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Committee of Experts on International Cooperation in Tax Matters
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Item 6 (a) (iv) of the provisional agenda*
Article 8: Transportation issues

Auxiliary Activities under Article 8

Note by the Secretariat[1]

Introduction

This note is essentially an updated version of note E.C18/2012/5 provided for consideration at the eighth annual session of the Committee in 2012. Its purpose is to address the issues involved in elaborating the concept of "auxiliary" activities under Article 8 of the United Nations Double Taxation Convention between Developed and Developing Countries.

2. At the seventh annual session of the United Nations Committee of Experts on International Cooperation in Tax Matters (the Committee) in 2011 the Committee agreed to update the Commentary to Article 8 (*Shipping, inland waterways transport and air transport*) with the wording found at Attachment A to this paper. The revisions proposed in document E/C.18/2011/CRP.2were only accepted in part.[3] The Committee discussion is summarized in th session report on Article 8 as follows:

> *Article 8: Shipping, inland waterways transport and air transport*
>
> 37. Several members expressed concern over the comprehensive changes proposed in the commentary on article 8. It was argued that the changes would widen the scope of the article and therefore needed to be discussed in detail in order to assess their implications.
>
> 38. Consequently, the OECD commentary paragraphs added in

would come within the operation of the article.

39. It was agreed to delete the proposed paragraph 8 on the issue of including fishing, dredging or hauling activities on the high seas under the commentary on this article. Concerning paragraphs 12 and 13 it was agreed to retain the text in strikethrough in the update, which meant that the correct reference for quoted paragraphs 4 to 14 would be to the 2003 OECD commentary.[4]

3. At the eighth annual session of the Committee in 2012, paper E/C.18/2012/5 was presented by the Mr. Ron van der Merwe, formally of the Committee, and by the secretariat. The Committee discussion is summarized in the report on that session as follows:[5]

93. As requested by the Committee, Ron van der Merwe, with Michael Lennard of the secretariat, introduced a note on auxiliary activities under article 8 (E/C.18/2012/5). It was noted that at the seventh session of the Committee concern had been expressed about updating the commentary on article 8 (Shipping, inland waterways transport and air transport) on the "auxiliary activities" sufficiently closely connected to the direct operation of ships and aircraft to come within the ambit of the article. Some members felt that updating the commentary in a way that was similar to the updates made to the OECD Model could, in effect, broaden the scope of the article and give a greater exception to the normal treatment under articles 5 and 7 than was justified.

94. In his presentation, Mr. Lennard compared the current wording used in both the United Nations Model and the OECD Model commentaries, highlighting that OECD refers to "ancillary" activities rather than "auxiliary" activities, perhaps in order to distinguish these activities from the "preparatory or auxiliary" activities under article 5(4) of its Model. He indicated that some usages in the commentary, such as references to advertising as "propaganda" and single-use hotels, as well as to containerization as a recent phenomenon, clearly needed updating.

95. During the discussion, some Committee members expressed the view that the terms "auxiliary" and "ancillary" are not interchangeable and that referring to the latter would broaden the scope of application of the aforesaid provision, and thus reduce source State taxing rights. In addition, it was stated that "auxiliary", being a more precise word, was easier to interpret than "ancillary". Others expressed support for updating the terminology in the Model commentary along the lines of the current language adopted in the OECD Model commentary, thus referring to "ancillary" activities instead of

4. **The only comments received on the issue are in the** the joint submission from the International Chamber of Shipping (ICS) and the World Shipping Council (WSC) included at Attachment B to this paper.

The Article

5. Article 8 as it appears in the UN Model update reads as follows (no changes were made to the text of the Article itself as part of the 2011 Update):

Article 8

SHIPPING, INLAND WATERWAYS TRANSPORT AND AIR TRANSPORT

Article 8 *(alternative A)*

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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 a 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.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 8 *(alternative B)*

1. Profits from the operation of aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Profits from the operation of ships in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated unless the shipping activities arising from such operation in the other Contracting State are more than casual. If such activities are more than casual, such profits may be taxed in that other State. The profits to be taxed in that other State shall be determined on the basis of an appropriate allocation of the overall net profits derived by the enterprise from its shipping operations. The tax computed in accordance with such allocation shall then be reduced by ___ per cent. (The percentage is to be established through bilateral negotiations.)

3. 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.

4. 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.

5. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Comparing the Most Recent UN Model and OECD Commentaries

Background to the Commentaries

6. The changes made as part of the 2011 UN Model Update all relate to the Commentary to the Article. They incorporate by reference many of the OECD Model changes since the previous version of the UN Model was effectively settled in 1999 and published in 2001 ("the 2001 Model"), but as noted above, the Members of the Committee did not agree to make some proposed changes on the meaning of "auxiliary activities" a term drawn from earlier versions of the OECD Commentaries. More current OECD usage is to speak of "ancillary activities" which perhaps distinguishes this issue more from the "preparatory or auxiliary" activities addressed in Article 5(4). In the note provided to the eight annual session in 2012 (E/C.18/2012/5) at para 4 the Secretariat expressed the view that this would be "a change that could be usefully made if the quotations from the OECD Model are updated in other respects." It also noted (at footnote 6) that that paragraph 10 of the UN Commentary to Article 5 already uses "ancillary" as a synonym for "auxiliary".

7. Not all Members agreed with this view during discussions at the eight annual session, as the report of the session indicates;[6]

95. During the discussion, some Committee members expressed the view that the terms "auxiliary" and "ancillary" are not interchangeable and that referring to the latter would broaden the scope of application of the aforesaid provision, and thus reduce source State taxing rights. In addition, it was stated that "auxiliary", being a more precise word, was easier to interpret than "ancillary". Others expressed support for updating the terminology in the Model commentary along the lines of the current language adopted in the OECD Model commentary, thus referring to "ancillary" activities instead of "auxiliary" activities. As a result, the Committee agreed to ask the secretariat to revise the abovementioned note in order to reflect those views, and to that end it invited comments by the end of 2012.

> that the latest elaboration from the OECD provides a pragmatic understanding of the activities that are clearly related to international transport without constituting a separate business for the shipping company. It is for example customary for shipping companies to charge shippers for late redelivery of containers, cargo storage etc. to ensure the smooth flow of cargo and equipment. Similarly, the income from the use, maintenance or rental of containers, including equipment for the transport of containers such as trailers and chassis, should be taxed only in the country of residence, provided that the containers are used for the international transport of cargo.

9. The submission more generally calls for consistency with the OECD approach as much as possible when it notes:

> ICS and WSC therefore welcome the efforts of the UN Committee to reach a consensus on the scope of Article 8. However, it is important to understand that any inconsistency with the OECD approach, or any new restriction on the scope of the current Shipping Article, would be extremely problematic for the industry since this could lead to different treatment by local authorities in the various ports of call on a voyage. Given the large number of ships and cargoes involved in international trade this would be chaotic, for tax authorities as well as shipping companies. This could seriously distort international trade which very much depends on common rules and an interpretation of such rules which allows market participants to offer cost-effective and efficient services.

10. A selection of extracts from dictionaries on the terms “auxiliary” and “ancillary” are includes at attachment C to this paper. The two terms appear to be largely used as alternatives in modern usage, and to the extent that there may be any difference in usage in technical areas it seems to be that “auxiliary may mean something held in reserve and not activated” while ancillary means something used but in a subsidiary capacity. Such a distinction appears irrelevant in the current context, where both usages are by definition referring to actual activities. As noted in note E/C.18/2012/5, (at footnote 6) paragraph 10 of the UN Commentary to Article 5 already uses “ancillary” as a synonym for “auxiliary”.

11. In view of the potential of confusion with the concept of “preparatory or auxiliary” activities under article 5(4) of the Model, the secretariat remains of the view that if changes are made to Article 8, consideration should at least be given to making this change to “ancillary”. While such changes should not be driven by OECD changes, it is a relevant factor that linguistic consistency is useful where no substantive difference is intended. Of course the Commentary

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19. The OECD Commentary now notes[11] that one example of activities covered by the provision: "would be that of an enterprise engaged in international transport that would have some of its passengers or cargo transported internationally by ships or aircraft operated by other enterprises, *e.g.* under code-sharing or slot-chartering arrangements or to take advantage of an earlier sailing." A slot charter is a maritime term for a charter party where the shipper leases one or more "slots," aboard a container ship. Each slot is generally capable of holding a 20-foot container.

20. There is no equivalent of this example in the pre-2005 OECD Model, and therefore it does not appear in the UN Model Commentary. That is not in itself significant, as the examples are not expressed to be exhaustive under either Model, but an issue for Members is whether this should be explicitly given as an example in the Commentary. If the answer is "yes", there might need to be some elaboration of the OECD wording.

