



# Article 8 of the UN Model Convention Before / After 2025

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ICAN2024 | Kuala Lumpur, Malaysia | 22 October 2024



# AGENDA

**Overview and problem statement**

**UN Model Convention vs. OECD Model Convention vs. ICAO TASA**

**Threats of the new Article 8 (2025)**

**Aviation industry's proposed ways forward**

**Q&A**



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# Overview

## United Nations System – Six principal organs/bodies of the United Nations



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# Overview

## Economic and Social Council (ECOSOC)

UN umbrella organization for more than 60 specialized agencies, functional and regional commissions, as well as other bodies and entities.

The ECOSOC coordinates the work of:

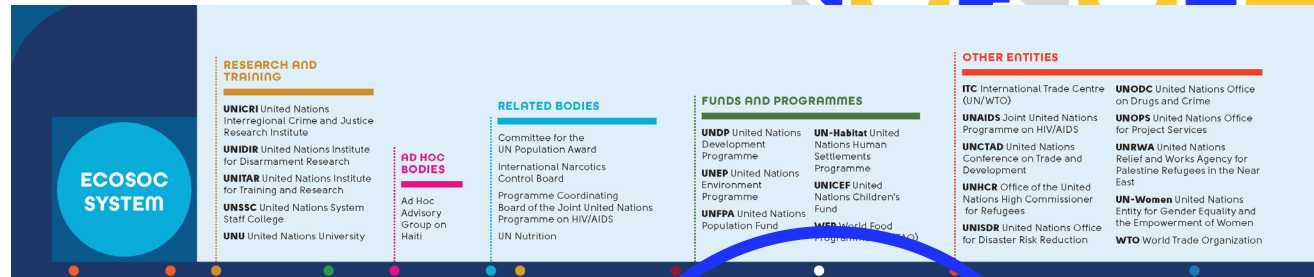
- 14 UN specialized agencies
- 10 functional commissions
- 5 regional commissions
- many other bodies and entities

**ECOSOC issues policy recommendations to the UN system and to Member States**





# Overview



## SPECIALIZED AGENCIES

**EXPERT BODIES COMPOSED OF MEMBERS SERVING IN THEIR PERSONAL CAPACITY**

- Committee for Development Policy
- Committee of Experts on Public Administration
- Committee of Experts on International Cooperation in Tax Matters
- Committee on Economic, Social and Cultural Rights
- Forum on

- FAO** Food and Agriculture Organization of the United Nations
- ICAO** International Civil Aviation Organization
- IFAD** International Fund for Agricultural Development
- ILO** International Labour Organization
- IMF** International Monetary Fund
- IMO** International Maritime Organization
- ITU** International Telecommunication Union
- UNESCO** United Nations Educational, Scientific and Cultural Organization
- UNIDO** United Nations Industrial Development Organization
- UNWTO** World Tourism Organization
- UPU** Universal Postal Union
- WHO** World Health Organization
- WIPO** World Intellectual Property Organization
- WMO** World Meteorological Organization

## Economic and Social Council System

<https://www.un.org/en/content/ecosoc-coordination/2023/>



# Overview

## Committee of Experts on International Cooperation in Tax Matters

The UN Tax Committee fosters international cooperation on domestic and international tax matters. **It works closely with observers from government, civil society, business and academia, to develop guidance and encourage an inclusive setting of norms and policies.**

While nominated by Governments, the **25 Committee members serve in their personal capacity.**

The members of the UN Tax Committee for 2021-2025 are:

