The current research,[6] which covers the period from 1 April 1997 to 1 January 2013, can be regarded as a follow-up to the 1997 research. Similar to the 1997 research, treaties dealing with shipping and air transport containing a tax provision are not included in the research because it is uncertain whether the standard provisions of the UN/OECD Models always serve as guidance in concluding these non-tax treaties. The tax treaties concluded in this period with a scope limited to the exchange of information (TIEAs) are not taken into account, as it has been decided not to analyse the provisions on the exchange of information contained in article 26 of the UN Model (see section

treaties and amending protocols concluded from 1 January 1980 to 1 April 1997. The 2011 research had a more limited scope. It dealt with the 16 provisions relevant in the context of the treatment of services from both the UN Models (1980) and (2001),[4] as well as the OECD Model (2010),[5] in the 1,586 comprehensive tax treaties and amending protocols concluded from 1 April 1997 to 1 January 2011.

*

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e r esearch and analysis was compiled with the assistance of the following IBFD sta members: Giulia Gallo (Research Associate (secretary and coordinator of the research)), Dr Noah Gaoua (Research Associate & Account Manager), Carlos Gutierrez Puente (Principal anag4rm0 Tc 0459.5273 Tc .78 ((e)20)e r

(Research Associate) and Jaap van der Meulen (IT Team).
e authors present this report on their research on the UN Model provisions with full knowledge that their research is not exhaustive; however, it is hoped that their work will provide the Committee with some useful new insights.

1. W. Wijnen & M. Magenta, The UN Model in Practice, 51 Bull. Intl. Fiscal Docn. 12 (1997), Journals IBFD.
2. W. Wijnen, J. de Goede & A. Alessi, The Treatment of Services in Tax Treaties, 66 Bull. Intl. Taxn. 1 (2012), Journals IBFD.
3. UN Model Tax Convention on Income and on Capital (1 Jan. 1980), Models IBFD.
4. UN Model Tax Convention on Income and on Capital (1 Jan. 2001), Models IBFD.
5. OECD Model Tax Convention on Income and on Capital (22 July 2010), Models IBFD.

able was the support of Jaap van der Meulen of the IBFD IT Team, who developed the tools to manage the research and the results of this extensive project.

1.2. The scope of the research

sulting or other auxiliary work.[15] Other treaties contain, in by UN countries with either a UN or an OECD country (in 2013: 78%) and 83 (28%) were concluded between OECD countries (in 2013: 22%).

2.2. Art

(1) Group A: 0 of 762 tax treaties (0%);

(2) Group B: 6 of 825 tax treaties (0.7%);[28] and

(3) Group C: 5 of 224 tax treaties (2.2%).[29]

The percentages are low, but this optional provision has only recently been included in the OECD Commentary. Not surprisingly, it has not, to date, been used in tax treaties between UN countries.

2.2.3. C A A 1997

The results of the current research are considerably higher than those of the earlier 1997 research. The combined result of the UN countries in Groups A and B amounted to 31% in 1997, whereas this result, as indicated by the current research, now amounts to 46%. It is also striking that the same applies to Group C. The 1997 research indicated that this typical UN provision was adopted in 2% of tax treaties between OECD countries, whereas this per centage, according to current research, amounts to 17%.

2.3. Article 5(4)(a) and (b) of the UN Model (1980): distribution activities

2.3.1. T UN M

Article 5(4)(a) and (b) of the UN Model reads as follows:

> (4) Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
>
> (a) The use of facilities solely for the purpose of storage or display (...) of goods or merchandise belonging to the enterprise;
>
> (b) The maintenance of a stock of goods or merchandise b

(a) Has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

(b) Has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise. (Emphasis added)

This subparagraph (b) expands on the concept of a deemed agency PE.

2.4.2. T A : 1 A A1997 1J 2013

Of the 1,811 tax treaties included in the research, 499 (28%) include a stock agent provision similar to that of the UN Model. These are divided over the three groups noted in section 1.2. as follows:

(1) Group A: 307 of 762 tax treaties (40%);

(2) Group B: 167 of 825 tax treaties (20%); and

(3) Group C: 25 of 224 tax treaties (11%).