21. With that said, the coverage of code sharing and slot chartering is unlikely to be controversial. The same would apply for cases where original bookings were made on the enterprise's vessels or aircraft, and these were later changed to, for example, address a delay in the sailing or flight,

22. The reference to "taking advantage of earlier sailings" might be more open to question. If an enterprise systematically booked cargo space or flights on entirely unrelated ships/ aircraft (*e.g.* non-code shared flights or where there is no slot charter in place) on the basis of more convenient timings for passengers, there could be issues as to whether the profits are auxiliary to the direct operation of ships or aircraft.

23. It can be suggested, however, that this example has to be read in the context of the first sentence of paragraph 6 of the current OECD Commentary, and an enterprise that systematically booked cargo space or flights on entirely unrelated ships/ aircraft would not be covered by that paragraph: "Profits derived by an enterprise from the transportation of passengers or cargo otherwise than by ships or aircraft that it operates in international traffic are covered by the paragraph to the extent that such transportation is directly connected with the operation, by that enterprise, of ships or aircraft in international traffic or is an ancillary activity."

24. The issue for the Committee is whether the formulation relating to "earlier sailings" has the benefit of greater certainty, while remaining consistent with the words of the Article itself, or whether it appears to give a self-standing rule and instead needs to be more explicitly conditioned by the ideas in that opening sentence (if the opening sentence was incorporated in any package of UN Model changes). In fact, a general issue for Members in considering further examples of auxiliary activities will be that it needs to be clear whether the examples given are examples of situations inherently meeting the "auxiliary test" or that *may* meet the test, depending on the circumstances and the existence (or lack) of particular factors. If some wording on "earlier sailings" is adopted, perhaps earlier *flights* should also be mentioned.

25. Members should note that a considerable part of the joint submission from the International Chamber of Shipping (ICS) and the World Shipping Council (WSC) included at Attachment B to this paper is devoted to this issue. The submission notes:

[11] At paragraph 6.

Vessel Operating Ocean Carriers Should Qualify for Article 8 Regardless of the Commercial Arrangements under Which They Provide or Obtain Vessel Capacity Used to Transport International Traffic

In addition to the inland transportation issue addressed above, there was also discussion at the most recent Committee of Experts meeting of the application of Article 8 to vessel space provided through vessel sharing arrangements. Specifically, there was a suggestion that Article 8 should not protect from double taxation revenues derived by an ocean carrier that transports a particular shipment using vessel space obtained from another carrier under a Vessel Sharing Agreement[12] or "VSA". The shipping industry believes that this suggestion is unworkable as a practical matter and could have serious implications for the level of service available to cargo interests if it were adopted.

Vessel sharing arrangements have become one of the most common features of the liner shipping industry, with over half of the containerized liner services offered worldwide being offered through such alliances. Because of the capital intensive nature of the shipping business, and because economies of scale have driven the industry towards the use of larger vessels in order to optimize fuel

At the UN meeting in October, ICS pointed out that inland transport is only included in the scope of taxable activity by the OECD commentary to the extent that the local leg is carried out by a domestic carrier, which would be taxed on its income. The international carrier providing through transportation is taxed for the revenue derived from that inland leg only in the "home country". Furthermore, ICS noted that it is not the practice of the industry to carry large volumes of containers on third party vessels outside a formal time charter, slot charter or vessel sharing arrangement. This latter point is relevant to the issue of prohibition of double taxation on the inland transportation leg of through international movements. It is also relevant to the point that the nature of the commercial arrangement under which an ocean carrier provides or obtains space on a ship should not affect that carrier's tax status.

Ticket selling

29. The 2005 OECD Commentary addresses instances of an enterprise frequently selling tickets on behalf of other transport enterprises at a location that it maintains primarily for purposes of selling tickets for transportation on the ships or aircraft that it operates in international traffic.[14] It notes that such sales of tickets on behalf of other enterprises will either be directly connected with voyages aboard ships or aircraft that the enterprise operates (such as

are therefore not covered by Article 8. The reference to “propaganda” represents an outdated usage and should in any case be updated.

