



Comments of the KVNR to the proposed changes to the OECD Model Tax Convention dealing with the Operation of Ships and Aircraft in International Traffic

The Royal Association of Netherlands Shipowners (KVNR) gladly accepts the invitation of the OECD Committee on Fiscal Affairs to send our comments on the public discussion draft on the proposed changes to the OECD Model Tax Convention dealing with the Operation of Ships and Aircraft in International Traffic.

General comments KVNR

The KVNR would welcome a more detailed review of the implications of the proposed amendments, especially regarding article 8, allowing us to oversee all possible consequences for current tax arrangements.

As a proponent of the ‘resident State principle’ on the taxation of income of seafarers, the KVNR expresses the hope that the OECD will further elaborate Article 15, with special attention to the fall-back position for countries that wish to adhere to the ‘effective management’ approach.

Article 8

Article 8 of the OECD Model Tax Convention deals with profits from the operation of ships and aircraft in international traffic and boats engaged in inland waterways transport.

This article ensures that the profits from the operation of ships or aircraft in international traffic will be taxed in one State only. According to the proposed changes, this text will be changed as follows:

Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

It is stated: “The vast majority of countries preferred the alternative provision included in paragraph 2 of the Commentary on Article 8, which provides for exclusive taxation in the State of the enterprise (State of residence), over paragraph 1 of Article 8, which provides for exclusive taxation in the State in which the place of effective management of the enterprise is situated’.

Comments KVNR

The Netherlands has one of the world’s most extensive treaty networks and has conducted tax treaties with over 90 countries. Most of the bilateral tax treaties that the Netherlands concluded provide for the exclusive taxation in the State in which the place of effective management of the enterprise is situated.

This approach is consistent with Article 4 of the OECD Model Tax, according to which the ‘place of effective management’ has been adopted as the preferred treaty criterion for persons other than individuals, to deal with international complexities of the taxation of income from shipping, inland waterways transport and air transport in particular.

Hence, any change to this Article might have far reaching implications in practice. In line with the International Chamber of Shipping (ICS), the KVNR would welcome a more detailed review of the implications of the proposed amendments, allowing us to oversee all possible consequences for current tax arrangements.

Article 15 paragraph 3

Paragraph 3 of Article 15 deals with the taxation of employees who work on such ships, aircraft and boats. According to the proposed changes, paragraph 3 of Article 15 shall read as follows:

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship of aircraft operated in international traffic (other than aboard a ship or aircraft operated solely within the other Contracting State) shall be taxable only in that State.

Comments KVNR

The proposed 'resident State' principle on the income of seafarers is in line with Dutch fiscal treaty policy. As a proponent of this principle, the KVNR expresses the hope that the OECD will further elaborate this Article, with special attention to the fall-back position for countries that wish to adhere to the 'effective management' approach.