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**Committee of Experts on International Cooperation in Tax Matters  
Tenth Session**

Geneva, 27-31 October 2014

Item 3(a) (iii) (a) of the provisional agenda\*

**Article 8: Transportation issues**

**Auxiliary Activities under Article 8**

**Note by the Secretariat<sup>1</sup>**

**Introduction**

This note is essentially an updated version of note E.C18/2013/CRP.4 (“the 2013 paper”) provided for consideration at the ninth annual session of the Committee in 2013. Its purpose is to address the issues involved in elaborating the concept of “auxilia eux Tm0.94( )8( c)tl

air transport enterprises, were removed. It was decided to include in the catalogue of issues for future discussion the term “auxiliary” in the context of the auxiliary activities that 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

include the aforesaid issue of revising the commentary in relation to “auxiliary activities” in the catalogue of issues to be further considered by the members of the



activities instead of “auxiliary” activities. As a result, the Committee agreed to ask the secretariat to revise the abovementioned note

“preparatory or auxiliary” under Article 5, particularly since the latter is interpreted as referring to activities that are “remote from the actual realisation of profits”.<sup>4</sup> It was clear that the examples of so called “auxiliary” activities described at paragraph 8 of the pre 2005 OECD Commentary on Article 8 (e.g., the sale of passage tickets on behalf of other enterprises, the operation of a bus service connecting a town with its airport, etc.) did not meet the description of being remote from the actual realization of profits. The term “ancillary” to the operation of aircraft in international traffic, adopted at paragraph 4.2 of the 2005 OECD Commentary, was considered a more appropriate description of the activities intended to be covered by Article 8.

16. The 2005 OECD Commentary included elaborations on the types of income that would be considered directly related or ancillary to the operation of aircraft in international traffic.<sup>5</sup> This was done to update the Commentary to reflect more usefully the actual state of cooperation among airlines. IATA had provided background information to the OECD to explain the need for this greater clarity, including the following:

The practice of airlines to perform various ancillary activities for one another at airports around the world has existed for many decades and has intensified with the growing development of strategic alliances. The reasons for this practice are basically economic. Everywhere a foreign airline flies it must operate, or otherwise provide for, terminal facilities, baggage and ground handling, load control and communications, ramp services, security services, catering, aircraft servicing and maintenance, hangars, and other capital intensive functions and equipment. These functions must be performed and equipment provided even where the airline’s service of a particular airport is minimal. Similarly, pilots, flight attendants, mechanics, baggage handlers, reservation agents, gate agents, security guards, cooks, cleaners, and other personnel, usually highly unionized, must be provided in each location notwithstanding thin traffic. The evolving demands of modern travelers also require the airlines to provide other amenities, including in terminal lounges, eating facilities, business facilities, and in flight entertainment. Almost from the beginning of commercial aviation, airlines have entered into cooperative arrangements to perform these activities for one another in order to maximize the efficient use of available resources. This practice, which has been recognized and encouraged by governments for decades, improves the economic situation of the airlines and their customers alike.

17. IATA urges the UN similarly to recognize that income attribut(m)13( the)nt(m)138.3.3(activi8(i)5.)



report was released on 15 December 2004.<sup>9</sup> Paragraph 6 of the OECD Model Commentary was changed in 2005 from the wording that was quoted in the 2001 UN Model Commentary. The earlier text referred to “additional activities more or less closely connected with the direct operation of ships or aircraft” which (as noted above) it termed “auxiliary activities”. The new formulation is: “[a]ctivities that the enterprise does not need to carry on for the purposes of its own operation of ships or aircraft in international traffic but which make a minor contribution relative to such operation and are so closely related to such operation that they should not be regarded as a separate business or source of income of the enterprise should be considered to be ancillary to the operation of ships and aircraft in international traffic.”<sup>10</sup>

16. Members might consider that the OECD formulation has the benefit of clarifying that the test is *not only* one of (i) the closeness of relationship with the primary transportation activities, but also of (ii) the relative contribution made to the business operations as a whole. In other words a closely related activity may, it seems, cease to be treated as “ancillary”/ “auxiliary” when its contribution is no longer minor in the context of the overall business operations. This creates some level of uncertainty as to when the threshold has been met but it has some conceptual justification. This justification is found in the idea that when an activity that is not of itself covered by Article 8 ceases to be conducted to facilitate the main transportation activity, and instead becomes a business with its own strategy and direction, it has emerged from the wings of the Article 8-protected parent activity and falls for consideration under the normal rules of Articles 5 and 7.