Containers

33. The 2005 OECD Commentary used new wording to address the use of containers in

> Investment income of shipping, inland waterways or air transport enterprises (*e.g.* income from stocks, bonds, shares or loans) is to be subjected to the treatment ordinarily applied to this class of income[24] […]

44. The exceptions noted in the current OECD Commentary are not addressed in the UN Model. While this does not necessarily imply disagreement with those conclusions[25] it does leave the issue "hanging in the air", as the very thing it does not address is whether and when there are exceptions whereby the investment income will be dealt with under Article 8 – in fact it may be read by some as denying that there will be such cases. Members will need to discuss these issues and to decide whether they agree with the conclusions in at least the pre-2005 version of the OECD Model and whether they consider these enhance the certainty of the Article's application, while remaining consistent with the Article's meaning. The changes made to the OECD Model in 2005 do not appear to be major ones and may not themselves justify referring to two versri0040 >>BDC 03

ATTACHMENT A:

ARTICLE 8 COMMENTARY AS IT APPEARS IN THE 2011 UN MODEL UPDATE

Article 8

SHIPPING, INLAND WATERWAYS TRANSPORT AND AIR TRANSPORT

A. General considerations

1. Two alternative versions are given for Article 8 of the United Nations Model Convention, namely Article 8 (alternative A) and Article 8 (alternative B). Article 8 (alternative A) reproduces Article 8 of the OECD Model Convention. Article 8 (alternative B) introduces substantive changes to Article 8 (alternative A), dealing separately with profits from the operation of aircraft and profits from the operation of ships in paragraphs 1 and 2, respectively. The remaining paragraphs (3, 4 and 5) reproduce paragraphs 2, 3 and 4 of Article 8 (alternative A) with a minor adjustment in paragraph 5.

2. With regard to the taxation of profits from the operation of ships in international traffic, many countries support the position taken in Article 8 (alternative A). In their view, shipping enterprises should not be exposed to the tax laws of the numerous countries to which their operations extend; taxation at the place of effective management was also preferable from the viewpoint of the various tax administrations. They argued that if every country taxed a portion of the profits of a shipping line, computed according to its own rules, the sum of those portions might well exceed the total income of the enterprise. Consequently, that would constitute a serious problem, especially because taxes in developing countries could be excessively high, and the total profits of shipping enterprises were frequently quite modest.

3. Other countries asserted that they were not in a position to forgo even the limited revenue to be derived from taxing foreign shipping enterprises as long as their own shipping industries were not more fully developed. They recognized, however, that considerable difficulties were involved in determining a taxable profit in such a situation and allocating the profit to the various countries concerned in the course of the operation of ships in international traffic.

4. Since no consensus could be reached on a provision concerning the taxation of shipping profits, the use of two alternatives in the Model Convention is proposed and the question of such taxation should be left to bilateral negotiations.

5. Although the texts of Article 8 (alternatives A and B) both refer to the “place of effective management of the enterprise”, some countries may wish to refer instead to the “State of residence of the enterprise”.

aircraft. Although it would be out of the question to list here all the auxiliary activities which could properly be brought under the provision, nevertheless a few examples may usefully be given.

8. The provision applies, inter alia, to the following activities:
a) the sale of passage tickets on behalf of other enterprises;
b) the operation of a bus service connecting a town with its airport;
c) advertising and commercial propaganda;
d) transportation of goods by truck connecting a depot with a port or airport.

9. If an enterprise engaged in international transport undertakes to see to it that, in connection with such transport, goods are delivered directly to the consignee in the other Contracting State, such inland transportation is considered to fall within the scope of the international operation of ships or aircraft and, therefore, is covered by the provisions of this Article.

10. Recently, "containerisation" has come to play an increasing role in the field of international transport. Such containers frequently are also used in inland transport. Profits derived by an enterprise engaged in international transport from the lease of containers which is supplementary or incidental to its international operation of ships or aircraft fall within the scope of this Article.

11. On the other hand, the provision does not cover a clearly separate activity such as the keeping of a hotel as a separate business; the profits from such an establishment are in any case easily determinable. In certain cases, however, circumstances are such that the provision must apply even to a hotel business *e.g.* the keeping of a hotel for no other purpose than to provide transit passengers with night accommodation, the cost of such a service being included in the price of the passage ticket. In such a case, the hotel can be regarded as a kind of waiting room.

12. There is another activity which is excluded from the field of application of the provision, namely a shipbuilding yard operated in one country by a shipping enterprise having its place of effective management in another country.