Of these 499 tax treaties, 307 were concluded between two UN countries (Group A), 167 between a UN and an OECD country (Group B) and 25 between two OECD countries (Group C).

In addition to the provision relating to stock agents, 8 of these treaties[35] (4 of Group A and 4 of Group B) include a specific provision for agents who habitually secure orders for the sale of goods or merchandise. An example of this type of provision is:

(c) he habitually secures orders for the sale of goods or merchandise in the first-mentioned State, wholly or almost wholly on behalf of the enterprise itself, or on behalf of the enterprise and other enterprises controlled by it or which have a controlling interest in it.

Further, 11 of these treaties[36] include a specific provision for agents who manufacture, assemble, process, pack or distribute goods or merchandise. An example of such a provision is:

Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 8 applies – is acting on behalf of an enterprise and b) manufactures or processes in a Contracting State for the enterprise goods or merchandise belonging to the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for that enterprise.

2.4.3. C A A 1997

The results of the current reseF(lm)7(e)16(q1.1(tle)1(s en)16(t 1Tf 0.er)8(sh(h t)-8(h)7(e)14.1( )]TJ 0.028 T

researe q1(t 1o)8(w a)9(m)7(o)16eunts to 30%. The result ties col(t 1)16(l)15.1(u)3(d)3(e)-3(d b)-10(e)-4(t)-1(w)9(e)T 2n5 1997 and 11% in 2013.

Artil6) oe UN Model (1980): ensran e activities

2.5.1. T UN M

Artice 5(6) of the UN Model reads as folows:

Notwithstandinhe precedinrovisons ohis Article, an insr ance enterprise oontracintate shall, except in regard to re-insuran e, be deemed to have a perma(t .9(e)6.9(n)21.9(t e)11.9(s)16

State or insres risks stated therein through a person other tha(t14((a

In 1 treaty of Group A[40] and 2 treaties of Group B,[41] the person acting on behalf of the insurance enterprise must have the authority to conclude contracts in the name of the insurance enterprise and must collect premiums in the source state.

In 1 treaty of Group A[42] and 2 treaties of Group B,[43] the right of the source state to tax profits from insurance activities is limited to a maximum tax rate ranging from 2.5%

> With reference to paragraph 1 of Article 7, profits derived from the alienation of goods or merchandise of the same or similar kind as those sold by the permanent establishment may be regarded as attributable to that permanent establishment, if it is proved that the permanent establishment has been involved in any manner in that operation.[49] (Emphasis added)

2.7.3. C A A 1997

The results of the current research demonstrate that, among UN countries, the interest in including a limited force of attraction provision is declining, whereas the interest among OECD countries is slightly on the increase.

The combined result of UN countries in Groups A and B amounted to 22% in 1997, whereas the current research indicates an amount of 14%. In respect of the treaties concluded between OECD countries, there is a slight increase from 8% in 1997 to 10% in 2013.

2.8. Article 7(3) of the UN Model (1980): management fees, interest and royalty payments

2.8.1. T UN M

Article 7(3) of the UN Model reads as follows:

> (3) In the determination

2.9. Article 7(-) of the UN Model (2001): purchase of goods

2.9.1. T UN M

The UN Model (1980) does not include the provision that the OECD Model contained in article 7(5) until 2010. The UN Model (2001) clarifies, in a note to article 7, that the question of whether profits should be attributed to a PE by reason of the mere purchase by that PE of goods and merchandise for the enterprise was not resolved and that it, therefore, should be settled in bilateral negotiations. The OECD provision was formulated as follows:

> No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

This provision was deleted from the OECD Model in 2010.

2.9.2. T A : 1 A A1997 1 2013

Of the 1,811 treaties included in the research, 109 treaties (6%) do not have, in conformity with the UN Model, a specific provision for the purchase of goods. These are divided over the three groups noted in section 1.2. as follows:

(1) Group A: 63 of 762 tax treaties (8%);

(2) Group B: 30 of 825 tax treaties (4%); and

(3) Group C: 16 of 224 tax treaties (7%).