17. The 2001 UN Model Commentary, in quoting the pre-2005 version of OECD Model, includes the following examples which are stated to be “auxiliary activities which could properly be brought under the provision”:

- (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.<sup>11</sup>

18. The wording (especially the use of the word “could” rather than “would”) is a little ambiguous as to whether or not such examples *inherently* are covered by the paragraph, but the context (and lack of reference to other decisive factors) seems to suggest that these examples are treated as inherently “more or less closely connected with the direct operation of ships or aircraft” and therefore covered by the paragraph as closely enough related to the primary activities. This conclusion might be subject, perhaps, to the issue of their relative contribution to the business, something that might change over time. These issues might usefully be clarified in any update to the Article 8 Commentary.

19. The 2005 version of the OECD Model gives more elaborated versions of these examples. An issue for the Committee is whether the OECD’s 2005 examples are expressed more narrowly (by limiting the types of such activity regarded as ancillary) or more broadly



(by more firmly stating that such activities are ancillary, rather than potentially ancillary) than in the existing UN Model Commentary, as updated in 2011, and if so what is the significance of any differences. The examples given in the 2005 OECD Model Commentary are as follows:

*Bus services*

20. The OECD Model provides that: “Another example would be that of an airline company that operates a bus service connecting a town with its airport primarily to provide access to and from that airport to the passengers of its international flights.”<sup>12</sup> The UN Model Commentary, in contrast, merely provides as one of the example of at 10\_005 OEC.18gonar :opsnn l pro1.8(e2r)-2

*International transportation legs operated by other carriers*

23. The OECD Model Commentary now notes<sup>15</sup>

26. The coverage of code sharing and slot chartering appears unlikely to be controversial for most countries. 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. The reference to "taking advantage of earlier sailings" might be more open to question, however. 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.

27. It can be suggested, however, that this example has to be read in the context of the opening sentence of paragraph 6 of the current OECD Model 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."

28. 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 used by the OECD, or something similar, is to be incorporated in any package of UN Model changes).

29. 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. The latter seems to be the intention but that could be elaborated and clarified to ensure greater certainty for both administrators and taxpayers. Explicitly clarifying the supervening aspect of the opening sentence in the case of the examples would, *prima facie*, address any issues in a case such as the taking advantage of earlier sailings by other operators. If some wording on "earlier sailings" is adopted, perhaps earlier *flights* should also be mentioned, although this is likely to be less of a practical issue with passengers than with cargo – the treatment of airline code sharing is likely to be more of an issue.

30. 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 the 2013 paper and to this paper was devoted to this issue of aircraft and shipping operators making arrangements for another carrier to carry people or goods on part of the international legs of a journey. The submission notes:

**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<sup>16</sup> 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 efficiency, it is cost-prohibitive for carriers to offer stand-alone services in many markets. By sharing vessel space, however, multiple carriers can maintain geographic coverage, vessel call frequency, and overall system capacity at levels beyond what they could provide individually, while at the same time those carriers continue to compete commercially for business. These arrangements provide more options, better service and thereby more competition for the carriers’ shipper customers.

Within a VSA each of the carriers typically participates in the joint service with a certain number of their own (or chartered) vessels. Each carrier has the right to use a specified amount of the container carrying capacity (TEU capacity / deadweight, whichever is reached first) on board of each of the vessels included in the joint service. The carriers share the capacity with each other on the basis of their share contribution (the ratio between each individual operator’s capacity contribution and the joint service total capacity).