13. It may be agreed bilaterally that profits from the operation of a vessel engaged in fishing, dredging or hauling activities on the high seas be treated as income falling under this Article.

14. Investment income of shipping, inland waterways or air transport enterprises (*e.g.* income from stocks, bonds, shares or loans) is to be subjected to the treatment ordinarily applied to this class of income […].

Paragraph 1 *of Article* 8 *(alternative B)*

12. This paragraph reproduces Article 8, paragraph 1, of the OECD Model Convention, with the deletion of the words "ships or". Thus the paragraph does not apply to the taxation of profits from the operation of ships in international traffic but does apply to the taxation of profits from the operation of aircraft in international traffic. Hence the Commentary on paragraph 1 of Article 8 (alternative A) is relevant in so far as aircraft are concerned.

Paragraph 2 *of Article* 8 *(alternative B)*

13. This paragraph allows profits from the operation of ships in international traffic to be taxed in the source country if operations in that country are “more than casual”. It also provides an independent operative rule for the shipping business and is not qualified by Articles 5 and 7 relating to business profits governed by the permanent establishment rule. It covers both regular or frequent shipping visits and irregular or isolated visits, provided the latter were planned and not merely fortuitous. The phrase “more than casual” means a scheduled or planned visit of a ship to a particular country to pick up freight or passengers.

14. The overall net profits should, in general, be determined by the authorities of the country in which the place of effective management of the enterprise is situated (or country of residence). The final conditions of the determination might be decided in bilateral negotiations. In the course of such negotiations, it might be specified, for example, whether the net profits are to be determined before the deduction of special allowances or incentives which could not be assimilated to depreciation allowances but could be considered rather as subsidies to the enterprise. It might also be specified in the course of the bilateral negotiations that direct subsidies paid to the enterprise by a Government should be included in net profits. The method for the recognition of any losses incurred during prior years, for the purpose of the determination of net profits, might also be worked out in the negotiations. In order to implement that approach, the country of residence would furnish a certificate indicating the net shipping profits of the enterprise and the amounts of any special items, including prior-year losses, which in accordance with the decisions reached in the negotiations were to be included in, or excluded from, the determination of the net profits to be apportioned or otherwise specially treated in that determination. The allocation of profits to be taxed might be based on some proportional factor specified in the bilateral negotiations, preferably the factor of outgoing freight receipts (determined on a uniform basis with or without the deduction of commissions). The percentage reduction in the tax computed on the basis of the allocated profits is intended to achieve a sharing of revenues that would reflect the managerial and capital inputs originating in the country of residence.

Paragraph 2 *of Article* 8 (*alternative A*) and
Paragraph 3 *of Article* 8 *(alternative B)*

15. Each of these paragraphs reproduces Article 8, paragraph 2, of the OECD Model Convention. The paragraphs apply not only to inland waterways transport between two or more countries but also to inland waterways transport effected by an enterprise of one country between two points in another country. Countries are free to settle any specific tax problem

Convention observes:

> 18. It follows from the wording of paragraphs 1 and 2 that enterprises not exclusively engaged in shipping, inland waterways transport or air transport nevertheless come within the provisions of these paragraphs as regards profits arising to them from the operation of ships, boats or aircraft belonging to them.
>
> 19. If such an enterprise has in a foreign country permanent establishments exclusively concerned with the operation of its ships or aircraft, there is no reason to treat such establishments differently from the permanent establishments of enterprises engaged exclusively in shipping, inland waterways transport or air transport.
>
> 20. Nor does any difficulty arise in applying the provisions of paragraphs 1 and 2 if the enterprise has in another State a permanent establishment which is not exclusively engaged in shipping, inland waterways transport or air transport. If its goods are carried in its own ships to a permanent establishment belonging to it in a foreign country, it is right to say that none of the profit obtained by the enterprise through acting as its own carrier can properly be taxed in the State where the permanent establishment is situated. The same must be true even if the permanent establishment maintains installations for operating the ships or aircraft (*e.g.* consignment wharves) or incurs other costs in connection with the carriage of the enterprise's goods (*e.g.* staff costs). In this case, even though certain functions related to the operation of ships and aircraft in international traffic may be performed by the permanent establishment, the profits attributable to these functions are taxable exclusively in the State where the place of effective management of the enterprise is situated. Any expenses, or part thereof, incurred in performing such functions must be deducted in computing that part of the profit that is not taxable in the State where the permanent establishment is located and will not, therefore, reduce the part of the profits attributable to the permanent establishment which may be taxed in that State pursuant to Article 7. 21. Where ships or aircraft are operated in international traffic, the application of the Article to the profits arising from such operation will not be affected by the fact that the ships or aircraft are operated by a permanent establishment which is not the place of effective management of the whole enterprise; thus, even if such profits could be attributed to the permanent establishment under Article 7, they will only be taxable in the State in which the place of effective management of the enterprise is situated […].