In the 1,702 treaties that contain a purchase provision, no substantial deviations from the wording of the OECD provision are found. Only a few treaties contain some special features of which the following are worth mentioning.

In 5 treaties of Group B, profits from the sale of goods or merchandise by the head office may not be attributed to its PE in the other state:

> No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.[51]

In 2 treaties, the expenses related to the purchase of goods are also expressly excluded:

> Likewise, no charge shall be allowed from the profits of the permanent establishment in respect of the purchase of goods or merchandise for the enterprise.[52]

2.9.3. C A A 1997

In respect of the treaties concluded by the UN countries, the results of the current research are equivalent to the 1997 results. The combined result of UN countries in Groups A and B also amounted to 6% in 1997. However, in respect of the treaties concluded between OECD countries, the situation changed slightly. The 1997 research indicated that all treaties between OECD countries included the purchase provision in article 7. With regard to the current research, it appears that this provision has been omitted in 7% of these treaties.

2.10. Article 8B of the UN Model (1980): shipping profits

2.10.1. T UN M

Article 8B of the UN Model reads as follows:

> (2) Profits from the operation of ships in intotion't&‰‰Ÿ'É9v —=À ‰

51. For example, art. 3(4) of the tax treaty between Guernsey and United Kingdom of 1952/2009.
52. For example, art. 7(5) of the tax treaty between Belgium and Tunisia of 2004 and art. 7(5) of the tax treaty between Oman and Tunisia of 1997.

– in 1 treaty of Group A and 2 of Group B the taxation in the source state is limited to 1.5% of the gross revenues; 2 other treaties of Group A contain a limitation to 4%;
– 9 treaties of Group A and 5 of Group B provide that the tax charged by the source state is the lesser of: (a) 1.5% of the gross revenue derived from sources in that state; and (b) the lowest rate of tax that may be imposed on pro ts of the same kind derived under similar circumstances by a resident of a third state.

2.10.3. C A A 1997

The current research shows a significant decrease in the use of this provision. The combined result of UN countries in Groups A and B amounted in 1997 to 15%, while this result in the current research decreased to 6%. The result of the treaties concluded between OECD countries decreased from 3% in 1997 to 0% in 2013.

2.11. Article 9(3) of the UN Model (2001): adjustment and penalties

2.11.1. T UN M

Article 9(3) of the UN Model (2001) reads as follows:

> The provisions of paragraph 2 shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default. (Emphasis added)

Under this provision there is no obligation to make a corresponding adjustment if one of the enterprises is liable to a penalty with respect to fraud, gross negligence or wilful default on the basis of a legal proceeding. Although this provision was not adopted in the UN Model until 2001, a number of treaties concluded in the foregoing years already contained such a provision using the same or similar wording.

2.11.2. T A : 1 A A 1997 1 2013

Of the 1,811 tax treaties included in the research, 235 treaties (13%) contain this new provision dealing with adjustments and penalties. These are divided over the three groups noted in section 1.2. as follows:

(1) Group A: 85 of 762 tax treaties (11%);

(2) Group B: 104 of 825 tax treaties (13%); and

(3) Group C: 46 of 224 tax treaties (20%).

Of these 235 treaties, 85 were concluded between two UN countries (Group A), 104 between a UN and an OECD country (Group B) and 46 between two OECD countries (Group C). It is remarkable that in so many OECD/OECD treaties such a carve-out was included despite the fact that it is not included in the OECD Model.

In 32 tax treaties, the literal wording of the UN provision has been adopted. However, in the vam ( )41(s(ECD3(d s3(e)1(tOs b)-10(e)-3(en a1O)1.5(t)-(d)3(e)4(l)1

It is striking that so many treaties concluded between OECD countries provide for a shared taxation right for royalties.

2.12.3. C A A 1997

The pertinent provision was not part of the research in 1997.