Take the example of three carriers cooperating to provide a service between ‘Country A’ and ‘Country B’, with each carrier supplying two of the six vessels necessary to provide a weekly service. Under that arrangement, each carrier has the right to use one third of the space on each vessel in the service, regardless of which VSA partner actually operates that particular vessel. Each individual carrier maintains its direct, independent relationship with its shipper customer, and the shipper looks to the carrier issuing the bill of lading to move the goods from origin to destination, regardless of who operates the ship on

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<sup>16</sup> We use the term “vessel sharing agreement” here in an inclusive sense, to encompass the full range of arrangements through which vessel operators share space. Such arrangements range from simple sales or exchanges of container slots on vessels to highly integrated operational alliances. The differences in the specifics of the various types of agreements are irrelevant for tax policy purposes.

which the goods are transported. It is immaterial to the carrier and to the shipper – and it should be immaterial to the taxing authorities – which vessel is used for any given shipment. Each of the three VSA partners is a vessel operating ocean carrier providing international transportation under the arrangement described just as surely as it would be if it operated the service using only its own assets. The only difference between the two situations is

services to a port for cruise passengers. The OECD Model Commentary might be usefully drawn upon in any discussion on this topic.

33. Members should note the discussion of inland transportation legs in the submission of the International Chamber of Shipping (ICS) and the World Shipping Council (WSC) included at Attachment B. The submission notes for example:

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.

34. Members should also note the discussion of inland transportation legs in the submission of the International Air Transport Association (IATA) included at Attachment D to this paper:

20. IATA also urges the UN to confirm the application of Article 8 to income

*Ticket selling*

35. The 2005 OECD Model 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.<sup>18</sup> 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 sale of a ticket issued by another enterprise for the domestic leg of an international voyage offered by the first enterprise) or else will be ancillary to its own sales. It concludes that profits derived by the first enterprise from selling such tickets are therefore covered by the paragraph.

36. The UN Model Commentary only deals with the “auxiliary”/ “ancillary” nature of the sale of tickets on behalf of other enterprises and Members should consider whether this elaboration of cases that are considered in the OECD Model Commentary as “directly connected” with voyages operated by the enterprise<sup>19</sup> is a useful clarification in the

enterprise engaged in international transport from the lease of containers are usually either directly connected or ancillary to its operation of ships or aircraft in international traffic and



*Providing goods or services to other enterprises*

41. The OECD Model Commentary as amended in 2005 notes that:

An enterprise that has assets or personnel in a foreign country for purposes of operating its ships or aircraft in international traffic may derive income from providing goods or services in that country to other transport enterprises. This would include (for example) the provision of goods and services by engineers, ground and equipment-maintenance staff, cargo handlers, catering staff and customer services personnel. Where the enterprise provides such goods to, or performs services for, other enterprises and such activities are directly connected or ancillary to the enterprise's operation of ships or aircraft in international traffic, the profits from the provision of such goods or services to other enterprises will fall under the paragraph.<sup>24</sup>

42. Of itself, that analysis does not take us far; in effect it is saying that such activities will be directly connected or ancillary (which we assume for the moment to mean the same as the term "auxiliary" used in the UN Model Commentary, an issue noted above) if they are directly connected or ancillary. However paragraph 10.1 of the OECD Model Commentary

manpower/facilities. It is understood that when the IATP was first formed, this co-operation, although covered by a contract, was entirely r

14. Investment income of shipping, ~~inland waterways~~ or air transport enterprises

*Emissions trading*

51. The 2014 version of the OECD Model Commentary provides a new paragraph 14.1

14.1 Enterprises engaged in the operation of ships or aircraft in international traffic

**Travel Add-Ons**

Hotels, car hire, bus transport, excursions and insurance may be booked as part of the flight booking process, earning commissions. As one author notes: “And the options just keep growing. Airlines are offering airport parking, airport-city transport, lounge access, currency exchange, telephone cards, city tours, tickets for events, and even ski rentals. Innovative airlines are coming up with new add-ons every day.”