Paragraph 3 *of Article* 8 (*alternative A*) and
Paragraph 4 *of Article* 8 *(alternative B)*

18. Each of these paragraphs, which reproduce Article 8, paragraph 3, of the OECD Model Convention, refers to the case in which the place of effective management of the enterprise concerned is aboard a ship or a boat. As noted in the Commentary on the OECD Model Convention:

> 22. […] In this case tax will only be charged by the State where the home harbour of the ship or boat is situated. It is provided that if the home harbour cannot be determined, tax will be charged only in the Contracting State of which the operator of the ship or boat is a resident.

Paragraph 4 *of Article* 8 (*alternative A*) and

Paragraph 5 *of Article* 8 *(alternative B)*

19. Paragraph 4 of Article 8 (alternative A) reproduces Article 8, paragraph 4, of the OECD Model Convention. Paragraph 5 of Article 8 (alternative B) also reproduces the latter paragraph, with one adjustment, namely, the replacement of the phrase “paragraph 1” by the words “paragraphs 1 and 2”. As the Commentary on the OECD Model Convention observes:

> 23. Various forms of international co-operation exist in shipping or air transport. In this field international co-operation is secured through pooling agreements or other conventions of a similar kind which lay down certain rules for apportioning the receipts (or profits) from the joint business.
>
> 24. In order to clarify the taxation position of the participant in a pool, joint business or in an international operating agency and to cope with any difficulties which may arierati/ the Comammat-12it er the participa((for appy)o r p iness tative

ATTACHMENT B:

SUBMISSION OF INTERNATIONAL CHAMBER OF SHIPPING AND WORLD SHIPPING COUNCIL

TREATMENT OF SHIPPING IN THE UN MODEL DOUBLE TAXATION CONVENTION BETWEEN DEVELOPED AND DEVELOPING COUNTRIES

Comments by the International Chamber of Shipping (ICS) and the World Shipping Council (WSC)

The International Chamber of Shipping (ICS) is the principal international trade association for merchant shipowners and operators, representing all sectors and trades (including inter alia tankers, dry bulk carriers, general cargo and specialised ships, as well as containerships) with the various intergovernmental bodies that impact on shipping. Its membership comprises national shipowners' associations in 36 countries representing over 80% of the world merchant fleet.

The World Shipping Council (WSC) is a membership organization representing the liner shipping industry on public policy issues of interest to its members before national, regional, and international governmental bodies. The Council has offices in Washington D.C. and Brussels. Taken together, the 29 World Shipping Council members provide approximately 90% of the world's containerized shipping capacity.

At the eighth session of the Committee of Experts on International Cooperation on Tax Matters, the shipping industry and other interested parties were invited to comment on the discussions about taxation of international transport. We appreciate this opportunity to provide the following remarks about the treatment of international shipping in the UN Model Double Taxation Convention.

About 90% of global trade is carried by sea. The efficiency of ship operations, and the global economy which they serve, is very much dependent upon the existence of a uniform and common understanding of how national rules apply to what is an international industry regulated by multilateral international treaties. If different national rules were to apply during different parts of a voyage then the result would be chaos

and serious inefficiency in the movement of the world's energy, raw materials, food and manufactured products.

Shipping is an inherently globalised business with over 60,000 vessels engaged in international trade calling at numerous different countries during a year. This is true of most ships engaged in bulk and specialist trades, as well as those carrying containerized cargoes. In the case of container vessels, they nearly always carry cargo from a number of different countries during a specific journey voyage. It is therefore paramount that the present and long established principle of taxing international shipping in the 'home country' only (as may be defined by the authorities in that country) is maintained. For the same reason and in order to ensure that there remains a common understanding of the international principles for taxation of shipping, the UN and the OECD model treaties should as far as possible be aligned with respect to their treatment of international shipping. The OECD commentary was revised in 2005 after an extensive analysis of the functioning and operation of modern day international shipping activities. It is the opinion of the global shipping industry that the OECD model should serve as the inspiration for the discussions at the UN level.