2.13. Article 12(3) of the UN Model (1980): royalty definition

2.13.1. T UN M

Article 12(3) of the UN Model reads as follows:

> The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or

2.13.3.2. Comparison with the 1997 research

As the 1997 research covered the period 1 January 1980 to 1 April 1997 and payments for the use of equipment were only deleted from the definition of royalties in the OECD Model in 1992, these payments did not form part of the research in 1997.

2.14. Article 13 of the UN Model: capital gains on real property shares

2.14.1. A A 13(4) UNM (1980):

2.14.1.1. The UN Model

Article 13(4) of the UN Model reads as follows:

> 4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State. (Emphasis added)

A provision dealing with capital gains on the sale of real property shares was not adopted in the OECD Model until 2003. This OECD provision applies only to capital gains that derive more than 50% of their value directly or indirectly from immovable property.

2.14.1.2. Tax treaties: 1 April 1997 – 1 January 2013

Of the 1,811 tax treaties included in the research, 1,089 shares but also gains from the alienation of interests in real property partnerships, trusts or estates.

2.14.2.2. The tax treaties: 1 April 1997 – 1 January 2013

Of the 1,811 tax treaties included in the research, 357 specifically include interests in real property partnerships, trusts, estates or other entities. These are divided over the three groups noted in section 1.2. as follows:

(1) Group A: 80 of 762 tax treaties (10%);

(2) Group B: 194 of 825 tax treaties (24%); and

(3) Group C: 83 of 224 tax treaties (37%).

Of these 357 treaties, 80 were concluded between two UN

Percentage	Group A	Group B	Group C
40%	–	1	–
850% 6090 T0810050871 719.8258057 cm 0 10 m s629811 –6090 T080050890 Td (–)Tj 010 Td (–)Tj E1 0 0 1 1126			

2.16. Article 14 of the UN Model: independent personal services

2.16.1. O A

In 2000, article 14, which deals with independent personal services, was deleted from the OECD Model. From this year, the UN Model deviates in this respect entirely from the OECD Model.

2.16.2. A A 14(1)( ) UN M (1980), (2001) (2011): A

2.16.2.1 Initial remarks

The basic rule for the treatment of independent personal services in article 14(1)(a) of the UN Models (1980), (2001) and (2011) reads as follows:

> (1) Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:
>
> (a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; (Emphasis added)

2.16.2.2 Tax treaties: 1 April 1997 – 1 January 2013

Of the 1,811 tax treaties included in the research, 1,402 treaties (77%) include a provision for professional services. These are divided over the three groups noted in section 1.2. as follows:

(1) Group A: 679 of 762 tax treaties (89%);

(2) Group B: 624 of 825 tax treaties (76%); and

(3) Group C: 99 of 224 tax treaties (44%).

Of these 1,402 treaties, 679 were concluded between two UN countries (Group A), 624 between a UN and an OECD country (Group B) and 99 between two OECD countries (Group C). The 89% figure with regard to treaties between UN countries is significantly higher than the 76% figure applicable to UN and OECD countries and even double the 44% applicable to treaties between OECD countries. The differences in these figures are apparently influenced by the deletion of article 14 from the OECD Model in 2000.

In some treaties, it is explicitly stated that the provision for professional services applies to individuals but not to enterprises.[93] In 1 tax treaty in Group B, in determining the income attributable to professional services, there shall be allowed as deductions all expenses which would be deductible under the law of the source state insofar as such expenses are reasonably allocable to the performance of those services including executive and general administrative expenses, so deductible and allocable, whether

93. For example, art. 14(1) of the tax treaty between sucew929 1s 4.916 o.Tc w 124(10.9(a)7)8 Tw twecel-182 TD01 Tw d6929 19352.T393 749.70393

The following periods are found in these treaties:

Table 10: Length of stay periods

Stay period	Group A	Group B	Group C
60 days	–	2	–
61 days	1	–	–
90 days	10	8	–
91 days	1	3	–
120 days	6	8	–
135 days	2	-	-
183 days	495	380	57
270 days	1	5	–
300 days	–	1	-
365 days	2	2	-
Total	518	409	57

N: Following art. 14 of the UN Model (2001), the periods are counted in days.