- Muhammad Ashfaq Ahmed (Pakistan)
- Rasmi Ranjan Das (India)
- Mathew Olusanya Gbonjubola (Nigeria)
- Liselott Kana (Chile)
- YoungJoo Lee (Republic of Korea)
- Wazona Ligomeka (Malawi)
- Nana Akua Achiaa Amoako Mensah (Ghana)
- Enrique Bolado Muñoz (Mexico)
- Kapembwa Elizabeth Namuyemba-Sikombe (Zambia)
- Marlene Patricia Nembhard-Parker (Jamaica)
- Eamonn O'Dea (Ireland)
- Pande Putu Oka Kusumawardani (Indonesia)
- Mya Mya Oo (Myanmar)
- El Hadramy Oubeid (Mauritania)
- Carlos Protto (Argentina)
- Elisângela Rita (Angola)
- Aart Roelofsen (Netherlands)
- Alexander Smirnov (Russia)
- Stephanie Smith (Canada)
- Trude Steinnes Sønvisen (Norway)
- Titia Stolte-Detring (Germany)
- José Troya (Ecuador)
- Mario Visco (Italy)
- Ingela Willfors (Sweden)
- Yan Xiong (China)





# Overview



## Committee of Experts on International Cooperation in Tax Matters

### MANDATE

1. Keep under review and update as necessary the United Nations Model Double Taxation Convention between Developed and Developing Countries and the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries;
2. Provide a framework for dialogue with a view to enhancing and promoting international tax cooperation among national tax authorities;
3. Consider how new and emerging issues could affect international cooperation in tax matters and develop assessments, commentaries and appropriate recommendations;
4. Make recommendations on capacity-building and the provision of technical assistance to developing countries and countries with economies in transition;
5. Give special attention to developing countries and countries with economies in transition in dealing with all the above issues.

# Problem Statement

## Why is this matter important for aviation?

Because last week (15-18 October 2024) the UN Tax Committee approved a change to Article 8 of the UN Model Convention, **that fundamentally changes the fiscal environment in which airlines operate.**

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# UN Model Convention vs. OECD Model Convention vs. ICAO TASA

## UN Model Convention (2021)

### Article 8 - International Shipping and Air Transport

#### Article 8 (Alternative A)

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

## OECD Model Convention

### Article 8 - International Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

## ICAO TASA

### Article 14 – Taxation

#### Option 1

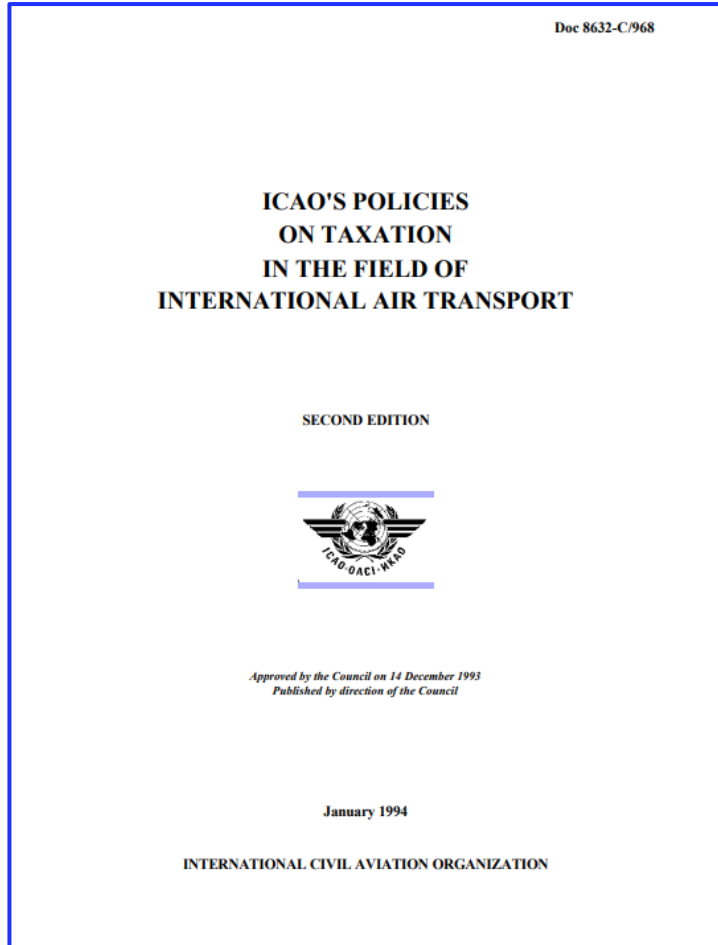
1. Profits from the operation of the aircraft of a designated airline in international traffic shall be taxable only in the territory of the Party in which the place of effective management of that airline is situated.