General Principles

At the meeting of the Committee of Experts, the question of auxiliary/ancillary income was discussed. ICS commented on the development of the industry – in particular container shipping – where the containers can continue their journey after the vessel reaches port. ICS commented on the practical issues of a

point is relevant to the issue of prohibition of double taxation on the inland transportation leg of through international movements. It is also relevant to the point that the nature of the commercial arrangement under which an ocean carrier provides or obtains space on a ship should not affect that carrier's tax status.

Key Features of Inte rnational Shipping

'Tramp' shipping (as opposed to liner shipping)

om a tax point of
some bulk trades, such as
exhibit similarities to containerised trades in

ed by an ocean carrier on one of its many services. The upper map is

Port calls in the same carrier's eastbound service

In the westbound service, for example, when the ship leaves Los Angeles, United States, it may have been loaded with cargo originating in Canada, the United States and various South American countries which will be unloaded from the ship at ports in Japan, Republic of Korea, Chinese Taipei, Hong Kong (China), Thailand, Sri Lanka, France, Netherlands, Germany, Belgium and the United Kingdom.

At each such port, some of the cargo will:

- be destined for that port andthe ocean carrier's responsibilities will end at that port;
- be destined for inland points within the country of the port of call and the ocean carrier has the responsibility to deliver the cargo there;
- be destined for inland points within a countrydifferent from the country of the port of call and the ocean carrier has the responsibility to deliver the cargo there (e.g. cargo is discharged in Rotterdam, Netherlands and barged, railed or trucked to Germany); or
- be trans-shipped in this port onto different vessels used by the carrier to transport the cargo to other ports not on the first vessel's itinerary (e.g. cargo discharged in Colombo, Sri Lanka may be relayed to a different vessel that will call at Mumbai, India), which may then be further transported to the various destination possibilities outlined above.

Most ocean carriers have numerous vessel strings operating simultaneously, which are integrated into networks that enable the carrier to serve the needs of international exporters and importers by literally moving goods from virtually any point in the world to any other point in the world. These can be intricate and very complex networks.

The Entire End-To-End Movement – Including Inland Transportation – Must Be Exempt From Double Taxation as International Traffic

When a ship sails on an itinerary such as the one shown above, the ocean carrier will be required to take into account revenue for the entire promised through transportation that the shipper has negotiated and agreed to pay for, not for portions of the revenue

could have serious implications for the level of service available to cargo interests if it were adopted.

Vessel sharing arrangements have become one of the most common features of the liner shipping industry, with over half of the containerized liner services offered worldwide being offered through such alliances. Because of the capital intensive nature of the shipping business, and because ec

Article 8 whether it is a shipowner, a vessel operator, a time or bareboat charterer, a space or slot charterer, or a lessor or a lessee for the voyage generating the revenue. These various arrangements merely characterize the financial and operational details of how the vessel comes to be made available for service; they have no significance to the policy considerations that underlie Article 8.

ATTACHMENT C

DEFINITIONS OF "ANCILLARY" AND "AUXILIARY"

Oxford English Dictionary (3rd) 2010

ancillary /an s l ɪ/

adjective

providing necessary support to the primary activities or operation of an organization, system, etc.: *ancillary staff*.

- in addition to something else, but not as important: *paragraph 19 was merely ancillary to paragraph 16*.

noun (pl. *ancillaries*)

a person whose work provides necessary support to the primary activities of an organization, system, etc.: *the employment of specialist teachers and ancillaries*.

- something which functions in a supplementary or supporting role: *undergraduate courses of three main subjects with related ancillaries* | *the system measures engine power at the flywheel with all ancillaries (fan, standard*

Merriam Webster Online:

an·cil·lary

adjective\ an(t)-s % ler- •; - le-r •; especially British an- si-l% •\

ƒ : providing something additional to a main part or function

Full Definition of ANCILLARY

1: SUBORDINATE, SUBSIDIARY <the main factory and its *ancillary* plants>
2: AUXILIARY, SUPPLEMENTARY <the need for *ancillary* evidence>
— **ancillary** *noun*

Examples of ANCILLARY

1. The company hopes to boost its sales by releasing *ancillary* products.
2. The lockout rocked the NHL, but among the *ancillary* benefits has been the