more than double in the last years. Aviation activities have been included in the EU ETS, but in order to further support the process led by the International Civil Aviation Organisation (ICAO) and allow for an agreement at global level on a “Carbon Offsetting and Reduction Scheme for International Aviation” (CORSIA), the EU has limited the EU ETS to flights within the European Economic Area (EEA), applies equal treatment to all operators on those routes and grants free emission allowances covering about 85% of the activity covered by the EU ETS.²⁸

²⁷ Member States may limit the scope of the exemptions to international and intra-Community transport. In addition, where a Member State has entered into a bilateral agreement with another Member State, it may also waive the exemptions and may apply a level of taxation below the minimum level set out in the ETD.

²⁸ [Evaluation of Council Directive 2003/96/EC of 27 October 2003](#), Commission Staff Working Document SWD(2019) 329 final, 11 September 2019 p54

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