This table indicates that, in respect of the length of stay criterion, UN and OECD countries usually follow the period of 183 days recommended in article 14(1)(b) of the UN Model.

In the tax treaties included in the research, numerous provisions can be found that deviate, to a greater or lesser extent, from the UN provisions. In order to provide an overall impression and without purporting to be comprehensive, the following selection of deviations can be noted.

In some tax treaties, the 183-day rule applies both to the length of stay and the fixed base criterion.[95] Other tax treaties have a length of stay and remuneration criterion without a fixed base criterion.[96] Some tax treaties have, apart from a 183-day rule in any 12-month period, a 122-day rule in each of the 2 preceding years.[97] In a number of tax treaties, the regime for professional services is incorporated into the regime for employment income, which means that the 183-day rule applies to professional services.[98] In other treaties, the 183-day rule for employment income is adopted in the regime for professional services.[99] Some tax treaties provide for a fixed tax rate of, for example, 10% of the gross amount, unless the professional has a fixed base regularly available in the source state.[100] In 1 tax treaty, the fixed rate of 10% applies only to 1 of the 2 treaty partners.[101]

95. For example, art. 14(1)(a) of the tax treaty between Thailand and Bahrain of 2001.
96. For example, art. 15(1) of the tax treaty between Malaysia and Egypt of 1997.
97. For example, art. 15(1) of the tax treaty between South Africa and Uganda of 1997.
98. For example, art. 14(1) and (2) of the tax treaty between Switzerland and Argentina of 1997/2006 and art. 14(1) and (2) of the tax treaty between Malaysia and Indonesia of 1991/2006.
99. For example, art. 14(1) of the tax treaty between Russia and Brazil of 2004.
100. For example, art. 14(1) of the tax treaty between Argentina and Norway of 1997.
101. For example, art. 14(1) and (2) of the tax treaty between France and Guinea of 1999.

2.16.3.3. Comparison with the 1997 research

The percentage of countries adopting a length-of-stay criterion for professional services significantly increased compared to the earlier 1997 research. The combined result of the UN countries in Groups A and B amounted to 38% in 1997, whereas this result according to the current research amounts to 58%. Even in respect of the treaties concluded between OECD countries in Group C, there is an increase from 18% in 1997 to 25% in 2013, which is, in light of the deletion of article 14 from the OECD Model, a remarkable development.

2.16.4. A A 14(1)( ) UN M (1980): A A A

2.16.4.1. The UN Model

In article 14(1)(c) of the UN Model (1980), the source states' right to tax is extended by a provision that the source state may tax any remuneration for independent personal services that exceeds a certain amount. This provision reads as follows:

> (1) Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:
>
> (a) ...
>
> (b) ...
>
> (c) If the remuneration for his activities in the other Contracting State is paid by a resident of that Contracting State or is borne by a permanent establishment or a fixed base situated in that Contracting State and exceeds in the fiscal year... (the amount is to be established through bilateral negotiations). (Emphasis added)

This subparagraph was deleted in the UN Model (2001) because it was not used that often in practice by UN countries. Even so, this provision is included in the present research, as it can still be a basis for source state taxation of professional services in tax treaties.

2.16.4.2. Tax treaties: 1 April 1997 – 1 January 2013

Of the 1,811 treaties included in the research, 49 treaties (3%) grant the source state a right to tax on the basis of the amount of the payment for the professional activities. These are divided over the three groups noted in section 1.2. as follows:

(1) Group A: 38 of 762 tax treaties (5%);

(2) Group B: 10 of 825 tax treaties (1%); and

(3) Group C: 1 of 224 tax treaties (0.4%).

Of these 49 treaties, 38 were concluded between two UN countries (Group A), 10 between a UN and an OECD country (Group B) and 1 between two OECD countries (Group C).

