

International Chamber of Shipping

38 St Mary Axe London EC3A 8BH

Tel +44 20 7090 1460

Fax +44 20 7090 1484

info@ics-shipping.org

**EIGHTH SESSION OF THE COMMITTEE OF EXPERTS ON INTERNATIONAL
COOPERATION IN TAX MATTERS, 15–19 OCTOBER 2012, GENEVA**

**The United Nations Model Double Taxation Convention between Developed and
Developing Countries**

Comments by the International Chamber of Shipping (ICS)

1. The International Chamber of Shipping (ICS) is the principal international trade association for ship operators. ICS membership comprises national shipowners' associations from 36 nations including OECD and non-OECD countries. ICS represents all sectors and trades and over 80% of the world's merchant shipping tonnage within the various United Nations agencies that impact on the industry.

2. ICS respectfully submits the following comments on the 'Shipping Article' (Article 8) of the UN Model Treaty.

International Shipping

3. The carriage of goods and raw materials between different countries by sea is an inherently international business requiring a uniform, global regulatory framework. This is to ensure that international maritime transport can operate efficiently, without the possibility of varying national rules at different parts of a voyage, which would result in chaos and serious market distortion.

4. About 90% of world trade is carried by sea and an efficient system of international maritime transport, free from unnecessary administrative complication, is vital to the smooth running of the global economy.

5. The necessity of global rules for a global shipping industry is therefore well established. It is enshrined in the various regulations and codes produced by the United Nations and its agencies which impact on international shipping. This includes the United Nations Convention on the Law of the Sea (UNCLOS) and the various international Conventions adopted by the United Nations International Maritime Organization (IMO).

Article 8

6. The same principle applies to the taxation of international shipping which has been well served by the UN Model Tax Treaty, including Article 8. This, of course, establishes the principle of 'home State' taxation of profits from the operation of ships engaged in international maritime traffic. This principle has been established in earlier UN model tax treaties and similar models agreed by the OECD, as well as by the UN's predecessor, the League of Nations. The principle has also been included in numerous bilateral shipping treaties, many of which predate even the first League of Nations Model Tax Treaty.

7. The shipping industry today comprises various ship types trading internationally, such as containerships, oil tankers and bulk carriers transporting, for example, iron ore and coal. The common feature of all these sectors is that the vessels all trade between ports in different countries. In many trades, ships do not follow scheduled routes and will be literally unaware of which countries they will be likely to visit during the course of a voyage.

8. As a result of the cross-border features of these ac

seeks to avoid and would even add further complexities. Indeed, as a consequence of the complicated patchwork of taxation arrangements that might emerge, many smaller shipping companies might decide not to call in certain countries' ports, reducing the choice of available shipping services, especially in non-OECD nations located outside the major trade routes.

Treatment of Domestic Leg of International Voyages

15. ICS accepts that "cabotage" or voyages with origin and destination ports in the same country are not within the scope of Article 8. However, ICS believes that it is most important that this restriction should not be extended to cover the domestic leg of an international transport voyage, whether this is conducted by coastal transport or by inland waterway (i.e. where an international movement of cargo has a domestic leg in the country of origin or destination). ICS firmly believes that the deciding factor should be the ultimate destination of the cargo, irrespective of whether any intermediate connection is made at either a domestic or a foreign location.

16. Domestic legs occur where goods are transported to a foreign destination via a domestic intermediate port, hub or transshipment port. This domestic leg can be achieved either via a local shipping operator (e.g. a feeder vessel) or via the international shipping company's own vessel.

17. In the case where a local feeder operator is paid to transport cargo in the domestic leg, the profits from the operation of the local feeder vessel are subject to domestic taxation.

18. It should be noted that international shipping companies do not issue separate freight invoices for a domestic leg and an international leg of an international voyage. The customer buys, and is invoiced for, a through transport from a domestic port in one country to a foreign port in another. It is up to the international shipping enterprise to carry out the transportation service

services exist only on the basis of the facilities and staff which are required to run the maritime transport activities and must be minor in comparison to the primary shipping activity.

21. If, in addition to opening up the possibility for a source State freight tax on shipping profits, the UN Model Treaty were also to permit domestic legs or auxiliary activities to be taxed in the source State under Article 8, ICS believes that the door would be open to a multitude of complexities and disputes regarding the allocation of income and costs.

22. ICS also notes, with reference to international legs, that there has been some concern about the use of third party vessels in the absence of code sharing, slot chartering, vessel agreemr 9 or w(irtthenome 42 0 T2 T-.00olcD-.00reaactivittD0 ji Tc4ult.12aemrme a