#### Option 2

1. Profits or income from the operation of aircraft in international traffic derived by an airline of one Party, including participation in inter-airline commercial agreements or joint business ventures, shall be exempt from any tax on profits or income imposed by the Government of the other Party.

**All three models are consistent in providing for residence-based taxation**

# ICAO'S Doc. 8632



## ICAO'S Policies on Taxation in the Field of International Air Transport (Doc. 8632) and related ICAO Council Resolutions

[https://www.icao.int/publications/Documents/8632\\_cons\\_en.pdf](https://www.icao.int/publications/Documents/8632_cons_en.pdf)

2. *With respect to the **taxation of income of international air transport enterprises and taxation of aircraft and other moveable property:***

*a) each Contracting State shall, to the fullest possible extent, grant reciprocally:*

*i) exemption from taxation on the income of air transport enterprises of other Contracting States derived in that Contracting State from the operation of aircraft in international air transport;*



# ICAO'S Doc. 8632 (cont.)

Doc 8632-C/968

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

SECOND EDITION



Approved by the Council on 14 December 1993  
Published by direction of the Council

January 1994

INTERNATIONAL CIVIL AVIATION ORGANIZATION

## ICAO'S Policies on Taxation in the Field of International Air Transport (Doc. 8632) and related ICAO Council Resolutions

[https://www.icao.int/publications/Documents/8632\\_cons\\_en.pdf](https://www.icao.int/publications/Documents/8632_cons_en.pdf)

3. With respect to *taxes on the sale and use of international air transport*: 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;



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# Threats of the new Article 8 (2025)

## UN Model Convention (2025)

### Article 8 - International Shipping and Air Transport

#### Article 8 (Alternative A)

1. Income arising in a Contracting State from the operation by a resident of the other Contracting State of ships or aircraft in international traffic **may be taxed in that other State.**
2. However, income from the operation of ships or aircraft in international traffic arising in a Contracting State **may also be taxed in the Contracting State in which it arises and according to the laws of that State (...)**

**Source-based taxation (new UN Model Convention, as of 2025)**

**is totally inconsistent with the ICAO Policies, and the ICAO TASA, and the OECD Model Convention.**

# Threats of the new Article 8 (2025)



Until 2024: consistency and alignment



- UN Model Convention 2021
- UN/ICAO TASA
- OECD Model Convention
- UN/ICAO Doc 8632
- Chicago Convention

After 2025: total inconsistency and misalignment

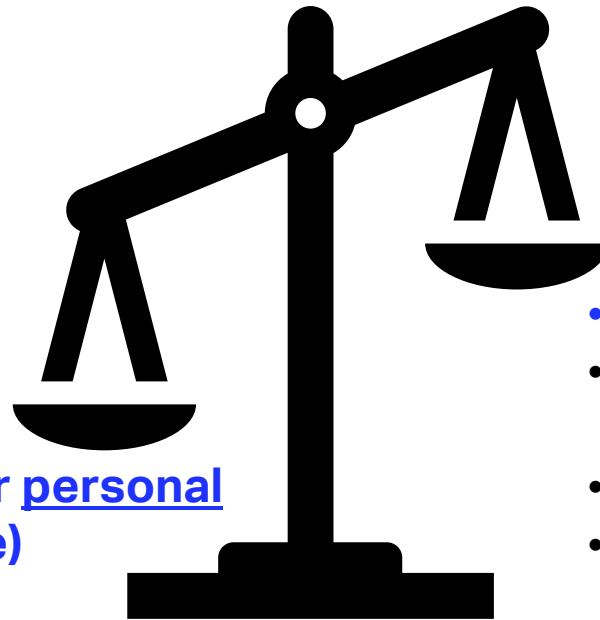


- UN Model Convention 2025
- UN/ICAO TASA
- OECD Model Convention
- UN/ICAO Doc 8632
- Chicago Convention

