





Current proposals for changes

- November 2013 Discussion draft (see OECD web site)
- Comments received
 - - Cruise Lines International Association (CLIA)
 - International Chamber of Shipping (ICS)
 - Rödl & Bartling GmbH
 - Royal Association of Netherlands Shipowners (KVNR)



Changes to Article 8

~~INTERNATIONAL SHIPPING, INLAND WATERWAYS TRANSPORT 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 ~~the Contracting that State in which the place of effective management of the enterprise is situated.~~
24. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.



Changes to Article 8

~~2. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.~~

~~3. If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.~~



The treaty practice before the Models

f Agreement between Great Britain and Norway for the Reciprocal Exemption from Income Tax in Certain Cases of Profits Accruing from the Business of Shipping, signed in London, 18 December 1924

f Provides for a reciprocal tax exemption for
f “any profits which accrue from the business of shipping carried on by an individual resident of [Norway] [Great Britain or Northern Ireland] or *by a company managing and controlling such business in* [Norway] [Great Britain or Northern Ireland]



The Resolutions.

I. IMPERSONAL OR SCHEDULAR TAXES (*Impôts réels*).

“2.....If the enterprise has its head office in one of the States and in another has a branch, an agency, an establishment, a stable commercial or industrial organisation, or a



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The technical experts report (1925)

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UN Model

- Article 8 (alternative A): same as OECD Model
- *Article 8 (alternative B):* same as OECD Model except for source taxation of profits from ships operated in international traffic (“unless the shipping activities arising from such operation in the other Contracting State are more than casual ...”)
- Alternative B has the OECD inland waterways transport provision: what happens if inland waterways transport is also international traffic?



Ship or boat?

- “A ship has three or more square rigged masts”
- “A ship can carry a boat. A boat cannot carry a ship”
- “A ship rolls outboard in a turn while a boat rolls inboard”
- “if it has a permanent crew with a commanding officer, it’s usually a ship. If it’s only crewed when actually in use and has no official CO, then you’re probably dealing with a boat”
- “The function of a boat happens on its deck, the function of a ship happens inside it”





Changes to Art. 6(2) (same in UN Model)

2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. ... ; ships, ~~boats~~ and aircraft shall not be regarded as immovable property.

[strictly consequential on deletion of Art. 8(2)]



- 3.



Changes to Art. 22(3) (same in UN Model)

3. ~~Capital represented by ships and aircraft operated in international traffic and by boats engaged in inland waterways transport, and by movable property pertaining to the operation of such ships, aircraft and boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated. Capital of an enterprise of a Contracting State that operates ships or aircraft in international traffic represented by such ships or aircraft, and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.~~

[strictly consequential on changes to 8(1) and deletion 8(2)]



Current Art. 15(3) (same in UN Model)

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated. 31



Reasons for changes to Art. 15(3)

- Current drafting is an historical accident: seems clear that taxation in State of source (i.e. where employment is exercised) was not intended
- How many countries have the domestic law right to tax employment income merely because the employer has its POEM in the State?
- Technical issues related to triangular cases:
 - Employee resides in State A, works in State A and C for an airline of State B
 - A-C treaty applies but Art. 15(3) of that treaty is not applicable
 - Does B-C treaty applies to salary of employee (who is a resident of State A)?



Resident of A



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- 3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a



Changes to Introduction (made in 2014)

25.1 It follows from the preceding explanations that, throughout the Convention, the words “may be taxed in” a Contracting State mean that that State is granted the right to tax the income to which the relevant provision applies and that these words do not affect the right to tax of the other Contracting State, except through the application of Article 23 A or 23 B when that other State is the State of residence.



Current definition of international traffic



Changes to “international traffic”

e) the term “international traffic” means any transport by a ship or aircraft ~~operated by an enterprise that has its place of effective management in a Contracting State~~, except when the ship or aircraft is operated solely between places in ~~the other~~ a Contracting State and the enterprise that operates the ship or aircraft is not an enterprise of that State



US Model

the term “international traffic” means any transport by a ship or aircraft, except when such transport is solely between places in a Contracting State



Resident and
citizen of US

CANADA

Employer: US airline