**On-Board Sales**

This includes duty-free items, which can be ordered and delivered in more convenient ways to travelers than in the past. This is extending to cover items such as headsets, and discount cards. Sale of Wi-Fi usage on board is becoming more common, as is sale of entertainment options.

**Advertising Sales**

With a captive audience, advertising can be found in the in-flight magazines, but also now on meal trays, cups, serviettes and other meal-related items, flight attendant aprons, overhead bins, window blinds and surrounds, seatbacks, bulkheads in entertainment programs and, especially, through the booking websites. Many airlines are now offering advertising space in lounge facilities and on the exterior of the aircraft, such as with advertising “wraps”.

**Customer Loyalty Programs**

These programs are a source of new revenue by facilitating partners such as hotels or car-rental companies to offer airline miles, wherein the partner acquires the miles issued - for a charge. Purchase of additional miles to achieve a higher frequent flyer “status”, achieve a redemption for a particular journey or an upgrade is increasingly important. Payments are sought to gift, share or even re-activate expired miles<sup>35</sup>. Many of the costs of running such programs are outsourced, and hence deductible. Some airlines have annual fees payable to reduce baggage charges and gain access to some special deals.

**Co-Branded Credit Cards**

Co-branding offers another source of revenue from joining and annual fees as well as sale of miles to the credit card companies

**Other Revenue Sources**

One author has noted: “Many airlines actively pursue revenue from sale of services to others which they already provide for themselves. Ground-handling services, engineering and maintenance services are traditional sources. But airlines can also offer short-term aircraft leases and the operation of sub-services and charter flights. Some low-cost airlines have even chosen to sell all their belly-hold cargo space to specialist freight- forwarder companies, rather than use it themselves.”

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<sup>35</sup> [http://www.aa.com/viewPromotionDetails.do?fn=A0605\\_reactivate.xml](http://www.aa.com/viewPromotionDetails.do?fn=A0605_reactivate.xml)



**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

alternatives, some countries who could not agree to Article 8 (alternative A) also could not agree to Article 8 (alternative B) because of the phrase “more than casual”. They argued that some countries might wish to tax either all shipping profits or all airline profits, and acceptance of Article 8 (alternative B) might thus lead to a revenue loss, considering the limited number of shipping companies or airlines whose effective management was situated in those countries. Again, in such cases taxation should be left to bilateral negotiations.

7. Depending on the frequency or volume of cross-border traffic, countries may, during bilateral negotiations, wish to extend the provisions of Article 8 to cover rail or road transport.

8. Some countries consider that the activity of transport carried out in inland waters, by definition, cannot be considered international transport and, by virtue of that, the fiscal or tax power should be attributed exclusively to the source country in which the activities are carried out. Since Article 8 deals with “Shipping, inland waterways transport and air transport”, obviously all three modes of transport dealt with in this Article involve problems of double taxation. Income derived from inland waterways transport is also subject to double taxation if a river or lake used for commercial transportation flows from more than one country with the headquarters of the establishment in one country and traffic originating in more than one country. Hence, it is possible that inland waterways transport would give rise to problems of double taxation.

B. Commentary on the paragraphs of article 8  
(alternatives A and B)

*Paragraph 1 of Article 8 (alternative A)*

9. This paragraph, which reproduces Article 8, paragraph 1, of the OECD Model Convention, has the objective of ensuring that profits from the operation of ships or aircraft in international traffic will be taxed in one State alone. The paragraph’s effect is that these profits are wholly exempt from tax at source and are taxed exclusively in the State in which the place of effective management of the enterprise engaged in international traffic is situated. It provides an independent operative rule for these activities and is not qualified by Articles 5 and 7 relating to business profits governed by the permanent establishment rule. The exemption from tax in the source country is predicated largely on the premise that the income of these enterprises is earned on the high seas, that exposure to the tax laws of numerous countries is likely to result in double taxation or at best in difficult allocation problems, and that exemption in places other than the home country ensures that the enterprises will not be taxed in foreign countries if their overall operations turn out to be unprofitable. Considerations relating to international air traffic are similar. Since a number of countries with water boundaries do not have resident shipping companies but do have ports used to a significant extent by ships from other countries, they have traditionally disagreed with the principle of such an exemption of shipping profits and would argue in favour of alternative B.