# Threats of the new Article 8 (2025)



**After 2025: total inconsistency and misalignment**



- **25 tax experts acting in their personal capacity (UN Tax Committee)**
- **Non-aviation professionals**

- **193 States (UN Members at ICAO)**
- **ICAO's Policies in the Field of Taxation of International Air Transport**
- **Chicago Convention**
- **38 OECD members (total of 100+ States use the OECD Model)**



# The threats of the new Article 8 (2025)

## What happens if States incorporate the new Article 8 into their new or revised bilateral agreements?

### AIRLINES

- Face **double, multiple, and excessive taxation**
- Subject to corporate income taxation **even when experiencing global net operating losses**
- Encounter **litigation and disputes** across various jurisdictions.
- Need to **hire local tax experts** to maintain global compliance with local regulations
- **Increased financial risk** becomes a key factor in route development planning

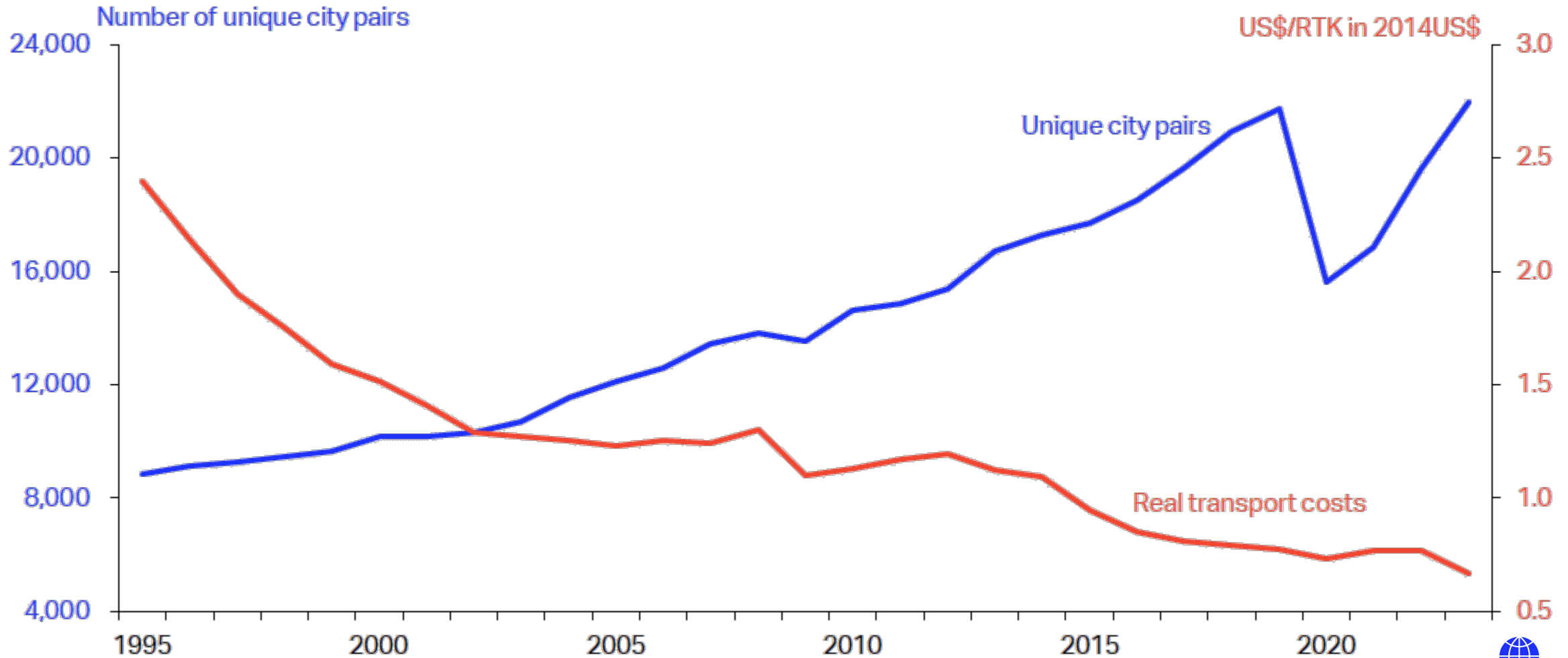
### STATES

- Tax Administrations' **capacity building** to face litigation, disputes, and perform audits
- Potential **loss of connectivity** if the costs are so high that routes are no longer attractive
- The **State's potential fiscal revenue will be largely surpassed by the foregone economic activity** potentiated by air transport (jobs, economic activity, GDP)
- This situation is **particularly critical for developing countries**