Some of the provisions with a remuneration criterion do not have a fixed base and/or length of stay criterion.[102]

In a number of tax treaties, professional services are integrated into the regime for employment income, which means that not only the 183-day rule applies to professional services, but also the "paid by" and "borne by a PE" criteria in article 15(2)(b) and (c) of the UN/OECD Models. As the scope of the "paid by" criterion in these treaties is not limited to an employer resident in the source state but is extended to a person resident in the source state, any payment for professional activities is taxable in the source state.[103] Consequently, the source state's right to tax in these treaties is even more far-reaching than under the remuneration criterion, which was deleted from article 14 of the UN Model in 2001. In a number of other treaties, the "paid by"/"borne by a PE" criteria of the employment income regime were adopted in the regime for professional services. In such tax treaties, professional services are taxable in the source state if the remuneration is paid by a person who is a resident of the source state or is borne by a PE or fixed base in the source state, which has the same far-reaching effect as the incorporation of professional services into the regime for employment income.[104]

2.16.4.3. Comparison with the 1997 research

In the research carried out by the IBFD in 1997, only 6% of the tax treaties concluded by UN countries in Groups A and B in the 1980 to 1997 period contained this provision. As the interest of these countries in adopting this provision has fallen to 3%, the conclusion is that the popularity of this treaty provision has not increased since 1997. This apparently is due to the fact that this provision is no longer part of the UN cabinet of instruments. However, it should be noted that there are provisions in a limited number of treaties that go even beyond the deleted remuneration criterion (see under section 2.17.).

2.17. Article 16(2) of the UN Model (1980): top-level managerial officials

2.17.1. The UN M08

Article 16(2) of the UN Model reads as follows:

> (2) Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State. (Emphasis added)

In this provision the principle applicable to the taxation of directors' fees is extended to the taxation of remuneration

(1) Group A: 187 of 762 tax treaties (25%);

(2) Gr

2.18.3.

In 25 of these treaties[152] (11 from Group B and 14 from Group C), a withholding tax is included to be applied on the gross amount of "other income". In 20 of these treaties[153] (9 from Group B and 11 from Group C) the withholding tax relates only to income from a trust. The withholding rates are typically 5%, 10%, 15% or 25%.

In Group A, 6 treaties[154] attribute an exclusive taxing right to the source state rather than the non-exclusive taxing right recommended by the UN Model.

In respect of winnings from gambling and lotteries arising in the source state, 34 treaties[155] (16 from Group A, 16 from Group B and 2 from Group C) provide for taxation in the source state.

In 9 treaties[156] (1 from Group A and 8 from Group B), a source taxation right is granted in respect of other income that is not subject to tax in the residence state.

2.20.3. C A A 1997

The results of the current research indicate a downward trend. The combined result of Groups A and B amounted to 44% in 1997, whereas this figure according to the current research now amounts to 37%. In respect of treaties concluded between OECD countries, there was only a slight decrease from 32% in 1997 to 30% in 2013.

2.21. Paragraph 19 of the Commentary on Article 23A of the UN Model (2011): unintended double exemption

2.21.1. T UN M

Following the example of article 23A(4) of the OECD Model (2008), the Commentary on Article 23 of the UN Model (2011) recommends, in paragraph 19, a specific provision for the avoidance of unintended double non-taxation with regard to countries wishing to avoid such a situation, which provision reads as follows:

> (4) The provisions of paragraph 1 shall not apply to income derived or capital owned by a resident of a Contracting State where the other Contracting State applies the provisions of this Convention to exempt such income or capital from tax or applies the provisions of paragraph 2 of Article 10, 11, or 11 to such income; in the latter case, the first-mentioned State shall allow the deduction of tax provided for by paragraph 2.

This provision refers to unintended double exemption as a result of disagreements between the residence state and the source state on the facts of a case or on the interpretation of the provisions of the convention. A state that generally adopts the exemption method may consider that such a method should not apply where the source state interprets the facts of a case or the provisions of the tax treaty in such a way that an item of income or capital falls under a provision of the tax treaty that does not allow that state to tax such income or capital while the residence state adopts

152. For example, art. 21(4) of the tax treaty between Peru and Korea (Rep.) of 2012.
153. For example, art. 20(2) of the tax treaty between Canada and Finland of 2007.
154. For example, art. 22(1) of the tax treaty between Namibia and South Africa of 1998.
155. For example, art. 23 of the tax treaty between Estonia and Russia of 2002.
156. For example, art. 21(3) of the tax treaty between Bahrain and Belgium of 2007.

