

Aviation Group Client Update

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EU ETS RULES WENT INTO EFFECT ON 1/1/2012

The European Union Emissions Trading System (EU ETS) is part of the EU's environmental policy focused on pricing and limiting carbon-dioxide emissions. Its goal is to encourage companies to invest in cleaner technologies and reduce long-term emission of greenhouse gas. **Effective January 1, 2012**, international aviation was added to the EU ETS trading scheme. Recently, the European Court of Justice in Luxemburg dismissed arguments against implementation made by Airlines for America, several U.S. Airlines, IATA, and the National Airlines Counsel for Canada. The plaintiffs argued that imposing the EU's cap-and-trade program on flights to and from European airports infringed upon national sovereignty and violated international aviation treaties.

Under the ETS, the EU will distribute a percentage of an air operator's allowances free of charge. However, air operators will be forced to purchase allowances to account for their additional carbon-dioxide emissions. Additional emission allowances may be bought and sold from air operators that did not use their allotted total. The tax places a particular burden on long haul international flights, as emissions are calculated based on the distance of the entire route from takeoff to touch down, regardless of the portion of flight in European airspace.

In October 2011, the U.S. House of Representatives passed the European Emissions Trading Scheme Prohibition Act of 2011, H.R. 2594, 112th Cong. (2011) (referred to the Senate committee, December 17, 2011) banning U.S. airlines from taking part in the ETS. Likewise, Airlines for America is reviewing options to pursue legal action in the English High Court. As of January 1, 2012, U.S. airlines will be required to participate in the EU ETS. We have seen some U.S. airlines begin to address the additional costs of implementing the EU ETS. For example, Delta Air Lines already added a \$3.00 surcharge each way on fares for flights between the United States and Europe.

ICAO working groups are due to meet over the coming months to discuss the manner in which such market based measures, including ETS, should be implemented on a global level. It remains to be seen whether the EU ETS will motivate ICAO to develop a global scheme in time for the 2013 general assembly. Increased pressure from China prohibiting its air carriers from participating in the trading scheme might force resolution sooner than expected.

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