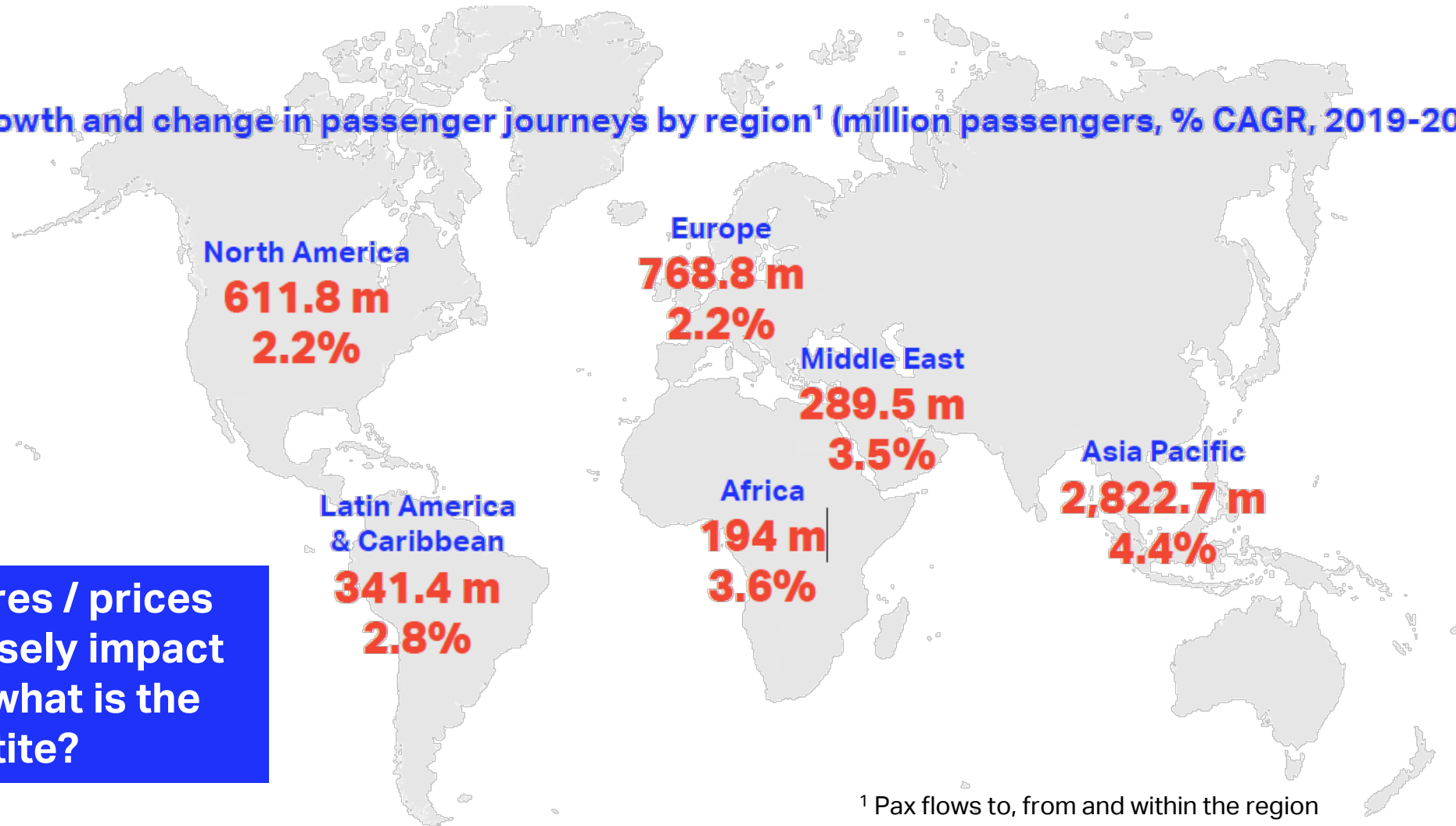
# The democratization of air travel has benefited LDCs