2.22.2.

2.23.3.

higher in respect of OECD/OECD treaties than UN/UN and UN/OECD treaties (see under section 4.4.).

When comparing the 1997 and 2013 results, it is striking that by counting both the number of higher and lower figures in respect of the UN/UN and UN/OECD treaties, the number of increases and decreases are practically equal. This could point to a stable level of popularity of the UN Model in these categories of treaties. When performing the same count for the OECD/OECD treaties, the number of higher figures outweighs the lower figures substantially. This seems to indicate that, amongst OECD countries, interest in the UN approach to the various treaty

Table 18: UN provisions in UN/UN and UN/OECD treaties		
UN provisions	2013	
	UN/UN UN/OECD	OECD/OECD
Art. 5(3)(a) supervisory activities	68%	35%
Art. 5(3)(a) period < 12 months	67%	32%
Art. 5(3)(b) furnishing of services	46%	17%
Art. 5(4)(a) and (b) delivery of goods	24%	6%
Art. 5(5)(b) stock agents	30%	11%
Art. 5(7) agents with one principal	39%	2%
Art. 5(7) agent arm's length limitation	17%	8%
Art. 7(3) management fees, etc.	29%	10%
Art. 12(1) and (2) shared taxation right	89%	72%
Art. 12(3) radio/TV broadcasting	80%	63%
Art. 14(1)(a) professional services	82%	44%
Art. 14(b) length of stay criterion	58%	25%

Unlike in the OECD countries, there is apparently a much more solid basis for these traditional UN provisions in the tax policy of UN countries. As these provisions have been in use for a long period, they have gradually been incorporated into their tax policy. The fact that these provisions attribute more taxation rights to the source state is apparently the decisive factor in this respect.

4.6. Closing remarks

The results of this research demonstrate that the specific provisions of the UN Model have unmistakably obtained a solid position in the negotiation of tax treaties, not only on the side of the UN countries but also in respect of a number of UN provisions on the side of the OECD countries. However, the intriguing question that remains is why 21 of the 30 UN provisions of the current research have an overall figure of lower than 40% (12 of them are even lower than 20%). This question is all the more intriguing if it is taken into account that the vast majority (1,587 or 80%) of the treaties included in the research (1,811) has been concluded by UN countries (UN/UN and UN/OECD treaties), while the OECD/OECD treaties are only a minor factor in this context (12%).

It is undeniable that the real impact of the UN Model on tax treaties cannot be measured simply on the basis of figures concerning the presence of UN provisions in tax treaties. Tax treaties are the result of negotiations on an entire set of provisions, in respect of which compromises are made on the basis of trade-offs. Consequently, the real importance of the UN Model on treaty practice is not immediately visible from the results of this research. However, this does not fully explain these relatively low figures.

In respect of the promotion of the specific UN provisions, the Commentary can play a very important if not decisive role. The value of elaborate and unambiguous Commentaries analysing the interest of the specific UN provisions for the developing countries cannot be overestimated, in particular because of the fact that these UN provisions not always seamlessly fit in every single bilateral relation. In the treaties included in the current research, a myriad of deviating provisions is found which in standardized form could be recommended in the Commentary as a compromise. Such a toolkit with alternative provisions and proper commentaries would certainly facilitate the negotiation process and reduce the number of deviations, which would strengthen the position of the UN Model at the negotiation tables.

This research grouped all non-OECD countries in one category of UN countries. This is a large group and it includes countries that cannot be classified as developing countries under traditional World Bank standards. Therefore, there is a wide diversity in the financial and economic position of the countries in this group. The heterogeneous make-up of this group of countries has undoubtedly also had an influence on the results of the research, although it is impossible to estimate the extent to which this has occurred. Likewise, it is difficult to determine the extent to which the popularity of the specific UN provisions has been influenced by the practicalities of their implementation. The motives behind the choice of states in including or excluding these provisions in their treaties were not part of the current research; this subject merits a separate