10. The Commentary on the OECD Model Convention notes that the place of effective management may be situated in a country different from the country of residence of an enterprise operating ships or aircraft and that “[...] some States therefore prefer to confer the





makes it unnecessary to devise detailed rules, *e.g.* for defining the profits covered, this



16. The rules set out in paragraphs 8 to 10 above relating to taxing rights and profits covered apply equally to this paragraph.

**Enterprises not exclusively engaged in shipping, inland waterways transport and air transport.**

17. With regard to enterprises not exclusively engaged in shipping, inland waterways transport or air transport, the Commentary on Article 8, paragraph 2, of the OECD Model 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



**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. T7O an co9Modde4s0TD T13 1 nydNo Ta3 ( M)5.1(n)ct



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.

#### Key Features of International Shipping

‘Tramp’ shipping (as opposed to liner shipping) is the maritime transportation of bulk materials (dry and wet) that does not adhere to published schedules and which often



*Port calls in a carrier's westbound service*

*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



shipping industry recommends that it be made very clear that the inland portion of



**E/C.18/2014/CR**

**ATTACHMENT C**  
**DEFINITIONS OF “ANCILLARY” AND “AUXILIARY”**

Oxford English Dictionary (3<sup>rd</sup>) 2010

**ancillary** /an s kɪlə/

adjective

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

v

### 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 emergence of young players who apprenticed for an additional season in the minors ... —Michael Farber, *Sports Illustrated*, 21 Nov. 2005

### aux·il·ia·ry

adjective \ g- zil-y % , - zil-r , - zi-l %

: available to provide extra help, power, etc., when it is needed

#### Full Definition of AUXILIARY

**1 a:** offering or providing help

**b:** functioning in a [subsidiary](#) capacity <an *auxiliary* branch of the state university>

**2: of a verb :** accompanying another verb and typically expressing person, number, [mood](#), or tense

**ATTACHMENT D**

**SUBMISSION OF INTERNATIONAL AIR TRANSPORT  
ASSOCIATION**

14 October 2013

VIA E-MAIL

Mr. Michael Lennard  
Chief, International Tax Cooperation Section  
Financing for Development Office  
UN Department of Economic and Social Affairs





3. Accordingly, IATA has a strong interest in the manner in which Article 8 is interpreted and applied.
4. The UN Model is an important manifestation of the UN's policy to contribute to the development aims of developing countries by eliminating, on politically and economically acceptable terms, the international double taxation that would otherwise inhibit the growth of investment flows from developed to developing countries.
5. The UN's International Civil Aviation Organization (ICAO) has long recognized the fundamental importance of (O)-1 oai

Nations Model Tax Convention. The rationale then was the same as it is today,

background information to the OECD to explain the need for this greater clarity, including the following:

The practice of airlines to perform various ancillary activities for one another at airports around the world has existed for many decades and has intensified with the growing development of strategic alliances. The reasons for this practice are basically economic. Everywhere a foreign airline flies it must operate, or otherwise provide for, terminal facilities, baggage and ground handling, load control and communications, ramp services, security services,

19. The OECD's 2005 Commentary recognizes the application of Article 8 to income realized by an airline from a code-sharing arrangement in which its passengers are transported internationally on aircraft operated by another enterprise where that arrangement is directly connected or ancillary to the airline's operation of aircraft in international traffic,<sup>43</sup> and IATA likewise urges the UN to adopt this clarification.

Treatment of "inland legs" of international transport

20. IATA also urges the UN to confirm the application of Article 8 to income attributable