More people are able to travel more often, to more destinations



# Demand supports long-term growth in LDCs

Growth and change in passenger journeys by region<sup>1</sup> (million passengers, % CAGR, 2019-2042)

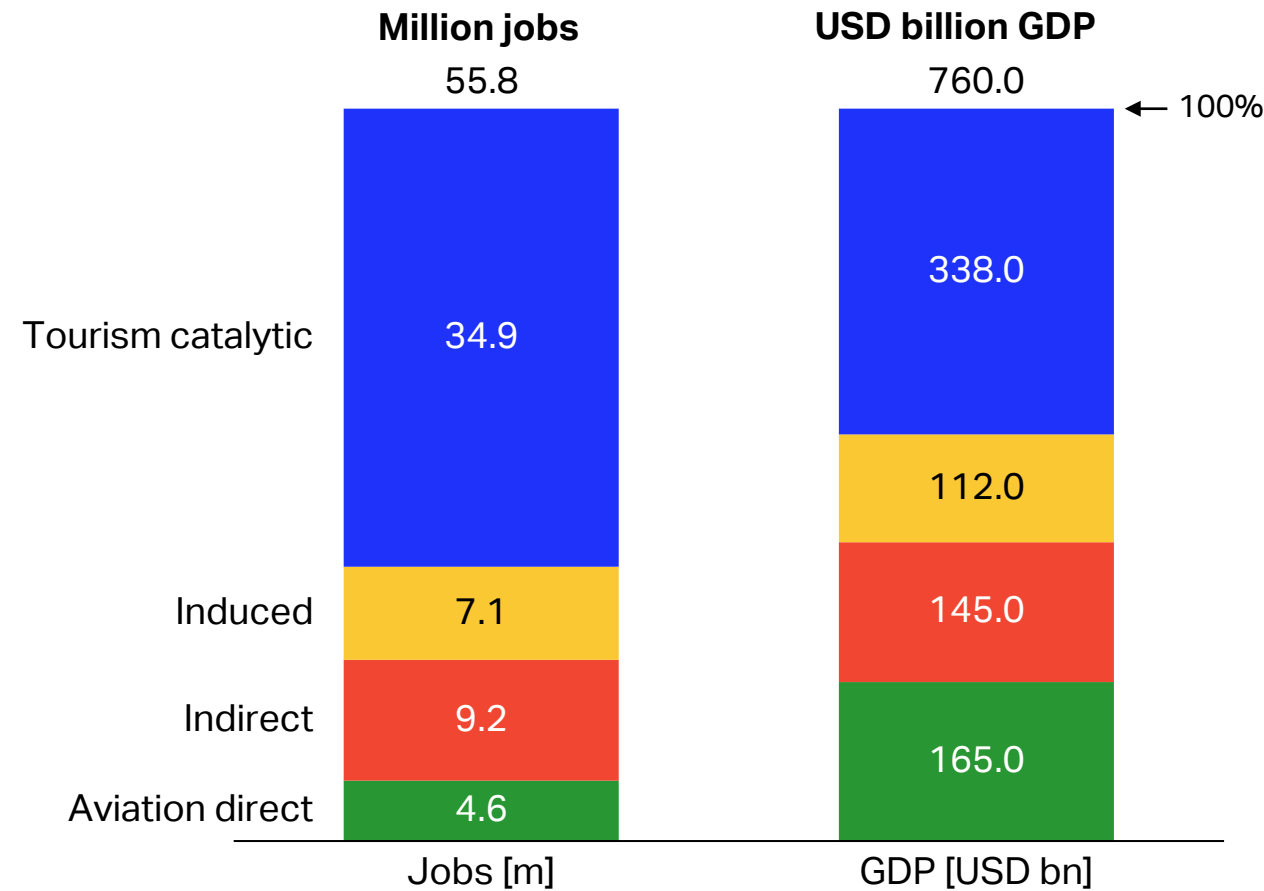


Higher fares / prices will adversely impact demand; what is the risk appetite?

<sup>1</sup> Pax flows to, from and within the region

# What is at risk for the developing nations?

56 million jobs and USD 760 billion contribution to GDP



**2** billion passengers  
**43.4%** share of global passenger traffic  
**763** airlines  
**1,969** airports  
**12,741** aircraft in service

# Aviation contributes to at least 15 of the 17 UN SDGs

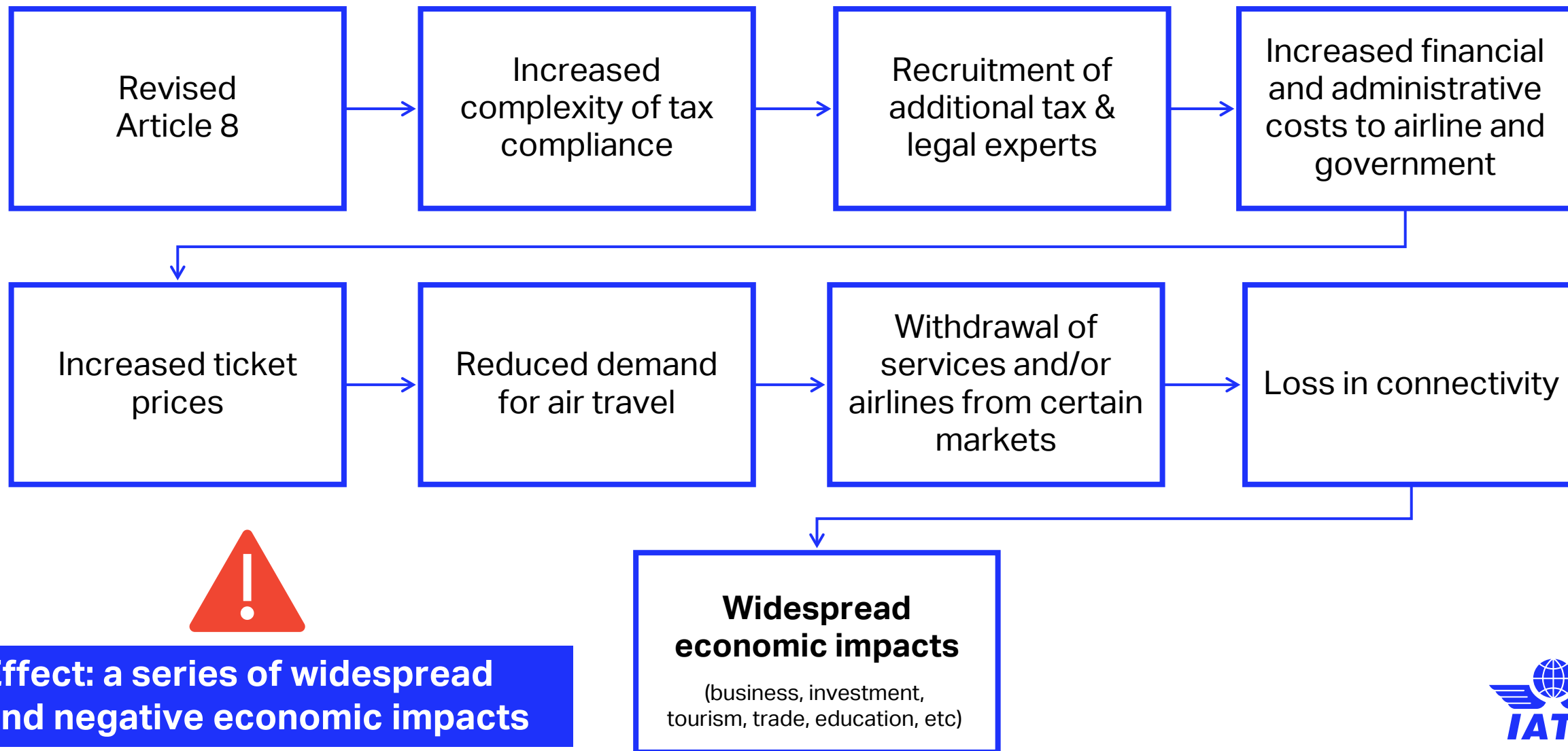




# What the UN Tax Committee envisages / promises



# What is more likely to happen



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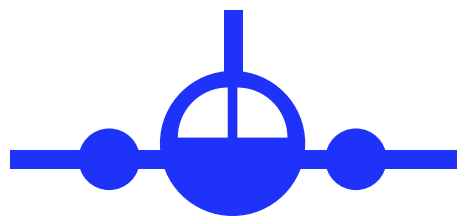
**Q&A**



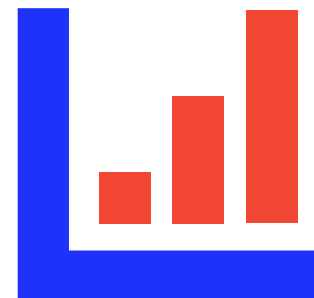
# The adverse economic impacts of taxation...

...can be unintended, widespread and diverse

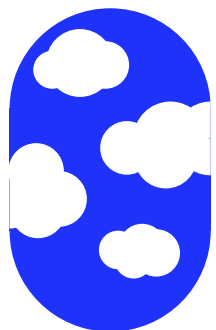
Passengers will fly to cheaper (less taxed) destinations



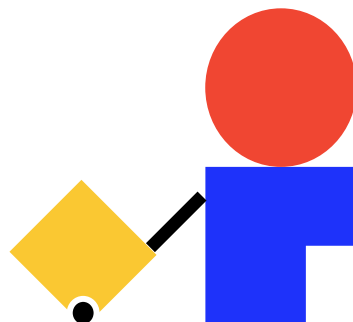
Governments may lose revenue if demand volumes drop as prices rise



Local economies suffer due to lower demand & connectivity



Airline financial health & resilience diminished



Reduction in competition may push prices even higher





# The Tax Policy perspective

## RESIDENCE-BASED TAXATION

(airlines taxed on their global economic activity in their home jurisdiction)

- Valid, accurate and transparent mechanism for international air transport.
- The League of the Nations adopted this taxing rule over 95 years ago; the international air transport characteristics that led to this rule remain valid (and have not been solved by legal or technological advancements).

## SOURCE-BASED TAXATION

(airlines taxed in all countries where there is a source of revenue)

- Exposes airlines to double taxation, increases costs for airlines and tax administrations, and potentially cut connectivity;
- Doesn't offer a common definition of revenue or global income.
- Countries risk losing aviation's economic multiplier effect (jobs, GDP, economic growth, social development)



# Call to action



1. When negotiating double tax agreements, air service agreements or granting reciprocal exemptions, **States should incorporate residence-based taxation** and reject proposals of source-based taxation.
2. **States should engage with their representatives at ICAO** and raise this concern, as the UN Model Convention is not aligned with the ICAO Member States' longstanding air transport global fiscal policies ICAO Doc. 8632.
3. **States should raise concerns to the UN Economic and Social Council (ECOSOC)** about the inconsistency between the UN Model Convention (as proposed by 25 individuals at the UN Tax Committee) and ICAO's Policies (adopted and approved by 193 Member States).

# Call to action



ICAO's policies on taxation are the only solution that promotes **more significant foreign investment inflows to countries, deliver better connectivity, trade, and support jobs and GDP – less barriers to air transport, and no country left behind!**

# AGENDA

**Off topic** – but I am happy to have side discussions with you on:

- **The future (mandatory) UN Tax Convention** that will likely absorb provisions from the Model Convention (e.g., Article 8)
- **UN Tax Convention / UN Model Convention discussions on carbon pricing instruments** (i.e., taxes) that threaten UN / ICAO CORSIA and LTAG



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# 「Q & A」

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**International Air Transport Association**

